



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## ORDER

Appeal No. AP-2009-015

Danone Inc.

v.

President of the Canada Border  
Services Agency

*Order issued  
Friday, March 5, 2010*

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

AND IN THE MATTER OF a request from counsel for the President of the Canada Border Services Agency that Professor H. Douglas Goff and Ms. Andrea O'Brien be permitted, as experts, access to certain confidential information on the record.

**BETWEEN**

**DANONE INC.**

**Appellant**

**AND**

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

**Respondent**

**ORDER**

WHEREAS, pursuant to subsection 45(3) of the *Canadian International Trade Tribunal Act*, confidential information may be disclosed by the Canadian International Trade Tribunal (the Tribunal) to experts acting under the control or direction of counsel, subject to directives from the Tribunal governing the use of such information;

WHEREAS access to confidential information of record in this matter is required for the purpose of Professor Goff and Ms. O'Brien providing their expert views on food science, in the case of Professor Goff, and on the chemical composition of food products, in the case of Ms. O'Brien, to counsel of record for the President of the Canada Border Services Agency;

WHEREAS the Tribunal qualifies Professor Goff as an expert in food science and Ms. O'Brien as an expert in the chemical composition of food products.

THE TRIBUNAL ORDERS THAT:

1. Counsel may disclose to Professor Goff and Ms. O'Brien the confidential exhibits in the present appeal, namely, the confidential supplemental materials of Danone Inc. containing a protected document detailing the manufacturing process of the goods in issue and three documents with information on the composition of DanActive, filed by counsel for Danone Inc. on March 1, 2010.
2. Professor Goff and Ms. O'Brien shall have access to the said confidential information at the Ottawa office of counsel for the President of the Canada Border Services Agency, at the Department of Justice, under the direction and control of the lead counsel in this case, Mr. Andrew Gibbs.
3. Prior to obtaining access to the said confidential information, Professor Goff and Ms. O'Brien each shall sign the attached undertaking and acknowledgement. Counsel for the President of the Canada Border Services Agency shall countersign the said document to acknowledge that Professor Goff and Ms. O'Brien are working under his direction and control.
4. Counsel for the President of the Canada Border Services Agency shall explain the terms of this order to Professor Goff and Ms. O'Brien prior to disclosure of any confidential information.
5. The undertaking and acknowledgement for Professor Goff and Ms. O'Brien shall provide that they:

- (a) use the specified confidential information exclusively for purposes of the subject proceedings;
- (b) not disclose, except to counsel for the President of the Canada Border Services Agency and to the Tribunal, any confidential information to which they have been given access;
- (c) not photocopy any document received that contains any confidential information;
- (d) save confidential information only on the hard drive of a stand-alone or laptop computer that is not connected to any computer network or accessible in any manner through another computer or other means; erase, at the completion of these proceedings, all confidential information saved on the stand-alone or laptop computer; and file with the Secretary of the Tribunal a certificate confirming the destruction of the said information; and
- (e) return to counsel for the President of the Canada Border Services Agency, at the end of the proceedings, all confidential information, including any notes, charts, tables and memoranda created based on confidential information.

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André Scott  
Presiding Member

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Dominique Laporte  
Secretary

**CANADIAN INTERNATIONAL TRADE TRIBUNAL****UNDERTAKING AND ACKNOWLEDGEMENT**

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

WHEREAS the Tribunal issued an order dated March 5, 2010, directing that the person to whom disclosure is made shall not disclose any of the confidential information to any person and shall not use the confidential information for any purpose, other than in and for the purpose of this appeal.

**UNDERTAKING**

I, Professor H. Douglas Goff, undertake:

- (a) to use the information disclosed under the conditions of this undertaking exclusively for purposes of the subject proceedings;
- (b) not to disclose, except to counsel for the President of the Canada Border Services Agency and to the Tribunal in my testimony in these proceedings, any confidential information to which I have been given access;
- (c) not to photocopy any document received that contains any confidential information;
- (d) to keep confidential the information disclosed under the conditions of this undertaking;
- (e) to save confidential information only on the hard drive of a stand-alone or laptop computer that is not connected to any computer network or accessible in any manner through another computer or other means; erase, at the completion of these proceedings, all confidential information saved on the stand-alone or laptop computer; and file with the Secretary of the Tribunal a certificate confirming the destruction of the said information; and
- (f) to return to counsel for the President of the Canada Border Services Agency any notes, charts, tables and memoranda created based on that confidential information at the end of my participation in these proceedings.

**ACKNOWLEDGEMENT**

I hereby acknowledge that disclosure by me of some or all of the confidential information to which I have been given access could result in economic harm to Danone Inc. and any other party to these proceedings.

Signature: \_\_\_\_\_  
Name: **Professor H. Douglas Goff**  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

**Countersigned by counsel for the President of the Canada Border Services Agency – Ottawa office**

Signature: \_\_\_\_\_  
Name: **Mr. Andrew Gibbs**  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

**CANADIAN INTERNATIONAL TRADE TRIBUNAL****UNDERTAKING AND ACKNOWLEDGEMENT**

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

WHEREAS the Tribunal issued an order dated March 5, 2010, directing that the person to whom disclosure is made shall not disclose any of the confidential information to any person and shall not use the confidential information for any purpose, other than in and for the purpose of this appeal.

**UNDERTAKING**

I, Ms. Andrea O'Brien, undertake:

- (a) to use the information disclosed under the conditions of this undertaking exclusively for purposes of the subject proceedings;
- (b) not to disclose, except to counsel for the President of the Canada Border Services Agency and to the Tribunal in my testimony in these proceedings, any confidential information to which I have been given access;
- (c) not to photocopy any document received that contains any confidential information;
- (d) to keep confidential the information disclosed under the conditions of this undertaking;
- (e) to save confidential information only on the hard drive of a stand-alone or laptop computer that is not connected to any computer network or accessible in any manner through another computer or other means; erase, at the completion of these proceedings, all confidential information saved on the stand-alone or laptop computer; and file with the Secretary of the Tribunal a certificate confirming the destruction of the said information; and
- (f) to return to counsel for the President of the Canada Border Services Agency any notes, charts, tables and memoranda created based on that confidential information at the end of my participation in these proceedings.

**ACKNOWLEDGEMENT**

I hereby acknowledge that disclosure by me of some or all of the confidential information to which I have been given access could result in economic harm to Danone Inc. and any other party to these proceedings.

Signature: \_\_\_\_\_  
Name: **Ms. Andrea O'Brien**  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

**Countersigned by counsel for the President of the Canada Border Services Agency – Ottawa office**

Signature: \_\_\_\_\_  
Name: **Mr. Andrew Gibbs**  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2010.