

Federal Court



Cour fédérale

Date: 20231013

Docket: T-917-21

Citation: 2023 FC 1368

Ottawa, Ontario, October 13, 2023

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

**AKME POULTRY, BUTTER & EGGS
DISTRIBUTORS INC**

Applicant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Akme Poultry, Butter & Eggs Distributors Inc [Akme or the company] is applying for judicial review of a decision dated May 11, 2021 [Decision] by a senior officer for trade compliance [Officer] with the Canada Border Services Agency [CBSA]. The Officer rejected Akme's duty drawback claims under the Duty Drawback Program [DDP] governed by sections 89 and 113 of the *Customs Tariff*, SC 1997, c 36, and by the *Goods Imported and*

Exported Refund and Drawback Regulations, SOR/96-42, on the grounds that Akme failed to provide the books and records requested by the CBSA in support of such claims.

[2] The Minister of Public Safety and Emergency Preparedness [Minister] argues that this case is about the CBSA's broad statutory power to compel production of documents and records from an importer of goods that the CBSA, in its discretion, may require in support of a drawback application under the *Customs Act*, RSC 1985, c 1 (2nd Supp) [Act], as well as the CBSA's capability of exercising such powers to inspect any records that may be relevant to the assessment and collection of duties, regardless of having any reasonable grounds to believe that there has been a breach of the Act. However, in my view, that is not what this case is about; nor is the present application for judicial review about whether Akme met the conditions of the DDP so that its drawback application should have been granted. Rather, this case is about the failure of the Officer to engage with central aspects raised by Akme in response to the further demand by the CBSA for the books and records of the company, contrary to what the Supreme Court has again, just recently, reminded us that administrative decision-makers must do if they are to avoid having their decisions set aside (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [Mason] at para 74). For the reasons that follow, I grant the present application for judicial review.

II. Background

[3] Akme is a family-run food processing business headquartered in Saint-Eustache, Quebec which processes domestic poultry and poultry imported from the United States into a variety of processed poultry products, including individually quick frozen marinated chicken breasts. The

DDP is a program administered by the CBSA meant to allow the Canadian food processing industry to be competitive, and whose purpose is to incentivize and facilitate trade for the Canadian businesses that participate in it. Section 89 of the *Customs Tariff* is the basis for the DDP, in particular paragraph 89(1)(d) in this case. There is both a discretionary and a compulsory aspect to the DDP, which represents a benefit or a privilege to those who qualify for the program. Under the DDP, when goods are imported into Canada and re-exported, or where processed products made using substitute domestic or imported goods [Substitute Goods] that are of the same class as the imported Goods [Goods of the Same Class] are exported, the processor is eligible to obtain a refund of the duties paid on the imported Goods, provided that certain statutory requirements are met.

[4] In the course of its business, Akme processed chicken imported from the United States as well as domestically sourced chicken into processed poultry products that were then exported to the United States. Between December 2017 and February 2018, Akme made 11 duty drawback applications under the DDP representing approximately 45 different transactions, totalling approximately \$5.37 million [First Set of drawback claims]. In addition, in June 2019, Akme submitted to the CBSA a further five drawback applications representing five additional transactions [Second Set of drawback claims].

[5] By letter dated August 23, 2019 [August 2019 decision], the CBSA agreed to refund only approximately \$1.8 million of Akme's First Set of drawback claims, finding that the Substitute Goods that were the subject of some of Akme's claims did not meet the DDP requirements. In particular, the CBSA determined that nine transactions did not meet the Goods of the Same Class

requirement, i.e., Akme's imported Goods and Akme's Substitute Goods were different products given the differences in the respective descriptions used to identify them in the transaction documentation [Same Class Requirement issue]; in 20 transactions, the CBSA could not determine the origin of the Substitute Goods purchased domestically by Akme [Origin issue]; and in five transactions, the weight of the imported Goods was higher than the weight of the Substitute Goods [Weight issue].

[6] No judicial review was sought of the August 2019 decision. Rather, Akme responded by sending lengthy submissions to the Minister by letter dated November 6, 2019 [November 2019 submissions], requesting that the August 2019 decision in relation to the First Set of drawback claims be overturned and that its drawback applications be accepted. In short, Akme argued, as regards the Same Class Requirement issue, that its Substitute Goods and imported Goods met the Goods of the Same Class requirement; as regards the Origin issue, that the origin of the Substitute Goods was irrelevant to its drawback claims because all of the substitute product was purchased from Canadian slaughterhouses and was thus domestic; and as regards the Weight issue, that it was in fact a non-issue because it was merely the result of chicken being a natural animal product with possible water retention discrepancies. Along the way, the parties seem to have resolved the Weight issue regarding five of the transactions. However, the Same Class Requirement issue and the Origin issue remained live issues with respect to the First Set of drawback claims; Akme argues that the CBSA never responded to its submissions with respect to those two live issues.

[7] By letter dated February 28, 2020 [February 2020 decision], the Officer rejected Akme's Second Set of drawback claims, indicating that the applications could not be processed because of certain "omissions that prevent the [CBSA] from processing these requests any further" and that they were thus found invalid. The CBSA detailed the omissions in Akme's claims and invited the company to resubmit its drawback claims once the specifically identified issues had been resolved and the requested documents had been provided—the additional specific information and documentation were purportedly needed to identify and trace the Imported Goods from importation through any processing, transfers or use of Goods of the Same Class, to the ultimate export or disposition of the goods [the concept of traceability]. Consequently, the Same Class Requirement issue continued to be a live issue in relation to the Second Set of drawback claims; again, no judicial review was sought with respect to the February 2020 decision.

[8] Akme nonetheless continued to pressure the CBSA. Following a series of exchanges between the parties which included further submissions by Akme, on May 22, 2020, the Officer sent Akme a letter [May 2020 decision] confirming the rejection of the Second Set of drawback claims; the Officer stated that after the company's most recent submissions were reviewed, it was "determined that not all of the information requested [by the CBSA] was submitted." The Officer underscored that it was incumbent upon Akme to demonstrate "full traceability and compliance with the program requirements, including demonstrating that all program obligations relating to *Goods of the Same Class* are met." The Officer continued:

This means that the participant must first clearly identify the goods (individual or by lot, raw material, part, or product, including quantities) under consideration. In addition, the participant must document all necessary information to trace the exported goods

back through any processing (including all inputs and outputs) or transfers, to the imported goods or *Goods of the Same Class* applied. Thus, traceability is the ability to identify and trace the quantity, use and movement of the goods throughout.

Without verifying the traceability of the goods, the *Agency* is unable to certify whether the claims submitted meet the conditions of the program requirements, and therefore is unable to complete the claim review.

[9] The Officer nonetheless confirmed that “[s]hould Akme wish to resubmit these claims, the following information should be included...” [emphasis added], and went on to identify, amongst other things, copies of purchase orders, commercial invoices, product identification information, a description of various production processes, and a description of how the processes and goods met the Goods of the Same Class conditions for the applied equivalence use. Finally, the Officer specifically requested access to Akme’s “books and records”:

In addition to the above, please note that the CBSA will also require access to specific company books and records to conduct this verification such as:

- the records/log used to track import and export shipments to and from Federally Registered Meat Establishments (required under the Meat Hygiene Manual of Procedures, Canadian Food Inspection Agency (CFIA)).
- specific detailed ledgers (i.e. vendor, inventories (raw and finished goods), production, sales/transfers etc.); and
- accounts which include production ‘leftovers’ (i.e. scrap or waste certificates, production loss factors, by-product produced); and/or

Note: if by-products are created during the process and that by-product is not exported, a Value Outturn Statement is also required to substantiate the eligible amount of drawback.

- any other documentation which would allow the CBSA to substantiate whether the goods and quantities claimed meet the conditions of the program.

These newly completed or amended *K32 Drawback Claim Forms* may be resubmitted to the CBSA along with all of the above requested information within the legislative time limits and that claims submitted beyond these time limits will be rejected.

[Emphasis added.]

[10] The Minister states that the specific list of items and information identified in the May 2020 decision clearly set out the case that Akme had to meet with the resubmissions of its claims, i.e., the information that the resubmissions needed to provide in order for the CBSA to reconsider the rejected claims. In other words, argues the Minister, reconsideration of drawback claims already rejected was conditional upon Akme providing the requested information, and in particular its books and records. That is not to say that Akme could not continue to resubmit its drawback claims for reconsideration, but only that there is no statutory duty to reconsider them and that the CBSA was not obliged to continuously reconsider submissions in respect of drawback claims that it already had rejected.

[11] Akme draws a distinction between the Origin issue and the concept of traceability, and argues that concern over the Origin issue was not expressed by the Officer in either the February 2020 decision or the May 2020 decision and that consequently, from its perspective, the only live issues preventing the resolution of the Second Set of drawback claims up to that point were the Same Class Requirement issue and the general requirement to show traceability. It should also be kept in mind, and as explained by counsel before me, that traceability is not, in itself, a legislative requirement for the DDP; rather, according to Akme, traceability is a concept

that the CBSA uses as a mechanism to confirm if the product has been imported and substituted with the new product, which was then exported—in essence, a map of the product’s processing chain from importation to Canada to re-exportation from Canada.

[12] In any event, by a letter dated September 29, 2020 [September 2020 resubmission], Akme resubmitted its unpaid drawback requests from the First Set and Second Set of drawback claims, compiled as seven claims totalling approximately \$4 million—a fresh start so to speak—accompanied by substantial submissions which it states clearly establish “full traceability and compliance with the program requirements, including demonstrating that all program obligations relating to *Goods of the Same Class* are met.” The submissions provided a purported roadmap in which Akme explained its business model and operations; provided a “walkthrough” of a sample transaction so as to show traceability, with reference to supporting documentation, including Excel spreadsheets; explained its products; reviewed how its imported and domestically purchased substitute chicken complied with the Goods of the Same Class requirement; explained how the CBSA could trace Akme’s products from import/purchase to export/sale; provided a chart of product descriptions for its imported, substitute and exported goods; and responded to the CBSA’s questions and request for information made in the May 2020 decision. The September 2020 resubmission also provided a Q&A table whereby Akme seemingly sets out all of the questions asked and requests made previously by the CBSA in relation to its drawback requests, and provides specific responses. In essence, Akme states that it was looking to fill the gaps of those certain “omissions that prevent the [CBSA] from processing these requests any further” and provided, in its view, a complete package of documents to establish that each of its drawback claims met all of the conditions of the DDP.

[13] According to the CBSA, however, Akme did not provide any new documents; the documents included in the September 2020 resubmission may have been the same documents as those previously submitted, although according to Akme, there were fresh explanations and tools to show that the documents indeed respond to the CBSA's questions and requests as part of the May 2020 decision. Nor did Akme produce its books and records, although in fairness it may not have been clear to Akme whether, in "requiring access", the CBSA was actually making a demand for production of the books and records in its May 2020 decision. In any event, Akme argues that the Officer either already had the specific documents that he had requested—and thus his request for them again is an indication of his failure to engage with what Akme had already submitted—or had the relevant information already on hand but in a different format, filed as part of prior submissions, which would allow the Officer to assess any outstanding issues and come to a determination as to whether Akme's drawback requests met all of the DDP requirements.

