Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

Ottawa, Thursday, March 11, 2004

Appeal No. AP-2002-023

IN THE MATTER OF an appeal heard on September 12, 2003, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF 17 decisions of the Commissioner of the Canada Customs and Revenue Agency dated April 16, 2002, made pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

BUFFALO INC. **Appellant**

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND REVENUE AGENCY **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed.

Ellen Fry
Ellen Fry
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Michel P. Granger
Michel P. Granger
Secretary

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
Tel.: (613) 990-2452
Fax.: (613) 990-2439
www.citt-tcce.gc.ca

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
Tél. : (613) 990-2452
Fax. : (613) 990-2439
www.tcce-citt.gc.ca

Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

UNOFFICIAL SUMMARY

Appeal No. AP-2002-023

BUFFALO INC. **Appellant**

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND REVENUE AGENCY **Respondent**

This is an appeal pursuant to section 67 of the *Customs Act* from 17 decisions of the Commissioner of the Canada Customs and Revenue Agency dated April 16, 2002, made pursuant to subsection 60(4) of the *Customs Act*.

The issue in this appeal is whether imported laces are entitled to preferential treatment under the United States Tariff.

HELD: The appeal is allowed. The Tribunal is satisfied by the evidence that the goods in issue were made by Imperial Laces, Inc. in the United States from materials originating in a *North American Free Trade Agreement* country and are entitled to preferential treatment under the United States Tariff.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	September 12, 2003
Date of Decision:	March 11, 2004
Tribunal Members:	Ellen Fry, Presiding Member Pierre Gosselin, Member Meriel V. M. Bradford, Member
Counsel for the Tribunal:	Dominique Laporte Roger Nassrallah
Clerk of the Tribunal:	Anne Turcotte
Appearances:	Steve Whitter, for the appellant Jean-Robert Noiseux, for the respondent

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
Tel.: (613) 990-2452
Fax.: (613) 990-2439
www.citt-tcce.gc.ca

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
Tél. : (613) 990-2452
Fax. : (613) 990-2439
www.tcce-citt.gc.ca

Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

Appeal No. AP-2002-023

BUFFALO INC. **Appellant**

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND REVENUE AGENCY **Respondent**

TRIBUNAL: ELLEN FRY, Presiding Member
PIERRE GOSSELIN, Member
MERIEL V. M. BRADFORD, Member

REASONS FOR DECISION

This is an appeal pursuant to section 67 of the *Customs Act*[1] from 17 decisions of the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) dated April 16, 2002, made pursuant to subsection 60(4) of the *Act*. The goods in issue are laces of various colours and patterns. The goods in issue were imported by Buffalo Inc. (Buffalo), Looks Sportswear Ltd., Request Jeans Limited and Slide Sportswear Inc. (collectively the Buffalo Group of Companies) from Imperial Laces, Inc. (Imperial), a New York-based company, between March 1998 and November 1999. On January 1, 1999, Buffalo took over the operations of the other three companies, the corporate entities of which were eventually dissolved.

The issue in this appeal is whether the laces imported by the Buffalo Group of Companies are entitled to preferential treatment under the United States Tariff.

EVIDENCE

Ms. Gisèle Thibault, Appeals Officer with the Canada Customs and Revenue Agency (CCRA), appeared on behalf of the Commissioner. Ms. Thibault explained that she was involved in this case as an appeals officer and rendered the decision. She explained that the verification of the origin of the goods was conducted in two stages: the first stage involved comparing the certificate of origin under the *North American Free Trade Agreement*[2] from the importer with the goods actually imported, and the second stage involved verifying with the exporter the accuracy of the data on the certificate of origin. She pointed out that, in this case, the exporter was Imperial, which exported the laces to Canada and issued a certificate of origin to enable the importers to be entitled to the preferential tariff treatment.

Ms. Thibault explained that letters were sent to the importers, i.e. the Buffalo Group of Companies, requesting that they furnish commercial invoices and certificates of origin. She stated that, to her knowledge, Buffalo had not provided a duly completed, valid certificate of origin for *NAFTA* purposes. In response to a question about the certificate of origin contained in the Commissioner's brief,[3] Ms. Thibault

1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].
2. 32 I.L.M. 289 (entered into force 1 January 1994) [*NAFTA*].
3. Commissioner's brief, Tab C.

