Federal Court of Appeal | Cour d'appel fédérale

Date: 20161021

Dockets: A-534-15
A-535-15
A-536-15

Citation: 2016 FCA 257

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

Docket: A-534-15

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

BRI-CHEM SUPPLY LTD.

Respondent

Docket: A-535-15

AND BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

EVER GREEN ECOLOGICAL SERVICES INC.

Respondent

Docket: A-536-15

AND BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

SOUTHERN PACIFIC RESOURCE CORP.

Respondent

Heard at Ottawa, Ontario, on October 19, 2016.

Judgment delivered at Ottawa, Ontario, on October 21, 2016.

REASONS FOR JUDGMENT BY:	STRATAS J.A.
CONCURRED IN BY:	TRUDEL J.A. SCOTT J.A.

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REASONS FOR JUDGMENT

STRATAS J.A.

A. Introduction

[1] In three decisions dated October 16, 2015, the Canadian International Trade Tribunal upheld the ability of importers to correct certain customs declarations in order to obtain more favourable tariff treatment: *Bri-Chem Supply Ltd.* (file AP-2014-017); *Ever Green Ecological Services Inc.* (file AP-2014-027) and *Southern Pacific Resource Corp.* (file AP-2014-028). In the course of doing this, the Tribunal rejected the submissions of the agency that administers the tariff regime, the Canada Border Services Agency or CBSA.

[2] The Tribunal's decisions turned upon the Canadian International Trade Tribunal's interpretation of the *Customs Act*, R.S.C. 1985 (2d. Supp.), c. 1, particularly sections 32.2 and 74. On this, the Tribunal adopted the interpretations and reasoning in its earlier decision in *Frito-Lay Canada Inc.* (file AP-2010-002). In the course of its reasons, the Tribunal found that the

CBSA committed an abuse of process by failing to apply its earlier decision in *Frito-Lay* when administering the Act and by relitigating *Frito-Lay* before the Tribunal.

[3] The Tribunal's reasons for decision are set out in *Bri-Chem*; it adopted these reasons in *Ever Green* and *Southern Pacific*.

[4] The Attorney General of Canada appeals all three decisions and the appeals have been consolidated. The Attorney General also challenges the Tribunal's finding that the CBSA committed an abuse of process. These are the Court's reasons in the consolidated appeals. A copy of these reasons shall be placed in each court file.

[5] I conclude that the Tribunal's decisions, including its ruling on abuse of process, are reasonable. I do not fully agree with the principles the Tribunal applied in making the abuse of process ruling. Nevertheless, the ruling is sustainable on this record. Therefore, I would dismiss the appeals with costs.

B. The basic facts

[6] In these three cases, goods qualifying under the *North American Free Trade Agreement* (NAFTA) were imported into Canada from the United States duty-free using the Most Favoured Nation (MFN) tariff treatment. The importers declared certain tariff classifications for the goods.

[7] Later, as a result of CBSA audits, the importers discovered that the tariff classifications they had chosen for the goods were incorrect. After discovering their error, they filed a correction to the tariff classifications. They went further and notified CBSA of a change to the

tariff treatment: the goods went from a duty-free tariff classification with MFN tariff treatment to a duty-free classification with NAFTA treatment. If the tariff treatment did not change from MFN to NAFTA, the goods would have been subject to duty.

[8] In doing this, the importers relied upon section 32.2 of the *Customs Act*. In particular, subsection 32.2(2) provides that "an importer…of goods…shall, within ninety days after the importer…has reason to believe that…the declaration of tariff classification…is incorrect,…make a correction to the declaration". The importers did just that: within ninety days, they corrected the tariff classifications on the declarations. They also changed the tariff treatment from MFN to NAFTA.

[9] The CBSA objected to what the importers had done. The matter fell before the Tribunal. Before the Tribunal, the CBSA focused on the importers' choice of MFN tariff treatment and told the Tribunal that MFN treatment is "not an incorrect tariff treatment"; after all, the goods could indeed be subject to MFN treatment. Thus, the choice of MFN treatment could not be changed.

[10] In its reasons for decision in *Bri-Chem*, the Tribunal saw nothing wrong with what the importers had done (at para. 18):

> Importantly, Bri-Chem did not correct the "origin" of the goods; they were always stated as being of U.S. origin. When Bri-Chem corrected the tariff classification, the accompanying choice of the UST/NAFTA tariff treatment that was always available to its goods of U.S. origin simply maintained the status quo ante of the previously claimed zero rate of duty and was, therefore, revenue-neutral.

