

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170405

Docket: A-197-15

Citation: 2017 FCA 72

**CORAM: GAUTHIER J.A.
BOIVIN J.A.
DE MONTIGNY J.A.**

BETWEEN:

VOLPAK INC.

Appellant

and

**PRESIDENT OF THE CANADA BORDER
SERVICES AGENCY**

Respondent

Heard at Montréal, Quebec, on April 5, 2017.
Judgment delivered from the Bench at Montréal, Quebec, on April 5, 2017.

REASONS FOR JUDGMENT OF THE COURT BY:

GAUTHIER J.A.

Federal Court of Appeal



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VOLPAK INC.

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Defendant

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on April 5, 2017).

GAUTHIER J.A.

[1] This is an appeal of a decision of the Canadian International Trade Tribunal (CITT) rejecting Volpak Inc.'s appeal (Volpak) from a re-determination made by the President of the Canada Border Services Agency (President) dated March 15, 2012.

[2] The President's decision related to the classification of 13,402 kilos of bone-in chicken breast imported from the United States, which had been reclassified by the Canada Border Services Agency (CBSA) from tariff item No. 0207.13.91 (within access commitment) to tariff item No. 0207.13.92 (over access commitment). The CBSA reclassified these goods after being advised that the import permit originally issued in February 2011 under section 8.3 of the *Export and Import Permit Act*, R.S.C., 1985, c. E-19 (*EIPA*) had been cancelled in July 2011 by the Minister of Foreign Affairs and International Trade.

[3] The President confirmed the CBSA's decision on the basis that pursuant to subsection 10(2) of the *Customs Tariff*, S.C. 1997, c. 36 (*Customs Tariff*), the goods at issue could not be classified as "within access commitment" unless they were imported under the authority of a valid permit issued under section 8.3 of the *EIPA*.

[4] The Minister's decision to retroactively cancel the permit issued to Volpak under the Import for Re-Export Program was made on the basis that Volpak had processed and exported 13,402 kilos of domestically sourced chicken instead of the 13,402 kilos it had originally imported from the United States on February 18, 2011. Volpak did not challenge the validity of the Minister's decision by way of judicial review. It is not disputed that it was not argued before the CITT that it or the CBSA had jurisdiction to challenge the validity of this cancellation. Counsel for Volpak conceded that this issue was therefore not properly before our Court.

[5] Therefore, before the CITT, the only goods at issue in Volpak's appeal were the 13,402 kilos of bone-in chicken which had been reclassified as "over access commitment" (tariff item

No. 0207.13.92). The CITT determined that the CBSA had no choice but to consider the fact that the permit under which these 13,402 kilos of chicken were originally imported had been retroactively cancelled by the Minister. That being the case, the decision made by the CBSA was perfectly in line with subsection 10(2) of the *Customs Tariff*.

[6] In its memorandum, Volpak submitted an argument focused on whether or not the CITT failed to address whether the CBSA had properly classified another quantity of 4,379 kilos of bone-in chicken also imported in February 2011 as “within access commitment”. It argued that the new permit issued in July 2011, which authorized Volpak to import 4,379 kilos of fresh, bone-in chicken breast, could not justify this classification. In our view there is no need to address this argument as the only goods at issue before the CITT were the 13,402 kilos of bone-in chicken and nothing else.

[7] Furthermore, considering the basis on which the President made its re-determination (absence of a permit), we have not been persuaded that the CITT made any reviewable error that could justify this Court’s intervention.

[8] The appeal will be dismissed with costs fixed at an amount of \$3000 (all inclusive).

« Johanne Gauthier »

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-197-15
STYLE OF CAUSE: VOLPAK INC. v. PRESIDENT OF
THE CANADA BORDER
SERVICES AGENCY

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: APRIL 5, 2017

REASONS FOR JUDGMENT OF THE COURT BY: GAUTHIER J.A.
BOIVIN J.A.
DE MONTIGNY J.A.

DELIVERED FROM THE BENCH BY: GAUTHIER J.A.

APPEARANCES:

Michael Kaylor FOR THE APPELLANT

Patricia Nobl FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lapointe Rosenstein FOR THE APPELLANT
Marchand Melançon s.e.n.c.r.l.
Montréal (Quebec)

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada