CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, August 31, 1998

Appeal No. AP-97-027

IN THE MATTER OF an appeal heard on December 11, 1997, under section 81.19 of the *Excise Tax Act*, R.S.C. 1985, c. E-15;

AND IN THE MATTER OF a decision of the Minister of National Revenue dated April 18, 1997, with respect to a notice of objection served under section 81.15 of the *Excise Tax Act*.

BETWEEN

MOVADO GROUP OF CANADA, INC. **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed.

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

Anita Szlazak
Anita Szlazak
Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Michel P. Granger
Michel P. Granger
Secretary

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TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-97-027

MOVADO GROUP OF CANADA, INC. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal under section 81.19 of the *Excise Tax Act* of an assessment of the Minister of National Revenue dated September 24, 1996. The issue in this appeal is whether the respondent correctly determined that the appellant was a manufacturer or producer of watches adapted for personal use and sold in Canada and, thus, liable to pay excise tax on these goods at the time of their sale in Canada, pursuant to subsection 23(1) of the *Excise Tax Act*.

HELD: The appeal is allowed. In the Tribunal's view, a plain reading of paragraph 23(11)(*b*) of the *Excise Tax Act* suggests that at least two activities must be performed in Canada in order to manufacture or produce a watch, i.e. putting a watch movement into a watch case and adding a strap. In the present case, the appellant only performs one of these two activities, namely, adding a strap to the watch head. Therefore, the Tribunal is of the opinion that, by performing only one of two required operations, the appellant cannot be deemed to be manufacturing or producing watches for purposes of subsection 23(11). Further, in the Tribunal's view, adding a strap to a watch head is similar to inserting a descrambler into a television receiver or installing a radio into a car, activities which have been held not to constitute assembly under paragraph (*f*) of the definition of "manufacturer or producer" under subsection 2(1). Because a watch can operate without a strap, the latter is not necessary to form an operative whole. Furthermore, the fact that the straps can be easily removed and sold separately is indicative of an addition and not an assembly. Accordingly, adding a strap to a watch head does not meet the definition of "assembly."

Finally, adding a strap to a watch head does not meet the common law definitions of "manufacture or production." More particularly, watches or straps are not "raw or prepared material," nor does the action of adding a strap to a watch give it new forms, qualities or properties. Furthermore, it does not cause the watch to be able to perform a function that it could not previously perform. The evidence clearly shows that the primary function of a watch is to tell time and that the goods in issue are capable of performing this function at the time of importation, before the appellant adds the straps.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	December 11, 1997
Date of Decision:	August 31, 1998
Tribunal Members:	Robert C. Coates, Q.C., Presiding Member Anita Szlazak, Member Peter F. Thalheimer, Member
Counsel for the Tribunal:	Joël J. Robichaud
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Steven K. D'Arcy and C. Brent Jay, for the appellant Kathleen McManus, for the respondent

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-97-027

MOVADO GROUP OF CANADA, INC. **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
ANITA SZLAZAK, Member
PETER F. THALHEIMER, Member

REASONS FOR DECISION

This is an appeal under section 81.19 of the *Excise Tax Act*[1] (the Act) of an assessment of the Minister of National Revenue dated September 24, 1996. On June 19, 1996, North American Watch of Canada Ltd. (NAW) was assessed $202,415.00 in unpaid excise taxes, plus $8,529.91 in interest and $8,038.82 in penalty for the period from November 1, 1991, to April 30, 1996. The notice of assessment indicated that NAW was entitled to credits of $179,477.00 in respect of taxes which it had paid in error on purchases of inventory during the same period. NAW, therefore, owed $39,506.73. NAW objected to the assessment in a notice of objection dated September 16, 1996. On September 24, 1996, the respondent issued a notice of re-assessment to correct arithmetical errors made in the computation of the amount of tax. NAW was re-assessed in the amount of $222,653.00 for taxes unpaid, plus $12,174.79 in interest and $11,975.45 in penalty. The amount of credits remained unchanged. The new amount of tax owing was, therefore, $67,326.24. In a notice of decision dated April 18, 1997, the respondent disallowed NAW's objection and confirmed the assessment.