Further, in the Tribunal's view, the CBSA was following a wrong methodology: the CBSA was focusing on "a purported 'correction' to *tariff treatment*, whereas the proper analytical starting

point is that the only 'correction' that took place was to *tariff classification*" (at para. 17) [emphasis in original].

[11] The CBSA also took the position that importers are not entitled to claim the benefits of NAFTA more than one year after importation. The CBSA argued that the one-year limitation for applications for refunds under section 74 of the *Customs Act* applied to non-revenue corrections under section 32.2 of the Act. The Tribunal rejected this as follows (at paras. 22-23):

> Further, the CBSA's position continues to be predicated on a misunderstanding of the two regimes of the Act (section 32.2 for Corrections and section 74 for Refunds). What Parliament intended through section 32.2 was to ensure that erroneous declarations of origin, tariff classification and/or value for duty be corrected and that any duties owed be paid, *but only when duties are owing*.
>
> Meanwhile, subsection 74(1) applies to "…a person *who paid* duties on any imported goods…" which is clearly not the case here. Section 74 does not allow the CBSA to operate schemes which would ensnare importers into duties on goods that are legitimately entitled to enter Canada duty-free; that is tantamount to taxation in the absence of legislation.…[emphasis in original]

[12] The Tribunal stressed that its earlier decision in *Frito-Lay* decided all of these issues. It adopted all of its conclusions and reasoning in *Frito-Lay*.

[13] The Tribunal expressed concern that the CBSA had relitigated *Frito-Lay* without justification. Indeed, the CBSA had "knowingly frustrated importers from the applicability of Frito-Lay in either similar or even identical situations of fact" (at para. 24) and had "embark[ed] on what appears to have been a policy of outright disregard for Frito-Lay" (at para. 25). In support of its comments, the Tribunal stressed the need for its decisions to be respected in order to further stability and predictability (at para. 37):

> …respectful and responsible application of Tribunal precedent is important for stability and predictability in the importing community. Importers should not be subjected to costs and unfair litigation of cases for matters that have already been dealt with through proper legal authority.

[14] The Attorney General appeals to this Court from the Tribunal's decisions.

C. Standard of review

[15] In this Court, the parties submit that we are to review the Canadian International Trade Tribunal's decisions on the basis of reasonableness. I agree. The Tribunal is entitled to a margin of appreciation because it has "particular familiarity" with the *Customs Act* provisions it interpreted and the provisions are "closely connected to its function": *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 54; see also *C.B. Powell Limited v. Canada (Border Services Agency)*, 2011 FCA 137, 418 N.R. 33 at paras. 19-22.

[16] The Supreme Court of Canada recently adopted reasonableness as the standard of review of Tribunal interpretations of the *Customs Tariff*, S.C. 1997, c. 36. It noted that the Tribunal "has specific expertise in interpreting 'the very complex customs tariff and the international and national rules for its interpretation'" and the questions of legislative interpretation involved in the case were "of 'a very technical nature' which the [Tribunal] will often be better equipped than a reviewing court to answer": *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 at para. 17, citing *Star Choice Television Network Inc. v. Canada (Customs and Revenue Agency)*, 2004 FCA 153 at para. 7 and *Minister of National Revenue (Customs and Excise) v. Schrader Automotive Inc.* (1999), 240 N.R. 381 at para. 5.

[17] The words of the Supreme Court in *Igloo* apply equally here. The *Customs Tariff* at issue in *Igloo* and the *Customs Act* at issue here are different statutes. But they are related. Further the particular issues of statutory interpretation concerning the provisions at issue here are similar to those in *Igloo* in nature and technical complexity.

D. Reviewing the Tribunal's decision for reasonableness

[18] In these consolidated appeals, we need not delve into any of the subtleties in the law governing the meaning of "reasonableness" and how much deference the Tribunal is owed: even if the standard of review were correctness, I would agree with the Canadian International Trade Tribunal's interpretation of the relevant provisions substantially for the reasons it gave.

[19] As mentioned above, the Tribunal adopted its earlier decision in *Frito-Lay* in the three decisions now under appeal. The outcome of the Tribunal in *Frito-Lay* is reasonable; indeed, I agree with that outcome and the reasoning offered in support of it. That reasoning is consistent with the reasons of this Court in *C.B. Powell*, above.

[20] Before us, the Attorney General submits, as it did before the Tribunal in this case and as in *Frito-Lay*, that a declaration of MFN tariff treatment is not wrong and, thus, does not fall for correction within the context of a section 32.2 revenue-neutral correction to tariff classification and tariff treatment.

[21] The respondents point out that if that is true, then a practical, real-world problem arises, one that the Tribunal—possessing real-world knowledge and expertise—appreciated and took into account when interpreting section 32.2. An importer that does not claim NAFTA treatment

at the time of importation and that does not seek a refund of duties under section 74 of the *Customs Act* finds itself in a dilemma. In order to claim NAFTA treatment, the importer must have a valid certificate of origin at the time of making the declaration. But often the importer is waiting to receive the certificate of origin from the exporter or manufacturer. As a result, the importer has no choice but to claim MFN treatment. Under the Attorney General's interpretation, the importer would never be able to change the tariff treatment even after receiving a valid certificate of origin from the manufacturer or exporter.

[22] The respondents note that the CBSA recognized the unacceptability of this problem and came up with an "administrative" solution where it would treat non-revenue claims for NAFTA tariff treatment as applications for refunds under section 74. But, as the Tribunal correctly noted, this was contrary to the wording of section 74. In its view, this was a "spurious theory" adopted by the CBSA to avoid the application of *Frito-Lay*.

[23] Whether or not a correction to tariff classification under section 32.2 allows for a concurrent re-evaluation of tariff treatment is a matter of statutory interpretation. In this Court and before the Tribunal, the Attorney General interpreted section 32.2 narrowly, arguing that a correction to tariff classification cannot lead to a subsequent correction of tariff treatment.

[24] The Tribunal disagreed, noting that tariff classification cannot be decoupled from tariff treatment.

[25] In my view, this interpretation is reasonable. The Tribunal—equipped to appreciate how the technical provisions of the *Customs Act* address the real-world problems of trade—reached an acceptable interpretation of section 32.2 consistent with its wording. Given that an importer

will choose tariff treatment based on tariff classification, a correction of one necessitates the re-evaluation of the other.

[26] The Attorney General submits that sections 35.1 and 74 of the *Customs Act*, section 24 of the *Customs Tariff* and the *Proof of Origin of Imported Goods Regulations*, SOR/98-52 support its position.

[27] Again, I disagree. Section 35.1 of the *Customs Act* does not limit when an importer may claim NAFTA tariff treatment, but rather sets out how an importer may prove the origin of goods. Section 74 of the *Customs Act* does not provide any general limitation on claims for NAFTA tariff treatment. Finally, section 24 of the *Customs Tariff* and the *Proof of Origin of Imported Goods Regulations* do not set out rules limiting when claims for NAFTA tariff treatment may be made.

[28] Indeed this submission was soundly and correctly rejected by the Tribunal in *Frito-Lay* (at para. 64):

> [T]hat position is not founded in law … section 74 of the Act is applicable *only* in the case of a *refund* application. Accordingly, because none of the transactions involve a request for a refund, section 74 is wholly inapplicable to this matter. Rather, according to subsection 32.2(4), the *obligation* to make the corrections provided for under subsection 32.2(2) exists for a four-year period after initial accounting… [emphasis in original]

[29] The Tribunal's decision is also consistent with articles 501-503 of NAFTA. On this, the Attorney General pointed us to certain United States cases. These interpret certain domestic provisions designed to implement NAFTA. The Attorney General submitted that these interpretations differ from the interpretations adopted by the Tribunal. That may be so, but the

interpretations of domestic provisions by United States courts do not suggest that the Tribunal, interpreting differently-worded legislation, has adopted an unreasonable interpretation of that legislation.

[30] Before us, the Attorney General invoked NAFTA article 501, paragraph 502(3) and subparagraph 502(1)(*c*) in support of the proposition that an importer may claim the benefits of NAFTA on only three occasions: at the time of accounting, when applying for a refund and at the request of a customs officer. I disagree.

[31] Article 501 states that a NAFTA certificate of origin "shall be accepted by [a NAFTA Party's] customs administration for four years after the date the [c]ertificate was signed.". It does not state that a NAFTA claim must be made at the time of accounting. Article 502(3) permits a claim for a refund of duties to be made within one year of the date of importation. It does not impose a one-year limit on claims for NAFTA when no refund is sought. And Article 502(1)(*c*) simply requires an importer who has made a NAFTA claim to produce a certificate of origin at the request of the administration, nothing more.

