



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Appeal AP-2022-033

Loran Thompson d.b.a.
Native Foods

v.

President of the Canada Border
Services Agency

*Order and reasons issued
Wednesday, August 23, 2023*

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IN THE MATTER OF an appeal filed by Loran Thompson d.b.a. Native Foods on December 21, 2022, pursuant to subsection 67(1) of the *Customs Act*;

AND IN THE MATTER OF the Tribunal's own motion regarding jurisdiction of the Tribunal to hear this appeal.

BETWEEN

LORAN THOMPSON D.B.A. NATIVE FOODS

Appellant

AND

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

Respondent

ORDER

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

Bree Jamieson-Holloway

Bree Jamieson-Holloway

Presiding Member

STATEMENT OF REASONS

OVERVIEW

[1] This appeal was filed by Loran Thompson doing business as Native Foods (Mr. Thompson). It was filed on December 21, 2022.¹

[2] Mr. Thompson is asking to appeal two things:

(a) the 2017 detailed adjustment statements (DASs) of the President of the Canada Border Service Agency (CBSA) for the payment of duties owing on poultry brought into Canada from the United States; and

(b) a decision by a judge of the Federal Court of Canada about the duties owing.

[3] Mr. Thompson says that he does not have to pay the duties because he lives on the Akwesasne Reserve and is exempt from duties by the *Akwesasne Residents Remission Order*² (Remission Order).

[4] On February 1, 2023, the Tribunal wrote to the parties and asked for their positions on whether the Tribunal has the jurisdiction to hear the appeal. The parties filed written arguments and the Tribunal considered them.

[5] For the reasons that follow, the Tribunal finds that it does not have jurisdiction to hear the appeal and the appeal is therefore dismissed.

BACKGROUND

[6] Mr. Thompson says that he is a “Haudenosaunee Iroquois Confederacy Treaty Indian”³ and is a resident of the Akwesasne Reserve near Cornwall Island, Ontario.⁴ He is the owner of Native Foods.⁵

[7] From 2014 to 2015, Mr. Thompson brought nine shipments of poultry into Canada at the Windsor border crossing and customs office.⁶

[8] The customs forms filled out by Mr. Thompson claimed that he did not have to pay any duties because of the Remission Order. As a result, Mr. Thompson paid no duties on the goods at the time of importation.

¹ The appeal was filed pursuant to subsection 67(1) of the *Customs Act*, RSC 1985, c 1 (2nd Supp).

² *Akwesasne Residents Remission Order*, SOR/91-412.

³ Exhibit PR-2022-033-01 at 3, 33.

⁴ Exhibit PR-2022-033-01 at 1.

⁵ Native Foods is a business registered with the Mohawk Council of Akwesasne Department of Economic Development as of September 3, 2013. Exhibit PR-2022-033-01 at 33–34.

⁶ Exhibit PR-2022-033-01.B at 81. Note: tariff classification number 0210.99.13 00 (Poultry).

[9] On April 24, 2017, the CBSA wrote to Mr. Thompson and explained that he must pay duties because the shipments were not brought through the Cornwall border crossing. The CBSA also told Mr. Thompson about the steps he needed to take to correct the situation and avoid penalties.

[10] The CBSA sent a similar letter to Mr. Thompson on May 18, 2017, saying the same things.⁷

[11] The Tribunal is not aware of any specific response of Mr. Thompson to either letter.

[12] On August 31, 2017, the CBSA followed up with Mr. Thompson with three DASs showing the duties owing.⁸ The Canada Revenue Agency (CRA) sent a notice of arrears dated March 7, 2018, and a notice of lien action dated April 9, 2018, to Mr. Thompson showing the duties owing and notice of steps to collect the money.⁹

[13] The CRA wrote to Mr. Thompson by letter dated September 11, 2018, noting that the duties remained unpaid, and that legal action could be taken “within 45 business days”.¹⁰

[14] In response, Mr. Thompson wrote to the CRA by letter dated October 15, 2018, objecting to the duties, and stating that the September 11, 2018, letter was the first he had heard of the duties.¹¹ He also asked for clarification about the imports and suggested that other business partners may be to blame.

