CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, February 17, 1994

Appeal No. AP-92-382

IN THE MATTER OF an appeal heard on August 26, 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 July 31, 1992, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

PAUL SCHOLEFIELD **Appellant**

AND

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

DECISION OF THE TRIBUNAL

The appeal is allowed.

Lise Bergeron
Lise Bergeron
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

W. Roy Hines
W. Roy Hines
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-92-382

PAUL SCHOLEFIELD **Appellant**

and

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

The issue in this appeal is the tariff classification of certain oiled cotton coats. The Deputy Minister of National Revenue for Customs and Excise classified the coats in issue under tariff item No. 6201.12.10 [sic]. The appellant submitted that the coats in issue should be classified under tariff item No. 9805.00.00 as goods imported by a former resident of Canada returning to Canada to resume residence. The issue in this appeal is whether the appellant has met the "use" requirement of this tariff item. The respondent has interpreted the provision to mean that the coats in issue must actually have been used for six months by the appellant prior to his return to Canada. In contrast, the appellant submitted that the coats in issue need only have been available for use for six months to meet the requirement.

HELD: *The appeal is allowed. The Tribunal is aware that the word "use" can be defined as having both meanings advanced by the parties. Reference to The Concise Oxford Dictionary of Current English supports the Tribunal's understanding of the common, ordinary meaning of the word "use" or, more precisely, the expression "in the ... use" to include both actual use and availability for use.*

The Tribunal was persuaded to adopt the "available for use" interpretation by reference to the Tariff Item No. 9805.00.00 Exemption Order. The significance to the Tribunal of the exemptions provided by the Order to the requirements specified in tariff item No. 9805.00.00 is that when Parliament intended that goods must actually be used to attain a certain qualification, it indicated that the goods must be "used." When this is contrasted with utilization of the word "use," as found in the expression "in the ... use," the Tribunal is persuaded that Parliament intended a different meaning to be given to the word. The Tribunal is persuaded that "in the ... use" means that goods must be available for use and not, necessarily, actually used.

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*August 26, 1993*
Date of Decision:	*February 17, 1994*
Tribunal Members:	*Lise Bergeron, Presiding Member* *Sidney A. Fraleigh, Member* *W. Roy Hines, Member*
Counsel for the Tribunal:	*David M. Attwater*
Clerk of the Tribunal:	*Janet Rumball*
Parties:	*Paul Scholefield, for the appellant* *Ian McCowan, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-92-382

PAUL SCHOLEFIELD **Appellant**

and

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

TRIBUNAL: LISE BERGERON, Presiding Member
SIDNEY A. FRALEIGH, Member
W. ROY HINES, 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) under section 63 of the Act. The appeal proceeded by way of written submissions, under rule 25 of the *Canadian International Trade Tribunal Rules*,[2] on the basis of the Tribunal's record as supplemented by an agreed statement of facts and briefs submitted by the parties.

In 1987, the appellant, Paul Scholefield, declared himself a non-resident of Canada and moved to Australia. He stayed in Australia until November 1990, after which he travelled for 13 months, returning to Canada in December 1991. When he left Australia to travel, he shipped his personal belongings to Canada.

On November 4, 1989, the appellant purchased two oiled cotton coats in Australia. The coats in issue were not worn in Australia and were shipped to Canada in their original packaging as part of the appellant's personal belongings. The coats in issue arrived in Canada in November 1990 and were cleared through customs in March 1991 by the appellant's father by way of a power of attorney for this purpose.

According to the respondent's brief, at the time of importation, the coats in issue were classified under tariff item No. 6104.22.00 of Schedule I to the *Customs Tariff*[3] as women's or girls' ensembles of knitted or crocheted cotton. This tariff classification was maintained on re-determination, the respondent indicating that "the coats having been confirmed to be new and unused are not admissible duty-free under classification 9805.00.00.40. They are neither allowed under 9807.00.00.00." A further re-determination was denied, the respondent indicating that "the coats having been stored new in their original packing do not meet the use requirement of the tariff item and are, therefore, ineligible for classification under tariff item 9805.00.00." The decision rendered by the Deputy Minister under section 63 of the Act indicates that the coats in issue were classified under tariff item No. 6201.12.10. However, a review of Schedule I to the *Customs Tariff* indicates that there is no such tariff item, though tariff item No. 6201.12.00 may be applicable.

