Date: 20020704

Docket: A-87-01

Ottawa, Ontario, July 4, 2002

CORAM: **LÉTOURNEAU J.A.**
NADON J.A.
PELLETIER J.A.

BETWEEN:

ALIMENTS DORCHESTER INC., now known as
EXCELDOR COOPÉRATIVE AVICOLE

Appellant

and

DEPARTMENT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE

Respondent

JUDGMENT

The appeal is dismissed with costs.

"Gilles Létourneau"

J.A.

Certified true translation

S. Debbané, LLB

Date: 20020704

Docket: A-87-01

Neutral Citation: 2002 FCA 286

CORAM: **LÉTOURNEAU J.A.**
NADON J.A.
PELLETIER J.A.

BETWEEN:

ALIMENTS DORCHESTER INC. now known as
EXCELDOR COOPÉRATIVE AVICOLE

Appellant

and

DEPARTMENT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE

Respondent

Hearing held at Québec, Quebec, on June 3, 2002

Judgment delivered at Ottawa, Ontario, on July 4, 2002

REASONS FOR JUDGMENT: NADON J.A.

CONCURRED IN BY: LÉTOURNEAU J.A.
PELLETIER J.A.

Date: 20020704

Docket: A-87-01

Neutral Citation: 2002 FCA 286

CORAM: **LÉTOURNEAU J.A.**
NADON J.A.
PELLETIER J.A.

BETWEEN:

ALIMENTS DORCHESTER INC. now known as
EXCELDOR COOPÉRATIVE AVICOLE

Appellant

and

DEPARTMENT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE

Respondent

REASONS FOR JUDGMENT

NADON J.A.

[1] On January 27, 2001, Mr. Justice Pinard, of the Trial Division of this Court, dismissed the application by the appellant, Exceldor Coopérative Avicole, for judicial review of two decisions by the respondent refusing to issue the appellant an import allocation for eviscerated chicken free of duty, under subsection 6.2(2) of the *Export and Import Permits Act*, R.S.C., 1985, c. E-19 (the "Act"), for the years 1999 and 2000.

[2] This appeal raises the following question: Was Pinard J. right in finding that the appellant was not entitled to the import allocation it was seeking for 1999 and 2000, under paragraph 2(1)(*b)* of the *Allocation Method Order (Chicken and Chicken Products)*, SOR/96-388, July 15, 1996 (the "Order")?

[3] The appellant is a business that operates chicken slaughter and processing plants. As the appellant stated in its memorandum, the market in which it operates is extremely competitive since chicken processors must compete not only with other meats but also with their Canadian competitors, other chicken slaughter and processing plants, and foreign imports, specifically from the United States.

[4] The appellant is a product of the merger of two co-operatives, Coopérative de Dorchester and Société coopérative avicole régionale. On December 15, 1998, these two co-operatives held 100% of the shares of Aliments Dorchester Inc. ("Aliments Dorchester"). Until January 31, 1999, one of the

appellant's three plants, specifically the one operated by Aliments Dorchester, was engaged in the processing of chicken-based products.

[5] In order to enable the appellant and its Canadian competitors to compete with competitors from the United States, Parliament amended the Act by enacting section 6.2 in order to allow the Minister to: (a) determine each year the quantity of eviscerated chicken that might benefit from the reduced import allocation; (b) establish a method for allocating the quantity between persons who apply for an allocation; (c) issue the said allocations to persons who meet the terms and conditions, and (d) consent to the transfer of an allocation from one person who is entitled to one to another.

[6] The Order was made in accordance with paragraph 6.2(2)(*a)* of the Act. By that Order, the Minister established a method for allocating the quantities for the different types of allocations available, including the one for which the appellant made applications that were rejected by the Minister, namely, a share of the eviscerated chicken imported to Canada for the purpose of processing it into chicken products ("chicken-based products"). The relevant provisions of the Act and the Order are the following:

The Act:

6.2 (1) Where any goods have been included on the Import Control List for the purpose of implementing an intergovernmental arrangement or commitment, the Minister may determine import access quantities, or the basis for calculating them, for the purposes of subsection (2) and section 8.3 of

La Loi:

6.2 (1) En cas d'une inscription de marchandises sur la listes des marchandises d'importation contrôlée aux fins de la mise en oeuvre d'un accord ou d'un engagement intergouvernemental, le ministre peut, pour l'application du paragraphe (2), de l'article 8.3 et du *Tarif des douanes*, déterminer la quantité de

this Act and for the purposes of the *Customs Tariff*.