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
Tel.: (613) 990-2452
Fax.: (613) 990-2439
www.citt-tcce.gc.ca

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
Tél. : (613) 990-2452
Fax. : (613) 990-2439
www.tcce-citt.gc.ca

stated that the document in question had been provided by an importer, that it had been completed by an Imperial representative and that it allowed the importers to claim the benefit of the *NAFTA* preferential tariff treatment for the styles of laces described in box 5 of the certificate of origin. She indicated that she did not know which importer had furnished the certificate of origin. She also indicated that, in light of the information in box 7 of the certificate of origin, it was possible to determine the criterion that the exporter had used to determine the origin. With respect to preference criterion B appearing in box 7, Ms. Thibault pointed out that, pursuant to the rules of origin in *NAFTA*, it indicated that the goods in issue had become originating goods because of their non-originating materials, which subsequently underwent a tariff classification change when incorporated into the finished products. In box 8, the exporter claimed to be the producer and, in box 10, the country of origin was identified as the United States.

Ms. Thibault indicated that the audit officer in this case had sent Imperial an origin verification questionnaire (chart) to gather information about the goods in issue.[4] She indicated that, to verify the information in the chart, the CCRA could request cost sheets[5] and lists of suppliers, particularly for goods that must undergo a tariff classification change. She pointed out that Imperial had not provided information for determining the origin of the goods in issue before the decision was rendered under section 59 of the *Act*. A preliminary decision was sent to Imperial stating that it had 30 days to provide the information; otherwise, *NAFTA* preferential treatment would be denied. The importers were notified of the preliminary decision. Since the information was not provided, the decision was put into effect, and *NAFTA* preferential treatment was withdrawn and replaced with the Most-Favoured-Nation Tariff. Imperial then sent information[6] after Buffalo had appealed. Since the chart provided by Imperial had not been satisfactorily completed, the appeals officer assigned to the case at the time requested additional information and, further to this request, the chart was completed a second time.

Ms. Thibault indicated that she took over the case at that point and noticed many inconsistencies between the two charts that Imperial had completed.[7] She stated the following:

> I know for a fact that, when determining the origin of an imported product, the important things to determine are the materials from which the exported goods are made, the suppliers of those materials, the origin of those materials and whether the product exported to Canada qualifies for the classification change set out in the rule of origin, since it had been established that the goods were originating under criterion B and, therefore, contained non-originating materials.
>
> All that has to be determined. Therefore, the chart does not provide us with all that information. It is important to refer to the documents that an exporter may have in its possession.
>
> That is why I wanted to obtain the cost sheets. Those are the documents that can help comprehensively determine the materials used in the lace that was exported to Canada.[8]
>
> [Translation]

With respect to the chart that was completed the first time and sent on February 28, 2001, by Ms. Bette Slutsky, Controller at Imperial, Ms. Thibault pointed out that she could not rely on it because it indicated that it had been completed "to the best of [her] knowledge" and that it contained many gaps and omissions. A preliminary decision was then sent to Buffalo, confirming the decision to deny *NAFTA*

4. *Ibid.*, Tab D.
5. Translation of the French term, "fiches de fabrication".
6. Commissioner's brief, Tab K.
7. *Transcript of Public Hearing*, 12 September 2003 at 40.
8. *Ibid.* at 40-41.

preferential tariff treatment because the exporter, no longer in business as of the end of 2000, had not furnished documents as proof of origin. Buffalo was granted 30 days to supply the additional information. Ms. Thibault indicated that the missing information was yarn descriptions or cost sheets. Because no additional information had been provided, Ms. Thibault indicated that she rendered her decision, confirming the preliminary decision. Ms. Thibault also outlined the actions that she took when she approached Imperial to obtain the missing information. She pointed out that the specific rules of origin, including those that concern the laces classified in Chapter 60 of the schedule to the *Customs Tariff*,[9] are sometimes complex and that, when preference criterion B is indicated, the laces contain non-originating materials that satisfy the requirements of the rule of origin. This rule of origin provides, in the case of Chapter 60, that the tariff classification change comes from another chapter; in other words, the materials are classified in a chapter other than Chapter 60, which allows the laces to be considered originating goods. She then explained that other rules were also applicable, for example, when the non-originating materials come from Chapters 54 and 55. In response to a question from the Commissioner, she stated that it was possible that some laces manufactured in the United States did not meet the criteria for originating goods, given that the supply sources for yarn are varied.

