CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, August 7, 1990

Appeal No. 2885

IN THE MATTER OF an application heard on March 5, 1990, pursuant to section 47 of the *Customs Act*, R.S.C., 1970, c. C-40, as amended;

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue for Customs and Excise dated August 31, 1987, with respect to a request for a redetermination pursuant to section 46 of the *Customs Act*.

BETWEEN

LOAN TO TRAN **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal declares that the 16 pictures imported by the appellant from Vietnam under entry number L509603 were correctly classified under tariff item 18000-1. The Tribunal also declares that the respondent correctly assessed the value for duty of the pictures imported under this entry number.

Kathleen E. Macmillan
Kathleen E. Macmillan
Presiding Member

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Robert J. Martin
Robert J. Martin
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. 2885

LOAN TO TRAN **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE **Respondent**

Customs Act - Whether pictures, composed of lacquer-painted, treated wood to which is stuck mother of pearl should be classified under tariff item 18000-1 as pictures, n.o.p. or whether, as the appellant claims, the goods should be classified under either tariff item 87500-1 as handicraft goods or tariff item 69520-1 as original collages by artists - If the goods are correctly classified under tariff item 18000-1, whether the Tribunal is empowered to waive the proof of origin requirement needed to enable goods duty-free entry under this tariff item in accordance with the General Preferential Tariff - If the Tribunal is not so empowered and duty is to be assessed on the pictures, whether the respondent used the correct exchange rate.

DECISION: *The appeal is dismissed. The goods were correctly classified under tariff item 18000-1 as pictures, n.o.p. The goods cannot be classified under tariff item 87500-1 as handicraft goods because, as a precondition to classification under this tariff item, the importer must provide a certificate from the country of export indicating that the goods are handicraft goods. The appellant does not have the certificate. The Tribunal cannot reclassify the goods under tariff item 69520-1 as original collages by artists since evidence brought forward does not establish that the goods are original collages produced by artists. Further, only the Governor in Council can waive the proof of origin requirement. The Tribunal also finds that customs officials followed the correct procedures, as spelled out in the Currency Exchange for Customs Valuation Regulations, to determine the value for duty and, accordingly, used the correct rate of exchange.*

Place of Hearing: *Vancouver, British Columbia*
Date of Hearing: *March 5, 1990*
Date of Decision: *August 7, 1990*

Tribunal Members: *Kathleen E. Macmillan, Presiding Member*
Robert J. Bertrand Q.C., Member
Sidney A. Fraleigh, Member

Clerk of the Tribunal: *Molly Hay*

Appearances: *Hiep Lee, for the appellant*
Bruce S. Russell, for the respondent

Case Cited: *J.E. Hastings Limited v. The Deputy Minister of National Revenue for Customs and Excise, 7 T.B.R. 376.*

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Statutes and Regulations Cited:	*Customs Tariff, R.S.C., 1970, c. C-41, as amended, subss. 3.1(1), 3.1(1.1), 3.1(6), 3.2(1) and tariff items 18000-1, 69520-1, 87500-1; General Preferential Tariff Rules of Origin Regulations, C.R.C. 1978, Vol. V, c. 528, p. 3641, as amended; Handicraft Goods Order, C.R.C. 1978, Vol. V, c. 531, p. 3661, as amended; Handicrafts Import Tariff Item 87500-1 Regulations, C.R.C. 1978, Vol. V, c. 532, p. 3665; Customs Act, R.S.C., 1970, c. C-40, s. 44, as amended by S.C., 1984, c. 47, s. 2; Currency and Exchange Act, R.S.C., 1970, c. C-39; Currency Act, S.C., 1984, c. 9, s. 1; Currency Exchange for Customs Valuation Regulations, SOR/78-86, Canada Gazette, Part II, p. 498, ss. 3 and 5; Canadian International Trade Tribunal Act, S.C., 1988, c. 56, subs. 54(2) and s. 60.*
Dictionaries Cited:	*The Oxford English Dictionary, Clarendon Press, 1989 (2nd ed.); Houghton Mifflin Canadian Dictionary of the English Language, Houghton Mifflin Canada Limited, 1982.*