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

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The issue in this appeal is the tariff classification of the coats in issue. In the re-determination under section 63 of the Act, the Deputy Minister classified the coats in issue under tariff item No. 6201.12.10. The appellant submitted that the coats in issue should be classified under tariff item No. 9805.00.00 as goods imported by a former resident of Canada returning to Canada to resume residence.

For purposes of this appeal, the relevant tariff nomenclature of Schedule I to the *Customs Tariff* reads as follows:

61.04	*Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted.*
	-Ensembles:
6104.22.00	*--Of cotton*
62.01	*Men's or boys' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, other than those of heading No. 62.03.*
	-Overcoats, raincoats, car-coats, capes, cloaks and similar articles:
6201.12.00	*--Of cotton*
9805.00.00	*Goods imported by a ... former resident of Canada returning to Canada to resume residence therein after having been a resident of another country for a period of not less than one year ... and acquired by that person for personal or household use and actually owned abroad by and in the possession and use of that person for at least six months prior to that person's return to Canada.*

The appellant argued that he has met all the conditions of eligibility for classification of the coats under tariff item No. 9805.00.00. He was a former resident of Canada who left the country in July 1987 and returned to Canada to resume residence in December 1991. Based on a credit card receipt, he submitted that the ownership requirement had been met and that the coats in issue had been purchased at least six months prior to his departure from Australia. Also, the coats in issue were in his possession from the time of purchase until being shipped to Canada. As to use, the coats in issue served the purpose for which they were designed and intended, by being available for use through the winter months. However, because the winter was not as rainy as anticipated, the coats in issue remained unused. They were kept in their original packaging so as not to stain any other clothing.

Counsel for the respondent submitted that, in order for goods to be classified under tariff item No. 9805.00.00, the taxpayer must meet three requirements. In the present case, the coats in issue must have been owned for at least six months prior to the taxpayer's return to Canada; they must have been in the taxpayer's possession for at least six months prior to his return to Canada; and they must have been used by the taxpayer for at least six months prior to his

return to Canada.[4] Since the taxpayer never used the coats in issue, the third requirement has not been met.

In the alternative, counsel for the respondent submitted that the coats in issue were not imported by a former resident returning to resume residence in Canada, given that the appellant shipped the coats in issue to Canada some 13 months prior to his return to Canada and that his father claimed them and paid the relevant duties.

The issue in this appeal is whether the appellant has met the "use" requirement of tariff item No. 9805.00.00. The tariff nomenclature states that the goods of a former resident must be "in the ... use of that person for at least six months prior to that person's return to Canada" to qualify for this tariff classification. The respondent has interpreted this provision to mean that the coats in issue must actually have been used for six months by the appellant prior to his return to Canada. In contrast, the appellant submitted that the coats in issue need only have been available for use for six months to meet the requirement.

In agreeing with the appellant's interpretation, the Tribunal is aware that the word "use" can be defined as having both meanings advanced by the parties. For instance, The Concise Oxford Dictionary of Current English[5] defines the word "use" to mean: "1. using, employment, application to a purpose." This is the interpretation adopted in the cases referred to by counsel for the respondent.[6] However, the same dictionary also defines the word to mean: "3. availability, utility, purpose for which thing can be used." Reference to this dictionary supports the Tribunal's understanding of the common, ordinary meaning of the word "use" or, more precisely, the expression "in the ... use" to include both actual use and availability for use.

