



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. EA-2015-003

Sistemalux Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, July 26, 2016*

TABLE OF CONTENTS

DECISION..... i

STATEMENT OF REASONS 1

 GOODS IN ISSUE AND QUESTION ON APPEAL 1

 PROCEDURAL HISTORY 2

 POSITIONS OF PARTIES..... 2

 Sistemalux..... 2

 CBSA 2

ANALYSIS..... 3

DECISION 4

IN THE MATTER OF an appeal heard on April 22, 2016, pursuant to section 61 of the *Special Import Measures Act*, R.S.C., 1985, c. S-15;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated June 11, 2015, with respect to a request for re-determination pursuant to section 59 of the *Special Import Measures Act*.

BETWEEN

SISTEMALUX INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Jean Bédard
Jean Bédard
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Rose Ritcey
Rose Ritcey
Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: April 22, 2016

Tribunal Members: Jean Bédard, Presiding Member
Jason W. Downey, Member
Rose Ritcey, Member

Counsel for the Tribunal: Anja Grabundzija

Senior Registrar Officer: Julie Lescom

Registrar Officer: Vedranka Zec

PARTICIPANTS:

Appellant	Counsel/Representative
Sistemalux Inc.	Marco Ouellet
Respondent	Counsel/Representative
President of the Canada Border Services Agency	Youri Tessier-Stall

Please address all communications to:

The Registrar
Secretariat to the Canadian International Trade Tribunal
333 Laurier Avenue West
15th Floor
Ottawa, Ontario K1A 0G7
Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

1. Sistemalux Inc. (Sistemalux) filed the present appeal with the Canadian International Trade Tribunal (the Tribunal) pursuant to section 61 of the *Special Import Measures Act*¹ from a decision made on June 11, 2015, by the President of the Canada Border Services Agency (CBSA) pursuant to section 59, in which the CBSA found that certain goods imported by Sistemalux were subject to anti-dumping and countervailing duties.

GOODS IN ISSUE AND QUESTION ON APPEAL

2. The goods imported by Sistemalux on January 10, 2014, are “commonly known as heat sinks, part No. HOU-376”² [translation] (the goods in issue). They originate from the People’s Republic of China, where they were produced by aluminum extrusion, among other techniques, and weigh about 460 g.³ After importation, the goods in issue are assembled with light-emitting diodes to make bulbs that are used in lamps.⁴ The goods in issue were imported under tariff item No. 7604.29.00⁵ of the schedule to the *Customs Tariff*⁶.

3. The CBSA determined that the goods in issue were of the same description as the goods subject to the Tribunal’s findings in Inquiry No. NQ-2008-003⁷ (the Tribunal’s findings), and that anti-dumping and countervailing duties were therefore payable. Sistemalux appealed the CBSA’s decision.

4. More specifically, Sistemalux does not contest that the goods in issue meet the general definition of the goods to which the Tribunal’s findings apply and that, on the face of it, they fall within its ambit⁸. Instead, Sistemalux alleges that the goods in issue are of the same description as certain goods specifically *excluded* from the Tribunal’s findings and that, as such, they are exempt from the imposition of anti-dumping and countervailing duties.

5. The relevant exclusion reads as follows:

Heat sinks imported under tariff item No. 8473.30.90 and weighing 700 g or less.

6. Therefore, the only issue was whether, pursuant to subsection 61(3) of *SIMA*, the goods in issue are of the same description as the aforementioned excluded goods.

1. R.S.C., 1985, c. S-15 [*SIMA*].

2. Exhibit EA-2015-003-04 at para. 9, Vol. 1; Exhibit EA-2015-003-13 at para. 11, Vol. 1B.

3. Exhibit EA-2015-003-04 at para. 11, Vol. 1.

4. *Ibid.* at para. 10.

