Federal Court Cour fédérale

Date: 20181004

Docket: T-1851-17

Citation: 2018 FC 991

Ottawa, Ontario, October 4, 2018

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

PRAIRIES TUBULARS (2015) INC.

Applicant

and

CANADA BORDER SERVICES AGENCY AND PRESIDENT CANADA BORDER SERVICE AGENCY AND THE ATTORNEY GENERAL OF CANADA

Respondents

JUDGMENT AND REASONS

[1] By this consolidated application for judicial review, Prairies Tubulars (2015) Inc. seeks judicial review of 22 decisions made by the Canada Border Services Agency pursuant to the provisions of the *Special Import Measures Act*, R.S.C. 1985, c. S-15 (*SIMA*). These decisions assessed anti-dumping duties on "oil country tubular goods" imported into Canada by the applicant.

[2] The respondents seek an order striking the application. Relying on section 18.5 of the *Federal Courts Act*, R.S.C., 1985, c. F-7, they assert that the Federal Court has no jurisdiction in this matter, as its jurisdiction has been ousted by the comprehensive statutory scheme established in the *SIMA* for challenges to assessments of anti-dumping duties.

[3] The applicant acknowledges the existence of the statutory appeal process in the *SIMA*. In order to be able to access this process, however, the *SIMA* requires that importers seeking to challenge assessments of anti-dumping duties must first pay all of the duties owing on the imported goods in issue. The applicant claims that it does not have the financial resources necessary to pay the assessed duties, with the result that it cannot access the *SIMA* appeals process. In the absence of an accessible statutory appeal mechanism, the applicant submits that it should have recourse in this Court.

[4] I agree with the respondents that the jurisdiction of the Federal Court in relation to challenges to assessments of anti-dumping duties is ousted by the provisions of section 18.5 of the *Federal Courts Act*. In the absence of a constitutional challenge to the applicable provisions of the *SIMA*, that statutory regime governs the applicant's challenge to the assessments in issue. It follows from this finding that the applicant's application for judicial review is so clearly improper as to be bereft of any possibility of success and that it must, accordingly, be struck out.

I. Legislative Regime

[5] In order to put the parties' arguments into context, it is necessary to have an understanding of the legislative scheme established for challenges to duties assessed under the *SIMA*. The full text of the legislative provisions referred to in these reasons is included as an appendix to this decision.

[6] The purpose of the *SIMA* is to protect domestic manufacturers against the marketing in Canada of foreign-made articles at unreasonably low prices, a practice known as “dumping”: *GRK Fasteners v. Canada (Attorney General)*, 2011 FC 198 at para. 5, [2011] F.C.J. No. 233. Dumping occurs when goods are sold to importers in Canada at prices that are lower than the price at which comparable goods are sold in the country of export, or where goods are sold in Canada at unprofitable prices. In order to protect Canadian manufacturers, the margin of dumping on imported goods may be off-set by the imposition of anti-dumping duties on the goods in question.

[7] “Countervailing duties” may also be imposed where the cost of manufacturing foreign goods has been subsidized in the exporting country. For the purposes of these reasons, the two types of duties will be referred to collectively as “anti-dumping duties”.

[8] The Canada Border Services Agency (CBSA) and the Canadian International Trade Tribunal (CITT) are jointly responsible for administering the *SIMA*. After receiving a complaint from a Canadian manufacturer, the CBSA may conduct an investigation. If it arrives at a preliminary determination that dumping has occurred and considers that the imposition of provisional duties is necessary to prevent injury, retardation or threat of injury, it may impose provisional duties: *SIMA* subsection 8(1). If the CITT subsequently concludes that dumping has caused injury to the relevant Canadian industry, such a finding provides the authority for the CBSA to impose anti-dumping duties: *SIMA* sections 55 and 56.

[9] An assessment of anti-dumping duties by a designated CBSA officer is final: *SIMA*, subsection 56(1). That said, subsection 56(1.01) of the *SIMA* provides that within ninety days after the making of the determination, the importer of the goods in question may apply in writing

to a designated officer for a re-determination of the duties owing. However, subsection 56(1.01) of the *SIMA* provides that to be eligible for any such re-determination, the importer must have paid all of the duties owing on the imported goods. The parties agree that there is no provision in the *SIMA* allowing the CBSA to waive this requirement.