The issue in this appeal is whether the respondent correctly determined that the appellant was a manufacturer or producer of watches adapted for personal use and sold in Canada and, thus, liable to pay excise tax on these goods at the time of their sale in Canada, pursuant to section 23 of the Act.

For purposes of this appeal, the relevant provisions of the Act are sections 2 and 23 and paragraph 5(*a*) of Schedule I to the Act, which provide, in part, as follows:

> 2. (1) In this Act,
>
> "manufacturer or producer" includes
>
> > (*f*) any person who, by himself or through another person acting for him, prepares goods for sale by assembling, blending, mixing, cutting to size, diluting, bottling, packaging or repackaging the goods or by applying coatings or finishes to the goods, other than a person who so prepares goods in a retail store for sale in that store exclusively and directly to consumers,
>
> 23. (1) Subject to subsections (6) to (8.3) and 23.2(6), whenever goods mentioned in Schedules I and II are imported into Canada or manufactured or produced in Canada and delivered to a purchaser thereof, there shall be imposed, levied and collected, in addition to any other duty or tax that may be payable under this or any other Act or law, an excise tax in respect of those goods at the applicable rate set out in the applicable section in whichever of those Schedules is applicable, computed, where that rate is specified as a percentage, on the duty paid value or the sale price, as the case may be.

1. R.S.C. 1985, c. E-15.

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> (2) Where goods are imported, the excise tax imposed by subsection (1) shall be paid in accordance with the provisions of the *Customs Act* by the importer, owner or other person liable to pay duties under that Act, and where goods are manufactured or produced and sold in Canada, the excise tax shall be payable by the manufacturer or producer at the time of delivery of the goods to the purchaser thereof.
>
> (11) Where a person has, in Canada,
> (*a*) put a clock or watch movement into a clock or watch case,
> (*b*) put a clock or watch movement into a clock or watch case and added a strap, bracelet, brooch or other accessory thereto, or
> (*c*) set or mounted one or more diamonds or other precious or semi-precious stones, real or imitation, in a ring, brooch or other article of jewellery,
> he shall, for purposes of this Part, be deemed to have manufactured or produced the watch, clock, ring, brooch or other article of jewellery in Canada,
>
> [Schedule I]
>
> 5. (*a*) Clocks and watches adapted to household or personal use, except railway men's watches, and those specially designed for the use of the blind, ten per cent of the amount by which the sale price or duty paid value exceeds fifty dollars.

At the hearing, Mr. Cory Boisselle, Vice-President of Movado Group of Canada, Inc., testified on behalf of the appellant. He explained that, in June 1997, NAW changed its name to Movado Group of Canada, Inc. so that it would reflect the name of its parent company. Accordingly, counsel for the appellant made a motion to have the appellant's name changed from NAW to Movado Group of Canada, Inc., to which counsel for the respondent consented. The motion was granted by the Tribunal.

Mr. Boisselle explained that the appellant is a wholly owned subsidiary of Movado Group, Inc., based in Lyndhurst, New Jersey (Movado US). He testified that Movado US does not manufacture watches and that its primary role is to distribute the merchandise in North America. The watches are manufactured by two companies in Switzerland, which are owned by Movado US. Mr. Boisselle testified that the appellant is not involved in the manufacturing activities of these two companies. He explained that the appellant is the exclusive distributor of Movado watches in the Canadian marketplace. Its facilities in Canada consist of a corporate office and a distribution centre.

Mr. Boisselle explained that the watches imported by the appellant fall into two categories: bracelet watches, which arrive with the bracelet attached, and strap watches, which arrive without straps. In the latter case, the appellant only receives the watch heads. He explained that it is more cost effective to purchase the straps in Canada or to import them separately from the United States. He testified that this can be done, while still maintaining the quality that the appellant requires. According to Mr. Boisselle, the cost of the strap represents approximately 5 to 7 percent of the total cost of the watch. He said that the appellant distributes the watches mostly to jewellers. They are sold with the straps attached to ensure that the appellant's quality standards are maintained. Mr. Boisselle explained that there is no specific person assigned to attach the straps to the watch heads. The appellant often hires a part-time employee when the shipments arrive in order to do that work. This happens approximately five times a year. The only training required is that the person learn how to use a strapping tool, which usually takes about five minutes.