In response to the Tribunal's questions, Ms. Thibault pointed out that she was prompted to request the cost sheets because, although preference criterion B was indicated on the certificate of origin, which showed that there were non-originating materials, the information in the chart contradicted the information in the certificate of origin by stating that the materials were, in fact, all originating materials. Ms. Thibault also indicated that she did not verify if Unifi, Inc. (Unifi) was a yarn manufacturer or distributor. She then stated that certificates of origin had been furnished by Unifi and United Yarn Products Co. Inc. (United), but that, before verifying the suppliers, she had to prepare the list of materials used in the laces exported to Canada.[10] However, she stated that she did not perform an on-site verification at Imperial. Finally, in response to one of the Tribunal's questions, Ms. Thibault was unable to indicate in what document she had requested the cost sheets from Imperial and confirmed that this information was not on the record.

ARGUMENT

Buffalo submitted that it was faced with "a catch 22 situation". According to Buffalo, the CCRA informed it that there was a problem with the certificate of origin, but did not provide further details. Buffalo was asked for documents, but did not know whether the information provided was satisfactory and whether the problem had been resolved. Buffalo indicated that it was not until the decision was rendered that it learned that the chart sent to the exporter had not been properly completed. Buffalo submitted that, despite all the resources available to it, the CCRA was not able to locate the information. With respect to the chart that Imperial completed, it maintained that there was no reason to doubt the good faith of those who had completed it. Finally, Buffalo submitted that it was faced with a problem that it did not create, with which it was not familiar and which it was being asked to resolve without the required information.

Referring to the wording of *NAFTA*, the Commissioner submitted that, to be entitled to the preferential tariff treatment, it is not enough that the goods be simply *produced* in a *NAFTA* country; they must qualify as originating goods, as defined in *NAFTA* and as incorporated into Canadian law. To facilitate proving the origin of goods, the certificate of origin was adopted, while reserving the right of the CCRA to verify the information provided. The Commissioner submitted that Article 401 of *NAFTA* reproduces

9. S.C. 1997, c. 36.
10. Unifi and United are the suppliers of the yarn that Imperial used to manufacture the laces.

preference criterion B, hence the importance of determining whether non-originating materials used in manufacturing originating goods satisfy the rules such that the final products exported are originating goods. The Commissioner also submitted that, contrary to Article 502(1) of *NAFTA* and the regulatory provisions, Buffalo never provided a valid certificate of origin. According to the Commissioner, to ensure that the goods are entitled to *NAFTA* preferential treatment, Buffalo could have requested an advance ruling on the determination of origin of the goods that it imported.

Referring to section 24 of the *Customs Tariff*, the Commissioner submitted that the origin of the goods must be established in accordance with the *Act*. In this regard, section 6 of the *Proof of Origin of Imported Goods Regulations*[11] provides that the importer must furnish a certificate of origin for the goods as proof of origin. The Commissioner also submitted that Buffalo did not comply with paragraph 24(1)(*a*) of the *Customs Tariff* to prove the origin of the goods. Section 24 of the *Customs Tariff* refers to section 16 of the *Customs Tariff*, which itself refers to the *NAFTA Regulations*. Paragraph 4(2)(*a*) of the *NAFTA Regulations* deals with cases where non-originating materials used in the production of goods undergo the applicable change in tariff classification as a result of production that occurs entirely in the territory of one or more of the *NAFTA* countries, where the applicable rule in Schedule I for the tariff provision under which the goods are classified specifies only a change in tariff classification, and the goods satisfy all other applicable requirements of the *NAFTA Regulations*. The Commissioner referred to Ms. Thibault's testimony regarding the rules that apply to textiles, textile articles and knitted fabrics, which include laces.

The Commissioner stated that there was no evidence that the goods in issue could be classified as originating goods and that Buffalo bears the onus of proof. Finally, the Commissioner submitted that it was Buffalo's responsibility to work with the companies that can provide it with the proof of the origin of the goods.

DECISION

The issue in this appeal is whether the laces imported by the Buffalo Group of Companies are entitled to preferential treatment under the United States Tariff.