(2) Where the Minister has determined a quantity of goods under subsection (1), the Minister may
(a) by order, establish a method for allocating the quantity to residents of Canada who apply for an allocation; and
(b) issue an allocation to any resident of Canada who applies for the allocation, subject to the regulations and any terms and conditions the Minister may specify in the allocation.

(3) The Minister may consent to the transfer of an import allocation from one resident of Canada to another.

****

The Order:

1. ...

" historical import quota" means an allocation that was made in 1994 on the basis of an allocation made at the time of the initial imposition of controls and allocations to importers, as adjusted since then.

"Distributor" means a distributor, who is not a commissioned broker, or a retailer-distributor, who during the reference period
(a) has bought at least 220,000 kg of chicken and chicken products and re-sold them to other businesses that are not distributors and
(b) has maintained or rented a warehouse and trucks or purchased warehousing or transportation services in carrying on its trade.

"reference period" in respect of an import allocation, means the 12-month period beginning on the September 1 and ending on the August 31 before the calendar year to which the import allocation applies.

marchandises visée par le régime d'accès en cause, ou établir des critères à cet effet.

(2) Lorsqu'il a déterminé la quantité des marchandises en application du paragraphe (1), le ministre peut :
a) établir, par arrêté, une méthode pour allouer des quotas aux résidents du Canada qui en font la demande;
b) délivrer une autorisation d'importation à tout résident du Canada qui en fait la demande, sous réserve des conditions qui y sont énoncées et des règlements.

(3) Le ministre peut autoriser le transfert à un autre résident de l'autorisation d'importation.

****

L'Arrêté:

1. ...

« contingent historique » Contingent alloué en 1994 en fonction de celui alloué au moment de l'introduction des contrôles à l'importation et de l'allocation de contingents, compte tenu de ses rajustements successifs.

...

« distributeur » Distributeur – qui n'est pas une agence de courtage ou un détaillant distributeur, lequel a exercé les activités suivantes durant la période de référence :
a) il a acheté au moins 220 000 kg de volaille et de produits de volaille et les a revendus à d'autres entreprises qui ne sont pas des distributeurs;
b) il a maintenu ou loué un entrepôt et des camions, ou a acheté des services d'entreposage ou de transport, pour la conduite de son activité commerciale.

...

« période de référence » Période de douze mois commençant le 1er septembre et se terminant le 31 août qui précède l'année civile à laquelle s'applique l'autorisation d'importation.

"processor" means a processor who has processed at least 220,000 kg of chicken and chicken products at its own or rented facilities during the reference period.

"process" means to slaughter chicken, to cut up eviscerated chicken or to further process. It includes to manufacture products such as patties, nuggets, fingers, rolls or roasts from chicken meat.

"eviscerated chicken" means a slaughtered chicken from which the blood, feathers, respiratory, digestive, reproductive and urinary systems, head, legs at the hock joint and the oil sack are removed.

2. (1) Subject to subsections (2) and (3), the method for allocating the import access quantity for chicken and chicken products that may be imported into Canada in a calendar year is as follows:
(a) an applicant who holds a historical import quota shall receive an equivalent import allocation;
(b) an applicant who is a processor of chicken-based products not on the *Import Control List* shall receive a share of the import access quantity that is equal, on an eviscerated chicken equivalent basis, to the amount of chicken and chicken products the processor used in producing those chicken-based products during the reference period;
(c) an applicant who is a foodservice chain whose volume of final sales of chicken and chicken products is equal to at least 50% of its total volume of final sales of meat, including chicken, turkey, beef and pork, shall receive a share of 1.75 million kg of the import access quantity, which shall not be less than 18,144 kg in proportion to its share of the volume of chicken and chicken products purchased by all applicants described in this paragraph during the reference period;
(d) an applicant who is a foodservice chain whose volume of final sales of chicken and chicken products is less than 50% of its total volume of final sales of meat, including chicken, turkey, beef and pork, shall receive a share of 0.75 million kg of the import access quantity, which shall not be less than 18,144 kg in

...

