CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, May 18, 2000

Appeal Nos. AP-96-046 and AP-96-074

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

AND IN THE MATTER OF a motion by the appellant requesting that the Tribunal strike out the grounds relied upon by the respondent as being contrary to law or as wholly inadequate and without merit and that the aforementioned appeals be allowed.

BETWEEN

GFT MODE CANADA INC. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The motion is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

James A. Ogilvy
James A. Ogilvy
Member

Michel P. Granger
Michel P. Granger
Secretary

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal Nos. AP-96-046 and AP-96-074

GFT MODE CANADA INC. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

A hearing was held on February 7, 2000, regarding a preliminary motion brought by the appellant in its appeals of the re-determinations made by the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency) of the value for duty of imported goods. In the motion, the appellant requested that the Tribunal strike out the respondent's brief and that the Tribunal allow the appeals on the basis of the remaining documentation on file. The appellant argued that the respondent's pleadings do not establish a *prima facie* case. The appellant also argued that the respondent cannot, in an appeal before the Tribunal, present grounds for the assessment of duty that were not covered by the respondent's re-determination.

HELD: The motion is dismissed. The Tribunal is of the view that it has jurisdiction, on a preliminary motion, to strike out pleadings and dismiss an appeal, but will only do so when it is "plain and obvious" or "beyond doubt" that the pleadings disclose no reasonable cause of action. The present case does not meet that standard. The legal principles at issue which concern the "value for duty" under the *Customs Act* are not yet settled. Further, the factual underpinnings of the case are in dispute and have not been proven.

The Tribunal is of the view that the appeals, on the merits, should proceed. It is also the Tribunal's opinion that the respondent may, in an appeal, raise alternative grounds for a re-determination that were not covered by a re-determination. Whether an item is dutiable arises from the application of the provisions of the *Customs Act*, not by virtue of a re-determination of the respondent. The Tribunal's objective in an appeal is to apply the valuation sections of the *Customs Act* to the evidentiary record presented at the hearing to ascertain the proper value for duty of the goods.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	February 7, 2000
Date of Decision:	May 18, 2000
Tribunal Members:	Pierre Gosselin, Presiding Member Arthur B. Trudeau, Member James A. Ogilvy, Member
Counsel for the Tribunal:	John Dodsworth
Clerk of the Tribunal:	Anne Turcotte
Appearances:	Dean A. Peroff, for the appellant Patricia Johnston, for the respondent

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal Nos. AP-96-046 and AP-96-074

GFT MODE CANADA INC. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: PIERRE GOSSELIN, Presiding Member
ARTHUR B. TRUDEAU, Member
JAMES A. OGILVY, Member

REASONS FOR DECISION

INTRODUCTION

This is a preliminary motion in appeals pursuant to subsection 67(1) of the *Customs Act*[1] from re-determinations dated March 27 and July 23, 1996, made by the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency). In these decisions, the respondent assessed duty on payments made by the appellant to the licensors as "royalties" pursuant to subparagraph 48(5)(*a*)(iv) of the Act. In his brief, the respondent argued that, in the alternative, a portion of the fees paid pursuant to the sublicence and licence agreements should be added to the price paid or payable as an assist.

On September 14, 1999, the parties requested that the Tribunal hold the appeals in abeyance, pending a decision of the Supreme Court of Canada on whether it would grant leave to appeal in *DMNR* v. *Mattel Canada*.[2] On September 21, 1999, the Tribunal advised the parties that the appeals would not be held in abeyance and set out a timetable for each party to file a supplemental brief with respect to the decision of the Federal Court of Appeal in that case. The appellant had to file a supplemental brief by November 10, 1999, and the respondent had to file a reply by December 30, 1999. Neither party filed a supplemental brief.

On November 3, 1999, the appellant brought the present motion pursuant to rule 24 of the *Canadian International Trade Tribunal Rules*[3] requesting that the Tribunal strike out the respondent's brief and allow the appeals based on the remaining documentation before the Tribunal. On February 7, 2000, a hearing was held on the motion.