[32] For the foregoing reasons, the Tribunal decisions are reasonable.

E. The abuse of process issue: can administrators decline to follow tribunal decisions?

[33] As mentioned above, the Canadian International Trade Tribunal found that the CBSA had committed an abuse of process: it failed to apply the Tribunal's earlier decision in *Frito-Lay* when administering the *Customs Act* and it improperly relitigated *Frito-Lay* before the Tribunal.

[34] In the course of its reasons, the Tribunal noted that the Attorney General, arguably acting on the CBSA's behalf, had appealed *Frito-Lay* to this Court but had discontinued the appeal. In its view, that should have been the end of the matter. Thereafter, the CBSA should have applied *Frito-Lay* when administering the Act. It should have applied *Frito-Lay* when considering the respondent importers' requests for correction in these three cases.

[35] In this Court, the Attorney General challenges the Tribunal's finding of abuse of process. The Attorney General submits that it is inconsistent with the legal principle that one panel of an administrative tribunal does not bind later panels. Based on this principle, it says that the CBSA was free to relitigate *Frito-Lay* in another case before a later panel of the Tribunal.

[36] The respondents disagree. They submit that the Tribunal was quite right in finding that the CBSA had committed an abuse of process. Echoing the reasons of the Tribunal, the respondents submit that an administrator like the CBSA is bound by and must always follow the jurisprudence of a tribunal that adjudicates its cases. The CBSA was wrong in failing to apply the Tribunal's decision in *Frito-Lay* and committed an abuse of process in relitigating it before the Tribunal.

[37] In my view, more principles than those identified by the parties bear upon this problem. And the principles are more nuanced than the parties and the Tribunal suggest. Despite this, in response to questioning from the Court, counsel largely agreed on the principles, their nature and their operation.

[38] It will be necessary to discuss the principles at a level of generality. In this discussion, I shall describe an adjudicative tribunal like the Canadian International Trade Tribunal as a "tribunal" and an administrator like the CBSA as an "administrator".

[39] Tribunals and administrators are both public bodies established by legislation. Both wield public power and both must obey all relevant legislation, often the same legislation. They are independent from each other. But they are in a hierarchical relationship. Tribunals pass judgment on the acts of administrators.

[40] The starting point for tribunals is that while they should try to follow their earlier decisions, they are not bound by them: *IWA v. Consolidated Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282 at pages 327-28 and 333; *Tremblay v. Quebec (Commission des affairs sociales)*, [1992] 1 S.C.R. 952 at pages 974; *Domtar Inc. v. Quebec (Commission d'appel en matière de lésions professionnelles)*, [1993] 2 S.C.R. 756 at pages 798-799. Further, within limits, it is possible for one tribunal panel to disagree with another and still act reasonably: *Wilson v. Atomic Energy of Canada*, 2016 SCC 29, 399 D.L.R. (4th) 193.

[41] However, that is only the starting point. Other principles come to bear. To name one, a tribunal is constrained by any rulings and guidance given by courts that govern the facts and

issues in the case: *Canada (Attorney General) v. Canadian Human Rights Commission*, 2013 FCA 75, 444 NR 120 at paras. 18-19.

[42] Another principle is that, in a case like this, Parliament—with a view to furthering efficient and sound management over an area of administration—has passed a law empowering a tribunal to decide certain issues efficiently and once and for all. Certainty, predictability and finality matter. Allowing tribunal panels to disagree with each other without any limitation tears against the need for a good measure of certainty, predictability and finality.

[43] In some contexts, certainty, predictability and finality arguably matter even more. Here, for example, we are dealing with commercial importation and international trade, an area where the CBSA, customs brokers and others are deluged every day by millions of goods seeking quick, efficient and predictable entry to our domestic market: see the Tribunal decision at para. 37, quoted in para. 13, above.

[44] Therefore, while it is true that later tribunal panels are not bound by the decisions of earlier tribunal panels, it is equally true that later panels should not depart from the decisions of earlier panels unless there is good reason.

[45] A number of principles govern administrators. An administrator whose actions are regulated by a tribunal—like the CBSA whose decisions are regulated by the Canadian International Trade Tribunal—must follow tribunal decisions. Certainty, predictability and finality matter here as well. So does the principle of tribunal pre-eminence: tribunals bind those who are subject to their jurisdiction, including administrators, subject to any later orders by reviewing courts.