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. 2885

LOAN TO TRAN **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE **Respondent**

TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member
ROBERT J. BERTRAND, Q.C., Member
SIDNEY A. FRALEIGH, Member

REASONS FOR DECISION

SUMMARY

On January 15, 1985, the appellant imported 16 pictures into Canada from Vietnam. The pictures are scenes fashioned from mother of pearl pieces attached to lacquer-painted, treated wood. Customs officials, and subsequently the respondent, classified the goods under tariff item 18000-1 as pictures, n.o.p. (pictures whose classification is not more accurately provided elsewhere in the Customs Tariff).

There are three points in issue in this appeal. First, did the respondent correctly classifiy the goods under tariff item 18000-1 as pictures, n.o.p., or should the goods be reclassified under tariff item 87500-1 as handicraft goods or tariff item 69520-1 as original collages by artists, either of which would entitle the goods to duty-free entry? Second, does the Tribunal have the jurisdiction to waive the proof of origin requirement necessary to import the goods under tariff item 18000-1 free of duty under the General Preferential Tariff? Finally, did the Deputy Minister use the correct exchange rate in calculating the value for duty?

The appeal is not allowed. On the question of tariff classification, the goods cannot be classified under tariff item 87500-1 as handicraft goods because the appellant is unable to provide a document from the country of origin certifying that the items are handicrafts. Regarding the collage classification, the evidence does not establish that the goods are original collages produced by artists. As these criteria must be satisfied in order to classify the goods under tariff item 69520-1, the Tribunal upholds the respondent's classification. Second, only the Governor in Council has authority to waive the proof of origin requirement. On the final issue of exchange rate, the Tribunal finds that customs officials followed the correct procedures, as outlined in the Currency Exchange for Customs Valuation Regulations, in determining the value for duty and, accordingly, used the correct rate of exchange. It is not within the Tribunal's jurisdiction to recommend the adoption of other procedures nor to suggest a more appropriate exchange rate for valuation purposes.

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THE LEGISLATION

The relevant statutory provisions, as they read when the goods in issue were shipped to and imported into Canada, are as follows:

Customs Tariff[1]

> *3.2(1) The Governor in Council may, by order, ... extend the benefit of the General Preferential Tariff in whole or in part to any country that in his opinion is a developing country, whose goods the growth, produce or manufacture of that country have previously been subject to the rates of Customs duties set forth in the ... Most-Favoured-Nation Tariff ... and from and after the date specified in such order ... the rates of duty of the General Preferential Tariff apply to goods the growth, produce or manufacture of such country.*

Vietnam, being a country to which the Most-Favoured-Nation Tariff has been granted, was also accorded General Preferential Tariff treatment on July 1, 1974.[2]

> *3.1(1) Subject to any other provision of this Act, the rates of Customs duties, if any, set out in column (4) of Schedule A, "General Preferential Tariff", apply to goods the product of any country to which the benefits of the General Preferential Tariff have been extended ... when such goods are imported into Canada from a country entitled to the benefits of that Tariff.*
>
> *(1.1) The Governor in Council may, by order and on such terms and conditions as he may specify, exempt the goods produced in a country enjoying the benefits of the General Preferential Tariff from ... the furnishing of proof of origin specified in accordance with subsection (6) ...*
>
> *(6) Proof of origin, as prescribed by regulations, shall be furnished with the bill of entry at the Customs office for goods admitted to entry under the General Preferential Tariff ... and the decision of the Minister [of National Revenue] is final as to the origin of the goods.*

General Preferential Tariff Rules of Origin Regulations[3]

Proof of origin requirements, as determined by the Governor in Council pursuant to subsection 3.1(8) of the *Customs Tariff*, is set forth in the *General Preferential Tariff Rules of Origin Regulations*.

