CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, January 10, 1997

Appeal No. AP-95-123

IN THE MATTER OF an appeal heard on March 18, 1996, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue dated August 16, 1995, with respect to requests for re-appraisal under section 63 of the *Customs Act*.

BETWEEN

PMI FOOD EQUIPMENT GROUP CANADA, A DIVISION OF PREMARK CANADA INC. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed in part.

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

Raynald Guay
Raynald Guay
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

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UNOFFICIAL SUMMARY

Appeal No. AP-95-123

PMI FOOD EQUIPMENT GROUP CANADA, A DIVISION OF PREMARK CANADA INC. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal under section 67 of the *Customs Act* from two decisions of the Deputy Minister of National Revenue regarding the value for duty of certain appliances and appliance parts imported into Canada by the appellant.

The appellant is one of three divisions of Premark Canada Inc. (Premark). The appellant manufactures and sells food equipment and offers after-sales service on the equipment that it sells.

On January 1, 1989, Premark entered into licence agreements with two US companies (the licensors). The licence agreements grant Premark, among other things, the rights to sell and service certain products in Canada, as well as manufacture certain products in Canada, in exchange for which it pays the licensors a royalty calculated as a percentage of the proceeds of sales and services realized by Premark on all products and services covered by the agreements.

When certain appliances and appliance parts were imported into Canada by the appellant, no royalty was included in the value for duty of the goods. The Department of National Revenue ruled that such portion of the total royalties paid by the appellant that could be attributed to the proceeds of the sales of the imported goods must be included in the value for duty of the goods pursuant to subparagraph 48(5)(*a*)(iv) of the *Customs Act*.

The primary issue in this appeal is whether the respondent correctly included royalties paid by the appellant in the value for duty of the imported goods pursuant to subparagraph 48(5)(*a*)(iv) of the *Customs Act*.

HELD: The appeal is allowed in part. In order for the royalties paid by the appellant to the licensors to be dutiable, three key criteria must be met: (1) the payments must be a royalty or licence fee; (2) the payments must be in respect of the goods; and (3) the payments must have been paid, directly or indirectly, as a condition of the sale of the goods for export to Canada.

In this appeal, it is the last two criteria that are at issue. With regard to whether the payments were "in respect of" the goods, the Tribunal is of the view that they were. In this case, the payments to the licensors varied based on the resale of the goods in Canada or on the sale of the goods into which the imported parts had been incorporated. Accordingly, the Tribunal is of the view that the payments were "in respect of" the goods in issue, as contemplated by subparagraph 48(5)(*a*)(iv) of the *Customs Act*.

On the second issue, specifically, whether the royalties were paid or payable, directly or indirectly, as "a condition of the sale" of the goods for export to Canada, the Tribunal concludes that this depends upon whether the goods were purchased from the licensors, other related companies or third-party manufacturers.

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

With the exception of the goods purchased from the licensors, the Tribunal is of the view that the evidence does not support a finding that the licensors actually exerted sufficient control or influence over the sales for export through ownership, contract or otherwise to make the sales conditional on the payment of royalties. The appellant was able to purchase the goods from other related companies and third-party manufacturers whether or not it paid a royalty to the licensors on the sale of the goods.

In respect of the goods purchased from the licensors, the Tribunal is of the view that the licensors were in a position to exert sufficient control over the sale of the goods for export for the payment of the royalties to constitute "a condition of the sale" under subparagraph 48(5)(*a*)(iv) of the *Customs Act*. Were the appellant not to make payments on the sale of the goods in Canada, the licensors could refuse to sell the appellant goods, thereby making payment of the royalties a "condition of the sale" of the goods for export.

Accordingly, the Tribunal is of the view that only the royalties paid in respect of goods purchased from the licensors should be added to the price paid or payable for the goods pursuant to subparagraph 48(5)(*a*)(iv) of the *Customs Act*. The other royalties fail, in the Tribunal's view, to meet the criteria for adding them to the price paid or payable for the goods under that provision of the *Customs Act*.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	March 18, 1996
Date of Decision:	January 10, 1997
Tribunal Members:	Robert C. Coates, Q.C., Presiding Member Raynald Guay, Member Desmond Hallissey, Member
Counsel for the Tribunal:	Heather A. Grant
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Brenda C. Swick-Martin and Kenneth H. Sorensen, for the appellant Frederick B. Woyiwada, for the respondent

CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-95-123

PMI FOOD EQUIPMENT GROUP CANADA, A DIVISION OF PREMARK CANADA INC. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
RAYNALD GUAY, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*[1] (the Act) from two decisions of the Deputy Minister of National Revenue regarding the value for duty of certain appliances and appliance parts imported into Canada by the appellant.

