

Ottawa, Wednesday, May 5, 1993

Appeal No. AP-92-157

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

AND IN THE MATTER OF a decision of the
Deputy Minister of National Revenue for Customs and
Excise dated September 22, 1992, with respect to a request
for a re-appraisal under section 63 of the *Customs Act*.

BETWEEN

CONSULAC ARCHITECTURAL PRODUCTS LTD.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Sidney A. Fraleigh

Sidney A. Fraleigh

Member

Charles A. Gracey

Charles A. Gracey

Member

Michel P. Granger

Michel P. Granger

Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-157

CONSULAC ARCHITECTURAL PRODUCTS LTD.

Appellant

and

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

Respondent

This is an appeal under section 67 of the Customs Act from a decision of the Deputy Minister of National Revenue for Customs and Excise dated September 22, 1992. The issue is whether the respondent correctly appraised the value for duty of goods imported into Canada by the appellant. In particular, it must be determined which transportation costs, if any, the appellant is entitled to deduct from the price paid for the goods in calculating the value for duty.

HELD: *The appeal is dismissed. The appellant has not satisfied its burden of proving that the amount claimed for transportation is equal to the cost of loading, unloading, handling, insurance and other costs relating to the transportation of the goods, as required under subparagraph 48(5)(b)(i) of the Customs Act.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: March 2, 1993

Date of Decision: May 5, 1993

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member
Sidney A. Fraleigh, Member
Charles A. Gracey, Member*

Counsel for the Tribunal: Shelley Rowe

Clerk of the Tribunal: Janet Rumball

Appearance: Ian McCowan, for the respondent

Appeal No. AP-92-157

CONSULAC ARCHITECTURAL PRODUCTS LTD.

Appellant

and

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

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
SIDNEY A. FRALEIGH, Member
CHARLES A. GRACEY, 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 (the Deputy Minister) dated September 22, 1992. The issue is whether the respondent correctly appraised the value for duty of goods imported into Canada by the appellant. In particular, it must be determined which transportation costs, if any, the appellant is entitled to deduct from the price paid for the goods in calculating the value for duty.

The appellant did not appear at the hearing of this appeal, and the Tribunal, therefore, proceeded to hear the appeal and to give whatever weight it deemed appropriate to the written submissions and documents filed by the appellant, in accordance with rule 22 of the *Canadian International Trade Tribunal Rules*.²

On November 7, 1991, the appellant imported into Canada aluminum framed building panels (the panels) from Kalwall Corporation (Kalwall) of Manchester, New Hampshire. The commercial invoice from Kalwall was for the amount of US\$74,179, of which US\$6,665 allegedly represented Kalwall's costs for transporting the panels to Canada in its own trucks. However, the "Canada Customs Invoice" indicated that the panels were shipped "F.O.B. Manchester, NH," and, on that basis, on December 19, 1991, an officer of the Department of National Revenue appraised the value for duty to include the alleged transportation costs under subsection 58(1) of the Act. On April 6, 1992, the appellant requested a re-appraisal under section 60 of the Act on the ground that the costs for transportation of the goods were included in Kalwall's selling price. On May 5, 1992, the Regional Tariff Values Administrator issued a decision under subsection 60(3) of the Act disallowing the claim on the ground that the appellant had not provided sufficient documentation to support its claim for the deduction of transportation costs. Finally, on September 22, 1992, under subsection 63(3) of the Act, the Deputy Minister confirmed the appraisal, and on October 1, 1992, the appellant appealed the Deputy Minister's decision to the Tribunal under section 67 of the Act.

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

2. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

In its brief, the appellant argued that, of the total amount of US\$74,179 that it paid to Kalwall for the panels, US\$6,665 represented transportation costs incurred by Kalwall for the use of its own trucks to transport the panels to Canada. The appellant relied on the information in the invoice from Kalwall dated October 22, 1991, and a letter from Mr. Alan J. Stone of Kalwall which, it submitted, both showed that the US\$6,665 was included in the amount of US\$74,179. Finally, to further support its position, the appellant provided copies of two letters from Mr. David G. Fogarty of Kalwall, dated August 13 and October 1, 1992, respectively, which outlined that the rates charged by Kalwall for trucking were based on the standard carrier rates.

As indicated in its brief, and through submissions made by counsel for the respondent at the hearing, the respondent's position was that the appellant was only able to deduct transportation costs from the price paid for the imported goods if it demonstrated that,

- 1) it actually paid the transportation costs in addition to the cost of the goods;
- 2) the costs of transportation were included in the contract price of the goods; and
- 3) the transportation costs related only to the transport of the goods to Canada.

Counsel for the respondent noted that, at the time of the Deputy Minister's decision, the only information provided by the appellant was the letter from Kalwall to it dated August 13, 1992, which stated that Kalwall applied the standard carrier rates. Subsequent to that letter, on October 1, 1992, Kalwall sent another letter to the appellant which provided that the rates were based on "M.A.C. U.S. Interstate Commerce recommended rates for class 85 freight."

