CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, December 18, 1997

Appeal No. AP-96-122

IN THE MATTER OF an appeal heard on September 9, 1997, 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 September 4 and 5, 1996, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

PAPANAN ENTERPRISES LTD. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Patricia M. Close
Patricia M. Close
Presiding Member

Raynald Guay
Raynald Guay
Member

Charles A. Gracey
Charles A. Gracey
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-96-122

PAPANAN ENTERPRISES LTD. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal under section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue regarding the determination of the origin of various items of rattan furniture imported by the appellant from the United States. The appellant takes issue with the respondent's decisions for two reasons. The appellant questions, first, the respondent's "interpretation of the origin criteria" and, second, the fairness of the retroactive application of the duties, particularly such a long time after the accounting for the imports.

HELD: The appeal is dismissed. With respect to the first issue, namely, the apparent inconsistency of the respondent's "interpretation of the origin criteria" in respect of allegedly "same goods," the Tribunal finds no grounds to support the claim that the respondent's interpretation of the rule of origin applicable in this case was incorrect. The Tribunal believes that the appellant actually takes issue with the fact that allegedly "same goods" were classified differently under the *Customs Tariff*, resulting in different tariff treatments, in spite of the determination of their origin. This issue is not properly before the Tribunal.

With respect to the second issue, the Tribunal is of the view that the respondent acted fully within his statutory authority in conducting a review of the origin of the goods and retroactively applying additional duties within two years of the original deemed determination. The appellant was, moreover, properly advised at the beginning of the review period that a review was to be conducted and that additional duties might be payable by the appellant if the review did not substantiate the original deemed determination of the origin of the goods.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	September 9, 1997
Date of Decision:	December 18, 1997
Tribunal Members:	Patricia M. Close, Presiding Member Raynald Guay, Member Charles A. Gracey, Member
Counsel for the Tribunal:	Heather A. Grant
Clerk of the Tribunal:	Anne Jamieson
Parties:	Charles. E. Davies and Marit E. Davies, for the appellant Edward (Ted) Livingstone, for the respondent

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-96-122

PAPANAN ENTERPRISES LTD. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member
RAYNALD GUAY, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*[1] (the Act) from decisions of the Deputy Minister of National Revenue dated September 4 and 5, 1996, regarding the determination of the origin of various items of rattan furniture imported by the appellant from the United States. This 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, including an agreed statement of facts and briefs submitted by the parties.

The following paragraphs set out the facts as agreed to by the parties. The appellant carries on business in Westbank, British Columbia, and is the successor to Rapid Repair Service Ltd., which carried on business as a furniture supplier from 1990 to 1994. The goods in issue are various items of rattan furniture, including tables, dining room chairs, lounge chairs and sofas. These goods were imported into Canada by the appellant by way of 20 transactions from May 30, 1991, to June 1, 1993. The exporter was Kiani-USA Inc. (Kiani) of Portland, Oregon, which manufactured the finished goods from unfinished furniture obtained from Indonesia.

In 1991, the Department of National Revenue (Revenue Canada) received an exporter's certificate of origin certifying that the country of origin of the goods in issue was the United States. The certificate was incomplete; therefore, a new and properly completed certificate was obtained at the request of Revenue Canada. On the strength of the certificate, the goods in issue were accorded preferential US tariff treatment.

Notwithstanding the certificate, a review in respect of the origin of the goods was initiated by Revenue Canada because the items were marked "Made in Indonesia" and, yet, Kiani claimed that the further finishing of the goods by it in the United States qualified the goods for US tariff treatment. This information was conveyed to the appellant in August 1991, indicating that the basis for the review was that there was insufficient information for a designated official to determine the origin of the goods pursuant to subsection 57.2(1) of the Act. The appellant was also advised, at that time, that, if the origin of the goods was re-determined, additional duties could be payable on those transactions, as well as on subsequent transactions.

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, as amended.

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In November 1991, the appellant was contacted again by Revenue Canada and advised that the goods were still under review and that additional information was being sought. The review took approximately two years to complete. Between mid-1991 and mid-1993, questionnaires were sent to Kiani. Kiani was slow to respond, but a verification visit was eventually carried out in May 1993.

Subsequent to the verification visit, it was determined, pursuant to paragraph 61(*b*) of the Act, that the goods in issue did not qualify for preferential US tariff treatment, but that the higher most-favoured-nation tariff was applicable. The appellant was advised of this re-determination in June and July 1993 by detailed adjustment statements for the various transactions. The statements also informed the appellant that approximately $6,000 was owing in unpaid duties and taxes on the goods in issue.

Pursuant to a notice of objection to the determination, the respondent found in favour of the appellant, in part, in holding that certain items among the imported goods, specifically certain tables, did qualify for US tariff treatment. This re-determination was communicated to the appellant in September 1996. The remainder of the items were, however, found not to qualify for such preferential tariff treatment. As a result of the respondent's re-determination, the amount of duties and taxes still owing was assessed at $3,253.72, plus interest.

It should be noted that the appellant specifically confirmed that it did not take issue with the respondent's determination of the origin of the goods,[3] but stated that "the primary basis for our Appeal is the Respondent's *interpretation of the origin criteria* as indicated in the **Agreed Statement of Facts, paragraph 11**."[4] A secondary issue raised by the appellant pertains to the fairness of the retroactive application of the duties, particularly such a long time after the accounting for the imports.

With respect to the first point, the appellant's representatives submitted that, as a result of the respondent's "interpretation of the origin criteria," different rates of duty were incorrectly and unjustifiably assessed by the respondent on the goods. In support of this argument, the representatives submitted information[5] that showed that various items among the imports of rattan furniture were accorded a different tariff treatment even though they were the "same goods."

On the second issue, the appellant's representatives submitted that the retroactive application of the duties, approximately two years after the respondent initially accepted that the goods were of US origin, was unfair. As a result of the timing of the reassessment, resulting from circumstances beyond the appellant's control, the appellant was unable to factor the amount of duties reassessed into its selling prices, as the goods had already been sold, thereby causing it considerable hardship.

Counsel for the respondent submitted that the determination of origin and the retroactive assessment of duties on the goods in issue by the respondent was carried out in accordance with the respondent's statutory authority. As there was insufficient information regarding the origin of the goods when the goods

3. Exhibit 15.

4. Paragraph 11 of the agreed statement of facts states the following: "In September of 1996 the Respondent granted the Appellant's appeal in part by finding that among the goods in question, certain tables qualified for USTT under a revised interpretation of the origin criteria pursuant to the North American Free Trade Agreement. However the remainder of the goods in issue were still found not to qualify for USTT and Detailed Adjustment Statements reflecting this decision were issued to the Appellant on September 4 and 5, 1996. As a result of the redetermination the total of duties and tax owing is $3253.72, plus interest."

5. Exhibit 11.

included in the first two shipments were accounted for, the Revenue Canada officer was unable to make a determination of origin in respect of the goods and, therefore, made a "[d]eemed determination" under subsection 57.2(2) of the Act. This determination was applied to the goods included in the first two shipments and to the goods included in the remaining ones. According to counsel, the legislation provides that a re-determination of origin may be made within two years of the original determination, based on a verification of the origin, and that such a re-determination was within that statutory time frame under section 61 of the Act. Counsel further submitted that the appellant was aware that the origin of the goods was under review and had been advised that additional duties might be payable on the goods imported pursuant to the first two transactions as a result of the review and that any re-determination might also affect the duties payable in respect of goods included in subsequent shipments.

Counsel for the respondent further submitted that, in collecting duties, Revenue Canada relies primarily on information provided by the importer in assessing the applicable duties, subject to verification and assessment. In the absence of proof to the contrary, preferential US tariff treatment continued to be granted on the basis of the appellant's claim, supported by the exporter's certificate of origin, that the country of origin of the goods was the United States. The appellant was made aware, no later than August 1991, that the origin of the goods was under review, allowing the appellant to change its selling prices for the goods at any time to cover a potential increase in the duties owing.

With respect to the rule of origin applicable to the goods in issue, counsel for the respondent submitted that subparagraph 4(a) of Annex 301.2 of the *Canada-United States Free Trade Agreement*[6] (the FTA) requires that, for goods which enter the territory of a party to the FTA, in this case Canada, in an unfinished condition, 50 percent of the value of the goods be added in the territory of the party, namely, the United States, for the goods to be treated as originating in the territory of the United States and that, with the exception of certain tables, the goods in issue did not meet this 50 percent value-added criterion. Accordingly, the goods in issue do not qualify for preferential US tariff treatment.

Having considered the evidence and arguments presented in this case, as well as the applicable legislative provisions, the Tribunal finds no basis to allow this appeal.

With respect to the first issue, namely, the apparent inconsistency of the respondent's "interpretation of the origin criteria" in respect of allegedly "same goods," the Tribunal finds no grounds to support the claim that the respondent's interpretation of the rule of origin applicable in this case was incorrect. The Tribunal believes that the appellant actually takes issue with the fact that allegedly "same goods" were classified differently under the *Customs Tariff*,[7] resulting in different tariff treatments, in spite of the determination of their origin. This issue is not properly before the Tribunal.

The Tribunal notes that it is important to appreciate that both the determination of the origin of the goods and their classification under the *Customs Tariff* have an effect on the rate of duty applicable to imports. In this appeal, only the respondent's decisions regarding the origin of the goods are before the Tribunal. Accordingly, the classification of the goods under the *Customs Tariff* is outside the scope of this appeal. Having said this, it is noteworthy that the classification of the goods by the appellant's customs brokers was apparently never challenged by Revenue Canada. As a result, the appellant is ultimately

6. *Canada Treaty Series*, 1989, No. 3 (C.T.S.).
7. R.S.C. 1985, c. 41 (3rd Supp.).

responsible in this case for that aspect of the tariff treatment accorded the goods resulting from their classification under the *Customs Tariff*.

With respect to the second issue, namely, the retroactive application of the duties, the Tribunal is of the view that, even though Revenue Canada took almost a full two years to complete its re-determination of the origin of the goods due to internal administrative reasons, it was acting fully within the limitation period imposed by the Act. Section 57.2 of the Act provides that, where an officer does not make a determination regarding the origin of the goods under subsection 57(1), a determination of the origin is "deemed" to have been made 30 days after the goods were accounted for, based on representations made at that time by the person accounting for them. Section 61 of the Act, read in conjunction with section 57.2, provides that a deemed determination may be re-determined within two years of that determination. The appellant was, moreover, properly advised at the beginning of the review period that a review was to be conducted and that additional duties might be payable by the appellant if the review did not substantiate the original deemed determination of the origin of the goods. Accordingly, there is no basis upon which to allow the appeal on this ground.

As submitted by counsel for the respondent, the appellant could have increased its selling price for the imported goods after it was notified of Revenue Canada's decision to conduct a review. As such, the Tribunal is not persuaded that the appellant was treated unfairly by the respondent in re-determining the origin of the goods or in reassessing the amount of duties applicable to the goods.

For the foregoing reasons, the appeal is dismissed.

Patricia M. Close
Patricia M. Close
Presiding Member

Raynald Guay
Raynald Guay
Member

Charles A. Gracey
Charles A. Gracey
Member