Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2007-007

A & G Inc. d.b.a. Alstyle Apparel

v.

President of the Canada Border Services Agency

Decision and reasons issued Thursday, March 12, 2009

Canada

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IN THE MATTER OF an appeal heard on October 15, 2008, under subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision made by the President of the Canada Border Services Agency, dated March 2, 2007, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

A & G INC. D.B.A. ALSTYLE APPAREL **Appellant**

AND

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

DECISION

The appeal is allowed.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Ellen Fry
Ellen Fry
Member

Diane Vincent
Diane Vincent
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing:	Vancouver, British Columbia
Date of Hearing:	October 15, 2008
Tribunal Members:	James A. Ogilvy, Presiding Member Ellen Fry, Member Diane Vincent, Member
Counsel for the Tribunal:	Georges Bujold Eric Wildhaber
Research Director:	Audrey Chapman
Senior Research Officer:	Cathy Turner
Manager, Registrar Office:	Gillian Burnett
Senior Registrar Officer:	Stéphanie Doré

PARTICIPANTS:

Appellant	**Counsel/Representative**
A & G Inc. d.b.a. Alstyle Apparel	Kimberley Cook
Respondent	**Counsel/Representative**
President of the Canada Border Services Agency	Lorne Ptack

WITNESS:

Graham Church
Controller
A & G Inc. d.b.a. Alstyle Apparel

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STATEMENT OF REASONS

1. This is an appeal filed by A & G Inc. d.b.a. Alstyle Apparel (A & G) pursuant to subsection 67(1) of the *Customs Act*[1] from a decision made on March 2, 2007, by the President of the Canada Border Services Agency (CBSA) under subsection 60(4).

2. The issue in this appeal is whether various long- and short-sleeved knitted 100 percent cotton T-shirts (the goods in issue) are entitled to the benefit of the United States Tariff, as asserted by A & G, or of the Mexico Tariff, as determined by the CBSA.

PROCEDURAL HISTORY

3. The goods in issue were imported by A & G from the United States into Canada on March 19, 2001. The goods in issue were classified under tariff item No. 6109.10.00 of the schedule to the *Customs Tariff*.[2] The tariff classification of the goods in issue is not in dispute. The parties also agree that the goods in issue are considered to be subject to the *NAFTA Rules of Origin Regulations*[3] and entitled to preferential tariff treatment under the *North American Free Trade Agreement*.[4]

4. On November 13, 2002, A & G requested a re-determination of the origin of the goods under paragraph 74(1)(*e*) of the *Act*. It requested that the tariff treatment be changed from the Mexico Tariff to the United States Tariff, which would entitle the goods in issue to enter duty free. On June 17, 2003, the CBSA denied the request under subparagraph 59(1)(*a*)(i).

5. On September 12, 2003, A & G requested a re-determination pursuant to subsection 60(1) of the *Act*.

6. On March 2, 2007, the CBSA made a decision under subsection 60(4) of the *Act* denying the request.

7. On May 31, 2007, A & G filed a notice of appeal with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Act*.

8. The Tribunal held a public hearing in Vancouver, British Columbia, on October 15, 2008. A & G called one witness, Mr. Graham Church, Controller, A & G, to testify on its behalf. The CBSA did not call any witnesses.

GOODS IN ISSUE

9. All components of the goods in issue (T-shirt body, sleeve pieces, collar and shoulder-seam ribbons) were produced in the United States. At its facility in Anaheim, California, A & G knits U.S.-originating cotton yarn into lengths of tubular fabric, forms them into rolls and dyes the rolls in large vats. The fabric is then dried and cut to create the components of the goods in issue. The T-shirt body is a seamless tube cut to the appropriate length from a roll of fabric, and the other components are cut from the same fabric.

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1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].
2. S.C. 1997, c. 36.
3. S.O.R./94-14.
4. *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*].

10. Once the production and cutting of the fabric in the United States are done, A & G bundles the unassembled T-shirt components together and ships them to Mexico for assembly. The bundles comprise the number of T-shirt bodies, sleeve pieces, collars and shoulder-seam ribbons required to assemble a given number of complete T-shirts.

11. Assembling the goods in issue consists of sewing each sleeve piece into a sleeve, sewing the sleeves and collar to the T-shirt body, and sewing the ribbons to cover the shoulder seams. Once assembly is complete, there are no fabric items left over from the bundles. The finished goods are then packaged and returned to A & G. Most of the finished goods go to the United States, although some are shipped to Canada directly from Mexico.

12. A & G filed various physical exhibits with the Tribunal: a set of the component parts of the goods in issue (including a sample of thread), two samples of the goods in issue (complete T-shirts), and a tank top and another type of T-shirt not manufactured by A & G.[5]

ANALYSIS

Law

13. Subsection 67(1) of the *Act* provides that "[a] person aggrieved by a decision of the President [of the CBSA] made under section 60 . . . may appeal from the decision to the Canadian International Trade Tribunal . . . ."

