CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, September 30, 1992

Appeal No. AP-91-212

IN THE MATTER OF an appeal heard on June 30, 1992, under section 18 of the *Softwood Lumber Products Export Charge Act*, R.S.C., 1985, c. 12 (3rd Supp.) and section 81.19 of the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended;

AND IN THE MATTER OF a decision of the Minister of National Revenue dated October 25, 1991, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

RÉAL GRONDIN INC. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal finds that the appellant exported softwood lumber products from Canada to the United States during the period in question.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Michel P. Granger
Michel P. Granger
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-91-212

RÉAL GRONDIN INC. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

The appellant transported lumber from a lumber company in the United States to its sawmill in Quebec where it treated the lumber and then shipped it back to the United States. The appellant also added some of its own lumber to the shipment going to the United States. The lumber which it added to the shipment was entirely of U.S. origin. The appellant was required to pay an export charge pursuant to the Softwood Lumber Products Export Charge Act for the period from February 19 to June 1, 1987. It argued that because the lumber which it exported to the United States was entirely of U.S. origin, it should not be required to pay the export charge. The appellant further maintained that the Tribunal has the authority to retroactively extend the exemptions that it received in the years following 1987 to cover the period in question. The respondent contended that the Tribunal does not have the jurisdiction to retroactively apply the exemptions and that, since the appellant exported softwood lumber to the United States, the Minister of National Revenue was correct in assessing it for the value of the export charge.

***HELD**: The appeal is dismissed. The Tribunal finds that the appellant exported softwood lumber to the United States, thus being subject to the export charge. The Tribunal does not have the jurisdiction to retroactively apply the exemptions that the appellant subsequently received nor to waive the penalty or interest charges imposed upon the appellant.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*June 30, 1992*
Date of Decision:	*September 30, 1992*
Tribunal Members:	*Arthur B. Trudeau, Presiding Member* *Charles A. Gracey, Member* *Robert C. Coates, Q.C., Member*
Legal Services for the Tribunal:	*Karen A. Jensen*
Clerk of the Tribunal:	*Dyna Côté*
Appearances:	*Jean-Denis Rancourt, for the appellant* *Alain Lafontaine, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-91-212

RÉAL GRONDIN INC. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
CHARLES A. GRACEY, Member
ROBERT C. COATES, Q.C., Member

REASONS FOR DECISION

This appeal was filed under section 81.19 of the *Excise Tax Act*[1] in accordance with section 18 of the *Softwood Lumber Products Export Charge Act*[2] (the Act).

The appellant, a manufacturer of softwood lumber products, had an arrangement with a U.S. company by the name of Isaacson Lumber Company (Isaacson). The appellant transported lumber from Isaacson's mill located in the state of Maine to its sawmill in Quebec where the lumber was dried and graded. The appellant then shipped the lumber back to the U.S. company except for a certain portion of the lumber which, pursuant to the arrangements made between the two companies, the appellant retained as payment for the drying and grading services that it performed.

On November 30, 1990, the appellant was assessed pursuant to the Act. As a result, it was asked to pay an export charge of $11,248.33 on softwood lumber which was shipped to the United States between January 8, 1987, and August 31, 1990.

The appellant served a notice of objection on November 30, 1990, which was subsequently dismissed in part by the Minister of National Revenue (the Minister) on October 25, 1991.

The issue in this appeal is whether the lumber, which the appellant received from the company in the United States, treated and then shipped back to the same company, is subject to the export charge pursuant to subsection 4(1) of the Act. At the outset of the hearing, it was established that only the export charge plus penalty and interest owing for the period from February 19 to June 1, 1987, were at issue.

Mr. Réal Grondin, the owner and president of the appellant company, testified that his company transported four grades of lumber from Isaacson's mill in the state of Maine to Réal Grondin Inc. in Quebec. He stated that the grades ranged from 1 to 4, with grade 1 being the highest quality lumber. Approximately 15 to 25 percent of the shipments made to Quebec

1. R.S.C., 1985, c. E-15, as amended.
2. R.S.C., 1985, c. 12 (3rd Supp.).

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consisted of grade 1, 2 or 3 lumber, the remaining 75 to 85 percent being comprised of grade 4 lumber. After drying and grading the lumber, his company returned the grade 4 and the poorest quality grade 3 lumber to Isaacson. Mr. Grondin stated that his company retained the grade 1 and 2 lumber and the best quality grade 3 lumber as payment for the services performed. In order to have a full shipment of lumber returned to Isaacson, this lumber was replaced with lumber from his sawmill. Mr. Grondin explained that the lumber from his sawmill had been produced from logs purchased from Isaacson.