[15] The CBSA, rather than the CRA, responded to Mr. Thompson’s letter addressing some of his requests for information about the decision.¹² The CBSA also told Mr. Thompson that if he disagreed with the duties, he could ask the Federal Court to review the CBSA’s decision.¹³

[16] Mr. Thompson started a proceeding in the Tax Court of Canada (TCC) to challenge the CRA’s assessment of duties.¹⁴ The TCC told Mr. Thompson to file a notice of objection to the DASs with the CRA, which he did.¹⁵

[17] The CRA sent the notice of objection to the CBSA on March 7, 2019.¹⁶

[18] The CBSA wrote to Mr. Thompson and explained to him that the notice of objection was not needed.¹⁷ The CBSA also told Mr. Thompson again that he could go to the Federal Court for a review of the decision. In 2020, Mr. Thompson asked the Federal Court to review the CBSA’s letter of May 17, 2019.

⁷ Exhibit PR-2022-033-01.B at 82.

⁸ *Ibid.* at 39–60.

⁹ *Ibid.* at 87–88.

¹⁰ *Ibid.* at 95.

¹¹ *Ibid.* at 92.

¹² *Ibid.* at 96.

¹³ *Ibid.* at 96.

¹⁴ *Ibid.* at 98.

¹⁵ Exhibit PR-2022-033-01 at 35; Exhibit PR-2022-033-01.B at 100.

¹⁶ Exhibit PR-2022-033-01.B at 62.

¹⁷ *Ibid.* at 104.

[19] On June 7, 2019, the Federal Court provided Mr. Thompson with instructions on how to file an application for judicial review at the Federal Court.¹⁸

[20] Mr. Thompson was granted an extension of time to file an application for judicial review by the Federal Court.¹⁹ Mr. Thompson filed the application with the Federal Court on December 11, 2020.

[21] The Federal Court hearing occurred on June 22, 2022, and the application was dismissed by written reasons dated December 15, 2022.²⁰

[22] Mr. Thompson filed his appeal with the Tribunal on December 21, 2022.

[23] In response to the Tribunal's request, the parties made arguments about the jurisdiction of the Tribunal to hear this appeal.

POSITIONS OF THE PARTIES

[24] The CBSA provided its arguments about the jurisdiction of the Tribunal on February 15, 2023.²¹ The CBSA argued that the Tribunal does not have jurisdiction to hear this appeal under the *Customs Act* because:

- (a) the Tribunal does not have jurisdiction to hear an appeal from a decision of the Federal Court;
- (b) the Tribunal does not have jurisdiction under subsection 67(1) of the *Customs Act* because the assessment of duties is not a "re-determination" under subsection 60 or 61 of the *Customs Act*; and
- (c) in the alternative, the appeal of the DASs under subsection 67(1) of the *Customs Act* is out of time.

[25] Instead, the CBSA suggests that an action in Federal Court under section 97.23 of the *Customs Act* is the correct procedure for contesting the DASs at issue in this case.

[26] Mr. Thompson filed reply arguments about the issue of the Tribunal's jurisdiction on February 27 and 28, 2023, including an affidavit signed by him with attachments.²²

¹⁸ *Ibid.* at 72.

¹⁹ Federal Court decision at para. 6.

²⁰ *Thompson v. Canada (Attorney General)*, [2022 FC 1739](#) (Federal Court decision).

²¹ Exhibit PR-2022-033-05.

²² Exhibit PR-2022-033-08 and Exhibit PR-2022-033-08.A.

[27] Mr. Thompson argues that:

- (a) the Tribunal has jurisdiction to hear the appeal under the *Customs Act* and pursuant to the *Indian Act*,²³ Aboriginal treaty rights, section 35 of the *Constitution Act, 1982*,²⁴ and the United Nations Declaration on the Rights of Indigenous Peoples; and
- (b) the appeal is not out of time, but if it is, it was the result of insufficient time due to delay by the CBSA.

