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CUSTOMS AND EXCISE

CUSTOMS TARIFF

Goods mined, manufactured or produced wholly or in part by forced labour — Judicial review of decision by Canada Border Services Agency (CBSA) Programs Manager stating in email that CBSA not having authority to prohibit or regulate goods for production by forced labour solely based on originating from specific region or country — Pursuant to *Canada-United States-Mexico Agreement* (CUSMA), art. 23.6 signatories obliged to prohibit importation of goods produced by forced labour — Prohibition implemented under *Customs Tariff*, S.C. 1997, c. 36 (Tariff), Item 9897.00.00 — Applicants requested that CBSA institute presumption generally prohibiting import of goods from Xinjiang, China, on basis that those goods mined, manufactured or produced wholly or in part by Uyghur forced labour — According to Programs Manager, this type of legislation falling under purview of Global Affairs Canada — CBSA's research, analysis essentially focusing on entities (producers or importers) rather than on region/countries, prohibition applied on case by case basis — Applicants submitting Programs Manager erred in law when stating that CBSA not having authority to apply presumption — Preliminary issue whether: email from CBSA constituting matter subject to judicial review; applicants having standing to this application — Main issue whether CBSA's interpretation of Tariff reasonable — Email not dispositive to matter concerning applicants on its merits, not matter subject to judicial review — Applicants' general interest in preventing forced labour not sufficient to transform email into matter affecting their rights or obligations — No element of statutory framework imposing duty on CBSA to make decision such as one requested by applicants — While Programs Manager communicated legal interpretation, this not amounting to final determination on issue of any imports from Xinjiang — Email by CBSA not directly affecting applicants' legal rights or causing prejudice — Applicants not meeting criteria to be granted public interest standing — Programs Manager's interpretation of *Customs Act*, R.S.C., 1985 (2nd Supp.), c. 1, Tariff reasonable — Nothing about presumptive determinations in chapter under which tariff item 9897.00.00 falling — Schedule to Tariff presenting complete code governing classification of goods by tariff item as they are imported or as advanced ruling requested — Ordinary reading of CBSA's program legislation confirming that goods classified on case-by-case basis by tariff item, country of origin — Programs Manager not suggesting that Employment and Social Development Canada (ESDC) empowered to make decisions about which goods or shipments intercepted, states rather that ESDC provides helpful research to CBSA officers — No evidence that current legislative scheme not effective in preventing goods that were mined, manufactured or produced by forced labour from entering Canada — Application dismissed.

KILGOUR V. CANADA (ATTORNEY GENERAL) (T-259-21, 2022 FC 472, Gagné A.C.J., reasons for judgment dated April 5, 2022, 23 pp.)