The relevant provisions of these regulations follow:

> *6(1) ... a certificate of origin, in the form set out in [the] Schedule ...*
>
> *(a) signed by the exporter of the goods in the beneficiary country from which the goods were consigned to Canada,*

1. R.S.C., 1970, c. C-41, as amended.
2. General Preferential Tariff Order, SOR/74-380 (P.C. 1974-1416).
3. C.R.C. 1978, Vol. V, c. 528, p. 3641, as amended.

(b) certified by a governmental body of the beneficiary country or other body approved by the government of that country and recognized by the Minister [of National Revenue] for the purpose ...

shall be presented by the importer to the collector of customs before entry of the goods under the General Preferential Tariff shall be allowed.

Customs Tariff - SCHEDULE "A" Tariff Items

18000-1 Photographs, chromos, chromotypes, artotypes, oleographs, paintings, drawings, pictures, engravings or prints or proofs therefrom, and similar works of art, n.o.p.

69520-1 Original paintings, drawings, collages and pastels by artists ...

87500-1 Handicraft goods designated by Order of the Governor in Council, the growth, produce or manufacture of a country entitled to the benefits of the General Preferential Tariff, when certified by the government of the country of production or by any other authority in the country of production recognized by the Minister as competent for that purpose:

(a)to be handicraft products with traditional or artistic characteristics that are typical of the geographical region where produced, and

(b)to have acquired their essential characteristic by the handiwork of individual craftsmen.

Under such regulations as the Minister [of National Revenue] may prescribe

Handicraft Goods Order[4]

The relevant provisions of the *Handicraft Goods Order* enacted pursuant to tariff item 87500-1 are as follows:

3(1) Any goods listed in the schedule that

(a) possess traditional or artistic characteristics that are typical of the geographical region in which they were produced, and

(b) acquired the traditional or artistic characteristics described in paragraph (a) by the handiwork of individual craftsmen

are hereby designated for the purpose of tariff item 87500-1.

4. C.R.C. 1978, Vol. V, c. 531, p. 3661, as amended.

SCHEDULE

1. The following articles, if composed wholly or in chief part by value of wood, namely ... lacquer ware.

Handicrafts Import Tariff Item 87500-1 Regulations[5]

The relevant provisions of these regulations are as follows:

3. These Regulations apply to handicraft goods designated by order of the Governor in Council pursuant to tariff item 87500-1 of Schedule A to the Customs Tariff.

4. Handicraft goods may be entered under tariff item 87500-1 on production of a certificate in duplicate

(a) in the form set out in the schedule hereto and containing the information required therein; and
(b) signed by a representative of
(i) the government of the country of production, or
(ii) an organization included on a list prepared by the Minister.

Customs Act[6]

44. The value for duty of imported goods shall be computed in Canadian currency in accordance with regulations made under the Currency Act.

Currency Exchange for Customs Valuation Regulations

Currency exchange requirements are set forth in the *Currency Exchange for Customs Valuation Regulations*.[7] The relevant provisions of these regulations follow:

3. For the purposes of the Customs Act, the rate of exchange used by the Minister [of National Revenue] for determining the value in Canadian dollars of a currency of a country other than Canada shall be the rate prevailing on the date of direct shipment to Canada of the goods whose value in Canadian currency is to be determined.

5. ... "rate prevailing" means

(a) the rate of exchange quoted to the Minister by the Bank of Canada;
(b) if no rate of exchange is quoted as described in paragraph (a), the rate quoted to the Minister by any Canadian chartered bank selected by the Minister; or
(c) if no rate of exchange is quoted as described in paragraph (a) or (b), the rate of exchange quoted by the Financial Times of London.

5. C.R.C. 1978, Vol. V, c. 532, p. 3665.
6. R.S.C., 1970, c. C-40, as amended by S.C., 1984, c. 47, s. 2.
7. SOR/78-86, Canada Gazette, Part II, p. 498, ss. 3 and 5.

