CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, June 20, 1990

Appeal No. 3068

IN THE MATTER OF an application heard February 6, 1990, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.) as amended;

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue for Customs and Excise dated August 30, 1988, with respect to an application filed pursuant to section 63 of the *Customs Act*.

BETWEEN

MONARK IMPORT-EXPORT INC. **Appellant**

AND

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

DECISION OF THE TRIBUNAL

The appeal is allowed. It is the finding of the Tribunal that the amount to be deducted from the purchase price of the goods in order to determine the value for duty is the actual cost of transportation by air. Under the terms of a C & F contract, the total cost of transportation to the point of destination is presumed to be included in the total price payable for the goods.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

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

W. Roy Hines
W. Roy Hines
Member

Robert J. Martin
Robert J. Martin
Secretary

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UNOFFICIAL SUMMARY

Appeal No. 3068

MONARK IMPORT-EXPORT INC. **Appellant**

and

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

Customs Act - Value for duty - C & F sales contracts - Whether the appellant is entitled to deduct the full amount of the air transportation cost from the contract price for the goods to determine the value for duty.

DECISION: *The appeal is allowed. It is the finding of the Tribunal that the amount to be deducted from the purchase price of the goods in order to determine the value for duty is the actual cost of transportation by air. Under the terms of a C & F contract, the total cost of transportation to the point of destination is presumed to be included in the total price payable for the goods.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*February 6, 1990*
Date of Decision:	*June 20, 1990*
Tribunal Members:	*Sidney A. Fraleigh, Presiding Member* *Robert J. Bertrand, Q.C., Member* *W. Roy Hines, Member*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*M. Laurence Gross, for the appellant* *Meg Kinnear, for the respondent*
Statutes Cited:	*Customs Act, R.S.C., 1985, c. 1, s. 48; Canadian International Trade Tribunal Act, S.C., 1988, s. 60.*
Other Reference Cited:	*International Chamber of Commerce Incoterms, ICC Publishing SA, Paris, reprinted 1983.*

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TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. 3068

MONARK IMPORT-EXPORT INC. **Appellant**

and

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

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
ROBERT J. BERTRAND, Q.C., Member
W. ROY HINES, Member

REASONS FOR DECISION

SUMMARY

On August 30, 1988, the Deputy Minister of National Revenue for Customs and Excise rendered a decision on the value for duty of certain gloves and mittens imported by the appellant, Monark Import-Export Inc. (Monark). The vendor and the importer originally established a C & F by sea purchase price for the goods. Monark later contacted the vendor to make arrangements to have the goods flown to Canada. The purchase price and the terms of sale were renegotiated at that time. The revised terms of sale were C & F by air and were established on the basis of the following formula. From the original C & F purchase price by sea, the vendor subtracted the cost of sea freight, then 50 percent of the air freight cost was added.

The issue raised by this appeal is whether the appellant is entitled to deduct the full amount of the air transportation costs from the contract price of the goods in order to determine the value for duty.

In determining the value for duty under section 48 of the *Customs Act*, transportation charges from the place of direct shipment to Canada are deductible from the price paid or payable for the imported goods to the extent that these charges are included in the selling price. The Tribunal finds that there was always a common understanding between the parties that the contracts of sale were on C & F terms. The term C & F (cost and freight) is authoritatively defined by the International Chamber of Commerce Incoterms, which reflects common practice in international trade. Under the Incoterms, a C & F selling price is defined by the rights and responsibilities of the parties that follow as a consequence of their agreement. In consideration of the payment by the purchaser of a predetermined amount of money, the vendor agrees to sell certain goods to the importer and to transport those goods to the port of destination by the agreed mode of transportation.

It is the finding of the Tribunal that the amount to be deducted from the purchase price of the goods in order to determine the value for duty is the actual cost of transportation by air. It is irrelevant that the vendor has quantified and declared the cost of shipping on the commercial

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invoices. The calculations shown on the vendor's commercial invoices indicate how the final purchase price was rationalized. Under the terms of a C & F contract, the total cost of transportation to the point of destination is presumed to be included in the total price payable for the goods. Thefore, the appeal is allowed.

