CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, February 17, 1997

Appeal No. AP-95-284

IN THE MATTER OF an appeal heard on November 29, 1996, 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 dated November 23, 1995, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

BAKER TEXTILES INC. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Desmond Hallissey
Desmond Hallissey
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-95-284

BAKER TEXTILES INC. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal under section 67 of the *Customs Act* concerning the origin of 368 rolls of imported fabric described as "style 0315 - 100% cotton indigo chambray denim - second quality" which were imported into Canada from the United States under two transactions. At the time of both importations, the fabric in issue was classified under tariff item No. 5203.42.00 and was claimed to be of US origin and, therefore, entitled to the benefit of the US tariff, as indicated on the exporter's certificate of origin. However, upon further review, it was determined by the respondent that there was insufficient information to support the appellant's claim that the fabric in issue was of US origin. As a result, it was re-determined, under section 61 of the *Customs Act*, that the fabric in issue was not entitled to the benefit of the US tariff. This re-determination was confirmed in the respondent's decision under section 63 of the *Customs Act*, which is now being appealed to the Tribunal.

HELD: The appeal is allowed. In the Tribunal's view, the appellant has provided sufficient information to show that the fabric in issue was "wholly obtained or produced" in the United States and, therefore, originates in the United States and is entitled to the benefit of the US tariff. The Tribunal is persuaded by the letter from Greenwood Mills, Inc. to the appellant that states that "style 0315 - 100% cotton indigo chambray denim - second quality" sold by Greenwood Mills Marketing Company, Division of Greenwood Mills, Inc. (Greenwood) to The Carabela Trading Company Inc. (Carabela) was manufactured by Greenwood Mills, Inc. in the United States from raw materials, namely, cotton, sourced in the United States. Moreover, the Tribunal is satisfied by the representative sample invoices from Carabela to the appellant and from the appellant to its customer, which show the same roll numbers as those on the invoices from Greenwood to Carabela, that the fabric in issue was manufactured by Greenwood Mills, Inc., sold to Carabela and then sold to the appellant. There is no indication that there were any intervening production processes undertaken on the fabric once it was sold by Greenwood to Carabela or that Carabela sold to the appellant another manufacturer's second quality, 100 percent cotton indigo chambray denim.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	November 29, 1996
Date of Decision:	February 17, 1997
Tribunal Members:	Charles A. Gracey, Presiding Member Arthur B. Trudeau, Member Desmond Hallissey, Member
Counsel for the Tribunal:	Shelley Rowe
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Paul Baker, for the appellant Guy A. Blouin, for the respondent

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-95-284

BAKER TEXTILES INC. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: CHARLES A. GRACEY, 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 368 rolls of fabric described as "style 0315 - 100% cotton indigo chambray denim - second quality" which were imported into Canada from the United States under two transactions. At the time of both importations, the fabric in issue was classified under tariff item No. 5203.42.00 and was claimed to be of US origin and, therefore, entitled to the benefit of the US tariff (UST), as indicated on the exporter's certificate of origin (ECO). However, upon further review, it was determined by the respondent that there was insufficient information to support the appellant's claim that the fabric in issue was of US origin. As a result, it was re-determined, under section 61 of the Act, that the fabric in issue was not entitled to the benefit of the UST. This re-determination was confirmed in the respondent's decision under section 63 of the Act, which is now being appealed to the Tribunal.

At the hearing, counsel for the respondent confirmed that an ECO had been filed in respect of all of the fabric in issue, but that the supporting documentation had been found to be insufficient. The appellant, therefore, filed additional documentation with the respondent, which was accepted as proof of entitlement to the benefit of the UST of 63 rolls. However, counsel indicated that the respondent was not prepared to extend entitlement to the benefit of the UST to the remaining 305 rolls.

