



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Appeal No. AP-2014-021

Worldpac Canada

v.

President of the Canada Border
Services Agency

*Order and reasons issued
Monday, July 6, 2015*

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IN THE MATTER OF an appeal filed by Worldpac Canada on September 3, 2014, pursuant to subsection 67(1) of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF motions filed by the President of the Canada Border Services Agency on May 12 and 14, 2015, requesting that the Tribunal dismiss the appeal on the basis that Worldpac Canada failed to comply with the Tribunal's directions.

BETWEEN

WORLDPAC CANADA

Appellant

AND

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

Respondent

ORDER

The motions are denied.

The appeal will be limited to the matter of the rejection notifications dated June 5 and 13, 2014.

Parties are to serve and file, by July 24, 2015, simultaneous submissions on the question of the Canadian International Trade Tribunal's jurisdiction to hear this appeal. Parties are to serve and file simultaneous reply submissions by August 7, 2015.

The deadline for filing the respondent's brief, if necessary, will be communicated at a later date.

The hearing scheduled for July 9, 2015, has been cancelled.

Jason W. Downey
Jason W. Downey
Presiding Member

STATEMENT OF REASONS

BACKGROUND

1. On September 3, 2014, Worldpac Canada (Worldpac) filed an appeal pursuant to subsection 60(4) of the *Customs Act*¹ concerning what was only later established to be two rejection notifications of the President of the Canada Border Services Agency (CBSA) dated June 5 and 13, 2014. The substance of the appeal concerns changes to the tariff classification of certain automotive parts and related applications for refunds. On September 5, 2014, Worldpac submitted a revised notice of appeal in respect of these same decisions.

PROCEDURAL HISTORY

2. On September 17, 2014, the Tribunal acknowledged receipt of Worldpac's notice of appeal and directed Worldpac to file its brief by November 17, 2014.

3. On November 17, 2014, Worldpac Canada failed to file its brief. Instead, on the day that the brief was due, Worldpac requested an extension of time until January 11, 2015, to file its brief. The CBSA opposed this request.

4. On November 24, 2014, the Tribunal granted Worldpac an extension of time and set a revised deadline of January 16, 2015, for the brief to be filed.

5. On January 16, 2015, Worldpac again failed to file its brief and requested another extension of time. Worldpac's counsel indicated that Worldpac was in discussions with legal counsel about the file and asked that the deadline to file its brief be extended until its legal counsel had an opportunity to review the file.

6. On January 22, 2015, the CBSA opposed Worldpac's request and asked the Tribunal to summarily dismiss the appeal. The CBSA argued that the refund requests under appeal had been filed outside the prescribed time limit and that the Tribunal, therefore, did not have jurisdiction to hear the appeal.

7. On January 23, 2015, the Tribunal granted another extension of time for the filing of Worldpac's brief and set a new deadline of January 30, 2015.

8. On January 30, 2015, Worldpac filed its brief. The brief, which was not particularly clear, raised some questions as to the precise decisions of the CBSA that are under appeal in this case.

9. On February 3, 2015, the CBSA reiterated its position that the appeal should be summarily dismissed for lack of jurisdiction and requested that the issue of jurisdiction be heard separately and on a preliminary basis. Worldpac did not oppose this request but asked that the CBSA provide specific details about the timing of its decisions in any submissions filed on the issue of jurisdiction.

10. On February 12, 2015, the Tribunal held a pre-hearing teleconference with the parties to discuss whether the jurisdictional issue should be heard on a preliminary basis. During the teleconference, the Tribunal directed Worldpac to clarify the transactions under appeal. A follow-up teleconference was scheduled for February 18, 2015.

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

11. On February 17, 2015, Worldpac informed the Tribunal and the CBSA that the legal counsel it had retained was no longer representing Worldpac in respect of this appeal and asked that the follow-up teleconference be rescheduled. The Tribunal denied Worldpac's request.

12. On February 18, 2015, the Tribunal held a follow-up teleconference with the parties during which it directed the parties to file a joint statement of the transactions under appeal by April 10, 2015. Following the teleconference, the Tribunal confirmed its directions in a letter.

13. On April 22, 2015, after a sustained lack of response by Worldpac and repeated attempts by the CBSA to coordinate a joint statement of the transactions under appeal, the Tribunal held a third teleconference. During this teleconference, Worldpac indicated that it was still seeking legal counsel. The Tribunal directed Worldpac to provide a list of the transactions under appeal by May 8, 2015. In the event that Worldpac retained legal counsel, the Tribunal indicated that Worldpac would have an additional week to provide this list to the Tribunal.

14. On May 8, 2015, Worldpac filed several large Excel-formatted files via the Tribunal's Secure E-filing Service, which purportedly responded to the Tribunal's request. Because of the size of the files, Worldpac claimed it was unable to serve the documents on the CBSA via e-mail and stated that a DVD version of the documents would be sent to the CBSA at a later date.