« transformateur » Transformateur qui a transformé au moins 220 000 kg de volaille et de produits de volaille dans ses propres installations ou des installation louées, durant la période de référence.

« transformer » Abattre la volaille, découper la volaille éviscérée ou la transformer en produits de second cycle, y compris la fabrication de produits tels que les petits pâtés, les croquettes, les doigts, les roulés ou les rôtis fabriques avec de la chair de volaille.

...
« volaille éviscérée » Volaille abattue dont on a enlevé le sang, les systèmes respiratoires, digestif, reproducteur et urinaire, la tête, les plumes, les pattes à partir de l'articulation tibiotarsienne (jarret) et la glande uropygienne.

2. (1) Sous réserve des paragraphes (2) et (3), la méthode d'allocation des quotas quant à la quantité de volaille et de produits de volaille visée par le régime d'accès en cause qui peut être importée au Canada au cours d'une année civile est la suivante:
a) le requérant qui détient un contingent historique reçoit un quota égal à celui-ci;
b) le requérant qui est un transformateur de second cycle de produits de volaille non inscrits sur la *Liste des marchandises d'importation contrôlée* reçoit un quota égal, en équivalent de volaille éviscérée, à la quantité de volaille et de produits de volaille qui a été nécessaire à la production de ces marchandises durant la période de référence;
c) le requérant qui est une chaîne de restauration dont les ventes finales de volaille et de produits de volaille représentent au moins 50 % de ses ventes finales de viandes, notamment la volaille, la dinde, le dindon, le boeuf et le porc, reçoit, sur 1.75 million kg de la quantité visée par le régime d'accès, une part non inférieure à 18 144 kg et proportionnelle à la quantité de volaille et de produits de volaille qu'il a achetée durant la période de référence par rapport à la quantité achetée par tous les requérants visés par le présent alinéa;
d) le requérant qui est une chaîne de restauration dont les ventes finales de volaille et de produits de

proportion to its share of the volume of chicken and chicken products purchased by all applicants described in this paragraph during the reference period;
(e) an applicant referred to in paragraph *(a)* shall receive, for the calendar year set out in column I of an item of Schedule II, the percentage set out in column II of that item of the portion of the import access quantity that was allocated to the applicant for the 1995 calendar year under paragraph 4(2)(*b)* of the *Allocation Methods Order – Cheese and Cheese Products, Chicken and Chicken Products, turkey and Turkey Products, Ice Cream, Yogurt, Powdered Buttermilk and Concentrated Milk* as it read immediately before the coming into force of this Order;
(f) an applicant who is a processor shall receive a share of 70% of the remaining portion of the import access quantity on a market-share basis after distribution to the applicants referred to in paragraphs *(a)* to *(e)*, which shall not be less than 60,686 kg; and
(g) an applicant who is a distributor shall receive a share of 30% of the remaining portion of the import access quantity on an equal-share basis after distribution to the applicants referred to in paragraphs *(a)* to *(e)*.

(2) An applicant referred to in paragraph (1)*(a)* who would otherwise satisfy the requirements of any of paragraphs (1)*(c), (d), (e), (f)* or *(g)* may, in lieu of an allocation under paragraphs (1)*(a)* and *(e)*, elect to be granted an allocation under any of paragraphs (1)*(c), (d), (f)* or *(g)*, which election is irrevocable.