ANALYSIS

This motion concerns the nature of an appeal under section 67 of the Act and raises three main issues: (1) whether the Tribunal has jurisdiction to strike out pleadings and decide an appeal on a preliminary motion; (2) whether the Tribunal should consider the respondent's alternative argument that the payments made by the appellant to the licensors are assists; and (3) whether the Tribunal should strike out the respondent's pleadings and allow the appeals.

---

1. R.S.C. 1985 (2d Supp.), c. l [hereinafter Act].
2. (13 January 1999), A—291—97 (FCA) [hereinafter *Mattel*].
3. S.O.R./91-499 [hereinafter Rules of Procedure].

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

Whether the Tribunal has jurisdiction to strike out pleadings and decide an appeal on a preliminary motion

The appellant argued that the Tribunal has jurisdiction, under subsection 17(2) of the *Canadian International Trade Tribunal Act*[4] and rules 5, 18(1)(*f*) and 24 of the Rules of Procedure, to consider this motion. The appellant referred to the Tribunal's decision in *Newman's Valve* v. *DMNR*,[5] in which the Tribunal determined that a motion may be brought under rule 24 by way of a preliminary motion before the hearing. The appellant alleged that, in *Newman's Valve*, the Tribunal determined that it had authority to strike out an appellant's brief and dismiss an appeal on a preliminary motion without proceeding by way of a hearing.

The appellant also argued that the Tribunal can refer to the *Federal Court Rules, 1998*[6] relating to a motion to strike out pleadings when ascertaining the scope of its authority to strike out pleadings in an appeal under the Act.

The respondent argued that the Tribunal does not have jurisdiction to hear a preliminary motion to strike out pleadings other than with respect to jurisdictional issues. The respondent argued that the Federal Court Rules do not apply to the Tribunal's procedure. However, should the Tribunal accept that the Federal Court Rules apply, the respondent argued that they do not apply to the present circumstances. Further, in the event that analogies are drawn by the Tribunal from the Federal Court Rules, the respondent argued that the test for striking out pleadings is very high. The respondent referred to *Hunt* v. *Carey*,[7] in which the Supreme Court of Canada established the test to be applied under the Federal Court Rules, which is that a motion to strike out pleadings can be granted only when it is "plain and obvious" or "beyond doubt" that the pleadings disclose no reasonable cause of action.

Section 67 of the Act states that, in an appeal, the Tribunal shall hold a hearing. Further, the Rules of Procedure suggest that, in normal course, a hearing in an appeal is intended to include an oral hearing (for example, rule 10 governs appearances before the Tribunal). However, the Tribunal is of the view that section 67 does not give the parties the unrestricted right to a hearing, even when one is unnecessary. Section 67 should not be interpreted to mean that the Tribunal cannot control the procedure by which an appeal is determined.

The Tribunal has jurisdiction to control its own procedure. The Tribunal has, in fact, made decisions before a hearing was held, for example, when it lacked jurisdiction to deal with the issues raised in the appeal.[8] As well, the Tribunal has rendered a preliminary decision to dismiss an appeal when an appellant repeatedly refused to comply with the directions of the Tribunal to take the necessary steps to advance the appeal.[9] It is interesting to note that this matter was decided in response to an application from the respondent seeking to strike out the appeals by way of a preliminary motion.

The respondent suggested that the Tribunal has no discretion in this regard and that a full hearing must be held in all circumstances, except when determining issues with respect to its jurisdiction. The Tribunal is of the view that this position could lead to absurd results. The Tribunal has discretion to

4. R.S.C. 1985 (4th Supp.), c. 47 [hereinafter CITT Act].
5. (10 October 1997), AP-96-121 (CITT) [hereinafter *Newman's Valve*].
6. S.O.R./98-106 [hereinafter Federal Court Rules].
7. [1999] 2 S.C.R. 959.
8. *Supra* note 5.
9. *Driscoll's Darts & Trophies* v. *MNR* (27 January 2000), AP-92-238 (CITT).

determine the scope and nature of a hearing, including whether, in these very unique cases, a hearing should be held at all.

