



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Appeal No. AP-2014-042

EMCO Corporation Westlund

v.

President of the Canada Border
Services Agency

*Order and reasons issued
Friday, September 4, 2015*

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IN THE MATTER OF an appeal filed by EMCO Corporation Westlund on February 27, 2015, pursuant to subsection 67(1) of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a motion filed by EMCO Corporation Westlund on August 28, 2015, to have certain documents and arguments struck from the respondent's brief.

BETWEEN

EMCO CORPORATION WESTLUND

Appellant

AND

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

Respondent

ORDER

The motion to have certain documents and arguments struck from the respondent's brief is denied.

Jean Bédard
Jean Bédard
Presiding Member

STATEMENT OF REASONS

BACKGROUND

1. On February 27, 2015, EMCO Corporation Westlund (EMCO) filed an appeal with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*.¹
2. On April 27, 2015, in accordance with rule 34 of the *Canadian International Trade Tribunal Rules*,² EMCO filed its brief.
3. On June 25, 2015, in accordance with rule 35 of the *Rules*, the Canada Border Services Agency (CBSA) filed its brief.
4. On August 28, 2015, EMCO filed a motion to have certain documents and arguments struck from the CBSA's brief on the grounds that they do not relate to the goods in issue.
5. On August 31, 2015, the CBSA filed a reply to EMCO's motion requesting that the Tribunal deny the motion, as the matters raised therein are more properly considered at the hearing of the appeal on its merits.

ANALYSIS

6. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8419.11.00 as instantaneous gas water heaters, as determined by the CBSA, or should be classified under tariff item No. 8403.10.00 as boilers, as claimed by EMCO.
7. The goods in issue are described as follows in EMCO's brief:

The goods are known commercially as Navien Condensing Gas Combination Boilers (or Combi-Boilers). The CH Series Combi-Boilers are for use in the home and smaller commercial locations. . . .
8. EMCO claims that the document submitted at tab B and some of the documents submitted at tab C of the CBSA's brief are product literature that relates to models of Combi-Boilers other than the CH Series or to a different type of goods altogether (tankless water heaters) produced by the same manufacturer. EMCO also challenges the arguments presented by the CBSA at paragraphs 9, 20, 30, 31, 32, 33 and 34 of its brief on the basis that they rely on these documents and are therefore prejudicial to EMCO's case.
9. The Tribunal finds that the inclusion of these documents and arguments on the record of this appeal does not cause any prejudice to EMCO. EMCO will have ample opportunity at the hearing of this appeal on its merits to contest the relevance of the CBSA's evidence and arguments, and to present its own evidence regarding the nature of the goods in issue. If the Tribunal then determines that the CBSA's evidence is not relevant, it will be given the weight that it deserves in rendering a decision on this appeal.

1. R.S.C., 1985, c. 1 (2nd Supp.).
2. S.O.R./91-499 [*Rules*].

DECISION

10. In light of the foregoing, EMCO's motion to have certain documents and arguments struck from the CBSA's brief is denied.

Jean Bédard _____
Jean Bédard
Presiding Member