(3) The quantity of chicken and chicken products allocated to an applicant under subsection (1) in respect of a calendar year shall be adjusted downward in proportion to any under-utilization by the applicant during the 12-month period before the calendar year to which the import allocation applies.

volaille sont inférieures à 50 % de ses ventes finales de viandes, notamment la volaille, la dinde, le dindon, le boeuf et le porc, reçoit, sur 0.75 million kg de la quantité visée par le régime d'accès, une part non inférieure à 18 144 kg et proportionnelle à la quantité de volaille et de produits de volaille qu'il a achetée durant la période de référence par rapport à la quantité achetée par tous les requérants visés par le présent alinéa;
e) le requérant visé à l'alinéa *a)* reçoit, pour l'année civile indiquée à la colonne I de l'annexe II, le pourcentage figurant à la colonne II de la part de la quantité visée par le régime d'accès qui lui a été allouée pour l'année civile 1995 en vertu de l'alinéa 4(2)*b)* de l'*Arrêté sur les méthodes d'allocation de quotas (Fromages et produits fromagers, volaille et ses produits, dindons, dindes et leurs produits, crème glacée, yoghourt, babeurre en poudre et lait concentré*), dans sa version antérieure à la date d'entrée en vigueur du présent arrêté;
f) le requérant qui est un transformateur reçoit, sur les 70 % du solde de la quantité visée par le régime d'accès, après distribution aux requérants visés aux alinéas *a)* à *e)*, une part non inférieure à 60 686 kg et proportionnelle à sa part du marché;
g) les requérants qui sont des distributeurs se partagent à part égale 30 % du solde de la quantité visée par le régime d'accès après distribution aux requérants visés aux alinéas *a)* à *e)*.

(2) Le requérant visé à l'alinéa (1)*a)* qui répond autrement aux critères visés à l'un ou à l'autre des alinéas (1)*c), d), e), f)* ou *g)*, peut, en remplacement d'un quota alloué en vertu des alinéas (1)*a)* et *e)*, choisir de recevoir un quota en vertu de l'un ou l'autre des alinéas (1)*c), d), f)* ou *g)*, ce choix étant irrévocable.

(3) Le quota de volaille et des produits de volaille alloué à un requérant pour une année civile aux termes du paragraphe (1) est rajusté à la baisse proportionnellement à sa sous-utilisation, le cas échéant, durant les douze mois précédant l'année civile à laquelle s'applique l'autorisation d'importation.

[7] The dispute deals entirely with what the Order describes as "chicken-based products", in other words, chicken products composed of less than 87% of chicken, such as patties, nuggets, fingers, rolls or roasts frommanufactured with chicken meat. Since these chicken-based products do not appear on the *Import Control List* (the "ICL"), they can enter Canada from the United States duty-free.

[8] It should be noted that eviscerated chicken is subject to some import duties because it appears on the ICL. Therefore, the importer who has an import allocation is not subject to any import duty, while the one who does not have one must pay import duties of approximately 238 %.

[9] That is why on December 15, 1998, and December 2, 1999, the appellant applied to the Minister for a share of the eviscerated chicken quota reserved for the production of chicken-based products, for 1999 and 2000. That application was based on the production of chicken-based products by its Aliments Dorchester subsidiary during the period from
September 1, 1997, to August 31, 1998, and from September 1, 1998, to August 31, 1999 (the "reference periods"). In its application of December 15, 1998, the appellant notified the Minister that Aliments Dorchester would cease its commercial activities on January 31, 1999.

[10] The parties do not take issue with the fact that the appellant was not processing eviscerated chicken into chicken-based products and did not intend to do so during 1999 and 2000. They also do

not dispute that Aliments Dorchester ceased processing chicken into chicken-based products on January 31, 1999.

[11] Before going any further, a few comments are in order. By agreement dated January 29, 1999, Aliments Dorchester agreed to distribute all of its assets to the appellant, on condition that the appellant assumed all of Aliment Dorchester's liabilities. Before Pinard J. and this court, the appellant argued that because of the asset allocation agreement between itself and Aliments Dorchester, [TRANSLATION] "a legal osmosis took place, the effects of which were similar to and, in many regards, treated as a merger, with the result that the rights and obligations of the transferor are passed on to the transferee ...." The appellant contended that if Aliments Dorchester was entitled to the import allocations it was seeking, it too was entitled to them.