THE LEGISLATION

For the purpose of this appeal, the relevant statutory provisions of the *Customs Act* are as follows:

> *Customs Act*[1]
>
> *48(1) Subject to subsection (6), the value for duty of goods is the transaction value of the goods if the goods are sold for export to Canada and the price paid or payable for the goods can be determined*
>
> ...
>
> *(4) The transaction value of goods shall be determined by ascertaining the price paid or payable for the goods when the goods are sold for export to Canada and adjusting the price paid or payable in accordance with subsection (5).*
>
> *(5) The price paid or payable in the sale of goods for export to Canada shall be adjusted ...*
>
> *(b) by deducting therefrom amounts, to the extent that each such amount is included in the price paid or payable for the goods, equal to*
>
> *(i) the cost of transportation of, the loading, unloading and handling charges and other charges and expenses associated with the transportation of, and the cost of insurance relating to the transportation of, the goods from the place within the country of export from which the goods are shipped directly to Canada ...*

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

1. R.S.C., 1985, c. 1, s. 48.
2. S.C., 1988, c. 56.

THE FACTS

On August 30, 1988, the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) rendered a decision on the value for duty of certain gloves and mittens imported by the appellant, Monark Import-Export Inc. (Monark) of Montréal, Quebec. The goods are manufactured in the People's Republic of China and are exported by the China National Arts and Crafts Import and Export Corp. (China National Arts and Crafts).

The Deputy Minister's decision relates to 13 shipments imported into Canada at Montréal, Quebec, under the following entry numbers:

DATE	ENTRY NUMBER
L050682	17/08/87
L048703	12/08/87
L061034	14/09/87
D080116	23/09/87
D080115	24/09/87
L064245	22/09/87
D080419	24/09/87
L063497	18/09/87
L062941	18/09/87
L050375	18/08/87
L045237	04/08/87
L048356	12/08/87
L069847	06/10/87

The appellant is an importer and exporter of clothing, wearing apparel, gloves, mittens and accessories. Mr. Naiman, Traffic Coordinator for Monark, gave evidence as to the business practices of the company relevant to this appeal. As Traffic Coordinator, Mr. Naiman manages all aspects of the business relating to the traffic of merchandise purchased and sold by the appellant, including negotiating with freight companies on FOB (free on board) purchases, banking and preparing estimated landed costs for future purchases.

Mr. Naiman testified that, with regard to each of the shipments at issue, approximately half a year prior to the anticipated date of shipping, the vendor, China National Arts and Crafts, and the importer, Monark established a C & F (cost and freight) by sea purchase price for a sale for export to Canada of gloves and mittens. These agreements were formally confirmed in a series of documents referred to as "Confirmations of Sale," which were the sales contracts. He stated that in each case the original C & F by sea selling price was a single "bundled" price for the goods, delivered to the port of Montréal.

Each "Confirmation of Sale" specified the month in which the goods were to be shipped to Canada. Shipping was to commence in January 1987, with the final shipments scheduled to leave China in July 1987. However, by May 1987, none of the goods had been shipped and it was

apparent that all of the shipments would be late in arriving to Canada if the goods were shipped by sea. Monark then contacted the vendor to make arrangements to have the goods flown to Canada. The purchase price and the terms of sale were renegotiated at that time.

According to Mr. Naiman, the revised terms of sale were C & F by air and were established on the basis of the following formula. From the original C & F purchase price by sea, the vendor subtracted the cost of sea freight, then 50 percent of the air freight cost was added.

Mr. Naiman stated that the renegotiated price was a new C & F price which was the total amount paid for the imported goods. Bank documents were produced to show the amounts owing and paid for the goods, which correlated with the prices stated on the commercial invoices. According to Mr. Naiman, there were no subsequent or additional payments either to the vendor or any other party on account of the goods or the transportation of the goods from China to Montréal. Counsel for the appellant also produced the air waybill which showed the freight charge, the date of shipment, the names of the importer and shipper and indicated that the freight was prepaid in full by the vendor. The amount paid by the vendor to the carrier was also shown by way of the carrier's bills of lading.

THE ISSUE

In determining the value for duty under section 48 of the *Customs Act* (the Act), transportation charges from the place of direct shipment to Canada are deductible from the price paid or payable for the imported goods to the extent that these charges are included in the selling price. The appellant maintains that the value for duty of the goods is the C & F selling price less the entire amount of freight paid by the vendor to the air carrier in respect of the transportation of these goods from the place of direct shipment to Canada. The Deputy Minister has authorized a deduction of only one half of the transportation charges, on the grounds that the commercial invoices referred to at the time of entry indicate that only 50 percent of the cost of shipping the goods from the place of direct shipment to Canada was included in the total price charged to the purchaser.

It is the appellant's contention that section 48 of the Act provides for a deduction from the C & F selling price of an amount equal to the total cost of transportation from the place of direct shipment to Canada if this amount has been paid by the vendor to the transportation company in respect of the transportation of the imported goods, so long as this amount has not been separately or additionally invoiced to the purchaser. This interpretation, argues the appellant, is supported by a reading of the legislative provisions of section 48 of the Act in the context of common commercial practice and internationally accepted commercial norms.

The appellant states that the term C & F should be accorded its usual meaning in commercial practice. As evidence of the definition of a C & F contract prevailing in international commercial practice, the appellant cites the International Chamber of Commerce Incoterms. The Incoterms list the responsibilities of each party in a C & F transaction. Pursuant to paragraph 2 of the definition, the supplier is obliged to:

> *Contract on usual terms at his own expense for the carriage of the goods to the agreed port of destination ... and pay freight charges and any charges for unloading at the port of discharge which may be levied by regular shipping lines at the time and port of shipment.*

The appellant maintains that, in the present case, the contracts of sale were always expressed in terms of a C & F selling price. Consequently, at the time the C & F by sea selling prices were established, neither party was able to precisely allocate the portions attributable to the cost of the goods or that of the freight. The appellant argues that the FOB values shown on the revised invoices should not be relied upon in the customs valuation of the goods, as these values were no more than an *ex post facto* rationalization of the revised purchase price. The sea freight deducted from the original C & F selling price was an estimation, as was the so-called FOB amount shown on the revised invoices.

The respondent states that, pursuant to subparagraph 48(5)(*b*)(i), the appellant is entitled to reduce the value for duty by the amount of the transportation costs only to the extent that they are included in the price paid for the imported goods. This provision, argues counsel, should be interpreted as meaning that transportation charges may be deducted from the sale price only to the extent that such charges are borne by the importer as an identifiable addition to the cost of the merchandise, net of the cost of shipping. In the present case, the respondent argues, this is a question of fact.

Thus, the Deputy Minister has authorized a deduction of only one-half of the transportation charges on the grounds that the commercial invoices referred to at the time of entry indicated that only 50 percent of the air freight cost was added to the original sale price after the cost of sea freight had been deducted.

The respondent argues that while the appellant's original contract may have been a proper C & F contract, the renegotiated contract is not, as it clearly identifies a specific freight charge. Thus, 50 percent of the air freight cost may be deducted to determine the value for duty.

DECISION

Canada's customs valuation legislation provides that the value for duty of imported goods be the transaction value of the goods, if the goods are sold for export to Canada and the price paid or payable for the goods can be determined. Subsection 48(4) of the Act states that the transaction value is to be determined by ascertaining the price paid for the goods, and then adjusting that price in accordance with subsection (5). Subparagraph 48(5)(*b*)(i) authorizes the deduction from the purchase price of the cost of transportation to the extent that it is included in the price paid. The effect of these provisions is to translate C & F contracts into an FOB basis for customs valuation purposes and make the transaction value equal to the amount paid for the goods to the vendor at the point of direct shipment to Canada. Whether transportation and other deductible charges are included in the selling price depends on the terms of the contract entered into by the importer and exporter.

The Tribunal finds that there was always a common understanding between the parties that the contracts of sale were on C & F terms. While the mode of transportation changed from sea freight to air, no evidence was presented to suggest that the other terms of sale were altered at any time. The commercial invoice on which the respondent relies to justify a deduction of 50 percent of the cost of the air transportation states clearly that both the original and the renegotiated selling prices were on C & F terms. The evidence also shows that the total cost of transportation by air was paid by the vendor. The purchaser was never separately invoiced for any part of the transportation costs. This is in accord with prevailing commercial practice in the case of a C & F contract.

The Tribunal accepts that the term C & F (cost and freight) is authoritatively defined by the International Chamber of Commerce Incoterms, which are a direct reflection of common commercial practice now current in international trade. Under the Incoterms, a C & F selling price is defined by the rights and responsibilities of the parties that follow as a consequence of their agreement. In consideration of the payment of a predetermined amount of money, the vendor agrees to sell certain goods to the importer. The vendor also agrees to transport those goods to the port of destination by the agreed mode of transportation.

The amount to be deducted for the transportation costs must be the actual amount paid to the shipper. It is irrelevant that the vendor has quantified and declared the cost of shipping on the commercial invoices of a C & F contract. The calculations shown on the vendor's commercial invoices indicate how the final purchase price was rationalized. In the present case, the vendor has rationalized the purchase price by ascribing to it only 50 percent of the transportation charges. From the perspective of the purchaser, the final purchase price represents the value of the goods as well as the total costs of shipping them to Canada. From the vendor's point of view, the amount received for the goods at the direct shipping point to Canada is the total amount received from the purchaser, less freight costs. At the end of the day, there is a single price owing to the vendor who has supplied both the goods and the cost of transportation.

CONCLUSION

The appeal is allowed. It is the finding of the Tribunal that the amount to be deducted from the purchase price of the goods in order to determine the value for duty is the actual cost of transportation by air. Under the terms of a C & F contract, the total cost of transportation to the point of destination is presumed to be included in the total price payable for the goods.

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