14. Decisions under section 60 of the *Act* include CBSA decisions on the origin of goods. It is a condition of entitlement to the benefit of a preferential tariff treatment under *NAFTA* that goods meet certain rules of origin in accordance with the prescribed regulations.

15. Chapter Four of *NAFTA* sets out the requirements for goods to qualify as "originating good[s]", while Chapter Five establishes the requirements for certificates of origin. The provisions of Chapters Four and Five are incorporated into Canadian law under the provisions of the *Act*, the *Customs Tariff* and regulations, such as the *NAFTA Rules of Origin Regulations*, the *Proof of Origin of Imported Goods Regulations*,[6] the *NAFTA Tariff Preference Regulations*,[7] the *Determination of Country of Origin for the Purposes of Marking Goods (NAFTA Countries) Regulations*[8] and the *NAFTA and CCFTA Verification of Origin Regulations*.[9]

Customs Tariff

16. Subsection 24(1) of the *Customs Tariff* provides the general conditions that must be met in order for goods to be entitled to the benefit of a preferential tariff treatment and reads as follows:

> **24.**(1) Unless otherwise provided in an order made under subsection (2) or otherwise specified in a tariff item, goods are entitled to a tariff treatment, other than the General Tariff, under this Act only if
>
> **24.**(1) Sauf disposition contraire des décrets d'application du paragraphe (2) ou d'un numéro tarifaire, les marchandises bénéficient d'un traitement tarifaire prévu par la présente loi, à l'exception du tarif général, si les conditions suivantes sont réunies :

5. Physical Exhibits A-01, A-02, A-03 and A-04.
6. S.O.R./98-52 [*Proof of Origin Regulations*].
7. S.O.R./94-17.
8. S.O.R./94-23 [*NAFTA Marking Regulations*].
9. S.O.R./97-333.

(*a*) proof of origin of the goods is given in accordance with the *Customs Act*; and	*a*) leur origine est établie en conformité avec la *Loi sur les douanes*;
(*b*) the goods are entitled to that tariff treatment in accordance with regulations made under section 16 or an order made under paragraph 31(1)(*a*), 34(1)(*a*), 38(1)(*a*) or 42(1)(*a*), subsection 45(13) or 49(2) or section 48.	*b*) elles bénéficient du traitement tarifaire accordé en conformité avec les règlements d'application de l'article 16 ou avec les décrets d'application des alinéas 31(1)*a*), 34(1)*a*), 38(1)*a*) ou 42(1)*a*), des paragraphes 45(13) ou 49(2) ou de l'article 48.

17. Therefore, in order for the goods in issue to be entitled to a tariff treatment other than the General 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.

– Proof of Origin

18. Paragraph 24(1)(*a*) of the *Customs Tariff* provides that goods are entitled to preferential tariff treatment only if "proof of origin of the goods is given in accordance with the *Customs Act*". The *Act* requires ". . . proof of origin, in the prescribed form . . . ."[10] Subsection 6(1) of the *Proof of Origin Regulations* requires a ". . . [c]ertificate of [o]rigin for the goods . . .", although no form for a certificate of origin is prescribed.

19. Subsection 4(1) of the *NAFTA Rules of Origin Regulations* provides that "[a] good originates in the territory of a NAFTA country where the good is . . . (*b*) a vegetable or other good harvested in the territory of one or more of the NAFTA countries . . . or (*j*) a good produced in the territory of one or more of the NAFTA countries exclusively from a good referred to in any of paragraphs (*a*) through (*i*), or from the derivatives of such a good, at any stage of production."

20. In this case, it has been established that the cotton from which the fabric was made was harvested in the United States, the yarn was made in the United States, the fabric was made and then cut in the United States, and the cut fabric was assembled into the finished goods in Mexico. Therefore, the goods in issue are originating goods within the meaning of subsection 4(1) of the *NAFTA Rules of Origin Regulations*. The Tribunal agrees with the parties that the proof of origin condition as prescribed by the *Act* has been met.

– Do the Goods in Issue Comply With the Applicable Regulations or Order?

21. With respect to the second condition set out in paragraph 24(1)(*b*) of the *Customs Tariff*, the parties agree that the goods in issue are entitled to the benefit of a preferential tariff treatment. However, as indicated, the only issue in this appeal is whether the applicable preferential tariff treatment is the United States Tariff or the Mexico Tariff.

22. In this regard, entitlement to the benefit of either preferential tariff treatments under *NAFTA* is determined according to the *NAFTA Tariff Preference Regulations*.