[12] In my view, the transaction of January 29, 1999, did not result in the merger of the appellant and its subsidiary. Notwithstanding this conclusion, since the appellant's applications for import allocations are based entirely on the right of Aliments Dorchester to the allocations, the appellant's right to the allocations depends entirely on the right of Aliments Dorchester, irrespective of whether there was a merger. Therefore, if that company was entitled to the allocations sought, the appellant will succeed in this appeal.

[13] By decisions dated July 29, 1999, and January 26, 2000, the Minister denied the appellant the shares it was seeking. The decision of July 29, 2000, reads, in part:

> [TRANSLATION]
>
> ...
>
> For your information, paragraph 1(*b*) of Schedule I of the *Allocation Method Order (Chicken and Chicken Products)* (see attachment) states that the applicant must be a processor of chicken-based products not on the *Import Control List* at the time it applies for a share.
>
> We have examined the application of Exceldor with respect to that criterion. Unfortunately, Exceldor no longer produces the products of which it had to show production and therefore, the business does not satisfy the aforementioned criterion. Your application for a share of the overall import allocation that is allocated to processors of products not on the *ICL* is therefore rejected.

The decision of January 26, 2000, is to the same effect as the decision of July 29, 1999.

[14] In rejecting the appellant's applications, the Minister did not differentiate between the appellant and its subsidiary, Aliments Dorchester. His refusal was based solely on the fact that since Aliments Dorchester had ceased its commercial operations, the appellant could henceforth no longer claim that it was a processor of chicken-based products.

[15] Relying on subsections 6.2(1) and (2) of the Act and on paragraphs 2(1)(*b*) and (*f*) of the Order, Pinard J. concluded that since the appellant was not a processor of chicken-based products within the meaning of paragraph 2(1)(*b*), it was not entitled to the allocation it had applied for. He also concluded that, in any case, Aliments Dorchester could transfer its right to a share of the eviscerated chicken to the appellant only if, in accordance with subsection 6.2(3) of the Act, the Minister consented to it. According to Pinard J., such a transfer could not be accepted since the appellant was not a processor of chicken-based products.

[16] Although Pinard J. did not reach any express conclusion regarding the right of Aliments Dorchester to obtain the allocations it had applied for, his comments clearly show that his response would have been negative since that company had ceased its operations on January 31, 1999, and consequently, was no longer a processor of chicken-based products.

[17] The relevant paragraphs of the reasons of Pinard J. are the following:

> [12] As it appears from the facts of the case at bar that the applicant for the import quotas for 1999 and 2000 is Exceldor, a processor which was not and is not, directly or indirectly, a processor of chicken-based products within the meaning of s. 2(1)(*b*) of the Order, I consider that this is by itself a sufficient reason for dismissing the application for judicial review.
>
> [13] Further, as Aliments Dorchester Inc. is a separate artificial person and ceased all production on January 31, 1999, the import quotas requested for the remainder of 1999 and for 2000 could not be used without being transferred, with the consent of the "Minister", by or for Aliments Dorchester Inc. to another qualified "resident", as provided in s. 6.2(3) of the *Export and Import Permits Act*. As such a transfer has never been requested and in any case has never been given the consent of the Minister responsible, the import quotas requested by Exceldor could not be allocated. Moreover, allowing such a transfer when Exceldor was not and is not in any way a processor of chicken-based products would have been contrary to the Order, which in s. 2(1)(*f*) provides a different method of quota allocation for other "processors".

[18] The appellant's argument is very simple. It claims that it satisfied the requirements for import allocations provided in paragraph 2(1)(*b)* of the Order because its subsidiary, Aliments Dorchester, had processed at least 220,000 kg of eviscerated chicken into chicken-based products during the reference periods. Therefore, the appellant submitted that it was entitled to receive an import allocation equal to the quantity of eviscerated chicken that was processed into chicken-based products, specifically 626,914 kg for 1999, and 12,906 kg for 2000. Thus, in order to satisfy the requirements of the Order,

it was not necessary, it says, to show that Aliments Dorchester would continue processing chicken-based products during 1999 and 2000.

