CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, May 26, 1994

Appeal No. AP-92-367

IN THE MATTER OF an appeal heard on December 15, 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 October 29, 1990, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

KELSEA SALES & IMPORTING LTD. **Appellant**

AND

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

DECISION OF THE TRIBUNAL

The appeal is allowed.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Desmond Hallissey
Desmond Hallissey
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-92-367

KELSEA SALES & IMPORTING 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 concerning the origin of certain imported needlecraft kits, each of which includes cloth with an imprinted design for embroidery, yarns of different colours, instructions, a needle, a picture of the finished product and a plastic bag containing each kit, in order to determine whether the kits are entitled to the benefit of the United States Tariff.

HELD: *The appeal is allowed. The Tribunal is of the opinion that the conditions under subsection 25.2(6) of the Customs Tariff have been met and, therefore, that the goods in issue are entitled to the benefit of the United States Tariff.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*December 15, 1993*
Date of Decision:	*May 26, 1994*
Tribunal Members:	*Sidney A. Fraleigh, Presiding Member* *Arthur B. Trudeau, Member* *Desmond Hallissey, Member*
Counsel for the Tribunal:	*Hugh J. Cheetham*
Clerk of the Tribunal:	*Anne Jamieson*
Appearances:	*Shane B. Brown, for the appellant* *Alain Préfontaine and Laura Thornhill, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-92-367

KELSEA SALES & IMPORTING LTD. **Appellant**

and

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

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
ARTHUR B. TRUDEAU, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*[1] (the Act) concerning the origin of certain imported needlecraft kits, each of which includes cloth with an imprinted design for embroidery, yarns of different colours, instructions, a needle, a picture of the finished product and a plastic bag containing each kit.

At the time of importation, 76 different kits were classified under tariff item No. 6308.00.00 of Schedule I to the *Customs Tariff*[2] and were assessed duty as if they were of U.S. origin and, thus, were entitled to the benefit of the United States Tariff (UST). The respondent subsequently requested that the appellant file an "Exporter's Certificate of Origin" (ECO) for purposes of verifying the origin of the kits. The appellant failed to file an ECO within the time limit set out in section 57.2 of the Act. As a result, the kits were re-determined under section 61 of the Act and found not to be entitled to the benefit of the UST, as there was insufficient information to support the claim that the kits were of U.S. origin.

The appellant requested a further re-determination. In this regard, the respondent requested that the appellant provide, among other things, a completed ECO and a completed origin questionnaire. The respondent found that, although the appellant had now filed a completed ECO, it did not correspond to a time frame that included the entry date at issue. The respondent also found that the questionnaire was still not complete, that it indicated that a number of components that were in the kits did not originate in Canada or the United States and that the appellant had not supplied the name and address of any U.S. supplier or any letter certifying that the materials used in the kits were wholly of U.S. origin. The appellant requested a further re-determination of the kits. By decision dated October 29, 1990, the respondent confirmed the re-determination.

The Tribunal's jurisdiction to hear this appeal is established by subsection 57.2(4) of the Act, which provides that requests for re-determinations and appeals from decisions concerning the origin of goods imported from the United States are to be treated as requests and appeals concerning the tariff classification or value for duty of the goods under sections 58 to 72 of the Act. The issue in this appeal is whether the appellant has established that the kits originate in the United States so as to entitle them to the benefit of the UST.

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

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On December 14, 1993, counsel for the appellant filed additional materials with the Tribunal, which materials were provided to counsel for the respondent on December 13, 1993. These materials included an ECO signed by Mr. Alan S. Getz, President of JCA, Inc. (JCA), the manufacturer and exporter of the kits, a copy of a notarized letter dated December 10, 1993, signed by Mr. Getz, wherein he discusses the origin of various components in the kits, and three forms entitled "Domestic Supplier's Declaration of Origin" relating to certain of the components of the kits.

At the commencement of the hearing, counsel for the appellant informed the Tribunal that the appellant was withdrawing its appeal with respect to 75 of the 76 types of needlecraft kits covered by the importation at issue. The type of kit that is the subject of this appeal is called "Blackberries for Supper." As no witnesses were called, the hearing proceeded to argument.

Counsel for the appellant submitted that the materials filed by the appellant prior to the hearing show that the goods in issue include a square woven cloth of 100-percent cotton produced in the United States from 100-percent cotton fibre grown in the United States. He also submitted that the materials show that the cloth is cut to size at JCA's premises, that the coloured cotton floss in the kit is purchased undyed by JCA from a U.S. supplier and that the printing of the instructions, colour organizer and other printed materials in the kit is done in the United States. He acknowledged that the appellant was not in a position to establish that the needle in the kit was of Canadian or U.S. origin.

