

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20160125**

**Docket: A-34-15**

**Citation: 2016 FCA 20**

**CORAM: TRUDEL J.A.  
STRATAS J.A.  
RYER J.A.**

**BETWEEN:**

**CANADIAN TIRE CORPORATION, LIMITED**

**Appellant**

**and**

**PRESIDENT OF THE CANADA BORDER  
SERVICES AGENCY**

**Respondent**

Heard at Toronto, Ontario, on January 25, 2016.  
Judgment delivered from the Bench at Toronto, Ontario, on January 25, 2016.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**STRATAS J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Toronto, Ontario, on January 25, 2016).**

**STRATAS J.A.**

[1] Canadian Tire Corporation, Limited appeals from the decision of the Canadian International Trade Tribunal dated October 29, 2014 (appeal no. AP-2012-035): 2014 CITT 95. In that decision, the Tribunal found that Canadian Tire's request to the President of the Canada Border Services Agency for a redetermination of anti-dumping duties was in fact an

administrative appeal and was not just a request to correct clerical and arithmetical errors. In these circumstances, the Tribunal upheld the President's decision to issue a single re-determination, addressing Canadian Tire's request and re-determined the duties owed under section 59 of the *Special Import Measures Act*, R.S.C. 1985, c. S-15, using values generated as a result of a re-investigation conducted by the Canada Border Services Agency.

[2] In its appeal, Canadian Tire acknowledges that the standard of review is reasonableness.

It raises two issues in this appeal:

- Was it reasonable for the Tribunal to find that Canadian Tire's request was filed as an administrative appeal under section 58 of the Act rather than as a request to correct clerical or arithmetical errors under subsection 12(2) of the Act?
- Was it reasonable for the Tribunal to find that the President could examine the values used in the determination of duties under section 59 of the Act?

[3] At the core of each issue raised is a question regarding how various provisions of the Act and the *Special Import Measures Regulations*, SOR/84-927 are to be interpreted. These qualify as questions of law that this Court can entertain under section 62 of the Act.

[4] Canadian Tire urges us to give the Tribunal only a limited margin of appreciation on these issues. But Canadian Tire does concede that the standard of review is not correctness. On the current state of authorities from the Supreme Court and, in particular, the presumption that

the standard of review is reasonableness for administrative interpretations of home statutes, this is an appropriate concession.

[5] On the first issue, we note that the Tribunal based its conclusion—that Canadian Tire’s request was filed as an administrative appeal and not as a request to correct clerical or arithmetic errors—primarily upon its interpretation of subsection 12(2) of the Act as it applied to the particular facts of this case. In our view, it is not necessary to be precise in the margin of appreciation that we should afford the Tribunal on this point. We are not persuaded that the Tribunal committed any reviewable error in interpreting this subsection and related sections. In the case of subsection 12(2), it drew upon dictionary definitions, its appreciation of the legislative scheme, and definitions of “clerical error” from Federal Court cases, albeit in another context, and then verified its assessments by examining relevant international agreements (at paragraphs 45-55). We have not been persuaded that the Tribunal reached an interpretation that was unacceptable or indefensible.

[6] On the second issue, the Tribunal found that the President, acting under section 59 of the Act, was not limited to only the issues raised by Canadian Tire in its section 58 request, but could go further and engage in a full determination of the amounts owing to the extent permitted by the words of section 59. In reaching this decision, the Tribunal interpreted section 59 of the Act. It did so, in careful and thorough reasons, by looking at the words of the section, other words in the Act, and the purpose of the Act. In our view, on this the Tribunal did not err. We substantially agree with the Tribunal’s analysis and conclusions at paragraphs 62-68 of its decision.

[7] Contrary to Canadian Tire's submission at paragraphs 58-60 of its memorandum, we are of the view that the Tribunal reasonably interpreted the Act and the Regulations to find that the Canada Border Services Agency could establish a reasonable amount for profit using discrete 60-day periods on the facts of this case: see paragraphs 93-97 of the Tribunal's decision. This is consistent with this Court's earlier reasons in *Uniboard Surfaces Inc. v. Kronotex Fussboden GmbH and Co.*, 2006 FCA 398, [2007] F.C.R. 101 at paragraph 65, which recognized that the President has a "wide discretion" in the method to be used when determining normal values.

[8] Finally, contrary to Canadian Tire's submissions at paragraphs 61-63 of its memorandum, the Tribunal (at paragraph 102 of its reasons) properly applied the cascading hierarchy of paragraph 11(1)(b) of the Regulations when establishing a reasonable amount for profit.

[9] Overall, the Tribunal's decision is reasonable. Therefore we shall dismiss the appeal with costs.

David Stratas"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-34-15

**APPEAL FROM A DECISION OF THE CANADIAN INTERNATIONAL TRADE  
TRIBUNAL DATED OCTOBER 29, 2014**

**STYLE OF CAUSE:** CANADIAN TIRE  
CORPORATION, LIMITED v.  
PRESIDENT OF THE CANADA  
BORDER SERVICES AGENCY

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** JANUARY 25, 2016

**REASONS FOR JUDGMENT OF THE COURT BY:** TRUDEL J.A.  
STRATAS J.A.  
RYER J.A.

**DELIVERED FROM THE BENCH BY:** STRATAS J.A.

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