

Federal Court of Appeal



Cour d'appel fédérale

Date: 20121129

Docket: A-151-12

Citation: 2012 FCA 316

**CORAM: SHARLOW J.A.
GAUTHIER J.A.
MAINVILLE J.A.**

BETWEEN:

FRANKE KINDRED CANADA LIMITED

Applicant

and

GACOR KITCHENWARE (NINGBO) CO. LTD., JIANGMEN NEW STAR ENTERPRISE LTD., GUANGZHOU KOMODO KITCHEN TECHNOLOGY CO. LTD., ZHONGSHAN SUPERTE KITCHENWARE CO., LTD., GUANGDONG DONGYUAN KITCHENWARE INDUSTRIAL CO., LTD., GUANGDONG YINGAO KITCHEN UTENSILS CO., LTD., ZOJE HOLDING GROUP CO. LTD., THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA, AND THE MINISTER OF PUBLIC SAFETY

Respondents

Heard at Ottawa, Ontario, on November 29, 2012.

Judgment delivered from the Bench at Ottawa, Ontario, on November 29, 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 November 29, 2012)

SHARLOW J.A.

[1] The Minister of Public Safety seeks an order quashing this application. The applicant Franke Kindred Canada Limited opposes the motion. Because the Minister's motion would, if successful, be a final disposition of this application, a three judge panel was convened to consider it (subsection 16(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7).

[2] The application for judicial review states that it is made under paragraph 96.1(1)(a) of the *Special Import Measures Act*, R.S.C. 1985, c. S-15 (SIMA), which reads in relevant part as follows:

96.1 (1) Subject to section 77.012 or 77.12, an application may be made to the Federal Court of Appeal to review and set aside

96.1 (1) Sous réserve des articles 77.012 et 77.12, une demande de révision et d'annulation peut être présentée à la Cour d'appel fédérale relativement aux décisions, ordonnances ou conclusions suivantes :

(a) a final determination of the President under paragraph 41(1)(a) [...].

a) la décision définitive rendue par le président au titre de l'alinéa 41(1)a [...].

[3] It is the position of Franke Kindred that its application for judicial review challenges the final determination of the President dated April 24, 2012 under paragraph 41(1)(a) of SIMA in respect of certain stainless steel sinks originating in or exported from the People's Republic of China (CBSA Case Numbers AD/1392 and CV/129).

[4] However, there is no allegation in the application for judicial review that there is any reviewable error in the President's final determination. Franke Kindred seeks the following relief:

1. an Order of this Court setting aside the President's decision pending disclosure to Counsel for [Franke Kindred] of the calculations and worksheets supporting the Final Decision;
2. an Order of this Court granting Counsel for [Franke Kindred] a reasonable period of time to review the calculations and worksheets supporting the Final Determination and an extension of time to seek any further review by this Court pursuant to section 96.1 of SIMA in connection with any errors disclosed by counsel's review of such calculations and worksheets;
3. an Order of this Court directing the President to disclose and grant counsel access to such calculations and worksheets as may be performed by the President in calculating future normal values, export prices, margins of dumping and amounts of subsidy in respect of reinvestigations of stainless steel sinks from the [People's Republic of China].

[5] Having considered the application for judicial review in its entirety, and the written and oral submissions of Franke Kindred and the Minister, we are unable to conclude that the application challenges the final determination of the President. For that reason, the application is not within the scope of paragraph 96.1(1)(a) of SIMA. Accordingly, the motion of the Minister for an order quashing the application must be granted with costs.

[6] The three other motions in this matter that have not yet been dealt with will be dismissed as moot. The Minister is entitled to his costs of those motions.

[7] We emphasize that in granting the Minister's motion in this case, we are expressing no opinion on (a) any of the substantive issues that Franke Kindred sought to have determined in the application, (b) the standing of a complainant to challenge, by way of judicial review under paragraph 96.1(1)(a) of SIMA, the President's specification of the margin of dumping or the amount of subsidy, or (c) the right of a complainant to access the President's worksheets and calculations.

“K. Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-151-12

STYLE OF CAUSE: FRANKE KINDRED CANADA
LIMITED v. GACOR
KITCHENWARE (NINGBO) CO.
LTD. et al

PLACE OF HEARING: Ottawa

DATE OF HEARING: November 29, 2012

REASONS FOR JUDGMENT OF THE COURT BY: (SHARLOW, GAUTHIER,
MAINVILLE JJ.A.)

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

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