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Tariff Classification Debate

The following article was written by Michael Kaylor, partner, Lapointe Rosenstein, L.L.P.

The recent decision of the Canadian International Trade Tribunal (the "Tribunal") in the case of Helly Hanson Leisure Canada Inc. v. PCBSA (AP-2006-054) (hereinafter "Helly") merits analysis insofar as a statement made by the Tribunal which, although obiter, may have significant ramifications insofar as a future case is concerned. Specifically, at paragraph 52 of its decision, the Tribunal held as follows:

52. Finally, the Tribunal notes that the various other rulings made by the CBSA concerning jackets other than the goods in issue are not relevant to this appeal. The Tribunal's task is to determine the proper tariff classification of the goods in issue, following the methodology prescribed by law. The consistency or lack of consistency in the CBSA's previous decisions is not relevant to this determination, regardless of whether these rulings concern goods that have the same characteristics as those of the goods in issue.



Michael Kaylor, partner, Lapointe Rosenstein, L.L.P.

The foregoing statement is relevant in that the appeal itself resulted from an advance ruling as issued by the Canada Border Services Agency (the "CBSA").

It is well established that a claimant cannot rely on the treatment accorded by the administrative authority to the competitors of the

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I.E.Canada Tradeshow

On October 27 - 29, 2008, I.E.Canada's 77th Annual Conference, Tradeshow and Gala will focus on Maximizing the Value in Your Supply Chain. It's a unique opportunity for Canadian importers

and exporters to share experiences and best practices.

The tradeshow, which will run October 27 and 28th, will take place at

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CFIA Consolidates Service Centres

The Canadian Food Inspection Agency (CFIA) has announced that it will be modernizing its import control processes by consolidating its three Import Service Centres. These centres, currently located in Montreal, Toronto and Vancouver, will be folded into one National Import Service Centre that is scheduled to open in early 2009.

The CFIA will continue to provide front-line screening to ensure that imported products meet Canadian requirements. Regulatory compliance and the safety of food and agricultural commodities imported into Canada are a priority for the Canadian Food Inspection Agency.

The creation of a centralized National Import Service Centre will provide the following enhanced services:

- a single window for issues related to import transactions and documentation;
- increased bilingual service to 24 hours, seven days a week from the existing 20 hours, seven days a week;
- increased consistency in the review of import documentation and verification of import admissibility;
- improved alignment with the ser-

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I.E.Canada Advocacy Activities

I.E.Canada's advocacy efforts have been ramping up over the summer in preparation for and active fall. Many submissions have been made, and communication exchanged regarding upcoming legislative changes and program development. The following is a brief update:

Partners in Protection

I.E.Canada submitted comments to CBSA on July 21, 2008 regarding proposed Cargo Sealing Guidelines for PIP Members. A copy of the submission is available at www.iecanada.com/Seal_Submission_July21_08.pdf and the draft guidelines at http://www.iecanada.com/PIP_Draft_Seal_Guidelines.pdf.

Claude St. Denis, Director, Program Development, CBSA in a letter dated July 4, 2008 responded to the association's submission on CBSA's draft acceptance/rejection, approval/denial, suspend/cancel and appeal/reinstate processes. A copy of Mr. St. Denis' letter is available at http://www.iecanada.com/CBSA_Response_July4_08.pdf. A copy of the association's submission dated May 8, 2008 is available at http://www.iecanada.com/assoc_news/PD.pdf, and the original document containing CBSA's proposals with respect to these processes is available at http://www.iecanada.com/PIP_Proposal_Apr_08.pdf.

CBSA has advised that the revised processes are not yet available as they are still being finalized.

Testing and Ventilation of Fumigants

A special meeting of the Border Commercial Consultative Committee (BCCC) was held on July 30, 2008 in response to concerns raised by the trade community with respect to the lengthy delays being



Carol Osmond, vice president, policy, I.E.Canada.

caused by the testing and ventilation of marine containers for fumigants.

Both Mary Anderson, president, I.E.Canada, and Carol Osmond, vice president, policy, I.E.Canada, participated in this meeting. Mary also attended a pre-meeting with senior CBSA officials.

In June 2008, CBSA officers began testing all marine containers pulled for inspection for the presence of formaldehyde in addition to the five other chemical fumigants for which CBSA was already conducting testing. The purpose of the tests is to protect CBSA employees from any possible exposure to hazardous chemicals. Containers that test positive are ventilated and retested prior to examination. However, almost all of the containers pulled for inspection tested positive for formaldehyde resulting in lengthy delays at maritime ports.

