

Federal Court



Cour fédérale

Date: 20110218

Docket: T-435-09

Citation: 2011 FC 198

Ottawa, Ontario, February 18, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

GRK FASTENERS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] GRK Fasteners seeks judicial review of a re-investigation by the Canadian Border Services Agency [CBSA] of prices and values associated with the importing of steel screws into Canada. The CBSA's re-investigation was carried out under the authority of the *Special Import Measures Act*, RSC, 1985, c S-15 [*SIMA*] and formed part of an examination of potential dumping of those products onto the Canadian market. GRK challenges the methodology by which the re-investigation

was carried out and questions the reasonableness of the outcome. It asks me to quash the re-investigation and order the CBSA to re-do it.

[2] The Attorney General of Canada maintains that a re-investigation is not amenable to judicial review and, in any case, that the re-investigation was done fairly and reasonably.

[3] I agree with the Attorney General that a re-investigation cannot be judicially reviewed. Therefore, I must dismiss this application for judicial review. It is unnecessary for me to deal with the other issues disputed by the parties.

[4] At the hearing, the parties also presented reciprocal motions. The Attorney General argued that GRK's application should be struck on grounds of mootness. GRK submitted that some of the Attorney General's materials should be struck because they had been prepared on the basis of improper involvement by the CBSA, the decision-maker in this case, in the preparation of those materials by the Attorney General, acting as counsel for the Government of Canada. In view of my conclusion that a re-investigation is not reviewable, I need not address these motions.

II. The Operation of the Statutory Scheme

[5] *SIMA*'s purpose is to protect Canadian manufacturers against the marketing in Canada of foreign-made articles at an unreasonably low price. This phenomenon is known as "dumping", defined as the selling of foreign goods in Canada at a price lower than their selling price in the

exporting country, or below the cost of their production. To protect against dumping, Canadian authorities may, under *SIMA*, impose duties on foreign goods.

[6] After receiving a complaint from a Canadian manufacturer, the CBSA may arrive at a preliminary determination of dumping and impose provisional duties (*SIMA* s 8(1); enactments are set out in Annex A). In turn, if the Canadian International Trade Tribunal [CITT] concludes that dumping has caused injury to the relevant Canadian industry, it falls to the CBSA to determine the appropriate amount of duty to be applied (s 55).

[7] Duties can be determined in two ways, either by calculating the actual amount by which imported goods fall below their “normal values” (the selling price in the originating country) or by sampling a percentage of imported goods. The latter approach is taken when it is impracticable to determine the normal value for the goods because of the large number of exporters, importers or producers involved, or the volume of goods in question (s 30.3(1)). Under the sampling approach, the sampled exporters are assessed duty according to the normal values for their particular goods, and the unsampled exporters are assessed duty based on the average values of the sampled goods.

[8] To determine duties, the CBSA depends on information supplied by importers, exporters and manufacturers, which it solicits by way of a request for information [RFI]— for example, information about selling prices, production costs, administrative fees, and so on. The CBSA arrives at a figure for the “export price” of the goods (the price at which the goods are sold to Canadian importers, less shipping and insurance costs) and the normal value. The difference, known as the margin of dumping, determines the duty.

[9] The CITT's decision on injury to Canadian manufacturers is valid for five years. However, the CBSA reviews market conditions on an ongoing basis. These periodic reviews are called "re-investigations". In carrying out a re-investigation, the CBSA may re-calculate the applicable normal values and corresponding duties. Again, these re-investigations proceed on the basis of information supplied by exporters, importers and manufacturers. The CBSA advises affected parties of the results of a re-investigation by way of a Notice of Conclusion of Re-investigation. However, the results of a re-investigation are not binding. An importer can challenge the results by requesting a re-determination (s 58(2)). And the CBSA can itself determine that a different amount of duty is appropriate (s 57).

[10] In circumstances where a company has failed to give sufficient information to calculate normal values in response to an RFI, the amount of duty is set by way of a Ministerial Specification (s 29(1)), which normally corresponds to the highest margin of dumping discovered.