Mr. Boisselle explained that there are approximately 100 different types of watches in the Movado line and 25 different types of watch straps. He said that most of the watches come with black straps. The strap can, however, be changed by the appellant at the request of the jeweller, or the jeweller can change the

strap and then sell the original black strap. No one could tell that the strap had been changed by simply looking at the watch. Mr. Boisselle explained that it is not difficult to change the strap. There is a special tool which is used for ease; however, some experienced watchmakers use a simple pocketknife. The process takes approximately two minutes. Mr. Boisselle testified that the watches function without straps, that is, they tell time. He testified that the watches could be sold in the state in which they are imported. He said that the appellant provides a warranty on the watches, which does not become void if a jeweller replaces the strap. It would become void, however, if the jeweller replaced one of the parts or put in a non-approved battery. Mr. Boisselle testified that the appellant paid excise tax on the duty-paid price of the imported watches.

In cross-examination, Mr. Boisselle testified that, as a matter of practice, the appellant, in order to maintain the appearance of the watches, does not ship them to the retailers without first having attached the straps. He agreed that, as far as the appellant is concerned, a Movado watch is not ready for sale to the retailer until the strap has been attached to the watch head. Mr. Boisselle testified that the person who attaches the straps to the watch heads usually works in the appellant's distribution centre. He explained that most jewellers have a strapping tool and that one could not purchase such a tool in a Canadian Tire store, for example. Mr. Boisselle testified that it is unlikely that the appellant would refuse a request from a particular retailer to change the straps, even though the new straps would affect the appearance of the watches, especially when that retailer is putting in a large order.

In answering questions from the Tribunal, Mr. Boisselle testified that the watches are not advertised as having interchangeable watch straps. He said that some people may carry the watch in their pockets without a watch strap. In his view, at that point, they would not be wearing the watch, but it still would be functioning as a watch. He testified that it is not the kind of watch that a woman would put on a chain and wear around her neck. Mr. Boisselle explained that the watches are imported under the same tariff item in the *Customs Tariff*,[2] regardless of whether or not they come with straps.

Counsel for the appellant argued that the attachment of watch straps to fully manufactured watches or watch heads by the appellant does not constitute either the manufacture or the production of goods for the purposes of Part III of the Act. Counsel argued that it does not constitute preparing goods for sale by assembling or by any of the other actions described in paragraph (*f*) of the definition of "manufacturer or producer" in subsection 2(1) of the Act. Thus, the appellant cannot be considered a "manufacturer or producer" of watches. Counsel also argued that the wording of subsection 23(11) of the Act, in particular paragraph (*b*), indicates that Parliament did not intend that the mere attachment of watch straps constitute the manufacture or production of watches.

Counsel for the appellant relied on the Tribunal's decision in *Tee-Comm Electronics Inc.* v. *The Minister of National Revenue*[3] in support of their argument that attaching watch straps to fully manufactured watch heads does not constitute the manufacture or production of watches. In particular, counsel argued that attaching watch straps to fully manufactured watch heads does not meet the following definition of "manufacture" taken from the decision of the Supreme Court of Canada in *Her Majesty the Queen* v. *York Marble, Tile and Terrazzo Limited*: "manufacture is the production of articles for use from raw or prepared material by giving to these materials new forms, qualities and properties or combinations whether by hand or

2. R.S.C. 1985, c. 41 (3rd Supp.).
3. Appeal No. AP-94-075, April 21, 1995.

machinery.[4]" Counsel compared the facts in *York Marble* to those in the present case. They argued that there is no new form added to the watches from the time they are imported to the time they leave the appellant's premises. What arrives in Canada and what leaves the appellant's premises is a Movado watch; there are no new qualities. What comes in is a beautiful, high-quality Swiss watch and what leaves is a beautiful, high-quality Swiss watch. Furthermore, there are no new properties. The watch can tell time when it arrives in Canada and can tell time when it leaves the appellant's premises.