[46] But this general principle admits at least of two exceptions, one uncontroversial, another more controversial.

[47] It is uncontroversial that as long as an administrator is acting *bona fide* and in accordance with its legislative mandate, an administrator can assert—where principled and warranted—that an earlier tribunal decision on its facts does not apply in a matter that has different facts. In other words, in pursuit of its legislative mandate, an administrator can sometimes distinguish an earlier tribunal decision on its facts and act accordingly.

[48] More controversial, however, are cases where an administrator feels it can and must act in a certain way but an earlier tribunal decision that it cannot distinguish stands in its way. And the administrator has a well-founded, *bona fide* concern that the earlier decision is flawed and should not be followed.

[49] In certain circumstances described below, the administrator should be allowed to act upon its view of the matter and, when challenged, should be allowed to raise with the tribunal the flaw it sees. For one thing, the administrator might be right: the earlier tribunal decision might be flawed and in bad need of correction. Unless the administrator is allowed to raise the issue, the tribunal will never be able to consider the matter, nor will a reviewing court receive it. As a result, a serious error might persist, possibly perpetually. To the extent possible, this sort of immunization from correction should be avoided: *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 S.C.R. 524; *Harris v. Canada*, [2000] 4 F.C.R. 37, 187 D.L.R. (4th) 419; *Slansky v. Canada (Attorney General)*, 2013 FCA 199, 364 D.L.R. (4th) 112 at para. 313 (dissenting, but not on this point).

[50] In my view, an administrator can act or take a position against an earlier tribunal decision only if it is satisfied it is acting *bona fide* in accordance with the terms and purposes of its legislative mandate and only if a particular threshold has been crossed. This threshold should be shaped by two sets of clashing principles discussed above: the principles of certainty, predictability, finality and tribunal pre-eminence on the one hand, and, on the other, ensuring that potentially meritorious challenges of arguably wrong decisions can go forward.

[51] What is the threshold? In an administrative regime like the one before us, the administrator must be able to identify and articulate with good reasons one or more specific elements in the tribunal's earlier decision that, in the administrator's *bona fide* and informed view, is likely wrong. The flaw must have significance based on all of the circumstances known to the administrator, including the probable impact of the flaw on future cases and the prejudice that will be caused to the administrator's mandate, the parties it regulates, or both.

[52] This is something far removed from an administrator putting essentially the same facts, the same law and the same arguments to a tribunal on the off-chance it might decide differently. Tribunal proceedings are not a game of roulette where a player, having lost, can just hope for better luck and try again.

[53] When the administrator tries to persuade the tribunal that its earlier decision should no longer be followed, the administrator must address at least the matters discussed above, offering submissions that are not simply a rerun. They must go further than just a modest modifying or small supplementing of the earlier submissions. The tribunal may then decide whether its earlier

decision remains good law after considering the evidence before it, the terms and purposes of the legislation, and any other legal standards that properly bear on its decision.

[54] When the administrator decides that an earlier tribunal decision can and should be challenged, the administrator, and later the tribunal, might wish to expedite matters so that the matter may be clarified as soon as possible.

[55] I note that there may be other ways of resolving this sort of issue. For example, an administrator and affected parties in a case pending before the tribunal can request the tribunal to state a question of law, jurisdiction, practice or procedure to the Court: *Federal Courts Act*, R.S.C. 1985, c. F-7, section 18.3. In some circumstances—especially where the question does not call for any particular administrative appreciation—a tribunal might well grant the request in order to advance the objectives of efficiency and certainty. As well, in the end, an administrator, dissatisfied by a tribunal ruling, can always try to get it reversed by asking for a legislative amendment.

[56] I also note that other particular forms of recourse may be available under specific legislative regimes. For example, under section 70 of the *Customs Act*, the President of the CBSA can refer directly to the Canadian International Trade Tribunal for decision "any questions relating to the origin, tariff classification or value for duty of any goods or class of goods.".

F. The Tribunal's finding that the CBSA had committed an abuse of process

[57] As mentioned above, the Canadian International Trade Tribunal found that the CBSA's relitigation of *Frito-Lay* in this case was an abuse of process. Based on the discussion above and bearing in mind the deference we must show to factually-suffused findings made by the Tribunal, there are no grounds for interfering with that finding.