The rules of origin in *NAFTA*, as incorporated into Canadian law, provide criteria for determining whether goods are entitled to preferential tariff treatment. Chapter Four of *NAFTA* sets out the requirements for goods to qualify as an "originating good", while Chapter Five establishes the requirements for certificates of origin, as well as the administration and enforcement procedures. The various provisions of Chapters Four and Five are incorporated into Canadian law under the provisions of the *Act*, the *Customs Tariff* and various regulations, such as the *NAFTA Regulations*, the *Proof of Origin of Imported Goods Regulations*, the *NAFTA Tariff Preference Regulations*[12] and the *NAFTA and CCFTA Verification of Origin Regulations*.[13] Only the provisions pertaining to this case will be discussed.

In order for the goods in issue to be entitled to a tariff treatment other than the General Tariff, in this case preferential treatment under the United States Tariff, subsection 24(1) of the *Customs Tariff* requires that two conditions be met: (1) proof of origin of the goods must be given in accordance with the *Act*; and (2) the goods must be entitled to that tariff treatment in accordance with the applicable regulations or order.

11. S.O.R./98-52.
12. S.O.R./94-17.
13. S.O.R./97-333.

The Tribunal will first determine if, in this case, proof of origin was given in accordance with the applicable law. Subsection 35.1(1) of the *Act* reads as follows.

> 35.1 (1) Subject to any regulations made under subsection (4), proof of origin, in the prescribed form containing the prescribed information and containing or accompanied by the information, statements or proof required by any regulations made under subsection (4), shall be furnished in respect of all goods that are imported.

In accordance with subsection 6(1) of the *Proof of Origin of Imported Goods Regulations*, where the benefit of preferential treatment under the United States Tariff is claimed for goods, a certificate of origin for the goods must be furnished as proof of origin. The Commissioner submitted that Buffalo failed to comply with the requirements of the *Act* and its regulations by failing to provide a valid certificate of origin for the laces. The Tribunal does not agree with this conclusion. Although several certificates issued by Imperial that relate to other free trade agreements have been filed, the evidence clearly shows that valid *NAFTA* certificates of origin were produced. A copy of a *NAFTA* certificate of origin for 1999 forms part of the record.[14] Ms. Thibault indicated that this certificate of origin covers the same style numbers as those of the goods in issue.[15] In addition, correspondence on the record from Ms. Susan Easton, Compliance Verification Officer for the CCRA, indicates that certificates of origin were provided for the entire period of importation of the goods in issue.[16] Accordingly, the Tribunal finds that proof of the origin of the laces was furnished in accordance with the requirements of the *Act*.

The Tribunal must now deal with the second issue in this appeal, i.e. whether the goods in issue are entitled to preferential treatment under the United States Tariff.

Subsection 24(1) of the *Customs Tariff* reads, in part, as follows:

> 24. (1) . . . goods are entitled to a tariff treatment, other than the General Tariff, under this Act only if
>
> (*b*) the goods are entitled to that tariff treatment in accordance with regulations made under section 16.

Paragraph 3(*b*) of the *NAFTA Tariff Preference Regulations* provides that goods are entitled to the benefit of the United States Tariff where:

> (*b*) in the case of agricultural goods and textile and apparel goods,
>
> (i) the goods are originating goods, and
>
> (ii) the goods are eligible to be marked as goods of the United States in accordance with the *Determination of Country of Origin for the Purposes of Marking Goods (NAFTA Countries) Regulations*.

Subparagraph 3(*b*)(ii) of the *NAFTA Tariff Preference Regulations* is not at issue.

14. Commissioner's brief, Tab C.
15. *Transcript of Public Hearing*, 12 September 2003 at 67.
16. In her letters dated March 23, 2000, Ms. Susan Easton states: "The exporter has provided blanket NAFTA certificates of origin." The importations covered by the letters encompass the entire period at issue (March 1998 to November 1999).

Section 16 of the *Customs Tariff* reads, in part, as follows:

> 16. (1) Subject to any regulations made under subsection (2), for the purposes of this Act, goods originate in a country if the whole of the value of the goods is produced in that country.
>
> (2) The Governor in Council may, on the recommendation of the Minister, make regulations
>
> (*a*) respecting the origin of goods, including regulations
>
> (i) deeming goods, the whole or a portion of which is produced outside a country, to originate in that country for the purposes of this Act or any other Act of Parliament, subject to such conditions as are specified in the regulations,
>
> (ii) deeming goods, the whole or a portion of which is produced within a geographic area of a country, not to originate in that country for the purposes of this Act or any other Act of Parliament and not to be entitled to the preferential tariff treatment otherwise applicable under this Act, subject to such conditions as are specified in the regulations, and
>
> (iii) for determining when goods originate in a country for the purposes of this Act or any other Act of Parliament.