[11] Further, CBSA operates a duty referral program. For participating importers, duties can be deferred when the goods are subsequently re-exported to another country. Duties are imposed only if the goods are actually sold in Canada, or remain here for four years after they were imported.

[12] A customs officer's determinations of duty are final (s 56). However, affected parties may ask the President of the CBSA to re-determine the duty within a year of the request (s 59(3)). The President's re-determination can be appealed to the CITT within 90 days (s 61(1)). A further appeal lies to the Federal Court of Appeal on questions of law (s 62).

III. Factual Background

[13] In 2005, the CITT concluded that the Canadian industry for stainless steel and carbon steel screws was injured by the dumping of those products by exporters from the People's Republic of China and Chinese Taipei. The CBSA proceeded to determine the applicable duty and employed a sampling procedure in doing so.

[14] In 2007 and 2008, the CBSA conducted a series of re-investigations of the situation and asked exporters to supply the information needed for it to do so. Again, the CBSA employed a sampling methodology. In 2009, the CBSA informed participants that, instead of sampling, it wished to obtain information for most if not all imports. It asked exporters who were not manufacturers to obtain information on production costs from the actual source of the goods. Only those who did so would be assessed duty based on normal values; others would be subject to a Ministerial Specification.

[15] GRK responded to the RFI and identified the companies from which it purchased goods. Those companies submitted information to the CBSA.

[16] On February 23, 2009, the CBSA issued its Conclusion of Re-investigation, in which it determined normal values for 21 exporters. Others, including most of GRK's sources, were subjected to a Ministerial Specification of 170%.

[17] In March 2009, GRK began proceedings in Federal Court for judicial review of the 2009 re-investigation. Shortly thereafter, the CITT reviewed its 2005 injury decision. On January 6, 2010, it concluded that GRK was entitled to exemptions in respect of certain products, including patented fasteners and stainless steel screws.

IV. The “Decision” Sought to be Reviewed

[18] GRK seeks judicial review of the February 23, 2009 Conclusion of Re-investigation. According to that conclusion, many of GRK’s sources were subjected to a 170% Ministerial Specification. That rate of duty would apply to any goods sold in Canada that were imported between February 23, 2009 and the subsequent decision of the CITT of January 6, 2010 granting GRK exemptions.

V. Is the Decision Reviewable?

[19] GRK argues that the Federal Court has jurisdiction to review any federal “decision or order”, a term the case law has interpreted broadly. Further, it maintains that the appeal remedies available under *SIMA* do not provide an adequate alternative remedy to judicial review and, therefore, that I should not decline to exercise my jurisdiction on that basis.

[20] While I agree with GRK that, generally speaking, this Court’s review jurisdiction under the *Federal Courts Act*, RSC 1985, c F-7, is broad, I find that the appeal remedies under *SIMA* are an adequate alternative to any recourse GRK might otherwise have to judicial review. For that reason, I

find that the results of the re-investigation are not amenable to judicial review.

[21] In similar circumstances, Justice Danièle Tremblay-Lamer concluded that the CBSA's determination of duty under *SIMA* was not reviewable (*Toyota Tsusho America Inc. v Canada (Border Services Agency)*, 2010 FC 78). She concluded that "the scheme of re-determinations and appeals provided by the *SIMA* is complete and, in enacting it, Parliament has clearly expressed its intention to oust the jurisdiction of this Court to review decisions taken under the authority of that statute" (para 20). That broad proposition was, in turn, endorsed by the Federal Court of Appeal relying on jurisprudence in respect of decisions taken under the *Customs Act*, RSC 1985 c 1, in which similar statutory remedies to those in *SIMA* are set out (2010 FCA 262, at para 2, citing *Abbott Laboratories Ltd. v Canada (Minister of National Revenue)*, 2004 FC 140 and *Fritz Marketing Inc. v Canada*, 2009 FCA 62). The Federal Court of Appeal had previously arrived at a similar conclusion in *Spike Marks Inc. v Canada (Attorney General)*, 2008 FCA 406.