I.E.Canada joined with the Canadian International Freight Forwarders Association (CIFFA) and the Shipping Federation of Canada in a letter to CBSA executive vice president, Greta Bossenmaier, expressing concerns about the introduction of testing for formaldehyde and the serious harm the delays were causing to the trade community. A copy of this letter is available at:

http://www.iecanada.com/IECanada_fumigants.pdf

At the July 30th meetings, CBSA officers expressed a willingness to engage the business community in exploring ways to improve the process and outlined the steps that were being taken to address the immediate need to reduce container backlogs, including acquiring new forms of detection technology and testing new ventilation technology.

CBSA is also liaising with Australian Customs to develop best practices and proposes to establish a stakeholder advisory group, with representation from business and government, to ensure there is an on-going dialogue and consultation with respect to improving the process. A copy of the presentation to the BCCC is available at: <http://www.iecanada.com/ChemFumigantsJuly08.pdf>

ACI/eManifest

The ACI Subcommittee of the Customs & Legislation Committee held a joint meeting with representatives of other importer associations on July 30, 2008. The meeting was also attended by representatives of the courier, customs brokerage and trucking industries. The purpose of the meeting was to review the draft eSPN Issues Log in order to provide comments to CBSA; to identify priority policy issues; and to agree on next steps.

Business Resumption/Contingency Planning

Members of the BCCC Contingency Planning Subcommittee, including I.E.Canada, have been asked to review and comment on a Plan for the Movement of People and Goods During and Following an Emergency, which contains a proposed process for the prioritization of critical goods and people for cross

Shipping and Trade Horizons



Leo Ryan

Shipping and Trade Horizons, a Tradeweek column, is produced by Leo Ryan. The column addresses Canadian industry issues and trade developments of interest to our members.

Ports Staging Annual Summit

Every summer, the chief executives of leading Canadian ports gather together to review the current challenges facing their industry. This year's Annual Conference and AGM of the Association of Canadian Port Authorities, being staged in Saint John on August 17-20, has special significance for two reasons. First, it will mark the 50th anniversary of the Association whose 20 member ports annually handle more than 280 million tonnes of cargo. Secondly, it is coinciding with rising concerns over a global economic slowdown and the fact that the United States in particular may already be in a recession.

As merits the occasion, there is a full agenda, which includes a scheduled keynote address by Lawrence Cannon, Minister of Transport, Infrastructure and Communities.

Worth noting is the fact that a burning issue of the past few years - amending the Canada Marine Act to provide ports with a significantly

improved regime for funding infrastructure projects - has been largely resolved with the recent passing of legislation.

Otherwise, as explains Gary LeRoux, ACPA Executive Director, "It is the one time of the year when all in the maritime community come together to take stock of where we are as an industry. We have representatives from shippers, carriers, rail, terminal operators, logistics providers, the cruise sector, and governments."

"This year's presenters," LeRoux added, "will delve into key subject areas like the importance of the federal government's policy framework for gateways and trade corridors as it is being played out in the various regions of the country."

The conference will also look at ongoing efforts being made by port authorities and their cities to work in partnership on local development initiatives. This is a sensitive area, as demonstrated by current and past tensions in such port-cities as Vancouver, Montreal, Toronto and Oshawa.

Presenters will, in addition, comment on the growing cruise business in every region, supply chain logistics, environmental management, and the progress in efforts to create a Green Award program for Canada modeled on that of a Rotterdam-based foundation.

Amidst rising global evidence of stagflationary economic trends sparked by falling growth and higher inflation, Canadian ports are generally managing to register at least moderate traffic gains as international maritime trade remains strong. Some ACPA ports, notably on the West Coast, are forging ahead with major expansion plans to meet Asian demand. On the St. Lawrence River and on the Atlantic coast, a mood of optimism gener-

ally prevails, despite abnormally low economic growth in key European markets. On the Great Lakes, a persistent decline in steel imports is adversely affecting individual ports.

In a recent candid analysis, Dominique Strauss-Kahn, Managing Director of the International Monetary Fund, suggested the world economy is teetering between "the ice of recession and the fire of inflation."

The consensus view is that the international outlook is being dragged down mainly by the United States, still undergoing a mortgage credit and housing crisis, but also by high world oil prices that have had a mushrooming effect on transportation and food costs. It remains to be seen how things will change in light of the recent drop in oil prices.