The appellant is one of three divisions of Premark Canada Inc. (Premark). The appellant manufactures and sells food equipment and offers after-sales service on the equipment that it sells. It has two plants in Canada, one in Owen Sound, Ontario, and the other in Drummondville, Quebec. Premark is owned by two US corporations: Hobart International Holdings, Inc. and Dart Industries Inc. Hobart International Holdings, Inc. is a wholly owned subsidiary of Premark FEG Corporation, with the ultimate parent of all companies being Premark International, Inc.

On January 1, 1989, Premark entered into licence agreements with two US companies, specifically, Hobart Corporation (Hobart) and Vulcan-Hart Corporation (Vulcan-Hart) (the licensors). The licence agreements grant Premark, among other things, the rights to sell and service certain products in Canada, as well as manufacture certain products in Canada, in exchange for which it pays the licensors a royalty calculated as a percentage of the proceeds of sales and services realized by Premark on all products and services covered by the agreements.

When certain appliances and appliance parts were imported into Canada by the appellant, no royalty was included in the value for duty of the goods. The Department of National Revenue ruled that such portion of the total royalties paid by the appellant that could be attributed to the proceeds of the sales of the imported goods must be included in the value for duty of the goods pursuant to subparagraph 48(5)(*a*)(iv) of the Act. The respondent confirmed the rulings in two decisions as a result of the appellant's requests for re-appraisal. It is these two decisions that are the subject of the present appeal.

The primary issue in this appeal is whether the respondent correctly included royalties paid by the appellant in the value for duty of the imported goods pursuant to subparagraph 48(5)(*a*)(iv) of the Act.

Subparagraph 48(5)(*a*)(iv) of the Act provides as follows:

> (5) The price paid or payable in the sale of goods for export to Canada shall be adjusted
> (*a*) by adding thereto amounts, to the extent that each such amount is not already included in the price paid or payable for the goods, equal to
> (iv) royalties and licence fees, including payments for patents, trade-marks and copyrights, in respect of the goods that the purchaser of the goods must pay, directly or indirectly, as a condition of the sale of the goods for export to Canada, exclusive of charges for the right to reproduce the goods in Canada.

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

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439
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An alternative argument, submitted by counsel for the respondent, is that, if the Tribunal concludes that the royalties are not properly included in the value for duty under subparagraph 48(5)(*a*)(iv) of the Act, they should be included in the price paid or payable for the imported goods pursuant to subparagraph 48(5)(*a*)(v) of the Act, which provision reads as follows:

> (v) the value of any part of the proceeds of any subsequent resale, disposal or use of the goods by the purchaser thereof that accrues or is to accrue, directly or indirectly, to the vendor.

Three witnesses appeared on behalf of the appellant. The first witness was Mr. Werner Straub, Controller at PMI Food Equipment Group Canada. Mr. Straub testified in respect of the appellant's corporate structure and Premark's licence agreements. Mr. Straub testified that the imports in respect of which the respondent assessed duties include parts used in manufacturing goods in Canada, as well as replacement parts, service parts and finished goods that it sells directly into the Canadian market.

Mr. Straub stated that, under the licence agreements, the appellant receives certain benefits, such as technical know-how, the right to manufacture products in Canada and sales and service support. In return, the appellant pays royalties to the licensors on the net sale of all products that it sells in Canada, as well as on service revenues associated with repairing the products.

