Federal Court  Cour fédérale

Date: 20221102

Docket: T-1164-21

Citation: 2022 FC 1498

Ottawa, Ontario, November 2, 2022

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

MICHAELS OF CANADA, ULC

Applicant
(Responding Party)

and

ATTORNEY GENERAL OF CANADA

Respondent
(Moving Party)

ORDER AND REASONS

I. Overview

[1] The Attorney General of Canada [AGC] moves to strike the Notice of Application [NOA] filed by Michaels of Canada, ULC [MoC] for judicial review of the Final Report (defined below) that resulted from a trade compliance verification of "value for duty" declarations MoC made under the *Customs Act*, RSC 1985, c 1 (2nd Supp) [*Act*].

[2] The AGC asserts that the Federal Court lacks jurisdiction or, alternatively, if the Court has jurisdiction, then MoC's judicial review application is premature because MoC has not exhausted yet remedies available to it under the *Act*.

[3] I agree with the AGC that the Court lacks jurisdiction in the circumstances, and further, MoC has not exhausted yet the remedies available to it under the *Act*. The AGC's motion to strike therefore is granted, for the more detailed reasons that follow.

II. Background

(1) Trade Compliance Verification Regime

[4] See Annex "A" for relevant legislative provisions described below.

[5] Section 32 of the *Act* requires importers to account for goods they import and to pay any duties owed on those goods before they can be released. This accounting includes declaring the "value for duty" of the imported goods, as defined in subsection 2(1) and determined in accordance with sections 47-55.

[6] Subsection 32.2(2) of the *Act* requires importers to self-correct within 90 days after they have "reason to believe" a declaration of the value for duty for any of the goods is incorrect. According to subsection 32.2(4), this obligation to self-correct ends four years after the importer originally accounted for the imported goods.

[7] Failure to comply with any provision of the *Act* or a designated regulation gives rise to liability for a penalty of not more than twenty-five thousand dollars, as the Minister may direct, under section 109.1, subject to possible assessment by an officer pursuant to section 109.3.

[8] An importer can request a National Customs Ruling [NCR] from the Canada Border Services Agency [CBSA], which administers and enforces the *Act*. The NCR is a written statement that outlines how the provisions of the *Act* would apply to goods to be imported into Canada based on information provided by the importer when they make the request; in other words, the NCR can provide guidance to an importer on how to ensure that their declarations of value for duty will be correct. It also can give rise to a "reason to believe." An NCR is valid until it is either modified or revoked by the CBSA, and until then, it is treated as binding both on the CBSA and the importer.

[9] The CBSA may apply a revocation retroactively to goods imported before the revocation is made if there was a "misstatement or omission of material facts" in the importer's request for the NCR, or if there was a change in circumstances or in the material facts upon which the ruling was based, and the CBSA was not notified. In either case, the NCR can be revoked back to the date of the misstatement, omission or change. In that event, the importer must make corrections to declarations made after the date of the retroactive revocation to a maximum of four years as provided for by section 32.2.

[10] Pursuant to section 42.01, the CBSA periodically initiates verifications to ensure compliance with the *Act*. Under this trade compliance verification process, the CBSA conducts a

review of declarations made by importers during a specific verification period. The verifications can result in an interim report and, following any additional submissions from the importer, a final report and even a revised final report, if further submissions are considered and addressed.

[11] The final report can identify corrections required to an importer's declarations and create the obligation to make corrections, pursuant to section 32.2 of the *Act*. In other words, like the NCR, the final report can give rise to a "reason to believe."

[12] Further to subsection 32.2(3), a correction by the importer is treated as a re-determination of the value for duty by the CBSA, under paragraph 59(1)(a) of the *Act*; the CBSA has the authority, under the latter provision, to file the corrections if the importer does not do so. This re-determination – whether completed by the CBSA under paragraph 59(1)(a) or by the importer further to its obligation under section 32.2 – results in the CBSA issuing a notice of re-determination to the importer referred to as a "detailed adjustment statement" [DAS].

[13] In sum, upon conclusion of the verification, the CBSA verification officer (i) will make findings about whether the importer declared the correct value for duty for the imported goods reviewed, (ii) may levy monetary penalties for any discovered contraventions of the *Act*, (iii) may provide guidance with respect to the application of the *Act* to the importer's circumstances, (iv) may determine the specific reassessment period that applies to identified errors (i.e. may vary the statutory period pursuant to the CBSA's Reassessment Policy), and (iv) may exercise powers under subsection 59(1) of the *Act* and re-determine the value for duty in respect of

specific transactions (rather than or in addition to imposing the self-correction obligation on the importer), among other things.

[14] The appeal process for re-determination decisions involves three levels of review: sections 60, 67, and 68 of the *Act*. Upon the issuance of a DAS, the *Act* requires the importer to pay immediately the indicated amounts, subject to the importer posting security for the amounts so that the importer can commence a challenge to the DAS. The first level of re-determination or further re-determination is by the President of the CBSA (section 60), followed by the possibility of appeal to the Canadian International Trade Tribunal [CITT] (subsection 67(1)) and then, the final level involves appeal to the Federal Court of Appeal (section 68).

[15] As noted by this Court recently, the right of appeal conferred by section 60 of the *Act* (which is the first step in the enacted review process) applies to decisions made under section 59 regarding the origin, tariff classification, value for duty, or marking of goods: *9209654 Canada Inc. v Canada (Border Services Agency)*, 2022 FC 1390 at para 26.

(2) MoC's Business and Importations into Canada

[16] MoC is a retailer of both its own private label branded products as well as third party branded products in the field of arts and crafts-related supplies and custom picture framing products [merchandise] that it sells to consumers through branded retail stores across Canada. MoC is a Canadian subsidiary of Michaels Stores Inc. [MSI], a United States of America [USA] company that is the largest arts and crafts specialty retailer in North America.

[17] Since 2004, MoC purchases almost all of the merchandise it sells from Michaels Stores Procurement Company, Inc. [MSPC], another MSI subsidiary. MoC buys the balance, which are third party branded products, from third party suppliers.

