



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Appeal No. AP-2003-012

Gammon Trading Co. Ltd.

v.

The Commissioner of the Canada
Customs and Revenue Agency

*Order and reasons issued
Wednesday, April 21, 2004*

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

AND IN THE MATTER OF a motion by the Commissioner of the Canada Customs and Revenue Agency requesting that the Tribunal dismiss the appeal on the grounds that it does not have jurisdiction to consider the appeal.

BETWEEN

GAMMON TRADING CO. LTD.

Appellant

AND

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

Respondent

ORDER

The motion is granted, and the appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Susanne Grimes
Susanne Grimes
Acting Secretary

Place of Hearing: Ottawa, Ontario

Tribunal Member: Pierre Gosselin, Presiding Member

Counsel for the Tribunal: John Dodsworth

Clerk of the Tribunal: Anne Turcotte

Appearances: Thomas Yuen, for the appellant
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STATEMENT OF REASONS

1. This is a decision in a motion brought by the Commissioner of the Canada Customs and Revenue Agency (CCRA) to the Tribunal on November 24, 2003, pursuant to rule 24 of the *Canadian International Trade Tribunal Rules*.¹
2. In its motion, the CCRA requests:
 1. An order dismissing the Appeal on the grounds that the Tribunal does not have jurisdiction to deal with issues raised in this Appeal; or
 2. In the alternative, if it is found that the Tribunal does have jurisdiction to hear this Appeal, an order allowing the Respondent [an] additional fifteen (15) business days to serve and file the Respondent's brief.

BACKGROUND

3. The goods in issue are 100 percent cotton 4.5 Wales cut corduroy pile fabrics used in the manufacture of apparel. They were imported from the People's Republic of China into Canada between July 18, 1998, and November 12, 1999, under tariff item No. 5801.22.20 of the schedule to the *Customs Tariff*,² with a claim for the special concessionary classification provision of tariff item No. 9935.00.00. In decisions made pursuant to subsection 60(4) of the *Customs Act*,³ dated March 21, 2003, the CCRA confirmed the classification of the goods in issue under tariff item No. 5801.22.20. However, the CCRA determined that tariff item No. 9935.00.00 applied only to goods classified in Chapter 52, such that it did not apply to the goods in issue. On June 6, 2003, pursuant to section 67 of the *Act*, Gammon Trading Co. Ltd. (Gammon) appealed the CCRA's March 21, 2003, decisions to the Tribunal. On June 20, 2003, the Tribunal acknowledged receipt of the appeal.
4. In a letter dated May 9, 2003, Gammon was informed by the CCRA that the wording of tariff item No. 9935.00.00, applied in its decisions with respect to the goods in issue, had been implemented by means of a ministerial order.⁴ Notice of the change of wording in the schedule to the *Customs Tariff* implemented by way of the *Order* was issued to importers on July 1, 1998. Gammon was also informed that, while the *Order* had been made retroactive to January 1, 1998, it did not apply to importations before July 1, 1998.
5. In its brief dated September 23, 2003, Gammon stated that the goods in issue qualified for the special concessionary classification provision of tariff item No. 9935.00.00 as it was worded prior to the *Order*. Gammon indicated that it feels that the retroactive application of this amendment, which made the tariff item applicable only to goods of Chapter 52, is unfair, as it will not be able to recover, from its customers, the amounts owing under the re-determination. Gammon stated that neither it nor its broker had received notice regarding the amendment. Gammon also stated in its brief that it had co-operated with the CCRA in its verification of the proper tariff classification of the goods in issue and that the CCRA had a responsibility to notify Gammon immediately if there was a mistake. Instead, it took the CCRA three years and nine months to issue the re-determination. Gammon also takes issue with the manner in which the CCRA calculated interest on the outstanding balance owed by Gammon pursuant to the re-determination.

1. S.O.R./91-499.

2. S.C. 1997, c. 36.

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

4. *Technical Amendments Order (Customs Tariff) 1998-3*, S.O.R./98-340 [*Order*].

MOTION

6. In its motion, the CCRA argues that the only substantive ground of appeal indicated in Gammon's brief concerns the retroactive imposition of duties under the *Customs Tariff* and that it has not challenged the CCRA's classification decision of the goods in issue under tariff item No. 5801.22.20. The CCRA argues that the Tribunal has no jurisdiction to consider the validity of the retroactive imposition of duties under the *Custom Tariff*, such that the appeal must be dismissed.

7. In reply, Gammon states that it had been following the CCRA's advice in filing an appeal with the Tribunal. Gammon stated that it wishes to have an expert witness, an employee of Gammon's customs broker, testify before the Tribunal in the appeal. The witness will contest and dispute the CCRA's ruling and explain how she handled the fabric shipments and why the particular commodity code was used. Gammon reiterated its concern stated in its brief, that the CCRA had taken too long to make its decision, resulting in a higher than expected penalty and interest charge.

DECISION

8. The Tribunal is an administrative body that is created by statute. It maintains no inherent jurisdiction. In its decision in *Deputy M.N.R.C.E. v. Unicare Medical Products Inc.*,⁵ the Tribunal stated:

As a statutory agency, its jurisdiction is entirely derived from Parliament. It only has the authority conferred explicitly or implicitly by its own enabling statute or other federal statutes that give it jurisdiction.⁶

9. The Tribunal's express authority with respect to hearing appeals is found in section 16 of the *Canadian International Trade Tribunal Act*,⁷ which states that the Tribunal will:

(c) hear, determine and deal with all appeals that, pursuant to any other Act of Parliament or regulations thereunder, may be made to the Tribunal, and all matters related thereto.

10. According to section 67 of the *Act*, a person aggrieved of a decision made by the CCRA regarding the origin, tariff classification, value for duty or marking of imported goods may appeal to the Tribunal.

11. The present matter clearly does not concern origin, value for duty or marking of imported goods. Furthermore, the Tribunal is of the view that it also does not pertain to a decision by the CCRA regarding the tariff classification of imported goods. However, in none of Gammon's submissions to the Tribunal in this appeal or in the present motion has Gammon expressed opposition to the CCRA's finding that the tariff item did not apply to the goods in issue. Instead, Gammon argued that the retroactive application of an amendment to the *Customs Tariff* was unfair; that neither it nor its broker had received notice of the amendment; that the CCRA had a responsibility to notify Gammon of its mistake sooner; and that the manner in which the CCRA calculated interest was improper. More fundamentally, however, the Tribunal lacks jurisdiction to address any of these issues in an appeal pursuant to section 67 of the *Act*. Moreover, it does not have the jurisdiction to address issues of fairness or equity. The following statement made by the Tribunal in a previous appeal is applicable:

The Tribunal notes that the appellants' representative argued that it is now too late to apply to the Federal Court of Canada for a review of the designated officer's re-determinations. This may be the

5. (30 April 1990), 2437, 2438, 2485, 2591 and 2592 (CITT).

6. *Ibid.* at 5.

7. R.S.C. 1985 (4th Supp.), c. 47.

case, but the Tribunal cannot assume jurisdiction either for practical reasons or on the basis of equity.⁸

12. Given that the Tribunal lacks jurisdiction to consider these grounds of appeal, the motion is granted, and the appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

8. *Richards Packaging Inc. v. Deputy M.N.R.* (10 February 1999) AP-98-007 and AP-98-010 (CITT) at 5-6.