[14] Akme also takes the position that its September 2020 resubmission seemingly resolved the Same Class Requirement issue, and points to internal correspondence in the record between CBSA personnel dated February 1, 2021 [February 2021 internal communication] which states that "[w]e maintain our earlier position that from a goods of the same class perspective only, it is our opinion based on the available information that the goods in question have met all of the legislative Drawback Program requirements to qualify for the goods of the same class provision. Therefore, the verification can proceed to determine if all of the other program conditions were met" [emphasis added]. Before me, Akme also noted that the February 2021 internal communication was before the Officer when he rendered the Decision, yet there is no indication

that the Officer considered it before rejecting its claims. The Minister takes the position that the February 2021 internal communication was simply an off-the-cuff statement from an individual who was not involved in the file. However, I must agree with Akme that it is nonetheless the only area in the record where the CBSA is seen to somehow engage with the issue of determining whether Akme's drawback claims meet the Goods of the Same Class requirement.

[15] In any event, on March 11, 2021, the Officer wrote to Akme [March 2021 request], this time specifically requesting the books and records that had been mentioned in the May 2020 decision so as to conduct the verification of the drawback claims. The Officer again noted that Akme had not provided any new documents “in regards to the traceability of the goods in order to determine the origin of the chickens purchased in Canada” [emphasis added], including from two of Akme's domestic suppliers; this, according to the Minister, went to the Origin issue as regards the substitute chicken purchased in Canada. From what I understood from counsel, it was not enough for Akme to confirm that the substitute chicken was domestically purchased (i.e., purchased by Akme in Canada); rather, the CBSA was looking to determine whether that product was initially Canadian—or foreign—sourced. The letter also indicated that Akme needed to provide the CBSA with “sufficient satisfactory documentation upon request that demonstrates full traceability and compliance with the program requirements, including demonstrating that all program obligations relating to *Goods of the Same Class* are met.”

[16] Before me, the Minister argued that traceability is not simply about the origin of the domestic chicken, but also about the need for the CBSA to follow and track the movement of the product from, in this case, the purchase of equivalent goods through processing and thereafter

out to export; the Minister argues that there are several conditions that Akme had to meet to establish eligibility for the DDP and that evidence of traceability allows the CBSA to follow the product along the processing chain and substantiate Akme's assertions on having met DDP requirements. In the Minister's view, and contrary to the position taken by Akme, the March 2021 request did not link traceability solely to the Origin issue, but to all the conditions of the DDP. However, from my perspective, I certainly understand how Akme could have read the March 2021 request as linking the traceability requirement to the Origin issue, with the Officer simply asserting that without verifying the traceability of the goods (i.e., so as to address the Origin issue), the CBSA is "unable to certify whether the claims submitted meet the conditions of the program requirements".

[17] In any event, the Minister argues that the March 2021 request was Akme's last chance—last amongst many previous chances—to provide the "books and records" of the company to substantiate Akme's previously made submissions regarding its compliance with DDP requirements. What is clear, however, is that the March 2021 request does not address Akme's assertion that all the documents required to determine whether the company had complied with the DDP requirements were in fact received by the CBSA. In particular, the March 2021 request does not address the previous submissions of Akme with respect to either the Same Class Requirement issue (including the February 2021 internal communication) or the Origin issue, nor does it identify any other requirement of the program that was still a live issue needing to be verified by way of traceability, nor does it reference where in previous exchanges one may find its engagement with Akme's submissions on those issues. According to the Minister, the CBSA

did not have to address these aspects, as engagement with Akme's submissions was fulfilled with the May 2020 decision when the case that Akme had to meet was laid out.

[18] By letter dated March 26, 2021 [March 2021 submissions], Akme replied to the March 2021 request by referring to its September 2020 resubmission and stating that the CBSA "has already received all documentation required to substantiate that the conditions of the [DDP] as to importation, interchangeability of substitute goods, processing and export have been met" [emphasis added]; the September 2020 resubmission seemingly explained in detail how Akme met the Goods of the Same Class requirement. Admittedly, Akme did not provide the CBSA with any new documents along with the March 2021 submissions. Rather, Akme stated that the CBSA's request for the books and records of the company is predicated on determining the origin of the Substitute Goods, but that the origin of any substitute product purchased in Canada is irrelevant to the company's drawback claims because Akme has not requested duty drawbacks in relation to the chicken purchased in Canada, but rather only in relation to product imported into Canada from the United States; according to Akme, the Minister may just as well have requested books and records to establish that the chickens were hatched on a Monday rather than a Wednesday.

[19] In any event, Akme explained that regardless of the relevance of the documentary request, it had attempted to secure the requested origin documents from its Canadian domestic suppliers from whom it had purchased the product, but to no avail. However, from the Minister's perspective, the Origin issue is not only tied to imported chicken but also to chicken purchased domestically, as it is imperative that the CBSA be able to determine whether the domestically

purchased chicken, itself, was sourced elsewhere and had possibly already benefited from the DDP after having been imported from, say, the United States.

[20] From the Minister's perspective, Akme could have, and should have, simply provided the books and records that the Officer requested; rather, with the September 2020 resubmission and the March 2021 submissions, the company embarked on an arduous attempt to explain to the CBSA that it already had all the documents that it needed to address the claims. In fact, Akme states that its submissions went further than that, in that the company's submissions actually pointed to where in their application package the Officer would have found many of the documents and much of the information now being requested, but that the request for the "books and records" to ascertain the origin of the Substitute Goods was simply improper under the circumstances as it was irrelevant to their claim.

[21] In the Decision dated May 11, 2021, the Officer rejected Akme's resubmitted drawback claims solely on the grounds of Akme's failure to provide the requested "books and records", without any mention of Akme's assertion that some of the documents were already in hand and that the CBSA nonetheless already had sufficient documents and information to assess and accept the claims. The Officer indicated that under subsection 40(1) of the Act and paragraph 113(3)(a) of the *Customs Tariff*, Akme was obliged to "provide the CBSA with the required documentation in order to determine eligibility" and that, in essence, the failure to do so—in this case, the failure to provide the specific books and records requested—justified the rejection of its claims. In other words, Akme's drawback claims were not rejected because of an

expressed failure to meet the identified conditions or requirements of the DDP, but because the company had failed to provide the specific “books and records” requested by the Officer.

III. Analysis

A. *Preliminary issues*

[22] As a preliminary matter, the Minister argues that exhibits A, B, C, and E of the affidavit of Spyros Plessas dated January 14, 2022, should be struck as inadmissible because those documents were not before the Officer as part of the drawback claims and were not part of the certified tribunal record under rule 318 of the *Federal Courts Rules*, SOR/98-106; the corresponding paragraphs 6, 10 to 13, and 15 of the affidavit should be struck on the same basis. I am dismissing the Minister’s request. There is no doubt that, generally, only evidence that is actually before the decision-maker is admissible on judicial review. However, and putting aside that Exhibit E was seemingly before the Officer at the time that he rendered the Decision, the impugned paragraphs and exhibits fall under the “general background” exception—one of the few exceptions to the general rule—as information that might assist the Court in understanding the history and nature of the case before the administrative decision-maker and the issues relevant to judicial review (*Delios v Canada (Attorney General)*, 2015 FCA 117 at paras 41–46; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20). Therefore, I only consider those paragraphs and exhibits as non-argumentative orienting statements; I would say, however, that although the words “[o]nce again, Akme had to resort to legal recourse and sought judicial review of the 2018 Denial” found at paragraph 13 of Mr. Plessas’s affidavit may push this exception to its limit,

nothing turns on what may likely be, rightly or wrongly, only an expression of frustration on the part of the affiant.

[23] In addition, although Akme seeks in its notice of application that, *inter alia*, the Court set aside the notices of penalty assessments made against it, the parties confirmed before me that no such notices have been issued against the company.

B. *Standard of review*

[24] As to the Decision itself, the parties agree that the standard of review applicable to the merits of the Decision is that of reasonableness; the determinative issue is whether the Officer provided reasons that are responsive to the central issues raised by Akme in its submissions and that are transparent, intelligible and justified (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 15, 81, 94, 127 and 128).

C. *The reasonableness of the Decision*

[25] I have set out the relevant statutory and regulatory provisions in the Annex to my decision. I should also mention that Akme raises a number of issues, any one of which the company argues renders the Decision unreasonable. However, given my decision regarding the paucity of the Officer's engagement with, and the Officer's lack of responsiveness to, the central issues raised by the company in its submissions, I do not see it necessary to deal with those other issues.

[26] The thrust of the Minister's argument relates to his broad powers under the Act to require access to and to examine an importer's records, and the obligation on the part of the importer to retain records for that purpose; the powers are broad because, argues the Minister, the regime established by the Act, the *Customs Tariff* and the trade incentive programs they provide for is based on a voluntary, self-reporting customs system, and the effectiveness of such a system depends on the importer's legal obligation to maintain adequate books and records and on the Minister's power to verify compliance with legislation through inspection, audit or examination of these records (*Martineau v Minister of Revenue et al*, [2004] 3 SCR 737 at paras 25 and 26). The Minister compares and contrasts sections 230, 231.1 and 231.2 of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA], with sections 40, 42 and 43 of the Act, and argues that similar obligations exist with respect to taxpayers maintaining records—in the context of tax audits, argues the Minister, the Supreme Court of Canada has found that the Minister of National Revenue has broad powers for the administration and enforcement of the ITA, and must be capable of exercising those broad powers to inspect any records by auditing and examining those records that may be relevant to the assessment and collection of taxes, regardless of having any reasonable grounds to believe that there has been a breach of the ITA (*R v McKinlay Transport Ltd*, [1990] 1 SCR 627 at 648–650; *R v Jarvis*, 2002 SCC 73 at paras 47–53).

[27] In administering the DDP, argues the Minister, the CBSA relies on importers' financial records to ensure compliance with subsection 89(1) of the *Customs Tariff*, and the maintenance of books and records would not assist in monitoring compliance with the Act if the Minister was not able to consult those books and records; in fact, adds the Minister, an importer who seeks to take advantage of a trade incentive program under the Act loses the right to exclude an inquiry

by the Minister for the purpose of verifying compliance with the program (*Canada (Minister of National Revenue) v Redeemer Foundation*, 2006 FCA 325 at paras 31 and 39 (aff'd in *Redeemer Foundation v Canada (National Revenue)*, 2008 SCC 46)). Accordingly, Akme necessarily had to provide the books and records that would allow the CBSA to trace each import transaction through any processing, transfer or use of Goods of the Same Class, and ultimately to the exportation of the same quantity of goods as the quantity of goods that was originally imported. Such records had to be presented in a manner that would allow the CBSA to perform a detailed audit and determine the amount of duties to be refunded (*Imported Goods Records Regulations*, SOR/86-1011, s 4 [Regulations]).

[28] The Minister argues that the CBSA can request any document that it, and not Akme, believes is necessary in order to assess a drawback claim, as long as such a request relates to the “administration and enforcement” of the Act; the Minister points to paragraph 113(3)(a) of the *Customs Tariff*, which provides that, for the purposes of granting a drawback claim pursuant to subsection 113(1), a drawback application “must be supported by such evidence as the [Minister] may require” [emphasis added]. According to the Minister, this ties in to subsection 40(1) of the Act, which requires that every person “who imports goods or causes goods to be imported...shall keep...any records in respect of those goods...and shall, where an officer so requests, make them available to the officer...” [emphasis added]. Subsection 40(2) of the Act reads: “If, in the opinion of the Minister, a person has not kept records in accordance with subsection (1), the Minister may request that person to comply with that subsection in respect of the records.”

