Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2006-002

Western RV Coach Inc.

v.

President of the Canada Border Services Agency

Decision and reasons issued
Monday, April 23, 2007

Canada

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IN THE MATTER OF an appeal heard on December 19, 2006, under subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated January 11, 2006, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

WESTERN RV COACH INC. **Appellant**

AND

THE PRESIDENT OF THE CANADA BORDER SERVICES AGENCY **Respondent**

DECISION

The appeal is dismissed.

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

James A. Ogilvy
James A. Ogilvy
Member

Elaine Feldman
Elaine Feldman
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	December 19, 2006
Tribunal Members:	Meriel V. M. Bradford, Presiding Member James A. Ogilvy, Member Elaine Feldman, Member
Counsel for the Tribunal:	Reagan Walker
Registrar Officer:	Valérie Cannavino
Appearances:	Bernard Cook, for the appellant Alysia Davies, for the respondent

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal under subsection 67(1) of the *Customs Act*[1] from a decision of the President of the Canada Border Services Agency (CBSA), dated January 11, 2006, made pursuant to subsection 60(4) of the *Act*.

2. There are two issues in this appeal. The first is whether a used 1995 Royale Coach motor home (the good in issue), imported by Western RV Coach Inc. (Western) from the United States on September 27, 2002, is entitled to preferential tariff treatment under the *North American Free Trade Agreement*[2]. The second is whether the legislation implementing *NAFTA*'s preferential tariff provisions (the *NAFTA* implementation legislation) violates the rights conferred by section 7, 11 or 12 or subsection 15(1) of the *Canadian Charter of Rights and Freedoms* (the *Charter*) and, if it does, whether the violation is justified under section 1 of the *Charter*.

3. This statement of reasons is subdivided into five parts: Facts of the appeal; Law on the first issue; Analysis of the first issue; Law on the second issue; and Analysis of the second issue.

PART I—FACTS OF THE APPEAL

4. Most of the following facts were presented by the CBSA, either in its brief[3] or through its witness, Mr. Raymond Thibeault, Manager, Origin and Valuation Audit Unit, Admissibility Branch, Canada Border Services Agency.[4] While Western provided some factual context in its appeal, it did not call witnesses or produce documents contesting the accuracy of the CBSA's factual submissions.

Importation Process

5. On September 24, 2002, at its sales and service complex in Florida, Marathon Coach Inc. (Marathon) sold the good in issue to Western as a used vehicle[5]. At the time of sale, Marathon gave Western a certificate of origin[6] confirming that the good in issue was an originating good within the meaning of the *NAFTA* implementation legislation.

6. Marathon indicated on the certificate of origin that the tariff classification number of the good in issue was 8703.33[7]. The tariff classification is not in dispute.

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1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].
2. *North American Free Trade Agreement Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994) [*NAFTA*].
3. Tribunal Exhibit No. AP-2006-002-13A.
4. Tribunal Exhibit No. AP-2006-002-27A.
5. Respondent's brief, Tab 5.
6. Respondent's brief, Tab 5.
7. Tariff item No. 8703.33.00: "Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02), including station wagons and racing cars. . . . --Of a cylinder capacity exceeding 2,500 cc".

7. Royale Coach by Monaco Inc. (Royale Coach),[8] a division of Monaco Coach Corporation[9] (Monaco), was identified as the original manufacturer and Marathon,as the exporter.[10] Marathon alleged that, in signing the certificate of origin, it had relied "on the producer's written representation . . . that the good qualifie[d] as an originating good".[11]

8. On the certificate of origin, Marathon certified that "[t]he good [was] produced entirely in the territory of one or more of the *NAFTA* countries exclusively from originating materials".[12] Marathon also certified that it had determined the regional value content of the good by using the net cost method.[13]

9. Based on the above assurances in the certificate of origin, Western imported the good in issue into Canada at the preferential tariff rate.[14]

Verification Process

10. Following complaints to the CBSA from other importers alleging that it was unfair that they should have to pay taxes and duties on imported motor homes (on account of insufficient information being available to prove the origin of their vehicles) while, at the same time, others were avoiding payment merely by presenting certificates of origin of questionable value,[15] the CBSA conducted an audit of the records and information behind Western's certificate of origin[16] throughout 2003.