THE FACTS

The facts in this case have been gathered from documents submitted in evidence, the testimony of Mr. Hiep Lee, the husband and representative of the appellant, and Mrs. Diane Scott, an employee of Revenue Canada with several years of experience in currency exchange.

On January 15, 1985, Mrs. Loan To Tran imported into Canada 16 pictures from Vietnam. The appellant imported these goods through the port of Vancouver, British Columbia, under entry number L509603.

According to the appellant, the pictures are traditional Vietnamese scenes fashioned from mother of pearl pieces stuck onto a background of lacquer-painted, treated wood.

Pictures of the type imported by the appellant have been produced as a cottage industry by Vietnamese craftsmen. The craft has been handed down from family to family for several centuries, and certain elements of the craft are considered "trade secrets." A few entrepreneurs engaged from 10 to 15 workers to produce these pictures, but most were produced in smaller scale operations.

According to Mr. Lee, the goods were purchased by a friend, who has since left Vietnam, at a government-owned store in Ho Chi' Minh City, Vietnam. The invoice price charged by the government store for the pictures was 50,600 dong which, according to Mr. Lee, was approximately seven times the prevailing Vietnamese "market price" for similar goods. The friend was then reimbursed, in Vietnamese currency, by the appellant.

The witness stated that Canadian chartered banks do not buy or sell Vietnamese dong. Consequently, the appellant had to use a private agency, located in Montréal, Quebec, in order to convert Canadian currency into Vietnamese currency. The agency then transferred the money to the appellant's friend in Vietnam.

The exchange rate that the agency quoted to the appellant, and that the appellant used to purchase the goods in issue, was approximately CAN$0.0132 to the dong. Based on the exchange rate provided by the agency, the purchase price for the 16 pictures was roughly CAN$667.

When the appellant imported the goods, she initially tried to have them cleared under tariff item 50600-1 as manufactures of wood, n.o.p. Customs officials classified the goods under tariff item 18000-1 as pictures, n.o.p.; that is, pictures whose classification is not more accurately provided elsewhere in the *Customs Tariff*. The Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) confirmed this classification on August 31, 1987.

Although goods imported under this tariff item from Vietnam are entitled to duty-free treatment pursuant to the General Preferential Tariff rate, this duty-free treatment is available to those importers who, at the time of entry of the goods, provide proof of origin in the form of a certificate signed by the exporter and the Vietnamese government. Due to her ignorance of this

requirement, the appellant did not have the certificate nor was she able to subsequently obtain the certificate because her friend had left Vietnam.

Consequently, customs officials and the Deputy Minister, on August 31, 1987, determined the value for duty of the goods in issue by converting the invoiced price from Vietnamese currency into Canadian currency at an exchange rate prevailing at the time of shipment of the goods to Canada. The exchange rate used was that quoted by the Royal Bank of Canada and confirmed by an independent trust company. The quoted rate being CAN$0.1261 to the dong, the total purchase price for the 16 pictures and, consequently, the value for duty assessment became CAN$6,381.

The appellant was not satisfied with the exchange rate used by the Deputy Minister in determining the value for duty of the subject goods. She claimed that the Deputy Minister should have used the rate of exchange used by the appellant to purchase the goods in issue. Hence, she commenced an appeal to the Tariff Board pursuant to section 47 of the *Customs Act*.[8] In her appeal, the appellant also asked the Tariff Board, in any event, to waive the requirement of proof of origin and to allow the goods duty-free access into Canada.

Although the appeal was originally commenced before the Tariff Board, the appeal is taken up and continued by the Canadian International Trade Tribunal (the Tribunal) in accordance with subsection 54(2) and section 60 of the *Canadian International Trade Tribunal Act*.[9]

According to documents submitted by the appellant (Exhibit B-1) and the testimony of Mr. Lee, Vietnam has a multitiered exchange rate system. There is an "official rate" that Revenue Canada officials used when converting Vietnamese currency into Canadian currency to assess value for duty. There is the lower "commercial rate plus bonus" that is used in Vietnam to convert foreign currency into Vietnamese funds and vice-versa. This is the rate at which the appellant exchanged money in order to reimburse her friend for the purchase of the pictures. Finally, there is a "black market" rate of exchange that is even lower.