10. Subsection 35.1(1).

NAFTA Tariff Preference Regulations

23. With respect to entitlement to the benefit of the United States Tariff, paragraph 3(*b*) of the *NAFTA Tariff Preference Regulations* provides as follows:

3. Goods are entitled to the benefit of the United States Tariff where	**3.** Les marchandises ont droit au bénéfice du tarif des États-Unis lorsque :
. . .	[...]
(*b*) in the case of . . . textile and apparel goods,	*b*) dans le cas [...] des textiles et vêtements, elles sont à la fois :
(i) the goods are originating goods, and	(i) des marchandises originaires,
(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*.	(ii) des marchandises admissibles au marquage en tant que marchandises des États-Unis conformément au *Règlement sur la détermination, aux fins de marquage, du pays d'origine des marchandises (pays ALÉNA)*.

24. With respect to entitlement to the benefit of the Mexico Tariff, paragraph 4(*b*) of the *NAFTA Tariff Preference Regulations* provides as follows:

4. Goods are entitled to the benefit of the Mexico Tariff where	**4.** Les marchandises ont droit au bénéfice du tarif du Mexique lorsque :
. . .	[...]
(*b*) in the case of . . . textile and apparel goods,	*b*) dans le cas [...] des textiles et vêtements, elles sont à la fois :
(i) the goods are originating goods, and	(i) des marchandises originaires,
(ii) the goods are eligible to be marked as goods of Mexico in accordance with the *Determination of Country of Origin for the Purposes of Marking Goods (NAFTA Countries) Regulations*.	(ii) des marchandises admissibles au marquage en tant que marchandises du Mexique conformément au *Règlement sur la détermination, aux fins de marquage, du pays d'origine des marchandises (pays ALÉNA)*.

25. The parties agreed that the goods in issue are textile and apparel goods which are originating goods, as required by subparagraphs 3(*b*)(i) and 4(*b*)(i) of the *NAFTA Tariff Preference Regulations*. The Tribunal agrees, given that U.S.-originating cotton yarn is processed into fabric in the United States, that the fabric is dyed and cut in the United States to create the components of the goods in issue and that, finally, the components are sewn together in Mexico. Accordingly, the Tribunal finds that the requirements of subparagraphs 3(*b*)(i) and 4(*b*)(i) have been met.

26. However, parties disagreed as to whether the goods are eligible to be marked as goods of the United States under subparagraph 3(*b*)(ii) or as goods of Mexico under subparagraph 4(*b*)(ii) of the *NAFTA Tariff Preference Regulations*. As a result, the Tribunal must determine whether the goods in issue are eligible to be marked as goods of the United States and, therefore, entitled to the benefit of the United States Tariff, or as goods of Mexico and, therefore, entitled to the benefit of the Mexico Tariff.

27. Consequently, in order to determine if the goods in issue are entitled to the benefit of the United States Tariff or the Mexico Tariff, the Tribunal must examine the rules of origin provided for in the *NAFTA Marking Regulations*.

Determining the Country of Origin

28. The rules for determining the country of origin of goods for the purposes of assessing their entitlement to *NAFTA* preferential tariff treatment are set out in the *NAFTA Marking Regulations*. The Tribunal will follow a section-by-section analysis of the rules set out in sections 4 through 7 of these regulations, starting with section 4 and proceeding, as necessary, through to section 7, until it determines that the goods in issue fulfil the conditions of a provision. These sections read as follows:[11]

4.(1) The country of origin of goods is the country in which	**4.**(1) Le pays d'origine d'une marchandise est le pays où, selon le cas :
(*a*) the goods are wholly obtained or produced;	*a*) elle est entièrement obtenue ou produite;
(*b*) the goods are produced exclusively from domestic materials;	*b*) elle est produite uniquement à partir de matières d'origine nationale;
(*c*) each of the foreign materials incorporated into the goods undergoes an applicable change in tariff classification and satisfies any other applicable requirements of these Regulations; or	*c*) chacune des matières étrangères incorporées dans la marchandise subit le changement de classement tarifaire applicable et satisfait aux autres exigences applicables du présent règlement;
(*d*) a good is considered to originate under a Chapter Note set out in Schedule III.	*d*) la marchandise est considérée comme étant originaire aux termes d'une note de chapitre énoncée à l'annexe III.
. . .	[...]
5.(1) Except in the case of goods that are described in the schedule to the Act as a set or are classified as a set pursuant to Rule 3 of the General Rules, where the country of origin of goods cannot be determined under section 4, the country or countries of origin of the goods shall be the country or countries of origin of the single material that imparts the essential character of the goods.	**5.**(1) Sauf dans le cas des marchandises qualifiées d'assortiment à l'annexe de la Loi ou classées comme assortiment aux termes de la Règle 3 des Règles générales, si le pays d'origine des marchandises ne peut être déterminé en application de l'article 4, le pays ou les pays d'origine des marchandises sont celui ou ceux de la matière qui à elle seule confère aux marchandises leur caractère essentiel.
(2) Where the single material that imparts the essential character of the goods is a fungible material and has been commingled so that direct physical identification of the country or countries of origin of each fungible material is not practical, the country or countries of origin of that material shall be determined, at the choice of the importer of the goods, under subsection (1) or on the basis of an inventory management method set out in Part I of Schedule X to the *NAFTA Rules of Origin Regulations*.	(2) Si cette matière est une matière fongible et qu'elle a été combinée de façon que l'identification directe du pays ou des pays d'origine de chaque matière fongible est irréalisable, son pays ou ses pays d'origine sont déterminés, au choix de l'importateur des marchandises, conformément au paragraphe (1) ou selon l'une des méthodes de gestion des stocks prévues à la partie I de l'annexe X du *Règlement sur les règles d'origine (ALÉNA)*.
6. Where the country or countries of origin of goods cannot be determined under section 4 or 5 and the goods are described in the schedule to the Act as a set or mixture, or are classified as a set or mixture or as composite goods pursuant to Rule 3 of the General Rules, the country or	**6.** Si le pays ou les pays d'origine des marchandises ne peuvent être déterminés en application des articles 4 ou 5 et que celles-ci sont qualifiées d'assortiment ou de produit mélangé à l'annexe de la Loi ou classées comme assortiment, produit mélangé ou article composite