[22] Justice David Stratas, in yet another case under the *Customs Act*, set out the principle underlying the general proposition that judicial review is unavailable when other administrative relief is provided in the relevant statute:

This prevents fragmentation of the administrative process and piecemeal court proceedings, eliminates the large costs and delays associated with premature forays to court and avoids the waste associated with hearing an interlocutory judicial review when the applicant for judicial review may succeed at the end of the administrative process anyway.

(*C.B. Powell Ltd. v Canada (Border Services Agency)*, 2010 FCA 61, at para 32.)

[23] Accordingly, “absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted” (para 31).

[24] Bearing these considerations in mind, I must conclude that the CBSA’s re-investigation is not amenable to judicial review. A re-investigation by definition is a preliminary step in the process that may lead to an assessment of duty. A re-investigation may lead to a determination or re-determination that may be appealed to the CITT, and to the Federal Court of Appeal.

[25] On the facts here, the impact of the re-investigation on GRK is uncertain, and certainly not immediate. These circumstances, along with the case law cited above, suggest that permitting judicial review of a re-investigation would be inappropriate. It would clearly run afoul of the policy considerations cited by Justice Stratas in *Powell*, above.

[26] Should it transpire that the duty arrived at under the re-investigation is imposed on GRK, it can seek a re-determination. And from there it can appeal to the CITT and the Federal Court of Appeal. A remedy in the form of judicial review at this early stage of the process set out in *SIMA* would disrupt and distort the remedial scheme Parliament enacted.

[27] GRK argues that the appeal remedies under the *SIMA* are not an adequate alternative to judicial review because the grounds for appeal are narrower than the grounds that may support an application for judicial review. Further, it may have to pay an assessed duty first and appeal later, which would not be the case if a re-investigation could be judicially reviewed. Finally, GRK

suggests that the appeal process takes longer than the judicial review.

[28] It is clear, however, that the grounds of appeal available under *SIMA* are broad and include issues of procedural fairness (*Toyota*, above; *Spike Marks*, above). It is certainly possible that an importer would be liable to pay duty while a determination is under appeal; it is also possible that an importer might, if a re-investigation could be judicially reviewed, succeed in quashing a decision whose effect on the importer is purely hypothetical. As discussed above, this may be the case in respect of GRK's application. Further, there would be nothing preventing an importer from selling a small amount of goods in Canada in order to trigger a determination and then seek to appeal it – in a sense, a test case. Finally, there is no evidence that the route of judicial review would be faster than an appeal. To recognize recourse to judicial review would accord parties two different remedy streams, effectively doubling the amount of time and resources spent adjudicating disputes over duties.

[29] In short, I am not satisfied that GRK does not have available to it an adequate alternate remedy in the form of an appeal under *SIMA*. Accordingly, I must dismiss GRK's application for judicial review, with costs.

JUDGMENT**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed with costs.
2. The applicant's motion to strike certain paragraphs from the respondent's Memorandum of Fact and Law, and the respondent's Motion Record is dismissed.
3. The respondent's motion to strike the application is dismissed.

"James W. O'Reilly"

Judge

Annex

Special Imports Measures Act, RSC, 1985, c S-15

Loi sur les mesures spéciales d'importation, LRC 1985, ch S-15

Imposition of provisional duty

8. (1) Where the President makes a preliminary determination of dumping or subsidizing in an investigation under this Act and considers that the imposition of provisional duty is necessary to prevent injury, retardation or threat of injury, the importer in Canada of dumped or subsidized goods that are of the same description as any goods to which the preliminary determination applies and that are released during the period commencing on the day the preliminary determination is made and ending on the earlier of

