What Is A "Blanket Authorization" And Why Does It Matter?

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According to the Canadian International Trade Tribunal ("CITT") in Worldpac Canada v. President of the Canada Border Services Agency, AP-2014-021 (Order and Reasons released on February 18, 2016 and posted on the CITT website on March 8, 2016), a "blanket authorization" is a "mechanism involving a specific process by which an importer can apply to the [Canada Border Services Agency ("CBSA")] for authorization to file several adjustment or refund requests at once."

The CITT goes on to explain that:

> "Instead of filing a large number of individual requests (often identical or in regard to the same subject matter), in certain circumstances, the CBSA allows importers to file a single request, under a blanket authorization, covering importations over a given period of time. This is meant to save time and effort for both the importer and the CBSA, which only has to deal with a single request as opposed to a larger number dealing with the same goods. According to its internal policies, however, the CBSA will only grant a blanket authorization, pursuant to an importer's request, if it believes that, by doing so, it will be mutually beneficial to the CBSA and the importer—this makes sense. It is designed to facilitate matters for all.

The obvious implication here is that an importer can only file several adjustment requests under the authority of a single application if an authorization is granted by the CBSA. This authorization then becomes the understanding that the CBSA will process a multitude of importations as one request, under one umbrella, because, for example, the goods are all similar, deal with the same subject matter and, more generally, to which the same arguments would apply (e.g. a request for a change in tariff treatment).

The process of blanket authorizations is not stipulated in the [*Customs Act*] but comes from an administrative practice. It simply allows the CBSA to streamline formal processes in order to help importers. Importantly, it must be remembered that the process in no way alters imperative prescriptions of the *Act*, including the four-year time limit for filing refund or adjustment requests under subparagraph 74(3)(b)(i) of the *Act*. At all times, both parties are bound by the requirements of the *Act*, notwithstanding this administrative streamlining."

The CITT's description concerning "blanket authorizations" in the *Worldpac* case is important because the CITT determined that it did not have jurisdiction to hear the appeal and dismissed the case on a technicality. The CITT explained in the "Procedural History" of the case that Worldpac had received blanket authorization letters from the CBSA, which included a caveat that the blanket authorizations could be cancelled if mutual administrative benefits were not realized. The blanket authorizations in the *Worldpac* case permitted a change in tariff classification, which resulted in refunds owing on past importation transactions. The CBSA had cancelled one or more of the blanket authorizations because of a lack of organization and diligence by Worldpac (apparently the paperwork was a bit of a mess). In the end, the CBSA accepted certain of the transactions covered by the blanket authorizations that were within the 4 year statutory limitation period and did not accept those that were filed outside the four year limitation period. Worldpac appealed the transactions considered to be outside the four year limitation period.

The case proceeded to a hearing and at the hearing the CBSA raised the jurisdictional issue – whether the CITT could hear the appeal because there was no decision under section 60 of the *Customs Act* and, therefore there was no section 67 appeal. The CBSA argued that only where it makes a decision on the basis of origin, tariff classification or value for duty, or makes an implied decision on the basis of any of those three grounds, is there a statutory basis for review pursuant to section 59, 60 or 67 of the*Customs Act*. Worldpac argued that the refusal of the CBSA to make a decision was a decision under section 60 of the *Customs Act*. Worldpac also argued that many of its refund requests were legally filed under the first two blanket authorizations issued by the CBSA and thatthis had the effect of suspending the four-year time limit prescribed under subparagraph 74(3)(b)(i) of the *Customs Act.*

The CITT agreed with the CBSA. The CITT determined that the *Customs Act* prescribes certain time limits during which refund requests must be filed and that a blanket authorization, which is administrative in nature, does not modify the imperatives set out in the *Act*. The CITT states that:

> "Subparagraph 74(3)(b)(i) of the *Act* is prescriptive and does not provide for extensions of time. Furthermore, discussions and attempts to find mutually beneficial grounds between the parties, either informally or through the blanket authorization process, do not suspend the effect of time and the operation of the legislative scheme; parties must always be mindful that the *Act* operates notwithstanding their interactions."

The CITT went on to state:

> "…the time limits are clearly set out in the legislative scheme and the *Act* does not provide any way to extend or modify them. The blanket authorization letters themselves made particularly clear that they ". . . in no way remove or extend the time limits to file a required adjustment under section 32.2 … or the application of penalties under the Administrative Monetary Penalties System, nor [do they] extend the one year under paragraph 74(1)(c.1) or the four-year time limits to file a refund under section 74." Furthermore, the blanket authorizations themselves have neither the effect nor the ability to extend the four- year time limit stipulated under the *Act."*

The CITT then makes an important point that brings the CITT's reasoning into clear perspective:

> "Worldpac could have filed individual refund requests for each transaction. This would have been time-consuming and administratively complex but would have enabled Worldpac to ensure compliance with the time limits set out in the *Act*. Instead, it chose to dedicate its time and effort negotiating a third blanket authorization request with the CBSA, a process which took several months. As it did so, time was fleeting for those importations on the fringe of that four-year time limit."

The morale of this story is that blanket authorizations case reduce paperwork burden for the importer and the CBSA. However, the paperwork must be filed on time and within the statutory scheme. If the blanket adjustments are not filed on time, the CBSA will not pay the refunds with respect to transactions outside the four year limitation period. If an importer is near a 4 year deadline, they should file the blanket adjustments more quickly or separate the transactions that may fall off the table and get B2 adjustments in on time.

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