



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Appeal No. AP-2003-040

Les Produits Laitiers Advidia Inc.

v.

The President of the Canada
Border Services Agency

*Order issued
Tuesday, April 20, 2004*

*Reasons issued
Tuesday, April 27, 2004*

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IN THE MATTER OF an appeal filed on November 19, 2003, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a motion by Les Produits Laitiers Advidia Inc., filed on March 23, 2004, pursuant to subrule 17(2) of the *Canadian International Trade Tribunal Rules*, S.O.R./91-499, for (a) an order to remove the appellant's brief from the record; and (b) an order immediately postponing the hearing scheduled for April 21, 2004, and setting revised deadlines for the filing of a new appellant's brief and respondent's brief, and a new hearing date;

AND IN THE MATTER OF an appearance entered under subsection 67(2) of the *Customs Act* and a notice of intervention filed under rule 39 of the *Canadian International Trade Tribunal Rules* by Dairy Farmers of Canada, on March 18, 2004.

BETWEEN

LES PRODUITS LAITIERS ADVIDIA INC.

Appellant

AND

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

Respondent

ORDER

Les Produits Laitiers Advidia Inc.'s (Advidia) motion for an order removing the appellant's brief from the record is dismissed. However, Advidia may amend the appellant's brief as its counsel sees fit, provided that the amendments are filed no later than June 7, 2004. Moreover, Advidia must file, by May 10, 2004, a response to the Canadian International Trade Tribunal's letter of March 18, 2004, regarding the designation as confidential of information in the appellant's original brief.

Advidia's motion for an order immediately postponing the hearing scheduled for April 21, 2004, is granted, and the hearing is now scheduled for September 14 and 15, 2004.

Dairy Farmers of Canada is granted intervener status in the appeal.

Richard Lafontaine

Richard Lafontaine
Presiding Member

Pierre Gosselin

Pierre Gosselin
Member

Meriel V. M. Bradford

Meriel V. M. Bradford
Member

Susanne Grimes

Susanne Grimes
Acting Secretary

The reasons will be issued at a later date.

REASONS FOR ORDER

1. On October 30, 2003, the Commissioner of the Canada Customs and Revenue Agency (CCRA), issued a decision under subsection 60(4) of the *Customs Act*,¹ regarding the tariff classification of certain milk component products imported by Les Produits Laitiers Advidia Inc. (Advidia).
2. On November 20, 2003, Advidia filed an appeal with the Canadian International Trade Tribunal (Tribunal) from the CCRA's decision.
3. On January 19, 2004, Advidia filed its brief (original brief) with the Tribunal. The original brief was not marked as confidential and was treated by the Tribunal as public.
4. By letter dated March 3, 2004, Advidia purported to file a public version of its original brief, dated February 18, 2004, which the Tribunal understood to be an attempt to designate the original brief as confidential, after the fact, under section 46 of the *Canadian International Trade Tribunal Act*.²
5. On March 18, 2004, the Tribunal advised Advidia that it was unable to accept the February 18, 2004, version of the brief as public or to designate, *ex post facto*, the original brief as confidential. In the Tribunal's view, the February 18, 2004, version did not comply with the requirements of subsection 46(1) of the *CITT Act*. It was neither a non-confidential edited version nor a non-confidential summary of the information in sufficient detail to convey a reasonable understanding of the allegedly confidential information. In addition, the Tribunal did not consider Advidia's designation of the original brief to be legitimate, given the nature and extent of the information contained therein. Thus, the Tribunal gave Advidia until March 22, 2004, to withdraw the designation or provide compelling reasons for the designation of each item contained in the original brief. The date for responding to the Tribunal's letter was later extended to March 24, 2004.
6. Furthermore, on March 16, 2004, Dairy Farmers of Canada (DFC) filed a notice of participation under subsection 67(2) of the *Customs Act* and a notice of intervention under rule 39 of the *Canadian International Trade Tribunal Rules*.³ In its submissions under rule 40.1 of the *CITT Rules*, DFC stated that it represented the major proportion of the domestic industry for milk and other dairy products, that its intervention was necessary in order to be heard in the appeal, that its member dairy producer associations would be directly affected by the Tribunal's determination and that it would assist the Tribunal by virtue of its members' knowledge of the product in issue.
7. On March 23, 2004, Advidia filed a notice of motion for (a) an order to remove the appellant's brief from the record and (b) an order immediately postponing the hearing scheduled for April 21, 2004, and setting revised deadlines for the filing of a new appellant's brief and respondent's brief, and a new hearing date. Advidia, in bringing the motion, argued that its counsel had just been retained and would need adequate time to prepare for the hearing, as the original brief was inadequate in terms of applicable facts and law and did not reflect all the evidence and arguments that would be made at the hearing. On March 23, 2004, Advidia also notified the Tribunal that the Canada Border Services Agency (CBSA) (formerly the CCRA) consented to its motion.
8. On March 24, 2004, DFC objected to Advidia's motion.
9. On March 26, 2004, Advidia requested that the Tribunal deny intervener status to DFC in the appeal.

1. R.S.C. 1985 (2d Supp.), c.1.

2. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].

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

10. Pending the resolution of Advidia's motion, the Tribunal suspended the deadline for filing the information requested from Advidia on March 18, 2004, as well as the deadlines for filing the respondent's brief and the intervener's submission.

11. The Tribunal will now address the points raised in Advidia's motion and its March 26, 2004, request.

12. First, Advidia's motion for an order removing its original brief from the record is dismissed. The Tribunal notes that the original brief was on the public record for six weeks before Advidia purported to designate it as confidential and that it remained on the record for a further three weeks before Advidia's motion to remove it was made. In other words, the original brief was on the record—and available to the parties—for nine full weeks before Advidia sought to have it removed. The original brief contains extensive information, including exhibits, that is relevant to the appeal and therefore of assistance to the parties and the Tribunal. To allow Advidia, at this stage, to withdraw its original brief and replace it with a better one, having belatedly retained counsel, is an unnecessary inconvenience to these proceedings. In light of the foregoing, the Tribunal will not grant such an order. The Tribunal will, however, allow Advidia the latitude to amend its original brief as its counsel sees fit, provided that the amendments are filed no later than June 7, 2004.

13. The Tribunal has preliminarily examined the information in the original brief and is of the view that almost all of it would, in the ordinary course, be considered to be public. Under section 46 of the *CITT Act*, a party must explain why it wishes to designate such information as confidential. Consequently, Advidia still must file a response to the Tribunal's letter of March 18, 2004, regarding the designation as confidential of information in its original brief. Advidia has until May 10, 2004, to file its response. Absent objections from the parties, the "public" brief dated February 18, 2004, may remain on the record as an anomalous appellant's brief.

14. Second, Advidia's motion for an order immediately postponing the hearing scheduled for April 21, 2004, and setting a new hearing date, is granted. Having granted Advidia the latitude to amend its original brief, the Tribunal is of the view that the parties will require additional time to complete their briefs, submissions and responses. The hearing is now scheduled for September 14 and 15, 2004.

15. Third, DFC is granted intervener status in the appeal. In the Tribunal's view, neither subsection 67(2) of the *Customs Act* nor rule 39 of the *CITT Rules* provides the Tribunal with any discretion to refuse intervener status where the notice of intervention contains all the information required by rule 40.1 of the *CITT Rules*. DFC's notice of intervention clearly contained all such information.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member