

Ottawa, Friday, December 20, 2002

Appeal No. AP-2001-072

IN THE MATTER OF an appeal under subsection 61(1) of the *Special Import Measures Act*, R.S.C. 1985, c. S-15;

AND IN THE MATTER OF a letter dated October 25, 2002, from the Canadian International Trade Tribunal directing ASA Alloys Inc. to show cause why the above-noted appeal should not be dismissed pursuant to paragraph 29(c) of the *Canadian International Trade Tribunal Rules*.

BETWEEN

ASA ALLOYS INC.

Appellant

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY**

Respondent

ORDER

WHEREAS the above-noted appeal was filed by the appellant on November 16, 2001, under subsection 61(1) of the *Special Import Measures Act*;

AND WHEREAS, by letter dated November 21, 2001, the Canadian International Trade Tribunal (the Tribunal) accepted the filing of the appeal, notified the respondent and scheduled a hearing for May 14, 2002;

AND WHEREAS, by letter dated January 7, 2002, the appellant requested a 30-day extension of the time limit to file its brief, which was granted by the Tribunal on January 15, 2002;

AND WHEREAS, by letter dated February 7, 2002, the appellant requested a second 30-day extension of the time limit to file its brief, which was granted by the Tribunal on February 21, 2002;

AND WHEREAS, by letter dated March 21, 2002, counsel for the appellant, Mr. Dalton Albrecht of Fraser Milner Casgrain LLP, informed the Tribunal that he no longer represented the appellant and would not be filing a brief or notice of discontinuance;

AND WHEREAS, by letter dated March 27, 2002, the Tribunal asked counsel for the appellant for the name of a contact at ASA Alloys Inc., which was provided to the Tribunal on March 28, 2002;

AND WHEREAS, by letter dated April 10, 2002, the Tribunal wrote to Mr. Michael Verge, President of ASA Alloys Inc., asking to be advised by April 25, 2002, of the appellant's intention with respect to the appeal;

AND WHEREAS, by letter dated May 1, 2002, the Tribunal again wrote to Mr. Verge requesting that the appellant execute and return the Notice of Discontinuance or file its brief no later than June 30, 2002;

AND WHEREAS, by letter dated July 3, 2002, the Tribunal advised appellant that the deadline for filing its brief had passed and that failure to file a brief could entail refusal by the Tribunal to accept it;

AND WHEREAS the appellant was further advised that the respondent would still be entitled to file his written brief and that this could result in the appellant being limited to presenting evidence and oral argument at the time of the hearing;

AND WHEREAS, by letter dated July 22, 2002, the Tribunal requested that the appellant immediately file its brief or, in the alternative, file the Notice of Discontinuance pursuant to rule 44 of the *Canadian International Trade Tribunal Rules*;¹

AND WHEREAS, by letter received on July 23, 2002, Mr. Terry Lehigh, National Sales Manager for ASA Alloys Inc., informed the Tribunal that Mr. Verge was no longer employed by the appellant and requested copies of the correspondence on file;

AND WHEREAS, by letter dated July 24, 2002, the Tribunal enclosed the requested correspondence and asked the appellant to advise the Tribunal no later than August 7, 2002, as to the appellant's intention with respect to the appeal;

AND WHEREAS, by letter dated August 15, 2002, the Tribunal, having received no answer from the appellant, requested that the appellant inform the Tribunal no later than August 28, 2002, whether the appellant intended to continue with the appeal and informed the appellant that, if the Tribunal did not hear from the appellant by that date, the matter would be set down for hearing and a deadline for the submission of a brief would be assigned;

AND WHEREAS, by letter dated September 6, 2002, the Tribunal, having had no response from the appellant, set the hearing down for January 10, 2003, and required the appellant to file its brief no later than October 7, 2002, or, in the event that the appellant did not wish to pursue the appeal, to execute and return the Notice of Discontinuance;

AND WHEREAS, by letter dated October 25, 2002, the Tribunal directed the appellant to show cause by November 15, 2002, why the appeal should not be dismissed and warned the appellant that failure to show cause might result in the appeal being dismissed without any further proceedings;

AND WHEREAS the Tribunal received no reply to its letter of October 25, 2002, and the appellant's brief has not been filed, as directed by the Tribunal in its previous letters;

AND WHEREAS the respondent filed a notice of motion with the Tribunal on November 12, 2002, requesting that the appeal be dismissed pursuant to rule 29(c) of the Rules of Procedure, since the appellant failed to prosecute its case in compliance with the Rules of Procedure or the Tribunal's directions and failed to file its brief in accordance with the Tribunal's numerous directions;

AND WHEREAS the appellant did not show cause, by November 15, 2002, why the appeal should not be dismissed;

1. S.O.R./91-499 [hereinafter Rules of Procedure].

THEREFORE, the Tribunal orders that the above-noted appeal be dismissed pursuant to paragraph 29(c) of the Rules of Procedure and that the hearing set down for January 10, 2003, be cancelled.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Patricia M. Close
Patricia M. Close
Member

Richard Lafontaine
Richard Lafontaine
Member

Michel P. Granger
Michel P. Granger
Secretary