11. The Tribunal notes that the parties relied only upon sections 4 and 5 of the *NAFTA Marking Regulations* in their submissions to the Tribunal.

countries of origin of the goods shall be the country or countries of origin of all the materials that merit equal consideration as imparting the essential character of the goods.

aux termes de la Règle 3 des Règles générales, le pays ou les pays d'origine des marchandises sont celui ou ceux d'où proviennent les matières pouvant être considérées sur un pied d'égalité quant à leur contribution au caractère essentiel des marchandises.

7. Where the country or countries of origin of goods cannot be determined under any of sections 4 to 6, the country or countries of origin of the goods shall be

(*a*) if the goods are produced by only minor processing, the country or countries of origin of all the materials that merit equal consideration as imparting the essential character of the goods;

(*b*) if the production of the goods is by simple assembly and the parts that merit equal consideration as imparting the essential character of the goods have the same country of origin, the country of origin of those parts; or

(*c*) in any other case, the last country in which the goods underwent production.

7. Si le pays ou les pays d'origine des marchandises ne peuvent être déterminés en application de l'un des articles 4 à 6, le pays ou les pays d'origine des marchandises sont :

a) dans le cas des marchandises produites simplement par traitement mineur, celui ou ceux d'où proviennent les matières pouvant être considérées sur un pied d'égalité quant à leur contribution au caractère essentiel des marchandises;

b) dans le cas des marchandises produites par montage simple et dont les pièces pouvant être considérées sur un pied d'égalité quant à leur contribution au caractère essentiel des marchandises ont le même pays d'origine, le pays d'origine de ces pièces;

c) dans tout autre cas, le dernier pays où les marchandises ont fait l'objet d'une opération de production.

Section 4 of the NAFTA Marking Regulations

29. Paragraph 4(1)(*a*) of the *NAFTA Marking Regulations* requires that the goods in issue be wholly obtained or produced in the territory of either the United States or Mexico. Given that the production of the fabric and the cutting of the T-shirt components occur in the United States and that the components are sewn together in Mexico, the requirement of paragraph 4(1)(*a*) that the goods in issue be *wholly obtained or produced* in either the territory of the United States or Mexico is not met. Accordingly, the Tribunal must now proceed to paragraph 4(1)(*b*).

30. Paragraph 4(1)(*b*) of the *NAFTA Marking Regulations* provides that the country of origin of goods is the country in which the goods are produced exclusively from domestic materials (e.g. if produced in Mexico, materials would need to come from Mexico). The evidence in this regard is that all the materials used to manufacture the goods in issue originate in the United States, while the final stage in the production process, which is the assembly, takes place in Mexico Therefore, paragraph 4(1)(*b*) is not applicable, since there is no single country, either the United States or Mexico, in which the goods in issue are produced exclusively from domestic materials. This was not disputed by the parties. Accordingly, the Tribunal must next proceed to paragraph 4(1)(*c*).

31. Paragraph 4(1)(*c*) of the *NAFTA Marking Regulations* provides that the country of origin of goods is the country in which each of the foreign materials incorporated into the goods undergoes an applicable change in tariff classification in accordance with the "tariff shift rules" that are set out in Schedule III of these regulations. These rules indicate the transformation that each of the U.S.-produced components of the goods in issue would have to undergo in Mexico to allow the goods in issue to qualify as goods originating in Mexico.