11. On March 19, 2003, the CBSA asked Marathon for a copy of the written representations it had claimed, on the certificate of origin, to have received from Monaco. Marathon replied the same day, attaching a copy of a "certificate of origin for a vehicle" issued by Monaco to the original purchaser of the good in issue.[17]

12. On July 25, 2003, the CBSA wrote to Marathon and indicated that the above-mentioned certificate was inadequate and advised Marathon that the CBSA needed to conduct a verification of the origin of the good in issue. It attached a "NAFTA origin verification questionnaire"[18] and directed Marathon to complete and return the questionnaire by August 29, 2003.[19] Marathon received two extensions; the final due date was October 31, 2003.[20]

13. On October 16, 2003, Monaco wrote to Marathon to say that it could not support a certificate of origin.[21] On April 30, 2004, Monaco also wrote to the CBSA asking the latter to grant preferential tariff treatment notwithstanding Monaco's inability to complete the questionnaire and added that it had no information on either the composition of, or the costs for, any "used" (Monaco's own term) vehicles.[22]

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8. Respondent's brief, Tab 5.
9. Respondent's brief, Tab 10.
10. Respondent's brief, Tab 5.
11. Respondent's brief, Tab 5.
12. Respondent's brief, Tab 5.
13. Respondent's brief, Tab 5.
14. Duty-free under the U.S. tariff.
15. *Transcript of Public Hearing*, 19 December 2006, at 90.
16. *Transcript of Public Hearing*, 19 December 2006, at 88.
17. Respondent's brief, Tab 10.
18. Respondent's brief, Tab 9.
19. Respondent's brief, Tab 10.
20. Respondent's brief, Tab 10.
21. Respondent's brief, Tab 10.
22. Respondent's brief, Tab 11.

14. On the basis of Monaco's letter of October 16, 2003, the CBSA issued a negative determination, cancelling the preferential tariff treatment of the good in issue.[23]

Re-determination Process

15. In the re-determination process that followed, Western requested the CBSA to compare the good in issue with similar goods that had received the preferential tariff.

16. Western first suggested the following 2003 Monaco models: the Navigator, the Cheetah, the Patriot and the Dynasty.[24] The CBSA concluded that there was inadequate information to confirm that these models constituted "similar goods" within the meaning of the *NAFTA* implementation legislation[25] listed in paragraph 23 below.

17. Western then asked the CBSA to compare the good in issue to a U.S. customs verification of Prevost Car Incorporated (Prevost) bus shells manufactured in 1997.[26] But these were heavy-duty vehicles, which required a different method of calculating costs[27] from that used for light-duty vehicles,[28] such as the good in issue. Moreover, cost information was provided only for major components, such as the engine, transmission and frame, without any further breakdown of their constituent parts or list of traced materials.[29] Therefore, the CBSA concluded that it was not possible to determine whether the components of the good in issue were comparable to the Prevost bus shells.[30]

18. Finally, on January 11, 2006, the CBSA issued its decision confirming that the good in issue did not qualify for preferential tariff treatment under *NAFTA*.[31]

19. On April 6, 2006, Western appealed the CBSA's decision to the Tribunal.[32]

Constitutional Challenge

20. In its brief,[33] filed on June 12, 2006, Western alleged, among other things, that the *NAFTA* implementation legislation was unconstitutional, basing its argument on an alleged limitation on access to the law applying to preferential tariff rates.[34] On July 7, 2006, the Tribunal directed Western to serve notice of its constitutional challenge[35] in accordance with the requirements of section 57 of the *Federal Courts Act*.[36] Western complied on July 28, 2006.

23. *Transcript of Public Hearing*, 19 December 2006, at 54.
24. Respondent's brief, Tab 12.
25. *Transcript of Public Hearing*, 19 December 2006, at 56-62, 96-97.
26. Respondent's brief, Tab 13.
27. The transaction method.
28. The net cost method.
29. *Transcript of Public Hearing*, 19 December 2006, at 66-67, 103-104, 110.
30. Respondent's brief, Tab A, para. 64.
31. Protected Tribunal Exhibit No. AP-2006-002-13B.
32. Tribunal Exhibit No. AP-2006-002-1.
33. Appellant's brief.
34. Appellant's brief, paras. 59, 61.
35. Tribunal Exhibit No. AP-2006-002-12.1.
36. S.C. 2002, c. 8.