The Tribunal was persuaded to adopt the "available for use" interpretation by reference to the *Tariff Item No. 9805.00.00 Exemption Order*[7] (the Order). As indicated in the explanatory note to the Order, it exempts certain classes of goods imported by certain classes of persons from the six-month ownership, possession and use requirements in tariff item No. 9805.00.00.[8] Two particular exemptions of significance to the Tribunal read:

> *(e) any goods imported by a person who has resided abroad for at least five years immediately prior to returning to Canada and who, prior to the date of return, owned, was in possession of and used the goods; and*
> *(f) goods acquired as replacements for goods that, but for their loss or destruction as the result of fire, theft, accident or other unforeseen contingency, would have been classified under tariff item No. 9805.00.00 of the Customs Tariff, on condition that*
> ...

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4. In support of the proposition that the goods must be used for six months, see *Antoine Boiridy v. The Deputy Minister of National Revenue for Customs and Excise*, Canadian International Trade Tribunal, Appeal No. 2916, April 28, 1989, and *Mrs. F. Abtahi, M.D. v. The Deputy Minister of National Revenue for Customs and Excise* (1987), 12 T.B.R. 600.

5. Seventh ed. (Oxford: Clarendon Press, 1982) at 1182.

6. *Supra*, note 4.

7. *General Amendment Order (Customs Tariff)*, SOR/88-84, December 31, 1987, Canada Gazette Part II, Vol. 122, No. 2 at 853 amending *Tariff Item 70320-1 Exemption Order*, SOR/81-701, September 4, 1981, Canada Gazette Part II, Vol. 115, No. 18 at 2711.

8. The authority of such order is found at Note 7(b) of Chapter 98 of Schedule I to the *Customs Tariff*.

(ii) the goods acquired as replacements were owned by, in the possession of, and used by a person prior to the person's return to Canada.

(Emphasis added)

The significance of these exemptions to the Tribunal is that, when Parliament intended that goods must actually be used to attain a certain qualification, it indicated that the goods must be "used." When this is contrasted with utilization of the word "use," as found in the expression "in the ... use," the Tribunal is persuaded that Parliament intended a different meaning to be given to the word. The Tribunal is persuaded that "in the ... use" means that goods must be available for use and not, necessarily, actually used. As such, the Tribunal is persuaded that all the requirements specified in tariff item No. 9805.00.00 have been met. Even if the goods were equally classifiable under tariff item No. 6201.12.00, Rule 3 (c) of the General Rules for the Interpretation of the Harmonized System[9] specifies that the goods be classified in the heading which occurs last in numerical order.

The Tribunal's interpretation of these provisions is also supported by the French text. The French text uses the word "*usage*," which can be defined to have the two meanings advanced for the word "use." For instance, the Nouveau Petit Larousse[10] dictionary defines "*usage*" (use) to mean both "*Emploi d'une chose*" (use of a thing) and "*Droit de se servir d'une chose qui appartient à autrui*; *possession • À l'usage de, destiné à servir à*" (right to use a thing that belongs to someone else; possession, for use by, destined to be used to). The French text of tariff item No. 9805.00.00 uses the expression "*à son usage*." This may be interpreted to mean "for his own use," which is akin to "available for use." In contrast, the French text of the Order, at paragraph (*e*), uses the expression "*faisait usage*." This may be interpreted to mean "has made use," which is akin to "actually used."

The Tribunal cannot accept counsel for the respondent's alternative argument that the coats in issue were not imported by a former resident returning to resume residence because they were not imported immediately prior to the appellant's return to Canada. The Tribunal is of the opinion that, if Parliament intended that goods must be imported immediately prior to a former resident's return to Canada, it would have so stated. In this regard, the Tribunal refers to paragraph (*e*) of the Order, where an exemption is given for "any goods imported by a person who has resided abroad for at least five years immediately prior to returning to Canada."

Accordingly, the appeal is allowed.

Lise Bergeron
Lise Bergeron
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

W. Roy Hines
W. Roy Hines
Member

9. *Supra*, note 3, Schedule I.
10. (Paris: Librairie Larousse, 1968) at 1058.