THE TRIBUNAL'S JURISDICTION TO HEAR THE APPEAL

[28] The issue addressed in this motion on the initiative of the Tribunal is whether the Tribunal has jurisdiction to consider an appeal of the decision of the Federal Court and/or the DASs.

[29] The Tribunal's jurisdiction to hear appeals is derived from legislation that empowers it to decide appeals for specific purposes and in specific contexts. The legislation sets the limits of the Tribunal's jurisdiction to hear appeals.²⁵

Jurisdiction to hear appeals from decisions of the Federal Court

[30] Mr. Thompson seeks to appeal the Federal Court decision to the Tribunal.

[31] There is no legislation or any other source of law that provides the Tribunal with the jurisdiction to hear appeals from decisions of the Federal Court. Therefore, the Tribunal does not have jurisdiction to hear them.

[32] The Tribunal informed Mr. Thompson of this by letter on February 1, 2023.²⁶

Jurisdiction to hear an appeal of the DASs

[33] Mr. Thompson seeks to appeal the DASs issued to him in 2017 by the CBSA.

[34] The jurisdiction of the Tribunal to hear customs appeals is derived from subsection 67(1) of the *Customs Act*, which states:

67 (1) A person aggrieved by a decision of the President [of the CBSA] 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.

²³ R.S.C., 1985, c. I-5.

²⁴ *Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK), 1982*, c 11.

²⁵ For an example of the application of this principle governing the Tribunal, the Supreme Court of Canada held in the procurement context that the Tribunal is "a statutory tribunal and access to it must be found in the relevant statutory instruments": *Northrop Grumman Overseas Services Corp v. Canada (Attorney General)*, 2009 SCC 50, [2009] 3 S.C.R. 309 at para. 44. The same principle applies in the customs appeal context. Section 16 of the *Canadian International Trade Tribunal Act*, RSC 1985, c 47 (4th Supp) defines the scope of the duties and functions of the Tribunal.

²⁶ Exhibit PR-2022-033-04.

[35] Decisions of the President of the CBSA that can be appealed to the Tribunal are decisions under sections 60 and 61 of the *Customs Act* that are about the *origin, tariff classification, value for duty or marking* of imported goods.

[36] Therefore, the Tribunal only has the power to decide cases on the specific issues of origin, tariff classification, value for duty or marking of imports following a CBSA decision.

[37] This appeal is about the application of the Remission Order and whether the duties were correctly charged to Mr. Thompson under the DASs. This appeal does not present any underlying dispute regarding the origin, tariff classification, value for duty or marking of the poultry imported by Mr. Thompson. A dispute regarding the application of the Remission Order by the CBSA in these particular circumstances is not a matter that the Tribunal is empowered by law to decide.²⁷

Constitutional rights, Aboriginal rights and First Nations treaty rights

[38] Mr. Thompson also relies on constitutional rights, Aboriginal rights and First Nations treaty rights in support of his appeal to the Tribunal.

[39] Aboriginal and treaty rights of the Indigenous peoples of Canada are important and are recognized and affirmed by section 35 of the *Constitution Act, 1982*.²⁸ The Tribunal takes note that the Truth and Reconciliation Commission's Calls to Action includes steps for understanding Indigenous law and access to justice in accordance with the unique cultures of the Aboriginal peoples of Canada (Call to Action 50).²⁹

[40] As noted above, the Tribunal's jurisdiction to hear customs appeals is confined to legislation, which, in this case, is the *Customs Act*. The Tribunal has in the past considered the free-standing application of constitutional rights in customs appeals and concluded that a constitutional question can only be considered if it is based in the law arising from the legislation granting the Tribunal jurisdiction.³⁰ The same principle applies to other Aboriginal and First Nations treaty rights: they cannot be considered apart from the legislation that empowers the Tribunal. Without an underlying legislative connection to the Tribunal's jurisdiction, deciding on free-standing constitutional rights, Aboriginal rights and First Nations treaty rights is not lawful.