- (a) the day on which the President causes the investigation to be terminated pursuant to subsection 41(1) with respect to goods of that description, and
- (b) the day on which the Tribunal makes an order or finding with respect to goods of that description,

shall, within the time prescribed under the *Customs Act* for the payment of duties, at the option of the importer,

- (c) pay or cause to be paid on the imported goods provisional duty in an amount not greater than the estimated margin of dumping of, or the estimated amount of subsidy on, the imported goods, or
- (d) post or cause to be posted security for provisional duty in the prescribed form and in an amount or to a value not greater than the estimated margin of dumping of, or the estimated amount of subsidy on, the

Droits provisoires

8. (1) Dans le cas où le président prend une décision provisoire de dumping ou de subventionnement dans le cadre d'une enquête prévue par la présente loi et où il estime que l'imposition de droits provisoires est nécessaire pour empêcher qu'un dommage ou un retard ne soit causé ou qu'il y ait menace de dommage, lorsque des marchandises sous-évaluées ou subventionnées de même description que celles faisant l'objet de la décision sont dédouanées au cours de la période commençant à la date de cette décision et se terminant à la première des dates suivantes :

- a) le jour où le président fait clore, conformément au paragraphe 41(1), l'enquête sur les marchandises répondant à cette description;
- b) le jour où le Tribunal rend l'ordonnance ou les conclusions au sujet des marchandises répondant à cette description,

il appartient à l'importateur au Canada de ces marchandises, à son choix, dans le délai réglementaire fixé en application de la *Loi sur les douanes* pour le paiement des droits :

- c) soit d'acquitter ou de veiller à ce que soient acquittés des droits provisoires d'un montant ne dépassant pas la marge estimative de dumping des marchandises importées ou le montant estimatif de la subvention octroyée pour elles;
- d) soit de fournir ou de veiller à ce que soit fournie, en la forme que le président prescrit, une caution pour les droits provisoires s'appliquant aux marchandises importées, ne dépassant pas cette marge ou ce montant.

imported goods.

Normal value and export price where information not available

29. (1) Where, in the opinion of the President, sufficient information has not been furnished or is not available to enable the determination of normal value or export price as provided in sections 15 to 28, the normal value or export price, as the case may be, shall be determined in such manner as the Minister specifies.

Margin of dumping based on sample

30.3 (1) The President may, if the President is of the opinion that it would be impracticable to determine a margin of dumping in relation to all goods under consideration because of the number of exporters, producers or importers, the variety or volume of goods or any other reason, determine margins of dumping in relation to

(a) the largest percentage of goods of each of the countries whose goods are under consideration that, in the opinion of the President, can reasonably be investigated; or

(b) samples of the goods of each of the countries whose goods are under consideration that, in the opinion of the President based on the information available at the time of selection, are statistically valid.

Determination by designated officer

55. (1) Where the President
(a) has made a final determination of dumping or subsidizing under subsection 41(1) with respect to any goods, and
(b) has, where applicable, received from the Tribunal an order or finding described in any of sections 4 to 6 with respect to the goods to

Renseignements insuffisants

29. (1) La valeur normale et le prix à l'exportation sont établis selon les modalités que fixe le ministre dans les cas où le président est d'avis qu'il est impossible de les établir conformément aux articles 15 à 28 vu l'insuffisance ou l'inaccessibilité des renseignements nécessaires.

Échantillonnage

30.3 (1) S'il est d'avis que, à cause du nombre de producteurs, d'importateurs ou d'exportateurs, de la variété ou du volume des marchandises ou pour toute autre raison, il est impossible d'établir la marge de dumping relative à toutes les marchandises en cause, le président peut, en ce qui concerne les marchandises de chacun des pays dont les marchandises sont en cause, établir les marges de dumping relatives :

a) soit au pourcentage le plus élevé de celles-ci qui, à son avis, peut raisonnablement faire l'objet d'une enquête;

b) soit à un échantillonnage de celles-ci qui, à son avis, est statistiquement valide, sur le fondement des renseignements disponibles au moment du choix des échantillons.