[29] The Minister also points to subsection 2(1) of the Regulations in support of his position that every person who is required by subsection 40(1) of the Act to keep records of commercial goods must keep all records that relate to a specific list of items enumerated in that subsection of the Regulations. In any event, states the Minister, sections 42 and 43 of the Act—which admittedly relate to the Minister’s audit powers—empower the Minister to require any person to provide any record for any purpose related to the administration or enforcement of the Act. Consequently, it is for the Officer, and not Akme, to decide what information and documents must be produced in order for a drawback claim to be accepted, and the failure to produce such documents alone is justification for the rejection of such claims.

[30] Akme concedes that the CBSA enjoys a broad power to request production of documents for the further administration of the Act. However, it states that the breadth of the Minister’s statutory power is nonetheless subject to the parameters set out by the Supreme Court in *Vavilov*; the argument that Akme is making in its submissions to the Officer and before me is that subsection 40(1) of the Act only requires an importer to maintain records of imported goods, and not of domestically sourced goods, which make up the Substitute Goods in this case, that are relevant to the company’s duty drawback applications. The Minister reads subsection 40(1) of the Act more broadly, as referring to records for all goods of an importer: not just with respect to imported products, but also with respect to domestically sourced goods. That is of course a debatable issue, one which the Officer seems to have conveniently avoided with the rendering of his Decision. In fact, argues Akme, the Officer never addressed any of the issues raised by Akme in relation to the documents requested, to wit, that the request for the “books and records” in relation to the origin of the Substitute Goods was irrelevant to the company’s drawback claims

and thus untethered to any statutory purpose; that the Officer was already in possession of some of the documents that he was requesting or at least had the information being requested, although in a different format; or that Akme had already provided all the documentation required to substantiate the outstanding issue of the Goods of the Same Class requirement.

[31] Akme states that subsection 2(1) of the Regulations is of little assistance to the Minister in the present context, as the requirement set forth therein is nonetheless tied to subsection 40(1) of the Act, and thus is limited to records relating to imported goods and does not cover those related to domestically sourced goods. In addition, Akme argues that sections 42 and 43—provisions which the Minister accepts relate to his audit powers—are also of little assistance, as we are not dealing here with a situation where the Minister is auditing Akme and compelling production of documents and records in support thereof.

[32] Akme argues that the Officer is under a statutory duty to assess the company's application for duty drawbacks, and where there has already been evidence of substantial documentary disclosure (here, over 3,000 pages of documentation addressing each of the legislative requirements under the DDP and over 40 pages of explanatory submissions), there has to be a connection between the further and continual request for documentation and the purpose of that request. Akme argues that the Officer had a duty to justify his decision to reject the company's claims, and in doing so, was required to address the central aspects of Akme's arguments as to the appropriateness of his request for the books and records; any discretion to request documents in the context of reviewing an application under the DDP pursuant to paragraph 113(3)(a) of the *Customs Tariff* cannot be arbitrarily exercised.

[33] According to Akme, it has met all of the legislative requirements so as to benefit from the DDP; however, the CBSA is refusing to engage with its submissions and assess its documents, or to identify the gaps so that they can be rectified, yet relentlessly continues to ask for more documents. According to Akme, what we are witnessing, in essence, is a petulant CBSA not following its past practice of identifying which conditions of the DDP have been met and which remain outstanding and thus giving the claimant an idea of the case that it needs to meet; refusing to exercise the statutory authority delegated to it by the Act; and abdicating the role assigned to it by Parliament by refusing to properly assess the company's submissions and to analyze the documents provided by Akme in support of its drawback claims. In short, from the company's perspective, the CBSA has failed to grapple with the information and documents already provided by Akme in support of its drawback claims, or to engage in the central aspects of Akme's response to the CBSA's request for further documentation; rather, it simply continues to stick its head in the sand and plough forward with a request for more and more documents. From the company's perspective, the Officer appears to have been searching for spurious grounds to avoid having to review the company's substantial submissions, with the single-minded view of disqualifying Akme's drawback claims; the CBSA's continual requests for documents are simply not based on a rational chain of analysis (*Vavilov* at paras 85 and 103), *inter alia*, because such requests relate to an issue—the Origin issue—which is not germane to Akme's drawback claims. We must keep in mind that in its March 2021 submissions, Akme argues that the origin of the substitute chicken is irrelevant and that the request for documents to verify the origin of the substitute chicken is thus unreasonable, and that issue—which is central to Akme's position—was never addressed by the Officer. As the Decision fails to address, and engage in any way with, the key issues that the company raised in its response to the CBSA's

request for additional documentation, it is neither transparent, nor intelligible, nor justified, according to Akme.

[34] The company also argues that nothing in the text of subsections 89(1) and 113(3) of the *Customs Tariff* or subsection 40(1) of the Act grants the CBSA discretion to refuse claims based solely on a failure to provide records of domestically sourced goods upon request. In the end, Akme argues that it no longer knows what case it has to meet; from the company's perspective, it is on an endless merry-go-round with the CBSA in seeking reimbursement of about \$4 million of duties that it has already paid and that it has a right to receive under the prevailing statutory provision, yet the CBSA keeps moving the goalposts on them by continually seeking more and more documents without reviewing what has already been submitted by the company.

[35] From the Minister's perspective, the issues raised by Akme were somehow addressed in the March 2021 request when the Officer stated that "[a] review of the documentation and explanation provided with the re-submission...we have notice [*sic*] that no new documents were presented.... Without verifying the traceability of the goods, the CBSA is unable to certify whether the claims submitted meet" the DDP requirements. In any event, argues the Minister, he has the right to seek substantiation or corroboration of the information already provided by Akme, and while not necessarily disputing the information submitted by Akme, the Minister argues that he has the authority to corroborate the information submitted by a claimant via the books and records of the company, in particular the accounting records, especially where, as is the case here, discrepancies have been raised within the documents that were submitted. Here, argues the Minister, the CBSA required the additional documents because the documents that

Akme had previously submitted did not allow the CBSA to make such a determination; the Minister cites *Gugliotti v Canada (Citizenship and Immigration)*, 2017 FC 71 [*Gugliotti*] at paragraphs 36 to 37 for the proposition that a party can expect the reconsideration of its application to be denied if it fails to provide information requested by a decision-maker to assess the reliability of previously filed evidence.

[36] First of all, I do not read the March 2021 request as the Minister is suggesting. There is no explanation, in response to Akme's submissions, as to why the Origin issue is relevant when Akme has not requested duty drawbacks in relation to chicken purchased in Canada. Also, whether or not Akme was correct in its argument regarding the Origin issue, it seems to me that the company was entitled to a response on the issue from the CBSA as it was directly tied to the Officer's request for the books and records of the company, the non-delivery of which was the sole reason for the rejection of the company's applications and the issuance of the Decision. The reasoning behind the simple request for documents without further substantiation, notwithstanding the submissions of Akme, cannot be found to be internally coherent. The Officer's reasoning is simply that the CBSA requested documents, that Akme did not provide them, and that thus, the dismissal of the claim was justified. I find this approach untenable. As *Vavilov* makes clear, "[r]easons that 'simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion' will rarely assist a reviewing court in understanding the rationale underlying a decision and 'are no substitute for statements of fact, analysis, inference and judgment'" (*Vavilov* at para 102; see also *Osun v Canada (Citizenship and Immigration)*, 2020 FC 295 at para 26); here, we do not even have a summary of the arguments made by Akme. Further, while decision-makers are not required to respond to every

argument raised, the failure to meaningfully grapple with and provide reasons that are responsive to the central issues raised by the parties may call into question whether the decision-maker was alert and sensitive to the matter before it (*Vavilov* at paras 127–128).

[37] Akme's position is that we are not in a situation where the company is under audit and where the CBSA is seeking to compel the disclosure of records for the purpose of determining whether the company has paid appropriate customs duties (as would be the case in a tax audit under the ITA); thus, sections 42 and 43 of the Act do not apply. Rather, having already paid nearly \$4 million in customs duties, Akme is seeking to benefit from a statutory incentive program and is applying for the refund of those duties; either the company has met the conditions of the program or it has not, with the burden being upon Akme to establish that it has (*9058-3956 Quebec Inc et al v Canada (Public Safety and Emergency Preparedness)*, 2006 FCA 363 [*9058-3956 Quebec Inc*] and *Sebag et al v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 310 [*Sebag*]).

[38] From my perspective, the Minister is hardly at the mercy of the voluntary, self-reporting system—as would be the case with an audit under the ITA—and now trying to see if, say, deductions were properly claimed. It is for the Minister to assess, with the information that he requests, whether the application for a refund of the duties is warranted. In any event, from my perspective, whether sections 42 and 43 of the Act apply in this context is less important. I read paragraph 113(3)(a) of the *Customs Tariff* as being wide enough to cover the documents and information which the Officer reasonably believes, in his discretion, to require in the assessment of Akme's drawback claims. However, Akme is not challenging the Officer's authority to

request such supporting documentation as may be required pursuant to paragraph 113(3)(a) of the *Customs Tariff*, but rather the reasonableness of this request in view of its submissions, in particular as regards the books and records for the purposes of assessing the Origin issue, and the fact that Akme's failure to submit these documents led to the rejection of its drawback claims.

[39] In any event, I must agree with Akme: how can the Officer's request for the documents be reasonable when he has not engaged with the submissions that purportedly establish that some of the documents have already been produced, that the necessary information is in the record but just not in the format requested by the Officer, or that the request itself in relation to the "books and records" is unsupportable at law? There is no engagement with the issue as to whether or not Akme's books and records were relevant in order to satisfy the Goods of the Same Class requirement (mentioned in the May 2020 decision and the March 2021 request) or to address the Origin issue (mentioned in the March 2021 request). The Minister's broad powers of inspection and his power to compel production are not a hall pass for the CBSA to avoid having to comply with the principles set out by the Supreme Court in *Vavilov* when it comes time to render a final decision on whether Akme has met the conditions of the DDP. It seems to me that where the CBSA is requiring evidence in support of an importer's applications for duty drawback, such a request must be in line with the nature of the claim itself and be reasonably linked to compliance with the statutory requirements of the program for which the applications were made; otherwise, as Akme put it, the Officer may as well have been asking for documents showing on what day the chickens were hatched.

[40] This is particularly so where a negative decision means that the claimant is now out of time to seek reconsideration, as is the case for Akme here. As stated by the Supreme Court in *Vavilov*, the importance of the decision to the individual affected is a key component in the assessment of the reasonableness of the decision (*Vavilov* at para 77). To accept the Minister's argument that it was enough that the Officer's request for the books and records was not complied with, and that it was not incumbent upon the Officer to fully address Akme's assertions before rejecting Akme's drawback claims, would be tantamount to giving the Officer unbridled discretion to ask for whatever documents that he wishes to obtain, regardless of the relevance or probative value of such documents in respect of the conditions of the program, thus rendering mere compliance with the Officer's request for documentation a condition of the program itself. As stated earlier, the Decision to reject Akme's claims is based not on the merits of the company's application, but rather solely on its failure to provide the books and records requested by the Officer. It seems to me that if such a request by the Officer for the books and records of Akme was indeed proper under these circumstances, leading to the desultory rejection of Akme's drawback claims, it would be simply too easy for federal agencies to circumvent their statutory duties under the guise of documentary sufficiency.