[10] In accordance with section 57 of the *SIMA*, a designated CBSA officer may re-determine a determination made under section 56 of the Act. Section 58 of the Act provides that any such re-determination is final and conclusive. However, paragraph 58(1.1)(a) of the *SIMA* provides that the importer of the goods in issue may apply to the President of the CBSA for a further re-determination, once again, only after paying any outstanding duties. Applications to the President of the CBSA on such re-determinations are governed by section 59 of the Act.

[11] Importers can then appeal to the CITT from decisions of the President of the CBSA in accordance with the provisions of section 61 of the *SIMA*. Subsection 61(3) of the Act provides that decisions of the CITT are final and conclusive, subject only to an appeal to the Federal Court of Appeal on a question of law in accordance with section 62 of the Act.

II. <u>Factual Background</u>

[12] The applicant sells "oil country tubular goods" (OCTG) and other related goods to drilling companies operating in Alberta's oil and gas industry. The vast majority of the OCTG sold by the applicant are imported from manufacturers in China and Thailand.

[13] In 2010, the President of the CBSA made a final determination of dumping with respect to OCTG originating in or exported from China. The CITT subsequently determined that the OCTG had been both dumped and subsidized, and that this had caused injury to the domestic

industry. As a result of the CITT's finding, certain OCTG became subject to anti-dumping duties. Goods imported after the CITT's decision were then reviewed to ensure that the correct amount of anti-dumping duties had been imposed.

[14] Pursuant to subsection 57(b) of the *SIMA*, the CBSA issued detailed adjustment statements in October and November of 2017 in relation to 22 importations of OCTG by the applicant. The goods in question were imported into Canada in December of 2016 and January of 2017. According to the applicant's Notice of Application, the total amount of the anti-dumping duties assessed as owing by the applicant was $18,829,412.40.

[15] The applicant did not agree with these assessments. In accordance with paragraph 58(1.1)(a) of the *SIMA*, it had 90 days from the date of each of the detailed adjustment statements to apply to the President of the CBSA for a re-determination.

[16] The applicant did not pay the duties owing, nor did it seek re-determinations by the President of the CBSA under this provision. As noted earlier, it submits that it does not have the financial resources to pay the anti-dumping duties in issue. As payment of the outstanding anti-dumping duties is a precondition to the use of the *SIMA*'s review scheme, the applicant submits that it is unable to access the statutory re-determination and appeal mechanisms necessary to contest the various detailed adjustment statements. In the absence of an accessible statutory recourse mechanism, the applicant instead sought judicial review of the assessments in this Court.

III. **The Applicant's Application for Judicial Review**

[17] The applicant originally commenced 22 applications for judicial review with respect to each of the detailed adjustment statements issued by a CBSA Compliance Officer during the period in issue. The applicant submits that these decisions were "arbitrary, based on an incomplete record and an erroneous belief regarding the exporter". It further maintains that it did not have the opportunity to be heard with respect to a fundamental and erroneous finding in one of the detailed adjustment statements, namely that the applicant's logistics agent was in fact its exporter.

[18] The applicant acknowledges the existence of a statutory recourse mechanism under section 58 of the *SIMA* in its Notice of Application. However, it states at paragraph 41 of the Notice of Application that it "does not have sufficient funds to pay the assessment[s]" in order to appeal them. As a result, it asserts at paragraph 43 of its Application that it cannot access the statutory review process, and that its only option is to seek redress from the Federal Court.

[19] By way of relief, the applicant seeks orders quashing or setting aside the detailed adjustment statements in issue, as well as orders referring the matters back to the CBSA in accordance with any directions that the Court considers appropriate. The applicant further seeks costs of the applications, and such other relief as Counsel may request and the Court deem just.

[20] Pursuant to an order of a Case Management Prothonotary, the 22 applications for judicial review were subsequently consolidated, continuing together as file T-1851-17.