Décision de l'agent désigné

55. (1) Après avoir :
a) rendu la décision définitive de dumping ou de subventionnement prévue au paragraphe 41(1);
b) reçu, le cas échéant, l'ordonnance ou les conclusions du Tribunal visées à l'un des articles 4 à 6 au sujet des marchandises objet de la décision définitive,

which the final determination applies, the President shall cause a designated officer to determine, not later than six months after the date of the order or finding,

(c) in respect of any goods referred to in subsection (2), whether the goods are in fact goods of the same description as goods described in the order or finding,

(d) the normal value and export price of or the amount of subsidy on the goods so released, and

(e) where section 6 or 10 applies in respect of the goods, the amount of the export subsidy on the goods.

Application

(2) Subsection (1) applies only in respect of

(a) goods released on or after the day on which a preliminary determination has been made, and on or before the day on which an undertaking has been accepted, in respect of the goods;

(b) goods described in paragraph 5(b) or 6(b);

(c) goods that are released on or after the day on which an undertaking with respect to those goods has been terminated pursuant to section 52 and on or before the day on which the Tribunal makes an order or finding pursuant to subsection 43(1) with respect to the goods; and

(d) goods described in paragraph 4(1)(b) or (2)(c).

Determination final

56. (1) Where, subsequent to the making of an order or finding of the Tribunal or an order of the Governor in Council imposing a countervailing duty under section 7, any goods are imported into Canada, a determination by a customs officer

le président fait déterminer par un agent désigné, dans les six mois suivant la date de l'ordonnance ou des conclusions :

c) la question de savoir si les marchandises visées au paragraphe (2) sont en fait de même description que celles désignées dans l'ordonnance ou les conclusions;

d) la valeur normale et le prix à l'exportation de ces marchandises ou le montant de subvention octroyée pour elles;

e) si les articles 6 ou 10 s'appliquent aux marchandises, le montant de la subvention à l'exportation octroyée pour elles.

Champ d'application

(2) Le paragraphe (1) ne s'applique qu'aux marchandises :

a) dédouanées à compter de la date de la décision provisoire et à la date de l'acceptation d'un engagement relatif à ces marchandises ou avant cette date;

b) désignées aux alinéas 5b) ou 6b);

c) dédouanées à compter de la date de la clôture d'un engagement relatif à ces marchandises en vertu de l'article 52 et à la date à laquelle le Tribunal rend une ordonnance ou des conclusions au sujet de ces marchandises en vertu du paragraphe 43(1) ou avant cette date;

d) désignées aux alinéas 4(1)b) ou (2)c).

Caractère définitif des décisions

56. (1) Lorsque des marchandises sont importées après la date de l'ordonnance ou des conclusions du Tribunal ou celle du décret imposant des droits compensateurs, prévu à l'article 7, est définitive une décision rendue par un agent des douanes dans les trente jours après déclaration en détail des marchandises aux termes des paragraphes 32(1), (3) ou (5) de la *Loi sur les douanes* et qui détermine :

(a) as to whether the imported goods are goods of the same description as goods to which the order or finding of the Tribunal or the order of the Governor in Council applies,

(b) of the normal value of or the amount, if any, of the subsidy on any imported goods that are of the same description as goods to which the order or finding of the Tribunal or the order of the Governor in Council applies, and

(c) of the export price of or the amount, if any, of the export subsidy on any imported goods that are of the same description as goods to which the order or finding of the Tribunal applies,

made within thirty days after they were accounted for under subsection 32(1), (3) or (5) of the *Customs Act* is final and conclusive.

Review by designated officer

57. Unless the President has previously re-determined under section 59 a determination referred to in subsection 56(1) or (2) or the determination was made in respect of goods released after the initiation of an expedited review under subsection 13.2(3) and before a decision was issued under that subsection, a designated officer may re-determine the determination

- (a) in accordance with a request made under subsection 56(1.01) or (1.1); or
- (b) if the designated officer deems it advisable, within two years after the determination.

Determination or re-determination final

58. (1) A determination or re-determination by a designated officer under section 55 or 57 with respect to any imported goods is final and

a) la question de savoir si les marchandises sont de même description que des marchandises auxquelles s'applique l'ordonnance ou les conclusions, ou le décret;

b) la valeur normale des marchandises de même description que des marchandises qui font l'objet de l'ordonnance ou des conclusions, ou du décret, ou le montant de l'éventuelle subvention qui est octroyée pour elles;

c) le prix à l'exportation des marchandises de même description que des marchandises qui font l'objet de l'ordonnance ou des conclusions ou le montant de l'éventuelle subvention à l'exportation.

Révision par l'agent désigné

57. Sauf si le président a réexaminé, conformément à l'article 59, une décision rendue en vertu du paragraphe 56(1) ou (2), ou que la décision a été prise à l'égard de marchandises qui ont été dédouanées après le début d'un réexamen expéditif fait en vertu du paragraphe 13.2(3), mais avant la prise de décision en vertu de ce paragraphe, l'agent désigné peut la réviser :

- a) soit à la suite d'une demande faite en application des paragraphes 56(1.01) ou (1.1);
- b) soit, de sa propre initiative, dans les deux ans suivant la décision.

Caractère définitif des décisions et révisions

58. (1) Les décisions ou révisions de l'agent désigné prévues aux articles 55 ou 57 sont définitives en ce qui a trait aux marchandises

conclusive.

Request for re-determination

(1.1) Notwithstanding subsection (1),

(a) where a determination or re-determination referred to in that subsection is made in respect of any goods, including goods of a NAFTA country, the importer of the goods may, within ninety days after the date of the determination or re-determination, make a written request in the prescribed form and manner and accompanied by the prescribed information to the President for a re-determination, if the importer has paid all duties owing on the goods; and

(b) where a determination or re-determination referred to in that subsection is made in respect of goods of a NAFTA country, the government of that NAFTA country or, if they are of that NAFTA country, the producer, manufacturer or exporter of the goods may make a request as described in paragraph (a), whether or not the importer has paid all duties owing on the goods.

Suspension of s. (2)

(1.2) The operation of subsection (2) is suspended during the period in which subsection (1.1) is in force.

Request for re-determination

(2) Notwithstanding subsection (1),

(a) where a determination or re-determination referred to in that subsection is made in respect of any goods, including goods of the United States, the importer of the goods may, within ninety days after the date of the determination or re-determination, make a written request in the

importées.

Demande de réexamen

(1.1) Par dérogation au paragraphe (1), l'importateur de marchandises visées par la décision ou la révision peut, après avoir payé les droits exigibles sur celles-ci et dans les quatre-vingt-dix jours suivant la date de la décision ou de la révision, demander au président, par écrit et selon les modalités de forme prescrites par celui-ci et les autres modalités réglementaires — relatives notamment aux renseignements à fournir —, de procéder à un réexamen. Dans le cas de marchandises d'un pays ALÉNA, la demande peut être faite, sans égard à ce paiement, par le gouvernement du pays ALÉNA ou, s'ils sont du pays ALÉNA, le producteur, le fabricant ou l'exportateur des marchandises.

Suspension

(1.2) Le paragraphe (2) est inopérant tant que le paragraphe (1.1) est en vigueur.

Demande de réexamen

(2) Par dérogation au paragraphe (1), l'importateur de marchandises visées par la décision ou la révision peut, après avoir payé les droits exigibles sur celles-ci et dans les quatre-vingt-dix jours suivant la date de la décision ou de la révision, demander au président, par écrit et selon les modalités de forme prescrites par celui-ci et les autres modalités réglementaires — relatives notamment aux renseignements à fournir —,

prescribed form and manner and accompanied by the prescribed information to the President for a re-determination, if the importer has paid all duties owing on the goods; and

(b) where a determination or re-determination referred to in that subsection is made in respect of goods of the United States, the United States government or the producer, manufacturer or exporter of the goods may make a request as described in paragraph (a), whether or not the importer has paid all duties owing on the goods.

