CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, July 8,

Appeal No. AP-92-105

IN THE MATTER OF an appeal heard on February 17, 1993, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a re-determination of the Deputy Minister of National Revenue for Customs and Excise dated June 22, 1992, under subsection 63(3) of the *Customs Act*.

BETWEEN

NYGÅRD INTERNATIONAL LTD. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Lise Bergeron
Lise Bergeron
Presiding Member

Michèle Blouin
Michèle Blouin
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
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UNOFFICIAL SUMMARY

Appeal No. AP-92-105

NYGÅRD INTERNATIONAL LTD. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE **Respondent**

The appellant imported samples of garments, which had previously been mutilated. The first issue is whether the value for duty of the samples is no more than $1.00 per sample rather than the price paid for the original garments, under section 48 of the Customs Act. The second issue is whether the samples of women's jackets, skirts and blouses should be classified as rags under tariff item No. 6310.90.00 or whether they are properly classified under tariff item Nos. 6204.32.00, 6204.59.00 and 6206.40.00, respectively, of Schedule I to the Customs Tariff, as determined by the respondent.

HELD: *The appeal is dismissed. The goods in issue were purchased for their specific characteristics in terms of fabric, design, style and construction, which all have a bearing on the price of the goods. Those characteristics remain despite the mutilation of the garments. Moreover, the mutilation of the garments cannot reasonably be seen as the type of "restrictions respecting the disposition or use of the goods by the purchaser" contemplated by subparagraphs 48(1)(a)(i) to (iii) of the Customs Act. With respect to the classification issue, the Tribunal is of the view that the goods in issue are not rags. Those goods are never used as rags, but as sample garments of what they are, namely, women's jackets, skirts and blouses. Those types of garments indeed have characteristics in terms of fabric, design, style and construction, which characteristics the goods in issue still possess, notwithstanding their mutilation. The goods in issue are, therefore, properly classified as women's jackets, skirts and blouses under tariff item Nos. 6204.32.00, 6204.59.00 and 6206.40.00, respectively, even though they can no longer be worn.*

Place of Hearing:	*Winnipeg, Manitoba*
Date of Hearing:	*February 17, 1993*
Date of Decision:	*July 8, 1993*
Tribunal Members:	*Lise Bergeron, Presiding Member* *Michèle Blouin, Member* *Desmond Hallissey, Member*
Counsel for the Tribunal:	*Gilles B. Legault*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*Bruce Bowman, for the appellant* *Brian Tittemore, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-92-105

NYGÅRD INTERNATIONAL LTD. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE **Respondent**

TRIBUNAL: LISE BERGERON, Presiding Member
MICHÈLE BLOUIN, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*[1] (the Act) from a decision of the Deputy Minister of National Revenue for Customs and Excise under subsection 63(3) of the Act.

The appellant designs, manufactures, distributes and retails women's garments. On October 30, 1990, the appellant imported into Canada samples of garments which had previously been mutilated.

There are two issues in this appeal. The first issue is whether the value for duty of the samples is no more than $1.00 per sample rather than the price paid for the original garments or the transaction value under section 48 of the Act. The second issue is whether the samples of women's jackets, skirts and blouses should be classified as rags under tariff item No. 6310.90.00 or whether they are properly classified under tariff item Nos. 6204.32.00, 6204.59.00 and 6206.40.00, respectively, of Schedule I to the *Customs Tariff*,[2] as determined by the respondent.

Mr. Peter Feuerstein, an employee of the appellant for 18 years, was called as a witness. Mr. Feuerstein explained to the Tribunal what the appellant does with the sample garments in issue. They are first listed in a book and then put in a distinct room that is used as a library by the merchandisers who look for specific silhouettes of garments, prints, fabrics and colours. When they choose a particular garment, it can be cut into several small pieces and sent to different agents across the world to determine if they can make that fabric and at what cost. The samples are also used to examine unusual embroidery, buttons and innovative construction. The witness testified that those are the sole reasons for the appellant's purchase of sample garments. Mr. Feuerstein concluded that samples, after one year, are usually thrown in the garbage.

With respect to the first issue, the appellant argued that the value for duty of the samples cannot be determined using the transaction value under subsection 48(1) of the Act because the garments that were purchased were not the goods that were exported, as the garments were transformed into samples. The mutilation of the garments, according to the appellant, constitutes "a change in the condition of the goods brought about by the deliberate action of the purchaser

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. R.S.C. 1985, c. 41 (3rd Supp.).

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prior to importation" as provided in Excise Memorandum D13-10-1[3] (Memorandum D13-10-1). The appellant also argued that there have been restrictions respecting the disposition or use of the garments by the purchaser that have substantially affected the value of the goods within the meaning of subparagraph 48(1)(*a*)(iii) of the Act. Consequently, the value for duty should not have been appraised based on the transaction value under section 48 of the Act. Moreover, the appellant does not produce mutilated samples, and, therefore, the goods cannot be appraised under either section 49 or 50 of the Act on the basis of "identical goods" or "similar goods," since the definitions of these terms refer to goods similar or identical to goods "produced by or on behalf of the person by or on behalf of whom the goods being appraised were produced." Consequently, counsel for the appellant urged the Tribunal to determine that the value for duty of the goods must be nil or no more than $1.00.

With respect to the second issue, counsel for the appellant argued that the description of rags in tariff item No. 6310.90.00 is not restrictive, as the Explanatory Notes[4] to heading No. 63.10 use the words "Rags may consist of." And, as the goods certainly cannot be classified as garments, they are properly classified as rags. Moreover, counsel pointed out that the goods are properly classified as rags under heading No. 63.10 in accordance with Rule 3 (c) of the General Rules for the Interpretation of the Harmonized System[5] which provides that, when goods cannot be classified by reference to Rule 3 (a) or 3 (b), they shall be classified in the heading which occurs last in numerical order among those which equally merit consideration.

Counsel for the respondent argued, with respect to the transaction value of the goods, that the two key requirements of section 48 of the Act had been met, namely, that there must be a sale for export of the goods to Canada and that a price paid or payable must be determined for the goods. Counsel affirmed that what was being purchased and, hence, imported by the appellant was an item of clothing having certain characteristics of style, fabric and design. Furthermore, the circumstances outlined in paragraphs 48(1)(*a*) to (*d*) of the Act that may preclude the use of the transaction value method do not exist in the present case. More specifically, there were no restrictions imposed on the appellant respecting the disposition or use of the goods within the meaning of subparagraphs 48(1)(*a*)(i) to (iii) of the Act, as the appellant was free to do what it wanted with the garments. As to Memorandum D13-10-1 on which the appellant relied, counsel argued that it refers to used goods, which the goods in issue are not. Finally, arbitrary or fictitious values, such as the ones proposed by the appellant, are prohibited under the Act. But for the value of the goods at which they were purchased, there was no evidence as to what other value could be used. With respect to the classification of the goods, counsel argued that the nature of the goods in issue is intact in terms of design, style and fabric, despite the fact that they can no longer be used in the traditional sense, that is, to be worn. The goods are, therefore, properly classified as garments under Chapter 62 of Schedule I to the *Customs Tariff*. In reply to the appellant's argument that the goods in issue are rags, counsel for the respondent contended that regard shall be had to the Explanatory Notes to heading No. 63.10, which state that the rags of textile fabrics of that heading may consist of articles of furnishing or clothing or of other "old textile articles so worn out, soiled or torn as to be beyond cleaning or repair, or of small new cuttings," which the goods in issue are not.

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3. Used Goods (*Customs Act*, sections 48 to 53), Department of National Revenue, Customs and Excise, June 1, 1986.

4. Explanatory Notes to the Harmonized Commodity Description and Coding System, Customs Co-operative Council, 1st ed., Brussels, 1986.

5. *Supra*, note 2, Schedule I.

The Tribunal agrees with the respondent on both issues. The explanation given in testimony with respect to the use of the sample garments by the appellant leaves no doubt that the goods in issue were purchased for their specific characteristics in terms of fabric, design, style and construction, which all have a bearing on the price of the goods. Those characteristics remain despite the mutilation of the garments. Moreover, the mutilation of the garments cannot reasonably be seen as the type of "restrictions respecting the disposition or use of the goods by the purchaser" contemplated by subparagraphs 48(1)(*a*)(i) to (iii) of the Act. It does not seem within the ambit of the provision to cover restrictions imposed by the purchaser itself, such as the mutilation of the goods in the present case. The appellant was unable to convince the Tribunal that the transaction value under section 48 of the Act should not apply.

With respect to the classification issue, the Tribunal is of the view that the goods in issue are not rags. Those goods are never used as rags, but as sample garments of what they are, namely, women's jackets, skirts and blouses. Those types of garments indeed have characteristics in terms of fabric, design, style and construction, which characteristics the goods in issue still possess, notwithstanding their mutilation. The goods in issue are, therefore, properly classified as women's jackets, skirts and blouses under tariff item Nos. 6204.32.00, 6204.59.00 and 6206.40.00, respectively, even though they can no longer be worn.

In light of the foregoing, the appeal is dismissed.

Lise Bergeron
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