21. In its notice, Western raised essentially four questions with respect to the constitutionality of the CBSA's process for determining the origin of the good in issue.[37] Western asked whether the process infringed or denied rights guaranteed by section 7, 11 or 12 or subsection 15(1) of the *Charter* and, in each case, if it did, whether the infringement was justifiable under section 1.

PART II—LAW ON THE FIRST ISSUE

22. The Tribunal's ruling on the first issue, i.e. whether the good in issue is entitled to preferential tariff treatment under *NAFTA*, will depend on whether it met all the requirements of the *NAFTA* rules of origin, as incorporated into Canadian law.

23. The *NAFTA* implementation legislation, which consists of various provisions of the *Act*, the *Customs Tariff* and other legislation, including the *Proof of Origin of Imported Goods Regulations*,[38] the *NAFTA Rules of Origin Regulations*[39] and the *NAFTA and CCFTA*[40] *Verification of Origin Regulations*,[41] enacts the requirements of *NAFTA* relating to the *NAFTA* rules of origin.

24. More specifically, subsection 24(1) of the *Customs Tariff* requires an importer to meet the following two conditions in order for an imported good to receive preferential tariff treatment:

(a) proof of origin of the good must be given in accordance with the requirements of the *Customs Act*; and

(b) the good must be entitled to preferential tariff treatment in accordance with the requirements of the applicable regulations.

25. Within this framework, in order for the good in issue to be imported into Canada at the preferential tariff rate, the importer had to prove the following four things:

(1) that the imported good, including its component parts and traced materials, met the statutory proof-of-origin requirement, i.e. that a certificate of origin accompanied by the statements required by the regulations was tendered for the vehicle;[42]

(2) that any non-originating inputs that were re-fabricated during the production of the good in issue were sufficiently transformed as to shift their tariff classification appropriately from one classification to another;[43]

(3) that the regional value content (RVC) of the imported good was at least the minimum percentage prescribed by the regulations;[44] and

(4) that the RVC was calculated using the net cost method.[45]

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37. In fact, eight questions were posed, but questions 5 through 8 were a repetition of questions 1 through 4, respectively.
38. S.O.R./98-52.
39. S.O.R./94-14.
40. *Canada-Chile Free Trade Agreement.*
41. S.O.R./97-333.
42. *Customs Act*, subsection 35.1(1); *Proof of Origin of Imported Goods Regulations*, subsection 6(1).
43. *NAFTA Rules of Origin Regulations*, Schedule I, subheading 8703.
44. *NAFTA Rules of Origin Regulations*, para. 13(1)(*a*).
45. *NAFTA Rules of Origin Regulations*, subparagraph 6(6)(*d*)(i).

PART III—ANALYSIS OF THE FIRST ISSUE

26. The first issue is whether Western has met the four requirements listed above. The Tribunal notes that, since the tests are cumulative, failure to meet any one of the four requirements will result in the failure of the appeal on the first issue.

Certificate of Origin (the first requirement)

27. Under section 42.1 of the *Customs Act*, the CBSA may conduct a verification of the origin of a good that is covered by a certificate of origin by auditing the books and records of the exporter or, where the exporter is not the producer of the good, those of the producer. Subsection 59(1) allows the CBSA up to four years from the original determination date to re-determine the origin of the good once the verification is completed.

28. Paragraph 13 of the *NAFTA* and *CCFTA Verification of Origin Regulations* states that ". . . preferential tariff treatment . . . may be denied or withdrawn from the goods that are the subject of a verification of origin where the exporter or producer of the goods . . . who is required to maintain records of goods in accordance with the applicable laws of the country in which the verification of origin is conducted fails to maintain those records in accordance with those laws, or denies the officer conducting the verification of origin access to those records . . .".

29. On March 19, 2003, less than six months after the importation of the good in issue, as part of its verification process, the CBSA requested that Marathon provide the "written representation" from Monaco upon which Marathon had relied when it signed the certificate of origin. Notwithstanding a number of exchanges of correspondence between the CBSA and Marathon, Marathon was unable to supply the written representation.