IV. The Test on Motions to Strike Notices of Application

[21] The first point that must be addressed is the test to be applied on a motion to strike a Notice of Application.

[22] Applications for judicial review are intended to be summary proceedings, and motions to strike Notices of Application add greatly to the cost and time required to deal with such matters. As a consequence, the Federal Court of Appeal has determined that applications for judicial review should not be struck out prior to a hearing on the merits, unless the applications are "so clearly improper as to be bereft of any possibility of success": *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588 at page 600, [1994] F.C.J. No. 1629 (C.A.).

[23] As the Federal Court of Appeal put it in *Canada (Minister of National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250 at paragraph 47, [2013] F.C.J. No. 1155, in order to strike out an application for judicial review at a preliminary stage of the process "[t]here must be a 'show stopper' or a 'knockout punch' - an obvious, fatal flaw striking at the root of this Court's power to entertain the application": citing *Rahman v. Public Service Labour Relations Board*, 2013 FCA 117 at para. 7; *Donaldson v. Western Grain Storage By-Products*, 2012 FCA 286 at para. 6; *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959.

[24] The Federal Court of Appeal has further stated that "[s]uch cases must be very exceptional and cannot include cases ... where there is simply a debatable issue as to the adequacy of the allegations in the notice of motion": *David Bull*, above at para. 15.

[25] Unless a moving party can meet this very stringent standard, the "direct and proper way to contest an originating notice of motion which the respondent thinks to be without merit is to

appear and argue at the hearing of the motion itself": *David Bull*, above at para. 10. See also *Addison & Leyen Ltd. v. Canada*, 2006 FCA 107 at para. 5, [2006] F.C.J. No. 489 (*Addison & Leyen* FCA), rev'd on other grounds 2007 SCC 33, [2007] S.C.J. No. 33.

[26] On a motion to strike an application for judicial review, the facts asserted by the applicant in its Notice of Application must be presumed to be true: *Toyota Tsusho America Inc. v. Canada (Border Services Agency)*, 2010 FC 78 at para. 13, [2010] F.C.J. No. 67 (*Toyota Tsusho*), aff'd 2010 FCA 262, [2010] F.C.J. No. 1271 (*Toyota Tsusho* (FCA)); *Addison & Leyen* FCA, above at para. 6. Notices of Application should, moreover, be read as generously as possible, in a manner that accommodates any inadequacies in the allegations that are merely the result of deficiencies in the drafting of the document: *Amnesty International Canada v. Canada (Canadian Forces)*, 2007 FC 1147 at para. 33, 287 D.L.R. (4th) 35.

[27] Finally, the Court must read the Notice of Application "holistically and practically without fastening onto matters of form" in order to gain "'a realistic appreciation' of the application's 'essential character'": *JP Morgan*, above at para. 50.

V. <u>Analysis</u>

[28] Applying these principles to the present case, it is evident from a review of the applicant's Notice of Application that its "essential character" is a challenge to the validity of determinations made by a CBSA Compliance Officer assessing anti-dumping duties on OCTG imported into Canada by the applicant.

[29] The applicant submits that, in contrast to parties in many of the cases relied upon by the respondents, it is not seeking to avoid the statutory appeals process contained in the *SIMA*. It

asserts that it wants to use the *SIMA*'s statutory appeals process to challenge the validity of the CBSA's assessment of anti-dumping duties, but that it is precluded from doing so by virtue of its inability to pay the assessed duties.

[30] The applicant further submits that it has a good argument that the detailed adjustment statements in issue in this case are flawed, as demonstrated by the fact that an earlier challenge to the assessment of anti-dumping duties brought by the applicant was resolved in its favour in a re-determination by the President of the CBSA.

[31] According to the applicant, the absence of a statutory provision allowing for exemption from the payment requirement operates as a fee that effectively bars access to the statutory review process. Citing the Supreme Court of Canada's decision in *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59, [2014] S.C.J. No. 59, the applicant submits that litigants' common law right of access to the Courts cannot be denied by exorbitant hearing fees.

[32] The applicant further submits that access to the Courts is fundamental to the rule of law, which is threatened in the absence of an accessible public forum for the adjudication of disputes: *Hryniak v. Mauldin*, 2014 SCC 7 at para. 26, [2014] 1 S.C.R. 87; *British Columbia Government Employees' Union v. British Columbia (Attorney General)*, [1988] 2 S.C.R. 214 at para. 26, [1988] S.C.J. No. 76.

[33] In these circumstances, the applicant contends that the Court should either deal with its application for judicial review or, alternatively, direct the CBSA to waive the payment requirement pending the applicant's exhaustion of the statutory appeals process.

[34] There appeared to be some confusion at the hearing of the respondents' motion to strike with respect to the legal basis for the motion. It is therefore important to understand what the respondents are arguing in support of their motion, and just as importantly, what they are not arguing.

[35] There are two arguments potentially available to a respondent in a case such as this. The first is that in accordance with section 18.5 of the *Federal Courts Act*, the Federal Court has no jurisdiction to review the validity of assessments of anti-dumping duties. Section 18.5 provides:

18.5 Despite sections 18 and 18.1, if an Act of Parliament expressly provides for an appeal to the Federal Court, the Federal Court of Appeal, the Supreme Court of Canada, the Court Martial Appeal Court, the Tax Court of Canada, the Governor in Council or the Treasury Board from a decision or an order of a federal board, commission or other tribunal made by or in the course of proceedings before that board, commission or tribunal, that decision or order is not, to the extent that it may be so appealed, subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with, except in accordance with that Act.	18.5 Par dérogation aux articles 18 et 18.1, lorsqu'une loi fédérale prévoit expressément qu'il peut être interjeté appel, devant la Cour fédérale, la Cour d'appel fédérale, la Cour suprême du Canada, la Cour d'appel de la cour martiale, la Cour canadienne de l'impôt, le gouverneur en conseil ou le Conseil du Trésor, d'une décision ou d'une ordonnance d'un office fédéral, rendue à tout stade des procédures, cette décision ou cette ordonnance ne peut, dans la mesure où elle est susceptible d'un tel appel, faire l'objet de contrôle, de restriction, de prohibition, d'évocation, d'annulation ni d'aucune autre intervention, sauf en conformité avec cette loi.

[36] The second argument potentially available to a respondent in these circumstances is that the Court should decline to entertain the applicant's application on the ground that there is an adequate alternate remedy available to it under the *SIMA*.

[37] There is an important distinction between the two arguments. Where it applies, section 18.5 of the *Federal Courts Act* acts as a statutory bar, depriving the Federal Court of the jurisdiction to set aside a detailed adjustment statement for any reason*: Fritz Marketing Inc. v. Canada*, 2009 FCA 62 at para. 33, [2009] F.C.J. No. 323. That is, the Federal Court has no power to review assessment decisions, even if it wanted to do so: *Spike Marks Inc. v. Canada (Attorney General)*, 2008 FCA 406 at paras. 19 and 21, [2008] F.C.J. No. 1756.

[38] The existence of an alternate statutory recourse mechanism can also operate as a bar to judicial review. There are a number of principles underlying the adequate alternate remedy rule, the most important of which for our purposes is the need to respect specialized statutory appeals processes created by Parliament: *JP Morgan*, above at para. 85.

[39] However, unlike situations where the Court is deprived of jurisdiction by virtue of section 18.5 of the *Federal Courts Act*, the availability of an alternate recourse mechanism is a *discretionary* bar to judicial review. That is, Courts have the power to entertain applications for judicial review in exceptional circumstances, notwithstanding the availability of an alternate remedy: *Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61 at para. 31, [2011] 2 F.C.R. 332; *JP Morgan*, above at para. 84.

[40] It is clear from both the respondents' Notice of Motion and their memorandum of fact and law that they are arguing that section 18.5 of the *Federal Courts Act* deprives this Court of jurisdiction to review the validity of the CBSA's assessments of anti-dumping duties. They are not arguing that the applicant has an adequate alternate remedy available to it through the statutory appeals process. The respondents confirmed that this was the case at the hearing of the motion.