Growth in the 30 countries belonging to the Paris-based Organization for Economic Cooperation and Development (OECD) has been forecast to slow to 1.8% this year and 1.7% in 2009. On the other hand, growth in China and India - the world's fastest-expanding economies - is expected to remain in the high single digits, according to the Economist Intelligence Unit.

In Canada, the OECD expects the GDP to progress by just 1.2% this year and to attain 2% in 2009. The present numbers for the United States are considerably bleaker. Not surprisingly, container volume at the main U.S. ports is forecast to diminish by 4% this year by Washington-based Global Insight because of reduced demand. Thus far, nonetheless, the low U.S. dollar is helping U.S. exports - which is positive for a port like Montreal which garners more than half of its box business from the U.S. Midwest and Northeast markets.

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CFIA, cont'd from pg. 1

vices delivered by the Canada Border Services Agency (CBSA).

The CFIA is committed to maintaining established service standards with minimal disruption to clients during this transition and will be providing updates to stakeholders as work progresses. At this point, there has been no confirmation as to where the Centre will be located.

I.E.Canada is interested in the impact the consolidation of the centres will have on Canadian importers, and would like to hear from food and agricultural product importers. Two key questions I.E.Canada is asking are:

Would centralization or a move of your current service centre to another location affect your business? If yes, how?

What services do you depend on receiving from the import service centres?

If you would like to comment on the CFIA's plans to consolidate the Import Service Centres, or would like to provide some answers to the questions above, please contact Keith Mussar, chair, foods committee at KMussar@iecanada.com, or by phone at 905-542-2082.

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claimant (Ford Motor Co. of Canada Ltd. v. M.N.R. [1997] 3 F.C. 103 (F.C.A.))

An exception to this principle appears to arise from the Tariff Classification Advance Rulings Regulations (the "Regulations"), issued pursuant to section 43.1 of the Customs Act, which provides as follows at paragraph 6:

An officer shall give consistent advance rulings with respect to applications for advance rulings

based on facts and circumstances that are identical in all material aspects.

The Tribunal's decisions concerning tariff classification are replete with statements that, in arriving at decisions concerning tariff classification, the Tribunal is not bound by rulings issued by the CBSA or by the U.S. Customs Service.

In the context of an ordinary appeal to the Tribunal concerning tariff classification, the Tribunal is certainly well-founded in the exercise of its discretion to disregard rulings as issued by the CBSA or the U.S. Customs Service in that such rulings merely reflect the "opinion" of the respective administrative agency. In the final analysis, it is the Tribunal which must make the decision concerning the proper tariff classification of the imported goods. There is no reason to suggest that there is a different requirement insofar as tariff classification appeals which arise from advance rulings.

However, section 6 of the Regulations may well create a right to judicial review of the advance ruling on the basis that it is inconsistent with other rulings and, as such, violates s.6 of the Regulations.

The Federal Court's jurisdiction to hear a judicial review application is only limited if the matter is otherwise appealable. The Tribunal's jurisdiction is limited in tariff classification appeals to the determination of the proper tariff classification of the goods. Arguably, this does not extend to issues of "consistency". It would therefore appear that the CBSA's improper exercise of its discretionary authority can be challenged on judicial review when it can be demonstrated that the CBSA has issued inconsistent rulings to different importers for the same goods (see *Chrysler Canada Inc. v. The Queen*, 2008 F.C. 727).

The Federal Court, on judicial review, may, in the case of inconsistent rulings, be persuaded to issue a finding which differs from that of the Tribunal whose jurisdiction is confined to the "substantive merits" of the tariff classification debate.

Time will tell.

Tradeshow, cont'd from pg. 1

the Delta Meadowvale Conference Centre, Toronto Airport, and will feature exhibitors with information, services and products that will help businesses maximize value in their global supply chains.

I.E.Canada's Annual Conference is the premier event for Canadian importers and exporters. Attendees include leaders in international trade from both the public and private sector. The tradeshow portion of the conference is a tremendous opportunity to showcase expertise and to learn from other professionals in global trade.

Sponsorship opportunities for the conference are still available, although the deadline for sponsorship is August 21, 2008.

For more information on the Tradeshow, or for information on exhibiting, please contact Jesse Arseneault at conference@iecanada.com

The agenda, sponsorship opportunities and on-line registration for the conference are now posted on I.E.Canada's website. Please visit www.iecanada.com for the latest information. Companies interested in sponsoring the conference should contact Fée Kiessling, Project Lead, 77th Annual Conference, I.E.Canada. Fée can be reached at 416-223-7072 or by e-mail at fkiesling@iecanada.com.

Online Marketplace for HKTDC

Online sourcing has been an important tool for buyers in recent years. But future trends suggest that while the Internet will remain an important instrument, buyers are actually using multiple channels, including publications and trade fairs to source products.

The Hong Kong Trade Development Council (HKTDC) has rolled out a new online integrated marketplace, www.hktdc.com, to address those needs. The new online service capitalises on the HKTDC's three established products: its international trade fairs, its online marketplace and product magazines, which together, create a platform for year-round sourcing and marketing.

"You can go through the traditional means of our physical trade fairs, but supplementing that with our online marketplace and product magazines allows us to deliver the best channel for buyers," said Clare Wong, Director of Publications and E-Commerce at the HKTDC.

One major advantage for users of the HKTDC online marketplace is the direct link to its 30 plus world-class trade fairs. The online marketplace is made up of a community of verified exhibiting suppliers who have taken part in HKTDC trade fairs.

Meantime, the 15 HKTDC product magazines have been aligned to become the official magazines of the trade fairs. Combining the trade fairs with the online marketplace and product magazines, according to Ms Wong, will extend the benefits of HKTDC's trade fairs. "Integrating the three products creates a 24/7 virtual exhibition, allowing buyers to research and source products and services before and after the events.

"In making improvements to our online marketplace, we focused on how best to help buyers differentiate one supplier from the next," Ms



Clare Wong, director of publications and e-commerce, Hong Kong Trade and Development Council.

Wong continued. "The fact that we have met these suppliers and shaken their hands should give buyers in our online service the confidence that these companies are credible and trustworthy."

Another way to help buyers on the online marketplace make better choices is through the introduction of third-party authentication. HKTDC has partnered with Dun and Bradstreet to provide the D&B checked authentication service to verify suppliers' company information. Meantime, information on suppliers' US import and Hong Kong and China export figures are available through data provided by PIERS, Ge-TS and Goodwill China.

To help clients in today's competitive business environment, the new www.hktdc.com comes with faster search engines and improved product categorisations to deliver the quickest, most precise sourcing information. A majority of customers who have previewed the new hktdc.com site agree. "The improvements to the site are excellent," said

Australian buyer Ron Craig. "It's more user friendly, with quicker access to preferred suppliers, and the search-refining process is great," he added.

In a further integration of HKTDC's virtual and physical marketplace, buyers who attend the trade fairs can now take advantage of the new hktdc.com Customised Sourcing Service. Launched last March, the mobile sourcing service helps buyers input specific product information into a mobile device, which then produces a printed list of relevant exhibitors that are present at the event.

"It provides a roadmap for buyers to find a particular product from among the thousands of exhibit booths," the HKTDC's Ms. Wong said.

More than 24,000 buyers took advantage of the innovative service at the three April 2008 fairs, where the service was introduced, with 2.8 million referrals made to exhibitors and suppliers. These types of improvements are part of efforts to make the HKTDC integrated marketplace a complete sourcing solution.



Advocacy, cont'd from pg. 2

border movement during emergencies. This document has been provided on a confidential basis for consultation purposes only and is not available for distribution.

If you would like further information on any of the issues addressed above, or have any questions, please contact Carol Osmond, vice president, policy, at cosmond@iecanada.com.



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Canadian Association of Importers and Exporters
Association canadienne des importateurs et exportateurs

77th Annual Conference, Trade Show & Gala

Maximizing the Value in Your Supply Chain

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Keynote Speakers Include:

The Honourable Michael Fortier (invited)
Minister of International Trade Canada

Cathy Munroe
Vice-President, Admissibility Branch
Canada Border Services Agency (CBSA)

Emilio Goicoechea
Ambassador of Mexico to Canada

October 27-29, 2008

Delta Meadowvale Conference Centre, 6750 Mississauga Road, Toronto Airport

I.E.Canada thanks the following sponsors to date for their support of the conference:



For the latest information available on this conference (i.e. agenda, on-line and trade show registration, and sponsorship opportunities), please visit <http://www.iecanada.com/2008-77th-Annual-Conference.html>.

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