Mandatory re-determination

59 (3) On a request made under subsection 58(1.1) or (2) to re-determine a determination under section 55 or a re-determination under section 57, the President shall

(a) in the case of a determination under section 55 or a re-determination under paragraph 57(b), re-determine the determination or re-determination within one year after the request under subsection 58(1.1) or (2) was made; and

(b) in the case of a re-determination under paragraph 57(a), re-determine the re-determination within one year after the request under subsection 56(1.01) or (1.1) was made.

Appeal to the Tribunal

61. (1) Subject to section 77.012 or 77.12, a person who deems himself aggrieved by a re-determination of the President made pursuant to section 59 with respect to any goods may appeal therefrom to the Tribunal by filing a notice of appeal in writing with the President and the Secretary of the Tribunal within ninety days after the day on which the re-determination was made.

de procéder à un réexamen. Dans le cas de marchandises des États-Unis, la demande peut être faite, sans égard à ce paiement, par le gouvernement des États-Unis ou le producteur, le fabricant ou l'exportateur des marchandises.

Réexamen obligatoire

59 (3) En cas de demande de réexamen faite, en application des paragraphes 58(1.1) ou (2) et concernant les décisions prévues à l'article 55 ou la révision prévue à l'article 57, le président :

a) dans le cas des décisions prévues à l'article 55 ou des révisions prévues à l'alinéa 57b), réexamine celles-ci dans l'année qui suit la date de la demande;

b) dans le cas des révisions prévues à l'alinéa 57a), réexamine celles-ci dans l'année qui suit la date de la demande prévue aux paragraphes 56(1.01) ou (1.1).

Appel devant le Tribunal

61. (1) Sous réserve des articles 77.012 et 77.12, quiconque s'estime lésé par un réexamen effectué en application de l'article 59 peut en appeler au Tribunal en déposant, auprès du président et du secrétaire du Tribunal, dans les quatre-vingt-dix jours suivant la date du réexamen, un avis d'appel.

Appeal to Federal Court on question of law

62. (1) Any of the parties to an appeal under section 61, namely,

- (a) the person who appealed,
- (b) the President, or
- (c) any person who entered an appearance in accordance with subsection 61(2), if the person has a substantial interest in the appeal and has obtained leave from the Court or a judge thereof,

may, within ninety days after the making of an order or finding under subsection 61(3), appeal therefrom to the Federal Court of Appeal on any question of law.

Disposition of appeal

(2) The Federal Court of Appeal may dispose of an appeal by making such order or finding as the nature of the matter may require and, without limiting the generality of the foregoing, may

- (a) declare what duty is payable or that no duty is payable on the goods with respect to which the appeal to the Tribunal was taken; or
- (b) refer the matter back to the Tribunal for re-hearing.

Recours devant la Cour d'appel fédérale sur un point de droit

62. (1) Dans les quatre-vingt-dix jours suivant l'ordonnance ou les conclusions prévues au paragraphe 61(3), recours peut en être porté sur une question de droit devant la Cour d'appel fédérale par :

- a) la personne qui a interjeté l'appel prévu à l'article 61;
- b) le président;
- c) les personnes ayant déposé un acte de comparution en application du paragraphe 61(2) à condition qu'elles aient un intérêt suffisant et aient obtenu l'autorisation de ce tribunal ou d'un de ses juges.

Jugement de la Cour d'appel fédérale

(2) La Cour d'appel fédérale peut se prononcer sur le recours en rendant les décisions indiquées en l'espèce et, notamment :

- a) déclarer soit quels droits sont payables, soit qu'aucun droit n'est payable sur les marchandises visées par l'appel au Tribunal;
- b) renvoyer l'affaire au Tribunal pour une nouvelle audition.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-435-09

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