Mr. Lee said that the official rate is highly inflated and bears no relationship to the true value of the dong. He said that, given the *per capita* income in Vietnam at the time of purchase of the goods in issue, it would have taken over 40 years for an individual to buy 16 pictures like the ones in issue. He also said that sometime after the goods were imported into Canada, the Vietnamese government lowered the exchange rate to a value closer to the "commercial rate plus bonus."

Mr. Lee said that the black market rate of exchange is a more accurate reflection of the value of the dong. Indeed, as he stated, the Vietnamese government tries to discourage black market currency exchange by providing to recipients of foreign currency a gift packet of common western medicines and a coupon to purchase western medicines at very low prices at the government-owned pharmacy, if the foreign currency is exchanged at the "commercial rate plus bonus."

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8. R.S.C., 1970, c. C-40.
9. S.C., 1988, c. 56.

Mrs. Scott, a Tariff and Values Administrator at Revenue Canada, described the procedures which officials follow to determine exchange rates used to calculate values for duty. According to the procedure, entry documents are examined to determine the date of direct shipment from the country of export. Officials then consult a B-Memorandum currency bulletin to obtain the exchange rate in effect on the date of shipment. The B-Memorandum is prepared in accordance with the *Currency Act*[10] and provides exchange rates for various countries. If, in the rare case, the B-Memorandum does not provide the exchange rate for the country of export, Revenue Canada contacts the Bank of Canada to obtain the exchange rate applicable to the country of export. If the Bank of Canada cannot provide the rate, officials then consult a chartered bank.

Mrs. Scott testified that, in this present case, the Royal Bank of Canada was consulted to determine the exchange rate because neither the B-Memorandum nor the Bank of Canada provided an exchange rate for Vietnamese dong. The rate quoted by the Royal Bank of Canada corresponded closely to the "official" exchange rate. Because the Royal Bank exchange rate was so different from the rate that the appellant claimed as applicable, the customs appraiser consulted an independent trust company. The trust company provided a quote that was very similar to the Royal Bank rate.

THE ISSUES

Several issues are raised in this appeal. First, was the Deputy Minister correct in classifying the subject goods under tariff item 18000-1 as pictures, n.o.p, or are the goods more accurately described either under tariff item 87500-1 as handicraft goods or under tariff item 69520-1 as original collages by artists? Goods classified under these latter two tariff items are given duty-free access.

The second issue is, assuming that the goods were accurately described under tariff item 18000-1, whether the Tribunal is empowered to waive the proof of origin requirement necessary to allow the goods to enter under tariff item 18000-1 free of duty under the General Preferential Tariff.

Finally, assuming that the Tribunal is not so empowered and the appellant must pay duty on the goods in issue, did the Deputy Minister use the correct rate of exchange in converting Vietnamese currency into Canadian currency for purposes of determining the value for duty of the imported pictures?

On the issue of tariff classification, the appellant argued that the goods can be classified under tariff item 87500-1 because the goods, being the product of Vietnamese craftsmen for several centuries, "are typical of the geographical region where produced" (i.e., Vietnam). Further, the goods "have acquired their essential characteristics by the handiwork of individual craftsmen" working in a home setting rather than a factory assembly setting.

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10. S.C., 1984, c. 9, s. 1. Previously *Currency and Exchange Act*, R.S.C., 1970, c. C-39.

The appellant added that the requirement, mentioned in tariff item 87500-1, that the importer provide a certificate from an authority in Vietnam declaring the goods to be handicraft products, applies only where the importer seeks General Preferential Tariff treatment for goods sought to be imported under this tariff item; but here, the appellant seeks Most-Favoured-Nation status treatment for the goods in issue.