[41] There is a substantial body of jurisprudence dealing with the operation of section 18.5 of the *Federal Courts Act* in cases involving the assessment of taxes or duties. While many of these cases (including the *Fritz Marketing* and *Spike Marks* decisions cited earlier in these reasons) arise under the provisions of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.) rather than the *SIMA*, the similarity of the appeal schemes in the two Acts makes cases decided under the *Customs Act* applicable to the present case: *Toyota Tsusho*, above at paras. 17 and 20.

[42] As Justice Tremblay-Lamer held in *Toyota Tsusho*, the scheme of re-determinations and appeals under 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": above, at para. 20. She went on to observe that the privative clauses in the *SIMA* are clear, and that the only way to challenge an assessment of anti-dumping duties "is to follow the procedures set out in the *SIMA* itself": above, at para. 20.

[43] The Federal Court of Appeal agreed that the statutory appeal scheme in the *SIMA* effectively excluded the jurisdiction of the Federal Court to entertain an application for judicial review of an assessment of anti-dumping duties: *Toyota Tsusho* (FCA), above at para. 2. See also *Spike Marks*, above, *Fritz Marketing*, above at para. 33; *1099065 Ontario Inc. (c.o.b. Outer Space Sports) v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1263 at para. 38, [2006] F.C.J. No. 1584, aff'd 2008 FCA 47, [2008] F.C.J. No. 177; *Jockey Canada Co. v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 396 at para. 31, [2010] F.C.J. No. 454.

[44] These decisions thus clearly establish that the effect of the statutory appeals regime in the *SIMA*, coupled with the provisions of section 18.5 of the *Federal Courts Act*, is to oust the

jurisdiction of the Federal Court to entertain challenges to the legal validity of assessments of anti-dumping duties and similar charges.

[45] It is true that earlier jurisprudence suggested that section 18.5 only bars applications for judicial review with respect to challenges to CITT decisions, and that it does not apply to bar applications brought in this Court challenging detailed adjustment statements: *Abbott Laboratories, Ltd. v. Canada (Minister of National Revenue - M.N.R.)*, 2004 FC 140 at para. 36, [2004] F.C.J. No. 410. However, it appears that the jurisprudential authority of this decision has been overtaken by more recent cases.

[46] By way of example, the *Toyota Tsusho* decision discussed above involved an application for judicial review of a detailed adjustment statement issued by a CBSA officer, as was also the case in *Fritz Marketing*. Even though neither case involved challenges to CITT decisions, the Federal Court of Appeal nevertheless concluded that section 18.5 of the *Federal Courts Act* applied to deprive this Court of jurisdiction. Similarly, *Spike Marks* involved a challenge to a decision by the President of the CBSA, rather than the CITT. The Federal Court of Appeal was nevertheless satisfied that the existence of a right of appeal to the CITT operated to deprive this Court of jurisdiction.

[47] Insofar as the applicant's access to justice argument is concerned, it is important to note that the *Trial Lawyers* case relied upon by the applicant involved a constitutional challenge to a legislative provision imposing fees on litigants seeking to try cases in the British Columbia Supreme Court. The Supreme Court of Canada concluded that the hearing fee scheme was unconstitutional, as it violated section 96 of the *Constitution Act*, 1867, by impermissibly

infringing on the core jurisdiction of the superior courts by denying some people access to the courts.

[48] The applicant has not challenged the appeal provisions of the *SIMA* on constitutional grounds, and in the absence of a constitutional challenge to the legislation, this Court is bound to apply the law: *JP Morgan*, above at para. 35.

VI. <u>Conclusion</u>

[49] I am mindful of the cautionary comments in *JP Morgan* where the Federal Court of Appeal stated that this Court should not strike a Notice of Application if it is uncertain whether section 18.5 of the *Federal Courts Act* applies to bar the application in question: above, at para. 91. That said, given that the essential nature of the application is a challenge to the assessment of anti-dumping duties, it is clear from the jurisprudence discussed in these reasons that section 18.5 of the *Federal Courts Act* operates to oust the jurisdiction of this Court in the present case, with the result that the applicant's application for judicial review is bereft of any chance of success. Consequently, the applicant's Notice of Application is struck out and the application for judicial review is dismissed.