30. In a letter dated October 16, 2003,[46] Monaco indicated that it did ". . . .not have the information [necessary for the verification] . . . with respect to the 1995 Royale Coach . . . ." In addition, Monaco explained that, because the production of the unit had occurred eight or nine years earlier, any records that would be necessary to compute its *NAFTA* content no longer existed. The Tribunal concludes that Marathon signed the certificate of origin without having the prescribed documentation from Monaco on which it purported to rely.

31. Western did not dispute the fact that the documentation to support the certificate of origin was not available or that Monaco failed to provide the information required for the verification. Western argued that it had relied on Marathon's certificate of origin and that the verification was carried out so late that obtaining records from Monaco was no longer possible. Western also alleged that it was unfair of Monaco to withhold information that would have allowed Marathon to support the certificate of origin.[47]

32. Part VI of the *NAFTA Rules of Origin Regulations* deals with an importer's inability to provide sufficient information due to circumstances beyond its control. Subsection 15(1) covers situations where the importer is unable to substantiate the claim that material used in the production of an imported good is an originating material or that the value of the material is accurate. Subsection 15(3) deals with a situation where the importer is unable to substantiate that the imported good itself is an originating good.

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46. Respondent's brief, Tab 10.
47. *Transcript of Public Hearing*, 19 December 2006, at 5-7.

33. In both of the above situations, before starting its investigation, the CBSA must consider whether it has already conducted a verification of other similar goods (produced by the producer of the good in issue) and determined that the similar goods were originating goods.[48]

34. The CBSA intimated[49] that Western failed to prove that its inability to provide the required information was due to "reasons beyond [its] control" within the meaning of subsection 15(2) of the regulations. This would include bankruptcy, financial distress, business reorganization, fire, flooding or other natural causes leading to the loss of the records.

35. The CBSA also argued,[50] in effect, that Western failed to prove that any of the proxy goods it had tendered during the re-determination constituted "similar goods" within the meaning of subsection 2(1) of the regulations, i.e. goods that have similar characteristics and component materials, which enable the goods to perform the same functions and to be commercially interchangeable with the imported goods.

36. The CBSA submitted that the proxy goods would not be commercially interchangeable because ". . . no reasonable competitor would accept a used 1995 Royale Motor Home as being equivalent to a new 2002 Executive Rambler".[51]

Conclusion on the First Issue

37. In the recent case of *Duhamel & Dewar*,[52] the Tribunal took the view that ". . . the CBSA could not rely on the face value of [a] letter to compare a motor home that was manufactured in 1999 with those that were audited in 2002, but were not of the same model as the one imported by Duhamel & Dewar. The supplementary information provided by Monaco falls short of satisfying the CBSA's request . . . . In determining the origin of goods, the CBSA must act within the boundaries of the *NAFTA Rules of Origin Regulations* that set out a specific methodology to calculate the regional value content of a motor home. The Tribunal is not satisfied that there is adequate evidence before it to make a finding that the good in issue met the requirements for preferential tariff treatment on the basis of its review of the matter."

38. The Tribunal finds the above case to be consistent with the present appeal on this point. In the present appeal, the producer refused to certify the good in issue and declined to submit supporting documentation for the preferential treatment. Without the missing information, the country of origin claimed on the certificate of origin cannot be corroborated.

39. Western submitted that the CBSA should have relied on comparisons with proxy goods and found the good in issue to be an originating good on that basis. In the Tribunal's view, the CBSA cannot be expected to rely on different Royale Coach models from different years as evidence of "similar goods" under the *NAFTA Rules of Origin Regulations*. Nor would it be reasonable to expect the CBSA to rely on comparatively sparse, disaggregated information on major component materials from Prevost bus shells, which the Tribunal agrees are vehicles of a different type and classification. Section 15 expressly stipulates the conditions that must be met before reliance may be placed on similar goods. The Tribunal is not satisfied that there is adequate evidence before it to make a finding that Western met those conditions.

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48. *NAFTA Rules of Origin Regulations*, paras. 15(1)(*c*) and (3)(*c*).
49. *Transcript of Public Argument*, 19 December 2006, at 26.
50. *Transcript of Public Argument*, 19 December 2006, at 29-30.
51. *Transcript of Public Argument*, 19 December 2006, at 33.
52. *Duhamel & Dewar Inc. v. President of the Canada Border Services Agency* (8 February 2007), AP-2005-046 (CITT) [*Duhamel & Dewar*].