[41] This is not a situation, as the Minister argues, of Akme simply resubmitting claims which have already been rejected, without anything further (*Gugliotti* at paras 36–37); here there is a great deal further, maybe not in terms of new documents, but certainly in terms of establishing the roadmap for the appreciation (at least in Akme's view) of the documents already submitted so as to fill the gaps identified by the Officer in the first go-around of the submission of the claims. How can a demand for documents be considered reasonable—even at the lower end of

the reasonableness scale—if the Officer did not review the documents through the prism which Akme has provided, including addressing the legal arguments going to the propriety of the demand itself in relation to purportedly outstanding issues? It was certainly open to the Officer to reject the distortions of the prism as being misleading and to not buy in to the conclusions that lay at the end of the road down which Akme wished to take him via the explanations, justifications and “roadmap” provided. It was also open for the Officer to push back on Akme’s claim with respect to the need for further documents regarding the Origin issue being improper or with respect to the application of paragraph 1 of Article 303 of the *North American Free Trade Agreement* (the “lesser of” rule). I also accept that paragraph 113(3)(a) of the *Customs Tariff* requires a claimant applying for a drawback to support its application with such evidence as the Minister may require. But without assessing what has been provided through the lens of the arguments that have been made, I do not see how it can be said that the further request for documentation can be reasonable, regardless of how broad the right to inspection may be.

[42] It seems to me that the power of the Minister to inspect and examine, or to compel the production of, documents from an importer upon demand so as to allow the Minister to exercise his powers of supervision over the regulatory scheme—whether or not the Minister has reasonable grounds for believing that a particular importer has breached the Act—should not be conflated with the obligation of the CBSA to engage with the submissions of the claimant and to reasonably assess whether the importer has met the conditions of a statutory program prior to rejecting the claim. In addition, even if the above provision did allow the CBSA to request records of Akme’s non-imported goods or did grant the CBSA the discretionary power to refuse drawback claims based on a failure to provide those records—the Minister only goes as far as

conceding that a request for documents must be linked to a purpose relating to the administration and enforcement of the Act—such discretionary power would still need to be exercised in accordance with the principles enunciated in *Vavilov*.

[43] There is no issue of Akme providing new documents; it clearly did not. What it did was provide a fresh take on the documents submitted as an attempt to clear up any possible confusion as to how the documents allowed the CBSA to find that they were sufficient. It is important that I see that any documentation which led to the Decision was reasonably requested in line with the requirements of the Act following the Officer's review of Akme's submissions. On the basis of Akme's lengthy September 2020 resubmission and the efforts that Akme subsequently made to focus the Officer's mind on that submission, the adequacy of certain answers and the responsiveness of others may quite possibly be debatable, but again, it is not enough for counsel to try to justify the Decision after the fact.

[44] The Minister argues that with the March 2021 submissions, Akme was providing the Officer simply with what Akme thought that the Officer needed and not with what the Officer requested, and that in any event, even if secondary information allowed for the determination that Akme's drawback claims met all the conditions of the DDP, the Minister nonetheless has the authority to ask for the primary records of the company to substantiate or corroborate such information. Putting aside for the moment whether what Akme had submitted was in fact only secondary information, I am not convinced that the Officer, without having engaged in Akme's submissions, was in a position to know whether any of the conditions of the DDP needed to be validated or corroborated. In essence, the Officer does not know what he does not know until he

engages with Akme's substantive submissions once the refresh button has been pushed; it seems to me that in order to seek validation of submitted information, one must first understand the nature of the information and the explanations already submitted. It is quite possible that with the benefit of the prism of the fresh submissions and the direction provided by Akme in the September 2020 resubmission as to where to find the necessary information, the Officer would have been satisfied with Akme's documentation. I am not saying that the Officer was obliged to accept Akme's submissions, but only that it was not reasonable for him not to have engaged with them prior to rejecting the drawback claims for non-production of the books and records.

[45] In addition, I cannot agree with the Minister that there is a distinction to be made between the reasonableness of the Decision and the reasonableness of the request by the Officer for the books and records of Akme. The decision to reject Akme's claims was based solely on the fact that the books and records were not provided. Finally, the Minister argues that in the context of a reconsideration decision, as is the case here, I should not be looking to the decisions sought to be reconsidered (*Canadian Airport Workers Union v Garda Security Screening Inc*, 2013 FCA 106 at para 3; *Sofina Foods Inc v Canada (Attorney General)*, 2015 FC 47 at para 50; *Complexe Enviro Progressive Ltée v Canada (Minister of Transport)*, 2018 FC 1299 at paras 31–33), in particular as Akme has not sought judicial review of those previous decisions. I agree, and that is why I have limited myself to the Decision and the reasons upon which it was based.

[46] I should also mention that the present case differs from the situations in *9058-3956 Quebec Inc* and *Sebag*. There is no suggestion here that Akme has not provided a document which is specifically identified as a required condition for the DDP. Here, the CBSA is asking

for more documents supposedly, as argued by the Minister before me, to corroborate the information already received from Akme and to address a lacuna that it suggests exists in such submissions. However, it does not seem as though the Officer dealt with any of those submissions; rather, it seems as though it simply rejected the drawback claims for failure by Akme to provide the “books and records” that were requested, a request which Akme directly challenged without receiving a response from the Officer.

[47] Nor, as I stated earlier, is this case similar to the situation in *Gugliotti*, cited by the Minister for the proposition that a reasonable request for additional information to weigh or assess the evidence filed should be complied with, on pain of dismissal of the application (*Gugliotti* at para 36); here, no concerns were expressed by the Officer with the reliability of the documents submitted by Akme, and even if there were any unstated concerns, any request for additional documents must be reasonable—I would think that before one can reasonably request corroborative documents, one must first grapple with the issues raised by the claimant. Here, the failure to consistently address those issues notwithstanding the continued underscoring of those issues by Akme suggests that the Officer simply did not.

D. *The discrepancies in Akme’s documentation and the importance of traceability*

[48] The Minister argues that the documents initially provided by Akme included discrepancies that were identified to the company but never corrected. In particular, the March 2021 request makes reference to the need for documents “in regards to traceability of the goods in order to determine the origin of the chickens purchased in Canada.” The parties made considerable submissions regarding the concept of traceability. As stated earlier, traceability is

not, in itself, a legislative requirement for the DDP, but rather a concept used by the CBSA to follow products from importation into Canada (assuming foreign origin) to the substitution with similar goods, and then to exportation of the similar goods—in essence, a map of the chain of the goods from sourcing in or importation to Canada, until final exportation from Canada.

[49] To be eligible for a drawback of duties pursuant to paragraph 89(1)(d) of the *Customs Tariff*, argues the Minister, on account of Akme using equivalent goods (Goods of the Same Class), there are a number of conditions that must be met before a drawback of duties is permitted; Akme has the onus of demonstrating, for each import transaction, that a number of factors have been met, including, amongst other things, that the goods for which a drawback is claimed were imported with duties paid, that the imported goods were processed in the same plant in Canada in which the Goods of the Same Class were processed, and that the same quantity of Goods of the Same Class as the quantity of goods originally imported was subsequently exported. Hence, argues the Minister, showing traceability is important in that it allows for the tracking of the goods from importation through any processing, including the tracing of the use of products that properly meet the Goods of the Same Class conditions, and thereafter to the subsequent export of the goods. Once the Minister exercises his discretion in favour of the granting of relief under paragraph 89(1)(d), the claimant is to be (i.e., shall be) granted a refund or drawback of all or a portion of duties if the conditions set out in section 113 of the *Customs Tariff* are met.

[50] I accept that the Officer determined, rightly or wrongly, that there existed outstanding issues with respect to Akme's drawback claims, hence the August 2019 and February 2020

decisions. But then came the September 2020 resubmission, and then the March 2021 submissions which, in particular, looked to address the Officer's concern expressed in the March 2021 request, including the need for documents in relation to not only the traceability of the goods "in order to determine the origin of the chickens purchased in Canada", but also the traceability of the goods in order to determine compliance with the remaining conditions of the program. Rather than addressing the submissions of Akme in relation to the Origin issue and the other issues which Akme thought were still outstanding, the Officer issued the Decision. I can certainly understand Akme when it states that it simply no longer understood the case it had to meet, given its continued attempts to specifically express its position on what it thought were the outstanding issues, in particular the Origin issue. Putting aside a possible procedural fairness issue which, as I indicated to the parties, was not raised by Akme, the impression, rightly or wrongly, is that the Officer was not interested in addressing the issues as submitted by Akme, but rather was simply determined to find an expeditious way to dismiss the claims, especially since Akme would then be out of time to resubmit them.

[51] I do not doubt that the DDP has requirements as set out by the Minister, but the trouble that I have with his position is that the Officer cannot know whether any of those discrepancies were corrected or explained by Akme because there is nothing to suggest that the Officer engaged with the submissions of the company that were meant specifically to address those discrepancies. Akme states that the March 2021 submissions, in conjunction with the September 2020 resubmission, are a complete answer to those discrepancies, in particular in relation to the Origin issue, to which the need for traceability seems mostly to relate, yet rather than addressing what Akme submitted, the Decision simply dismissed Akme's drawback claims

because, in essence, no new documents were provided. The Officer has completely missed the mark, and in my view, the Decision falls well short of the transparency, intelligibility and justification requirements of *Vavilov*, even taking into consideration the context and the history of the exchanges between the parties in respect of the drawback claims found in the record.

[52] It seems to me that before the Officer is able to reject a claim for what is in essence a sufficiency issue, he must first engage with the submissions of the claimant. This does not in any way limit the broad powers of forcing disclosure that the Minister has, nor, as stated, does it mean that a claimant can simply continue to submit for reconsideration claims that were previously rejected, without any further material (see *Gugliotti* at paras 36–37). What it does mean is that, even in a case of reconsideration, where a claimant has provided new arguments to substantiate its claim, even where no new documents are submitted, the CBSA must reasonably engage with those arguments prior to rejecting the claim. In the end, the CBSA may well be fully justified in determining that Akme has not met the conditions of the DDP, but without addressing the issues raised and the attempts made by Akme to fill the gaps, the Decision to dismiss the claims solely on the basis of Akme not providing new documents is unreasonable.

E. *Was Akme barred from raising issues that were the subject matter of previous decisions for which no judicial review was sought?*

[53] The Minister argues that if Akme was not satisfied with the Minister's position on, say, the Origin issue, a position purportedly expressed by the Minister in the August 2019 decision, it should have taken that decision to judicial review. I do not accept that argument. Clearly, the CBSA invited Akme to resubmit its previously rejected claims; thus, an administrative option continued to exist. Such resubmissions would necessarily include a fresh take on what the CBSA

found previously to be non-compliant as regards Akme's claims. The Minister conceded before me that reconsideration is meant as a fresh start, but argues that even under reconsideration, we cannot separate the Decision from the record and that therefore, Akme knew what case it had to meet, and the CBSA was not obligated to simply repeatedly express the same position taken previously in relation to the claims.

[54] I cannot agree with the Minister. I appreciate that there is no statutory requirement for reconsideration of claims; however, to allow the resubmission of claims for reconsideration, and then to deny them on the grounds that any fresh—and possibly otherwise persuasive—arguments should have been previously made on judicial review, seems to me inconsistent; I can see where a claimant may feel sandbagged. The whole point of reconsideration is to afford the claimant the chance for a fresh review based upon the case that it makes on resubmission; in fact, the Minister himself concedes in his written submissions that the Officer engaged in “a fresh exercise of discretion” in rendering the Decision (*Bell Canada v Canada (Attorney General)*, 2011 FC 1120 at paras 98 and 99; *Dumbrava v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 1238, (1995) 101 FTR 230 at para 15). To now take the position, as the Minister is taking before me, that the CBSA had already set out its position on the Origin issue, the Same Class Requirement issue or the traceability issue, and thus no longer needed to repeat itself notwithstanding the fresh arguments made by Akme, is not persuasive.