Article 2 of one of the licence agreements provides as follows:[2]

> **Grant of License.** Licensor [Hobart] hereby grants to Licensee [Premark] the following rights, licenses and privileges which Licensor owns or has the right to license for the duration of this Agreement:

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2. In discussing the licence agreements, Mr. Straub referred to the provisions of the agreement between Premark and Hobart, since the agreement between Premark and Vulcan-Hart is essentially the same. Article 1 of the agreement sets out the following definitions:

> (a) "Products" shall mean any and all products now or hereafter during the term of this Agreement manufactured and/or sold by Licensor or Licensee, including but not limited to the food related and other equipment described in the preamble to this Agreement which is now being manufactured and/or sold by Licensor, except that this Clause 1(a) shall not apply to products manufactured and/or sold without Licensor's Technology and Technical Information, Patents or Trademarks.
>
> (b) "Services" shall mean all services rendered and charged by Licensee to any third party; provided, however, that the term "Services" shall not include those services rendered to companies directly or indirectly affiliated with Licensor or Licensee.
>
> (c) "Technology and Technical Information" shall mean all of Licensor's technical knowledge and know-how, commercial know-how, skill and experience concerning the Products which is developed or acquired by Licensor, or any improvement or development made or acquired by Licensee, and which is required by Licensee in carrying on its regular business activities and operations during the term of this Agreement, including, but not limited to, drawings, designs, plans, formulae, specifications, inventions, processes and data relevant to the Products and to the manufacture of the Products.
>
> (d) "Patents" shall mean Licensor's patents with respect to the products which are now in existence or hereafter during the term of this Agreement applied for or granted in Canada. The patents now applied for or granted in Canada are listed in Exhibit A attached hereto. Future patent applications shall, when filed, as well as any patents acquired by Licensor, shall be considered automatically added thereto while this Agreement is in effect.
>
> (e) "Trademarks" shall mean the registered and unregistered trademarks and trade names, and trademark applications which are listed in Exhibit B attached hereto, as the same may be changed from time to time by Licensor. Future trademark registrations, when filed, as well as any trademarks acquired by Licensor, shall be considered automatically added thereto while this Agreement is in effect.

(a) an exclusive, non-transferable right and license under the Patents during the term of this Agreement to manufacture or have manufactured in Canada the Products embodying, or which are manufactured by or with the use of, inventions claimed in and covered by the Patents;

(b) a non-exclusive, non-transferable right and license under the Patents during the term of this Agreement to use and/or sell the Products embodying, or which are manufactured by or with the use of, inventions claimed in and covered by the Patents;

(c) an exclusive, non-transferable right and license during the term of this Agreement to use the Technology and Technical Information in the manufacture in Canada of the Products; and

(d) a non-exclusive, non-transferable right and license under the Technology and Technical Information during the term of this Agreement to use and/or sell the Products embodying, or which are manufactured by or with the use of, inventions claimed in and covered by the Technology and Technical Information;

(e) a non-exclusive, non-transferable right and license during the term of this Agreement to use the Trademarks in the sale of the Products. Licensor undertakes to execute any and all documents which may be necessary to evidence Licensee's aforementioned right and license.

Article 8 of the same licence agreement reads, in part, as follows:

Royalty.

(a) In consideration of the rights and licenses granted by Licensor hereunder, and the other undertakings assumed by Licensor hereunder, Licensee shall pay Licensor a royalty based on Licensee's sales of the Products during the term of this Agreement. The amount of the royalty shall be equal to ... percent ... of Licensee's net sales of the Products manufactured, sold or distributed, and the Services rendered by Licensee, during each six-month period ending June 30 or December 31. Net sales for each such six-month period shall mean the Licensee's gross sales of Products or Services during such period, less the sum of (i) trade discounts, transportation charges, and turnover taxes attributable to such sales, and (ii) the laid down cost of any Products, including customs duties thereon, which Licensee purchased from Licensor or from other companies directly or indirectly affiliated to Licensor during such period.

Mr. Straub emphasized that the royalties are paid on all products sold in Canada, whether the products are sourced domestically or abroad, whether they are purchased from a related or unrelated manufacturer or whether they have a trademark or not. Royalties are also paid on all services rendered in Canada.

Mr. Straub explained that, under the licence agreements, the appellant does not require prior approval or authorization from the licensors in order to import certain products into Canada. Furthermore, the appellant is not required to send samples of products to the licensors prior to deciding to purchase goods from suppliers other than the licensors.