The Tribunal might be able to determine on a preliminary motion that legal arguments made by one or more of the parties have no chance of success. For example, where this is shown to be the case and where no facts are in dispute, it may well lend itself to a decision by the Tribunal that there is, in effect, no case to be heard.

Although the Tribunal is not bound by the Federal Court Rules, the Tribunal notes that the test applied by the Federal Court of Canada in such matters is very high.[10] Case law indicates that the test on motions to strike out pleadings requires the moving party to demonstrate that the outcome of the case is "plain and obvious" or that it is "beyond doubt" that the pleadings disclose no reasonable cause of action, a standard that the Tribunal feels should apply in preliminary motions of this nature before the Tribunal.

Rare are the circumstances in which it appears that it is "plain and obvious" or "beyond doubt" that a pleading discloses no reasonable cause of action. That said, from time to time, such cases do come before the Tribunal. Given the limited resources of all courts and tribunals, it is important that those resources be used wisely. When there is little doubt about the outcome of a case, it may well be appropriate to dispose of it before a full hearing is involved.

Whether the Tribunal should consider the respondent's alternative argument that the payments made by the appellant to the licensors are assists

The appellant submitted that the respondent cannot raise an alternative ground for the assessment of duties, i.e. one that was not part of the respondent's re-determinations pursuant to subsection 63(3) of the Act, which forms the basis of these appeals. Indeed, it is argued in the respondent's brief, for the first time, that some of the payments made by the appellant to the licensors were dutiable as assists, according to subparagraph 48(5)(*a*)(iii) of the Act.[11]

By way of analogy, the appellant stated that, in tax law, an assessment by the Department of National Revenue (now the Canada Customs and Revenue Agency) "forms the basis of the appeal". To allow the respondent to raise new grounds for the assessment of duty that were covered by the original re-determination would be "tantamount to allowing the Minister to appeal his own assessment".

---

10. *Rule 221*. MOTION TO STRIKE

(1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it

(*a*) discloses no reasonable cause of action or defence, as the case may be,
(*b*) is immaterial or redundant,
(*c*) is scandalous, frivolous or vexatious,
(*d*) may prejudice or delay the fair trial of the action,
(*e*) constitutes a departure from a previous pleading, or
(*f*) is otherwise an abuse of the process of the Court,

and may order the action be dismissed or judgment entered accordingly.

11. Respondent's brief filed May 28, 1997.

The *Income Tax Act*[12] requires the Minister of National Revenue to provide an assessment of tax owing by the taxpayer for the year.[13] Relying on cases drawn from tax law, the appellant was of the view that the decision under the Act is the assessment of duty. However, in contrast, pursuant to sections 58 to 61 of the Act, the respondent determines and re-determines the value for duty (or the tariff classification or the origin) of imported goods. It is the re-determination (or re-appraisal) of the value for duty which, under section 67, may be appealed by the importer to the Tribunal.

In a written response to a question posed by the Tribunal at the hearing, the appellant further argued that the Tribunal itself cannot, on its own initiative, render a decision that is different from the respondent's re-determination or one that is argued by the appellant. The appellant argued that the Tribunal has jurisdiction only to either dismiss or allow an appeal from the respondent's re-determination, but it does not have jurisdiction to change the re-determination. The appellant argued that to do so would constitute a denial of natural justice, as the appellant would not have had the opportunity to rebut the factual underpinnings of those new grounds and would not know the case that has to be met. The appellant argued that "should the Tribunal proceed in this fashion, it will act like a court of first instance rather than an appellate body".

The respondent argued that an appeal pursuant to section 67 of the Act is made from the respondent's re-determination or re-appraisal, not his reasons for that decision. It was argued that the specific section of the Act relied upon by the respondent in his re-determination constitutes the reasons for the re-determination. In this case, the appeals concern the respondent's decision that certain payments made by the appellant to the licensor were dutiable. Whether the payments made by the appellant to the licensors were dutiable as "royalties" or as "assists" constitutes the reasons for the decision. In an appeal, the respondent is free to raise new reasons for its decision that the payments are dutiable.

