



Ottawa, Wednesday, September 26, 2001

Appeal No. AP-2000-060

IN THE MATTER OF a rehearing held on August 30, 2001,
under subsection 68(2) of the *Customs Act*, R.S.C. 1985
(2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Federal Court of
Appeal, dated March 7, 2001, with respect to a decision of the
Canadian International Trade Tribunal made under section 67 of
the *Customs Act*.

BETWEEN

UTEX CORPORATION

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

On consent of the parties, the appeal is allowed.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Susanne Grimes
Susanne Grimes
Acting Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-2000-060

UTEX CORPORATION

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This rehearing follows a decision of the Federal Court of Appeal dated March 7, 2001, which set aside the Tribunal's decision in Appeal No. AP-98-085 and referred the matter back to the Tribunal for redetermination. Pursuant to subparagraph 48(5)(a)(i) of the *Customs Act*, the Tribunal concluded that commissions paid by the appellant to Fabco Trading Corp. should be added to the price paid or payable for the imported garments. The Tribunal was not persuaded, on balance, that Fabco Trading Corp. was a *bona fide* buying agent for the appellant, as it did not always act in the interests of its principal. On appeal, the Federal Court of Appeal found that there was no evidence in the record that showed that Fabco Trading Corp., in providing services to the appellant, had failed in some respects to act in the interests of its principal, but, even if there were, the Federal Court of Appeal found that, by itself, it would be insufficient to establish that the fees paid to Fabco Trading Corp. were outside the exception set out in subparagraph 48(5)(a)(i) of the *Customs Act* as fees paid to the agent of a purchaser for the service of representing the purchaser abroad in respect of the sale. In light of the foregoing, the Federal Court of Appeal allowed the appeal, and the matter was referred back to the Tribunal for redetermination.

HELD: On consent of the parties, the appeal is allowed.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	August 30, 2001
Date of Decision:	September 26, 2001
Tribunal Member:	Richard Lafontaine, Presiding Member
Counsel for the Tribunal:	Marie-France Dagenais
Clerk of the Tribunal:	Anne Turcotte
Parties:	Richard S. Gottlieb, for the appellant Louis Sébastien, for the respondent

Appeal No. AP-2000-060

UTEX CORPORATION

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: RICHARD LAFONTAINE, Presiding Member

REASONS FOR DECISION

This is a rehearing of an appeal under subsection 68(2) of the *Customs Act*¹ further to a decision of the Federal Court of Appeal (the Court) dated March 7, 2001, which set aside the Tribunal's decision in Appeal No. AP-98-085 and referred the matter back to the Tribunal for redetermination.

The Tribunal originally determined that the commissions paid to Fabco Trading Corp. (Fabco) by the appellant had been correctly added to the price paid or payable for the imported garments, since the appellant had not established that Fabco was a *bona fide* buying agent in this matter. After looking into an agent's fiduciary duty to its principal and examining some of the factors that must be considered in order to establish the existence of an agency relationship, the Tribunal held that it was not persuaded by the facts of the case at hand that Fabco always acted in the interests of its principal, the appellant, nor that Fabco was a *bona fide* agent. Accordingly, the Tribunal concluded that the fees paid to Fabco by the appellant were dutiable, as they could not be considered fees paid to the agent of a purchaser for the service of representing the purchaser abroad in respect of the sale.

For its part, the Court found that there was no evidence in the record that showed that Fabco, in providing services to the appellant, failed in some respects to act in the interests of its principal, but even if there were, by itself, it would be insufficient to establish that the fees paid to Fabco were outside the exception set out in subparagraph 48(5)(a)(i) of the Act as fees paid to the agent of a purchaser for the service of representing the purchaser abroad in respect of the sale.

In light of the foregoing, the Court allowed the appeal, and the matter was referred back to the Tribunal for redetermination.

However, on July 30, 2001, the parties advised the Tribunal that they had agreed to a resolution of the appeal and filed their consents with the Tribunal. They requested that the Tribunal issue a decision reflecting the agreement that partly stated that the respondent "accepts to re-evaluate the duty owed in accordance with the reasons of the Federal Court of Appeal" and that the appeal be allowed.

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].

Therefore, on consent of the parties, the appeal is allowed.

Richard Lafontaine
Richard Lafontaine
Presiding Member