32. The Tribunal finds that these rules are not relevant in this case, since the component parts of the goods in issue did not undergo a tariff shift. The evidence indicates that, when the bundled component parts of the goods in issue were imported into Mexico, they were classified as finished T-shirts in subheading No. 6109.10. After assembly in Mexico, when the goods in issue were shipped to the United States and then to Canada, they remained classified in subheading No. 6109.10. Accordingly, the Tribunal will now consider paragraph 4(1)(*d*) of the *NAFTA Marking Regulations.*

33. Paragraph 4(1)(*d*) of the *NAFTA Marking Regulations* provides that the country of origin of goods is the country in which "a good is considered to originate under a Chapter Note set out in Schedule III [to the *NAFTA Marking Regulations*]." With respect to the goods in issue, the relevant chapter notes of Schedule III provide as follows:

Chapter 61 Articles of Apparel and Clothing Accessories, Knitted or Crocheted	**Chapitre 61 Vêtements et accessoires du vêtement, en bonneterie**
Note 1: For the purposes of this chapter, "substantial assembly" means the sewing together or other assembly of	**Note 1 :** Dans le présent chapitre, « assemblage substantiel » s'entend de tout assemblage, notamment la couture :
(*a*) all the major garment parts of a good of this chapter; or	*a*) soit de toutes les parties principales d'un vêtement du présent chapitre;
(*b*) six or more garment parts of a good of this chapter.	*b*) soit d'au moins six parties d'un vêtement du présent chapitre.
Note 2: For the purposes of this chapter, "major garment parts" means integral components of a garment, but does not include parts such as collars, cuffs, waistbands, plackets, pockets, linings, paddings or accessories.	**Note 2** : Dans le présent chapitre, « parties principales d'un vêtement » s'entend des parties intégrantes de celui-ci, à l'exclusion du col, des manchettes, de la ceinture, des doubles pattes, des poches, de la doublure, de la bourre, des accessoires et de toute autre partie similaire.

34. A & G argued that, absent a tariff shift, the relevant chapter notes of Schedule III to the *NAFTA Marking Regulations* do not direct how origin is to be determined. The CBSA argued that the goods in issue comprise "major garment parts" that underwent "substantial assembly" in Mexico and, therefore, that Notes 1 and 2 of Chapter 61 of Schedule III direct, in and of themselves (i.e. without a tariff shift), that the goods in issue should be of Mexican origin pursuant to paragraph 4(1)(*d*).[12]

35. The Tribunal has already determined that a tariff shift did not occur. The tariff shift rules therefore do not apply.

36. In the Tribunal's view, it is clear from the language of Notes 1 and 2 of Chapter 61 of Schedule III to the *NAFTA Marking Regulations* that the Notes provide guidance when applying the third tariff shift rule in the context of an analysis under paragraph 4(1)(*c*), but are not rules whereby "a good is considered to originate under a Chapter Note set out in Schedule III", as is required by paragraph 4(1)(*d*).

37. Accordingly, because the origin of the goods in issue cannot be determined pursuant to paragraph 4(1)(*d*) of the *NAFTA Marking Regulations*, the Tribunal will continue its analysis under section 5.

12. *Transcript of Public Hearing*, 15 October 2008, at 102, 113-14, 122-26.

Section 5 of the NAFTA Marking Regulations

38. Subsection 5(1) of the *NAFTA Marking Regulations* applies "[e]xcept in the case of goods that are described in the schedule to the [*Customs Tariff*] as a set or are classified as a set pursuant to Rule 3 of the [*General Rules for the Interpretation of the Harmonized System*[13]] . . . ."

39. The goods in issue are not described as "sets" in the schedule to the *Customs Tariff*, and Rule 3 of the *General Rules* refers to "sets" only in the phrases "a set put up *for retail sale*" and "sets *for retail sale*" [emphasis added]. The evidence indicates that the requirement that the sets be put up "for retail sale" is not met in this case. Although the component parts of the goods in issue were bundled for shipping, it is clear that such bundles were not intended as the form in which the goods in issue were to be offered for retail sale.

40. Given the above, the Tribunal concludes that the exception to the provisions of section 5 of the *NAFTA Marking Regulations* does not apply, and it must continue with an examination of section 5 to determine whether there is a "single material that imparts the essential character of the goods." If so, subsection 5(1) provides that the origin of the goods in issue will be the country of origin of that single material.[14]

41. Subsection 2(2) of the *NAFTA Marking Regulations* provides guidance in determining the material that imparts the essential character of goods, if any. It states the following:

> (2) For the purpose of determining the materials that impart the essential character of goods under sections 5 to 7,
>
> (*a*) the only materials that shall be taken into consideration are those materials, including materials produced by the producer of the goods and materials that are classified under the same tariff provision as that under which the goods are classified, that are incorporated into those goods and in respect of which there is not an applicable change in tariff classification; and
>
> (*b*) the factors to be taken into consideration are the following, namely,
>
> (i) the nature of each of the materials, such as the volume, weight and value of the material,
>
> (ii) the quantity of each of the materials, and
>
> (iii) the role of each of the materials with regard to the use of the goods.

> (2) Aux fins de la détermination des matières qui confèrent aux marchandises leur caractère essentiel selon les articles 5 à 7 :
>
> *a*) seules sont prises en compte les matières – y compris celles produites par le producteur des marchandises et celles classées dans le même poste tarifaire que celui des marchandises – qui sont incorporées dans celles-ci et pour lesquelles il n'y a pas de changement de classement tarifaire applicable;
>
> *b*) les facteurs à prendre en compte sont les suivants :
>
> (i) la nature de chacune des matières, tels son volume, son poids et sa valeur,
>
> (ii) sa quantité,
>
> (iii) sa fonction quant à l'utilisation des marchandises.

