Federal Court of Appeal

Cour d'appel fédérale

Date: 20140122

Docket: A-490-12

Citation: 2014 FCA 14

CORAM: **PELLETIER J.A.**
GAUTHIER J.A.
TRUDEL J.A.

BETWEEN:

DESGAGNÉS TRANSARCTIK INC.

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Montréal, Quebec, on October 24, 2013.

Judgment delivered at Ottawa, Ontario, on January 22, 2014.

REASONS FOR JUDGMENT BY: GAUTHIER J.A.

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

Federal Court of Appeal

Cour d'appel fédérale

Date: 20140122

Docket: A-490-12

Citation: 2014 FCA 14

CORAM: **PELLETIER J.A.**
GAUTHIER J.A.
TRUDEL J.A.

BETWEEN:

DESGAGNÉS TRANSARCTIK INC.

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT

GAUTHIER J.A.

[1] This is an appeal by Desgagnés Transarctik Inc. (Desgagnés) of a decision by Justice Pinard of the Federal Court (the judge) dismissing with costs its application for judicial review of the refusal by the Minister of Finance to recommend to the Governor in Council, pursuant to subsection 115(1) of the *Customs Tariff*, S.C. 1997, c. 36 (the Tariff) (see Annex A), a remission of customs duties with respect to three vessels (dry bulk self-unloaders) imported to Canada by Desgagnés before January 1, 2010.

[2] In his letter dated March 11, 2011, the Minister indicated that his refusal was motivated by the need to ensure fair and equitable treatment that takes into account past decisions on customs duty remission requests concerning vessels competing in the same market as the three vessels that were the subject of the requests by Desgagnés (Appeal Record [A.R.], page 243).

[3] Desgagnés alleges that the judge committed numerous errors warranting this Court's intervention. Essentially, Desgagnés submits that the judge erred:

(i) in finding that the Minister had not breached his duty to act fairly, and

(ii) in finding that the Minister's decision was reasonable.

[4] For the reasons set out below, the appeal should be dismissed.

1. BACKGROUND

[5] Given the arguments put forward on appeal, the following facts should be highlighted.

[6] The duty remission requests relating to the importation of Desgagnés's three vessels were assigned to two Department of Finance officials on August 13, 2009. They involved vessels that had been imported before that date.

[7] On August 29, 2009, Nunavut Eastern Arctic Shipping (NEAS), Desgagnés's principal competitor in the Arctic market, submitted a written opposition to these requests.

[8] In its letter of opposition, NEAS indicated that in 2000 its own customs duty remission request with respect to the importation of a vessel to be used in the same Arctic market had been opposed by Desgagnés. The Minister thus denied the request of NEAS. According to NEAS, it would therefore be unfair to grant Desgagnés's requests. NEAS also indicated that if the remissions were to be granted, it would ask the Minister to recommend that remissions be granted with respect to the duty paid on three vessels used in the same market that NEAS had imported before 2009.

[9] It is mainly because of the opposition by NEAS that the Department of Finance officials, in a memorandum to the Minister dated April 22, 2010, suggested that it would be unfair to grant Desgagnés's remission requests.

[10] After the Minister had decided to deny Desgagnés's requests, it was also decided that any decisions involving outstanding remission requests for vessels imported before January 1, 2010, would be announced in the fall, at the same time as the unveiling of a new tariff policy favouring the replacement of Canada's aging fleets.

[11] On October 24, 2009, the Government had invited all interested parties to submit comments on a proposal to amend tariff policies in this regard. The notice published in the Canada Gazette clearly indicates that the Government would maintain its practice of looking at customs duty remission requests on a case-by-case basis for vessels imported before January 1, 2010, taking into account the views of stakeholders (A.R., page 559), and that any new policy governing the general remission of customs duties on the importation of certain vessels would be applicable only to vessels imported on or after January 1, 2010.