Counsel for the appellant also submitted that, to determine whether the goods in issue were entitled to the benefit of the UST, the Tribunal had to make two specific findings of fact, namely, (1) whether all components of the goods in issue not originating in Canada or the United States (i.e. the needles) had undergone sufficient transformation to satisfy Rule 16 of Section XI of the Schedule to the *United States Tariff Rules of Origin Regulations*[3] (the Regulations) and (2) whether all the "operations ... undergone" by the goods in issue in the United States were "packaging or ... combining" operations for purposes of paragraph 3(2)(*a*) of the Regulations.

In the Tribunal's view, in order for goods to be entitled to the benefit of the UST, all of the following requirements under subsection 25.2(6) of the *Customs Tariff* must be satisfied:

> *(a) proof of origin of the goods is given in accordance with the Customs Act;*
> *(b) the goods are entitled, in accordance with any regulations made pursuant to subsection 13(2), to the benefit of the United States Tariff; and*
> *(c) the goods are shipped directly to Canada, with or without transhipment, from the United States.*

The respondent acknowledged that the last condition was not at issue. Therefore, this appeal must consider whether the appellant has satisfied the requirements under paragraphs 25.2(6)(*a*) and (*b*) of the *Customs Tariff*.

Subsection 35.1(1) of the Act requires that proof of origin be "in the prescribed form containing the prescribed information and containing or accompanied by the information, statements or proof required by any regulations."

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3. SOR/89-49, December 30, 1988, Canada Gazette Part II, Vol. 123, No. 2 at 773.

Subsection 3.1(2)[4] of the *Proof of Origin Regulations*[5] requires that an importer who claims the benefit of the UST provide as proof of origin "the exporter's certificate of the origin of the goods" or a declaration of origin. As noted above, the completed ECO eventually filed by the appellant did not correspond to a time frame that included the entry date at issue. However, the ECO provided to the respondent before the hearing is complete and fulfils the requirements for it to be considered a properly completed ECO. Therefore, the Tribunal finds that the requirements of subsection 3.1(2) of the *Proof of Origin Regulations* have been satisfied and, thus, proof of origin of the goods has been given in accordance with the Act.

As a further condition, the appellant must show that the goods in issue are entitled, in accordance with any regulations made under subsection 13(2) of the *Customs Tariff*, to the benefit of the UST. This condition is also set out under section 57.1 of the Act which provides that the "origin of imported goods shall be determined in accordance with section 13 of the *Customs Tariff*."

Section 13 of the *Customs Tariff* provides as follows:

> *(1) Subject to any regulations made under subsection (2), for the purposes of this Act, goods originate in a country if the whole of the value of the goods is produced in that country.*
>
> *(2) The Governor in Council may, on the recommendation of the Minister of Finance, make regulations respecting the origin of goods including, in particular, but without limiting the generality of the foregoing, regulations*
>
> *(a) deeming goods, the whole or a portion of the value of which is produced outside a country, to originate in that country for the purposes of this Act, subject to such conditions, if any, as are specified in the regulations; and*
>
> *(b) for determining when goods are entitled to the benefit of the Most-Favoured-Nation Tariff, United States Tariff, British Preferential Tariff, General Preferential Tariff or other tariff treatment under this Act.*

The Governor in Council has made regulations respecting the origin of goods, namely, the Regulations. Subsection 3(1) of the Regulations sets out the circumstances in which goods originate in the United States and are entitled to the benefit of the UST.

Counsel for the appellant claimed that the goods in issue satisfy paragraph 3(1)(*b*) of the Regulations, which reads as follows:

> *(b) subject to subsection (2), the goods are processed or assembled in the territory so as to be subject, when accounted for in Canada,*
>
> *(i) subject to subsection (3), to a change in tariff classification from the tariff classification to which they would have been subject prior to processing or assembly, as described in the schedule and the goods meet other conditions set out in the schedule, or*
>
> *(ii) to no change in the tariff classification and the goods meet the applicable requirements set out in the schedule.*

4. Added by SOR/89-68, December 30, 1988, Canada Gazette Part II, Vol. 123, No. 2 at 855.
5. SOR/88-83, December 31, 1987, Canada Gazette Part II, Vol. 122, No. 2 at 850.

Subsection 3(2) of the Regulations reads as follows:

> *(2) Goods are not goods originating in the United States and are not entitled to the benefit of the United States Tariff if the only operations that the goods have undergone in the territory consist of one or more of the following:*
> *(a) packaging or, unless otherwise provided for in the schedule, combining operations;*
> *(b) dilution with water or any other substance that does not materially alter the characteristics of the goods; or*
> *(c) any alteration or process that was undertaken for the sole purpose of circumventing these Regulations.*

The Tribunal must, therefore, consider whether those components which do not originate in Canada or the United States (i.e. non-territorial components[6]) have satisfied any relevant tariff change requirements set out in the schedule and if so, whether the goods in issue were processed or assembled in the United States, i.e. that the operations that the goods in issue have undergone in the United States consist of more than packaging or combining operations. The Tribunal notes that the requirements of subsection 3(3) of the Regulations are not at issue in this appeal.