[19] The Minister disagrees with the appellant's position. He says that since the appellant could not claim to be a processor of chicken-based products after January 31, 1999, and the objective of the legislation is to enable Canadian processors of eviscerated chicken into chicken-based products that are not on the ICL to compete with American competitors, the Appellant's proposed interpretation of paragraph 2(1)(*b*) of the Order cannot be valid because its effect would be not to enable it to compete with American competitors but rather to give it an advantage over its Canadian competitors.

[20] According to the Minister, the use of the verb "is" in paragraph 2(1)(*b)* of the Order reflects Parliament's obvious intention that import allocations be granted exclusively to persons who continue to be involved in the processing of eviscerated chicken into chicken-based products. Since the appellant was never a processor of chicken-based products not on the ICL and Aliments Dorchester had ceased its operations at the end of January 1999, he was right in denying the appellant the requested allocations.

[21] The final argument put forward by the Minister is that even if the appellant satisfied the requirements of paragraph 2(1)(*b)* of the Order, his decision to require that an applicant for import allocations continue to be a processor of chicken-based products constitutes a valid exercise of the discretion conferred on him by paragraph 6.2(2)(*b)* of the Act. To support that argument, the Minister

refers to the decision of the Supreme Court of Canada in *Maple Lodge Farm Ltd. v. Government of Canada*, [1982] 2 S.C.R. 2.

[22] The only issue before us concerns the interpretation of paragraph 2(1)(*b)* of the Order, which provides that "an applicant who is a processor of chicken-based products ... shall receive a share ... that is equal ...." The appellant submits that since "processor" is defined in the Order as a processor who has processed at least 220,000 kg of chicken and chicken products during the reference period, it follows that paragraph 2(1)(*b)* does not require in any way that the processor continue to be a processor of chicken-based products at the time its application is filed or at the time the quantities are allocated.

[23] It is unfortunate for the appellant that I cannot subscribe to that point of view. Paragraph 2(1)(*b)* of the Order obviously must be read not in a vacuum but rather in the manner indicated by Mr. Justice Iacobucci of the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, when he adopted Driedger's position in *Construction of Statutes*, 2nd edition, 1983, at pages 40 and 41:

> Although much has been written about the interpretation of legislation..., Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and

> ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Moreover, section 12 of the *Interpretation Act*, R.S.C., 1985, c. I-21, provides:

12. Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.	**12.** Tout texte est censé apporter une solution de droit et s'interprète de la manière la plus équitable et la plus large qui soit compatible avec la réalisation de son objet.

[24] A careful reading of paragraph 2(1)(*b)* together with paragraphs 2(1)(*a), (c), (d), (e)* and *(f)* and subsection 2(2) leads to the following conclusion: that the right to the import allocations under 2(1)(*b*) is determined by the status of the applicant, that is, a processor of chicken-based products, whereas the amount of the import allocation that will be allocated is determined by the amount of chicken used in the applicant's production during the previous year, i.e. the reference period.

[25] Paragraph 2(1)(*a)* confers a right to an import allocation on a person who holds a historical import quota. To be entitled to that allocation, an applicant must hold a historical import quota and the amount of the allocation shall be equal to the historical import quota.

[26] Paragraphs 2(1)(*c)* and *(d)* confer on an applicant who is a foodservice chain a right to an import allocation. Paragraph 2(1)(*c)* concerns an applicant whose volume of final sales of chicken and chicken products is equal to at least 50% of its total volume of final sales of meat, while paragraph 2(1)(*d)* deals with an applicant whose volume of final sales of chicken and chicken products is less than 50% of its total volume of final sales of meat. Thus, in order to be entitled to an import allocation, an applicant under paragraph 2(1)(*c*) must necessarily be a foodservice chain whose volume of final sales of chicken and chicken products is equal to at least 50 % of its total volume of final sales of meat. Moreover, the amount of the import allocation that will be allocated to that applicant will be based on the volume of chicken and chicken products it purchased during the previous year, i.e. during the reference period.