[55] I accept that the May 2020 decision may have suggested that resubmission of the drawback claims was conditional upon Akme providing, *inter alia*, the books and records. However, it seems to me that in setting hard and fast conditions for resubmission, the Officer

may well have been fettering his own discretion as regards any fresh review of the claims. In any event, Akme states that the September 2020 resubmission substantially complied with the Officer's request for information, indicating that in essence, the information was already in the file, but not necessarily in the format of the books and records as specifically identified by the Officer. For my part, I cannot determine, from the record before me, whether the documents requested as part of the May 2020 decision or the March 2021 request were relevant to the DDP conditions as they relate to the Origin issue, nor am I able to address whether Akme's legal submissions regarding the reasonableness of those requests are correct without the Minister's position on the issues that Akme raised in its March 2021 submissions. As I mentioned to the parties, it is not for the Court to go over the March 2021 submissions and track through the thousands of pages of supporting documents to determine whether Akme is correct and that the Officer already had the information that he was seeking but did not know it because he did not engage with those submissions, in particular with respect to the legal issue relating to the Origin issue and the propriety of the CBSA requesting the books and records of the company so as to assess the origin of domestically sourced product. Suffice it to say that that exercise was seemingly not done by the Officer, an exercise I believe was incumbent upon him to do before dismissing the drawback claims for the simple reason that Akme did not provide new documents.

[56] This is not a case, as the Minister argues, of Akme asking the Officer to undertake his entire analysis from scratch when he did not receive the documents that he requested. Rather, it is a case of the Officer needing to review Akme's submissions to ascertain whether the purpose of his document request was, in essence, already complied with, or whether it was indeed, as Akme argues, improper as it related to the Origin issue. The Minister argues that Akme does not

specifically state that the books and records are already in the file, but simply that the information needed to determine compliance with the conditions of the DDP is already in the record; in other words, the CBSA has the information, but just not in the format of the books and records. That may be so, but if indeed the record contained all the information allowing the CBSA to find that Akme had complied with all the conditions required for its drawback claims, I cannot accept that the CBSA was able to nonetheless deny the claims simply because the information was not in the format requested even though Akme seemingly has gone to great lengths to provide the CBSA with a roadmap on how to trace that information. Moreover, as regards the Origin issue, Akme is telling the CBSA that its request for books and records to substantiate this issue is improper; the CBSA does not address the propriety of its request for the “books and records”—a legal issue I would think—but proceeds to simply dismiss the claims for non-production of those documents. Again, I must agree with Akme that there is a complete failure on the part of the CBSA to engage with the proposition put forward by Akme, which thus renders the Decision not reasonable. Nor has counsel’s attempt to take me through the history of the correspondence allowed me to connect the dots to find justification for the CBSA’s failure to specifically address the Origin issue in its Decision.

[57] I should also mention that this is not a case of a claimant looking to avoid paying customs duties or to find more time to do so. Akme has paid approximately \$4 million in import duties out of pocket and now seeks reimbursement through corresponding drawbacks. The consequences to a small, family-run business of a decision of the Minister refusing Akme’s claims are serious. *Vavilov* makes it clear that the greater the consequences of a decision, the

greater the requirement that the decision-maker grapple with those consequences and ensure that they are justified in light of the facts and law (*Vavilov* at paras 133–135).

[58] In the end, the Decision is not reasonable not because the Officer did not have the authority to request additional books and records—there is no issue that he did—but because the Decision did not meaningfully account for the central issues and concerns raised by Akme in relation to such a request. As the Supreme Court again recently reminded us, a decision maker must “meaningfully account for the central issues raised by the parties” (*Mason* at para 74; *Vavilov* at para 127), and that “[t]he failure of a decision maker to “meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it” (*Vavilov* at para 128). As a result, “where reasons are provided but they fail to provide a transparent and intelligible justification ... the decision will be unreasonable” (*Vavilov* at para 136). In the present case, it is as if the parties were speaking at cross-purposes: the CBSA was raising issues and requesting documents, and Akme was desperately trying to point the Officer to specific documents already in the file which addressed those concerns. Rather than engaging with those submissions, the Officer simply took the view that because no new documents were submitted, the claim should be dismissed. From my perspective, that is an untenable position to take. Otherwise, it would be too easy for any federal agency to punt its obligation to review an admittedly voluminous and complex file down the field and assert that a claimant should have complied with a document request so as to avoid addressing issues going to the appropriateness of such a request, despite the company’s insistence that the necessary documents were already in hand. This position is untenable in

particular given the consequences to Akme of a refusal of its claims—including a four-year bar on resubmission for being outside the statutory time frame for DDP claims.

IV. Remedy

[59] As regards the appropriate remedy, Akme states that it identified several issues with the Decision, issues that have been plaguing Akme for years in its quest to receive reimbursement of duties that it rightly claims. It suggests that the Court can order the refund of the drawbacks in issue. However, as I made clear during the hearing, it is generally not for the Court to put itself in the place of the Officer who has been tasked by Parliament to assess and determine whether the legislative conditions for the DDP have been met.

[60] This is a situation where, as stated by the Supreme Court, “the legislature has entrusted the matter to the administrative decision maker, and not to the court, to decide” (*Vavilov* at para 140). Nor do I think it appropriate in this case for me to remit the matter back to the CBSA, ordering that it pay Akme’s drawback claims with a directed order or that it reach a specific result on redetermination. Generally, a Court should not substitute its own decision for that made by the administrative decision-maker by compelling the decision-maker to reach a specific conclusion (*Catalyst Pharmaceuticals, Inc v Canada (Attorney General)*, 2022 FC 292 at para 194), I would think especially where the assessment to be made is highly technical and fact-specific, and ought to be performed by the statutorily delegated decision-maker with the benefit of a full record. Under the circumstances, I will send the matter back for redetermination, to a wholly new verification team of the CBSA that will benefit from my reasons for judgment and that should no doubt render a decision in line with the principles enunciated herein while

properly engaging with the submissions of Akme in relation to the legislated DDP conditions, all within a reasonable time frame given the circumstances.

[61] The parties have agreed that in the event that Akme is successful, the Minister will pay costs in the amount of \$4,500; I will so order.

JUDGMENT in T-917-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The decision dated May 11, 2021, is set aside and this matter is remitted for redetermination within a reasonable time frame by a differently constituted verification team of the CBSA in line with the reasons set out in the present decision.
3. Costs are to be paid to Akme in the amount of \$4,500, all inclusive.

"Peter G. Pamel"

Judge

ANNEX

Customs Tariff, SC 1997, c 36

Duty Deferral**Relief**

89 (1) Subject to subsection (2), sections 95, 98.1 and 98.2 and any regulations made under section 99, if an application for relief is made within the prescribed time, in accordance with subsection (4), by a person of a prescribed class, relief may be granted from the payment of duties that would but for this section be payable in respect of imported goods that are

(a) released and subsequently exported in the same condition in which they were imported;

(b) released, processed in Canada and subsequently exported;

(c) released and directly consumed or expended in the processing in Canada of goods that are subsequently exported;

(d) released, if the same quantity of domestic or imported goods of the same class is processed in Canada and subsequently exported; or

(e) released, if the same quantity of domestic or imported goods of the

Report des droits**Exonération**

89 (1) Sous réserve du paragraphe (2), des articles 95, 98.1 et 98.2 et des règlements visés à l'article 99 et sur demande présentée dans le délai réglementaire en conformité avec le paragraphe (4) par une personne appartenant à une catégorie réglementaire, des marchandises importées peuvent, dans les cas suivants, être exonérées, une fois dédouanées, des droits qui, sans le présent article, seraient exigibles :

a) elles sont ultérieurement exportées dans le même état qu'au moment de leur importation;

b) elles sont transformées au Canada et ultérieurement exportées;

c) elles sont directement consommées ou absorbées lors de la transformation au Canada de marchandises ultérieurement exportées;

d) la même quantité de marchandises nationales ou importées de la même catégorie est transformée au Canada et ultérieurement exportée;

e) la même quantité de marchandises nationales ou importées de la même

same class is directly consumed or expended in the processing in Canada of goods that are subsequently exported.

catégorie est directement consommée ou absorbée lors de la transformation au Canada de marchandises ultérieurement exportées.

Exception

(2) Relief of the duties or taxes levied or imposed under sections 21.1 to 21.3, the *Excise Act, 2001* or the *Excise Tax Act* may not be granted under subsection (1) on tobacco products, vaping products or designated goods.

Exception

(2) L'exonération ne s'applique pas dans le cas de droits ou taxes perçus ou imposés, en application des articles 21.1 à 21.3, de la *Loi de 2001 sur l'accise* ou de la *Loi sur la taxe d'accise*, sur les produits du tabac, les produits de vapotage et les marchandises désignées.

Deemed exportation

(3) For the purposes of subsection (1), goods are deemed to have been exported if they are

(a) designated as ships' stores by regulations made under paragraph 99(g) and supplied for use on board a conveyance of a class prescribed under that paragraph;

(b) used for the equipment, repair or reconstruction of ships or aircraft of a class prescribed under paragraph 99(d);

(c) delivered to a telegraph cable ship of a class prescribed under paragraph 99(d);

Présomption d'exportation

(3) Pour l'application du paragraphe (1), sont réputées avoir été exportées les marchandises :

a) désignées comme provisions de bord au titre de l'alinéa 99 g) et fournies en vue de leur usage à bord d'un moyen de transport d'une catégorie réglementaire prévue par cet alinéa;

b) ayant servi pour l'équipement, la réparation ou la reconstruction de navires ou d'aéronefs d'une catégorie réglementaire prévue par l'alinéa 99 d);

c) livrées à des navires poseurs de câbles télégraphiques d'une catégorie réglementaire prévue par l'alinéa 99 d);

(d) supplied for exportation to a department or agency of, or a corporation owned, controlled or operated by, the Government of Canada or the government of a province, that is designated by the Minister of Public Safety and Emergency Preparedness;

(e) placed in a bonded warehouse or duty free shop for exportation, or placed in a bonded warehouse for use in accordance with paragraph (a) or (c);

(f) transferred from a person who has been issued a certificate under section 90 to another person who has been issued such a certificate; or

(g) used or destined for use in any other prescribed manner.

d) fournies en vue de leur exportation aux ministères ou organismes fédéraux ou provinciaux, ou aux sociétés d'appartenance, d'exploitation ou de contrôle fédérales ou provinciales, désignés par le ministre de la Sécurité publique et de la Protection civile;

e) placées en entrepôt de stockage ou en boutique hors taxes en vue de leur exportation ou placées en entrepôt de stockage en vue d'un usage conforme aux alinéas a) ou c);

f) cédées par le titulaire d'un certificat délivré en application de l'article 90 à un autre titulaire d'un tel certificat;

g) utilisées ou destinées à être utilisées de toute autre manière réglementaire.

Application

(4) An application for relief under subsection (1) must be in a form and contain information satisfactory to the Minister of Public Safety and Emergency Preparedness.

...

Additional Relief

Refund or drawback

113 (1) Subject to subsection (2), sections 96, 98.1 and 98.2 and any

Demandes

(4) Les demandes d'exonération sont présentées en la forme et comportent les renseignements que le ministre de la Sécurité publique et de la Protection civile juge indiqués.

[...]

Autres formes d'exonération

Remboursement ou drawback

113 (1) Sous réserve du paragraphe (2), des articles 96, 98.1 et 98.2 et des

regulations made under subsection (4), a refund or drawback shall be granted of all or a portion of duties if

(a) relief or a refund of all or a portion of the duties could have been, but was not, granted under section 89 or 101;

(b) all or a portion of the duties was paid; and

(c) an application is made in accordance with subsection (3) and section 119.

No refund

(2) No refund or drawback of the duties imposed on tobacco products or vaping products under the *Excise Act, 2001* shall be granted under subsection (1), except if a refund of the whole or the portion of the duties is required to be granted under Division 3.

Application

(3) For the purposes of subsection (1), an application must

...

(b) be made by a prescribed person or by a person belonging to a prescribed class of persons;

(c) be made in the prescribed form and manner, with the prescribed information,

règlements d'application du paragraphe (4), est accordé un remboursement ou un drawback de tout ou partie des droits si, à la fois :

a) l'exonération ou le remboursement de tout ou partie des droits aurait pu être accordé en application des articles 89 ou 101, mais ne l'a pas été;

b) les droits ont été payés en tout ou en partie;

c) une demande est présentée en conformité avec le paragraphe (3) et l'article 119.

Aucun remboursement

(2) Il n'est accordé aucun remboursement ou drawback des droits imposés sur les produits du tabac ou les produits de vapotage en vertu de la *Loi de 2001 sur l'accise*, sauf si le remboursement d'une fraction ou de la totalité des droits est prévu par la section 3.

Demandes

(3) Pour l'application du paragraphe (1), les demandes :

[...]

b) sont présentées par les personnes visées par règlement ou les personnes d'une catégorie réglementaire;

c) sont présentées, en la forme prescrite par le ministre de la Sécurité publique et de la

within four years, or within such other time as may be prescribed, after the goods in respect of which it is made are released; and

(d) if the goods have not been exported or deemed exported for the purposes of relief under section 89, disclose the number of the certificate issued under section 90.

Regulations

(4) For the purposes of this section, the Governor in Council may, on the recommendation of the Minister of Public Safety and Emergency Preparedness, make regulations prescribing

(a) the circumstances in which, and the classes of goods in respect of which, a refund or drawback of duties levied under sections 21.1 to 21.3 or under the *Special Import Measures Act*, a surtax or temporary duty imposed under Division 4 of Part 2, a tax levied under the *Excise Tax Act* or a duty levied under the *Excise Act, 2001* may not be granted under subsection (1);

Protection civile et comportent les renseignements prescrits par lui, dans les quatre ans — ou, le cas échéant, dans le délai réglementaire — suivant le dédouanement des marchandises;

d) portent, pour l'application de l'article 89 dans les cas où les marchandises n'ont pas été exportées ou ne sont pas réputées exportées, le numéro indiqué sur le certificat délivré au titre de l'article 90.

Règlements

(4) Pour l'application du présent article, le gouverneur en conseil peut, sur recommandation du ministre de la Sécurité publique et de la Protection civile, préciser par règlement :

a) les catégories de marchandises inadmissibles au remboursement ou au drawback des droits perçus au titre des articles 21.1 à 21.3 ou de la *Loi sur les mesures spéciales d'importation*, des surtaxes ou droits temporaires imposés en application de la section 4 de la partie 2, des taxes perçues au titre de la *Loi sur la taxe d'accise* ou des droits perçus au titre de la *Loi de 2001 sur l'accise*, ainsi que les cas d'inadmissibilité;

(b) the portion of duties paid that may be granted as a refund or drawback under subsection (1);

b) la fraction des droits payés susceptible d'être versée au titre du remboursement ou du drawback;

(c) the persons or classes of persons who may make an application for a refund or drawback under subsection (1);

c) les personnes ou les catégories de celles-ci qui peuvent demander le remboursement ou le drawback;

(d) the uses to which goods may be put or operations that goods may undergo after which the goods will be considered to be in the same condition;

d) les usages qui peuvent être faits des marchandises ou les travaux qu'elles peuvent subir sans que leur état soit réputé modifié;

(e) goods that are considered to be of the same class;

e) les marchandises à classer dans la même catégorie;

(f) the time within which an application for a refund or drawback must be made;

f) le délai de présentation de la demande de remboursement ou de drawback;

(g) the circumstances in which an application for a refund or drawback may be made;

g) les cas dans lesquels une demande de remboursement ou de drawback peut être faite;

(h) restrictions as to the classes of goods for which a refund or drawback may be granted; and

h) les restrictions quant aux catégories de marchandises qui sont admissibles au remboursement ou au drawback;

(i) the circumstances in which a refund or drawback may not be granted.

i) les cas d'inadmissibilité au remboursement ou au drawback.

Designated goods

(5) Despite the exception in subsection 89(2), a refund or drawback of duties or taxes

Marchandises désignées

(5) Malgré l'exception prévue au paragraphe 89(2), le remboursement ou le

levied or imposed under sections 21.1 to 21.3, the *Excise Act, 2001* or the *Excise Tax Act* shall be granted under paragraph (1)(a) on designated goods.

drawback de droits ou de taxes imposés ou perçus au titre des articles 21.1 à 21.3, de la *Loi de 2001 sur l'accise* ou de la *Loi sur la taxe d'accise* est accordé en application de l'alinéa (1)a) sur les marchandises désignées.

*Customs Act, RSC 1985, c 1 (2nd Supp)***Records****Importers' records**

40 (1) Every person who imports goods or causes goods to be imported for sale or for any industrial, occupational, commercial, institutional or other like use or any other use that may be prescribed shall keep at the person's place of business in Canada or at any other place that may be designated by the Minister any records in respect of those goods in any manner and for any period of time that may be prescribed and shall, where an officer so requests, make them available to the officer, within the time specified by the officer, and answer truthfully any questions asked by the officer in respect of the records.

Minister's request

(2) If, in the opinion of the Minister, a person has not kept records in accordance with subsection (1), the Minister may request that person to comply with that subsection in respect of the records.

...

Definition of *dwelling-house*

42 (1) In this section, *dwelling-house* means the whole or any part of a building or structure that is kept or occupied as a

Documents**Documents de l'importateur**

40 (1) Toute personne qui importe ou fait importer des marchandises en vue de leur vente ou d'usages industriels, professionnels, commerciaux ou collectifs, ou à d'autres fins analogues ou prévues par règlement, est tenue de conserver en son établissement au Canada ou en un autre lieu désigné par le ministre, selon les modalités et pendant le délai réglementaires, les documents réglementaires relatifs aux marchandises et, à la demande de l'agent et dans le délai qu'il précise, de lui communiquer ces documents et de répondre véridiquement aux questions qu'il lui pose à leur sujet.

Demande du ministre

(2) Le ministre peut demander à la personne qui, selon lui, a manqué à ses obligations prévues au paragraphe (1) quant à la conservation de documents de se conformer à ce paragraphe quant aux documents.

[...]

Définition de *maison d'habitation*

42 (1) Au présent article, *maison d'habitation* s'entend de tout ou partie d'un bâtiment ou d'une construction tenus ou occupés

permanent or temporary residence, and includes

(a) a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered and enclosed passageway; and

(b) a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence.

comme résidence permanente ou temporaire, y compris :

a) un bâtiment qui se trouve dans la même enceinte qu'une maison d'habitation et qui y est relié par une baie de porte ou par un passage couvert et clos;

b) une unité conçue pour être mobile et pour être utilisée comme résidence permanente ou temporaire et qui est ainsi utilisée.

Inspections

(2) An officer, or an officer within a class of officers, designated by the President for the purposes of this section, may at all reasonable times, for any purpose related to the administration or enforcement of this Act,

(a) inspect, audit or examine any record of a person that relates or may relate to the information that is or should be in the records of the person or to any amount paid or payable under this Act;

(b) examine property in an inventory of a person and any property or process of, or matter relating to, the person, an examination of which may assist the officer in determining the accuracy of the inventory

Enquêtes

(2) 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 à toute heure convenable, pour l'application et l'exécution de la présente loi :

a) inspecter, vérifier ou examiner les documents d'une personne qui se rapportent ou peuvent se rapporter soit aux renseignements qui figurent dans les livres ou registres de la personne ou qui devraient y figurer, soit à toute somme à payer par la personne en vertu de la présente loi;

b) examiner les biens à porter à l'inventaire d'une personne, ainsi que tout bien ou tout procédé de celle-ci ou toute matière la concernant dont l'examen peut aider l'agent à établir l'exactitude de l'inventaire

of the person or in ascertaining the information that is or should be in the records of the person or any amount paid or payable by the person under this Act;

(c) subject to subsection (3), enter any premises or place where any business is carried on, any property is kept, anything is done in connection with any business or any records are or should be kept; and

(d) require the owner or manager of the property or business and any other person on the premises or place to give the officer all reasonable assistance and to answer truthfully any question, and, for that purpose, require the owner, manager or other person designated by the owner or manager to attend at the premises or place with the officer.

Prior authorization

(3) If any premises or place referred to in paragraph (2)(c) is a dwelling-house, an officer may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant under subsection (4).

Warrant

(4) On *ex parte* application by the Minister, a judge may

de la personne ou à contrôler soit les renseignements qui figurent dans les documents de la personne ou qui devraient y figurer, soit toute somme payée ou à payer par la personne en vertu de la présente loi;

c) sous réserve du paragraphe (3), pénétrer dans un lieu où est exploitée une entreprise, est gardé un bien, est faite une chose en rapport avec une entreprise ou sont tenus, ou devraient être tenus, des documents;

d) requérir le propriétaire du bien ou de l'entreprise, ou la personne en ayant la gestion, ainsi que toute autre personne présente sur les lieux de lui fournir toute l'aide raisonnable et de répondre véridiquement à toutes les questions et, à cette fin, requérir le propriétaire ou la personne ayant la gestion de l'accompagner sur les lieux.

Autorisation préalable

(3) Si le lieu mentionné à l'alinéa (2)c) est une maison d'habitation, l'agent ne peut y pénétrer sans la permission de l'occupant, à moins d'y être autorisé par un mandat décerné en vertu du paragraphe (4).

Mandat d'entrée

(4) Sur requête *ex parte* du ministre, le juge saisi peut

issue a warrant authorizing an officer to enter a dwelling-house subject to the conditions that may be specified in the warrant, if the judge is satisfied by information on oath that

(a) there are reasonable grounds to believe that the dwelling-house is a premises or place referred to in paragraph (2)(c);

(b) entry into the dwelling-house is necessary; and

(c) entry into the dwelling-house has been, or there are reasonable grounds to believe that entry into the dwelling-house will be, refused.

Other access to document

(5) If the judge is not satisfied that entry into that dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act but is satisfied that access to a document or property that is or should be kept in the dwelling-house has been or may be expected to be refused, the judge may

(a) order the occupant of the dwelling-house to provide the officer with reasonable access to any document or property; and

décerner un mandat qui autorise un agent à pénétrer dans une maison d'habitation aux conditions précisées dans le mandat, s'il est convaincu, sur dénonciation sous serment, de ce qui suit :

a) il existe des motifs raisonnables de croire que la maison d'habitation est un lieu mentionné à l'alinéa (2)c);

b) il est nécessaire d'y pénétrer pour l'application ou l'exécution de la présente loi;

c) un refus d'y pénétrer a été opposé, ou il existe des motifs raisonnables de croire qu'un tel refus sera opposé.