[18] MoC also purports to license certain intellectual property from MSPC consisting of (i) brand trademarks, trade names, etc. [Marks] and (ii) retail concepts such as business systems, store layout, product placement, seasonal campaigns, etc. [Concept] that establish consistency between MoC stores in Canada and in the USA. MoC's business model contemplates the pursuit of a retail strategy developed and supported by MSI and MSPC, particularly through use of the Concept.

[19] From 2003 to February 2018, MoC paid MSPC to license the Marks and the Concept, pursuant to a single licence agreement that provided a formula involving a fixed component and a residual or "floating" component.

[20] According to the NOA, MoC and MSPC reorganized their arrangement in 2018. They entered into two licence agreements, one for the Marks and the other for the Concept, with corresponding separate payments. The Concept licence fee consists of a fixed component comprising a fixed percentage of net monthly sales and a floating or residual component based on performance, or more specifically, on MoC's operating margin. The reorganization was not intended to change the intangibles covered, however.

(3) Procedural History and Decision at Issue

[21] An NCR issued in 2006 that provided MoC was entitled to use the transaction value method (described in Part III of the *Act*), and that the licence fees payable by MoC to MSPC under the licence agreement were not dutiable [2006 NCR]. MoC asserts in its NOA that the ruling officer considered all payments under the 2003 licence agreement to be non-dutiable. MoC appraised the value for duty of its importations in accordance with the 2006 NCR until it was revoked and superseded by the Final Report (defined below).

[22] The CBSA conducted a compliance verification regarding MoC's declarations of the "value for duty" of goods that it imported between February 3, 2018 and February 2, 2019, and issued an interim report in November 2020 and a final report in April 2021.

[23] The CBSA determined that the licence fees called for by the 2018 licence agreements should be included in MoC's calculation of value for duty, as amounts constituting "subsequent proceeds" under subparagraph 48(5)(a)(v) of the *Act*, and required MoC to make corrections to declarations dating as far back as the 2018 agreements. The CBSA had not taken the 2006 NCR into account, however. When MoC brought the 2006 NCR to the CBSA's attention, the CBSA issued the revised final report on June 25, 2021, under cover of an explanatory email [together, the Final Report].

[24] The Final Report identifies two issues. Issue #1 concerns the floating (or residual) component of the Concept licence fee, while Issue #2 concerns the fixed component of the Concept licence fee. The Marks licence fees are not in issue.

[25] Regarding Issue #1, the verification officer found that the 2018 concept licence agreement changed how the floating or residual component operated. Under the 2003 licence agreement, MoC would pay to MSPC only an amount to be negotiated. Under the 2018 Concept licence agreement, it was possible, in the officer's view, that MSPC would pay MoC for MoC's use of the Concept if MoC's operating margin fell below a certain level, and this is illogical as a payment for intangibles. (The officer also found that the items comprising the Concept proprietary knowledge were not "legal property, registered trademarks or secret trade know-how.") The officer concluded this constituted a change to the material facts on which the 2006 NCR was based, justifying its revocation with retroactive effect.

[26] Further, as of the date of the 2018 Concept Agreement, MoC was found to have "specific information" (namely, subparagraph 48(5)(a)(v) of the *Act* that requires proceeds of subsequent sales of the goods to be included in value for duty) giving it "reason to believe" pursuant to section 32.2 that its declarations were incorrect, such that corrections were required within 90 days to all declarations back to the date of the 2018 Concept licence agreement, "to a maximum of four year after the goods are accounted for as provided for in the *Customs Act*."

[27] Regarding Issue #2, the Verification Officer found that there had been no material change to the operation of the fixed component of the Concept licence fee between the 2003 licence agreement and the 2018 Concept licence agreement. The 2006 NCR therefore continued to apply to this component, such that it was appropriate to exclude this component from the calculation of value for duty in the declarations made during the verification period. MoC had no "reason to believe" its declarations were incorrect. Pursuant to CBSA policy, MoC would have to account

for this fee only in future declarations, that is from the date of the Final Report forward, consistent with the revocation of the 2006 NCR.

[28] Finally, the verification officer advised MoC of its appeal rights under the *Act*, which are triggered once MoC submits the required corrections and the CBSA issues a DAS.

(4) Notice of Application

[29] In its subsequent NOA challenging the Final Report, MoC submits that the verification officer unreasonably interpreted the scope of the 2006 NCR narrowly, and capriciously made the erroneous determination that there was a change in material facts in the intervening period after the 2006 NCR was issued. In addition, MoC argues that the verification officer imputed "reason to believe" under Section 32.2 of the *Act* in circumstances that were unreasonable, procedurally unfair, and prejudicial to MoC.

[30] More specifically, MoC argues on this motion that the verification officer erred in (i) the interpretation of the 2006 NCR, (ii) the determination of the "date of specific information" that gave the importer "reason to believe" its declarations were incorrect, and (iii) the temporal scope of reassessments ordered, in so far as these inter-related issues concern differential treatment of Issue #1 and Issue #2 in the context of the retrospective corrections. Further, MoC submits that the date of specific information applicable to Issue #1 was the date of accounting (i.e. the date of the 2018 Concept licence agreements when MoC knew or ought to have known that its value for duty declarations regarding the residual component were incorrect), while the date of specific information applicable to Issue #2 was the date of the Final Report. No retrospective corrections

were required in respect of the fixed component of the Concept licence fee, however, and hence, less than four years of corrections were required in both cases, contrary to subsection 32.2(4) of the *Act*. I note the requirement in the Final Report to make corrections regardless of whether there is a financial impact.

[31] Not in issue in its NOA are the "value for duty" findings MoC says that the CBSA made in the Final Report, namely that: (a) the transaction value method for calculating the value for duty is the correct method; (b) the floating component of the Concept licence fees are "subsequent proceeds" under subparagraph 48(5)(a)(v) of the *Act* because the methodology used to calculate them resembled the methodology used to adjust the intercompany sale price of goods; and (c) the retail Concept is not an intangible asset for which an importer may pay a (non-dutiable) licence fee.

[32] For its part, the AGC argues that the Final Report does not affect or impose legal obligations on MoC (in other words, it is not a "decision" as such) but rather it informs MoC how the CBSA will exercise its statutory authority (i.e. by issuing a DAS under section 59) once MoC files or refrains from filing the corrections the CBSA has determined are required by the *Act*.

III. Issues

[33] Having considered the parties' written material and their oral submissions, I find that the issues for the Court to determine on this motion are two-fold:

A. *Is the Applicant directly affected by the Decision, such that this Court has jurisdiction to conduct judicial review?*

B. *Alternatively, if the Court has jurisdiction, is the doctrine of exhaustion applicable, such that this Court should exercise its discretion to decline to hear the application? In other words, should the application be struck for prematurity?*

IV. Analysis

[34] I am satisfied the AGC has met the requisite test for striking an application. Specifically, the AGC has established that MoC's judicial review application has no prospect of success, or that it is "doomed to fail": *McLaughlin v Canada (Attorney General)*, 2022 FC 1466 at para 15 (citing *Rahman v Public Service Labour Relations* Board, 2013 FCA 117 [*Rahman*] at para 7; *Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 33.

[35] This Court has recognized that a motion to strike an application imposes a heavy burden on the moving party: *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, 1994 CanLII 3529 (FCA), [1995] 1 FC 588, 176 NR 48. The AGC must establish that the notice of application is "so clearly improper as to be bereft of any possibility of success," that the application is so fatally flawed it strikes at the heart of the Court's ability to entertain it: *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250 [*JP Morgan*], at para 47; *Murphy v Canada (Attorney General)*, 2022 FC 146 [*Murphy*] at para 9, citing *Rahman*, above at para 8.

[36] As recently articulated by (now) Associate Judge Tabib, the failure to exhaust all the effective administrative remedies available to a party is an example of a fatal flaw which, absent exceptional circumstances, justifies the preliminary dismissal of an application: *Murphy*, above

at para 10, citing *CB Powell Limited v Canada (Border Services Agency)*, 2010 FCA 61 at para 31). In accordance with the principle that a fatal flaw must be obvious, a notice of application may not be struck as premature, however, unless the Court is certain that there is recourse elsewhere, now or later, and that this recourse is adequate and effective: *JP Morgan*, above at para 91; *Murphy* above at para 11.

A. *Does the Federal Court have jurisdiction?*

[37] I am not persuaded that, in the circumstances here, the Court has the jurisdiction MoC urges it to exercise.

[38] Both parties seek to draw a bright line, albeit for different reasons, between the Final Report and the DAS, a line that in my view is untenable or, at best, blurred. On the one hand, the AGC argues that MoC is not affected directly by the findings in the Final Report and is not required legally to respond to them or the Final Report. Rather, the DAS crystallizes the Final Report; the issuance of the DAS results in an administrative decision "directly affecting" MoC by requiring it to remit immediately the amount of unpaid duties and interest, if not paid further to any corrections made under section 32.2.

[39] In response, MoC argues that the Final Report gives rise to a "reason to believe" under subsection 32.2(1) of the *Act*, and hence, an obligation ("shall") to make a correction and pay any amount owing as duties. The AGC acknowledged at the hearing of this matter that the Court (although not necessarily the Federal Court, in my view) will have to determine the novel issues raised by MoC, at some point. Further, I note that where the importer makes a correction under

subsection 32.2(1), then subsection 32.2(3) essentially deems the correction to be a re-determination under paragraph 59(1)(a) that in turn can be the subject of a request for a further re-determination made to the President of the CBSA under section 60, as the first step in the appeal or review process contemplated by the *Act*.

[40] While I am sympathetic to MoC's argument, I am not persuaded that there is a bright line between the Final Report and the DAS that either party seeks to draw. In particular, MoC submits that the issues it raises with the judicial review application otherwise will not be considered because the CITT has found that "reason to believe" is not relevant to the issue of whether "value for duty" was correctly determined. I disagree, however, that the CITT decision in *Jockey Canada Company v President of the Canada Border Services Agency*, 2012 CanLII 85177 (CA CITT), 2012 CITT Appeal No. AP-2011-008 [*Jockey CITT*], stands definitively for this proposition.

[41] *Jockey CITT* flowed from an earlier decision of the Federal Court where Jockey Canada Company Limited [JCC], similar to MoC, attempted to challenge a CBSA decision that JCC had "reason to believe" under section 32.2 of the *Act* that its valuation method of imported goods was incorrect: *Jockey Canada Company Limited v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 396 [*Jockey FC*] at para 2. As a result of the CBSA's decision, JCC was required to make corrections over a four-year period from 2009 when the CBSA rendered its decision back to 2005.

[42] Having considered applicable jurisprudence, (former) Justice Mandamin concluded that Parliament's intended review system under the *Act* ousted judicial review by the Federal Court under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. In other words, for matters unresolved by first the CBSA President and next the CITT, then section 18.5 of the *Federal Courts Act* is engaged, by reason of paragraph 28(1)(e), on further appeal from the CITT to the Federal Court of Appeal: *Jockey FC*, above at paras 21-26, 30.

[43] Following the decision in *Jockey FC*, the matter came to the CITT for determination. MoC points to the following finding of the CITT in support of its argument that the CITT has ruled that "reason to believe" is not relevant to "value for duty" (*Jockey CITT*, para 262):

> The Tribunal agrees with the CBSA that whether JCC had "reason to believe" in 2009 or 2005 has no bearing on the issue of whether the value for duty of the goods in issue was correctly re-determined by the CBSA, which is the substantive legal issue that the Tribunal has to address in this appeal pursuant to subsection 67(1) of the *Act*.

[44] In arriving at this conclusion, however, the CITT acknowledged the following argument by the CBSA (*Jockey CITT*, para 256):

> "… 'reason to believe' only comes into play after it has been determined that a given declaration is incorrect and, while **this issue may, in certain circumstances, be relevant in deciding how far back corrections must be made**, in this case, the fact that the decisions appealed from state that JCC had "reason to believe" that its value for duty declarations were incorrect as early as 2005, **did not determine the duration of the duty reassessment period in this case**. The reason being that, pursuant to subsection 32.2(2) of the *Act*, the obligation of importers to make corrections to their declarations concerning the tariff classification, the value for duty or the origin of the imported goods ends four years after the imported goods have been accounted for.
>
> [Emphasis added.]

[45] Further, the CITT held that, “the additional duties that were owed by JCC and collected as a result of the revisions to the value for duty of the goods in issue stemmed from the findings of the CBSA audit and were not levied on the basis that JCC had ‘reason to believe’, in 2005, that its value for duty declarations were incorrect”: *Jockey CITT*, above at para 284.

[46] I am not persuaded, therefore, as argued by MoC, that the CITT categorically would not consider the issue of “reason to believe” in the context of “value for duty” (i.e. one of four specified items the CBSA President can address under subsection 60(1) of the *Act*) because of its findings in *Jockey CITT*. In the matter before me, the full four-year limitation contemplated in subsection 32.2(4) is not engaged, unlike the situation in *Jockey FC* and *Jockey CITT*, because here the amount of time between the 2018 Concept licence agreement and the Final Report is less than four years.

[47] Whether MoC’s situation involves a circumstance where the issue of “reason to believe” is thus relevant in deciding how far back corrections must be made (*Jockey CITT*, para 256), will be an issue for the CITT to determine, if MoC requests a further re-determination by the CBSA President, and then pursues an appeal of the President’s findings to that body. As (former) Justice Sharlow observed, “the CITT… has the mandate to determine the **validity and correctness** of the Detailed Adjustment Statements” [emphasis added]: *Fritz Marketing Inc. v Canada*, 2009 FCA 62 at para 36.

[48] In sum, although I am not persuaded that MoC is not affected directly by the Final Report, the Federal Courts jurisprudence repeatedly points to the displacement of the Federal

Court's jurisdiction in favour of the "administrative, quasi-judicial and judicial review system [under the *Act*] to be followed to the exclusion of any other paths of review or appeal," even on jurisdictional issues: *Abbott Laboratories Ltd. v Canada (Minister of National Revenue)*, 2004 FC 140 at para 39; *Canada (Border Services Agency) v C.B. Powell Limited*, 2010 FCA 61 [*C.B. Powell*] at para 4.

[49] Further, I am not satisfied that the circumstances here are exceptional, warranting recourse to the Federal Court: *C.B. Powell*, above at para 51.

[50] I therefore conclude that the Federal Court does not have the requisite jurisdiction to hear MoC's application. If I am incorrect, however, then in the alternative, the application is premature, in my view, as discussed briefly below.

B. *Does the doctrine of exhaustion apply?*

[51] I am not persuaded that the review system in place in the *Act* does not represent an adequate alternative remedy. Having regard to the above discussion, until MoC has pursued administrative remedies available to it in the form of appeals to the CBSA President and then the CITT, it is premature in my view to assert that the CITT will not consider MoC's novel issues, an argument based on distinguishable CITT case law (i.e. *Jockey CITT*). Simply because the CITT declined to consider the issue of "reason to believe" in the context of "value for duty" in an earlier instance, does not mean the CITT going forward has foreclosed consideration of issues like those raised here by MoC.

[52] As the Federal Court of Appeal has opined in the past, "[t]he function of the CITT as both an adjudicator of disputes and an instrument in the development of trade and import policy suggests that the Parliament intends and expects the CITT to take into account, even in appeals under section 68 of the Customs Act, policy questions that are not appropriate for ordinary judicial appeals": *Deputy Canada (Minister of National Revenue) v Yves Ponroy Canada*, 2000 CanLII 15801 (FCA) at para 33.

[53] To paraphrase (now) Associate Judge Milczynski, MoC seemingly is at an early stage of the *Act*'s adjudicative process. At the time MoC filed its NOA, a DAS had not issued and MoC had yet to seek a re-determination or a further re-determination. MoC can put its arguments concerning the CBSA's interpretation of the 2006 NCR, the determination of the "date of specific information" that gave MoC "reason to believe" its declarations were incorrect, and the temporal scope of reassessments ordered, to the CBSA President, the CITT, and then the Federal Court of Appeal, if it chooses: *Skechers USA Canada, Inc. v Canada (Border Services Agency)*, 2021 FC 879. (At the time of issuance of this Order and Reasons, I note that an appeal of the latter decision to this Court under Rule 51 of the *Federal Courts Rules*, SOR/98-106, is under reserve.)

V. Conclusion

[54] For the above reasons, the AGC's motion is granted, and the Court orders MoC's NOA struck. The Court lacks jurisdiction in the circumstances, and the NOA is premature, MoC not having exhausted the appeal or review system in place in the *Act.*

VI. Costs

[55] At the hearing of this motion, the AGC submitted that its costs were approximately $3,000, while MoC submitted that costs should be “at the normal rate.” I consider the amount of $3,000 to be appropriate, and therefore, I exercise my discretion to award the AGC all-inclusive lump sum costs in this amount, payable by MoC.

ORDER in T-1164-21

THIS COURT'S ORDER is that:

1. The Attorney General of Canada's motion to strike the Notice of Application filed on July 23, 2021 by Michaels of Canada, ULC is granted. The Notice of Application is struck.
2. The Attorney General of Canada is awarded all-inclusive lump sum costs in the amount of $3,000, payable by Michaels of Canada, ULC.

"Janet M. Fuhrer"
Judge

Annex "A" – Relevant Provisions

Customs Act **(R.S.C., 1985, c. 1 (2nd Supp.))**
Loi sur les douanes **(L.R.C. (1985), ch. 1 (2e suppl.))**

Interpretation	**Définitions et champ d'application**
Definitions	**Définitions**
2 (1) In this Act,	**2 (1)** Les définitions qui suivent s'appliquent à la présente loi.
value for duty means, in respect of goods, the value of the goods as it would be determined in accordance with sections 45 to 56; (*valeur en douane*)	***valeur en douane*** La valeur des marchandises déterminée conformément aux articles 45 à 56. (*value for duty*)
Accounting and Payment of Duties	**Déclaration en détail et paiement des droits**
Accounting and payment of duties	**Déclaration en détail et paiement des droits**
32 (1) Subject to subsections (2) and (4) and any regulations made under subsection (6), and to section 33, no goods shall be released until	**32 (1)** Sous réserve des paragraphes (2) et (4), des règlements d'application du paragraphe (6), et de l'article 33, le dédouanement des marchandises est subordonné :
(a) they have been accounted for by the importer or owner thereof in the prescribed manner and, where they are to be accounted for in writing, in the prescribed form containing the prescribed information; and **(b)** all duties thereon have been paid.	**a)** à leur déclaration en détail faite par leur importateur ou leur propriétaire selon les modalités réglementaires et, si elle est à établir par écrit, en la forme et avec les renseignements déterminés par le ministre; **b)** au paiement des droits afférents.
Release prior to accounting	**Déclaration provisoire**
(2) In prescribed circumstances and under prescribed conditions, goods may be released prior to the accounting required under subsection (1) if	**(2)** Dans les circonstances prévues par règlement et sous réserve des conditions qui y sont fixées, le dédouanement peut s'effectuer avant la déclaration en détail prévue au paragraphe (1) dans les cas suivants :
(a) the importer or owner of the goods makes an interim accounting in the prescribed manner and form and containing the prescribed information, or in the form	**a)** l'importateur ou le propriétaire des marchandises fait une déclaration provisoire selon les modalités, en la forme et avec les renseignements réglementaires,

and containing the information that is satisfactory to the Minister; or
(b) the goods have been authorized by an officer or by any prescribed means for delivery to, and have been received at, the place of business of the importer, owner or consignee of the goods.

ou en la forme et avec les renseignements satisfaisants pour le ministre;
b) la livraison des marchandises à l'établissement de l'importateur, du propriétaire ou du destinataire a été autorisée par un agent ou selon les modalités réglementaires et elles y ont été reçues.

Accounting after release

(3) If goods are released under subsection (2), they shall be accounted for within the prescribed time and in the manner described in paragraph (1)(a) by, in the case of goods to which paragraph (2)(a) applies, the person who made the interim accounting under that paragraph in respect of the goods and, in the case of goods to which paragraph (2)(b) applies, by the importer or owner of the goods.

Déclaration en détail postérieure au dédouanement

(3) En cas de dédouanement de marchandises en vertu du paragraphe (2), l'auteur de la déclaration provisoire prévue à l'alinéa 2a) fait, dans le délai réglementaire, une déclaration en détail de ces marchandises selon les modalités prévues à l'alinéa (1)a); dans le cas des marchandises visées à l'alinéa (2)b), la déclaration en détail est faite par l'importateur ou le propriétaire.

Release of goods

(4) In such circumstances, and under such conditions, as may be prescribed, goods imported by courier or as mail may be released prior to the accounting required under subsection (1) and prior to the payment of duties thereon.

Dédouanement de marchandises

(4) Dans les circonstances et dans les conditions éventuellement prévues par règlement, le dédouanement des marchandises importées par messager ou comme courrier peut s'effectuer avant la déclaration en détail prévue au paragraphe (1) et avant le paiement des droits afférents.

Accounting and payment of duties

(5) Where goods are released under subsection (4),

Déclaration en détail et paiement des droits

(5) La personne autorisée par l'alinéa (6)a) ou par le paragraphe (7) à faire la déclaration en détail de marchandises dont le dédouanement est effectué en vertu du paragraphe (4) en fait la déclaration en détail dans le délai réglementaire et selon les modalités prévues à l'alinéa (1)a). Cette personne, ou l'importateur ou le propriétaire des marchandises, est alors tenu de payer dans le délai réglementaire les droits afférents. En l'absence d'une telle personne, l'importateur ou le propriétaire des marchandises en fait la déclaration en détail

	dans le délai réglementaire et selon les modalités prévues à l'alinéa (1)a), et paie les droits afférents dans le délai réglementaire.
(a) the person who is authorized under paragraph (6)(a) or subsection (7) to account for the goods shall, within the prescribed time, account for the goods in the manner described in paragraph (1)(a) and that person or the importer or owner of the goods shall, within the prescribed time, pay duties on the goods, or **(b)** where there is no person authorized under paragraph (6)(a) or subsection (7) to account for the goods, the importer or owner of the goods shall, within the prescribed time, account for the goods in the manner described in paragraph (1)(a) and shall, within the prescribed time, pay duties on the goods.	
Deemed accounting	**Présomption de déclaration en détail**
(5.1) Except in prescribed circumstances, where the importer or owner of mail that has been released as mail under subsection (4) takes delivery of the mail, the mail shall be deemed to have been accounted for under subsection (5) at the time of its release.	**(5.1)** Sauf dans les circonstances prévues par règlement, la déclaration en détail du courrier dédouané en application du paragraphe (4) dont l'importateur ou le propriétaire prend livraison est réputée effectuée en vertu du paragraphe (5) au moment du dédouanement du courrier.
Regulations	**Règlements**
(6) The Governor in Council may make regulations	**(6)** Le gouverneur en conseil peut, par règlement :
(a) specifying persons or classes of persons who are authorized to account for goods under this section in lieu of the importer or owner thereof and prescribing the circumstances in which and the conditions under which such persons or classes of persons are so authorized; and **(b)** prescribing the circumstances in which goods may be released without any requirement of accounting.	**a)** préciser les personnes ou les catégories de personnes autorisées à faire une déclaration en détail ou provisoire de marchandises au lieu de leur importateur ou de leur propriétaire et déterminer les circonstances et les conditions de l'autorisation; **b)** déterminer les circonstances dans lesquelles des marchandises peuvent être dédouanées sans avoir à être déclarées en détail.
Authorization to account	**Autorisation**

(7) The Minister or an officer designated by the President for the purposes of this subsection may authorize any person not resident in Canada to account for goods under this section, in such circumstances and under such conditions as may be prescribed, in lieu of the importer or owner of those goods.	**(7)** Le ministre ou l'agent que le président charge de l'application du présent paragraphe peut autoriser une personne qui ne réside pas au Canada à faire une déclaration en détail ou provisoire de marchandises en vertu du présent article, dans les circonstances et dans les conditions prévues par règlement, au lieu de leur importateur ou de leur propriétaire.
Correction to declaration of origin	**Correction de la déclaration d'origine**
32.2 (1) An importer or owner of goods for which preferential tariff treatment under a free trade agreement has been claimed or any person authorized to account for those goods under paragraph 32(6)(a) or subsection 32(7) shall, within ninety days after the importer, owner or person has reason to believe that a declaration of origin for those goods made under this Act is incorrect,	**32.2 (1)** L'importateur ou le propriétaire de marchandises ayant fait l'objet d'une demande de traitement tarifaire préférentiel découlant d'un accord de libre-échange, ou encore la personne autorisée, sous le régime de l'alinéa 32(6)a) ou du paragraphe 32(7), à effectuer la déclaration en détail ou provisoire des marchandises, qui a des motifs de croire que la déclaration de l'origine de ces marchandises effectuée en application de la présente loi est inexacte doit, dans les quatre-vingt-dix jours suivant sa constatation :
(a) make a correction to the declaration of origin in the prescribed manner and in the prescribed form containing the prescribed information; and	**a)** effectuer une déclaration corrigée conformément aux modalités de présentation et de temps réglementaires et comportant les renseignements réglementaires;
(b) pay any amount owing as duties as a result of the correction to the declaration of origin and any interest owing or that may become owing on that amount.	**b)** verser tout complément de droits résultant de la déclaration corrigée et les intérêts échus ou à échoir sur ce complément.
Corrections to other declarations	**Autres corrections**
(2) Subject to regulations made under subsection (7), an importer or owner of goods or a person who is within a prescribed class of persons in relation to goods or is authorized under paragraph 32(6)(a) or subsection 32(7) to account for goods shall, within ninety days after the importer, owner or person has reason to believe that the declaration of origin (other than a declaration of origin referred to in subsection (1)), declaration of tariff classification or	**(2)** Sous réserve des règlements pris en vertu du paragraphe (7), l'importateur ou le propriétaire de marchandises ou une personne qui appartient à une catégorie réglementaire de personnes relativement à celles-ci, ou qui est autorisée en application de l'alinéa 32(6)a) ou du paragraphe 32(7) à effectuer la déclaration en détail ou provisoire des marchandises, ayant des motifs de croire que la déclaration de l'origine de ces marchandises, autre que celle visée au paragraphe (1), la déclaration du

declaration of value for duty made under this Act for any of those goods is incorrect,

(a) make a correction to the declaration in the prescribed form and manner, with the prescribed information; and

(b) pay any amount owing as duties as a result of the correction to the declaration and any interest owing or that may become owing on that amount.

Correction treated as re-determination

(3) A correction made under this section is to be treated for the purposes of this Act as if it were a re-determination under paragraph 59(1)(a).

Four-year limit on correction obligation

(4) The obligation under this section to make a correction in respect of imported goods ends four years after the goods are accounted for under subsection 32(1), (3) or (5).

Correction not to result in refund

(5) This section does not apply to require or allow a correction that would result in a claim for a refund of duties.

Diversions

(6) The obligation under this section to make a correction to a declaration of tariff classification includes an obligation to correct a declaration of tariff classification that is rendered incorrect by a failure, after the goods are accounted for under subsection 32(1), (3) or (5) or, in the case of prescribed goods, after the goods are released without accounting, to comply with a condition imposed under a tariff item in the List of Tariff Provisions set out in the schedule to

classement tarifaire ou celle de la valeur en douane effectuée à l'égard d'une de ces marchandises en application de la présente loi est inexacte est tenue, dans les quatre-vingt-dix jours suivant sa constatation :

a) d'effectuer une correction à la déclaration en la forme et selon les modalités réglementaires et comportant les renseignements réglementaires;
b) de verser tout complément de droits résultant de la déclaration corrigée et les intérêts échus ou à échoir sur ce complément.

Correction assimilée à la révision

(3) Pour l'application de la présente loi, la correction de la déclaration faite en application du présent article est assimilée à la révision prévue à l'alinéa 59(1)a).

Obligation de corriger limitée à quatre ans

(4) L'obligation de corriger une déclaration, prévue au présent article, à l'égard de marchandises importées prend fin quatre ans après leur déclaration en détail au titre des paragraphes 32(1), (3) ou (5).

Aucun remboursement

(5) Le présent article ne s'applique pas dans le cas où la correction d'une déclaration entraînerait une demande de remboursement de droits.

Ventes ou réaffectations

(6) L'obligation, prévue au présent article, de corriger la déclaration du classement tarifaire comprend l'obligation de corriger celle qui devient défectueuse, après la déclaration en détail des marchandises au titre des paragraphes 32(1), (3) ou (5) ou, dans le cas de marchandises réglementaires, après leur dédouanement sans déclaration en détail, par suite de l'inobservation d'une condition imposée aux termes d'un numéro tarifaire de la liste des dispositions tarifaires de l'annexe

the *Customs Tariff* or under any regulations made under that Act in respect of a tariff item in that List.	du *Tarif des douanes* ou d'un règlement pris en vertu de cette loi à l'égard d'un numéro tarifaire de cette liste.
Regulations **(7)** The Governor in Council may make regulations prescribing the circumstances in which certain goods are exempt from the operation of subsection (6) and the classes of goods in respect of which, the length of time for which and the conditions under which the exemptions apply.	**Règlements** **(7)** Le gouverneur en conseil peut, par règlement, déterminer les cas où certaines marchandises sont exemptées de l'application du paragraphe (6), désigner les catégories de marchandises visées ainsi que fixer la durée et les conditions de l'exemption.
Duties **(8)** If a declaration of tariff classification is rendered incorrect by a failure referred to in subsection (6), for the purposes of paragraph (2)(b), duties do not include duties or taxes levied under the *Excise Act, 2001*, the *Excise Tax Act* or the *Special Import Measures Act*.	**Droits** **(8)** Lorsque la déclaration d'un classement tarifaire devient défectueuse par suite d'un manquement visé au paragraphe (6), les droits ne comprennent pas, pour l'application de l'alinéa (2) b), les droits et taxes perçus au titre de la *Loi de 2001* sur l'accise, de la *Loi sur la taxe d'accise* et de la *Loi sur les mesures spéciales d'importation*.
Verifications **Methods of verification** **42.01** An officer, or an officer within a class of officers, designated by the President for the purposes of this section may conduct a verification of origin (other than a verification of origin referred to in section 42.1), verification of tariff classification or verification of value for duty in respect of imported goods in the manner that is prescribed and may for that purpose at all reasonable times enter any prescribed premises.	**Vérifications** **Méthodes de vérification** **42.01** L'agent chargé par le président, individuellement ou au titre de son appartenance à une catégorie d'agents, de l'application du présent article peut effectuer la vérification de l'origine des marchandises importées, autres que celles visées à l'article 42.1, ou la vérification de leur classement tarifaire ou de leur valeur en douane selon les modalités réglementaires; à cette fin, il a accès aux lieux désignés par règlement à toute heure convenable.
Transaction Value of the Goods **Adjustment of price paid or payable** **48 (5)** The price paid or payable in the sale of goods for export to Canada shall be adjusted	**Valeur transactionnelle des marchandises** **Ajustement du prix payé ou à payer** **48 (5)** Dans le cas d'une vente de marchandises pour exportation au Canada, le prix payé ou à payer est ajusté :

(a) by adding thereto amounts, to the extent that each such amount is not already included in the price paid or payable for the goods, equal to … **(v)** the value of any part of the proceeds of any subsequent resale, disposal or use of the goods by the purchaser thereof that accrues or is to accrue, directly or indirectly, to the vendor, and	**a)** par addition, dans la mesure où ils n'y ont pas déjà été inclus, des montants représentant : … **(v)** la valeur de toute partie du produit de toute revente, cession ou utilisation ultérieure par l'acheteur des marchandises, qui revient ou doit revenir, directement ou indirectement, au vendeur,
Determination, Re-determination and Further Re-determination of Origin, Tariff Classification and Value for Duty of Imported Goods **Re-determination or further re-determination** **59 (1)** An officer, or any officer within a class of officers, designated by the President for the purposes of this section may **(a)** in the case of a determination under section 57.01 or 58, re-determine the origin, tariff classification, value for duty or marking determination of any imported goods at any time within **(i)** four years after the date of the determination, on the basis of an audit or examination under section 42, a verification under section 42.01 or a verification of origin under section 42.1, or **(ii)** four years after the date of the determination, if the Minister considers it advisable to make the re-determination; and	**Détermination de l'origine, du classement tarifaire et de la valeur en douane des marchandises importées, révision et réexamen** **Révision et réexamen** **59 (1)** L'agent chargé par le président, individuellement ou au titre de son appartenance à une catégorie d'agents, de l'application du présent article peut : **a)** dans le cas d'une décision prévue à l'article 57.01 ou d'une détermination prévue à l'article 58, réviser l'origine, le classement tarifaire ou la valeur en douane des marchandises importées, ou procéder à la révision de la décision sur la conformité des marques de ces marchandises, dans les délais suivants : **(i)** dans les quatre années suivant la date de la détermination, d'après les résultats de la vérification ou de l'examen visé à l'article 42, de la vérification prévue à l'article 42.01 ou de la vérification de l'origine prévue à l'article 42.1, **(ii)** dans les quatre années suivant la date de la détermination, si le ministre l'estime indiqué;
Re-determination and Further Re-determination by President **Request for re-determination or further re-determination**	**Révision ou réexamen par le président** **Demande de révision ou de réexamen**

60 (1) A person to whom notice is given under subsection 59(2) in respect of goods may, within ninety days after the notice is given, request a re-determination or further re-determination of origin, tariff classification, value for duty or marking. The request may be made only after all amounts owing as duties and interest in respect of the goods are paid or security satisfactory to the Minister is given in respect of the total amount owing.	**60 (1)** Toute personne avisée en application du paragraphe 59(2) peut, dans les quatre-vingt-dix jours suivant la notification de l'avis et après avoir versé tous droits et intérêts dus sur des marchandises ou avoir donné la garantie, jugée satisfaisante par le ministre, du versement du montant de ces droits et intérêts, demander la révision ou le réexamen de l'origine, du classement tarifaire ou de la valeur en douane, ou d'une décision sur la conformité des marques.
Request for review **(2)** A person may request a review of an advance ruling made under section 43.1 within ninety days after it is given to the person.	**Demande de révision** **(2)** Toute personne qui a reçu une décision anticipée prise en application de l'article 43.1 peut, dans les quatre-vingt-dix jours suivant la notification de la décision anticipée, en demander la révision.
How request to be made **(3)** A request under this section must be made to the President in the prescribed form and manner, with the prescribed information.	**Présentation de la demande** **(3)** La demande prévue au présent article est présentée au président en la forme et selon les modalités réglementaires et avec les renseignements réglementaires.
President's duty on receipt of request **(4)** On receipt of a request under this section, the President shall, without delay, **(a)** re-determine or further re-determine the origin, tariff classification or value for duty; **(b)** affirm, revise or reverse the advance ruling; or **(c)** re-determine or further re-determine the marking determination.	**Intervention du président** **(4)** Sur réception de la demande prévue au présent article, le président procède sans délai à l'une des interventions suivantes : **a)** la révision ou le réexamen de l'origine, du classement tarifaire ou de la valeur en douane; **b)** la confirmation, la modification ou l'annulation de la décision anticipée; **c)** la révision ou le réexamen de la décision sur la conformité des marques.
Notice requirement **(5)** The President shall without delay give notice of a decision made under subsection (4), including the rationale on which the decision is made, to the person who made the request.	**Avis de la décision** **(5)** Le président donne avis au demandeur, sans délai, de la décision qu'il a prise en application du paragraphe (4), motifs à l'appui.
Appeals and References	**Appels et recours**

Appeal to the Canadian International Trade Tribunal	**Appel devant le Tribunal canadien du commerce extérieur**
67 (1) A person aggrieved by a decision of the President made under section 60 or 61 may appeal from the decision to the Canadian International Trade Tribunal by filing a notice of appeal in writing with the President and the Canadian International Trade Tribunal within ninety days after the time notice of the decision was given.	**67 (1)** Toute personne qui s'estime lésée par une décision du président rendue conformément aux articles 60 ou 61 peut en interjeter appel devant le Tribunal canadien du commerce extérieur en déposant par écrit un avis d'appel auprès du président et du Tribunal dans les quatre-vingt-dix jours suivant la notification de l'avis de décision.
Publication of notice of appeal	**Publication de l'avis d'appel**
(2) Before making a decision under this section, the Canadian International Trade Tribunal shall provide for a hearing and shall publish a notice thereof in the *Canada Gazette* at least twenty-one days prior to the day of the hearing, and any person who, on or before the day of the hearing, enters an appearance with the Canadian International Trade Tribunal may be heard on the appeal.	**(2)** Avant de se prononcer sur l'appel prévu par le présent article, le Tribunal canadien du commerce extérieur tient une audience sur préavis d'au moins vingt et un jours publié dans la Gazette du Canada, et toute personne peut être entendue à l'appel si, au plus tard le jour de l'audience, elle a remis un acte de comparution au Tribunal.
Judicial review	**Recours judiciaire**
(3) On an appeal under subsection (1), the Canadian International Trade Tribunal may make such order, finding or declaration as the nature of the matter may require, and an order, finding or declaration made under this section is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by section 68.	**(3)** Le Tribunal canadien du commerce extérieur peut statuer sur l'appel prévu au paragraphe (1), selon la nature de l'espèce, par ordonnance, constatation ou déclaration, celles-ci n'étant susceptibles de recours, de restriction, d'interdiction, d'annulation, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues à l'article 68.
Appeal to Federal Court	**Recours devant la Cour d'appel fédérale**
68 (1) Any of the parties to an appeal under section 67, namely,	**68 (1)** La décision sur l'appel prévu à l'article 67 est, dans les quatre-vingt-dix jours suivant la date où elle est rendue, susceptible de recours devant la Cour d'appel fédérale sur tout point de droit, de la part de toute partie à l'appel, à savoir :
(a) the person who appealed, **(b)** the President, or **(c)** any person who entered an appearance in accordance with subsection 67(2),	**a)** l'appelant; **b)** le président; **c)** quiconque a remis l'acte de comparution visé au paragraphe 67(2).

may, within ninety days after the date a decision is made under section 67, appeal therefrom to the Federal Court of Appeal on any question of law.	
Disposition of appeal	**Issue du recours**
(2) The Federal Court of Appeal may dispose of an appeal by making such order or finding as the nature of the matter may require or by referring the matter back to the Canadian International Trade Tribunal for re-hearing.	**(2)** La Cour d'appel fédérale peut statuer sur le recours, selon la nature de l'espèce, par ordonnance ou constatation, ou renvoyer l'affaire au Tribunal canadien du commerce extérieur pour une nouvelle audience.
Penalties and Interest	**Pénalités et intérêts**
Designated provisions	**Dispositions désignées**
109.1 (1) Every person who fails to comply with any provision of an Act or a regulation designated by the regulations made under subsection (3) is liable to a penalty of not more than twenty-five thousand dollars, as the Minister may direct.	109.1 (1) Est passible d'une pénalité maximale de vingt-cinq mille dollars fixée par le ministre quiconque omet de se conformer à une disposition d'une loi ou d'un règlement, désignée par un règlement pris en vertu du paragraphe (3).
Failure to comply	**Défaut de se conformer**
(2) Every person who fails to comply with any term or condition of a licence issued under this Act or the *Customs Tariff* or any obligation undertaken under section 4.1 is liable to a penalty of not more than twenty-five thousand dollars, as the Minister may direct.	(2) Est passible d'une pénalité maximale de vingt-cinq mille dollars fixée par le ministre quiconque omet de se conformer à une condition d'un agrément octroyé en vertu de la présente loi ou du *Tarif des douanes* ou à une obligation prévue dans un engagement accepté en vertu de l'article 4.1.
Designation by regulation	**Prescription par règlement**
(3) The Governor in Council may make regulations (a) designating any provisions of this Act, the *Customs Tariff* or the *Special Import Measures Act* or of any regulation made under any of those Acts; and (b) establishing short-form descriptions of the provisions designated under paragraph (a) and providing for the use of those descriptions.	(3) Le gouverneur en conseil peut, par règlement : a) désigner toute disposition de la présente loi, du *Tarif des douanes* ou de la *Loi sur les mesures spéciales d'importation*, ou de leurs règlements d'application; b) formuler les descriptions abrégées des dispositions désignées en vertu de l'alinéa a) et prévoir l'utilisation de ces descriptions.
Assessment	**Cotisation**

109.3 (1) A penalty to which a person is liable under section 109.1 or 109.2 may be assessed by an officer and, if an assessment is made, an officer shall serve on the person a written notice of that assessment by sending it by registered or certified mail or delivering it to the person.	**109.3 (1)** Les pénalités prévues aux articles 109.1 ou 109.2 peuvent être établies par l'agent. Le cas échéant, un avis écrit de cotisation concernant la pénalité est signifié à personne ou par courrier recommandé ou certifié par l'agent à la personne tenue de la payer.
Limitation on assessment **(2)** A person shall not be assessed penalties under both sections 109.1 and 109.2 in respect of the same contravention of this Act, the *Customs Tariff* or the *Special Import Measures Act* or the regulations made under those Acts.	**Restriction** **(2)** Une infraction à la présente loi, au *Tarif des douanes*, à la *Loi sur les mesures spéciales d'importation* ou à leurs règlements d'application ne peut faire l'objet à la fois de la pénalité prévue à l'article 109.1 et de celle prévue à l'article 109.2.
Penalty in addition to other sanction **(3)** An assessment under subsection (1) may be made in addition to a seizure under this Act or a demand for payment under section 124, in respect of the same contravention of this Act or the regulations.	**Pénalité supplémentaire** **(3)** Une saisie effectuée en vertu de la présente loi ou l'avis réclamant un paiement en vertu de l'article 124 relativement à une infraction donnée à la présente loi ou à ses règlements d'application n'empêche pas l'établissement d'une pénalité en vertu du paragraphe (1) pour la même infraction.
Sufficiency of short-form description **(4)** The use on a notice of assessment of a short-form description established under paragraph 109.1(3)(b) or of a description that deviates from that description without affecting its substance is sufficient for all purposes to describe the contravention.	**Emploi de la description abrégée** **(4)** Pour caractériser une contravention, il suffit d'en reporter sur l'avis de cotisation la description abrégée visée à l'alinéa 109.1(3)b) ou toute autre description qui n'en diffère pas quant au fond.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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