



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Application No. EP-2019-002

Coalision Inc.

*Order and reasons issued
Wednesday, September 18, 2019*

TABLE OF CONTENTS

ORDER	ii
STATEMENT OF REASONS	1
INTRODUCTION	1
STATUTORY FRAMEWORK.....	1
ANALYSIS.....	2
The application was made within one year	2
The applicant demonstrated a <i>bona fide</i> intention to appeal.....	2
Granting the application is just and equitable	2
The application was made as soon as circumstances permitted.....	3
There are reasonable grounds for the appeal.....	3
DECISION	3

IN THE MATTER OF an application made by Coalision Inc., pursuant to section 67.1 of the *Customs Act*, for an order extending the time to file a notice of appeal pursuant to section 67 of the *Customs Act*, with respect to a decision dated March 19, 2019, issued by the President of the Canada Border Services Agency.

ORDER

Having considered the application and submissions of Coalision Inc. and having noted that the President of the Canada Border Services Agency takes no position regarding the application, the Canadian International Trade Tribunal is satisfied that the requirements and conditions set out in section 67.1 of the *Customs Act* have been met.

The Canadian International Trade Tribunal hereby grants the extension of time to file a notice of appeal and accepts the documents filed by Coalision Inc. on June 24, 2019, as a notice of appeal, pursuant to subsection 67(1) of the *Customs Act*.

Jean Bédard

Jean Bédard, Q.C.

Presiding Member

STATEMENT OF REASONS

INTRODUCTION

1. This concerns an application filed by Coalision Inc. (Coalision) on June 24, 2019,¹ pursuant to section 67.1 of the *Customs Act*,² for an extension of time to appeal a decision of the President of the Canada Border Services Agency (CBSA) pursuant to subsection 60(4) of the *Act*.
2. Coalision's appeal challenges the CBSA's determination of March 19, 2019, of the price paid or payable for the imported goods.
3. Subsection 67(1) of the *Act* requires that a notice of appeal be filed with the Canadian International Trade Tribunal within 90 days after notice of the decision was given. This means that the deadline was June 17, 2019. Coalision filed this application and a notice of appeal on June 24, 2019, seven days after the deadline.
4. On June 28, 2019, the Tribunal acknowledged receipt of the application and requested that the CBSA make its submissions, if any, by July 29, 2019. On July 3, 2019, the CBSA requested an additional 30 days to file its submissions. With Coalision's consent, the Tribunal granted the CBSA's request.
5. On August 12, 2019, the CBSA advised that it would not be filing any reply submissions in the present application.

STATUTORY FRAMEWORK

6. Subsection 67(1) of the *Act* states as follows:

67 (1) A person aggrieved by a decision of the President made under section 60 or 61 may appeal from the decision to the Canadian International Trade Tribunal by filing a notice of appeal in writing with the President and the Canadian International Trade Tribunal within ninety days after the time notice of the decision was given.
7. Section 67.1 of the *Act* states as follows:

67.1 (1) If no notice of appeal has been filed within the time set out in section 67, a person may make an application to the Canadian International Trade Tribunal for an order extending the time within which a notice of appeal may be filed, and the Tribunal may make an order extending the time for appealing and may impose any terms that it considers just.

(2) The application must set out the reasons why the notice of appeal was not filed on time.

(3) The application must be made by filing with the President and the Canadian International Trade Tribunal the application accompanied by the notice of appeal.

(4) No order may be made under this section unless

1. Coalision's application for an extension of time and notice of appeal were dated Saturday, June 22, 2019. Coalision therefore refers to a five-day delay in filing its notice of appeal. However, the documents were sent early on Sunday, June 23, 2019. Additionally, Coalision provided revised confidential and public versions of its submissions on Monday, June 24, 2019. Therefore, the Tribunal considered the documents to be filed on June 24, 2019.

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

- (a) the application is made within one year after the expiry of the time set out in section 67; and
- (b) the person making the application demonstrates that
 - (i) within the time set out in section 67 for appealing, 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 appeal,
 - (ii) it would be just and equitable to grant the application,
 - (iii) the application was made as soon as circumstances permitted, and
 - (iv) there are reasonable grounds for the appeal.

ANALYSIS

8. The party seeking an extension of time bears the onus of demonstrating, on a balance of probabilities, that the conditions set out in section 67.1 of the *Act* have been fulfilled. In order to satisfy that burden, the evidence presented must be sufficiently clear, convincing and cogent.³ The Tribunal finds that Coalision has met this onus, for the following reasons.

