



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Appeal No. AP-2019-027

Coalision Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, January 7, 2020*

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IN THE MATTER OF an appeal filed by Coalision Inc., pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a request filed by the Canada Border Services Agency pursuant to rule 23.1 of the *Canadian International Trade Tribunal Rules*, SOR/91-499, for an order directing Coalision Inc. to produce certain documents and to clarify certain submissions made in the appellant's brief.

BETWEEN

COALISION INC.

Appellant

AND

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

Respondent

ORDER

After considering the request and supporting submissions filed on December 20, 2019, by the Canada Border Services Agency, the submissions opposing the request filed on December 20, 2019, by Coalision Inc., and the submissions in reply filed on December 24, 2019, by the Canada Border Services Agency, the Canadian International Trade Tribunal dismisses the request of the Canada Border Services Agency for an order directing Coalision Inc. to produce certain documents and to clarify certain submissions made in the appellant's brief.

The Canadian International Trade Tribunal hereby extends the deadline for the Canada Border Services Agency to serve and file its brief until January 30, 2020.

Georges Bujold

Georges Bujold
Presiding Member

STATEMENT OF REASONS

INTRODUCTION

[1] The Canadian International Trade Tribunal (the Tribunal) examined the request by the Canada Border Services Agency (CBSA) made on December 20, 2019, seeking (1) that the Tribunal order Coalision Inc. (Coalision) to file certain documents in evidence; (2) that it order Coalision to provide clarifications regarding some of the submissions in its brief; and (3) that it suspend the proceedings in this file until Coalision serves and files the documents and clarifications requested. After reading the parties' submissions regarding this request and determining that it was appropriate to examine it under rule 23.1 of the *Canadian International Trade Tribunal Rules*,¹ the Tribunal decided to rule on this request as follows.

ANALYSIS

Service and filing of additional documents

[2] The CBSA is asking the Tribunal to order Coalision to file accounting records related to the purchase of surplus fabric for 2013, 2014 and 2016 in support of the allegation that the surplus fabric in issue is recorded as an expense for acquiring tangible assets and in accounts for assets in inventory stock held abroad. Noting that Coalision has also alleged that the payments in issue are not provided for in the purchase agreement for the goods in issue, the CBSA is asking the Tribunal to order Coalision to file the purchase agreements in effect from 2013 to 2016 between Coalision and its suppliers.

[3] With respect to the accounting records, the CBSA acknowledges that it has in its possession the relevant accounting records for 2015 and indicates in its letter dated December 24, 2019, in reply to Coalision's response to the CBSA's request, that it is reasonable to believe that the company treated the surplus fabric the same way for 2013, 2014 and 2016. In the Tribunal's opinion, as long as the purchases of surplus fabric are treated the same way in Coalision's accounting for all of the relevant transactions during the entire period in issue (2013 to 2016), it does not have to provide all of the accounting records related to surplus fabric purchases in order to comply with paragraph 34(2)(e) of the *Rules*. It is sufficient that it confirm that the accounting entries for 2013, 2014 and 2016 reflect those for 2015, which are already in the CBSA's possession, as seems to be indicated in its letter dated December 20, 2019, in response to the CBSA's request. The Tribunal hereby directs Coalision to confirm this fact in writing no later than January 10, 2020.

[4] Coalision does not allege in that letter or in its brief that it accounted for the surplus fabric differently in its books for years other than 2015. Consequently, the CBSA does not need Coalision to file all documents related to accounting for the surplus fabric to respond to the allegation that the surplus fabric in issue was recorded as an expense for acquiring tangible assets and in accounts for assets in inventory stock held abroad. If the CBSA's position is that the accounting records show that this is not the case, it can support this argument in its brief on the basis of documents already in its possession.

1 SOR/91-499 (*Rules*). The Tribunal notes that the CBSA's letter dated December 20, 2019, indicates that the request was made under rules 20.1, 23.1 and 24. Yet, pursuant to subrule 24(1) of the *Rules*, the Tribunal proceeds by way of motion only if it decides not to consider a question under rule 23.1 or the *Rules* specify that it must proceed by way of motion. However, the *Rules* do not require a party to file a motion for the Tribunal to examine the type of request made by the CBSA in this case.

[5] The CBSA also submits that the Tribunal cannot determine the value of imported clothing without having the requested documents for all of the years. The Tribunal cannot accept this argument. The issue that the Tribunal must decide is whether the payments for the surplus fabric must be added to the value for duty of the clothing pursuant to sections 45 and 48 of the *Customs Act*,² not to determine their quantum, that is, the exact amount that should or should not be added for each transaction in issue.

[6] Furthermore, Annex A (confidential) of the CBSA's decision dated March 19, 2019, under subsection 60(1) of the *Act*, which is the subject of this appeal, clearly indicates the amounts that should be added to the value for duty of the goods in issue should the Tribunal reject Coalision's allegations. In this respect, the Tribunal's understanding is that those amounts reflect the corrections that were prepared and filed by Coalision within 90 days of the CBSA's audit concerning establishing the value for duty of the goods in issue, the results of which were communicated to Coalision on April 5, 2017. Coalision is not asking the Tribunal to review these amounts. Once again, the purpose of the appeal is not to verify whether these amounts are correct from an accounting perspective, but rather to determine whether they should be included in the value for duty of the goods in issue.