The second witness to appear on behalf of the appellant was Mr. Robert L.D. Campbell, Manager, National Distribution Centre at PMI Food Equipment Group Canada. Mr. Campbell testified primarily in respect of the nature of the imports on which the duties were assessed. He also discussed the appellant's purchases of parts and finished goods, both domestic and from abroad. Similar to the evidence given by Mr. Straub, Mr. Campbell testified that the appellant may choose its suppliers and is not required to source products from suppliers related to the licensors. He further testified that price and availability are two factors that the appellant takes into account in choosing suppliers. Mr. Campbell reviewed for the Tribunal a variety of documentation, including commercial invoices, customs forms and purchase orders, respecting transactions between the appellant and primarily foreign suppliers of parts and finished equipment, explaining that the appellant pays royalties on all the goods that it sells and services in Canada, irrespective of whether the suppliers are foreign or domestic, or related or unrelated to the licensors.

Mr. Campbell testified that, whereas most of the finished goods that it purchases bear a trademark, many of the parts do not. Furthermore, not all imported parts are subject to a patented process, and it would be impossible to segregate parts subject to a patented process from those that were not. Mr. Campbell testified that the appellant's suppliers are not aware that it pays a royalty on the products to its licensors. Furthermore, the licensors do not question the appellant's choice of suppliers or the appellant's design upgrades, for Canadian Standards Association purposes, to the goods that it manufactures domestically or imports.

The third witness to appear on behalf of the appellant was Mr. John C. Davidson, Director of Food Retail Sales at Hobart Food Equipment Group Canada. Mr. Davidson testified in respect of the services component of the appellant's operations. Similar to the testimonies given by Mr. Straub and Mr. Campbell, Mr. Davidson stated that the appellant pays a royalty on all proceeds from services rendered, whether the serviced products are imported from the licensors or from other suppliers. Technical support is received from the licensors in the form of service manuals, parts manuals, training videos and selling aids.

In argument, counsel for the appellant emphasized that the licence agreements are effectively distribution agreements and that the royalties are paid for an intangible right, namely, the right to distribute and service certain goods in Canada. As such, the royalties are not of the type to be included in the value for duty of the imported goods under the Act.

Counsel for the appellant submitted that it is the transaction value against which the value for duty of the goods themselves, and not intangibles, is to be determined and that this is the amount paid by the purchaser to the vendor. Only in exceptional circumstances is this amount to be adjusted to take into account relevant adjustments under subsection 48(5) of the Act.

In this case, counsel for the appellant argued that it is the sale between the licensors and the appellant, or the sale between other foreign suppliers and the appellant, that constitutes the relevant sale for export for determining the transaction value of the goods. In counsel's view, the royalty payments by the appellant to the licensors, in this case, are not a basis for adjusting the transaction value of the goods under subparagraph 48(5)(*a*)(iv) of the Act. Specifically, the royalties are not paid or payable "in respect of" the imported goods, they are not "a condition of the sale" of the goods for export and, furthermore, they do not always accrue to the benefit of the vendor.

The intention of the Act, in the view of counsel for the appellant, is not to capture the value of intangible personal property that is not inherent in the imported goods themselves, such as a distribution right for both goods and services. The value of the imported goods and the extrinsic intellectual property associated with it are to be kept separate. In counsel's view, the value of intangibles is only to be included in the value for duty of the goods if the intangibles are expressly included in the price paid or payable for the goods by the purchaser to the vendor or if one of the anti-avoidance conditions under paragraph 58(5)(*a*) of the Act applies.

In further support of their position, counsel for the appellant referred to the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade*[3] (the Code), in particular to Article 8 of the Code upon which subparagraph 48(5)(*a*)(iv) of the Act is based almost verbatim,[4] to certain advisory opinions of the Technical Committee on Customs Valuation[5] and to other sources, including foreign case law and foreign customs rulings.[6]

Turning to whether the royalties in this case are paid or payable "in respect of" the goods, counsel for the appellant submitted that there must be some connection between the royalties and the imported goods in order for this condition to be satisfied. Counsel argued that, since the royalties are paid for the right to distribute certain goods in Canada and provide services in respect of those goods, this condition is not met. Payment of the royalties is triggered based on activity in Canada and not in respect of the imported goods.

With respect to the second condition that must be met, namely, that payment must be "a condition of the sale" of the goods for export, counsel for the appellant argued that this condition is also not satisfied based on the facts of this case. Payment of the royalties is at the appellant's initiative and apart from the transaction that results in the importation of the goods. The appellant is, moreover, able to choose its own suppliers, which it generally does based on considerations of price and availability. The appellant is not under an obligation to purchase goods from the licensors nor must it seek the approval of the licensors in order to source goods from third-party manufacturers. In fact, third-party manufacturers are generally not even aware of the existence of the licence agreements between the appellant and the licensors.

Counsel for the appellant further argued that, in the absence of a royalty payment, the import transaction would be unaffected. However, if the imported goods were subsequently sold in Canada without payment of the royalties, the licensors would have a variety of remedies available to them against the appellant, but no right of action against third-party manufacturers.

Regarding counsel for the respondent's alternative argument, namely, that the royalties constitute a subsequent proceed to the vendor and that, therefore, the royalties must be added to the price paid or payable under subparagraph 48(5)(*a*)(iv) of the Act, counsel for the appellant argued that the respondent cannot, at this late stage, change the basis of the original assessment.

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3. Geneva, March 1980, GATT BISD, 26th Supp. at 116.
4. The relevant parts of Article 8 of the Code read as follows:

   1. In determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods:

      (*c*) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

   4. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

5. *GATT Agreement and Texts of the Technical Committee on Customs Valuation*, Customs Co-operation Council, Brussels, Advisory Opinions 4.8 and 4.13.
6. Counsel for the appellant referred in particular to the following two Australian cases: *Estee Lauder Pty. Limited* v. *Comptroller General of Customs and Anor.*, unreported, Federal Court of Australia, No. G611 of 1990, June 28, 1991; and *Re: Collector of Customs and Marym (Australia) Pty. Ltd.*, Federal Court of Australia (1992), 15 A.A.R. 436, No. V G6 of 1992, June 12, 1992.

Counsel for the respondent emphasized that there are two components to the value for duty: (1) the price paid or payable; and (2) the requisite adjustments under subsection 48(5) of the Act. The transaction value is not simply the price paid or payable with certain adjustments required in exceptional circumstances. Under subparagraph 48(5)(*a*)(iv) of the Act, it is clear that royalties and licence fees are to be included in calculating the transaction value of imports, provided they are paid in respect of the imports and, directly or indirectly, as a condition of the sale of the goods for export to Canada.

Counsel for the respondent submitted that all the goods in respect of which a royalty is paid have certain qualities which bring them within the scope of the agreements, for example, a patent, trademark or technological connection with the licensors, and which add value to the goods.

With reference to the Tribunal's decision in *Polygram Inc.* v. *The Deputy Minister of National Revenue for Customs and Excise*,[7] counsel for the respondent argued that the time at which payment is made, i.e. the time of sale in Canada, is not relevant in determining that the royalties are paid "in respect of" the goods. Where the royalties payable vary according to the value of the goods in issue, they are clearly paid "in respect of" the particular goods sold.

In arguing that payment of the royalties constitutes a condition of the sale for export, counsel for the respondent referred to the Tribunal's decision in *Reebok Canada Inc., A Division of Avrecan International Inc.* v. *The Deputy Minister of National Revenue for Customs and Excise*,[8] in which the Tribunal indicated that, although royalties may not be required pursuant to the terms of the purchase itself, they may still be considered a condition of the sale, provided there is some connection between the royalties and the goods purchased. Since the royalties are paid in order to sell goods covered by the agreements in Canada, counsel submitted that it would be pointless to import the goods without paying the royalties. Clearly, in counsel's view, the licensors have made arrangements with third parties allowing those parties to use their intellectual property because they know that they will be reimbursed for its usage through the payment of royalties on the sale of the goods. As such, there is a connection between the sale of the goods and the royalties.

In arguing, in the alternative, that the royalties must be included in the value for duty of the imports pursuant to subparagraph 48(5)(*a*)(v) of the Act, counsel relied on the Federal Court of Appeal's decision in *Signature Plaza Sport Inc.* v. *Minister of National Revenue*,[9] in which it was decided that royalties calculated on net sales by an importer and paid to the exporter may be included in the value for duty as part of the proceeds of a subsequent resale.

In order for the royalties paid by the appellant to the licensors to be dutiable, three key criteria must be met: (1) the payments must be a royalty or licence fee; (2) the payments must be in respect of the goods; and (3) the payments must have been paid, directly or indirectly, as a condition of the sale of the goods for export to Canada.

In this appeal, it is the last two criteria that are at issue. With regard to whether the payments were "in respect of" the goods, the Tribunal is of the view that they were. In *Gene A. Nowegijick* v. *Her Majesty the Queen*,[10] the Supreme Court of Canada stated that the phrase "in respect of" "is probably the widest of

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7. Appeal Nos. AP-89-151 and AP-89-165, May 7, 1992.
8. Appeal No. AP-92-224, September 1, 1993.
9. 169 N.R. 321, Court File No. A-453-90, February 18, 1994.
10. [1983] 1 S.C.R. 29.

any expression intended to convey some connection between two related subject matters.[11]" Moreover, in its decision in *Polygram*, the Tribunal concluded that a payment is "in respect of" goods where it is not a general payment unaffected by the specific goods being imported. In this case, the payments to the licensors varied based on the resale of the goods in Canada or on the sale of the goods into which the imported parts had been incorporated. Accordingly, the Tribunal is of the view that the payments were "in respect of" the goods in issue, as contemplated by subparagraph 48(5)(*a*)(iv) of the Act.

On the second issue, specifically, whether the royalties were paid or payable, directly or indirectly, as "a condition of the sale" of the goods for export to Canada, the Tribunal concludes that this depends upon whether the goods were purchased from the licensors, other related companies or third-party manufacturers. In *Reebok* and *Polygram*, the Tribunal indicated that a royalty payment would be a "condition of the sale" if the purchaser were not able to purchase and import the goods without payment of the royalty.

With the exception of the goods purchased from the licensors, the Tribunal is of the view that the evidence does not support a finding that the licensors actually exerted sufficient control or influence over the sales for export through ownership, contract or otherwise to make the sales conditional on the payment of royalties.

The appellant was able to purchase the goods from other related companies and third-party manufacturers whether or not it paid a royalty to the licensors on the sale of the goods. As indicated by Mr. Straub and Mr. Campbell in their testimonies, the appellant does not require prior approval from the licensors in order to import goods from various suppliers and can request design changes to the imported goods without seeking approval from the licensors. Furthermore, the appellant is not required to source products from suppliers related to the licensors. In fact, to the best of Mr. Campbell's knowledge, the appellant's suppliers are not even aware that the appellant is required to make royalty payments to the licensors on net sales of goods in Canada.

In respect of the goods purchased from the licensors, the Tribunal is of the view that the licensors were in a position to exert sufficient control over the sale of the goods for export for the payment of the royalties to constitute "a condition of the sale" under subparagraph 48(5)(*a*)(iv) of the Act. Were the appellant not to make payments on the sale of the goods in Canada, the licensors could refuse to sell the appellant goods, thereby making payment of the royalties a "condition of the sale" of the goods for export.

Accordingly, the Tribunal is of the view that only the royalties paid in respect of goods purchased from the licensors should be added to the price paid or payable for the goods pursuant to subparagraph 48(5)(*a*)(iv) of the Act. The other royalties fail, in the Tribunal's view, to meet the criteria for adding them to the price paid or payable for the goods under that provision of the Act.

The Tribunal would note that, as previously stated in its decision in *Jana & Company* v. *The Deputy Minister of National Revenue*,[12] it does not find that there is an ambiguity in the language of subparagraph 48(5)(*a*)(iv) or (v) of the Act or its applications that requires reference to the Code, advisory opinions or decisions in other jurisdictions for guidance in this appeal.

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11. *Ibid.* at 39.
12. Appeal No. AP-94-150, September 3, 1996.

With respect to counsel for the respondent's alternative argument, the Tribunal is of the view that the royalty payments to the licensors in respect of the goods imported from related and third-party manufacturers do not meet the criteria of subparagraph 48(5)(*a*)(v) of the Act and, accordingly, should not be added to the price paid or payable for those goods. The Tribunal is not persuaded by the evidence that any royalties paid to the licensors on the subsequent resale of the goods by the appellant accrued, directly or indirectly, to the vendor where the vendor was a related or third-party manufacturer.

Accordingly, the appeal is allowed in part.

Robert C. Coates, Q.C.
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