[58] After the release of *Frito-Lay* and following the discontinuance of the appeal from it, the CBSA took administrative positions contrary to it without explanation, justification or action of the sort required: see Tribunal decision at para. 24 and see paras. 50-56 above. Later, when appearing before the Canadian International Trade Tribunal, the CBSA did not focus on particular passages in *Frito-Lay* that it felt were wrong. By and large, the CBSA simply reargued the issues decided in *Frito-Lay* on virtually identical facts and law, without identifying any flaws, let alone serious flaws, in the particular reasoning in *Frito-Lay*. In fact, in its written submissions to the Tribunal, the CBSA mentioned *Frito-Lay* not as a leading point, but more or less as an after-thought: see Appeal Book, pp. 572-599. The written submissions and oral argument before the Tribunal in these cases do not show arguments much different from those the Tribunal rejected in *Frito-Lay*; in these cases, the Tribunal had evidence before it that could lead it to the conclusion that, at best, it was receiving only a modest modification or small supplementing of arguments it had received in *Frito-Lay*: see the transcript in the *Southern Pacific* case at pages 193-194; Appeal Book at pages 1137-1138. It is true that on this record, there is no evidence of malice or ill-will. And it is also true that when an administrator may act contrary to tribunal decisions and may relitigate points before a tribunal was somewhat uncertain. But a finding of abuse of process does not require malice, knowledge or ill-will.

[59] Also relevant is the fact that the Tribunal's decision in *Frito-Lay* was appealed to this Court but the appeal was discontinued for whatever reason. Rather than fighting *Frito-Lay* in this Court, the CBSA chose to fight it by resisting it at the administrative level: Tribunal decision at para. 24.

[60] Discontinuances can have consequences. While they are not dismissals, they are still meant to terminate earlier proceedings. Later attempts by the discontinuing party or its proxies to relitigate the issues can face obstacles. As well, in public law cases, other considerations may affect the ability to relitigate. See *Philipos v. Canada (Attorney General)*, 2016 FCA 79 at paras. 17-23.

[61] The discontinuance of *Frito-Lay* placed a higher tactical burden upon the CBSA in this case to demonstrate its good faith and to offer good reasons to the Tribunal both as to why *Frito-Lay* should not be followed and why the appeal from *Frito-Lay* was discontinued. The CBSA did not discharge this tactical burden.

[62] Overall, the evidence in the record, viewed in light of the principles set out above and bearing in mind the deference we must show to fact-suffused decisions, sustains the Tribunal's finding.

G. Proposed disposition

[63] For the foregoing reasons, I would dismiss the appeals.

[64] The respondent importers seek their costs of the appeals on a solicitor and client basis. In support of this, they invoke the CBSA's conduct at the administrative level below. However, under Rule 400 of the *Federal Courts Rules*, SOR/98-106, the focus is on the "proceedings" in this Court, not matters in the administrative levels below. Under Rule 2, both "appeals" and "applications" are "proceedings".

[65] The respondents fairly conceded that there was nothing in the conduct of these appeals that would justify an award of solicitor and client costs. In my view, there is nothing to remove these appeals from the usual disposition that costs shall follow the event. Therefore, I would grant the respondents their costs of the appeals. Since the appeals were consolidated, I would grant one set of costs.

[66] The panel wishes to thank counsel for their excellent submissions.

"David Stratas"

J.A.

"I agree
Johanne Trudel J.A."

"I agree
A.F. Scott J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS:	A-534-15, A-535-15 AND A-536-15

APPEAL FROM A DECISION OF THE CANADIAN INTERNATIONAL TRADE TRIBUNAL DATED OCTOBER 2, 2015; FILE NOS. AP-2014-017, AP-2014-027 AND AP-2014-028

DOCKET:	A-534-15
STYLE OF CAUSE:	ATTORNEY GENERAL OF CANADA v. BRI-CHEM SUPPLY LTD.
AND DOCKET:	A-535-15
STYLE OF CAUSE:	ATTORNEY GENERAL OF CANADA v. EVER GREEN ECOLOGICAL SERVICES INC.
AND DOCKET:	A-536-15
STYLE OF CAUSE:	ATTORNEY GENERAL OF CANADA v. SOUTHERN PACIFIC RESOURCE CORP.
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	OCTOBER 19, 2016
REASONS FOR JUDGMENT BY:	STRATAS J.A.
CONCURRED IN BY:	TRUDEL AND SCOTT JJ.A.
DATED:	OCTOBER 21, 2016

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