In cross-examination, Mr. Grondin stated that there were no receipts or order forms on which a price for the drying, classification and transportation services was indicated. He stated that the arrangements made by the appellant and Isaacson were a form of barter. The amount of lumber which was shipped back to the U.S. company was sometimes greater than the amount shipped to the appellant for drying, the difference being due to the fact that the drying operation reduced the weight of the lumber, thus permitting the appellant to add more lumber to the shipment to the United States. The witness was unable to specify exactly how much lumber from his own sawmill was added to the shipment to complete the load. He estimated the supplement to represent approximately 15 to 25 percent of the total shipment. Mr. Grondin explained that it is essential to dry pine lumber before attempting to sell it. The drying process adds strength and resilience to pine. Pine lumber that has not been dried is virtually useless and not marketable.

Mr. Grondin testified that in 1987 he applied for an exemption from the softwood lumber export charge, but his application was rejected. In 1990, he was allocated a quota of 800,000 board feet of lumber which could be exported to the United States without paying an export charge. In 1991, he reapplied for the exemption, which was approved. He was again granted an exemption from payment of the export charge during 1992. Mr. Grondin asserted that the basis of the decision to exempt his company from the export charge was that the lumber which the company exported to the United States was of U.S. origin. The witness maintained that he conducted exactly the same kind of operations with respect to the lumber received from Isaacson from 1983 to the present time. He found it strange that his company had not been granted an exemption when the operations that it performed and the lumber that it used were the same in 1987 as they were in 1991.

Mr. Gilles Cantin, an auditor for the Department of National Revenue (Revenue Canada), appeared as a witness for the respondent. He testified that, in October 1987, an auditor went to the appellant for the purpose of conducting an audit. During the course of the audit, Mr. Grondin was told that his company would have to pay an export charge on the sale price of the lumber that it exported to the United States. As Mr. Grondin had been unable to provide any proof of the sale price of the lumber that his company exported to Isaacson, the price of identical products sold in Canada had to be used to determine the amount of the export charge owed by the appellant. Mr. Cantin could not state what percentage of exports were of lumber from the appellant's own mill because there was no proof of the composition of the shipment to the United States.

Mr. Cantin testified that, according to Revenue Canada policy, exportation from Canada occurs when goods cross the Canada-United States border after having been transformed through a manufacturing process in Canada. He stated that, in the present case, the drying operations performed on the lumber imported into Canada constituted a manufacturing process which resulted in a transformation of the lumber. In deciding to levy a charge on the lumber, he relied on a Revenue Canada ruling card which stipulated that the drying operation

constitutes a manufacturing operation because it contributes significant value and new properties to lumber.

Mr. Cantin explained that although some companies were exempted from paying an export charge on the softwood lumber when the Act was implemented in 1987, the appellant was not one of those companies. In cross-examination, Mr. Cantin stated that he had never retroactively applied an exemption that a company had received in the years subsequent to the assessment year. He stated that his job was to apply the law as it existed during the period of assessment.

Relying on the testimony of the witnesses and the documents filed with the Tribunal, counsel for the appellant argued that, because the lumber that the appellant transported to the United States had always been entirely of U.S. origin, it should never have been subject to an export charge. He argued that the exemption which the appellant received for 1992 was based on the company's operations in the years preceding 1992. Counsel argued, therefore, that the Tribunal has the authority to retroactively extend the appellant's exemption for 1992 to 1987. In the alternative, counsel argued that the appellant should be required to pay an export charge only on that part of the shipment comprised of lumber that the appellant had processed in its own sawmill, that being 15 to 25 percent of the shipments to the United States. Finally, it was argued that the appellant should not be required to pay the penalty as it had not been given the correct information by Revenue Canada officials regarding the export charge. If the appellant had been given the correct information, it would have paid the charge promptly and then applied for relief.

Counsel for the respondent contended that, in cases where the goods are of U.S. origin, the two conditions that must be fulfilled before a softwood lumber export charge is applicable are: (1) the goods must be manufactured or processed in Canada, and (2) the goods must then be exported to the United States. Counsel for the respondent argued that, according to the case law, exportation occurs when goods cross the border. He noted that the appellant admitted that the above conditions had been fulfilled. He argued, therefore, that the export charge was properly assessed by Revenue Canada. Counsel further argued that the Tribunal did not have the jurisdiction to retroactively apply the exemption that the appellant received for 1992 to the exports made in 1987. Similarly, the Tribunal did not have the jurisdiction to retroactively apply the appellant's 1988 quota allocation to its 1987 exports. Counsel emphasized that the quota and exemption system was established as a result of negotiations and agreements reached between the Canadian and U.S. governments. He argued that the Tribunal does not have the authority to circumvent these agreements.

Section 4 of the Act provides that a charge shall be levied on all softwood lumber products exported to the United States after January 7, 1987. The Act stipulates only that "export" means "to export from Canada." For further clarification of the meaning of "export," the Tribunal referred to the decision of Strayer J. in *Old HW-GW Ltd. v. The Minister of National Revenue*[3] in which he stated:

> *The two most pertinent Canadian cases involving the interpretation of "goods exported" or "goods ... for export", expressions used there to describe goods exempted from certain sales taxes, both expressed the view that "export" normally involves the transfer of goods from one country to another.*

3. 43 F.T.R. 197, at 203.

After referring to dictionary definitions of the verb "to export," Strayer J. went on to state:

> *It would appear from these definitions that apart from the literal meaning of its Latin roots, ex portare, meaning to carry out or away, the most natural meaning in a commercial context for the term "export" or "exportation" is the sending of goods from one country to another, foreign, country.*

The Tribunal believes that the meaning of the word "export," as it has been defined by the Federal Court in the *Old HW-GW Ltd.* case, is also applicable to the Act. It adopts the definition of "export" which means to send from one country to another or to cause to be sent from one country to another.

Mr. Grondin testified that between February 19 and June 1, 1987, the appellant transported softwood lumber from its sawmill in Quebec across the Canada-United States border into the state of Maine. As such, the appellant "exported" softwood lumber to the United States from Canada in 1987.

Subsection 4(3) of the Act provides an exemption from the payment of export charges on only two kinds of exports: (1) products that are exported to a country other than the United States, but that pass in transit through the United States, or (2) products that are exported to the United States on a through bill of lading dated before December 31, 1986. Neither of the above two conditions was fulfilled with respect to the export of the goods in question.

Section 15 of the Act authorizes the Governor in Council, upon the recommendation of the Minister for International Trade, to grant exemptions to softwood lumber exporters. The appellant was not granted such an exemption for the time period in question. As was stated in an earlier decision,[4] the Tribunal has no authority to hear appeals from decisions of the Minister for International Trade and the Governor in Council in which the appellant was denied an exemption from liability under the Act.

The Tribunal is aware of the fact that the legislation was created to avoid the imposition by the United States of a countervailing duty on Canadian softwood lumber exports. One can therefrom infer that the intent of the legislation was not to levy a charge on products of U.S. origin. However, in the absence of a specific exemption in the legislation, it is beyond the authority of this Tribunal to rely upon such an inference and conclude that the charge should not have been imposed. A specific exemption is not provided for in the legislation, and the Tribunal cannot grant such an exemption.

Therefore, given the fact that the appellant was exporting softwood lumber products to the United States and that it did not meet the conditions required for the exemptions provided by the Act, the Tribunal finds that the Minister was justified in levying an export charge against the appellant pursuant to section 4 of the Act.

The Act does not provide the Tribunal with the authority to retroactively apply either the exemption or the quota allocation that the appellant received in the years following 1987. Similarly, the Tribunal's jurisdiction does not permit it to waive the penalty or interest charges imposed upon the appellant.

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4. Unreported, *Nova Lumber Co. Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. 3071, July 19, 1991.

Accordingly, the appeal is dismissed. The Tribunal finds that the appellant exported softwood lumber products to the United States in 1987. Therefore, the Minister was correct in requiring the appellant to pay an export charge in accordance with section 4 of the Act.

The Tribunal renders this judgment with considerable regret. It has great sympathy for the appellant, particularly since there appears to be no defensible reason why the appellant was refused an exemption for the period in question. The Tribunal finds it difficult to understand why the appellant was required to pay an export charge on its exports of softwood lumber when, in subsequent years, the decision to grant the appellant an exemption from the payment of such a charge was based on the very same export activity and others had requested and received exemptions earlier. However, for the reasons stated above, the Tribunal has no choice but to dismiss the appeal.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

Robert C. Coates, Q.C.
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Member