With respect to the first question, the Tribunal must identify the non-territorial components in the kits. As indicated above, the appellant's position is that the needles are the only non-territorial components. Counsel for the respondent took the position that the Tribunal should also question whether the evidence before it with respect to the yarn and fabric in the kits was sufficient to conclude that they are of U.S. origin. More specifically, counsel submitted that the particulars relating to this matter in Mr. Getz's letter should be considered unsatisfactory, as they are based on information provided to Mr. Getz by others and, thus, are matters about which Mr. Getz does not have direct personal knowledge. Further, counsel compared this information with the information already provided by the appellant in the "Origin Determination Tariff Change - Third Country Materials" form that it had previously filed with the respondent. This form makes reference to non-territorial sources of fabric and yarn.

In the Tribunal's view, these submissions go to the question of the amount of weight to give to this evidence. The Tribunal is satisfied that this evidence is clearly relevant to the matters to which it speaks. The Tribunal is also satisfied that the evidence presented by the appellant establishes that the fabric and yarn are of U.S. origin. Mr. Getz has clearly made the effort to inform himself of the matters at issue and offered that information on the basis of a notarized statement. In addition, the Tribunal does not agree with counsel for the respondent that the "Origin Determination Tariff Change - Third Country Materials" form contradicts the evidence now being offered by the appellant. The Tribunal may have agreed with this submission if this appeal had been dealing with all 76 kits originally considered by the respondent. However, this is not the case. The Tribunal is only dealing with one type of kit, and the Tribunal is persuaded that the evidence shows that the non-territorial fabric and yarn referenced in the "Origin Determination Tariff Change - Third Country Materials" form are not used in the goods in issue. Therefore, the Tribunal finds that the only non-territorial components of the kits are the needles.

At the time of importation, the kits were classified under tariff item No. 6308.00.00 as "Sets consisting of woven fabric and yarn, whether or not with accessories, for making up into rugs, tapestries, embroidered table cloths or serviettes, or similar textile articles, put up in packings for retail sale." Section XI of the Regulations, which relates to textiles and textile articles classified

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6. "Territory" is defined in subsection 2(1) of the Regulations to mean "Canada, the United States or both, as the case may be."

in Chapters 50 to 63 of Schedule I of the *Customs Tariff*, would apply to the goods in issue and more specifically to the needles. Rule 16 of Section XI of the Regulations provides that the following classification changes apply to, among other things, sets:

> *16. A change to any heading No. of Chapter 63 from any heading No. outside that Chapter other than heading Nos. 51.06 to 51.13, 52.04 to 52.12, 53.06 to 53.11 or heading Nos. of Chapters 54 and 55; provided that the goods are both cut and sewn in the territory.*

In the Tribunal's view, the needles would have been classified in Chapter 73 of the Harmonized Commodity Description and Coding System,[7] which is in a different chapter from that in which the kits were classified. Counsel for the respondent concurred with this conclusion. The evidence also shows that, in the course of producing the goods in issue in the United States, the exporter engaged in both cutting and sewing operations.

The Tribunal must next consider whether the operations that the kits have undergone in the United States consist of more than packaging or combining operations and, thus, it may be said that the kits were "processed or assembled" in the United States. "Packaging" is defined in subsection 2(1) of the Regulations as "the operation of placing goods into a container or holder for the purpose of retail sale." "Combining" is not defined in the Regulations. The Concise Oxford Dictionary of Current English defines "combine" to mean to "join together" or "unite.[8]" The evidence shows that the exporter does far more than merely place goods in a package or simply join together or unite the components of the kits. In addition to assembling the kits, JCA also cuts cloth to size, dyes floss and prepares the printed materials that come with the kits, which JCA indicates are printed locally. In the Tribunal's opinion, when all of these activities or operations are taken together, they go beyond packaging and combining and satisfy the requirement that the goods in issue be processed or assembled in the territory.

In conclusion, the Tribunal is of the opinion that the conditions under subsection 25.2(6) of the *Customs Tariff* have been met and, therefore, that the goods in issue are entitled to the benefit of the UST.

Accordingly, the appeal is allowed.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Desmond Hallissey
Desmond Hallissey
Member

7. Customs Co-operation Council, 1st ed., Brussels, 1987.
8. Seventh ed. (Oxford: Clarendon Press, 1982) at 185.