Autre forme d'accès au document

(5) Dans la mesure où un refus de pénétrer dans la maison d'habitation a été opposé ou pourrait l'être et où des documents ou biens sont gardés dans la maison d'habitation ou pourraient l'être, le juge qui n'est pas convaincu qu'il est nécessaire de pénétrer dans la maison d'habitation pour l'application ou l'exécution de la présente loi peut :

a) ordonner à l'occupant de la maison d'habitation de permettre à l'agent d'avoir raisonnablement accès à tous documents ou biens qui sont gardés dans

(b) make any other order that is appropriate in the circumstances to carry out the purposes of this Act.

...

Production of Documents

Production of records

43 (1) The Minister may, for any purpose related to the administration or enforcement of this Act, including the collection of any amount owing under this Act by any person, by notice served personally or sent by registered or certified mail, require any person to provide any record at a place specified by the Minister and within any reasonable time that may be stipulated in the notice.

Compliance

(2) Any person who is required to provide any records, books, letters, accounts, invoices, statements or other documents or information under subsection (1) shall, notwithstanding any other law to the contrary but subject to subsection (3), do so as required.

Application of section 232 of the *Income Tax Act*

(3) The definitions *lawyer* and *solicitor-client privilege* in subsection 232(1) of the *Income Tax Act*, and

la maison d'habitation ou devraient y être gardés;

b) rendre toute autre ordonnance indiquée en l'espèce pour l'application de la présente loi.

[...]

Production de documents

Production de documents

43 (1) Aux fins d'exécution ou de contrôle d'application de la présente loi, notamment pour la perception d'une somme dont une personne est débitrice en vertu de la présente loi, le ministre peut, par avis signifié à personne ou envoyé par courrier recommandé ou certifié, exiger d'une personne qu'elle fournisse tout document, au lieu qu'il précise et dans le délai raisonnable qui peut être fixé dans l'avis.

Obligation d'obtempérer

(2) Sous réserve du paragraphe (3), le destinataire de l'avis visé au paragraphe (1) est tenu de s'y conformer, indépendamment de toute autre règle de droit contraire.

Application de l'article 232 de la *Loi de l'impôt sur le revenu*

(3) Les définitions de *avocat* et de *privilège des communications entre client et avocat* données au

subsection 232(2) of that Act, apply with respect to a requirement under subsection (1) as if the reference in subsection 232(2) to section 231.2 of that Act were a reference to this section.

paragraphe 232(1), ainsi que le paragraphe 232(2), de la *Loi de l'impôt sur le revenu* s'appliquent aux demandes visées au paragraphe (1) comme si, au paragraphe 232(2), le renvoi à l'article 231.2 de cette loi était un renvoi au présent article.

Federal Courts Rules, SOR/98-106

Material to be transmitted

318 (1) Within 20 days after service of a request under rule 317, the tribunal shall transmit

(a) a certified copy of the requested material to the Registry and to the party making the request; or

(b) where the material cannot be reproduced, the original material to the Registry.

Objection by tribunal

(2) Where a tribunal or party objects to a request under rule 317, the tribunal or the party shall inform all parties and the Administrator, in writing, of the reasons for the objection.

Directions as to procedure

(3) The Court may give directions to the parties and to a tribunal as to the procedure for making submissions with

Documents à transmettre

318 (1) Dans les 20 jours suivant la signification de la demande de transmission visée à la règle 317, l'office fédéral transmet :

a) au greffe et à la partie qui en a fait la demande une copie certifiée conforme des documents en cause;

b) au greffe les documents qui ne se prêtent pas à la reproduction et les éléments matériels en cause.

Opposition de l'office fédéral

(2) Si l'office fédéral ou une partie s'opposent à la demande de transmission, ils informent par écrit toutes les parties et l'administrateur des motifs de leur opposition.

Directives de la Cour

(3) La Cour peut donner aux parties et à l'office fédéral des directives sur la façon de procéder pour présenter des

respect to an objection under subsection (2).

Order

(4) The Court may, after hearing submissions with respect to an objection under subsection (2), order that a certified copy, or the original, of all or part of the material requested be forwarded to the Registry.

observations au sujet d'une opposition à la demande de transmission.

Ordonnance

(4) La Cour peut, après avoir entendu les observations sur l'opposition, ordonner qu'une copie certifiée conforme ou l'original des documents ou que les éléments matériels soient transmis, en totalité ou en partie, au greffe.

Income Tax Act, RSC 1985, c 1 (5th Supp)

General

Records and books

230 (1) Every person carrying on business and every person who is required, by or pursuant to this Act, to pay or collect taxes or other amounts shall keep records and books of account (including an annual inventory kept in prescribed manner) at the person's place of business or residence in Canada or at such other place as may be designated by the Minister, in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.

Records and books

(2) Every qualified donee referred to in paragraphs (a) to

Généralités

Livres de comptes et registres

230 (1) Quiconque exploite une entreprise et quiconque est obligé, par ou selon la présente loi, de payer ou de percevoir des impôts ou autres montants doit tenir des registres et des livres de comptes (y compris un inventaire annuel, selon les modalités réglementaires) à son lieu d'affaires ou de résidence au Canada ou à tout autre lieu que le ministre peut désigner, dans la forme et renfermant les renseignements qui permettent d'établir le montant des impôts payables en vertu de la présente loi, ou des impôts ou autres sommes qui auraient dû être déduites, retenues ou perçues.

Livres de comptes et registres

(2) Chaque donataire reconnu visé aux alinéas a) à c) de la

<p>(c) of the definition <i>qualified donee</i> in subsection 149.1(1) shall keep records and books of account — in the case of a qualified donee referred to in any of subparagraphs (a)(i) and (iii) and paragraphs (b), (b.1) and (c) of that definition, at an address in Canada recorded with the Minister or designated by the Minister — containing</p>	<p>définition de <i>donataire reconnu</i> au paragraphe 149.1(1) doit tenir des registres et des livres de comptes — à une adresse au Canada enregistrée auprès du ministre ou désignée par lui, s’il s’agit d’un donataire reconnu visé aux sous-alinéas a)(i) ou (iii) ou aux alinéas b), b.1) ou c) de cette définition — qui contiennent ce qui suit :</p>
<p>(a) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act;</p>	<p>a) des renseignements sous une forme qui permet au ministre de déterminer s’il existe des motifs de révocation de l’enregistrement de l’organisme ou de l’association en vertu de la présente loi;</p>
<p>(b) a duplicate of each receipt containing prescribed information for a donation received by it; and</p>	<p>b) un double de chaque reçu, renfermant les renseignements prescrits, visant les dons reçus par l’organisme ou l’association;</p>
<p>(c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act.</p>	<p>c) d’autres renseignements sous une forme qui permet au ministre de vérifier les dons faits à l’organisme ou à l’association et qui donnent droit à une déduction ou à un crédit d’impôt aux termes de la présente loi.</p>

Idem, lawyers

(2.1) For greater certainty, the records and books of account required by subsection 230(1) to be kept by a person carrying on business as a lawyer (within the meaning

Idem, avocats

(2.1) Il est entendu que les registres et les livres de comptes qui doivent, en vertu du paragraphe (1), être tenus par une personne exploitant une entreprise consistant dans

assigned by subsection 232(1)) whether by means of a partnership or otherwise, include all accounting records of the lawyer, including supporting vouchers and cheques.

Minister's requirement to keep records, etc.

(3) Where a person has failed to keep adequate records and books of account for the purposes of this Act, the Minister may require the person to keep such records and books of account as the Minister may specify and that person shall thereafter keep records and books of account as so required.

Limitation period for keeping records, etc.

(4) Every person required by this section to keep records and books of account shall retain

(a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as is prescribed; and

(b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information

l'exercice de la profession d'avocat (au sens du paragraphe 232(1)) en société de personnes ou autrement comprennent tous les registres comptables de l'avocat, y compris les pièces justificatives et les chèques.

Ordre du ministre quant à la tenue de registres

(3) Le ministre peut exiger de la personne qui n'a pas tenue les registres et livres de compte voulus pour l'application de la présente loi qu'elle tienne ceux qu'il spécifie. Dès lors, la personne doit tenir les registres et livres de compte qui sont ainsi exigés d'elle.

Durée de conservation

(4) Quiconque est requis, sous le régime du présent article, de tenir des registres et livres de comptes doit conserver :

a) les registres et livres de comptes, de même que les comptes et pièces justificatives nécessaires à la vérification des renseignements contenus dans ces registres et livres de comptes, dont les règlements prévoient la conservation pour une période déterminée;

b) tous les autres registres et livres de comptes mentionnés au présent article de même que les comptes et pièces justificatives nécessaires à

contained therein, until the expiration of six years from the end of the last taxation year to which the records and books of account relate.

la vérification des renseignements contenus dans ces registres et livres de comptes pendant les six ans qui suivent la fin de la dernière année d'imposition à laquelle les documents se rapportent.

Electronic records

(4.1) Every person required by this section to keep records who does so electronically shall retain them in an electronically readable format for the retention period referred to in subsection 230(4).

Registres électroniques

(4.1) Quiconque tient des registres, comme l'en oblige le présent article, par voie électronique doit les conserver sous une forme électronique intelligible pendant la durée de conservation visée au paragraphe (4).

Exemptions

(4.2) The Minister may, on such terms and conditions as are acceptable to the Minister, exempt a person or a class of persons from the requirement in subsection 230(4.1).

Dispense

(4.2) Le ministre peut, selon des modalités qu'il estime acceptables, dispenser une personne ou une catégorie de personnes de l'exigence visée au paragraphe (4.1).

Exception where no return filed

(5) Where, in respect of any taxation year, a person referred to in subsection 230(1) has not filed a return with the Minister as and when required by section 150, that person shall retain every record and book of account that is required by this section to be kept and that relates to that taxation year, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the day the

Exception : défaut de production d'une déclaration

(5) La personne visée au paragraphe (1) et qui n'a pas produit auprès du ministre, pour une année d'imposition, la déclaration de revenu prévue par l'article 150, de la manière et à la date prévues à cet article, doit conserver les registres et livres de comptes exigés par le présent article et qui se rapportent à cette année de même que les comptes et pièces justificatives nécessaires à la vérification des renseignements contenus dans ces registres et livres de comptes pendant les six ans

return for that taxation year is filed.

qui suivent la date à laquelle la déclaration de revenu pour cette année est produite auprès du ministre.

Exception where objection or appeal

Exception : opposition ou appel

(6) Where a person required by this section to keep records and books of account serves a notice of objection or where that person is a party to an appeal to the Tax Court of Canada under this Act, that person shall retain every record, book of account, account and voucher necessary for dealing with the objection or appeal until, in the case of the serving of a notice of objection, the time provided by section 169 to appeal has elapsed or, in the case of an appeal, until the appeal is disposed of and any further appeal in respect thereof is disposed of or the time for filing any such further appeal has expired.

(6) Une personne tenue par le présent article de tenir des registres et livres de comptes et qui signifie un avis d'opposition ou est partie à un appel devant la Cour canadienne de l'impôt en vertu de la présente loi doit conserver les registres, livres de comptes, comptes et pièces justificatives nécessaires à l'examen de l'opposition ou de l'appel jusqu'à l'expiration du délai d'appel prévu à l'article 169 en cas de signification d'un avis d'opposition, ou, en cas d'appel, jusqu'au prononcé sur l'appel et sur tout autre appel en découlant ou jusqu'à l'expiration du délai prévu pour interjeter cet autre appel.

