Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Appeal No. AP-2020-006

Mazda Canada Inc.

v.

President of the Canada Border Services Agency

Order and reasons issued
Wednesday, November 25, 2020

Canada

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IN THE MATTER OF an appeal filed by Mazda Canada Inc. on July 15, 2020, pursuant to subsection 67(1) of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a motion by the President of the Canada Border Services Agency for an order dismissing the appeal for lack of jurisdiction.

BETWEEN

MAZDA CANADA INC. **Appellant**

AND

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

ORDER

The motion is granted. The Canadian International Trade Tribunal does not have jurisdiction to hear the appeal. The appeal is dismissed.

Peter Burn

Peter Burn
Presiding Member

STATEMENT OF REASONS

BACKGROUND

[1] The relevant background facts are as follows.

[2] Between December 19, 2019, and January 9, 2020, the Canada Border Services Agency (CBSA) issued 10 Detailed Adjustment Statements (DASs) denying Mazda Canada Inc.'s (Mazda) request for a refund of duties for vehicle parts. The CBSA decided that the claim for a refund of duties for vehicle parts that were replaced under warranty could not be accepted because the goods did not meet provisions of subsection 76(1) of the *Customs Act*.[1]

[3] On March 10, 2020, Mazda submitted a request for re-determination to the CBSA with regard to the 10 DASs pursuant to section 60 of the *Act*.

[4] On April 20, 2020, the CBSA rejected Mazda's request for re-determination because no section-59 DASs had been issued. Accordingly, the CBSA determined that the request was invalid.

[5] On July 15, 2020, Mazda appealed to the Canadian International Trade Tribunal.

[6] On September 10, 2020, the CBSA made a motion for an order dismissing the appeal for lack of jurisdiction. The CBSA's motion submits that the Tribunal has no jurisdiction to hear this appeal. Its position is that the Tribunal's jurisdiction is limited to matters concerning tariff classification, value for duty, or origin of the imported goods. The CBSA reiterates that there was no section-60 decision from which Mazda could appeal to the Tribunal.

[7] In response, Mazda agrees that the Tribunal lacks jurisdiction in this matter.[2]

[8] For the reasons that follow, the Tribunal agrees with the parties and finds that it does not have jurisdiction to hear this appeal.

THE TRIBUNAL'S JURISDICTION TO HEAR THIS APPEAL

[9] The issue raised by the motion and considered by the Tribunal is whether the Tribunal can hear an appeal from the decision of the CBSA to refuse to issue a decision under section 60 of the *Act*, i.e. whether such a (non-)decision is appealable to the Tribunal. The relevant statutory provisions are set out in the Appendix to these reasons.

[10] A dispute from a decision of the CBSA regarding *tariff classification, value for duty, origin or marking of imported goods* would normally be heard by the Tribunal. Subsection 67(1) of the *Act* states as follows:

> 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.

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

2 Although it concedes regarding this dispositive issue, Mazda did not withdraw its appeal.

[11] The Federal Court of Appeal has been clear that CBSA "non-decisions" or refusals to exercise jurisdiction under the *Act* were "decisions" that could be appealed to the Tribunal by stating that "[t]he court below appropriately cited *Mueller*, *supra*, for the proposition that so-called 'non-decisions' or refusals to exercise jurisdiction under this statutory regime were 'decisions' that could be appealed to the CITT."[3]

[12] The Federal Court of Appeal has also approved of the Tribunal's statement that implied decisions could be made at the same time as express decisions and that the former could be the subject of the Tribunal's jurisdiction in the normal course of deciding the latter.[4] The determination of whether such a situation is present in a given appeal was described by the Court as a "factual" one.[5] While there may be situations where the Tribunal will find that implied decisions were made by the CBSA, this is not the case in this matter.

[13] Simply put, this appeal does not present any underlying dispute regarding tariff classification, value for duty, marking or origin, which could give the Tribunal jurisdiction to hear this appeal, i.e. to apply the statutory scheme set out at sections 59, 60 and 67. A dispute as to the particular negative (non-)decision made by the CBSA in these particular circumstances is not a matter which can be appealed to the Tribunal.

[14] As argued by the CBSA, the present case does not involve a dispute as to tariff classification, value for duty, or origin of imported goods; instead, the facts involve a rejection of a request for a refund under subsection 76(1) of the *Act*. The Tribunal possesses no jurisdiction to review the CBSA's decision to reject Mazda's request for such refunds nor does the CBSA have the jurisdiction to issue a section-59 or -60 decision regarding such a dispute.

[15] The Tribunal does not have jurisdiction to hear this appeal as its circumstances are such that there was not, nor could there be, a decision made by the CBSA under section 60 of the *Act*.

[16] In summary, it cannot be said that the CBSA made, or refused to make, decisions in regard to the tariff classification, value for duty, origin, or marking of imported goods or improperly refused to act on a timely basis, such that its action or inaction could be found by the Tribunal to constitute a negative decision that it could examine in an appeal pursuant to section 67 of the *Act*.[6]

DECISION

[17] The motion is granted. The Tribunal has no jurisdiction to hear the present appeal and therefore dismisses the appeal.

Peter Burn

Peter Burn
Presiding Member

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3 *President of the Canada Border Services Agency v. C.B. Powell Limited*, 2010 FCA 61, at para. 35.

4 *C.B. Powell Limited v. President of the Canada Border Services Agency*, 2011 FCA 137, at paras. 31-33.

5 *Ibid.*

6 See, for example, *Tenneco Automotive Operating Company Inc. v. President of the Canada Border Services Agency* (12 March 2020), AP-2019-019 (CITT).

APPENDIX

Customs Act

59 (1) An officer, or any officer within a class of officers, designated by the President for the purposes of this section may

> **(a)** in the case of a determination under section 57.01 or 58, re-determine the origin, tariff classification, value for duty or marking determination of any imported goods at any time within

. . .

> **(ii)** four years after the date of the determination, if the Minister considers it advisable to make the redetermination;

. . .

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.

. . .

(3) A request under this section must be made to the President in the prescribed form and manner, with the prescribed information.

(4) On receipt of a request under this section, the President shall, without delay,

> **(a)** re-determine or further re-determine the origin, tariff classification or value for duty;

. . .

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.

. . .

76 (1) Subject to any regulations made under section 81, the Minister may, in such circumstances as may be prescribed, grant to any person by whom duties were paid on imported goods that are defective, are of a quality inferior to that in respect of which duties were paid or are not the goods ordered, a refund of the whole or part of the duties paid thereon if the goods have, subsequently to the importation, been disposed of in a manner acceptable to the Minister at no expense to Her Majesty in right of Canada or exported.