The respondent argued that the goods in issue cannot be considered "handicraft goods" under tariff item 87500-1 because: (1) the appellant has not provided a certificate from an authority in Vietnam declaring the goods to be handicraft products; (2) the goods in issue are not listed as "handicraft goods" in the *Handicraft Goods Order*[11] issued by Order of the Governor in Council pursuant to tariff item 87500-1; and (3) the goods in issue, being the product of a cottage industry wherein numerous persons are typically employed and assembled to work in a quasi-factory setting, cannot be characterized as "the handiwork of individual craftsmen."

The appellant also argued that the goods in issue fall under tariff item 69520-1 because the goods are produced by master artistic craftsmen and because the goods fall within dictionary meanings of the word "collage."

The respondent, relying on the Tariff Board decision in *J.E. Hastings Limited v. The Deputy Minister of National Revenue for Customs and Excise*,[12] argued that tariff item 69520-1 should be rejected because the goods in issue, being the products of a widespread cottage industry in which there could be up to 15 people working at the same time, do not have the requisite originality for inclusion under this tariff item. Further, the respondent argued, goods like those in issue are not chosen because they are the work of a particular artist, but for other reasons.

Regarding the second issue, the appellant asked the Tribunal to accord General Preferential Tariff treatment to the goods in issue by waiving the proof of origin requirement. The appellant stated that she only became aware of this requirement after the goods were imported into Canada. The appellant argued that, in any event, it would be impossible for her to get a certificate of origin because the friend who purchased the goods and shipped them to Canada has since left Vietnam and because, the appellant asserted, Vietnam does not have an open system of government where requests for such certificates are readily granted.

The respondent made no representations on his behalf in respect of this issue.

Turning to the final issue in this appeal, the appellant argued that the imported goods should be valued using the "commercial rate plus bonus" because, the appellant submitted, this rate more accurately reflects the actual value of Vietnamese currency and, thus, of the goods in issue.

The appellant further argued that, as one of the dictionary definitions of the word "quote" means "to state the market price of a commodity, stock, or bond," such meaning should be given to the word as it is used in the *Currency Exchange for Customs Valuation Regulations*.

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11. C.R.C. 1978, Vol. V, c. 531, p. 3661, as amended.
12. 7 T.B.R. 376.

Accordingly, the appellant contended that the goods in issue should have been valued at a currency rate based on commercially convertible Vietnamese currency. Because Vietnamese dong cannot be converted in Canada at the official exchange rate, this rate should not be used to value the appellant's goods.

The appellant also argued that the official exchange rate does not fall within the common and ordinary meaning of the phrase "prevailing exchange rate." According to the appellant, dictionaries define exchange as "a giving and taking of one thing for another." Chartered banks, which provided customs officials with the official rate of exchange for the Vietnamese dong, will not buy or sell the Vietnamese dong. However, the dong is converted at certain exchange houses, but at the "commercial rate plus bonus." Given that Vietnamese currency can be converted at this rate, this rate should be the "prevailing exchange rate."

The respondent argued that he was bound to use the rate set forth in the applicable legislation. Citing section 44 of the *Customs Act*, the respondent argued that the value for duty must be determined by taking the price paid for the goods when they are sold for export to Canada and converting that amount into Canadian currency "in accordance with regulations made under the *Currency Act*." According to the respondent, the regulations applicable to the appeal are the *Currency Exchange for Customs Valuation Regulations*.

The respondent contended that, according to these regulations, the rate of exchange that must be used is that quoted by the Bank of Canada. However, the respondent contended that, if no such rate is quoted, the rate quoted by a chartered bank is to be used. Finally, if neither of these two rates is quoted, then the Financial Times of London is to be consulted.

The respondent stated that there is uncontradicted evidence to indicate that customs officals followed the correct procedures in establishing the value for duty of the pictures. Consequently, he argued, the Tribunal should conclude that the respondent correctly assessed the value for duty.