Exception where demand by Minister

Exception : demande du ministre

(7) Where the Minister is of the opinion that it is necessary for the administration of this Act, the Minister may, by registered letter or by a demand served personally, require any person required by this section to keep records and books of account to retain those records and books of account, together with every account and voucher necessary to verify the information contained therein,

(7) Le ministre peut exiger de la part de toute personne obligée de tenir des registres et livres de comptes en vertu du présent article, par demande signifiée à personne ou par lettre recommandée, la conservation des registres et livres de comptes de même que des comptes et pièces justificatives nécessaires à la vérification des renseignements contenus dans ces registres et livres de

for such period as is specified in the letter or demand.

comptes, pour la période y prévue, lorsqu'il est d'avis que cela est nécessaire pour l'application de la présente loi.

Permission for earlier disposal

(8) A person required by this section to keep records and books of account may dispose of the records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, before the expiration of the period in respect of which those records and books of account are required to be kept if written permission for their disposal is given by the Minister.

Autorisation de se départir plus tôt des documents

(8) Le ministre peut autoriser par écrit une personne à se départir des documents qu'elle doit conserver aux termes du présent article avant la fin de la période fixée sous le régime de celui-ci.

...

[...]

Information gathering

231.1 (1) An authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Act,

(a) inspect, audit or examine any document, including books and records, of a taxpayer or any other person that may be relevant in determining the obligations or entitlements of the taxpayer or any other person under this Act;

Collecte de renseignements

231.1 (1) Une personne autorisée, à tout moment raisonnable, pour l'application et l'exécution de la présente loi, peut :

a) inspecter, vérifier ou examiner tous documents, y compris les livres et registres, d'un contribuable ou d'une autre personne qui peuvent être pertinents pour déterminer les obligations ou les droits du contribuable ou de cette autre personne en vertu de la présente loi;

(b) examine any property or process of, or matter relating to, a taxpayer or any other person, an examination of which may assist the authorized person in determining the obligations or entitlements of the taxpayer or any other person under this Act;

(c) enter any premises or place where any business is carried on, any property is kept, anything is done in connection with any business or any books or records are or should be kept, except that, if the premises or place is a dwelling-house, the authorized person may enter the dwelling-house without the consent of the occupant only under the authority of a warrant under subsection (3);

(d) require a taxpayer or any other person to give the authorized person all reasonable assistance, to answer all proper questions relating to the administration or enforcement of this Act and

(i) to attend with the authorized person, at a place designated by the authorized person, or by video-conference or by another form of electronic communication, and to

b) examiner tout bien ou tout procédé d'un contribuable ou d'une autre personne ou toute matière le concernant ou la concernant, dont l'examen peut aider la personne autorisée à établir les obligations ou les droits du contribuable ou de cette autre personne en vertu de la présente loi;

c) pénétrer dans un lieu où est exploitée une entreprise, est gardé un bien, est faite une chose en rapport avec une entreprise ou sont tenus ou devraient l'être des livres ou registres, sauf que, si le lieu est une maison d'habitation, la personne autorisée ne peut y pénétrer sans la permission de l'occupant, qu'après l'obtention d'un mandat décerné en vertu du paragraphe (3);

d) requérir le contribuable ou toute autre personne de lui fournir toute l'aide raisonnable et de répondre à toutes les questions pertinentes à l'application ou l'exécution de la présente loi ainsi que :

(i) de l'accompagner à un lieu désigné par celle-ci, de participer avec elle par vidéo-conférence ou par tout autre moyen de communication électronique à une

answer the questions orally, and

(ii) to answer the questions in writing, in any form specified by the authorized person; and

(e) require a taxpayer or any other person to give the authorized person all reasonable assistance with anything the authorized person is authorized to do under this Act.

(2) [Repealed, 2022, c. 19, s. 54]

Application

(3) Where, on *ex parte* application by the Minister, a judge is satisfied by information on oath that

(a) there are reasonable grounds to believe that a dwelling-house is a premises or place referred to in paragraph 231.1(1)(c),

(b) entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and

(c) entry into the dwelling-house has been, or there are reasonable grounds to

rencontre, et de répondre à ses questions de vive voix,

(ii) de répondre aux questions par écrit, en la forme qu'elle précise;

e) requérir un contribuable ou toute autre personne de lui fournir toute l'aide raisonnable concernant quoi que ce soit qu'elle est autorisée à accomplir en vertu de la présente loi.

(2) [Abrogé, 2022, ch. 19, art. 54]

Mandat d'entrée

(3) Sur requête *ex parte* du ministre, le juge saisi peut décerner un mandat qui autorise une personne autorisée à pénétrer dans une maison d'habitation aux conditions précisées dans le mandat, s'il est convaincu, sur dénonciation sous serment, de ce qui suit :

a) il existe des motifs raisonnables de croire que la maison d'habitation est un lieu mentionné à l'alinéa (1)c);

b) il est nécessaire d'y pénétrer pour l'application ou l'exécution de la présente loi;

c) un refus d'y pénétrer a été opposé, ou il existe des motifs raisonnables de

believe that entry will be, refused,

the judge may issue a warrant authorizing an authorized person to enter the dwelling-house subject to such conditions as are specified in the warrant but, where the judge is not satisfied that entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, the judge may

(d) order the occupant of the dwelling-house to provide to an authorized person reasonable access to any document or property that is or should be kept in the dwelling-house, and

(e) make such other order as is appropriate in the circumstances to carry out the purposes of this Act,

to the extent that access was or may be expected to be refused and that the document or property is or may be expected to be kept in the dwelling-house.

Requirement to provide documents or information

231.2 (1) Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement

croire qu'un tel refus sera opposé.

Dans la mesure où un refus de pénétrer dans la maison d'habitation a été opposé ou pourrait l'être et où des documents ou biens sont gardés dans la maison d'habitation ou pourraient l'être, le juge qui n'est pas convaincu qu'il est nécessaire de pénétrer dans la maison d'habitation pour l'application ou l'exécution de la présente loi peut ordonner à l'occupant de la maison d'habitation de permettre à une personne autorisée d'avoir raisonnablement accès à tous documents ou biens qui sont gardés dans la maison d'habitation ou devraient y être gardés et rendre tout autre ordonnance indiquée en l'espèce pour l'application de la présente loi.

Production de documents ou fourniture de renseignements

231.2 (1) Malgré les autres dispositions de la présente loi, le ministre peut, sous réserve du paragraphe (2) et, pour l'application ou l'exécution de la présente loi (y compris la

of this Act (including the collection of any amount payable under this Act by any person), of a listed international agreement or, for greater certainty, of a tax treaty with another country, by notice sent or served in accordance with subsection (1.1), require that any person provide, within such reasonable time as is stipulated in the notice,

(a) any information or additional information, including a return of income or a supplementary return; or

(b) any document.

Notice

(1.1) A notice referred to in subsection (1) may be

- (a) served personally;
- (b) sent by registered or certified mail; or
- (c) sent electronically to a bank or credit union that has provided written consent to receive notices under subsection (1) electronically.

Unnamed persons

(2) The Minister shall not impose on any person (in this section referred to as a “third party”) a requirement under subsection 231.2(1) to provide information or any document

perception d’un montant payable par une personne en vertu de la présente loi), d’un accord international désigné ou d’un traité fiscal conclu avec un autre pays, par avis signifié ou envoyé conformément au paragraphe (1.1), exiger d’une personne, dans le délai raisonnable que précise l’avis :

a) qu’elle fournisse tout renseignement ou tout renseignement supplémentaire, y compris une déclaration de revenu ou une déclaration supplémentaire;

b) qu’elle produise des documents.

Avis

(1.1) L’avis visé au paragraphe (1) peut être :

- a) soit signifié à personne;
- b) soit envoyé par courrier recommandé ou certifié;
- c) soit envoyé par voie électronique à une banque ou une caisse de crédit qui a consenti par écrit à recevoir les avis visés au paragraphe (1) par voie électronique.

Personnes non désignées nommément

(2) Le ministre ne peut exiger de quiconque — appelé « tiers » au présent article — la fourniture de renseignements ou production de documents prévue au

relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection 231.2(3).

Judicial authorization

(3) A judge of the Federal Court may, on application by the Minister and subject to any conditions that the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection (1) relating to an unnamed person or more than one unnamed person (in this section referred to as the “group”) if the judge is satisfied by information on oath that

- (a) the person or group is ascertainable; and
- (b) the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act.

(c) and (d) [Repealed, 1996, c. 21, s. 58(1)]

paragraphe (1) concernant une ou plusieurs personnes non désignées nommément, sans y être au préalable autorisé par un juge en vertu du paragraphe (3).

Autorisation judiciaire

(3) Sur requête du ministre, un juge de la Cour fédérale peut, aux conditions qu’il estime indiquées, autoriser le ministre à exiger d’un tiers la fourniture de renseignements ou la production de documents prévues au paragraphe (1) concernant une personne non désignée nommément ou plus d’une personne non désignée nommément — appelée « groupe » au présent article —, s’il est convaincu, sur dénonciation sous serment, de ce qui suit :

- a) cette personne ou ce groupe est identifiable;
- b) la fourniture ou la production est exigée pour vérifier si cette personne ou les personnes de ce groupe ont respecté quelque devoir ou obligation prévu par la présente loi;

c) et d) [Abrogés, 1996, ch. 21, art. 58(1)]

Imported Goods Records Regulations, SOR/86-1011

General

2 (1) Every person who is required by subsection 40(1) of the Act to keep records in

Dispositions générales

2 (1) La personne à qui incombe l’obligation prévue au paragraphe 40(1) de la Loi

respect of commercial goods shall keep, for the period of six years following the importation of the commercial goods, all records that relate to	quant à la conservation de documents doit conserver, pendant les six ans suivant l'importation des marchandises commerciales en cause :
(a) the origin, marking, purchase, importation, costs and value of the commercial goods;	a) les documents portant sur l'origine, le marquage, l'achat, l'importation, le coût et la valeur des marchandises commerciales;
(b) payment for the commercial goods;	b) les documents portant sur le paiement effectué à l'égard de ces marchandises;
(c) the sale or other disposal of the commercial goods in Canada; and	c) les documents portant sur leur vente ou toute autre forme de disposition au Canada;
(d) any application for an advance ruling made under section 43.1 of the Act in respect of the commercial goods.	d) les documents concernant toute demande de décision anticipée présentée aux termes de l'article 43.1 de la Loi à l'égard de ces marchandises.
...	[...]
4 The records referred to in sections 2 to 3.1 shall be kept in such a manner as to enable an officer to perform detailed audits of the records and to obtain or verify the information on which a determination of the amount of the duties paid, payable, deferred, refunded or relieved was made.	4 Les documents visés aux articles 2 à 3.1 sont conservés de façon à permettre à un agent d'en effectuer des vérifications détaillées et d'obtenir ou de vérifier les renseignements ayant servi au calcul du montant des droits payés, à payer, reportés, remboursés ou visés par une exonération.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-917-21

STYLE OF CAUSE: AKME POULTRY, BUTTER & EGGS
DISTRIBUTORS INC v MINISTER OF PUBLIC
SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: FEBRUARY 8, 2023

JUDGMENT AND REASONS: PAMEL J.

DATED: OCTOBER 13, 2023

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