5. The goods in issue were later reclassified in tariff item No. 8543.90.00.

6. S.C. 1997, c. 36.

7. *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) [*Extrusions*]. In its findings, pursuant to subsection 43(1) of *SIMA*, the Tribunal determined that the dumping and subsidizing of the described goods had caused injury to the domestic industry. The findings in *Extrusions* were continued, pursuant to paragraph 76.03(12)(b) of *SIMA*, by order of the Tribunal issued March 17, 2014, in Expiry Review No. RR-2013-003. Unless otherwise stated, all references in this statement of reasons relate to Inquiry No. NQ-2008-003.

8. Exhibit EA-2015-003-04 at paras. 3, 13, Vol. 1; Exhibit EA-2015-003-21, Vol. 1B; Exhibit EA-2015-003-10, Vol. 1B.

PROCEDURAL HISTORY

7. Sistemalux filed the present appeal on September 8, 2015. The parties filed submissions, and Sistemalux also filed three samples (Exhibits A-01, A-02 and A-03), which represent the goods in issue as imported, as well as the goods in issue at two different stages of assembly.

8. At the joint request of the parties, the Tribunal decided, on February 23, 2016, to hold a file hearing. The parties then submitted an agreed statement of facts, and filed submissions and additional documents in accordance with the procedure established by the Tribunal.

9. The Tribunal held a file hearing on April 22, 2016, in Ottawa, Ontario.

POSITIONS OF PARTIES

Sistemalux

10. Sistemalux alleged that the goods in issue are excluded from the Tribunal's findings by virtue of the exclusion for heat sinks imported under tariff item No. 8473.30.90 that weigh 700 g or less.

11. Sistemalux alleged that the goods in issue are properly classified under tariff item No. 8543.90.00. In spite of the fact that this tariff item number does not correspond to the one specified in the exclusion, Sistemalux alleged that the goods in issue are excluded by virtue of paragraph 371 of the Tribunal's statement of reasons in *Extrusions*. Sistemalux also relied on documentation filed by another importer in support of the product exclusion requests discussed in paragraph 371 of the statement of reasons; it argued that, although those requests concerned importations under tariff item No. 8473.30.90, the tariff classification is inappropriate, and the goods described in the product exclusion requests are similar to the goods in issue.

12. In fact, Sistemalux claimed that, for the purpose of the relevant exclusion, the classification of the goods under tariff item No. 8473.30.90 is not determinative. Moreover, it submitted that the domestic producers of aluminum extrusions are not able to produce the same type of products as the goods in issue.

CBSA

13. The CBSA submitted that the goods in issue are of the same description as the goods subject to the Tribunal's findings. In addition, according to the CBSA, the goods in issue do not correspond to any of the specified exclusions.

14. In particular, the CBSA submitted that the goods in issue do not meet all the requirements of the exclusion concerning "heat sinks imported under tariff item No. 8473.30.90 and weighing 700 g or less", since they were not imported under tariff item No. 8473.30.90.

15. According to the CBSA, the goods in issue simply do not fulfil one of the requirements of the exclusion referred to by Sistemalux. In this respect, the CBSA noted that an exclusion request is not tantamount to an exclusion granted by the Tribunal and that, therefore, the alleged resemblance of the goods in issue to goods described in certain exclusion requests made in *Extrusions* is not relevant for the purposes of this appeal.

16. The CBSA also submitted that findings should be interpreted on the basis of their ordinary meaning, and that the Tribunal has indicated that it would look behind its findings only if they are

ambiguous, which is not the case here. Finally, the CBSA noted that the Tribunal does not have the authority to amend the scope of its findings in an appeal under section 61 of *SIMA* and that, insofar as Sistemalux wishes to obtain a new exclusion, it should do so in an interim review pursuant to section 76.01.

ANALYSIS

17. Pursuant to subsection 3(1) of *SIMA*, anti-dumping and countervailing duties apply to goods of the same description as goods in respect of which the Tribunal has made a finding of injury.

18. Thus, in an appeal under section 61 of *SIMA* where the applicability of duties to imported goods is in issue, the Tribunal must determine whether the goods are of the same description as goods described in a finding. Similarly, where the question on appeal is whether the imported goods are *excluded* from the scope of a finding, the relevant question is whether the goods are of the same description as the excluded goods.⁹

19. The starting point of the analysis is the ordinary meaning of the words of the finding or the exclusion under consideration. In this respect, it is well established that it is only if there exists an ambiguity in the wording of a finding or exclusion that recourse can be had to the statement of reasons or other relevant documents in the administrative record in order to address the ambiguity. The starting point of such an exercise is to determine whether there exists any ambiguity whatsoever in the wording of a given finding or exclusion.¹⁰

20. In addition, it warrants noting that, in an appeal under section 61 of *SIMA*, the Tribunal's task is to determine the intended meaning of a finding and its factual application. In this context, the Tribunal has no authority to amend a given finding or exclusion.¹¹

21. In the present case, the Tribunal notes that the exclusion referred to by Sistemalux concerns goods that meet three requirements. The goods must be (1) heat sinks (2) imported under tariff item No. 8473.30.90 (3) that weigh 700 g or less.

22. The Tribunal sees no ambiguity in the text of the exclusion. In fact, Sistemalux did not allege that the exclusion is ambiguous.

23. Therefore, it is not necessary to have recourse to the statement of reasons or the evidence on the record of the Tribunal's inquiry in *Extrusions*. As explained above, such documents are used to clarify an

9. *Robertson Inc. v. President of the Canada Border Services Agency* (25 January 2016), EA-2014-002 and EA-2014-003 (CITT) [*Robertson*] at paras. 19-20; *Ideal Roofing Company Limited and Havelock Metal Products Inc. v. President of the Canada Border Services Agency* (10 July 2014), AP-2013-008 and AP-2013-009 (CITT) [*Ideal Roofing*] at para. 21; *Powers Industries Limited v. President of the Canada Border Services Agency* (22 April 2013), AP-2012-010 (CITT) [*Powers*] at para. 25.

10. *Robertson* at para. 21; *Salzgitter Mannesmann International (Canada) Inc. and Varsteel Ltd. v. President of the Canada Border Services Agency* (25 September 2013), AP-2012-047 and AP-2012-048 (CITT) at paras. 13-15; *Powers* at paras. 23-25; *Regal Ideas Inc. v. President of the Canada Border Services Agency* (27 May 2013), AP-2012-025 (CITT) at paras. 28-35; *Colonial Élégance Inc. v. President of the Canada Border Services Agency* (11 September 2013), AP-2012-038 (CITT) at paras. 15-16; *Ideal Roofing* at paras. 21-23; *Deputy M.N.R. (Customs and Excise) v. Trane Company of Canada.*, [1982] 2 FC 194 (FCA) at 206.

11. *Robertson* at para. 21; *Aluminart Products Limited v. President of the Canada Border Services Agency* (19 April 2012), AP-2011-027 (CITT) at para. 9; *Levolor Home Fashions Canada v. President of the Canada Border Services Agency* (22 May 2012), AP-2011-015 (CITT) at para. 17; *DeVilbiss (Canada) Ltd. v. Anti-dumping Tribunal*, [1983] 1 F.C. 706 (C.A.); *MAAX Bath Inc. v. Almag Aluminum Inc.*, 2010 FCA 62 (CanLII) at para. 35.

ambiguity in the findings. They are not used to create an ambiguity where none exists, or to question the scope of an exclusion clearly formulated by the Tribunal.

24. The parties agreed that the goods in issue were *not* imported under tariff item No. 8473.30.90. In addition, Sistemalux did not argue that the goods in issue should have been imported under tariff item No. 8473.30.90.

25. Therefore, since the goods in issue do not meet one of the requirements of the relevant exclusion, they are not of the same description as the excluded goods. The goods in issue are of the same description as the goods subject to the Tribunal's findings.

DECISION

26. The appeal is dismissed.

Jean Bédard
Jean Bédard
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Rose Ritcey
Rose Ritcey
Member