The Tribunal has traditionally taken the view that it has broad powers to dispose of an appeal. In tariff classification appeals, for example, the Tribunal has classified goods in a manner that is different from what was put forward by either the appellant or the respondent.[14] In this regard, the statutory basis of an appeal under the Act is the same for the re-appraisal of the value for duty as it is for the tariff classification or the origin of the imported goods.

It is the Tribunal's view that, in an appeal, the respondent may argue alternative or new grounds for the value for duty of goods in support of his re-determination which were not part of the reasons for his re-determination. The Tribunal possesses broad powers in disposing of an appeal, as granted by subsection 67(3) of the Act. As such, the Tribunal is of the view that it may come to a decision that is different from the respondent's re-determination. The Tribunal would be severely limited in exercising its jurisdiction in deciding appeals if, as the appellant argued, it were limited to considering the record before the respondent at the time of the re-determination.

---

12. R.S.C. 1985 (5th Supp.).
13. Section 152 of the *Income Tax Act* states, in part:

    > The Minister shall, with all due dispatch, examine a taxpayer's return of income for a taxation year, assess the tax for the year, the interest and penalties, if any, payable and determine
    > (a) the amount of refund, if any, to which the taxpayer may be entitled . . .
    > (b) the amount of tax, if any, deemed . . . to be paid on account of the taxpayer's tax payable under this Part for the year. [Emphasis added]

14. *Reha Enterprises* v. *DMNR* (28 October 1999), AP-98-053 (CITT); *and Research Products* v. *DMNRCE* (30 January 1992), AP-90-174 (CITT).

The Tribunal is of the view that the appellant has misunderstood the fundamental nature of an appeal before the Tribunal. The appellant suggested, in its brief, that the Tribunal is an appellate body, not a court of first instance.[15] While it is true that the Tribunal hears appeals, it is not an appellate body in the sense that it reviews a trial court's decision. The Tribunal is, in fact, a "court of first instance" where evidence is heard, witnesses are cross-examined and argument is made. Typically, both the appellant and the respondent bring evidence and present arguments not relied upon when the original determination was made.

There is a well-established principle that, on appeal, an appellant may not raise a point that was not pleaded or argued in the trial court, unless all relevant evidence is on the record.[16] This principle was at the heart of the Supreme Court of Canada's decision in *Continental Bank of Canada* v. *Canada*,[17] which was relied upon heavily by the appellant in its submissions and argument on the motion. In that case, the respondent attempted to raise grounds at the Supreme Court of Canada level which were not raised in the lower courts. The Supreme Court of Canada stated, in part:

> To accept this characterization by the appellant would, in effect, create a situation where the Crown is permitted to raise new arguments simply because other arguments failed in the courts below.
>
> Taxpayers must know the basis upon which they are being assessed so that they may advance the proper evidence to challenge that assessment. Here, it is not clear that there is the proper factual basis to support a reassessment on the basis proposed by the appellant. . . . Because the Bank was not assessed on the recapture, the evidence relating to the allocation of the purchase price was not adduced at trial. To allow the appellant to proceed with its new assessment without the benefit of findings of fact made at trial would require this Court to become a court of first instance with regard to the new claim.[18] [Emphasis added]

But this rationale does not apply to the Tribunal in an appeal pursuant to section 67 of the Act. The Tribunal's very function is to receive evidence and to consider the positions of the parties. The Tribunal's objective in hearing an appeal is to apply the valuation sections of the Act to the evidentiary record presented at the hearing to ascertain the proper value for duty of the goods.