[7] On balance, the Tribunal is of the view that the requested documents are of limited relevance and considers that granting the request would impose too heavy a burden on Coalision in the circumstances. In addition, the Tribunal notes that the parties do not have a general right to discovery of the evidence before it and that an information request must not be a mere "fishing expedition".³

[8] With regard to the request for the filing of purchase agreements in effect from 2013 to 2016 between Coalision and its suppliers, Coalision's letter dated December 20, 2019, indicates that no formal written agreement exists in that respect. The Tribunal cannot order the filing of documents that do not exist.

[9] For the above reasons, the Tribunal concludes that the CBSA's request for the filing of additional accounting records is unfounded.

Clarifications sought regarding the submissions in Coalision's brief

[10] The CBSA submits that Coalision made vague allegations and did not support them with evidence, which makes it impossible for it to respond to them, and asks the Tribunal to order it to provide clarifications.

[11] First, according to the CBSA, Coalision's submissions at paragraphs 45 to 51 of its brief are insufficient for it to understand and to respond to the proposed statutory interpretation. After examining the submissions in question, the Tribunal concludes that they comply with the requirement set out in subparagraph 34(2)(c)(vii) of the *Rules*. Indeed, they indicate that Coalision intends to argue at the hearing that the wording of the English version of subsection 45(1) of the *Act* must be interpreted in light of the French version of that provision and of certain provisions of a multilateral trade agreement. The Tribunal is of the view that this constitutes a "brief statement" of the arguments that the appellant will make at the hearing and that the CBSA does not need additional information to respond to this argument and to present its interpretation of the relevant provisions if it is different from that of Coalision.

2 R.S.C. (1985), c. 1 (2nd suppl.) (*Act*).

3 *The Masha Krupp Translation Group Ltd. v. Canada Revenue Agency* (October 17, 2018), PR-2016-041 (CITT) at para. 23.

[12] The CBSA also argues that Coalision made vague submissions regarding two potential situations involving the surplus fabric, namely, a potential repatriation to Canada, which would give rise to double-counting according to Coalision, and a potential resale of the fabric by Coalision to the manufacturer or to third parties. According to the CBSA, it is unclear whether these situations really arose between 2013 and 2016 or whether they are simply hypothetical and therefore irrelevant to the appeal.

[13] In its response to the CBSA's request, Coalision confirmed that a part of the surplus fabric was repatriated to Canada and that, in fact, that fabric is sometimes resold to the manufacturer. Coalision also referred to the evidence that it filed with its brief in support of these allegations.

[14] In the Tribunal's opinion, the requirements of the *Rules* and those of procedural fairness do not oblige Coalision to provide more clarifications to enable the CBSA to respond to its allegations. For example, it is open to the CBSA to argue, as it seems to suggest in its submissions in support of its request, that Coalision did not file enough evidence to establish the relevance of these situations in determining the value for duty of the goods in issue. In any case, the Tribunal is of the view that, if the CBSA intends to challenge Coalision's arguments with respect to those situations, it has sufficient information to do so.

[15] Furthermore, the Tribunal reminds the CBSA that Coalision is not arguing that the value for duty of the goods in issue, as established by the CBSA following the corrections made by the appellant, should be reduced to take into account the fabric that it would potentially repatriate to Canada or sell to a third party. In such a case, it could be relevant to have detailed knowledge of the circumstances and the amounts involved in the transactions. However, Coalision's allegations are of a different nature. Accordingly, the Tribunal concludes that it is not necessary for Coalision to provide clarifications on the circumstances surrounding the potential repatriation or resale of the surplus fabric in order to enable the CBSA to respond to the argument that these situations, whether hypothetical or real, are relevant to determining whether the payments for the surplus fabric purchases should be included in the value for duty of the goods in issue.

[16] For the above reasons, the Tribunal rejects the CBSA's request to order Coalision to provide clarifications with respect to the submissions made in its brief.

Request for suspension

[17] Given the Tribunal's decision on the issues of providing additional documents and filing clarifications with respect to some of Coalision's submissions, the Tribunal concludes that the CBSA's request to suspend the proceedings in this appeal is unfounded.

[18] However, given the directive to Coalision stated at paragraph 3 of these Reasons, the Tribunal decided to extend the time limit for the filing of the respondent's brief. Thus, the CBSA has until January 30, 2020, to serve and file its brief with the Tribunal.

CONCLUSION

[19] The CBSA's request for an order directing Coalision to produce certain documents and to provide clarifications regarding some submissions made in the appellant's brief is dismissed.

[20] The deadline for the service and filing of the respondent's brief is extended to January 30, 2020.

Georges Bujold

Georges Bujold
Presiding Member