42. In this respect, A & G argued that the single material that imparts the essential character of the goods in issue is the body. In its submission, the body is a singlet that is recognizable as a T-shirt even prior to having the sleeves and collar added, and the body is the largest and most costly component of the goods

13. S.C. 1997, c. 36, schedule [*General Rules*].
14. Subsection 2(1) of the *NAFTA Marking Regulations* defines "materials" as "goods that are incorporated into other goods, and *includes a part*, a component and an ingredient" [emphasis added]. The Tribunal notes that subsection 33(2) of the *Interpretation Act*, R.S.C. 1985, c. I-21, provides that "[w]ords in the singular include the plural, and words in the plural include the singular."

in issue. The CBSA argued that the essential character of the goods in issue is not "crystallized" before assembly in Mexico. Before arriving in Mexico, the parts are merely separate components. Without the referenced garment parts there is no good. More specifically, without the bodies and sleeves, there are no T-shirts.

43. The Tribunal considers that it was clear from testimony and from an examination of the physical exhibits that the T-shirt bodies are not singlets. In the Tribunal's view, the evidence indicated that singlets are wearable, whereas the T-shirt bodies of the goods in issue do not yet have shoulder seams, which would be required to make them wearable.[15] Furthermore, the Tribunal considers that all the component parts merit equal consideration in establishing the essential character of the goods in issue, because they are all structurally necessary to form the finished T-shirt. Therefore, the Tribunal does not agree that the T-shirt body imparts the essential character of a finished T-shirt. While the Tribunal accepts that, because of their relative size and centrality in the design of the final goods, the unfinished bodies are of critical importance in the production of the goods, it does not see this as sufficient to establish that the unfinished bodies impart the essential character to the finished goods.

44. The Tribunal considers that no single material imparts the essential character of the goods. Therefore, it is of the view that subsection 5(1) of the *NAFTA Marking Regulations* does not provide guidance for determining the origin of the goods in issue.

45. The Tribunal will therefore consider subsection 5(2) of the *NAFTA Marking Regulations*.

Subsection 5(2) of the NAFTA Marking Regulations

46. Subsection 5(2) of the *NAFTA Marking Regulations* concerns "fungible material[s]". Subsection 2(1) defines "fungible materials" as "materials that are interchangeable for commercial purposes with other materials and whose properties are essentially identical". The goods in issue do not concern "fungible material[s]". Therefore, subsection 5(2) is not applicable.

47. The Tribunal will therefore consider section 6 of the *NAFTA Marking Regulations*.

Section 6 of the NAFTA Marking Regulations

48. Section 6 of the *NAFTA Marking Regulations* applies only to sets or mixtures or composite goods.[16] The goods in issue do not fall into this category. Accordingly, section 6 does not apply in this case, and the Tribunal will next consider section 7.

Section 7 of the NAFTA Marking Regulations

49. Section 7 of the *NAFTA Marking Regulations* provides for three ways to determine origin. Section 7 reads as follows:

7. Where the country or countries of origin of goods cannot be determined under any of sections 4 to 6, the country or countries of origin of the goods shall be	**7.** Si le pays ou les pays d'origine des marchandises ne peuvent être déterminés en application de l'un des articles 4 à 6, le pays ou les pays d'origine des marchandises sont :

15. *Transcript of Public Hearing*, 15 October 2008, at 72; Physical Exhibit A-02.
16. The parties also agreed that section 6 of the *NAFTA Marking Regulations* was not applicable. See *Transcript of Public Hearing*, 15 October 2008, at 118.

(*a*) if the goods are produced by only minor processing, the country or countries of origin of all the materials that merit equal consideration as imparting the essential character of the goods;

(*b*) if the production of the goods is by simple assembly and the parts that merit equal consideration as imparting the essential character of the goods have the same country of origin, the country of origin of those parts; or

(*c*) in any other case, the last country in which the goods underwent production.

a) dans le cas des marchandises produites simplement par traitement mineur, celui ou ceux d'où proviennent les matières pouvant être considérées sur un pied d'égalité quant à leur contribution au caractère essentiel des marchandises;

b) dans le cas des marchandises produites par montage simple et dont les pièces pouvant être considérées sur un pied d'égalité quant à leur contribution au caractère essentiel des marchandises ont le même pays d'origine, le pays d'origine de ces pièces;

c) dans tout autre cas, le dernier pays où les marchandises ont fait l'objet d'une opération de production.

50. Consideration of section 7 of the *NAFTA Marking Regulations* requires an examination of the terms "minor processing", "essential character" and "simple assembly" as they apply to the goods in issue.

51. Subsection 2(1) of the *NAFTA Marking Regulations* defines "minor processing", in respect of goods, as follows:

(*a*) mere dilution with water or any other substance that does not materially alter the characteristics of the goods,

(*b*) cleaning, including removal of rust, grease, paint or any other coating,

(*c*) applying any preservative or decorative coating, including any lubricant, protective encapsulation, preservative or decorative paint, or metallic coating,

(*d*) trimming, filing or cutting off small amounts of excess material,

(*e*) unloading, reloading or any other operation necessary to maintain the goods in good condition,

(*f*) putting up in measured doses, packing, repacking, packaging or repackaging,

(*g*) testing, marking, sorting or grading,

(*h*) repairs or alterations, washing, laundering or sterilizing,

(*i*) textile decorative processes incidental to the production of textile goods, other than apparel, such as edge pinking, whipping, folding and rolling, fringing and fringe knotting, piping, bordering, minor embroidery, hemstitching, embossing, dyeing and printing, or

(*j*) ornamental or finishing operations incidental to apparel assembly and designed to enhance the marketing appeal or the ease of care of the goods, such as embroidery, hemstitching and

À l'égard de marchandises, s'entend :

a) de la simple dilution dans l'eau ou dans toute autre substance qui n'en modifie pas sensiblement les caractéristiques;

b) du nettoyage, notamment l'enlèvement de rouille, de graisse, de peinture ou de tout autre revêtement;

c) de l'application d'un agent de conservation ou d'un revêtement décoratif, notamment un lubrifiant, une capsule protectrice, de la peinture pour conservation ou décoration ou un revêtement métallique;

d) du rognage, du limage ou du découpage de petites quantités de matière excédentaire;

e) du déchargement, du rechargement ou de toute autre opération nécessaire à leur maintien en bon état;

f) de la séparation en doses mesurées, de l'emballage, du remballage, du conditionnement ou du reconditionnement;

g) de la mise à l'essai, du marquage, du triage ou du classement;

h) des réparations ou modifications, du lavage, du lessivage ou de la stérilisation;

i) des procédés de décoration textile associés à la production de produits textiles autres que les vêtements, notamment la dentelure de bords, le surjetage, le dosage et l'enroulage, le garnissage et le nouage de franges, le garnissage de

sewn appliqué work, stone or acid washing, printing and piece dyeing, preshrinking and permanent pressing, and the attachment of accessories, notions, trimmings and findings.	passepoils, le garnissage de bordures, la broderie mineure, le garnissage d'ourlets, le gaufrage, la teinture et l'impression; *j*) de travaux ornementaux ou de finition associés à l'assemblage de vêtements et conçus pour rehausser la commerciabilité des marchandises ou en faciliter l'entretien, notamment la broderie, le garnissage d'ourlets, le travail d'applique cousu, le lavage à la pierre ou à l'acide, l'impression et la teinture à la pièce, le préretrait, le pressage permanent et la fixation d'accessoires, d'articles de mercerie, de garnitures et d'attaches et de boutons.

52. Paragraph 7(*a*) of the *NAFTA Marking Regulations* states that, if the goods are produced by only minor processing, the country of origin will be the country of origin of all the materials that merit equal consideration as imparting the essential character of the goods. In this respect, A & G argued that the goods in issue underwent "minor processing" in Mexico. The CBSA did not agree.[17]

53. The Tribunal is of the view that the goods in issue are produced by more than "minor processing". In this regard, what takes place in Mexico is the assembly of garment parts, which is clearly not what is envisaged in any of the definitions of "minor processing" in subsection 2(1) of the *NAFTA Marking Regulations* listed above, and is a significantly more fundamental type of processing operation. It includes, for example, what is described in paragraph 2(1)(*j*) as being "ornamental or finishing operations incidental to apparel assembly". The work performed in Mexico on the goods in issue is clearly more than "incidental to the assembly",—it is the assembly itself. Therefore, the Tribunal finds that paragraph 7(*a*) does not apply.

54. Paragraph 7(*b*) of the *NAFTA Marking Regulations* refers to "simple assembly". In this regard, subsection 2(1) defines "simple assembly" as follows:

The fitting together of five or fewer parts, all of which are foreign parts, other than screws, bolts or other fasteners, by bolting, gluing, soldering, sewing or any other means without more than minor processing.	Assemblage d'au plus cinq pièces–toutes étrangères–, à l'exclusion des dispositifs de fixation tels que les vis et les boulons, par boulonnage, collage, soudure, couture ou tout autre procédé, sans aucune autre opération qu'un traitement mineur.

55. Therefore, to determine whether the requirements set out in the definition of "simple assembly" are met in this case, the Tribunal examined the following four criteria.