Counsel argued that this information was not sufficient to demonstrate that the figure of US\$6,665 reflected the transportation costs incurred by Kalwall in transporting the panels from New Hampshire to Canada.

In counsel's view, the Tribunal should interpret the words "F.O.B. Manchester, NH" on the customs invoice in accordance with their common usage in the trade. Counsel submitted that, where goods are sold on F.O.B. terms, the price does not include the cost of freight and, on that basis, argued that the appellant should not be allowed to deduct transportation costs from the purchase price. However, counsel noted that the appellant provided further documentation supporting the view that the price paid by it included transportation costs and submitted that the appellant had a further onus of establishing that there was a "common understanding" between it and Kalwall with respect to the treatment of transportation costs, as was determined by the Tribunal in *Monark Import-Export Inc. v. The Deputy Minister of National Revenue for Customs and Excise*.³

Finally, counsel argued that the onus was on the appellant to show that the amount that it wanted to deduct as transportation costs reflected the true costs of transportation, as was stated by the Tribunal in *Monark*. In counsel's view, the information provided, i.e. the standard carrier rates, was only a starting point to figuring out the actual transportation costs. Counsel suggested that the Tribunal base its decision on what is sufficient on the definition of "sufficient information" in Customs Notice No. N-558,⁴ which provides that "sufficient" normally means carrier's invoices plus monthly statements, credit notes and proof of payment.

3. Appeal No. 3068, June 20, 1990.

4. Deductions for Transportation Costs, Department of National Revenue, January 11, 1991.

The Tribunal refers to section 48 of the Act which sets out the requirements for the deduction of transportation costs when calculating the value for duty of goods being imported into Canada. The first requirement under paragraph 48(5)(b) provides that the amount sought to be deducted is to be "included in the price paid or payable for the goods." The second requirement under subparagraph 48(5)(b)(i) is that the amount is to be equal to

the cost of transportation of, the loading, unloading and handling charges and other charges and expenses associated with the transportation of, and the cost of insurance relating to the transportation of, the goods from the place within the country of export from which the goods are shipped directly to Canada.

Further, paragraph 152(3)(c) of the Act provides that the burden of proof of any matters concerning the payment of duties on the importation of goods rests with the party to the proceeding other than Her Majesty. Therefore, in this appeal, the appellant bears the burden of proving that it has satisfied both of the requirements under section 48 of the Act for the deduction of transportation costs from the price paid.

In considering the first requirement, the Tribunal reviewed the attachments to the appellant's brief and is satisfied that the appellant paid an amount to Kalwall which was included as part of the price of the panels and identified as transportation costs. The invoice from Kalwall dated October 22, 1991 and the letter from Mr. Stone to Mr. John Balmer, President of the appellant, indicated that, of the total amount of US\$74,179 which Kalwall charged the appellant for the panels, US\$6,665 related to transportation. Further, in a letter dated August 13, 1992, to Mr. Balmer, Mr. Fogarty confirmed that the appellant had paid the full amount of US\$74,179, of which US\$6,665 was identified as relating to transportation.

The only information that the Tribunal has concerning how the figure of US\$6,665 was derived is the unsigned letter dated October 1, 1992, from Mr. Fogarty to Mr. Balmer. In that letter, Mr. Fogarty indicated that the amount was derived using the "M.A.C. U.S. Interstate Commerce recommended rates for class 85 freight" based on a cargo weight of 3,809 kg transported a distance of 1,074 mi. However, the "M.A.C. U.S. Interstate Commerce recommended rates" were not made available to the Tribunal for examination.

In its brief, the appellant explained that the distance of 1,074 mi. represented the round trip distance between its location in Canada and Kalwall's location in Manchester, New Hampshire, and that this figure was used because Kalwall is not licensed to pick up goods in Canada for shipment to Manchester, New Hampshire. Kalwall, therefore, charged the appellant for the return distance as well. However, the Tribunal notes that subparagraph 48(5)(b)(i) provides that the cost of transportation is to relate to the transportation of the goods from the place within the country of export directly to Canada. Subparagraph 48(5)(b)(i) does not provide for the cost of transportation from Canada to the place within the country of export.

Subparagraph 48(5)(b)(i) very clearly sets out that the amount claimed for transportation is to be equal to the cost of loading, unloading, handling, insurance and other costs relating to the transportation of the goods. The appellant did not supply sufficient documentation to satisfy its burden of proving that the amount claimed for transportation was equal to the costs listed under subparagraph 48(5)(b)(i). The appellant must provide more than a confirmation that it paid the amount being claimed, that the amount related to transportation costs and that the amount was calculated using standard rates.

The Tribunal, therefore, dismisses this appeal.

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

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Charles A. Gracey
Charles A. Gracey
Member