Mr. Paul Baker, General Manager of Baker Textiles Inc., appeared as both witness for and representative of the appellant. He stated that the appellant purchased the fabric in issue from The Carabela Trading Company Inc. (Carabela), a textile jobber in New York, which had purchased the fabric from Greenwood Mills Marketing Company, Division of Greenwood Mills, Inc. (Greenwood). Mr. Baker explained that, unknown to the appellant, the Department of National Revenue had, following a verification visit to Carabela's premises in October 1992, determined that Carabela had no inventory management method to distinguish qualifying or originating products from non-qualifying or non-originating goods and

1. R.S.C. 1985, c. 1 (2nd Supp.). Subsection 57.2(4) of the *Customs Act* provides that requests for re-determination 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 *Customs Act*.

that it was not , therefore, entitled to the benefit of the UST. He referred to a memorandum by Ms. Ginette Yassa, a tariff administrator, dated November 1, 1995,[2] which summarizes these facts.

In describing the fabric in issue, Mr. Baker explained that it is woven from dyed yarns. Mr. Baker referred specifically to the invoices from Greenwood and pointed out that they provide that the fabric is "spun, dyed, woven and finished." The fabric in issue is finished by Greenwood for shrinkage.

Mr. Baker presented and explained several documents which had been filed as part of the appellant's brief. One of the documents was a letter to Mr. Baker, from Mr. Earl Jennings, Director, Planning/Customer Service, Greenwood Mills, Inc., marked as being received July 2, 1996, which states, in part, as follows:

> The goods in question ... have been sold and manufactured by Greenwood Mills Inc. from raw materials sourced in the USA and in turn, wholly produced in the United States of America by Greenwood Mills Inc. The fabric was woven in the United States of America by Greenwood Mills Inc. from yarns manufactured in the United States of America at the Greenwood Mills Lindale, GA. plant and comply with the origin requirements (Article 301.2) specified in the United States Free Trade Agreement (FTA).

The documents also included a letter dated April 15, 1996, from Mr. Barry Ervin, Salesman/Secretary of The Carabela Trading Company Inc. to Mr. Baker which states, in part, as follows:

> This is to certify that Carabela Trading Company purchased 100% cotton Indigo Chambray Greenwood Mills Style #315 from Greenwood Mills Inc.
>
> Thirty seven rolls of the goods in question, style #315 - 100% cotton Indigo Chambray denim second Quality were subsequently sold to Baker Textiles Inc. on our Invoice #504108 of April 15, 1993.
>
> We are at present attempting to locate additional Greenwood Mill Invoices pertaining to the balance of the goods sold to Baker Textiles Inc.

The balance of the documents were copies of invoices from Greenwood to Carabela and from Carabela to the appellant. Mr. Baker referred to those documents to show that 63 roll numbers shown on invoices from Greenwood to Carabela were also shown on invoices from Carabela to the appellant. He indicated that he believed that style No. 0315, shown on the documents, was an internal number used by Greenwood.

Mr. Baker said that it had been suggested to him that, if he could obtain similar evidence for 56 more rolls, the respondent would consider recommending that all of the remaining rolls be entitled to the benefit of the UST. Mr. Baker indicated that such information was not available.

Mr. Baker also introduced copies of commercial invoices with the packing slips from the appellant to Confections Rayjo Inc. to show that all 368 rolls were sold to one customer and that the roll numbers on those invoices match the roll numbers shown on Carabela's invoices, some of which, in turn, match the roll numbers on Greenwood's invoices.

The respondent's first witness, Ms. Yassa, the tariff administrator originally responsible for the importations at issue, described the process for disposing of requests for re-determination and rendering decisions on behalf of the respondent. In describing this process, she referred to a monitoring unit whose mandate is to identify high-risk areas, such as textiles, where goods possibly do not qualify as originating in a particular territory under the rules of origin, but are being declared as such. The monitoring unit collects

2. Respondent's brief, Tab B.

information and reports the results of its reviews and investigations and its decisions on a database called the Technical Reference System (TRS). The information on this system is one of the sources used in making origin determinations.

Ms. Yassa identified two TRS decisions: TRS Nos. 82371[3] and 94050,[4] to which she referred in her review. TRS decision No. 82371 provides that, as a result of a verification visit by the monitoring unit specialists, Carabela cannot obtain *Canada-United States Free Trade Agreement*[5] (FTA) certification for certain fabrics "because the printers and converters will not provide it." TRS decision No. 94050 provides that "[a]s of July 27, 1993 [Carabela] has demonstrated to have [an] inventory management system which will allow for the identification of those exports which will qualify for USTT. [Carabela] will complete an ECO for each shipment to Canada and supply greige style codes for qualifying fabrics." Ms. Yassa stated that this last decision suggested to her that, after July 27, 1993, Carabela did provide some information to support that it can sign ECOs and trace back the origin of goods.