According to counsel for the appellant, the appellant does not take raw material or prepared material and turn it into articles. Rather, it takes two completely manufactured and functional articles, namely, the watch head and the watch strap, and attaches them together. They argued that the attachment of the strap to the watch does not cause either the watch or the strap to perform functions which they could not previously perform. They referred to the evidence which showed that the strap and the watch can be sold separately. The strap can also be easily changed. It involves a simple operation which does not require any special skills or machinery. Counsel argued that the watches are in a saleable state when they are imported by the appellant. Nothing would stop the appellant from selling them to a retailer at that time. For various reasons, the appellant elects to attach the straps before it sells the watches. Relying on the decision of the Supreme Court of Ontario in *Gruen Watch Company of Canada Ltd.* v. *Attorney General of Canada*[5] and the decision of the Federal Court of Appeal in *The Minister of National Revenue* v. *Enseignes Imperial Signs Ltée*,[6] counsel argued that the appellant is not a producer of watches. Counsel reiterated that the addition of a strap does not change the function of the watch.

Relying on the decision of the Federal Court of Canada - Trial Division in *Fiat Auto Canada Limited* v. *The Queen*,[7] where it was held that the installation of radios and speakers into fully manufactured automobiles did not constitute assembly, but rather an addition to those automobiles, counsel for the appellant argued that attaching a strap to a watch head does not constitute "assembling" under paragraph (*f*) of the definition of "manufacturer or producer." Counsel noted that the Federal Court of Canada - Trial Division held that to assemble something means to fit together various parts so as to make them into an operative whole. The insertion of the radios and the speakers was found to constitute the addition of a convenience, rather than assembly, even though it involved the replacement of the car battery, and the insertion of an antenna, ground connections and an opening in the door and rear panels. Counsel also relied on *Tee-Comm*, where the Tribunal held that installing descramblers into television receivers constituted an addition and not the preparation of goods by way of assembly. The Tribunal found that the receivers could operate to some extent without the descramblers; therefore, they were not strictly necessary to form an operative whole. Further, the fact that the descramblers could easily be removed from the receivers and both of these items easily returned to their original state was indicative of an addition and not assembly. Relying on several dictionary definitions of the word "watch," counsel argued that a watch is a small portable timepiece which may or may not have a strap attached. On the basis of these definitions, counsel argued that a watch becomes an operative whole at the time it becomes a portable timepiece.

In support of their argument that attaching a strap to a fully manufactured watch does not constitute "manufacture" or "production" under the Act, counsel for the appellant relied on the following two common principles of statutory interpretation: "implied exclusion" and "presumption against tautology." Counsel

4. [1968] S.C.R. 140 at 145.
5. [1950] O.R. 429, [1950] C.T.C. 440.
6. (1990), 116 N.R. 235, File No. A-264-89, February 28, 1990.
7. [1984] 1 F.C. 203.

argued that subsection 23(11) of the Act is a more specific provision than paragraph (*f*) of the definition of "manufacturer or producer." They noted that subsection 23(11) deems certain activities with respect to specific goods to be manufacture or production, as opposed to paragraph (*f*) which only deems certain activities to be manufacture or production. Counsel explained that the principle of "implied exclusion" means that to specifically include one thing is to implicitly exclude another. They argued that, when a provision such as subsection 23(11) is silent with respect to an activity like simply attaching a strap to a watch, that activity could not have been intended to be included. Counsel also relied on a textbook on statutory interpretation[8] in support of their argument. Counsel argued that the presumption is strengthened where there is good reason to expect an express reference to an item, as in the present case. Counsel argued that the combined activities of putting a watch movement into a watch case and adding a strap constitute manufacture or production, not simply adding a strap.

With respect to the second principle, counsel for the appellant submitted that it is presumed that every legislative provision in some manner furthers the legislative purpose. In other words, it is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain and that every word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose.[9] Counsel noted that subsection 23(11) of the Act was enacted prior to paragraph (*f*) of the definition of "manufacturer or producer" and argued that, according to the principle of the presumption against tautology, it must be presumed that the decision to leave the more specific provision in place had some purpose, that is, to deal with watches and clocks. Hence, counsel argued that, when looking at anything having to do with watches and clocks, paragraph (*f*), the more marginal provision, should not govern. Instead, the Tribunal should rely on subsection 23(11).