In *Michelin Tires* v. *MNR*,[19] an appeal under the *Excise Tax Act*,[20] the Tribunal considered whether the respondent should be permitted to refer to the general anti-avoidance rule (GAAR), which was not raised in the respondent's notice of decision. The Tribunal relied upon *Louis Riendeau* v. *Her Majesty the Queen*,[21] in which the respondent raised a new ground for the reassessment of taxes for the first time at the Tax Court of Canada. In particular, the Tribunal stated that, in *Riendeau*:

> The Court found that a taxpayer's liability to pay tax is just the same whether a notice of assessment is mistaken or is never sent at all. Furthermore, it matters little under which section of the *Income Tax Act* an assessment is made. What does matter is whether tax is due. The Court was of the view that

15. See paragraph 71 of the appellant's submission entitled "Appellant's Response to Questions on Preliminary Motion", filed on February 21, 2000, in which the appellant states: "Should the Tribunal proceed in this fashion, it will act like a court of first instance rather than an appellate body".
16. J. Sopinka and M.A. Gelowitz, *The Conduct of an Appeal* (Toronto: Butterworths, 1993) at 51.
17. [1998] 1 S.C.R. 358 [hereinafter *Continental Bank*].
18. *Ibid.* at 367-68.
19. (22 March 1995), AP-93-333 (CITT) [hereinafter *Michelin Tires*].
20. R.S.C. 1985, c. E-15.
21. 91 D.T.C. 5416 (FCA) [hereinafter *Riendeau*].

> the Minister's mental process in making an assessment cannot affect a taxpayer's liability to pay the tax imposed by the *Income Tax Act* itself and that the Minister may correct a mistake.[22]

As such, in *Michelin Tires*, the Tribunal was of the view that the respondent was not precluded from raising the GAAR argument in the case before it. The Tribunal's decision was recently affirmed by the Federal Court of Canada.[23]

Further, very recent Tax Court of Canada decisions,[24] which considered *Continental Bank*, have specifically refuted the proposition that this case stands for the proposition that the respondent cannot raise new grounds for a decision (assessment) at trial. For example, in *General Motors*, the Tax Court of Canada stated, in part:

> There is nothing in the Rules of this Court, the Tax Court of Canada Act, or the Income Tax Act, precluding a party in an appeal to plead in the alternative. It may well be that a party may not be successful on his or her main argument but may be successful if an alternative argument is pleaded.
>
> The facts leading to an assessment are normally known by a taxpayer, not the Minister. Thus, the Minister may learn of additional facts during the course of considering a notice of objection or on discovery of a taxpayer after the normal reassessing period has expired. The Minister or the Attorney General may realize during one of these stages that the Crown's assessment may be valid not only on the basis of the statutory provisions the Minister originally assessed but on other provisions as well.[25]

In the present case, the respondent is not trying to re-determine the value for duty of the goods in issue at the appellate level after the original re-determination was rejected at trial, as was the situation in the cases relied upon by the appellant, nor is the respondent attempting to appeal his own decision after the statutorily prescribed time frames for doing so have expired.

In the Tribunal's view, the respondent may raise alternative grounds for the assessment of duties that did not form part of the his re-determination. Whether an item is dutiable arises from the application of the provisions of the Act, not by virtue of the respondent's re-determination. The Tribunal's objective in hearing an appeal is to apply the valuation sections of the Act to the evidentiary record presented at the hearing in order to ascertain the proper value for duty of the goods.

The Tribunal does not wish to suggest that the respondent's ability to raise alternative or new grounds in an appeal is unrestricted. In cases where new arguments are raised for the first time on appeal, the Tribunal must consider whether the addition of new grounds prejudices the appellant in any way. As was said in *General Motors*:

> The Minister may allege new facts, facts that came to the Minister's knowledge after the assessment was issued, and may submit additional statutory provisions, but the taxpayer must be informed of these allegations and submissions in a timely manner, not on the eve of a trial and definitely not at the appellate level. The taxpayer must have sufficient time to consider and review the new allegations and submissions. And, of course, the Crown has the onus of proving the allegations of facts it did not consider on assessing and to convince the court that the provisions of the Act newly relied on support the assessment.[26]

---

22. *Supra* note 19 at 16.
23. (28 March 2000), T—1525—95 (FCC).
24. *General Motors Acceptance* v. *Canada*, [1999] T.C.J. No. 502 online: QL (TCJ) [hereinafter *General Motors*]; and *Smith Kline Beecham Animal Health* v. *Canada*, [1999] T.C.J. No. 762.
25. *General Motors*, *ibid.* at para. 35 and 36.
26. *Ibid*. at para. 40.