– There Must be Five or Fewer Parts

56. In the Tribunal's view, this criterion is satisfied because there are five parts to the goods in issue, namely, the body, two sleeves, the collar and the shoulder-seam ribbons. The Tribunal considers that the thread is not a part, although it is necessary for sewing together the parts. The label, contrary to what was argued by the CBSA, is not a part which undergoes assembly in the same way as the parts of the goods in issue listed above.[18] It is sewn onto the T-shirt, not assembled as a part of the T-shirt. The application of a

17. *Transcript of Public Hearing*, 15 October 2008, at 118.
18. At the hearing, the CBSA submitted that it considered the label as a part. Refer to *Transcript of Public Hearing*, 15 October 2008, at 122.

label is more in the nature of a finishing operation incidental to apparel assembly, designed to enhance the marketing appeal and the ease of care of the goods, as described in paragraph 2(1)(*j*) of the *NAFTA Marking Regulations*.

– All Parts Must be Foreign

57. As previously discussed, the assembly of the "foreign" parts (U.S. origin) takes place in Mexico. This criterion is therefore satisfied.

– Assembly May be by Sewing

58. The goods in issue were sewn; therefore, this criterion is met.

– The Fitting Together by Sewing or Any Other Means Without More Than Minor Processing

59. Two interpretations of the English text are possible. One is that the fitting together of five or fewer parts must take place by "sewing" or by "any other means without more than minor processing". In the present instance, the assembly is done by sewing, and the Tribunal does not need to give consideration to the other possibility of fitting together the parts by another means without more than minor processing. The other possible reading is that the fitting together of five or fewer parts must take place by "sewing . . . without more than minor processing", or by "any other means without more than minor processing". This reading might suggest that the sewing operation could be completed by something that is no more than "minor processing". In the present instance, the sewing of the label, for instance, as noted previously, is a type of minor processing. Finally, the Tribunal notes that, if the English version of the definition of "simple assembly", taken alone, is interpreted to mean that the nature of the assembly in question (i.e. the sewing, in this case) must itself constitute no more than "minor processing", such an interpretation would introduce inconsistency with the definition of "minor processing" reviewed earlier, because the assembly by sewing is not itself minor processing.

60. The French definition of "simple assembly" (*montage simple*) reads as follows: "*Assemblage d'au plus cinq pièces . . . par . . . couture* ou tout autre procédé, *sans aucune autre opération qu'un traitement mineur*" [emphasis added]. The text and the punctuation in the French version clarify that something else, in addition to sewing, can be done, as long as it is minor processing. For example, as noted above, the adding of a label would fall into the definition of minor processing: ". . . finishing operations incidental to apparel assembly and designed to enhance the marketing appeal or the ease of care of the goods . . . ." The Tribunal notes that section 13 of the *Official Languages Act*[19] provides as follows:

13. Any . . . Act of Parliament . . . that is . . . enacted . . . in both official languages shall be . . . enacted . . . simultaneously in both languages, and both language versions are equally authoritative.	**13.** Tous les textes qui sont établis [...] dans les deux langues officielles le sont simultanément, les deux versions ayant également force de loi ou même valeur.

61. Therefore, pursuant to the shared meaning rule regarding the interpretation of Canadian legislation, the version of the language that is more specific and that resolves ambiguity is to be preferred over a broader version.[20] The Tribunal finds that the French version, which corresponds to one possible interpretation of the

19. R.S.C. 1985 (4th Supp.), c. 31.
20. See Pierre-André Côté, *The interpretation of legislation in Canada*, 3d ed. (Toronto: Carswell, 2000) at 326-28; see *Tupper v. R.* [1967] S.C.R. 589.

English version, should therefore be preferred. Accordingly, the Tribunal is of the view that the proper interpretation is that the means of fitting together five or fewer parts by sewing constitutes "simple assembly". As a result, the terms of the definition of "simple assembly" as set out in paragraph 7(*b*) of the *NAFTA Marking Regulations* are satisfied.

62. The Tribunal will now determine whether the second criterion of paragraph 7(*b*) of the *NAFTA Marking Regulations* is satisfied, specifically that "the parts that merit equal consideration as imparting the essential character of the goods have the same country of origin."

63. The Tribunal has indicated above that it does not consider the body of the T-shirt alone to establish the essential character. The Tribunal also notes that, in this instance, "parts" is in the plural. As previously noted, the Tribunal is of the view that all the component parts merit equal consideration in establishing the essential character of the goods in issue, because they are all structurally necessary to form the finished T-shirt. Given that these parts all originate in the United States, and therefore have the same country of origin, the Tribunal concludes that the goods in issue must be considered to originate in the United States.

64. The Tribunal therefore determines that, pursuant to paragraph 7(*b*) of the *NAFTA Marking Regulations*, for the purpose of establishing the preferential tariff treatment, the goods in issue originate in the United States.

DECISION

65. For the foregoing reasons, the Tribunal concludes that the goods in issue are entitled to the benefit of the United States Tariff.

66. The appeal is therefore allowed.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Ellen Fry
Ellen Fry
Member

Diane Vincent
Diane Vincent
Member