[27] Paragraph 2(1)(*f)* deals with the right of an applicant who is a processor to an allocation. The applicant will be entitled to an allocation if it has processed at least 220,000 kg of chicken and chicken products during the reference period. Moreover, the amount a processor shall receive, calculated on a 70 % share of the remaining portion of the import access quantity on a market-share basis after distribution to the applicants referred to in paragraphs 2(1)(*a)* to *(e)*, shall not be less than 60,686 kg.

[28] Paragraph 2(1)(*g)* deals with the right of an applicant who is a distributor to an import allocation. To be entitled to that allocation, an applicant must meet the definition of "distributor" in section 1 of the Order. All applicants who are distributors shall receive a share of 30% of the remaining portion of the import access quantity on an equal-share basis after distribution to the applicant referred to in paragraphs 2(1)(*a)* to *(e)*.

[29] Subsection 2(2) of the Order is also relevant to fully understand the meaning of paragraph 2(1)(*b),* in that it provides that an applicant who holds a historical import quota and who also satisfies the requirements of paragraphs 2(1)(*c), (d), (e),(f)* or *(g)* may elect to be granted an allocation under those paragraphs in lieu of an allocation under paragraph 2(1)(*a)*. In my view, that text correctly reflects Parliament's intention that these are requirements (the French text uses the term "critères") that must be satisfied by an applicant: an applicant who holds a historical import quota; a foodservice chain whose volume of final sales of chicken is equal to at least 50% of its total volume of final sales of meat or less than 50 %, as the case may be; a processor who receives a share on a market-share basis of not less than 60,686 kg; or a distributor (as defined by the Order) who shares 30% of the remaining portion of the import access quantity with others on an equal-share basis after distribution to the applicants referred to in paragraphs 2(1)*(a)* to *(e)*.

[30] Paragraphs 2(1)(*a), (c), (d), (e), (f)* and *(g)* clearly show that the qualifications relating to an applicant are requirements that must necessarily be satisfied if an applicant is to be entitled to an import allocation and, in the case of subsection 2(2), to be able to elect another allocation. Since the requirements set out in paragraphs 2(1)(*a), (c), (d), (e), (f)* and *(g)* are analogous to those in paragraph 2(1)(*b),* it follows that the applicant who wants to be granted an allocation under paragraph 2(1)(*b)* must establish that it is a processor of chicken-based products who has processed at least 220,000 kg of chicken and chicken products during the reference period. If it satisfies those requirements, the applicant will be entitled to an allocation that will be determined by the quantity of chicken and chicken products it needed to produce those chicken-based products during the reference period.

[31] In my view, such an applicant must be able to satisfy the requirements of paragraph 2(1)(*b),* not only at the time of its application for an allocation but more particularly at the time the allocation sought is granted. Since the import allocation is allocated to an applicant for processing purposes during the current year, I fail to see how the paragraph can be read any differently. Given that Aliments Dorchester had ceased its operations on January 31, 1999, that the appellant was not a processor of chicken-based products at the time it applied for import allocations, that it had never

been such a processor and had no intention of becoming one, there can be no doubt that the respondent was entirely justified in denying the appellant the import allocations.

[32] I have therefore come to the conclusion that Pinard J. did not commit any error when he held that the appellant was not entitled to the import allocations that it was requesting for 1999 and 2000. The appeal should therefore be dismissed with costs.

"M. Nadon"

J.A.

"I concur.
Gilles Létourneau J.A."

"I concur.
J.D. Pelletier J.A."

Certified true translation

S. Debbané, LLB

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-87-01

STYLE OF CAUSE: ALIMENTS DORCHESTER INC

Appellant

and

DEPARTMENT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE

Respondent

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: June 3, 2002

REASONS: Nadon J.A.

CONCURRED IN BY: Létourneau J.A.
Pelletier J.A.

DATE OF REASONS: July 4, 2002

APPEARANCES:

Alain Robitaille
Michel Jolin

FOR THE APPELLANT

Louis Sébastien
Jean-Robert Noiseux

FOR THE RESPONDENT

SOLICITORS OF RECORD:

KRONSTROM DESJARDINS
Québec, Quebec

FOR THE APPELLANT

DEPARTMENT OF JUSTICE
Ottawa, Ontario
FOR THE RESPONDENT