



Ottawa, Wednesday, February 18, 2004

**Application No. EP-2003-005**

IN THE MATTER OF an application made by Codd Import Export (7) Inc. under section 60.2 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1, for an extension of time to make a request for a further re-determination.

### **ORDER OF THE TRIBUNAL**

The Canadian International Trade Tribunal denies the application for an extension of time to make a request for a further re-determination under section 60 of the *Customs Act*.

Patricia M. Close

Patricia M. Close  
Presiding Member

James A. Ogilvy

James A. Ogilvy  
Member

Ellen Fry

Ellen Fry  
Member

Michel P. Granger

Michel P. Granger  
Secretary



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TRIBUNAL: PATRICIA M. CLOSE, Presiding Member  
JAMES A. OGILVY, Member  
ELLEN FRY, Member

## STATEMENT OF REASONS

### BACKGROUND

Between August 7, 2000, and April 26, 2001, Codd Import Export (7) Inc. (Codd) imported 10 shipments of clothing.

On October 4, 2001, the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) made a re-determination of the tariff classification and value for duty of the goods imported by Codd. Each detailed adjustment statement (DAS) stated, “request for a further re-determination respecting this decision may be made within 90 days of the date of the notice, on Form B2, pursuant to subsection 60(1) of the *Customs Act*” and, “your request for a refund has been denied and as such is treated as a re-determination under subsection 59(1)(a) of the *Customs Act*”. Accordingly, the 90-day limitation period for making a request for a further re-determination under subsection 60(1) of the *Customs Act*<sup>1</sup> expired on January 2, 2002.

On May 2, 2002, Codd through its agent (R & W Customs Brokers Inc.), made an application for an extension of time pursuant to subsection 60.1(1) of the *Act* to dispute the re-determinations made on October 4, 2001.

On September 12, 2002, the Commissioner requested additional information in support of Codd’s application for an extension of time and, more specifically, the appropriate certificate of origin.

On October 9 and November 8, 2002, Codd sent some of the information requested by the Commissioner.

On January 7, 2003, the Commissioner denied Codd’s application for an extension on time on the basis that it would not be just and equitable to other importers to grant the application.

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1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].

By letters dated July 21, September 25 and October 8, 2003, sent to the Canadian International Trade Tribunal (the Tribunal), Codd applied for an extension of time to make a request for a further re-determination under section 60.2 of the *Act*.

On October 27, 2003, the Tribunal invited the Commissioner to provide his written submissions on Codd's application under section 60.2 of the *Act*. The Commissioner filed his submissions on November 21, 2003.

On November 26, 2003, the Tribunal invited Codd to respond to the Commissioner's written submissions. On December 17, 2003, Codd filed its response.

## ANALYSIS

Section 60.2 of the *Act* reads as follows:

**60.2** (1) A person who has made an application under section 60.1 may apply to the Canadian International Trade Tribunal to have the application granted after either

- (a) the Commissioner has refused the application: or
- (b) ninety days have elapsed after the application was made and the Commissioner has not notified the person of the Commissioner's decision.

If paragraph (a) applies, the application under this subsection must be made within ninety days after the application is refused.

(2) The application must be made by filing with the Commissioner and the Secretary of the Canadian International Trade Tribunal a copy of the application referred to in section 60.1 and, if notice has been given under subsection 60.1(4), a copy of the notice.

(3) The Canadian International Trade Tribunal may dispose of an application by dismissing or granting it and, in granting an application, it may impose any terms that it considers just or order that the request be deemed to be a valid request as of the date of the order.

(4) No application may be granted under this section unless

- (a) the application under subsection 60.1(1) was made within one year after the expiry of the time set out in section 60; and
- (b) the person making the application demonstrates that
  - (i) within the time set out in section 60, the person was unable to act or to give a mandate to act in the person's name or the person had a *bona fide* intention to make a request,
  - (ii) it would be just and equitable to grant the application, and
  - (iii) the application was made as soon as circumstances permitted.

The above provision contains four tests, each of which an applicant must meet in order to succeed in an application to the Tribunal for an extension of time to make a request for a further re-determination by the Commissioner.

However, before determining whether an applicant has met the four tests, the Tribunal must determine whether, pursuant to subsection 60.2(1) of the *Act*, the application for an extension of time was made within 90 days of the Commissioner's refusal of the application.

## ARGUMENT

The Commissioner argued that Codd's application to the Tribunal for an extension of time was made outside the time frame prescribed by the *Act*. According to the Commissioner, the evidence on the record indicates that the limitation period for making an application to the Tribunal for an extension of time expired on March 31, 2003, 90 days following the Commissioner's decision dated January 7, 2003.

The Commissioner argued that the date to be taken into consideration when calculating the prescribed time frame must be January 7, 2003. The Commissioner submitted that the January 7, 2003, decision was mailed to Codd's correct address, i.e. 642 De Courcelle Street, PH 4, Montréal, Quebec, as identified on the DAS, using the proper administrative procedures. The Commissioner also submitted that other correspondence, including correspondence concerning Codd's application for an extension of time, had been sent to the same address without incident or delay. In addition, the Commissioner submitted that a separate copy of the DAS was mailed to Codd's agent at its address on the record, i.e. 5553 Park Avenue, Montréal.

To support his argument, the Commissioner relied on section 149 of the *Act*, which states:

For the purposes of this Act, the date on which a notice is given pursuant to this Act or the regulations, shall, where it is given by mail, be deemed to be the date of mailing of the notice, and the date of mailing shall, in the absence of any evidence to the contrary, be deemed to be the day appearing from such notice to be the date thereof unless called into question by the Minister or by some person acting for him or Her Majesty.

The Commissioner further argued that subsection 60.1(4) of the *Act* provides that the person making the application is to be notified in writing, but does not require notification of a decision to be served personally or proven to have been received by the taxpayer. The Commissioner relied on the Federal Court of Appeal decision in *Canada (Attorney General) v. Bowen*,<sup>2</sup> where it was held that, in interpreting a similar provision, notifying a taxpayer does not require the notification of a decision to be served personally or proven to have been received by the taxpayer, but only that the decision be deemed to have been sent.

In reply, Codd argued that section 60.2 of the *Act* presupposes that it has knowledge of the Commissioner's refusal. Codd submitted that there is no evidence on the record to indicate that the Commissioner's decision was mailed to either Codd or its agent on January 7, 2003.

Codd argued that the onus is on the Commissioner to prove that the decision was mailed. It further argued that the fact that other correspondence was sent and received by the parties does not prove, in any way, that the documents were ever mailed or received.

## DECISION

On January 7, 2003, the Commissioner, under subsection 60.1(4) of the *Act*, denied Codd's request for an extension of time and notified Codd by mail of his decision.

Subsection 60.1(4) of the *Act* provides as follows:

(4) On receipt of an application, the Commissioner must, without delay, consider it and notify the person making the application, in writing, of the Commissioner's decision.

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2. [1992] 1 F.C. 311 (F.C.A.).

Although Codd denied having received the decision at that time, it did not provide any evidence in support of this contention. The Tribunal accepts the Commissioner's evidence that the decision was sent following the usual administrative procedures and that it was sent to Codd's last known address, i.e. 642 De Courcelle Street, PH 4, Montréal. The Tribunal further accepts the evidence that a separate copy was also mailed to Codd's agent at its address on the record, i.e. 5553 Park Avenue, Montréal. The Tribunal also notes that the evidence shows that the Commissioner used the same address to send other correspondence to Codd without incident or delay. Under the circumstances, it was reasonable to conclude that 642 De Courcelle Street was Codd's last known address and that 5553 Park Avenue was its agent's last known address.

As provided by section 149 of the *Act*, the date of January 7, 2003, appearing on the Commissioner's decision is deemed, in the absence of any evidence to the contrary, to be the date on which the decision was mailed and, thus, the date on which Codd was notified. In the Tribunal's view, there is uncontradicted evidence that the Commissioner, pursuant to subsection 60.1(4), considered the application and notified Codd in writing of his decision on January 7, 2003. The evidence also shows that the Commissioner's decision to refuse the application was mailed to Codd's last known address as indicated on the DAS. Accordingly, the Tribunal finds that January 7, 2003, is the date of the Commissioner's decision and, thus, is the date to be taken into consideration when calculating the prescribed time limit under paragraph 60.2(1)(a).

Since the Commissioner's decision is dated January 7, 2003, the application to the Tribunal for an extension of time pursuant to paragraph 60.2(1)(a) of the *Act* should have been made by Codd no later than April 6, 2003.

Codd made its application to the Tribunal for an extension of time on July 21, 2003, and therefore did so more than 90 days after the Commissioner's refusal and notification of January 7, 2003.

Consequently, Codd is out of time to make its application to the Tribunal for an extension of time because it has not met the condition of applying within the 90-day time period, as prescribed under paragraph 60.2(1)(a) of the *Act*, and its application is denied.

Patricia M. Close  
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Presiding Member

James A. Ogilvy  
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Member

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Member