



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## ORDER AND REASONS

Appeal No. AP-2012-009

Volpak Inc.

v.

President of the Canada Border  
Services Agency

*Order and reasons issued  
Tuesday, May 14, 2013*

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IN THE MATTER OF an appeal filed by Volpak Inc. on June 6, 2012, pursuant to subsection 67(1) of the *Customs Act*, R.S.C. 1985, (2d Supp.), c.1;

AND IN THE MATTER OF a request made by the President of the Canada Border Services Agency on November 2, 2012, pursuant to rule 23.1 of the *Canadian International Trade Tribunal Rules*, for an order dismissing the appeal on the basis that the Canadian International Trade Tribunal does not have the jurisdiction to deal with the issue on appeal or, in the alternative, an order that Volpak Inc. provide further submissions on the alleged errors made by the Canada Border Services Agency in its re-determination of the tariff classification of the goods in issue.

**BETWEEN**

**VOLPAK INC.**

**Appellant**

**AND**

**THE PRESIDENT OF THE CANADA BORDER SERVICES  
AGENCY**

**Respondent**

**ORDER**

The request made by the President of the Canada Border Services Agency to dismiss the appeal for lack of jurisdiction is denied.

The request made by the President of the Canada Border Services Agency for Volpak Inc. to provide further submissions regarding the alleged errors made by the Canada Border Services Agency in its re-determination of the tariff classification is granted. Such further submissions shall be served and filed by June 4, 2013.

Stephen A. Leach  
Stephen A. Leach  
Presiding Member

Dominique Laporte  
Dominique Laporte  
Secretary

## STATEMENT OF REASONS

1. On June 6, 2012, Volpak Inc. (Volpak) filed an appeal with the Canadian International Trade Tribunal (the Tribunal) with regard to a decision of the President of the Canada Border Services Agency (CBSA) made on March 15, 2012, pursuant to subsection 60(4) of the *Customs Act*,<sup>1</sup> concerning the tariff classification of chicken and chicken products (the goods in issue).

2. On November 2, 2012, the CBSA made a request to the Tribunal, pursuant to rule 23.1 of the *Canadian International Trade Tribunal Rules*,<sup>2</sup> for an order dismissing the appeal on the basis that the Tribunal does not have the jurisdiction to deal with the issue on appeal.

### Positions of the Parties

3. The CBSA states that because the re-determination of the tariff classification occurred as a result of a decision by the Minister of Foreign Affairs (the Minister) to cancel Volpak's import permit under the *Export and Import Permits Act*,<sup>3</sup> Volpak is in fact attacking the discretion of the Minister. The CBSA contends that the Tribunal does not have jurisdiction to review the exercise of discretion by the Minister and that the appeal must therefore be dismissed.

4. In the alternative, the CBSA asks that Volpak be ordered to provide further submissions as to the alleged errors made by the CBSA in its re-determination of the tariff classification of the goods in issue.

5. In its reply submission, Volpak argues that the CBSA did in fact make a re-determination of the tariff classification of the goods in issue under subsection 59(1) of the *Act*, which the CBSA subsequently maintained under subsection 60(4). Volpak submits that as it is this re-determination of the tariff classification which is in issue, the appeal is exclusively within the jurisdiction of the Tribunal, pursuant to subsection 67(1) of the *Act*.

6. Moreover, Volpak asserts that due to the complex factual and legal matters at issue, the appeal cannot be disposed of based solely on the record currently before the Tribunal.

### Legislation

7. Subsection 59(1) of the *Act* states as follows:

**59.** (1) An officer, or any officer within a class of officers, designated by the President for the purposes of this section may

(a) in the case of a determination under section 57.01 or 58, re-determine the origin, tariff classification, value for duty or marking determination of any imported goods at any time within

(i) four years after the date of the determination, on the basis of an audit or examination under section 42, a verification under section 42.01 or a verification of origin under section 42.1 . . . .

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1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].

2. S.O.R./91-499 [*Rules*].

3. R.S.C. 1985, c. E-19.

8. Subsection 60(4) of the *Act* provides that:

- 60.** (4) On receipt of a request under this section, the President shall, without delay,
- (a) re-determine or further re-determine the origin, tariff classification or value for duty;
  - (b) affirm, revise or reverse the advance ruling; or
  - (c) re-determine or further re-determine the marking determination.

9. Subsection 67(1) of the *Act* provides that a person aggrieved by a decision of the CBSA made pursuant to section 60 may appeal from the decision to the Tribunal.

### **Analysis**

10. Subsection 67(1) states that the Tribunal's jurisdiction to hear appeals pursuant to the *Act* arises from decisions made by the CBSA pursuant to section 60 or 61.

11. The CBSA concedes that a decision was made to reclassify the goods in issue under subsection 59(1) of the *Act* and that the reclassification was subsequently affirmed by way of the CBSA's decision under subsection 60(4).<sup>4</sup>

12. At the heart of the present appeal is Volpak's request that the tariff classification of the goods in issue, and the subsequent duty assessed, be set aside by the Tribunal.

13. The Tribunal finds that as this is an appeal under subsection 67(1) of the *Act* from a decision rendered by the CBSA under subsection 60(4), this appeal is properly before the Tribunal. As such, the Tribunal finds that it has jurisdiction to hear this appeal.

14. For the above reasons, the Tribunal denies the CBSA's request to dismiss the appeal for lack of jurisdiction.

15. The Tribunal agrees with the CBSA's submission that additional clarification regarding Volpak's reasons for appeal would be beneficial. The Tribunal therefore grants the CBSA's request that Volpak be ordered to provide further submissions on the alleged errors made by the CBSA in its re-determination of the tariff classification of the goods in issue.

Stephen A. Leach  
Stephen A. Leach  
Presiding Member

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4. Tribunal Exhibit AP-2012-009-12B at paras. 14, 15.