The *NAFTA Regulations* were enacted under subsection 16(2) of the *Customs Tariff*. Section 4 of the *NAFTA Regulations* establishes the requirements that must be met in order for goods to be deemed to originate in the territory of a *NAFTA* country. Under subsection 2(1) of the *NAFTA Regulations*, "originating good" is defined as "a good that qualifies as originating under these Regulations". The *NAFTA Regulations* provide a complex set of rules in order to make this determination.

Subsection 4(3) of the *NAFTA Regulations* reads as follows:

> (3) A good originates in the territory of a NAFTA country where the good is produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials.

In this context, the CCRA was concerned that some non-originating yarns (i.e. yarns that do not originate in a *NAFTA* country) may have been used in the manufacturing process of the laces in issue. To address this issue, Imperial provided certificates of origin from its yarn suppliers, Unifi and United.[17] In addition, at the CCRA's request, Imperial completed a detailed chart, provided by the CCRA, on each style of lace. The completed chart showed the yarn content and style number, the yarn suppliers (Unifi and/or United, depending on the style of lace), the origin of the yarn (i.e. the United States) and the production processes and location (i.e. the United States). The completed chart also confirmed that the manufacturer had *NAFTA* certification from the yarn supplier.

Imperial completed this chart twice: once in February 2001 and, again, in September 2001. Correspondence from Mr. Gérard Bélisle of the CCRA indicates that the CCRA was satisfied with the information initially provided for style No. 1904 because it could be matched to the *NAFTA* certification from Unifi. However, the CCRA requested that Imperial complete the chart a second time to provide more specific information on the yarn content and product numbers for the other styles of lace, where the yarn was purchased from United, to enable it to match the yarns in question to the certificate of origin.[18] The revised chart of September 2001 may well have enabled the CCRA to match the other styles to the certificates of origin, but the evidence is not clear on this point. Ms. Thibault's testimony indicated that she could not match the yarn types for any style, but her memory on this issue is open to question, given that she

17. *Transcript of Public Hearing*, 12 September 2003 at 75-76; Commissioner's brief, Tab K.
18. Commissioner's brief, Tab M.

contradicts Mr. Bélisle's conclusion that the yarn could be matched for style No. 1904. The Tribunal finds Mr. Bélisle's conclusion to be more reliable, given that it was put in writing to an outside party.[19]

The manufacturer also provided samples of two lace patterns to the CCRA.[20] Since these samples were requested by the CCRA at the same time as it asked Imperial to complete the chart the first time, and since there was no comment by the CCRA on the samples when it asked for the chart to be completed a second time, presumably the samples were satisfactory.[21] Ms. Thibault did not refer to the samples as a factor in the Commissioner's decision to deny preferential tariff treatment.

Despite the considerable amount of information provided to the CCRA to confirm the U.S. origin of the laces, the Commissioner was not satisfied that the laces were of U.S. origin and, therefore, denied preferential treatment under the United States Tariff.

Ms. Thibault indicated that preferential treatment under the United States Tariff was denied because of perceived inconsistencies in the information that was provided to the CCRA by Imperial and because she could not obtain further information from Imperial, in the form of cost sheets, to resolve the inconsistencies.

The fact that preference criterion B is indicated on the certificate of origin for the laces appears to have been one of the major inconsistencies perceived by Ms. Thibault. The relevant part of preference criterion B is defined as follows:

> The good is produced entirely in the territory of one or more of the NAFTA countries and satisfies the specific rule or origin, set out in Annex 401, that applies to its tariff classification. The rule may include a tariff classification change, regional value-content requirement or a combination thereof. The good must also satisfy all other applicable requirements of Chapter Four. . . . (Reference: Article 401(b)).[22]

Ms. Thibault testified that preference criterion B indicates, in the case of the laces in issue, that some non-*NAFTA*-originating yarn is used in the manufacturing process. She considered that information to be inconsistent with the fact that the charts indicated that all the yarn was of U.S. origin. The Tribunal does not consider that these two sources of information are necessarily contradictory. In completing the chart, it would have been reasonable for Imperial to indicate the origin of the laces *after* the rules of origin had been applied. In other words, even if some of the fibre that made up the yarn were not made in the United States, it could be considered U.S.-originating material if it fulfilled the requirements of the rules of origin.