[12] It was on October 1, 2010 that the Minister publicly announced the implementation of new tariff measures with respect to certain vessels imported on or after January 1, 2010 (A.R., pages 230 and 235). At the same time, the Minister indicated as well that certain duty remission requests for vessels imported before that date had been granted, including in particular requests made by Algoma Central Corporation (Algoma) regarding two tankers operating on the Great Lakes and the St. Lawrence River.

[13] At the time of this announcement, Desgagnés's remission requests were not among those that had been granted. The precise date on which Desgagnés was verbally informed that its requests had been rejected is disputed, but on October 8, 2010, the Chairman of the Board and Chief Executive Officer of Desgagnés (the CEO) wrote a detailed letter to the Minister indicating, among other things, that refusing the requests would be unfair in light of the new policy announced on October 1, since the three vessels in question met all of the objectives of the new policy. The requests should therefore have been included in the list of approved requests, such as Algoma's. Desgagnés also indicated that Algoma's requests were contemporaneous with its own and that they involved vessels imported within the same time frame.

[14] In its letter, Desgagnés emphasizes that it is being twice penalized by the decisions made, for the following reasons:

(i) its own tankers on which duty had been paid will be competing with the two tankers that had benefited from customs duty relief; and

(ii) Desgagnés's competitors will be able, with respect to dry cargo transport, to benefit immediately from the new policy to replace and modernize their fleets,

> while Desgagnés, which has already begun modernizing its fleet, finds itself in a different position as a result of the refusal of its requests (see A.R., page 239, lines 25 to 29).

[15] On page 3 of the letter (A.R., page 240, lines 15 to 20), Desgagnés also refers to the fact that the Minister had been told that about 10 years earlier Desgagnés had opposed a specific remission request. Desgagnés notes that, at the time, this opposition was fully supported by the industry and that it was consistent with the Government's policy of encouraging Canadian shipyards.

[16] According to Desgagnés, the current situation (in 2010) is totally different, because the Government now wants to foster the renewal of the fleets of all shipowners without distinction. It would therefore be unfair for only one company (Desgagnés) to have to pay customs duty while the others are exempted. Desgagnés also notes that, in light of their common interests and the interest of the industry in general, it had supported the requests for remission filed by its competitor Algoma.

[17] The letter dated October 8, 2010, was seen by the departmental officials as a request for reconsideration.

[18] On November 2, 2010, NEAS reiterated in writing its opposition to Desgagnés's requests.

[19] On November 5, 2010, the departmental officials prepared a new memorandum to the Minister in which it was concluded that the new information received from Desgagnés did not

justify any change to the initial conclusion that the Minister should refuse to recommend the duty remissions.

[20] Desgagnés stressed at the hearing that the memorandum of November 5, 2010, contained errors and was incomplete. However, it is important to point out that the letter of October 8, 2010, and the memorandum of April 22, 2010, described above, were annexed to the memorandum of November 5, 2010.

[21] On November 25, 2010, at Desgagnés's request, the departmental officials met with the CEO of Desgagnés, who gave them an elaborate presentation covering in greater detail the points raised in the letter of October 8, 2010.

2. JUDGE'S DECISION

[22] In his reasons (2012 FC 1224), the judge deals first with Desgagnés's argument that the Minister breached his duty to act fairly in this case.

[23] He refers to Desgagnés's argument that the Minister's decision was based on "extrinsic evidence", namely, the objections of NEAS, which were not disclosed to it, and that Desgagnés was therefore unable to make specific representations addressing the factors that led to its requests being rejected (paragraph 21 of his reasons).

[24] The judge then indicates that Desgagnés was arguing that "the Department did not notify it of the first decision, the underlying reasons or the reconsideration of the applications" (paragraph 22 of the reasons).

[25] As for the scope of the Minister's duty of procedural fairness, the judge begins by concluding that the Federal Court of Appeal's decision in *Waycobah First Nation v. Canada (Attorney General)*, 2011 FCA 191, which establishes that the Minister's duty of procedural fairness is minimal in the context of an application under subsection 23(2) of the *Financial Administration Act*, R.S.C. 1985, c. F-11 (see Annex A), is relevant and that the Minister's duty in the context of a request made under subsection 115(1) of the Tariff should not be more onerous.