[41] Accordingly, while affirming the importance of Aboriginal and treaty rights, the Tribunal is not empowered to consider an appeal based on these rights, apart from the *Customs Act*, and such rights are not an independent basis upon which the Tribunal could assert jurisdiction over the appeal.

Avenues for Mr. Thompson

[42] Based on the record before the Tribunal and the efforts made by Mr. Thompson to appeal the DASs, Mr. Thompson has the sympathy of the Tribunal for the situation in which he finds himself. The various courts and government departments in which Mr. Thompson has sought help appear to have been regrettably difficult to identify and navigate.

²⁷ See also in regard to remission of duties: *9029654 Canada Inc. dba Sofina Foods Inc.* (February 8, 2021), AP-2019-038 (CITT) at paras. 15, 22, 25–26.

²⁸ *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), 1982, c 11.

²⁹ Truth and Reconciliation Commission of Canada, "Truth and Reconciliation Commission of Canada: Calls to Action" (2015): https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf.

³⁰ *Western RV Coach Inc. v. Canada Border Services Agency* (April 23, 2007), AP-2006-002(CITT) at paras. 51–52.

[43] In particular, the Tribunal notes that Mr. Thompson, an Indigenous litigant whose first language is not French or English, received what could be characterized as unfortunate direction from the courts in trying to navigate the TCC and Federal Court procedure prior to attempting an appeal to the Tribunal. Mr. Thompson has stated that his attempts to obtain legal advice to assist his cause were not successful.³¹ In the spirit of understanding access to justice in accordance with the unique cultures of the Indigenous peoples of Canada, it is important that government organizations such as the CBSA be aware of the challenges faced by Indigenous persons navigating the bureaucratic and legal system.

[44] The current statutory regime of the *Customs Act* does not allow for questions relating to the interpretation and application of remission orders, including the Remission Order which in this case was promulgated for the benefit of Indigenous persons. It is up to Parliament to consider whether legislative changes are warranted to expand access to the efficiency and practicality of the Tribunal's procedure. Recourse to administrative tribunals is an important element of access to justice, as noted by the former Chief Justice of the Supreme Court of Canada: "In an age when access to justice is increasingly lacking, [administrative tribunals] help to fill the gap."³²

[45] Despite the difficulties Mr. Thompson had in seeking the relevant guidance, the Tribunal reiterates the importance for Mr. Thompson to seek independent legal advice from a lawyer regarding the possible avenues for recourse identified by the CBSA in its submissions in light of the recent Federal Court decision. In particular, the CBSA has noted the following possible next steps for Mr. Thompson:

Pursuant to s. 97.23 of the *Customs Act*, debts owed to the Crown under s. 97.22 are appealable by way of an action in the Federal Court within 30 days of when a notice of arrears under s.97.22(1) of the *Customs Act* is sent. Assessments (DAS) issued pursuant to s.118 of the *Customs Tariff*, may be judicially reviewed by the Federal Court under s.18.1 of the *Federal Courts Act*. Although the Appellant already sought recourse from the Federal Court, in *Thompson*, the Federal Court only judicially reviewed the decision contained in the CBSA letter dated May 17, 2019. The Appellant would need to frame the judicial review as a review of the assessment made under s.118 of the *Customs Tariff*.

A Federal Court decision pursuant to 97.23 of the *Customs Act*, or 18.1 of the *Federal Courts Act*, is further appealable to the Federal Court of Appeal pursuant to s. 27 of the *Federal Courts Act*. The Appellant is, however, well beyond the 30-day time limit within which to make an appeal to the Federal Court under s.97.23 of the *Customs Act*.³³

[46] The Tribunal reiterates that it cannot, in its role, provide any advice or assurances to Mr. Thompson regarding the viability of the avenues identified by the CBSA or the probability of getting an extension that may or may not be required. It is important for Mr. Thompson to seek that advice from a lawyer.

³¹ Exhibit PR-2022-033-08 at 2.