Reference was made to the letter from counsel for Carabela[6] indicating that Carabela was not going to provide any supporting information for its ECO. Ms. Yassa stated that an ECO is a condition for entitlement to the benefit of the UST. However, an ECO is not sufficient as proof that goods originate in a particular territory. She referred to the statement at Box 11 of the ECO which provides that the exporter agrees to "maintain and to present upon request, the documentation to support this certification." According to Ms. Yassa, supporting information should track the origin of the goods from the manufacturer, the mill, through the production process up to the point where the goods are sold to the exporter and shipped to Canada. This information would include invoices, evidence of further processing and inventory. Ms. Yassa suggested that this information is necessary because, even though a supplier may be sourcing originating fabric from one manufacturer, that supplier may also be sourcing the same fabric from other manufacturers. If that is the case, the fabric may be mixed in the inventory and, without an appropriate inventory system, it is difficult to know if what was imported to Canada is the same as what was produced by the US mill.

Ms. Marie Dewar, the respondent's second witness, the tariff administrator currently assigned to the case under appeal to the Tribunal, verified the information in the appellant's brief and determined that there was sufficient proof to show that 63 of the 368 rolls of fabric in issue originated in the United States and were entitled to the benefit of the UST. In particular, Ms. Dewar cross-referenced roll numbers from the invoices from Greenwood to Carabela to the invoices from Carabela to the appellant. Ms. Dewar stated that all of the 63 rolls for which information was provided were sold on one of the two invoices for rolls of fabric sold to Carabela by Greenwood. To verify the origin of the remaining 305 rolls of fabric, she requested similar additional information for every fifth roll. Ms. Dewar was advised in October 1996 that the appellant could not provide the requested information.

The appellant's representative submitted that the additional information provided in the appellant's brief, namely, the letter from Greenwood and the invoices from Greenwood to Carabela and from Carabela to the appellant, as well as the information provided at the hearing, namely, the invoice from the appellant to the ultimate purchaser of the fabric in issue, Confections Rayjo Inc., demonstrated that the fabric in issue,

3. Respondent's brief, Tab E.
4. Respondent's brief, Tab F.
5. *Canada Treaty Series*, 1989, No. 3 (C.T.S.).
6. Respondent's brief, Tab D.

as manufactured by Greenwood, sold to Carabela and then exported to the appellant, originates in the United States and is entitled to the benefit of the UST.

Counsel for the respondent submitted that, pursuant to section 3 of the *United States Tariff Rules of Origin Regulations*[7] (the Regulations), goods imported from the United States are entitled to the benefit of the UST when they are goods wholly obtained or produced in that territory. Counsel referred to the following procedures, taken from sections 79 and 85 of Memorandum D-11-4-12,[8] to determine whether goods are entitled to the benefit of the UST:

> 79. As outlined in Memorandum D11-4-2, Proof of Origin Regulations, in order to request UST treatment of the time of accounting, the importer must be in possession of a certificate of origin from the U.S. exporter which certifies that the goods in question meet the UST rules of origin. Therefore, the ultimate responsibility for determining whether goods qualify as of territorial origin lies with the exporter of the goods.
>
> ...
>
> 85. Goods wholly obtained or produced in the territory:
>
> ...
>
> *(c)* where applicable, obtain a list of the materials used to produce the goods in the territory and where and from whom each material was obtained, including any information available as to origin.
>
> (1) It may be necessary to verify the information obtained in *(c)* above with third parties and beyond to identify the origin of materials or sub-materials, bearing in mind that each material must be wholly of territorial origin.

Counsel submitted that neither the appellant nor Carabela provided the necessary documentation or information requested by the respondent regarding the state of the fabric in issue when received by Carabela from Greenwood and when exported by Carabela to the appellant. Moreover, counsel argued that counsel for Carabela confirmed, in writing, that his client did not intend to furnish any additional information and that the respondent should close the file with respect to the export under review.