40. The Tribunal therefore concludes that the good in issue did not meet the statutory proof-of-origin requirement for preferential tariff treatment. Therefore, the Tribunal determines that the good in issue is not entitled to preferential tariff treatment.

41. Having found that the good in issue failed to satisfy the first of the four requirements, the Tribunal does not consider it necessary to pursue its analysis of whether or not the good in issue met the remaining requirements of the regulations, which contain the rules of origin for the classification of the good.

PART IV—LAW ON THE SECOND ISSUE

42. It is now well settled that administrative tribunals empowered to decide questions of law may apply the *Charter* to questions before them, including the constitutionality of legislation they are responsible for interpreting and applying.[53]

43. The courts have also held that it is the party raising a *Charter* challenge who bears the onus of establishing the infringement of his or her rights under the *Charter*.

44. Western claimed that its rights under sections 7, 11 and 12 and subsection 15(1) of the *Charter* were violated.

45. Section 7 reads as follows: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

46. Paragraph 11(d) states: "Any person charged with an offence has the right . . . to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal".

47. Section 12 declares that "[e]veryone has the right not to be subjected to any cruel and unusual treatment or punishment."

48. Subsection 15(1) recognizes that "[e]very individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

49. Even in situations where a law creates a *prima facie* violation of an individual's rights under the above *Charter* provisions, the law may be enforced if it meets the conditions of section 1 of the *Charter*, which reads as follows: "The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

PART V—ANALYSIS OF THE SECOND ISSUE

50. The object of this analysis is to determine whether Western has met its burden of establishing that the *NAFTA* legislation infringes one or more of the above *Charter* rights.

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53. *Nova Scotia (Workers' Compensation Board) v. Martin*, [2003] S.C.R. 504; *Paul v. British Columbia (Forest Appeals Commission*), [2003] S.C.R. 585.

Form of the Constitutional Question

51. The CBSA argued that "[t]he Appellant's submissions on the constitutional question have not addressed any specific provisions of the Canadian legislation. The Appellant appears to be complaining about what he perceives as general unfairness, but he has not based his arguments upon the law."[54] The CBSA added that ". . . the Tribunal cannot consider a constitutional question unless it is based in the law arising from the application of the statutes upon which the Tribunal is empowered to adjudicate".[55]

52. The Tribunal agrees with the CBSA's description of the scope of the Tribunal's authority to consider constitutional matters. Nonetheless, the Tribunal is of the view that it is clear from the record that Western intended to challenge only two discrete legislative provisions.

53. The first provision is subsection 42.1(2) of the *Act*, which states that, "[i]f an exporter or producer of goods that are subject to a verification of origin . . . does not consent to the verification of origin . . . , preferential tariff treatment under a free trade agreement may be denied or withdrawn from the goods".

54. The second provision is subsection 107(2) of the *Act*, which stipulates that, "[e]xcept as authorized under this section, no person shall knowingly provide, or allow to be provided, to any person any customs information . . .". Subsection 107(1) defines "customs information" as "information of any kind and in any form that relates to one or more persons and is obtained by or on behalf of the Minister for the purposes of this Act or the *Customs Tariff* . . .".

Arguments on the Constitutional Question

55. Regarding the first legislative provision at issue, Western clarified that it intended to challenge, not the certificate-of-origin scheme in its entirety, but rather the "voluntary element" of the requirement for the producer to provide supporting documentation for the certificate.

56. The Tribunal notes that the producer is free not to accept the burden of providing the considerable information necessary to calculate the RVC of an imported motor vehicle, albeit not without consequences to the exporter and importer, under the *Act* and the *NAFTA and CCFTA Verification of Origin Regulations*. Paragraph 13(*a*) of the regulations provides that "[f]or the purposes of subsection 42.1(2) of the Act, preferential tariff treatment under NAFTA . . . may be denied or withdrawn . . . where the producer of the goods does not consent to a verification visit within 30 days after receiving a notice referred to in paragraph 4(1)(*a*) . . . ."

57. Western submitted that the CBSA did not carry out its audit in accordance with "natural and human" rights or in accordance with the principles of a fair and competitive marketplace. It submitted that, because of the affirmative requirement to provide a certificate of origin, the importer is held ransom to the producer's decision whether or not to provide the information to the importer. It reasoned that it was because the producer's provision of information about the production of the good in issue is voluntary that it had been frustrated in its attempt to meet the requirements of the law in order to prove the origin of the good in issue.