15. Worldpac mailed the DVD on May 13, 2015. The CBSA and the Tribunal received it on May 14, 2015. Of note is the fact that the DVD contained eight documents, three of which were not included in Worldpac's submission of March 8, 2015. The first, second, seventh and eighth documents were identical to those filed with the Tribunal on May 8, 2015. However, the third, fourth and fifth documents were new documents that had not been filed with the Tribunal on May 8, 2015.

16. On May 12 and 14, 2015, the CBSA filed motions with the Tribunal, requesting that the appeal be dismissed on the basis that Worldpac had not complied with the Tribunal's repeated directions to clarify the list of transactions under appeal.

17. On June 10, 2015, a hearing was held in Ottawa, Ontario, in order to hear submissions from the parties in connection with the CBSA's motions that the appeal be dismissed.

ANALYSIS

18. Put simply, the actions or inactions by counsel for Worldpac in this matter have been unacceptable.

19. The Tribunal's file is replete with examples where counsel for Worldpac has shown himself to be disorganized or, at best, uncertain as to how to advocate for his client.

20. Commitments made to the Tribunal have not been kept. Worldpac has not complied with directions given by the Tribunal. Various materials filed have been either of no use whatsoever or only of marginal or tangential relevance.

21. Written arguments have stretched the meaning of what is accepted as being succinct or cogent. Multiple delays have been caused as a direct result. Only painstakingly, and with the Tribunal's

intervention, was it possible to ultimately ascertain that, of the several thousand pages of documents filed by Worldpac, this appeal concerns only the two rejection notifications to which Worldpac referred in its brief.²

22. The Tribunal's ability to be a forum of easy access, to vary its procedure to conduct its proceedings informally and to excuse defects of form or technical irregularities has limits, the boundaries of which Worldpac and its counsel have reached.

23. Where a party to a proceeding has not met a requirement of the *Canadian International Trade Tribunal Rules*³ or has failed to comply with an order or direction, the Tribunal can dismiss an appeal pursuant to paragraph 29(c). The Tribunal has exercised this authority in the past,⁴ however, the Tribunal reluctantly will not do so in the present instance. Considering the unique facts of the case, it would be singularly unfair to Worldpac itself to lose its appellate rights solely due to counsel's inadequate performance thus far. The CBSA's motions are therefore denied.

24. At this juncture, the Tribunal is essentially willing to afford Worldpac a final opportunity to arrange its affairs related to this appeal, with its counsel, so that it may proceed without further delay and in strict compliance with Tribunal directions. The Tribunal will not entertain any further delays in this case caused by Worldpac's choice of counsel, or for any other reason, save for exceptional circumstances. Worldpac will therefore have to bear the consequences of any further inability of its counsel to properly advocate its rights within the procedural confines of the Tribunal's proceedings.

25. The Tribunal encourages Worldpac's counsel to take the necessary steps to familiarize himself with the *Rules* and liaise with the Tribunal's Registrar, should he have further questions. The Tribunal also recommends consulting a document titled "Tips for Effective Advocacy before the Canadian International Trade Tribunal", which is posted on the Tribunal's Web site, and perhaps seeking further mentorship, if so required.

26. In a request to the Tribunal dated February 3, 2015, and at the hearing of June 10, 2015, the CBSA raised an argument concerning the Tribunal's jurisdiction in this matter.⁵ Of its own recognizance, the Tribunal considers this to be a live issue and therefore directs parties to serve and file simultaneous submissions on the question of the Tribunal's jurisdiction to hear this appeal. Parties are to serve and file simultaneous submissions by July 24, 2015, and simultaneous reply submissions by August 7, 2015.

ORDER

27. The motions are denied.

28. The appeal will be limited to the matter of the rejection notifications dated June 5 and 13, 2014.

29. Parties are to serve and file, by July 24, 2015, simultaneous submissions on the question of the Tribunal's jurisdiction to hear this appeal. Parties are to serve and file simultaneous reply submissions by August 7, 2015.

2. *Transcript of Public Hearing*, Vol. 1, 10 June 2015, at 46; Exhibit AP-2014-021-10A, tabs C-7.2 and C-8, Vol. 1.
3. S.O.R./91-499 [*Rules*]. Rule 29 directs as follows: "... Where a party to a proceeding has not met any requirement of these Rules or complied with any order or direction issued by the Tribunal, the Tribunal may ... (c) make any order that it considers just and equitable in the circumstances, including a dismissal order."
4. *Gateway Cabinets Ltd. v. M.N.R.* (5 July 2002), AP-90-154 and AP-90-160 (CITT); *Grimmworks Inc. v. President of the Canada Border Services Agency* (15 June 2015), AP-2014-040 (CITT).
5. Exhibit AP-2014-021-11, Vol. 1A; *Transcript of Public Hearing*, Vol. 1, 10 June 2015, at 49.

30. The deadline for filing the respondent's brief, if necessary, will be communicated at a later date.
31. The hearing scheduled for July 9, 2015, has been cancelled.

Jason W. Downey

Jason W. Downey
Presiding Member