With respect to the supporting documentation provided by the appellant in its brief, counsel for the respondent submitted that it only covered 63 of the 368 rolls of fabric in issue and was not, therefore, sufficient to allow the remaining 305 rolls to be entitled to the benefit of the UST. Counsel argued that Carabela is a jobber that purchases "close-outs," remnants and seconds, resells them to Canadian importers and arranges to have fabric printed and finished. As a result, the respondent requires a documentation trail to establish the source of the raw fabric through the manufacturing process and ultimate sale to the appellant.

In the Tribunal's view, in order for goods to be entitled to the benefit of the UST, the following conditions under subsection 25.2(6) of the *Customs Tariff*[9] 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.

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7. SOR/89-49, December 30, 1988, *Canada Gazette* Part II, Vol. 123, No. 2 at 773.
8. *United States Tariff Rules of Origin Regulations*, Department of National Revenue, Customs, Excise and Taxation, December 1988.
9. R.S.C. 1985, c. 41 (3rd Supp.).

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."

Subsection 3.1(2)[10] of the *Proof of Origin Regulations*[11] requires that an importer who claims the benefit of the UST is to provide, as proof of origin, "the exporter's certificate of origin of the goods" or a declaration of origin.

Carabela filed an ECO for the fabric in issue with the respondent. In the ECO, Carabela claims that the fabric in issue was "wholly produced or obtained in Canada or the United States." In the Tribunal's view, the requirement to file an ECO has been satisfied. 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." Moreover, the person signing an ECO agrees to provide the supporting documentation for the ECO upon request.

As noted, paragraph 25.2(6)*(b)* of the *Customs Tariff* requires that the appellant show that the fabric in issue is entitled, in accordance with any regulations made pursuant to subsection 13(2) of the *Customs Tariff*, to the benefit of the UST. Subsection 13(1) of the *Customs Tariff* provides that "goods originate in a country if the whole of the value of the goods is produced in that country." Subsection 13(2) of the *Customs Tariff* provides 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 which is produced outside a country, to originate in that country ...; and *(b)* for determining when goods are entitled to the benefit of the ... [UST]."

Pursuant to subsection 3(1) of the Regulations, goods originate in the United States and are entitled to the benefit of the UST where: (a) the goods are goods 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 assembly. The appellant has claimed that the fabric in issue was "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 Regulations to include goods produced in the United States exclusively from, among other goods, goods harvested in the United States, at any stage of production.

In the Tribunal's view, the appellant has provided sufficient information to show that the fabric in issue was "wholly obtained or produced" in the United States and, therefore, originates in the United States and is entitled to the benefit of the UST. The Tribunal is persuaded by the letter from Greenwood Mills, Inc. to the appellant that states that "style 0315 - 100% cotton indigo chambray denim - second quality" sold by Greenwood to Carabela was manufactured by Greenwood Mills, Inc. in the United States from raw materials, namely, cotton, sourced in the United States. Moreover, the Tribunal is satisfied by the representative sample invoices from Carabela to the appellant and from the appellant to its customer, which show the same roll numbers as those on the invoices from Greenwood to Carabela, that the fabric in issue was manufactured by Greenwood Mills, Inc., sold to Carabela and then sold to the appellant. There is no indication that there were any intervening production processes undertaken on the fabric once it was sold by

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

Greenwood to Carabela or that Carabela sold to the appellant another manufacturer's second quality, 100 percent cotton indigo chambray denim.

Accordingly, the Tribunal finds that the fabric in issue is entitled to the benefit of the UST, and the appeal is allowed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Desmond Hallissey
Desmond Hallissey
Member

Ottawa, Thursday, March 13, 1997

Appeal No. AP-95-284

IN THE MATTER OF an appeal heard on November 29, 1996, 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 dated November 23, 1995, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

BAKER TEXTILES INC. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

C O R R I G E N D U M

The tariff item cited in the first paragraph of the unofficial summary and on page 1 of the reasons for decision of February 17, 1997, concerning the above-mentioned appeal, should have been tariff item No. 5209.42.00, not 5203.42.00.

By order of the Tribunal,

Michel P. Granger
Secretary