



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER

Appeal No. AP-2009-015

Danone Inc.

v.

President of the Canada Border
Services Agency

*Order issued
Friday, January 15, 2010*

IN THE MATTER OF an appeal filed by Danone Inc. on June 25, 2009, pursuant to subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF an order of the Canadian International Trade Tribunal issued on November 19, 2009, granting limited intervener status in the appeal to Ultima Foods Inc., Parmalat Canada Inc. and Dairy Farmers of Canada;

AND IN THE MATTER OF an intervener brief filed jointly by Ultima Foods Inc. and Parmalat Canada Inc. and an intervener brief filed by Dairy Farmers of Canada, both on December 29, 2009;

AND IN THE MATTER OF motions filed by Danone Inc. on January 8, 2010, pursuant to rule 24 of the *Canadian International Trade Tribunal Rules* for an order striking certain paragraphs from the intervener briefs.

BETWEEN

DANONE INC.

Appellant

AND

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

Respondent

ORDER

WHEREAS the Canadian International Trade Tribunal, by order issued on November 19, 2009, granted Ultima Foods Inc., Parmalat Canada Inc. and Dairy Farmers of Canada intervener status in the appeal with the following limitations:

- Ultima Foods Inc. and Parmalat Canada Inc. shall file a joint written submission with supporting documents, if any, and present joint oral argument at the hearing on the impact that the tariff classification sought by Danone Inc. would have on their respective market positions.
- Dairy Farmers of Canada shall file a written submission with supporting documents, if any, and present oral argument at the hearing on the impact that the tariff classification sought by Danone Inc. would have on Canada's supply management system.

WHEREAS the Canadian International Trade Tribunal issued reasons for its order on December 1, 2009, which indicate, *inter alia*, the following:

- Ultima Foods Inc., Parmalat Canada Inc. and Dairy Farmers of Canada each have a direct interest in the appeal that would not otherwise be adequately represented by either of the parties.

- In particular, Ultima Foods Inc. and Parmalat Canada Inc. produce and sell products that compete directly with the goods in issue and, while the President of the Canada Border Services Agency can be expected to provide legal arguments and evidence in support of the tariff classification that favours Ultima Foods Inc. and Parmalat Canada Inc., the latter have the first-hand expertise about the relevant products to ensure that their direct interests are adequately represented in the appeal, and Dairy Farmers of Canada represents the Canadian producers of milk and dairy producers that are shielded by a supply management system, and there is no reason to believe that either of the parties will adequately address how the functioning of this system may depend on the tariff classification of the good in issue.
- Pursuant to subsection 17(2) and section 35 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal is a master of its own procedure and is free to restrict the interveners' submissions to ensure that its proceedings are expeditious and not unduly complicated for the parties to the appeal.
- The Canadian International Trade Tribunal was therefore permitting Ultima Foods Inc. and Parmalat Canada Inc. to file a joint submission on the impact that the proposed tariff classification would have on their respective market positions and was permitting Dairy Farmers of Canada to file a submission on the impact on Canada's supply management system (i.e. to the degree necessary to adequately represent their respective direct interest in the appeal).

AND WHEREAS Ultima Foods Inc. and Parmalat Canada Inc., jointly, and Dairy Farmers of Canada filed written submissions with supporting documents on December 29, 2009, that consist, *inter alia*, of legal arguments and evidence in support of the tariff classification that they favour, as well as other information that does not relate to the impact of the proposed tariff classification on the market position of Ultima Foods Inc. or Parmalat Canada Inc. or, in the case of Dairy Farmers of Canada, on Canada's supply management system;

THEREFORE, the written submissions filed by the interveners on December 29, 2009, exceed the scope of the Canadian International Trade Tribunal's order of November 19, 2009, and the Canadian International Trade Tribunal hereby orders as follows:

- The written submissions and supporting documents filed by the interveners on December 29, 2009, shall be removed from the record forthwith.
- By the end the day on January 18, 2010, Ultima Foods Inc. and Parmalat Canada Inc. shall re-file their written submissions of December 29, 2009, with the Secretary, without paragraphs 33-37, 40-42, 71-79, 84, 88, 93-100, 102-115 and 118-74 and the last sentence of paragraph 81, and without the supporting documents that correspond to these paragraphs, and shall forthwith serve a copy on each party and on Dairy Farmers of Canada.
- By end of day on January 18, 2010, Dairy Farmers of Canada shall re-file its written submissions of December 29, 2009, with the Secretary, without paragraphs 3, 7, 10, 36-101 and 113-16, and without the supporting documents that correspond to these paragraphs, and shall forthwith serve a copy on each party and on Ultima Foods Inc. and Parmalat Canada Inc.

- Danone Inc. still has until end of day on January 29, 2010, to file a response to the interveners' written submissions with the Secretary and to serve forthwith a copy on the President of the Canada Border Services Agency and on the interveners.

André F. Scott
André F. Scott
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary