



Ottawa, Thursday, June 9, 1994

Appeal No. AP-93-150

IN THE MATTER OF an appeal heard on February 1, 1994,
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 June 1,
1993, with respect to a request for re-determination under
section 63 of the *Customs Act*.

BETWEEN

PROVINCIAL WALLCOVERINGS LIMITED

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Kathleen E. Macmillan

Kathleen E. Macmillan
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

UNOFFICIAL SUMMARY

Appeal No. AP-93-150

PROVINCIAL WALLCOVERINGS LIMITED

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 cotton fabrics and wallcoverings composed of ink, paper reels, vinyl coating and printing rollers. The issue in this appeal is whether the cotton fabrics and wallcoverings are entitled to the benefit of the United States Tariff.

HELD: *The appeal is dismissed. In the Tribunal's view, the conditions under subsection 25.2(6) of the Customs Tariff have not been met, since the appellant has failed to establish that the cotton fabrics and wallcoverings were goods "wholly produced or obtained in Canada or the United States," as claimed in the "Exporter's Certificate of Origin," and has not satisfied the requirements of the United States Tariff Rules of Origin Regulations to demonstrate that the cotton fabrics and wallcoverings are entitled to the benefit of the United States Tariff.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: February 1, 1994
Date of Decision: June 9, 1994

Tribunal Members: Kathleen E. Macmillan, Presiding Member
Charles A. Gracey, Member
Robert C. Coates, Q.C., Member

Counsel for the Tribunal: Shelley Rowe

Clerk of the Tribunal: Anne Jamieson

Appearance: Gilles Villeneuve, for the respondent

Appeal No. AP-93-150

PROVINCIAL WALLCOVERINGS LIMITED

Appellant

and

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

Respondent

TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member
CHARLES A. GRACEY, Member
ROBERT C. COATES, Q.C., Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act) concerning the origin of certain imported cotton fabrics and wallcoverings composed of ink, paper reels, vinyl coating and printing rollers. At the time of importation, the cotton fabrics were classified under tariff item No. 5208.19.00 of Schedule I to the *Customs Tariff*,² the wallcoverings were classified under tariff item No. 4814.20.00, and it was determined that both the cotton fabrics and wallcoverings were of U.S. origin and were entitled to the benefit of the United States Tariff. However, upon further review, it was determined that there was insufficient information to support the appellant's claim that the goods in issue were of U.S. origin. As a result, it was re-determined, under section 61 of the Act, that the goods in issue were not entitled to the benefit of the United States Tariff. The respondent confirmed this re-determination in a decision dated June 1, 1993, which is now being appealed to the Tribunal.

Since the appellant did not appear at the hearing, the Tribunal 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*.³

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.

As a preliminary issue in this appeal, the Tribunal considered whether the appellant had filed its notice of appeal with the Tribunal "within ninety days after the time notice of the decision was given," as required by section 67 of the Act. Counsel for the respondent conceded that, in the respondent's view, the notice of appeal had been filed within the required time. As a

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1. R.S.C. 1985, c. 1 (2nd Supp.)
 2. R.S.C. 1985, c. 41 (3rd Supp.).
 3. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

result, the filing of the notice of appeal ceased to be an issue, and the Tribunal proceeded to consider the merits of the appeal.

According to the documents filed with the Tribunal, the appellant filed an "Exporter's Certificate of Origin" on July 3, 1991, with its request for re-determination under section 63 of the Act. The certificate was signed by Ms. Deirdre Morningstar of York Wallcoverings in York, Pennsylvania, the exporter of the cotton fabrics and wallcoverings. The certificate states that the origin criterion of the cotton fabrics and wallcoverings is "5A," which means that they are goods "wholly produced or obtained in Canada or the United States."

By letter dated August 15, 1991, from Ms. T. Sienkiewicz, Tariff and Values Administrator with the Department of National Revenue (Revenue Canada), the appellant was asked to fill out a "Tariff Change Questionnaire." The appellant filed a "Territorial Content Questionnaire" on October 7, 1991. On November 13, 1991, Ms. T. Sienkiewicz wrote to the appellant requesting additional information, namely, the value of the materials and attestation from the manufacturer as to the materials from which the cotton fabrics were manufactured.

As part of its brief, the appellant filed with the Tribunal on October 29, 1993, a "Canada-U.S. Free Trade Agreement Origin Determination Questionnaire" for goods wholly obtained or produced in the territory of Canada, the United States or both. The "Product Information" portion of that questionnaire lists the cotton fabrics, the materials used to produce the wallcoverings, namely, ink, paper reels, vinyl coating and printing rollers, and the suppliers of those materials and cotton fabrics. Attached to the questionnaire are letters from those suppliers.

In a letter dated July 8, 1993, from Ms. Christine Casto of Decorative Screen Printers, Inc. in Plainview, New York, the supplier of the cotton fabrics, it is stated that "all materials supplied in processing [the] fabrics originate from the United States in accordance with the Canada-U.S. Free Trade Agreement."

In a letter dated July 6, 1993, from Mr. Samson P. Levine of Salamanca Print Cutters, Inc. in Salamanca, New York, the supplier of the printing rollers, it is stated that "all of the raw materials and subassemblies used in the Waldron and Flexo printing cylinders we produce for York Wallcoverings, Inc. are purchased in the United States."

In a letter dated July 1, 1993, from Mr. Chand Mehta of Grant Industries, Inc. in Elmwood Park, New Jersey, the supplier of the vinyl coating, it is stated that "Flatcoat YW-3, and Flatcoat VW-20 and Antifoam LTA supplied by Grant Industries[,] Inc. to York Wallcovering[s] are made by Grant Industries in the U.S.A. All the ingredients for making the above products are also made in the U.S.A."

In a letter dated July 7, 1993, from Ms. Grace Javoroski of CBC Coating, Inc. in Appleton, Wisconsin, the supplier of the paper reels, it is stated that "all raw materials used in the products [they] sell to York Wallcoverings, Inc. are not manufactured in Canada."

In a letter dated July 16, 1993, from Ms. Marie Belluci of Polytex Environmental Inks Ltd. in Bronx, New York, the supplier of the ink, it is stated that "the origin of materials and finished goods are manufactured in the U.S.A."

Counsel for the respondent submitted that it had not been demonstrated by the appellant that the cotton fabrics and wallcoverings are "goods wholly obtained or produced in the

territory" within the meaning of subsection 2(1) of the *United States Tariff Rules of Origin Regulations*.⁴

Counsel for the respondent submitted that the appellant must provide information confirming that the materials used to make the cotton fabrics and wallcoverings originate in Canada or the United States, or the cotton fabrics and wallcoverings must meet the relevant rule of origin set out in subparagraph 3(1)(b)(i) of the *United States Tariff Rules of Origin Regulations*.

In the Tribunal's view, in order for goods to be entitled to the benefit of the United States Tariff, the following conditions under subsection 25.2(6) of the *Customs Tariff*⁵ 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 transshipment, from the United States.*

It is clear from the use of the word "and" following paragraph 25.2(6)(b) that all of these conditions must be satisfied in order for the goods to be entitled to the benefit of the United States Tariff.

In the respondent's brief, it is conceded that the appellant has established that the cotton fabrics and wallcoverings were shipped directly to Canada, without transshipment, from the United States. Therefore, the only issue in this appeal is whether the appellant has satisfied the requirements under paragraphs 25.2(6)(a) and (b) of the *Customs Tariff* relating to proof of origin of the goods and entitlement to the benefit of the United States Tariff.

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

Subsection 3.1(2)⁶ of the *Proof of Origin Regulations*⁷ requires that an importer who claims the benefit of the United States Tariff provide, as proof of origin, "the exporter's certificate of the origin of the goods" or "a declaration of origin."

The appellant filed an "Exporter's Certificate of Origin" of the goods with Revenue Canada. In this certificate, the appellant claimed that the cotton fabrics and wallcoverings were goods "wholly produced or obtained in Canada or the United States." In the Tribunal's view, the appellant has satisfied the condition of proof of origin by filing the "Exporter's Certificate of Origin." However, it is not clear from the information provided in that certificate that the goods are "wholly produced or obtained in Canada or the United States."

As noted, paragraph 25.2(6)(b) of the *Customs Tariff* requires that the appellant show that the cotton fabrics and wallcoverings are entitled, in accordance with any regulations made under subsection 13(2) of the *Customs Tariff*, to the benefit of the United States Tariff. Section 13 of the

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

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

6. Added by SOR/89-68, December 30, 1988, Canada Gazette Part II, Vol. 123, No. 2 at 855.

7. SOR/88-83, December 31, 1987, Canada Gazette Part II, Vol. 122, No. 2 at 850.

Customs Tariff provides that "goods originate in a country if the whole of the value of the goods is produced in that country" and that the "Governor in Council may, on the recommendation of the Minister of Finance, make regulations respecting the origin of goods including ... regulations (a) deeming goods, the whole or a portion of the value of which is produced outside a country, to originate in that country ...; and (b) for determining when goods are entitled to the benefit of the ... United States Tariff."

Under subsection 3(1) of the *United States Tariff Rules of Origin Regulations*, goods originate in the United States and are entitled to the benefit of the United States Tariff where (a) the goods are "wholly obtained or produced in the territory," (b) the goods "are processed or assembled in the territory so as to be subject ... to a change in tariff classification from the tariff classification to which they would have been subject prior to processing or assembly ... and the goods meet other conditions set out in the schedule," or (c) the goods "are assembled in the territory and are classified under the same tariff classification prior to and subsequent to the assembling."

The appellant has claimed that the cotton fabrics and wallcoverings in issue are goods "wholly obtained or produced" in the United States. The phrase "goods wholly obtained or produced in the territory" is defined under subsection 2(1) of the *United States Tariff Rules of Origin Regulations* to mean the following:

- (a) mineral goods extracted in the territory,
- (b) goods harvested in the territory,
- (c) live animals born and raised in the territory,
- (d) goods such as fish, shellfish and other marine life taken from the sea by a vessel registered or recorded with Canada or the United States and flying the flag of Canada or the United States, as the case may be,
- (e) goods produced on board a factory vessel from goods referred to in paragraph (d) where the vessel is registered or recorded with Canada or the United States and flies the flag of Canada or the United States, as the case may be,
- (f) goods taken by Canada, the United States or a person of the territory from or beneath the seabed outside the territorial sea of Canada or the territorial waters of the United States, as the case may be, where Canada or the United States, as the case may be, has the right to exploit the seabed or the area beneath that seabed,
- (g) goods taken from space, where the goods are obtained by Canada, the United States or a person of the territory and not processed in a third country,
- (h) waste and scrap derived from manufacturing operations and used goods, where the waste and scrap are collected in the territory and are fit only for the recovery of raw materials, and
- (i) goods produced in the territory exclusively from goods referred to in paragraphs (a) to (h) or from their derivatives, at any stage of production.

In the Tribunal's view, the evidence provided by the appellant, namely, the letters from the suppliers, does not demonstrate that the cotton fabrics and/or wallcoverings and the raw materials used to manufacture or produce these goods qualify as "goods wholly obtained or produced in the territory" within the prescribed meaning under subsection 2(1) of the *United States Tariff Rules of Origin Regulations*. Some of the letters from the appellant's suppliers, particularly the letters from Grant Industries, Inc. and Polytex Environmental Inks Ltd., indicate that the vinyl coating and ink, respectively, and their raw materials are manufactured or produced in the United States. It is, therefore, possible that the vinyl coating and ink and their raw materials qualify under paragraph (i) of the definition of "goods wholly obtained or

produced in the territory" as "goods produced in the territory exclusively from goods referred to in paragraphs (a) to (h) or from their derivatives, at any stage of production." However, it is not clear from the other letters that the cotton fabrics, printing rollers and paper reels or their raw materials are manufactured or produced in the United States. The Tribunal is, therefore, of the view that the cotton fabrics and wallcoverings are not entitled to the benefit of the United States Tariff as goods wholly obtained or produced in the United States.

The cotton fabrics and wallcoverings may be entitled to the benefit of the United States Tariff under paragraph 3(1)(b) or (c) of the *United States Tariff Rules of Origin Regulations*. However, the appellant did not provide sufficient evidence to the Tribunal to show that the cotton fabrics and/or wallcoverings meet the conditions of either paragraph 3(1)(b) or (c) of the *United States Tariff Rules of Origin Regulations*.

In the Tribunal's view, the conditions under subsection 25.2(6) of the *Customs Tariff* have not been met, since the appellant has failed to establish that the cotton fabrics and wallcoverings were goods "wholly produced or obtained in Canada or the United States," as claimed in the "Exporter's Certificate of Origin," and has not satisfied the requirements of the *United States Tariff Rules of Origin Regulations* to demonstrate that the cotton fabrics and wallcoverings are entitled to the benefit of the United States Tariff.

Accordingly, the appeal is dismissed.

Kathleen E. Macmillan

Kathleen E. Macmillan
Presiding Member

Charles A. Gracey

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Robert C. Coates, Q.C.

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Member