The application was made within one year

9. As Coalision's application was filed only seven days after the deadline to file a notice of appeal, it falls within the one-year window set out in paragraph 67(4)(a) of the *Act*.

The applicant demonstrated a *bona fide* intention to appeal

10. Coalision sent an email to the CBSA on May 24, 2019, several weeks before the 90-day deadline, communicating its intention to appeal to the Tribunal. The Tribunal is satisfied that this demonstrates that Coalision formed, within the appeal period, a clear and *bona fide* intention to appeal.

Granting the application is just and equitable

11. Coalision submitted that it missed the deadline due to a clerical error. The CBSA rendered two distinct decisions regarding the same customs valuation issue within less than two months of one another. The decision in issue was rendered March 19, 2019, but a related decision on penalty pursuant to section 131 of the *Act* was rendered May 10, 2019. Coalision submitted that this created confusion in recording the appropriate appeal deadlines.

12. In *Full Bore*, the Tribunal considered it to be just and equitable to grant an application for extension of time under section 60.2 of the *Act* where "an honest mistake was committed and . . . efforts to rectify it were promptly taken".⁴ The present circumstances are similar: Coalision made an honest clerical error and attempted to remedy the situation in a timely manner.

13. Considering that the CBSA made no representations in this case, the Tribunal sees no reason why it would not be just and equitable to grant Coalision an extension of time.

3. *B. Erickson Manufacturing Limited* (3 April 2017), EP-2016-001 (CITT) at para. 6; *F.H. v. McDougall*, [2008] 3 SCR 41, 2008 SCC 53 (CanLII) at para. 46.

4. *Full Bore Marketing Inc.* (22 August 2018), EP-2018-001 (CITT) at para. 18. See also *Latoplast Ltd.* (25 July 2019), EP-2019-001 (CITT) [*Latoplast*] at para. 14.

The application was made as soon as circumstances permitted

14. As the Tribunal has previously noted, whether the application was made as soon as circumstances permitted is a fact-specific determination without a bright-line test.⁵ In the present circumstances, the Tribunal finds that Coalision acted with haste and filed the application as soon as possible after it realized its mistake.

15. Indeed, documents were first filed a mere six days after the 90-day deadline, during the early hours of Sunday, June 23, 2019. Coalision then made corrections to its submissions regarding confidential information on Monday, June 24, 2019, which was a provincial holiday in Quebec. Coalision was thus working on its application well outside of usual working hours. The Tribunal considers this to be evidence of Coalision's sense of urgency in the matter.

There are reasonable grounds for the appeal

16. Coalision made payments to the manufacturer of the apparel it imported for excess fabric that was left over after the apparel was produced. The CBSA considered the excess fabric to be an expense of producing the apparel, for which Coalision reimbursed the manufacturer. The CBSA therefore considered these payments to be made "in respect of the goods" pursuant to the definition of "price paid or payable" in subsection 45(1) of the *Act*. Accordingly, the CBSA included these payments in the "price paid or payable" for the apparel when calculating its value for duty.

17. Coalision submitted that these payments for excess material are distinct from payments for the imported apparel itself, and that the CBSA cannot extend the scope of the expression "price paid or payable" to cover payments made for other goods. In addition, Coalision submitted that the CBSA did not consider proper legal and accounting principles related to the acquisition of goods in the determination of price.

18. The Tribunal has previously stated that there are reasonable grounds for an appeal when the appellant "appears to raise an arguable issue".⁶ The Tribunal finds that Coalision's submissions above raise an arguable issue with regard to the proper calculation of the price paid or payable for the imported apparel, and thus demonstrate reasonable grounds for appeal.

DECISION

19. For the foregoing reasons, the Tribunal grants the application for an extension of time to file a notice of appeal pursuant to subsection 67(1) of the *Act*.

20. Noting that Coalision has filed a notice of appeal with the Tribunal and the CBSA, the Tribunal will consider the appeal to have been filed on the day this order is issued and will instruct the parties accordingly regarding the deadlines to file their submissions.

Jean Bédard
Jean Bédard, Q.C.
Presiding Member

5. *Latoplast* at para. 18.

6. *American Standard Bath & Kitchen (Canada)* (25 May 2004), EP-2003-008 (CITT) at para. 11.