DECISION

While the Tribunal sympathizes with the appellant's situation, the Tribunal nevertheless considers that the appeal should be dismissed in view of the facts in issue, the relevant jurisprudence and the applicable legislation.

The first issue is that of tariff classification. In order for the goods in issue to be classified as handicraft goods under tariff item 87500-1, all of the following conditions must be met: the goods must be (i) " handicraft goods" in accordance to the parameters set forth in the *Handicraft Goods Order*; (ii) the growth, produce or manufacture of a country entitled to the benefits of the General Preferential Tariff; and (iii) certified by the government of the country of production or by any other authority in the country of production recognized by the Minister as competent for that purpose, as being handicraft products.

Also, according to tariff item 87500-1, an importer seeking to classify goods under this tariff item must also comply with the *Handicrafts Import Tariff Item 87500-1 Regulations*

established by the Minister. These regulations specify that one of the things that the importer must do in order to have goods imported under tariff item 87500-1 is to produce a certificate in the form set out in the Regulations.

The recital of the evidence in this appeal makes it clear that the appellant does not have this certificate or, for that matter, any other documentation, government issued or otherwise, to indicate that the subject goods are handicraft products.

However, the appellant argued that the certificate mentioned in tariff item 87500-1 and the Regulations is only needed if the importer seeks to import the goods under the General Preferential Tariff rate of customs duty treatment. The appellant seeks Most-Favoured-Nation status treatment for the goods and, therefore, claims that the goods can be classified under this tariff item.

Unfortunately, this argument assumes that the certificate is needed to establish the rate of customs duty treatment for goods imported under this tariff item. In fact, the certification is required to determine whether the imported goods can be classified under this tariff item. And if the conditions, including certification, laid out in tariff item 87500-1 are not met, then the imported goods cannot be so classified, regardless of the rate of customs duty treatment claimed.

The next question is whether the goods should be classified under tariff item 69520-1 as original collages by artists. For the Tribunal, to reclassify the goods as such, the evidence must clearly establish that they are more accurately described under that tariff item than the more general category of "pictures" selected by the Deputy Minister. Specifically, the appellant must satisfy the Tribunal that the goods are collages, that they are original and that they are made by artists.

Beginning with the collage question, the Tribunal referred to several dictionary definitions. The Oxford English Dictionary[13] defines "collage" as follows:

> *An abstract form of art in which photographs, pieces of paper, newspaper cutting, strings, etc., are placed in juxtaposition and glued to the pictorial surface ...*

And the Houghton Mifflin Canadian Dictionary of the English Language[14] defines "collage" as:

> *An artistic composition of materials and objects pasted over a surface, often with unifying lines and color.*

According to these definitions, an important characteristic of collages is that the design pieces are somehow applied onto the surface of the picture. This appears to have been the case for the goods at issue. In letters submitted to Revenue Canada, and introduced in evidence in this appeal, the appellant describes the mother of pearl pieces as having been stuck onto the background of treated wood. The appellant's representative described the production of the

13. Clarendon Press, 1989 (2nd ed.).
14. Houghton Mifflin Canada Limited, 1982.

pictures in similar terms at the hearing. The evidence would therefore suggest that these goods may fit the description of collages.

However, in determining whether these goods would fall under tariff item 69520-1, the Tribunal also had to consider whether the goods are original and were produced by artists. The evidence established the following: the pictures were produced in a traditional or cottage industry that may involve up to 15 individuals working in a home setting, and the people creating these pictures were described as craftsmen possessing trade secrets passed down from generation to generation. The Tribunal was not shown an example of the goods or pictures of them.

This evidence is not sufficient, in the Tribunal's view, to conclude that the goods are original collages created by artists. The appellant did not discharge the onus of showing, through evidence, that the goods are better described under tariff item 69520-1.