58. Western also contended that, in light of the above circumstances, either the *Charter* has been violated or the *Charter* is unable to protect human and natural rights. Western argued that the security of its property under section 7 had been affected by the tariffs it was required to pay for importing the good in

54. Response to Constitutional Questions, Tab A, para. 6.
55. Response to Constitutional Questions, Tab A, para. 7.

issue. Western pursued this point by adding that taking property would be a threat to one's individual life, which consists of one's thoughts, spirit and ability to act freely in achieving one's destiny. If the *Charter* cannot protect property and economic rights, then it will be unable to protect human and natural rights.

59. Western also argued that, by requiring it to pay the full most-favoured nation (MFN) tariff, the government had subjected it to a penalty. Western reasoned that the fact that it could not obtain the necessary information to support the application of the preferential tariff rate resulted in the tariff becoming a penalty. Western also advanced the view that it is being punished by way of having a privilege taken away, a punishment that is cruel and that has given rise to "mental torture".

60. The CBSA replied that the onus is on the importer to provide the information necessary to support a preferential tariff rate under the *Customs Tariff*. Regarding the good in issue, the CBSA submitted that the preferential tariff rate was withdrawn after it carried out a verification under the *NAFTA* implementation legislation. The CBSA claimed that Western was given "due process" and that the assessment of the MFN tariff could not be considered cruel or unusual punishment.

Analysis of the Constitutional Question

61. Western claimed that its *Charter* rights had been infringed. The Tribunal notes that rights are more than privileges, more than contractual obligations, since they cannot generally be alienated, and more than exemptions from the ordinary consequences of a *bona fide* regulatory scheme. Purely economic benefits—as opposed to economic rights fundamental to human life or survival, such as social security, food and shelter—are minimally protected under the *Charter*, if at all.[56] Moreover, the *Charter* ordinarily applies only to individuals,[57] whereas Western is a corporation.

62. By its express wording, subsection 15(1) of the *Charter* applies exclusively to individuals: "Every *individual* is equal before and under the law . . ." [emphasis added]. Western, being a corporation, is therefore not entitled to the benefit of this subsection.

63. The courts have stated that a ". . . common sense reading of the phrase 'Everyone has the right to life, liberty and security of the person', [in section 7 of the *Charter*], serves to underline the human element involved; only human beings can enjoy these rights. [The word] 'everyone' . . . [is] defined to exclude corporations and other artificial entities incapable of enjoying life, liberty or security of the person, and include only human beings."[58] Therefore, section 7 does not apply to Western.

64. Paragraph 11(*d*) of the *Charter* confirms that "[a]ny person charged with an offence has the right . . . to be presumed innocent until proven guilty according to law . . .". Western alleges that its rights under this paragraph have been infringed because the "appellant has been denied . . . the admissibility of . . . [the] U.S. Customs audit result".

65. The Tribunal notes that the protection guaranteed by paragraph 11*d*) applies only where a person has been charged with an offence. It is clear to the Tribunal that neither Western nor its principals have been charged with an offence, and this argument therefore fails.

56. *Gosselin v. Quebec (Attorney General)*, [2002] 4 S.C.R. 429.
57. *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295.
58. *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at 80.

66. Section 12 of the *Charter* states that "[e]veryone has the right not to be subjected to any cruel and unusual treatment or punishment". As noted in the above-mentioned discussion of subsection 15(1) and section 7, in the Tribunal's view, "everyone" applies only to individuals and does not include a corporation. Western's argument on this ground therefore fails.

Conclusion on the Second Issue

67. Given that the rights recognized in sections 7 and 12 and subsection 15(1) apply only to individuals, not corporations, and that Western has failed to adduce any evidence that it was charged with an offence so as to bring itself within the purview of section 11 of the *Charter*, there is no need for the Tribunal to consider whether any alleged limitations imposed by the legislation were justifiable under section 1 of the *Charter*. The Tribunal has therefore determined that the *NAFTA* implementation legislation does not violate any *Charter* right.

DECISION

68. Based on the foregoing reasons, the appeal is dismissed.

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

James A. Ogilvy
James A. Ogilvy
Member

Elaine Feldman
Elaine Feldman
Member