[26] The judge then analyzes the relevant factors set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paragraphs 21 and 23 to 28, in order to determine the scope of the duty to act fairly. In that regard, he adopts the following arguments of the Minister at paragraph 25 of his reasons:

> 1. Remitting duties is an exception to the Tariff's general principle that customs duties are payable on imported goods. The process for making a decision is left to the Minister's complete discretion and is *ad hoc* in nature since the Minister has not limited the decision-making process through a policy or directive;
> 2. The Tariff does not limit the discretion of ministers or of the Governor in Council to remit customs duties;
> 3. The amount at issue is significant, but [Desgagnés] must have known that it would pay customs duties on its three vessels at the time they were imported;
> 4. [Desgagnés] could not legitimately expect to receive a remission of customs duties because it knew it had successfully opposed the duty remission application by its competitor NEAS in 2000, and the same assessment practice was still in force for vessels imported prior to January 1, 2010;

> 5. The Minister's choice of procedure for applications under subsection 115(1) of the Tariff should be respected because the Act gives the Minister the ability to choose the applicable procedure.

[27] It should be noted that the parties are not calling into question the judge's finding that the Minister's duty in this case was minimal. What Desgagnés is arguing is that, while the duty to act fairly is minimal, it does include a duty to allow Desgagnés to make specific representations regarding the grounds of opposition of NEAS.

[28] On this point, the judge concludes at paragraph 26 of his reasons:

> It is important to indicate that, in this case, the . . . written representations [of Desgagnés] sent to the [Minister] on November 25, 2010, show that [Desgagnés] knew about NEAS' opposition to its remission applications and that it had the opportunity to make written and oral representations in this regard.

[29] As for Desgagnés's second argument, the judge notes at paragraph 27 of his reasons that Desgagnés had failed to persuade him that it was not aware of the Minister's first decision to reject its request. Nor does he accept the claim that Desgagnés was not aware of the Minister's decision to reconsider its requests.

[30] In light of the above, the judge held that there had been no breach of the duty of procedural fairness.

[31] As regards the validity of the decision being challenged by Desgagnés, the judge decided first that the standard of reasonableness applied. He then held that fairness towards a competitor was a relevant and serious ground that in itself could justify the Minister's conclusion. According to the

judge, the Minister's decision fell "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (paragraph 34 of his reasons).

3. ANALYSIS

[32] I have already set out the issues in broad terms at paragraph 3 above. I will address in my analysis, after stating the role of this Court in this appeal, the most important arguments raised before us.

[33] While this Court may intervene in the case of a breach with regard to procedural fairness (standard of correctness), this assessment must be made in the light of the judge's findings of fact. Indeed, this Court is bound by those findings in the absence of a palpable and overriding error.

[34] As for the validity of the Minister's decision, this Court's role in an appeal of a decision rendered on an application for judicial review is well established: it is to determine whether the judge used the appropriate standard of review and applied it correctly (see, for example, *Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, at paragraphs 43-44; *Canada (Revenue Agency) v. Telfer*, 2009 FCA 23, at paragraph 18; *Canada (Revenue Agency) v. Slau Limited*, 2009 FCA 270, at paragraph 26; and *Public Service Alliance of Canada v. Canada Post Corporation*, 2010 FCA 56, at paragraph 84).

A. Procedural fairness

[35] The parties agree that, as determined by the judge, the Minister's duty of procedural fairness in this case is minimal. Desgagnés presented three arguments in support of its view that this Court's intervention is nevertheless warranted.

[36] First, Desgagnés argues that the judge ignored the fact that the Minister applied different tariff policies to the review of its requests and those of Algoma. According to Desgagnés, this constitutes a breach of his duty to act fairly.

[37] Second, Desgagnés submits that the judge erred in finding that it was aware of the opposition by NEAS and that it could have made appropriate written and oral representations. In particular, Desgagnés says that it was not informed of the precise grounds of the opposition by NEAS.

[38] Third, Desgagnés emphasizes that the Minister could not have reached an [TRANSLATION] "independent" decision (paragraph 90 of Desgagnés's Memorandum) given the many errors contained in the recommendation notes submitted to him.

(i) Differential treatment of the requests of Algoma and Desgagnés

[39] As counsel for Desgagnés acknowledged at the hearing, in order to succeed with respect to its first argument—the one on which it placed the most emphasis—, Desgagnés had to persuade us that its requests had indeed been dealt with under a different policy than that applied to Algoma's requests.

[40] Desgagnés recognized before this Court that its requests should have been and were in fact dealt with in accordance with the case-by-case-review procedure applied prior to the adoption of the new policy for vessels imported after January 1, 2010, even though it had argued in its letter dated October 8, 2010, that its requests were also consistent with the spirit and rationale of the new policy applicable to vessels imported after January 1, 2010.

[41] Desgagnés is therefore asking this Court to infer that, contrary to what was announced on October 24, 2009, in the notice published in the *Canada Gazette* (A.R., page 559, and paragraph 11 above), Algoma's requests were granted by virtue of the application of the policy unveiled on October 1, 2010, which provided for a general remission of customs duties for certain vessels.

[42] According to Desgagnés, the Court may draw such an inference from the following circumstances.

[43] First, Desgagnés is relying on an excerpt from the memorandum of November 5, 2010 (A.R., page 446), under the heading "Background", which provides a very general description of that which is dealt with in detail in the memorandum of April 22, 2010, which, as I have mentioned, was annexed to the memorandum of November 5. In particular, Desgagnés refers to a sentence indicating that decisions relating to outstanding requests with respect to vessels imported before January 1, 2010, were made following a case-by-case review and in a manner consistent with the underlying rationale of the new remission framework.

[44] Desgagnés adds that, when one considers the nature of Algoma's requests and the fact that the two tankers in question compete with Desgagnés's tankers for which no remission of customs duties was granted, it becomes clear that these requests were not assessed using the same criteria (fairness between two competitors) as those that resulted in the rejection of Desgagnés's requests. Desgagnés notes that the rejection of its requests is also inconsistent with the rationale of the new tariff policy announced in October 2010.

[45] Desgagnés also argues that, in this case, the onus is on the respondent to explain on what basis Algoma's requests were analyzed and granted, since Desgagnés did not have access to all of the confidential documents relating to those requests.

[46] There is sufficient evidence in the record to decide this issue. That evidence does not support the inference that Desgagnés would have this Court draw; quite the contrary, which explains why the judge did not consider it necessary to deal with that argument.

[47] As Desgagnés has said, the procedure applicable to vessels imported before January 1 was clearly set out in the notice published in the *Canada Gazette* (A.R., page 559). The process that was in fact followed and that led to the granting of the remissions requested by Algoma is described in the order dated September 23, 2010, confirming the granting of the remissions in question (A.R., pages 651 and following). The order clearly indicates under the heading "Consultation" that (i) consultations were held with stakeholders, (ii) the duty remission for Algoma was supported by the industry in general and (iii) there was "no opposition" to the remission (see A.R., page 653).

[48] In my view, this confirms that the traditional procedure was indeed followed, since the new policy creates a general remission system under which the views of stakeholders are no longer relevant.

[49] Moreover, in the announcement made by the Department of Finance on October 1, 2010 (A.R., page 235), the Minister of Finance indicates the following:

> To complement the new duty remission framework, which will be retroactive to January 1, 2010, the Government of Canada also made decisions on outstanding company-specific duty relief requests made by BC Ferries and Algoma Central Corporation before January 1, 2010. The duties remitted in these requests amount to $119.4 million and $15 million, respectively. <u>The vessels covered by these remission orders would now qualify for duty relief under the tariff framework announced today.</u>
> [Emphasis added.]

