



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## ORDER AND REASONS

Application No. EP-2018-001

Full Bore Marketing Inc.

*Order and reasons issued  
Wednesday, August 22, 2018*

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IN THE MATTER OF an application made by Full Bore Marketing Inc., pursuant to subsection 60.2(1) of the *Customs Act*, for an order extending the time to file requests for further re-determination pursuant to section 60 of the *Customs Act*.

### **ORDER**

Having considered the application of Full Bore Marketing Inc. and the submissions of the Canada Border Services Agency, the Canadian International Trade Tribunal is satisfied that the requirements and conditions set out in section 60.2 of the *Customs Act* have been met.

The Canadian International Trade Tribunal hereby grants the application for an extension of time and gives Full Bore Marketing Inc. 30 days from the date of this order to file requests for further re-determination pursuant to section 60 of the *Customs Act*, with respect to the re-determinations listed in the application.

Jean Bédard

Jean Bédard, Q.C.

Presiding Member

## STATEMENT OF REASONS

### INTRODUCTION

1. This concerns an application filed by Full Bore Marketing Inc. (Full Bore) on May 8, 2018, pursuant to section 60.2 of the *Customs Act*<sup>1</sup> for an extension of time to file requests for further re-determination of the tariff classification of certain motorcycle helmets.

2. Full Bore's application follows the February 8, 2018, decision of the President of the Canada Border Services Agency (CBSA) to deny Full Bore's request for an extension of time under section 60.1 of the *Act*.

### BACKGROUND

3. On June 26, 2017, Full Bore, through its representative, filed a request for further re-determination, pursuant to subsections 60(1) and (2) of the *Act*, of the tariff classification of certain motorcycle helmets.

4. On or around July 14, 2017, the CBSA issued six Detailed Adjustment Statements (DAS) pursuant to subsection 59(1) of the *Act*, also regarding the tariff classification of certain motorcycle helmets. According to Full Bore, these decisions involved the same goods and were consistent with the above-mentioned tariff classification decisions that were the subject of Full Bore's June 26, 2017, requests.

5. Pursuant to subsection 60(1) of the *Act*, Full Bore had 90 days to file requests for further re-determination of the tariff classification with respect to the DASs issued on or around July 14, 2017. That period expired on October 12, 2017.

6. According to Full Bore's submission, Full Bore forwarded the July 14th DASs to its representative upon receipt. However, requests for further re-determination were not filed within the 90-day timeframe.

7. On October 17, 2017, Full Bore filed an application for an extension of time to file requests for further re-determination under section 60 of the *Act*, claiming the deadline was missed due to the senior consultant's absence on an overseas trip and an administrative oversight. On February 8, 2018, the CBSA denied the application.

8. On May 8, 2018, Full Bore filed an application for an extension of time with the Tribunal, pursuant to subsection 60.2(1) of the *Act*.

### STATUTORY FRAMEWORK

9. The relevant provisions of the *Act* are as follows:

**60 (1)** A person to whom notice is given under subsection 59(2) in respect of goods may, within ninety days after the notice is given, request a re-determination or further re-determination of origin, tariff classification, value for duty or marking. The request may be made only after all amounts owing as duties and interest in respect of the goods are paid or security satisfactory to the Minister is given in respect of the total amount owing.

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1. R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].

**60.1 (1)** If no request is made under section 60 within the time set out in that section, a person may make an application to the President for an extension of the time within which the request may be made, and the President may extend the time for making the request.

...

**60.2 (1)** A person who has made an application under section 60.1 may apply to the Canadian International Trade Tribunal to have the application granted after either

(a) the President has refused the application; or

(b) ninety days have elapsed after the application was made and the President has not notified the person of the President's decision.

If paragraph (a) applies, the application under this subsection must be made within ninety days after the application is refused.

...

(3) The Canadian International Trade Tribunal may dispose of an application by dismissing or granting it and, in granting an application, it may impose any terms that it considers just or order that the request be deemed to be a valid request as of the date of the order.

(4) No application may be granted under this section unless

(a) the application under subsection 60.1(1) was made within one year after the expiry of the time set out in section 60; and

(b) the person making the application demonstrates that

(i) within the time set out in section 60, the person was unable to act or to give a mandate to act in the person's name or the person had a bona fide intention to make a request,

(ii) it would be just and equitable to grant the application, and

(iii) the application was made as soon as circumstances permitted.

## ANALYSIS

10. For an extension of time request to be granted, an applicant must meet the four conditions stated at subsection 60.2(4) of the *Act*. The onus lies with the applicant to demonstrate, on a balance of probabilities, that these conditions have been met.

11. In the present application, there was no dispute between the parties that Full Bore met three of the four requirements. The Tribunal agrees. First, the application was made within one year after the expiry of the time set out in section 60. Second, the applicant has demonstrated a *bona fide* intention to make a request: Full Bore made another request for further re-determination relating to substantially the same goods, and it forwarded the DASs at issue to its representative requesting that they be added to that earlier request. Third, the application was made as soon as circumstances permitted, being filed just five days past the deadline.

12. Therefore, the question for the Tribunal to determine is whether the applicant has demonstrated that it would be just and equitable to grant the application.

13. The Tribunal has weighed various factors when assessing whether or not the granting of an extension of time would be just and equitable. Such factors include weighing the length of the delay against the consequences to the applicant if the application was not granted, the potential unfairness faced by other

importers if the application was granted, and the reasons for the delay.<sup>2</sup> No single factor is decisive and the determination of whether it is just and equitable to grant an application will depend on the facts and circumstances of each case. It also involves the exercise of discretion on the part of the Tribunal. In making this determination, the Tribunal has considered, among other factors, the benefit for the applicant in granting the application and the balance of convenience.

14. In the present case, Full Bore's representative filed the application for an extension of time just five days after the deadline for filing expired. Hence, after realizing the mistake, Full Bore's representative promptly and adequately followed up to remediate the failure.

15. In addition, the CBSA has not demonstrated that the interests of other importers would be prejudiced or disadvantaged by this short delay; while, on the other hand, there is no dispute that Full Bore would lose the opportunity to argue its case for a refund of duties paid if its application were not granted. As such, the Tribunal finds that the harm to Full Bore in denying its application would be significant. Additionally, in this case, there is no evidence that granting the application places an undue burden on the CBSA as it is already seized with a request for re-determination filed by Full Bore concerning the tariff classification of the same or substantially similar goods. There is also no significant harm to the CBSA's interest in finality, given that this was not a lengthy delay.

16. Full Bore's application indicates that the reasons for the delay were the senior representative's absence on an overseas trip and an administrative oversight. The CBSA submits that administrative oversight and inadvertence is not a justification for the late filing, as this does not constitute a circumstance beyond the applicant's control. In addition, the CBSA submits that, absent a circumstance beyond the applicant's control, granting the application would be unjust and inequitable towards other importers who do exercise the required due diligence to respect statutory time limits.

17. The Tribunal agrees with the CBSA that statutory deadlines should not be taken lightly. In particular, statutory deadlines ensure the timely resolution of files and provide finality to a proceeding. On the other hand, section 60.2 of the *Act* expressly gives the Tribunal permission to alter and extend statutory deadlines for certain requests provided that the conditions of that section have been satisfied, including that it is just and equitable to do so.

18. The Tribunal is not prepared to accept the CBSA's position that these provisions can only be invoked when a deadline was missed due to circumstances that are wholly beyond an applicant's control, particularly when a *bona fide* intention to make a request has been clearly established by the applicant, as is the situation in this case. However, circumstances beyond an applicant's control could certainly constitute a just and equitable reason for granting an application. When an applicant can establish that an honest mistake was committed and that efforts to rectify it were promptly taken, the Tribunal considers this to fall within the spectrum of situations provided for by section 60.2.

19. The Tribunal accepts that Full Bore and its representative made an honest mistake in this case. Full Bore trusted its representative to file the requests for further re-determination, which is not unreasonable given that Full Bore's representative had already filed timely requests for further re-determination with the CBSA in a similar proceeding. In addition, although Full Bore's representative made a mistake in missing the deadline, it has provided a reasonable explanation and the evidence shows that the mistake was swiftly

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2. *Dealers Ingredients Inc.* (29 August 2014), EP-2014-001 (CITT) [*Dealers Ingredients*] at para. 26.

remedied. This is different from the situation considered by the Tribunal in *Dealers Ingredients*, which involved a much longer delay of 61 days.<sup>3</sup>

20. This decision is consistent with the jurisprudence of the Tax Court of Canada in the context of legislation that is very similar to section 60.1 of the *Act*. While not binding on the Tribunal, the said jurisprudence provides that extensions of time for inadvertent errors may be permitted, so long as those errors are not the result of negligence or carelessness.<sup>4</sup>

21. The Tribunal is always mindful of possible abuses of the application process under section 60.2 of the *Act*. In the present circumstance, the Tribunal is satisfied that the mistake made in this case does not amount to negligence or carelessness and finds that it is just and equitable to grant this application for an extension of time. The third statutory condition under subparagraph 60.2(4)(b)(ii) of the *Act* has therefore been met.

22. The Tribunal also acknowledges Full Bore's request for the DASs in issue in this application to be appended to Full Bore's request for further re-determination in CBSA's File No. 17-0347. In the Tribunal's view, the decision of whether or not to join the two requests is best left to the CBSA.

## DECISION

23. The Tribunal grants the application for an extension of time and gives Full Bore Marketing Inc. 30 days from the date of this order to file requests for further re-determination pursuant to section 60 of the *Customs Act*, with respect to the re-determinations listed in the application.

Jean Bédard

Jean Bédard, Q.C.

Presiding Member

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3. *Dealers Ingredients* at para. 27.

4. See, for example, *Di Modica v. The Queen*, 2001 CanLII 548 (TCC) at para. 16 and *2749807 Canada Inc. v. The Queen*, 2004 TCC 457 (CanLII) at para. 18.