In view of the foregoing, and, because there is no evidence that would indicate otherwise, the Tribunal is of the view that the goods were correctly classified under tariff item 18000-1 as pictures.

This brings the Tribunal to the second issue. Goods imported under tariff item 18000-1 from Vietnam are entitled to duty-free treatment pursuant to the General Preferential Tariff rate provided certain conditions are met. Those conditions are set forth in the *Customs Tariff* and the *General Preferential Tariff Rules of Origin Regulations*.

According to this legislation, proof that the imported goods came from a country entitled to General Preferential Tariff treatment must be given to customs officials at the time that goods are imported into Canada. That proof is a certificate in the form set out in the regulations.

The appellant does not have this certificate and therefore asks the Tribunal to waive this requirement.

Unfortunately for the appellant, the legislation makes it clear that the Tribunal is not empowered to grant this request since, pursuant to subsection 3.1(1.1) of the *Customs Tariff*, only the Governor in Council (that is, the Governor General in consultation with the Cabinet) can exempt the importer from providing this certificate. As set out earlier in this decision, that subsection reads as follows:

> *3.1(1.1) The Governor in Council may, by order and on such terms and conditions as he may specify, exempt the goods produced in a country enjoying the benefits of the General Preferential Tariff from ... the furnishing of proof of origin* ... (emphasis added)

Thus, the Tribunal's accession to the appellant's request would be tantamount to ignoring Parliament's express intention of only providing the Governor in Council with the power to waive the certificate of origin.

Given that the goods in issue are properly classified under tariff item 18000-1 and that the Tribunal is not empowered to grant the goods duty-free entry under this item, there remains the final issue of determining whether the Deputy Minister used the correct rate of exchange in converting Vietnamese currency into Canadian currency for purposes of determining the value for duty of the imported pictures.

Pursuant to section 44 of the *Customs Act*, the value for duty of imported goods must be determined in accordance with the *Currency Exchange for Customs Valuation Regulations* enacted under the *Currency Act*.

Section 3 of these Regulations states that the rate of exchange to be used in determining the value in Canadian dollars of a currency of another country is the rate prevailing on the date of direct shipment of the goods in issue. If the Regulations said nothing further on the meaning of the phrase "rate prevailing," then the Tribunal might define this term on the basis of dictionary definitions and whether or not a currency can be exchanged at a particular rate.

However, the Governor in Council has spoken on this issue and has defined, in section 5 of the Regulations, the meaning to be ascribed to the phrase "rate prevailing." According to that section, the phrase means the rate quoted by the Bank of Canada or, if no such rate is quoted, the rate quoted by a chartered bank. And if neither of these institutions can quote a rate, then the phrase means the rate quoted by the Financial Times of London.

The evidence is very clear that the rate of exchange used to calculate the value for duty of the subject goods was established according to procedures outlined in section 5 of these Regulations. The uncontradicted evidence of Mrs. Scott was that the Bank of Canada was not able to provide a rate of exchange for Vietnamese currency. Consequently, a quote was obtained from the Royal Bank of Canada. This was the rate that the Deputy Minister used in assessing the value for duty of the subject goods.

The Tribunal is sympathetic to the appellant's situation concerning the value for duty and recognizes that the rate selected bears little ressemblance to the true market value of the dong. The *Currency Act* and its accompanying regulations are very clear, however, and provide neither Revenue Canada nor the Tribunal any latitude in this area. Simply put, it is not within the Tribunal's jurisdiction to recommend the adoption of other procedures or, by selecting a rate that better reflects the fair value of the exchange rate, to put itself in the role of gauging currency markets.

In view of the foregoing, the Tribunal concludes that the respondent used the correct rate of exchange in assessing the value for duty of the subject goods.

CONCLUSION

In sum, the Tribunal is of the view that not only were the goods correctly classified under tariff item 18000-1, but the goods were correctly assessed on value for duty. Accordingly, the appeal is not allowed.

Kathleen E. Macmillan
Kathleen E. Macmillan
Presiding Member

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member