[50] The respondents acknowledge that it remains open to the applicant to commence a constitutional challenge to the legislative scheme contained in the *SIMA*. In the exercise of my discretion, the applicant shall have leave to file an amended Notice of Application within 30 days of the date of this decision advancing its challenge to the relevant provisions of the *SIMA* on constitutional grounds, without prejudice to the right of the respondents to bring such further motions they may deem appropriate.

VII. Costs

[51] In accordance with the agreement of the parties, the respondents are entitled to their costs fixed in the amount of $2,000.00, inclusive of GST and disbursements.

JUDGMENT IN T-1851-17

THIS COURT'S JUDGMENT is that:

1. The applicant's application for judicial review is dismissed;

2. The applicant shall have leave to file an amended Notice of Application within 30 days of the date of this decision, without prejudice to the right of the respondents to bring such further motions they may deem appropriate; and

3. The respondents shall have their costs of this motion fixed in the amount of $2,000.00, inclusive of GST and disbursements.

"Anne L. Mactavish"

Judge

Appendix

Special Import Measures Act, R.S.C. 1985, c. S-15

Imposition of provisional duty

8 (1) Subject to subsection (1.3), if 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 beginning on the day on which 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

Droits provisoires

8 (1) Sous réserve du paragraphe (1.3), 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) 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 imported goods.

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.

[. . .]

[. . .]

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 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.

[. . .]

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,

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.

[. . .]

Determination final

56 (1) If, after 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 designated officer

(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.

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 la décision qui a été rendue par l'agent désigné 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) 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.

Request for re-determination

(1.01) Notwithstanding subsection (1),

(a) where a 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,

Demande de révision

(1.01) Par dérogation au paragraphe (1), l'importateur de marchandises visées par la décision peut, après avoir payé les droits exigibles sur celles-ci et dans les quatre-vingt-dix jours suivant la date de la décision, demander à un agent désigné, par écrit et selon

within ninety days after the making of the determination, make a written request in the prescribed form and manner and accompanied by the prescribed information to a designated officer for a re-determination, if the importer has paid all duties owing on the goods; and

(b) where a 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 of the goods has paid all duties owing on the goods.

les modalités de forme prescrites par le président et les autres modalités réglementaires — relatives notamment aux renseignements à fournir —, de réviser celle-ci. 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.

[. . .]

[. . .]

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.

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.

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 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;

[. . .]

Permissive re-determination

59 (1) Subject to subsection (3), the President may re-determine any determination or re-determination referred to in section 55, 56 or 57 or made under this section in respect of any imported goods

(a) in accordance with a request made pursuant to subsection 58(1.1) or (2);

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 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.

[. . .]

Réexamen : faculté du président

59 (1) Sous réserve du paragraphe (3), le président peut réexaminer les décisions ou les révisions visées aux articles 55, 56 ou 57 ou au présent article, concernant des marchandises importées :

a) à la suite d'une demande faite en application des paragraphes 58(1.1) ou (2);

(b) at any time, if the importer or exporter has made any misrepresentation or committed a fraud in accounting for the goods under subsection 32(1), (3) or (5) of the *Customs Act* or in obtaining release of the goods;

(c) at any time, if subsection 2(6) or section 26 or 28 applies or at any time becomes applicable in respect of the goods;

(d) at any time, for the purpose of giving effect to a decision of the Tribunal, the Federal Court of Appeal or the Supreme Court of Canada with respect to the goods; and

(e) in any case where the President deems it advisable, within two years after the determination referred to in section 55 or subsection 56(1), as the case may be, if the President has not previously made a re-determination with respect to the goods pursuant to any of paragraphs (a) to (d) or subsection (2) or (3).

