Federal Court of Appeal | Cour d'appel fédérale

Date: 20190911

Docket: A-261-18

Citation: 2019 FCA 229

CORAM: **STRATAS J.A.**
WEBB J.A.
DE MONTIGNY J.A.

BETWEEN:

AGT FOOD AND INGREDIENTS,
DURUM GIDA SANAYI VE TICARET A.S., and
MEDITERRANEAN EXPORTERS ASSOCIATION

Applicants

and

CANADIAN PASTA MANUFACTURERS ASSOCIATION,
KRAFT HEINZ CANADA ULC, PULSE CANADA,
and LOBLAWS INC.

Respondents

Heard at Ottawa, Ontario, on September 11, 2019.
Judgment delivered from the Bench at Ottawa, Ontario, on September 11, 2019.

REASONS FOR JUDGMENT OF THE COURT BY: WEBB J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on September 11, 2019).

WEBB J.A.

[1] This is an application for judicial review of a decision of the Canadian International Trade Tribunal under the *Special Import Measures Act*, R.S.C. 1985, c. S-15 (SIMA) related to

the injury caused to the domestic industry by the dumping and subsidizing of certain dry wheat-based pasta.

[2] The applicants have submitted that the standard of review for the test for causation that is to be applied in this case is correctness. However, the issue in this case is the interpretation of section 42 of SIMA and, therefore, is a question of statutory interpretation. In our view, reasonableness is the appropriate standard of review and considering the relevant text, context, and purpose of the statute, we are of the view that there can be more than one possible reasonable interpretation of this provision (*Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association, 2011 SCC 61, [2011] 3 SCR 654* and *Wilson v Atomic Energy of Canada Ltd., 2016 SCC 29, [2016] 1 SCR 770*).

[3] Even if we were to assume that the Tribunal's interpretation of the causation requirement in SIMA diverges from earlier decisions, this is not sufficient for this Court to intervene. Despite the uncertainty that may result from such differences, Supreme Court jurisprudence teaches that reviewing courts must show a high degree of deference to expert tribunals interpreting their home statute (*Wilson*).

[4] The main argument of the applicants in this case is that the Tribunal erred in focusing on whether the dumped and subsidized goods caused injury and not whether the dumping and subsidizing of these goods caused injury. This distinction, in our view, only a formal, inconsequential one, between whether the dumped and subsidized goods have caused injury or

the dumping and subsidizing of the goods has caused injury, does not warrant our intervention in this case.

[5] The applicants referred to a recent decision of the Appellate Body of the World Trade Organization with respect to *Korea – Anti-Dumping Duties on Pneumatic Valves from Japan* (Complaint by Japan) (2019), WTO Doc WT/DS504/AB/R (Appellate Body Report), online: WTO <docsonline.wto.org> as support for this distinction. However, in paragraph 5.173 of this decision, the Appellate Body of the World Trade Organization states that:

> Second, those comments do not suggest that a particular method should be applied for evaluating the magnitude of the margin of dumping in an examination of the impact of the dumped imports on the domestic industry.

[6] This illustrates that the Appellate Body of the World Trade Organization equates the impact of dumped goods to the impact of the dumping of the goods. The applicants also referred to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement). However, Article 3.5 of this Agreement provides that:

> 3.5 It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports.

[7] The distinction that the applicants are drawing between whether the dumping of the goods caused injury and whether the dumped goods caused injury is not reflected in Article 3.5 of the Anti-Dumping Agreement.

[8] In our view, reading the Tribunal's reasons as the Supreme Court instructs us to do, when the Tribunal referred to the impact of the dumped and subsidized goods and the link between the dumped and subsidized goods and the injury suffered by the domestic industry, this is equivalent to a finding by the Tribunal that the dumping and subsidizing of the goods caused that injury. Since the determination of whether the dumping and subsidizing of the subject goods caused injury is a question of mixed fact and law, suffused by factual appreciation, there is no basis for us to interfere.

[9] While the applicants raised other issues in their application, we have not been convinced that any of these would warrant our intervention.

[10] As a result, we would dismiss this application with costs fixed in the amount of $5,000.

"Wyman W. Webb"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

JUDICIAL REVIEW OF THE DECISION OF THE CANADIAN INTERNATIONAL TRADE TRIBUNAL, INQUIRY NUMBER NQ-2017-005, ISSUED ON JULY 26, 2018 WITH REASONS ISSUED ON AUGUST 10, 2018

DOCKET:	A-261-18
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PLACE OF HEARING:	Ottawa, Ontario
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REASONS FOR JUDGMENT OF THE COURT BY:	STRATAS J.A. WEBB J.A. DE MONTIGNY J.A.
DELIVERED FROM THE BENCH BY:	WEBB J.A.

APPEARANCES:

Victoria Bazan Devin Doyle	FOR THE APPLICANTS
Vince DeRose Daniel Hohnstein Stephanie Desjardins	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Victoria Bazan Professional Corporation Ottawa, Ontario	FOR THE APPLICANTS
Aitken Klee LLP Ottawa, Ontario	FOR THE APPLICANTS
Tereposky & DeRose LLP Ottawa, Ontario	FOR THE RESPONDENTS