Counsel for the respondent argued that a "wristwatch" does not become a "wristwatch" until the strap is attached to the watch head, so that you are able to wear it on your wrist. Counsel argued that, as the appellant is a manufacturer of watches adapted for personal use, excise tax was properly assessed at the time the appellant delivered the wristwatches for sale to the retailers. According to counsel, the appellant meets the four tests that need to be met in order to be considered a "manufacturer or producer" under paragraph (*f*) of that definition. More particularly, there was an assembly of goods, which was done by the appellant in order to prepare the goods for sale, and the assembly was not done in a retail store for direct and exclusive sale to consumers. According to counsel, the goods in issue are wristwatches and, until the straps are attached to the watch heads, they are not ready to be sold to the retailer. Relying on certain definitions of the word "watch" to which counsel for the appellant referred, counsel for the respondent argued that, until the strap is attached, a wristwatch cannot perform its designed function, which is to be worn on a person's wrist.

With respect to the meaning to be attributed to the word "assembly," counsel for the respondent referred to the Tribunal's decision in *Advance-Interface Electronic Inc.* v. *The Minister of National Revenue*,[10] where it was held that this term should just be used in its grammatical and ordinary sense, which is to bring together parts to put them into their operational whole. In relation to *Fiat*, counsel argued that a wristwatch is not ready for sale until it has a strap on it which enables it to be worn on the wrist. She argued that a customer would not purchase a wristwatch unless there was a strap attached to it. Counsel referred to the testimony of the appellant's witness in support of her position that, as far as the appellant is concerned, a watch is not ready for sale to the retailer until the strap has been attached to it. She argued that the reason for

8. R. Sullivan, *Driedger on the Construction of Statutes*, 3rd ed. (Toronto: Butterworths, 1994) at 168.
9. *Ibid*. at 159.
10. 4 G.T.C. 5031, Appeal No. AP-95-071, May 30, 1996.

doing so is not relevant. What is important is that this is what the appellant does. Accordingly, counsel argued that fitting together the watch head and the watch strap to create a wristwatch comes within the meaning of the term "assembly" under paragraph (*f*) of the definition of "manufacturer or producer."

Referring to *York Marble*, counsel for the respondent argued that attaching a strap to a watch head does give the watch head a new form. The new form is that it can now finally perform the function for which it was designed, that is, to be worn on a wrist. Therefore, the appellant can certainly be regarded as a traditional manufacturer. Furthermore, the appellant can be regarded as a producer. In support of this argument, counsel relied on *Enseignes Imperial Signs*, where it was held that changes do not have to be significant in order for production to occur and for a person to be found to be a traditional producer of goods. As such, attaching a strap to a watch head can be considered production, even though it is a simple operation. The finished product is the wristwatch and that is the product which should be taxed.

Quoting from the decision of the Federal Court of Appeal in *W.R. McRae Company Limited* v. *Her Majesty the Queen*,[11] counsel for the respondent argued that, in interpreting the Act, the Tribunal should not "equate asymmetry with flaws." The Tribunal should not "compare microscopically the words of provisions devised at different times … and meant to address distinct concerns." She argued that, in *McRae*, the Federal Court of Appeal is urging courts and administrative tribunals to be forgiving in interpreting a piece of legislation such as the Act, which has undergone countless amendments and revisions since it came into force over 80 years ago. Counsel argued that paragraph (*f*) of the definition of "manufacturer or producer" was enacted by Parliament to deal with changing commercial realities. More specifically, Parliament became aware of a new concept called marginal manufacturing. In essence, importers were paying less tax than domestic manufacturers by dividing up the work. The same goods were being produced, but different taxes were being applied. This created a huge inequity. Counsel referred to the decision of the Federal Court of Appeal in *Ford Motor Co. of Canada Ltd.* v. *Minister of National Revenue*[12] which quoted from the Budget Papers which enacted paragraph (*f*) in support of her contention. She argued that paragraph (*f*) was enacted to deal with similar situations to the present one, that is, where part of the manufacture is done in Canada. If this provision did not exist, then the appellant would escape the tax, resulting in an inequity. She submitted that paragraph (*f*) and subsection 23(11) address two different situations and that they do not create a redundancy.