Re-determination of re-determination

(1.1) The President may re-determine any re-determination

(a) at any time after a re-determination was made under any of paragraphs (1)(a) to (c) and (e) but before an appeal under section 61 is heard, on the recommendation of the Attorney General of Canada, if the re-determination would reduce duties payable on the goods; and

(b) at any time if the re-determination would be consistent with a decision of the Tribunal, the Federal Court of Appeal

b) dans les cas où l'importateur ou l'exportateur a fait une déclaration trompeuse ou commis une fraude lors de la déclaration en détail des marchandises aux termes des paragraphes 32(1), (3) ou (5) de la *Loi sur les douanes* ou lors de leur dédouanement;

c) dans les cas où le paragraphe 2(6) ou les articles 26 ou 28 sont applicables aux marchandises en cause ou le deviennent;

d) en vue d'exécuter une décision du Tribunal, de la Cour d'appel fédérale ou de la Cour suprême du Canada portant sur ces marchandises;

e) de sa propre initiative, dans les deux ans suivant la décision rendue, selon le cas, en vertu de l'article 55 ou du paragraphe 56(1), sauf s'il a déjà fait un réexamen en vertu des alinéas a) à d) ou des paragraphes (2) ou (3).

Réexamen du président de sa décision

(1.1) Le président peut réexaminer sa décision issue du réexamen :

a) fait au titre d'un des alinéas (1)a) à c) et e), après ce réexamen, mais avant l'audition de l'appel prévu à l'article 61, sur recommandation du procureur général du Canada, dans les cas où le nouveau réexamen réduirait les droits exigibles sur les marchandises;

b) dans les cas où celui-ci ne serait pas incompatible avec une décision du Tribunal, de la Cour d'appel fédérale ou de la Cour

or the Supreme Court of Canada, or with a re-determination under paragraph (a), made in respect of other like goods of the same importer or owner imported on or before the date of importation of the goods in respect of which the re-determination is being made.

suprême du Canada ou avec un nouveau réexamen fait en application de l'alinéa a) qui vise d'autres marchandises similaires du même importateur ou propriétaire importées au plus tard à la même date que celle de l'importation des marchandises en cause.

Permissive re-determination

(2) The President may re-determine any determination or re-determination referred to in section 55, 56 or 57 or made under this section in respect of any imported goods at any time for the purpose of giving effect to a decision of a panel under Part I.1 or II with respect to the goods.

Idem

(2) Le président peut faire un tel réexamen en tout temps afin de donner effet à une décision rendue par un groupe spécial sous le régime des parties I.1 ou II.

Mandatory re-determination

(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.

[. . .]

Réexamen obligatoire

(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).

[. . .]

Appeal to 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 Tribunal within ninety days after the day on which the re-determination was made.

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 de celui-ci et du président, dans les quatre-vingt-dix jours suivant la date du réexamen, un avis d'appel.

[. . .]

[. . .]

Order or finding of the Tribunal

(3) On any appeal under subsection (1) or (1.1), the Tribunal may make such order or finding as the nature of the matter may require and, without limiting the generality of the foregoing, may declare what duty is payable or that no duty is payable on the goods with respect to which the appeal was taken, and an order, finding or declaration of the Tribunal is final and conclusive subject to further appeal as provided in section 62.

Ordonnances ou conclusions du Tribunal

(3) Le Tribunal, saisi d'un appel en vertu des paragraphes (1) ou (1.1), peut rendre les ordonnances ou conclusions indiquées en l'espèce et, notamment, déclarer soit quels droits sont payables, soit qu'aucun droit n'est payable sur les marchandises visées par l'appel. Les ordonnances, conclusions et déclarations du Tribunal sont définitives, sauf recours prévu à l'article 62.

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

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) any person who entered an appearance in accordance with subsection 61(2),

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.

c) les personnes ayant déposé un acte de comparution en application du paragraphe 61(2).

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.

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

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STYLE OF CAUSE:	PRAIRIES TUBULARS (2015) INC, v CANADA BORDER SERVICES AGENCY AND PRESIDENT CANADA BORDER SERVICE AGENCY AND THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
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APPEARANCES:

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