



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Appeal No. EA-2019-003

2045662 Alberta Inc.

v.

President of the Canada Border
Services Agency

*Order issued
Friday, December 27, 2019*

*Reasons issued
Tuesday, January 7, 2020*

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IN THE MATTER OF an appeal filed by 2045662 Alberta Inc. on October 17, 2019, pursuant to subsection 61(1) of the *Special Import Measures Act*, R.S.C., 1985, c. S-15;

AND IN THE MATTER OF a request made by 2045662 Alberta Inc. on November 22, 2019, pursuant to subrule 23.1(1) of the *Canadian International Trade Tribunal Rules*, SOR/91-499, for an order directing the Canada Border Services Agency to disclose certain information.

BETWEEN

2045662 ALBERTA INC.

Appellant

AND

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

Respondent

ORDER

The request made by 2045662 Alberta Inc. for an order directing the Canada Border Services Agency to disclose certain information is denied.

Serge Fréchette

Serge Fréchette
Presiding Member

The statement of reasons will be issued at a later date.

STATEMENT OF REASONS

BACKGROUND

[1] On October 17, 2019, 2045662 Alberta Inc. (Alberta Inc.) filed this appeal with the Canadian International Trade Tribunal (Tribunal), pursuant to subsection 61(1) of the *Special Import Measures Act*,¹ from decisions made by the President of the Canada Border Services Agency (CBSA) on September 17 and 18, 2019, pursuant to paragraph 59(1)(b) of *SIMA*.² The President of the CBSA re-determined the normal values of, and the amounts of subsidy on, goods imported by Alberta Inc. that were subject to the Tribunal's findings in Inquiry Nos. NQ-2007-001 and NQ-2009-004.³

[2] On November 22, 2019, Alberta Inc. made a request pursuant to subrule 23.1(1) of the *Canadian International Trade Tribunal Rules*⁴ for an order directing the CBSA to disclose all information in its possession that relates to its re-determinations made pursuant to paragraph 59(1)(b) of *SIMA*.⁵ The request specifically lists the information sought by way of order, which includes, *inter alia*, the identities of all sources of information or parties involved in any denunciations relating to this matter along with copies of their statements and details of what they have said, copies of all emails, notes, spreadsheets, reports and summaries prepared by officers of the CBSA in relation to the re-determinations, and all communications between the CBSA, police, security agencies and other government agencies or bodies which have been generated in relation to the re-determinations.

[3] On December 2, 2019, the CBSA filed submissions objecting to Alberta Inc.'s request for a disclosure order. On December 9, 2019, Alberta Inc. filed reply submissions wherein it raised valid questions with respect to the basis upon which the re-determinations were made by the President of the CBSA.

[4] On December 11, 2019, the Tribunal requested that the CBSA address the questions raised by Alberta Inc. in its reply submissions. It also requested that Alberta Inc. clearly identify the transactions under appeal. Both parties provided the Tribunal with the requested information on December 17, 2019. On the same date, Alberta Inc. filed unsolicited submissions in relation to the information provided by the CBSA.

POSITIONS OF PARTIES

[5] Alberta Inc. submitted that, while the *Rules* do not govern how, when and if the CBSA is to disclose information directly to an appellant, in the context of a finding of misrepresentation or fraud

¹ R.S.C., 1985, c. S-15 [*SIMA*].

² Paragraph 59(1)(b) of *SIMA* allows the President of the CBSA to re-determine, at any time, any determination or re-determination if the importer or exporter has made any misrepresentation or committed a fraud in accounting for the goods under the *Customs Act* or in obtaining their release.

³ The imported goods were subject to the Tribunal's findings concerning the dumping and subsidizing of certain seamless carbon or alloy steel oil and gas well casing, and of certain oil country tubular goods, originating in or exported from the People's Republic of China. See *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT); *Oil Country Tubular Goods* (23 March 2010), NQ-2009-004 (CITT).

⁴ SOR/91-499 [*Rules*].

⁵ The request for order was made jointly with Prairie Tubulars (2015) Inc., the appellant in Appeal No. EA-2019-004. That facts and issues in that appeal are, for all intents and purposes, identical to those in the present appeal. The Tribunal also denied the appellant's request for order in that appeal. See *Prairie Tubulars (2015) Inc. v. President of the Canada Border Services Agency* (27 December 2019), EA-2019-004 (CITT).

made by the President of the CBSA, as is the case here, procedural fairness requires that the CBSA disclose all facts, circumstances and evidence that form the basis of its re-determinations. It added that full and complete disclosure of all evidence that was before the President of the CBSA (i.e. the decision maker), including evidence that does not support the re-determinations, is required for it to file its brief and have a fair hearing. Finally, it submitted that the information provided by the CBSA to date is completely insufficient to assist in the preparation of its brief.

[6] The CBSA submitted that the disclosure provided to date, including the additional information provided on December 17, 2019, in response to the Tribunal's request, is sufficient to meet the requirement of procedural fairness and to allow Alberta Inc. to prepare its brief. It submitted that Alberta Inc. knows the case it has to meet and that there is thus no reason to depart from the normal sequencing for presenting a case to the Tribunal and order disclosure at this time. It added that any issues related to the sufficiency of disclosure may properly be revisited once the CBSA has filed its brief.

TRIBUNAL'S ANALYSIS

[7] In the Tribunal's view, Alberta Inc.'s arguments appear to misconstrue the nature of the current proceedings and the associated documentary disclosure obligations. Appeals under subsection 61(1) of *SIMA* are clearly not judicial reviews of re-determinations made by the President of the CBSA and, accordingly, the Tribunal does not require all material considered by the President in making the re-determinations.

[8] Moreover, as indicated by the Federal Court in *Toyota Tsusho America Inc. v. Canada (Canada Border Services Agency)*,⁶ appeals before the Tribunal proceed *de novo*. As such, parties are not bound by their previous submissions and are entitled to raise new arguments and introduce new evidence in appeals before the Tribunal.⁷ The Tribunal therefore relies on the parties, having reference to the requirements found in the *Rules*, to file all relevant information in order to allow it to properly adjudicate appeals.

[9] Indeed, the *Rules* require that both the appellant and respondent's briefs "include a copy of any document that may be useful in explaining or supporting the appeal and any other information relating to the appeal that the Tribunal requires".⁸ While they manifestly do not provide for a court-like discovery process, the Tribunal is of the view that the *Rules* do provide for adequate documentary disclosure. Also, the fact that this is an appeal of re-determinations made by the President of the CBSA pursuant to paragraph 59(1)(b) of *SIMA*, which entails a finding of misrepresentation or fraud, does not change the level of documentary disclosure required by the *Rules*.

[10] In the present circumstances, the Tribunal is satisfied that with the additional information provided by the CBSA on December 17, 2019, Alberta Inc. knows the case that it has to meet and can thus prepare its brief. Once Alberta Inc. has filed its brief, the CBSA will then be required to serve and file its brief along with any information or evidence necessary to support its position.

⁶ 2010 FC 78 (CanLII) at para. 24.

⁷ See *Toyota Tsusho American Inc. v. President of the Canada Border Services Agency* (27 April 2011), AP-2010-063 (CITT) at para. 3.

⁸ See paragraphs 34(2)(e) and 35(2)(e) of the *Rules*.

Should Alberta Inc. be of the view that additional disclosure is required after the CBSA has filed its brief, it may make a new request to the Tribunal for a disclosure order.

DECISION

[11] The request made by Alberta Inc. for an order directing the CBSA to disclose certain information is denied.

Serge Fréchette

Serge Fréchette
Presiding Member