In reply, counsel for the appellant argued that the Tribunal must consider whether, at the time of importation, the goods in issue were an operative whole and capable of being sold as such to retailers, not consumers. Counsel noted that the Act refers to watches and not wristwatches. Counsel argued that *McRae* can be distinguished from the present situation because, in that case, tax would have been avoided altogether if the Federal Court of Appeal had ruled in favour of the appellant in that case. The present situation is very different. Tax is clearly payable at the time of importation by the appellant. Counsel reiterated that the Tribunal must refer to subsection 23(11) of the Act, rather than paragraph (*f*) of the definition of "manufacturer or producer," because it is a more specific provision which deals with the goods in issue. Counsel argued that, although the presumption against tautology may be rebutted, it has not been in this case.

As noted above, subsection 23(1) of the Act provides that, whenever goods mentioned in Schedules I and II are imported into Canada or manufactured or produced in Canada and then sold, an excise tax is imposed on those goods. Subsection 23(2) provides that, when goods are imported, the excise tax

11. Court File Nos. A-207-94 and A-266-96, June 13, 1997.
12. 212 N.R. 275, Court File No. A-613-94, April 25, 1997.

must be paid in accordance with the provisions of the *Customs Act*[13] by the importer, owner or other person liable to pay duties under that act, and, where goods are manufactured or produced and sold in Canada, the excise tax must be paid by the manufacturer or producer at the time of the delivery of the goods. The parties agreed that the goods in issue are listed in paragraph 5(*a*) of Schedule I to the Act and that they are, therefore, subject to an excise tax. They disagreed, however, on whether they were manufactured or produced in Canada.

The question that the Tribunal must, therefore, address is whether the goods in issue are manufactured or produced in Canada or, more particularly, whether attaching a watch strap to a watch head constitutes the manufacture or production of "watches."

First, the Tribunal notes that, pursuant to paragraph 23(11)(*b*) of the Act, a person, in Canada, who puts a watch movement into a watch case and adds a strap is deemed to have manufactured or produced a watch. In the Tribunal's view, a plain reading of those words suggests that at least two activities must be performed in Canada in order to manufacture or produce a watch, i.e. putting a watch movement into a watch case and adding a strap. In the present case, the appellant only performs one of these two activities, namely, adding a strap to the watch head. Therefore, the Tribunal is of the opinion that, by performing only one of two required operations, the appellant cannot be deemed to be manufacturing or producing watches for purposes of subsection 23(11) of the Act.

Next, the Tribunal must decide whether the appellant can be considered a "manufacturer or producer" of watches in accordance with the definition of that term found in paragraph (*f*). At issue is whether adding a strap to a watch head constitutes preparing goods for sale by way of assembly. The meaning to be attributed to the term "assembly" under the Act has been considered by the Tribunal at least on one previous occasion, namely, in *Tee-Comm*. In the Tribunal's view, adding a strap to a watch head is similar to inserting a descrambler into a television receiver, which, in *Tee-Comm*, the Tribunal held did not constitute assembly. In addition, in the Tribunal's view, adding a strap to a watch head is similar to installing a radio into a car, which the Federal Court of Canada - Trial Division, in *Fiat*, also held did not constitute assembly. Relying on these two decisions, the Tribunal finds that the watches can operate without the straps; therefore, they are not necessary to form an operative whole. The Tribunal notes that paragraph 5(*a*) of Schedule I to the Act refers to "watches" and not "wristwatches." Furthermore, the fact that the straps can be easily removed and sold separately is indicative of an addition and not an assembly. Accordingly, adding a strap to a watch head does not meet the definition of "assembly" under paragraph (*f*).

The Tribunal is also of the view that adding a watch strap to a watch head does not meet the common law definitions of "manufacture or production." More particularly, the Tribunal is of the view that watches or straps are not "raw or prepared material," as those words have been defined in *York Marble*, nor does the action of adding a strap to a watch give it new forms, qualities or properties. Furthermore, it does not cause the watch to be able to perform a function that it could not previously perform. As such, the appellant is not a producer, as that term as been defined in numerous cases, for example, *Enseignes Imperial Signs*. The evidence clearly shows that the primary function of a watch is to tell time and that the goods in issue are capable of performing this function at the time of importation, before the appellant adds the straps.

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

Accordingly, the appeal is allowed.

Robert C. Coates, Q.C.
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