

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120530

Docket: A-461-10

Citation: 2012 FCA 163

**CORAM: LÉTOURNEAU J.A.
EVANS J.A.
SHARLOW J.A.**

BETWEEN:

CANADIAN SUGAR INSTITUTE

Applicant

and

**ATTORNEY GENERAL OF CANADA,
FOOD PROCESSORS OF CANADA,
ALBERTA SUGAR BEET GROWERS,
UNITED STATES BEET SUGAR ASSOCIATION, and
DELEGATION OF THE EUROPEAN UNION TO CANADA**

Respondents

Heard at Ottawa, Ontario, on May 30, 2012.

Judgment delivered from the Bench at Ottawa, Ontario, on May 30, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on May 30, 2012)

SHARLOW J.A.

[1] The Canadian Sugar Institute has applied for judicial review of the November 1, 2010 order of the Canadian International Trade Tribunal in Expiry Review No. RR-2009-003. In that order, the Tribunal declined to continue its 1995 anti-dumping order with respect to refined sugar originating in or exported from Denmark, Germany, the Netherlands and the United Kingdom, and the subsidizing of refined sugar originating in or exported from the European Union. The Tribunal made that order because it concluded that the expiry of the 1995 order with respect to the named countries would not result in injury to the Canadian sugar industry in the near to medium future.

The Institute alleges that the order is based on findings of fact for which there is no evidence or that is contrary to the evidence.

[2] In an application for judicial review of an order in an anti-dumping matter, the standard of review is reasonableness: *Owen & Company Limited v. Globe Spring & Cushion Co. Ltd.*, 2010 FCA 288. Therefore, the issue before this Court is whether the decision of the Tribunal was reasonable having regard to the evidence before it and the reasons given by the Tribunal.

[3] The task of assessing the submissions of the applicant is unusual in this case because none of the named respondents has chosen to appear and defend the Tribunal's decision.

[4] Having considered the written and oral submissions of the Institute, we are unable to discern from the Tribunal's reasons and the evidence to which we were referred how the Tribunal reached the conclusions it did about the expected volume of refined sugar exports from the named countries during the relevant period, and the operational capacity of new refineries. For that reason, this application for judicial review will be allowed, the order will be set aside with respect to the European Union, and the matter will be returned to the Tribunal for reconsideration.

“K. Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-461-10

STYLE OF CAUSE: Canadian Sugar Institute v. Attorney General of Canada, Food Processors of Canada, Alberta Sugar Beet Growers, United States Beet Sugar Association, and Delegation of the European Union to Canada

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: May 30, 2012

REASONS FOR JUDGMENT OF THE COURT BY: (Létourneau, Evans, Sharlow, JJ.A.)

DELIVERED FROM THE BENCH BY: Sharlow J.A.

APPEARANCES:

Gerry H. Stobo
John Landry

FOR THE APPLICANT

SOLICITORS OF RECORD:

Borden,Ladner Gervais
Ottawa, Ontario

FOR THE APPLICANT