

Federal Court
of Appeal



CANADA

Cour d'appel
fédérale

Date: 20101012

Docket: A-42-10

Citation: 2010 FCA 262

**CORAM: SHARLOW J.A.
PELLETIER J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

TOYOTA TSUSHO AMERICA INC.

Appellant

and

**CANADA BORDER SERVICES AGENCY and
ATTORNEY GENERAL OF CANADA**

Respondents

Heard at Ottawa, Ontario, on October 12, 2010.

Judgment delivered from the Bench at Ottawa, Ontario, on October 12, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on October 12, 2010)

SHARLOW J.A.

[1] The appellant Toyota Tsusho America Inc. (“Toyota”) is asking this Court to reverse the judgment of Justice Tremblay-Lamer (2010 FC 78) which granted the Crown’s motion to strike Toyota’s application for judicial review of a decision of the Canada Border Services Agency (“CBSA”) determining that certain Chinese-origin boron steel plate that Toyota shipped to Canada would be subject to an anti-dumping order issued by the Canadian International Trade Tribunal (“CITT”). The application for judicial review sought an order quashing or setting aside the determination, or alternatively an order prohibiting the determination from being enforced.

[2] Toyota claims that it made the shipment in reliance on an oral communication from a CBSA official that the anti-dumping order would not apply to boron steel plate. Justice Tremblay-Lamer concluded that, even if that oral communication was made and relied upon as Toyota alleged, the subsequent CBSA determination was subject to the statutory appeal scheme in the *Special Import Measures Act*, R.S.C. 1985, c. S-15 (“SIMA”), which effectively excluded the jurisdiction of the Federal Court to entertain an application for judicial review of the determination. That conclusion was based on an analysis of the relevant provisions of SIMA, as well as a line of cases that includes *Canada v. Addison & Leyen Ltd.*, 2007 SCC 33, [2007] 2 SCR 793, *Abbott Laboratories Ltd. v. Canada (Minister of National Revenue)*, 2004 FC 140, and *Fritz Marketing Inc. v. Canada (F.C.A.)*, 2009 FCA 62, [2009] 4 F.C.R. 314.

[3] Toyota argues that this conclusion is based on one or more errors of law. We do not consider it necessary to discuss the grounds of appeal in any detail. Despite the able written and oral submissions of counsel for Toyota, we have not been persuaded that Justice Tremblay-Lamer’s conclusion is based on an error of law or any other error warranting the intervention of this Court. On the contrary, we agree with her conclusion, substantially for the reasons she gave. Specifically, we are not persuaded that the arguments sought to be raised by Toyota in its judicial review application cannot be adjudicated within the statutory appeal process, if not by the CBSA or its President, then by the CITT.

[4] This appeal will be dismissed with costs.

“K. Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-42-10

APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE TREMBLAY-LAMER DATED JANUARY 22, 2010, DOCKET NO. T-1420-09

STYLE OF CAUSE: Toyota Tsusho America Inc. v.
Canada Border Services Agency and
Attorney General of Canada

PLACE OF HEARING: Ottawa

DATE OF HEARING: October 12, 2010

REASONS FOR JUDGMENT OF THE COURT BY: Sharlow J.A.
Pelletier J.A.
Layden-Stevenson J.A.

DELIVERED FROM THE BENCH BY: Sharlow J.A.

APPEARANCES:

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