In the present case, the respondent has provided the appellant with adequate notice that he will be arguing in the appeal that some of the payments made under the licence agreements are dutiable as assists, having raised this ground in his brief, which was filed, as was noted earlier, on May 28, 1997. It is the Tribunal's view that to permit the respondent to raise this argument in this procedure does not deny natural justice, as alleged by the appellant.

Regarding the onus of proof, tax cases confirm that the appellant bears the burden of proof with respect to the assumptions made by the respondent in making his assessment.[27] However, they also indicate that the respondent bears the onus of proof with respect to the assumptions raised for the first time.[28] The parties should be guided by these principles in the present case.

Whether the Tribunal should strike out the respondent's pleadings and allow the appeals

If, as the appellant urged, the Tribunal strikes out that part of the respondent's brief dealing with assists, the only remaining issue would concern royalties. In this regard, the appellant argued that the respondent's position, coupled with the facts and law relating to this case, cannot but result in the appellant winning. The appellant submitted this argument in view of the position relied upon by the respondent in his brief, which, according to the appellant, has been explicitly rejected by the Federal Court of Appeal in decisions rendered subsequent to the assessment of duties in the present case.[29] The appellant argued that the respondent's determination is, therefore, not supported by his own legal and factual findings. Consequently, the respondent's pleadings, which argue and rely on these principles, should be struck out. As a further consequence, the appellant argued that the respondent has not discharged his duty to establish his case and that the appeal should be allowed.

The respondent argued that the motion to strike out his pleadings should not be granted. The respondent argued that matters of law, not completely settled in jurisprudence, should not be disposed of by way of a motion to strike out. The respondent further argued that the motion is premature, given that the Tribunal invited the parties to submit supplemental briefs regarding the decision of the Federal Court of Appeal in *Mattel* and that neither party has yet done so.

The Tribunal is inclined to agree with the respondent in this respect. The Tribunal is of the view that the present case is not one in which it is "plain and obvious" or "beyond doubt" that the pleadings disclose no reasonable cause of action. The evidence has not been conclusively established, according to the respondent, and the Tribunal is inclined to agree. Value for duty cases often involve complex facts, which can only be verified upon close scrutiny, including examination and cross-examination of witnesses and review of relevant documents. In addition, the law, as it applies to this specific case, is not as completely settled as the appellant suggests. In such circumstances, it would be premature to dismiss this matter on a preliminary motion, particularly given the Tribunal's decision to allow the respondent to raise the argument, in the alternative, that some of the payments made by the appellant are dutiable as "assists". As such, the Tribunal is of the view that a full hearing should be held in this matter.

27. *Supra* note 19 at 19.
28. *Ibid.*
29. *Supra* note 2 (leave to appeal to the Supreme Court of Canada granted March 16, 2000, without reasons); and *Nike Canada* v. *Canada*, [1999], F.C.J. No. 53 (FCA).

CONCLUSION

In view of the decision made in relation to the motion, the Tribunal will permit the respondent to argue all issues relating to value for duty, as well as alternative grounds relating to assists, at a full hearing of this case. The Tribunal notes that the Supreme Court of Canada has granted leave to appeal and cross-appeal to the parties in *Mattel*. The Tribunal has requested that parties, whose cases invoke value for duty issues similar to those raised in *Mattel*, indicate if they wish to proceed to have their cases heard and disposed of before *Mattel* is dealt with by the Supreme Court of Canada. Consequently, the Tribunal would like the appellant and the respondent to indicate if they wish their cases to proceed notwithstanding *Mattel* or have matters postponed until the Supreme Court of Canada decision is rendered. Either way, the parties will be provided with the opportunity to file supplemental briefs to provide their views as to the impact that *Mattel* has on the facts of these appeals.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

James A. Ogilvy
James A. Ogilvy
Member