³² Remarks of the Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada, 6th Annual Conference of the Council of Canadian Administrative Tribunals, Toronto, Ontario (May 27, 2013): <https://www.scc-csc.ca/judges-juges/spe-dis/bm-2013-05-27-eng.aspx>.

³³ Exhibit PR-2022-033-05 at 7–8.

DECISION

[47] The Tribunal does not have jurisdiction to hear the appeal. The appeal is therefore dismissed.

Bree Jamieson-Holloway

Bree Jamieson-Holloway

Presiding Member

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;

...

What President may do

61 (1) The President may

(a) re-determine or further re-determine the origin, tariff classification or value for duty of imported goods

(i) at any time after a re-determination or further re-determination is made under paragraph 60(4)(a), but before an appeal is heard under section 67, on the recommendation of the Attorney General of Canada, if the re-determination or further re-determination would reduce duties payable on the goods,

(ii) at any time, if the person who accounted for the goods under subsection 32(1), (3) or (5) fails to comply with any provision of this Act or the regulations or commits an offence under this Act in respect of the goods, and

(iii) at any time, if the re-determination or further re-determination would give effect to a decision of the Canadian International Trade Tribunal, the Federal Court of Appeal or the Supreme Court of Canada made in respect of the goods;

(b) re-determine or further re-determine the marking determination of imported goods

(i) within four years after the date the determination was made under section 57.01, if the Minister considers it advisable to make the re-determination,

(ii) at any time, if the person who is given notice of a marking determination under section 57.01 or of a re-determination under paragraph 59(1)(a) fails to comply with any provision of this Act or the regulations or commits an offence under this Act in respect of the goods,

(iii) at any time, if the re-determination or further re-determination would give effect to a decision made in respect of the goods by the Canadian International Trade Tribunal, the Federal Court of Appeal or the Supreme Court of Canada, and

(iv) at any time after a re-determination is made under paragraph 60(4)(c), but before an appeal is heard under section 67, on the recommendation of the Attorney General of Canada; and

(c) re-determine or further re-determine the origin, tariff classification or value for duty of imported goods (in this paragraph referred to as the “subsequent goods”), at any time, if the re-determination or further re-determination would give effect, in respect of the subsequent goods, to a decision of the Canadian International Trade Tribunal, the Federal Court of Appeal or the Supreme Court of Canada, or of the President under subparagraph (a)(i),

(i) that relates to the origin or tariff classification of other like goods imported by the same importer or owner on or before the date of importation of the subsequent goods, or

(ii) that relates to the manner of determining the value for duty of other goods previously imported by the same importer or owner on or before the date of importation of the subsequent goods.

Notice requirement

(2) If the President makes a re-determination or further re-determination under this section, the President shall without delay give notice of that decision, including the rationale on which the decision is made, to the prescribed persons.

R.S., 1985, c. 1 (2nd Supp.), s. 611992, c. 28, s. 131993, c. 44, s. 921997, c. 36, s. 1661999, c. 17, s. 1272001, c. 25, s. 442005, c. 38, s. 85

...

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.

...

Debts to Her Majesty

97.22 (1) Subject to subsections (2) and (3), any duties, fee, charge or other amount owing or payable under this Act is a debt due to Her Majesty in right of Canada from and after the time such amount should have been paid, and any person from whom the amount is owing shall, after a notice of arrears is sent by mail addressed to the person at their latest known address or delivered to that address, pay the amount owing as indicated in the notice or appeal the notice under section 97.23.

...

Appeal

97.23 A person to whom a notice is sent or delivered under subsection 97.22(1) may, within thirty days after that notice is sent, appeal the notice by way of an action in the Federal Court in which the person is the plaintiff and the Minister of Public Safety and Emergency Preparedness is the defendant if

(a) no appeal is or was available to that person under section 67 or 68 in respect of the same matter; and

(b) the notice is not in respect of an amount assessed under section 97.44.

2001, c. 25, s. 582005, c. 38, ss. 84, 145