This necessarily implies that the new policy was not applied to these requests.

[50] This is quite consistent with the memorandum of April 22, 2010, in which it was recommended that Algoma's requests be granted and that Desgagnés's requests be rejected (A.R., pages 449 and following). Under the heading "Existing Duty Remission Requests with the Department", it was reiterated that outstanding requests were to be examined in accordance with the notice that appeared in the *Canada Gazette* in October 2009 (A.R., page 454). It was then noted that under this ad hoc approach each request would be evaluated on its merits, taking into account all relevant factors such as the views of shipyards, shipowners and Industry Canada.

[51] Therefore, although the particular excerpt from the memorandum of November 5, 2010, on which Desgagnés placed great emphasis, could have been more specific, it does not, when the

context is taken into account, support an inference that Algoma's requests were evaluated under the new policy rather than the old one.

[52] I agree with the respondent that there was nothing incongruous, unfair or unlawful about pointing out that requests recommended to the Governor in Council in accordance with the former policy would also have been recommended under the new policy. However, it would be completely absurd to interpret the passage as meaning that requests that were unacceptable under the former policy would automatically become acceptable because they were consistent with the new policy.

[53] As for the so-called inconsistency of accepting Algoma's requests and rejecting Desgagnés's requests, in my view, it simply does not exist. As is shown by the documentation in the record, the Canadian market in which Algoma's vessels were to be used was not the same market as that in which the vessels that were the subject of Desgagnés's requests were to operate.

[54] A plain reading of Desgagnés's opposition in 2000 (A.R., pages 564 and following) indicates that Desgagnés was well aware that the vessels for which a remission had been requested were being evaluated on the basis of their impact on the Canadian market in which they were to operate.

[55] There was therefore an essential difference between Desgagnés's requests, which were opposed by NEAS, Desgagnés's principal competitor in the Arctic market, and Algoma's requests, which even Desgagnés, a competitor of Algoma's on the St. Lawrence River and the Great Lakes, had supported. An opposition was filed against the former, while no such opposition was filed against Algoma's requests.

[56] In my view, the judge was not required to deal explicitly with this argument that he had rejected implicitly. He therefore committed no error, since there is no basis for Desgagnés's argument that different policies were applied to its requests than were applied to Algoma's.

(ii) Opportunity to make representations regarding opposition of NEAS

[57] As for this second argument, Desgagnés could not have been unaware, as it alleges, of the name of its principal competitor (if not the only one in 2009-2010) in the Arctic market, especially considering that this competitor had been the target of a specific opposition by Desgagnés 10 years earlier. There is no indication that Desgagnés had opposed any other remission request relating to a vessel operating in the Arctic market at that time.

[58] As I have already mentioned, Desgagnés knew full well that the opposition could only have related to issues involving competition in the Arctic market. Desgagnés had itself confirmed that the three vessels for which it had submitted requests were operating in the proportion of 40% in that market to 60% internationally and that any customs duties paid had to be absorbed in the Arctic market, as they could not be absorbed in the international market.

[59] It is clear from the presentation made by the CEO of Desgagnés on November 25, 2010, to which the judge referred (A.R., pages 713 and 715 in particular), that Desgagnés was well aware of the key argument raised in the opposition, namely, that the vessels for which the requests had been made would be in competition with those of NEAS, without NEAS having been able to benefit from a customs duty remission.

[60] Even assuming, without so deciding, that the Minister's minimal duty included informing Desgagnés of the specific grounds of its competitor's opposition, I am of the view that the judge did not err in finding that Desgagnés did in fact have the opportunity to put forward its arguments both orally and in writing. Therefore, no consequences flowed from the alleged breach.

[61] The presentation of November 25, 2010, read in the context of the arguments brought forward in the letter dated October 8, 2010, confirms that Desgagnés set forth fully the contextual differences between the years 2000 and 2010, as well as the underlying objectives of the policies in place in 2000 as compared to those of the 2010 policies.

[62] Whatever the scope of the Minister's duty of fairness might be in this case, it does not include a requirement that the Minister allow an adversarial debate concerning the strategy adopted by NEAS. NEAS was attempting to position itself with respect to customs duty remission requests that it might submit at some point. At that time, no such request had been submitted, and no decision had been made by the Minister, Desgagnés's assertions notwithstanding.

[63] This brings me to Desgagnés's third series of arguments.

(iii) Determinative errors in the memorandum of November 5, 2010

[64] Desgagnés is relying on various errors that it characterizes as sufficiently determinative for the Minister not to have been able to reach an independent decision. Desgagnés adds that the

incorrect information was significant enough to have negatively influenced the Minister's judgment as to the merits of the requests.

[65] I have chosen to deal at this stage with the arguments grouped under this heading in Desgagnés's memorandum, even though it is not clear that all of them truly raise issues of procedural fairness. The "fettering of discretion" is a separate ground from that of procedural fairness even if it may warrant the quashing of a decision. Moreover, procedural fairness does not come into play where an error of fact relates to an element regarding which no adversarial debate is required (see paragraph 62 above). In such a case, it is rather a matter of determining whether such an error renders the decision unreasonable.

[66] Desgagnés notes first that the memorandum of November 5, 2010, suggests that the Minister would be exposing himself to a request from NEAS for the remission of customs duties paid by the latter on three vessels imported before January 2010 if he granted Desgagnés's request.

[67] According to Desgagnés, this information is false, since the NEAS vessels did not meet the conditions of the Government's new tariff policy. Moreover, as formulated, the statement that, in order to be fair, the Government would then also have to reimburse NEAS [TRANSLATION] "nullified the decision-maker's power and served, because of these untruths, to determine in advance the outcome of the requests without any examination of their merit" (paragraph 95 of Desgagnés's Memorandum).

[68] Desgagnés relies on *Maple Lodge Farms Ltd. v. Canada*, [1982] 2 S.C.R. 2 (*Maple Lodge*), in submitting that a departmental directive or policy cannot be made into an obligatory rule fettering the Minister's discretion (paragraph 96 of Desgagnés's Memorandum).

[69] As I have said, it is clear that NEAS had not filed any requests and that the Minister did not have any decisions to make with respect to NEAS. Regardless of the language used or the preliminary opinion expressed by the departmental officials at that stage, nothing in the memorandum could have been binding on the Minister in this regard. In the circumstances, there is no purpose in discussing more fully the potential merits of requests that never materialized.

[70] However, it was open to the departmental officials to warn the Minister that NEAS was very likely to try to take advantage of the granting of Desgagnés's requests in order to obtain its own remission on the basis of unfairness.

[71] I note that the statement referred to in paragraph 67 above did not appear in the memorandum dated April 22, 2010, and that the Minister nevertheless reached the same decision. I am satisfied that the Minister made his decisions regarding Desgagnés's requests after examining them on their merits.

[72] Moreover, these so-called errors do not constitute grounds for overturning the Minister's decision if, as the judge determined, that decision was reasonable in that it was supported by at least one reason that could stand up to a quite thorough examination, such as the reason expressly cited in the decision dated March 11, 2011 (see *Canada (Director of Investigation and Research) v.*

Southam Inc., [1997] 1 S.C.R. 748, at paragraph 56; and *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247, at paragraphs 48, 49 and 55).

[73] Desgagnés's next allegation is that the departmental officials failed to provide, in the memorandum of November 5, 2010, the background of and the reasons for Desgagnés's opposition to the request of NEAS in 2000. Desgagnés further asserts that the departmental officials falsely represented that its requests had been assessed on the same basis as those of Algoma, and that the memorandum falsely suggests that its requests were inconsistent with the spirit or the rationale of the new tariff policy.