However, even if Ms. Thibault was correct in perceiving a contradiction between these two sources of information (a contradiction which, if it occurred, might simply have been caused by human error), the Tribunal does not consider that this would seriously call into question the U.S. origin of the yarn, given the weight of the other evidence on this point, as discussed above.

The testimony also indicates that Ms. Thibault was not satisfied with the information provided because, in her view, the yarn was described inconsistently in the two versions of the chart completed by Imperial. However, in the Tribunal's view, it was to be expected that the second chart would have yarn descriptions that were different from those of the first chart, given that Imperial was asked by the CCRA to complete the chart a second time in order to provide better yarn descriptions. In any event, the evidence on

19. *Ibid.*, Tab M.
20. *Ibid.*, Tab K.
21. *Ibid.*, Tab D.
22. Certificate of origin, preference criterion B.

the record does not indicate to what extent the yarn descriptions provided in the second chart were truly different from the first ones, as opposed to simply being more precise. In the absence of such evidence, it is reasonable to assume that, when completing the chart a second time, Imperial merely provided more precise information.

Ms. Thibault also testified that there were inconsistencies between the two charts with regard to the names of the yarn suppliers. In a careful review of the two charts, the Tribunal could not find any inconsistencies as to the suppliers of the yarns for the styles that were imported by the Buffalo Group of Companies,[23] noting that the charts also cover other styles of lace that are not at issue.

Ms. Thibault also pointed out that, in a letter dated January 9, 2001,[24] Mr. Kenneth Berger of Imperial stated that the yarns used by Imperial came from Unifi and did not mention other suppliers. According to her, this put into question the accuracy of the information provided later on in the charts, given that a second supplier, United, is mentioned in the charts. Ms. Thibault considered that this inconsistency raised the possibility that there were, in fact, more than two yarn suppliers. The Tribunal notes that the two versions of the chart both named the same two yarn suppliers and that there is no evidence to support Ms. Thibault's suspicion that there were more than two yarn suppliers. On balance, the Tribunal accepts the evidence that there were two yarn suppliers, Unifi and United. The Tribunal notes that, in his letter of January 9, 2001, Mr. Berger stated that Imperial had been out of business since December 2000. This may explain, in part, why he provided incomplete information, since former employees of a company that has gone out of business may be less inclined to spend time trying to retrieve documents and reconcile information.

Ms. Thibault also testified that there was an inconsistency in information, in that the certificate of origin for the laces included certain styles of lace that, according to the chart, were not manufactured by Imperial.[25] However, given that none of the styles in question are at issue, the Tribunal does not consider that this potential inconsistency is relevant.

Ms. Thibault indicated that, in light of the perceived inconsistencies in the information that had been provided, she required additional information in the form of cost sheets, which she did not receive. In her letter of February 11, 2002, to Buffalo, communicating the Commissioner's preliminary decision, she mentions that "the information on hand cannot be verified with documents such as the nomenclature or cost sheet" [translation]. However, at the hearing, she was unable to remember the particulars of any request made to provide cost sheets and, although there are numerous pieces of the CCRA's correspondence in evidence, there are no documents to confirm that the request was made.[26] This would suggest that, in her mind, the request was not of paramount importance. The Tribunal also notes that the CCRA could have chosen to obtain more information through a plant visit, but chose instead to rely entirely on documents requested.

In light of the foregoing, the Tribunal is satisfied by the evidence that the goods in issue were made by Imperial in the United States from *NAFTA*-originating materials that meet the requirements of subsection 4(3) of the *NAFTA Regulations* and are therefore entitled to preferential treatment under the

23. Exhibit A-1 indicates that the following styles of lace were imported by the Buffalo Group of Companies: 1904, 6810, 7500, 8201 and 9030.
24. Commissioner's brief, Tab H.
25. *Transcript of Public Hearing*, 12 September 2003 at 73.
26. *Ibid.* at 103-104.

United States Tariff. As discussed earlier, the conclusion that the laces are of U.S. origin is supported by certificates of origin for both the laces and the yarn used in manufacturing the laces and by detailed information concerning the yarn supplied in the two charts requested by the CCRA. The Tribunal does not consider that the inconsistencies in information perceived by the CCRA call this evidence into question in any significant way. Furthermore, there is little or no evidence that would support a conclusion that the laces are not of U.S. origin.

For the foregoing reasons, the appeal is allowed.

Ellen Fry
Ellen Fry
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member