

Ottawa, Tuesday, September 12, 2000

**Appeal No. AP-99-043**

IN THE MATTER OF a re-hearing held on June 26, 2000, under subsection 68(2) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Federal Court of Appeal dated June 28, 1999, with respect to a decision of the Canadian International Trade Tribunal made under section 67 of the *Customs Act*.

**BETWEEN**

**TOYOTA CANADA INC.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

On consent of the parties, the appeal is dismissed.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-99-043**

**TOYOTA CANADA INC.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

This appeal followed a decision of the Federal Court of Appeal which referred the matter back to the Tribunal for re-hearing. Pursuant to subsection 48(5) of the *Customs Act*, the Tribunal had concluded that the credit note stipulated on the Canada Customs Invoice did not constitute a rebate of, or other decrease in, the “price paid or payable” for the vehicles in issue. Rather, the Tribunal found that the purpose of the credit note was simply to reflect the actual and final selling price of the goods. On appeal, the Federal Court of Appeal held that the Tribunal had failed to take into account the time requirements embodied in section 48 of the *Customs Act* which partly provides that, in order for an importer to avail itself of the transaction value, it must first show that the “price paid or payable” for the goods can be determined when the goods are sold for export to Canada. The issue to be determined by the Tribunal is whether section 48 is applicable at all and, more specifically, whether the appellant’s pricing method allowed for the determination of the “price paid or payable” for the vehicles at the time of importation.

**HELD:** Considering the judgement of the Federal Court of Appeal and the filing of the consent of the parties, the appeal is dismissed.

Place of Hearing: Ottawa, Ontario  
Date of Hearing: June 26, 2000  
Date of Decision: September 12, 2000

Tribunal Member: Pierre Gosselin, Presiding Member

Counsel for the Tribunal: Marie-France Dagenais

Clerk of the Tribunal: Anne Turcotte

Parties: Brenda C. Swick-Martin, for the appellant  
Frederick B. Woyiwada, for the respondent

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TRIBUNAL: Pierre Gosselin, Presiding Member

**REASONS FOR DECISION**

This is the re-hearing of an appeal<sup>1</sup> under subsection 68(2) of the *Customs Act*<sup>2</sup> following a decision of the Federal Court of Appeal (the Court) which set aside and referred the matter back to the Tribunal for reconsideration with instructions that it decide whether section 48 of the Act is applicable and, more specifically, whether the appellant's pricing method allowed for the determination of the "price paid or payable" for the vehicles at the time of importation.

The Tribunal originally determined that the credit note stipulated on the Canada Customs Invoice was not a rebate of, or other decrease in, the "price paid or payable" for the vehicles in issue pursuant to subsection 48(5) of the Act. Rather, the Tribunal found that the purpose of the credit note was simply to reflect the actual and final selling price of the goods. This decision was based on the evidence which showed that there existed an understanding between the parties that the price stipulated on the Canada Customs Invoice was a provisional selling price estimated for purposes of calculating the value for duty and that the final selling price of the vehicles would only be known at the conclusion of the negotiations between the parties.

The Court disagreed with the Tribunal's approach and allowed the appeal. The Court held that the Tribunal had failed to take into account the time requirements embodied in section 48 of the Act, which partly provides that, in order for an importer to avail itself of the transaction value, it must first show that the "price paid or payable" for the goods can be determined when the goods are sold for export to Canada. It concluded that the Tribunal should not have asked itself whether the final price resulted in a rebate under paragraph 48(5)(c) without first deciding if section 48 was applicable at all. According to the Court, the Tribunal had to decide whether the appellant's pricing method allows for the determination of the "price paid or payable" for the vehicles at the time of importation and could avail itself of the transaction value. If the price submitted on entry was the "price paid or payable", then any price reduction brought about after importation as a result of the establishment of the final selling price had to be disregarded. If, however, the appellant's price method did not allow for the determination of the "price paid or payable" at the time of importation, then the Tribunal had to determine the value for duty of the imported goods by an alternative valuation method, as prescribed by subsection 47(2).

Therefore, the issue in this appeal is whether section 48 of the Act is applicable and, more specifically, whether the appellant's pricing method allowed for the determination of the "price paid or payable" for the vehicles at the time of importation.

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1. (15 August 1996), AP-95-090 and AP-95-166 (CITT).  
2. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].

On April 25, 2000, the parties advised the Tribunal that they had agreed to a resolution of the appeal and filed a “Consent to Decision” with the Tribunal. They requested that the Tribunal issue a decision reflecting the agreement that partly stated that the appeal should be “dismissed and the decisions of the Deputy Minister of National Revenue, dated June 27, 1995, regarding transaction numbers 17566800604256, 17566800604449, 17566800582089, and 17566800610389 . . . upheld”.

Considering the judgement of the Court and the filing of the consent of the parties, the appeal is dismissed.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member