[74] As I have already noted, the letter of October 8, 2010, attached to the memorandum of November 5, 2010, stated in terms that could not have been clearer that Desgagnés's requests were consistent with the spirit and rationale underlying the new tariff policy applicable to vessels imported after January 1. It also very clearly sets out how the context in which Desgagnés had opposed NEAS's request in 2000 differed from the current context. The Minister therefore had the relevant information before him.

[75] In conclusion, Desgagnés has failed to persuade me that the judge erred in holding that there was no breach of procedural fairness in this case. There is no error with respect to the issues described above that might warrant the intervention of this Court.

B. Is the decision reasonable?

[76] Desgagnés submits that the judge erred in concluding that the Minister's refusal was reasonable because he failed to consider the fact that the decision was not transparent and comprehensible. Again, I disagree.

[77] As the Supreme Court of Canada indicates in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at paragraph 14, there is no precedent supporting the argument that the adequacy of reasons is a stand-alone basis for quashing a decision, or advocating that a reviewing court undertake two discrete analyses—one for the reasons and a separate one for the result. The judge was therefore not required to deal with this issue separately in his reasons once he had made a general finding that the decision fell within a range of possible outcomes.

[78] The letter of March 11, 2011, is clear and does state the principal reason on which the decision was based. The judge seems to have had no difficulty understanding the decision-maker's reasoning and assessing whether the outcome was one that was possible having regard to the facts and applicable law in this case.

[79] In this regard, I note that the parties agree that the judge applied the appropriate standard of review. I am satisfied that he in fact applied it correctly as the very specific reason stated by the Minister in his letter of March 11, 2011 (see paragraph 2 above) is in itself sufficient to justify the Minister's refusal.

[80] In the circumstances, I propose that the appeal be dismissed with costs.

"Johanne Gauthier"

J.A.

"I agree.
J.D. Denis Pelletier J.A."

"I agree.
Johanne Trudel J.A."

Certified true translation
Erich Klein

Annex A

Customs Tariff	*Tarif des douanes*
S.C. 1997, c. 36	**L.C. 1997, ch. 36**
115. (1) The Governor in Council may, on the recommendation of the Minister or the Minister of Public Safety and Emergency Preparedness, by order, remit duties.	**115. (1) Sur recommandation du ministre ou du ministre de la Sécurité publique et de la Protection civile, le gouverneur en conseil peut, par décret, remettre des droits.**
Financial Administration Act	*Loi sur la gestion des finances publiques*
R.S.C. 1985, c. F-11	**L.R.C. 1985, ch. F-11**
23. (2) The Governor in Council may, on the recommendation of the appropriate Minister, remit any tax or penalty, including any interest paid or payable thereon, where the Governor in Council considers that the collection of the tax or the enforcement of the penalty is unreasonable or unjust or that it is otherwise in the public interest to remit the tax or penalty.	**23. (2) Sur recommandation du ministre compétent, le gouverneur en conseil peut faire remise de toutes taxes ou pénalités, ainsi que des intérêts afférents, s'il estime que leur perception ou leur exécution forcée est déraisonnable ou injuste ou que, d'une façon générale, l'intérêt public justifie la remise.**

Federal Court of Appeal Cour d'appel fédérale

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-490-12
STYLE OF CAUSE:	DESGAGNÉS TRANSARCTIK INC. v. THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	OCTOBER 24, 2013
REASONS FOR JUDGMENT BY:	GAUTHIER J.A.
CONCURRED IN BY:	PELLETIER J.A. TRUDEL J.A.
DATED:	JANUARY 22, 2014

APPEARANCES:

Raynold Langlois	FOR THE APPELLANT
Bernard Letarte Jean-Robert Noiseux	FOR THE RESPONDENT

SOLICITORS OF RECORD:

LANGLOIS KRONSTRÖM DESJARDINS, LLP Montréal, Quebec	FOR THE APPELLANT
William F. Pentney Deputy Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT