

APPEALS

INTRODUCTION

The Canadian International Trade Tribunal (the Tribunal) hears and decides appeals from decisions of the Canada Border Services Agency (CBSA) under the *Customs Act* and the *Special Import Measures Act (SIMA)*. Appeals made under the *Customs Act* relate to the tariff classification, value for duty and origin of imported goods. Appeals made under *SIMA* relate to the application, to imported goods, of Tribunal findings or orders concerning injury or retardation caused by dumping and/or subsidizing and the normal value, export price or amount of subsidy in relation to the imported goods.

The Tribunal also hears and decides appeals from decisions of the Minister of National Revenue (the Minister) made under the *Excise Tax Act*. These appeals relate to assessments or determinations of federal sales tax or excise tax.

APPEAL PROCESS

Pre-hearing Process

The appeal process is set in motion when a notice of appeal (or letter) is filed with the Tribunal. A person must file an appeal within 90 days of the date of a decision by the CBSA or the Minister.

The person filing an appeal (the appellant) with the Tribunal has 60 days to submit a document called a brief. The brief must state under which act the appeal is filed, give a description of the goods in issue, indicate the points at issue between the appellant and the CBSA or the Minister (the respondent), and state why the appellant believes that the respondent's decision is incorrect. For example, a company could argue that the goods that it has imported should be classified under a different tariff item than the one that has been determined by the CBSA. A copy of the brief must also be given to the respondent.

Within 60 days after having received the appellant's brief, the respondent must provide the Tribunal and the appellant with a brief setting forth the respondent's position.

Extensions of Time

Under the *Customs Act*, a person may apply to the Tribunal for an extension of time to file a request for a re-determination or a further re-determination with the CBSA. The Tribunal may grant the extension after either the CBSA has refused the application or 90 days have elapsed after the application was made and the person has not been notified of the CBSA's decision. A person may also apply to the Tribunal for an extension of time to file a notice of appeal with the Tribunal. Similarly, under the *Excise Tax Act*, a person may apply to the Tribunal for an extension of time to file a notice of objection with the Minister or to file a notice of appeal with the Tribunal. Extensions of time are not automatic, and these two acts specify the circumstances and conditions under which an extension of time may be granted by the Tribunal.

Hearing

Once the Tribunal has received the respondent's brief, the Secretary of the Tribunal contacts both parties in order to schedule a hearing. Hearings are generally conducted before Tribunal members in public. The Tribunal publishes a notice of the hearing in Part I of the *Canada Gazette* to allow other interested persons to attend.

Depending on the complexity and nature of the matter at issue, appeals are heard by a panel of one or three members.

A person who wishes to participate in the appeal as a third party (an intervener) may do so by requesting intervener status, specifying the nature of his or her interest in the appeal, and indicating the reason for intervening and how he or she may assist the Tribunal in the resolution of the appeal.

An individual may present a case before the Tribunal in person, or be represented by counsel or any other representative. The respondent is generally represented by counsel from the Department of Justice.

As in a court, the appellant, the respondent and an intervener can call witnesses, and these witnesses are questioned under oath or affirmation by the opposing parties, as well as by Tribunal members, in order to test the validity of their evidence. When all the evidence is gathered, parties may present arguments in support of their respective positions.

On its own initiative or at the request of the appellant or the respondent, the Tribunal may decide to hold a hearing by way of written submissions (a file hearing). In this case also, it publishes a notice in Part I of the *Canada Gazette* to allow other interested persons to participate. In the notice, the Tribunal establishes the manner and timing for filing the submissions and, if appropriate, the requirement for the parties to file an agreed statement of facts.

DECISION

The Tribunal usually issues a decision on the matters in dispute, as well as the reasons for its decision, within 120 days of the hearing.

JUDICIAL REVIEW

If the appellant, the respondent or an intervener disagrees with the Tribunal's decision, the decision can be appealed to the Federal Court of Appeal (*Customs Act* and *SIMA*) or the Federal Court (*Excise Tax Act*).

APPEAL PROCESS

