Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2012-070

Cargill Inc.

v.

President of the Canada Border Services Agency

Decision and reasons issued
Friday, May 23, 2014

Canada

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IN THE MATTER OF an appeal heard on March 27, 2014, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated February 4, 2013, issued pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

CARGILL INC. **Appellant**

AND

THE PRESIDENT OF THE CANADA BORDER SERVICES AGENCY **Respondent**

DECISION

The appeal is dismissed.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Gillian Burnett
Gillian Burnett
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	March 27, 2014
Tribunal Member:	Pasquale Michaele Saroli, Presiding Member
Counsel for the Tribunal:	Alexandra Pietrzak
Registrar Officer:	Ekaterina Pavlova

PARTICIPANTS:

Appellant	**Counsel/Representative**
Cargill Inc.	Michael Kaylor

Respondent	**Counsel/Representative**
President of the Canada Border Services Agency	Andrew Gibbs

WITNESS:

Heather Gledhill
Canadian Customs Compliance Manager
Cargill Inc.

Please address all communications to:

The Secretary
Canadian International Trade Tribunal
15th Floor
333 Laurier Avenue West
Ottawa, Ontario K1A 0G7

Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: secretary@citt-tcce.gc.ca

STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Cargill Inc. (Cargill) on February 26, 2013, pursuant to subsection 67(1) of the *Customs Act*[1] from a re-determination of an origin ruling originally issued by the President of the Canada Border Services Agency (CBSA) on March 23, 2009.

2. The parties agree that certain refined, bleached and deodorized palm stearin oils (the goods in issue) are properly classified under tariff item No. 1517.90.99 of the schedule to the *Customs Tariff*[2] as other edible mixtures or preparations of animal or vegetable fats or oils.[3] However, Cargill alleges that the CBSA improperly used information gathered in an unrelated advance ruling request to make a retroactive re-determination under section 59 of the *Act* and a subsequent re-determination under section 60 that the goods in issue were not originating goods under the *North American Free Trade Agreement*[4] and, therefore, were not eligible for preferential tariff treatment.

3. Cargill is the exporter of record. The importer of record is Kraft Canada (Kraft). Kraft did not participate in the appeal before the Canadian International Trade Tribunal (the Tribunal).

PROCEDURAL HISTORY

4. Kraft began importing the goods in issue in 2008. At the time of importation, Kraft claimed preferential tariff treatment for the goods in issue, which were listed as originating in the United States.

5. On December 22, 2008, Cargill applied for an advance ruling in respect of goods that were identical to the goods in issue, submitting that they should be classified under tariff item No. 1507.90.90.

6. The CBSA's advance ruling, issued on March 23, 2009, concluded that those goods were properly classified under tariff item No. 1517.90.99 and did not qualify for preferential tariff treatment, as they did not originate in the United States.

7. On July 27, 2009, the CBSA sent a letter to Kraft informing it that, pursuant to subsection 42(2) of the *Act*, the CBSA was conducting an inspection of documents for the verification of origin.

8. Kraft, on or about September 14, 2009, provided the CBSA with the certificates of origin from its vendors, including Cargill.

9. By letter dated September 15, 2009, the CBSA informed Cargill that it was verifying the eligibility of the goods in issue for preferential tariff treatment under *NAFTA* for the 2008 calendar year. To assist in the review, Cargill was asked to complete an enclosed questionnaire and return same by

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1. R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].
2. S.C. 1997, c. 36.
3. In its brief, the CBSA listed tariff item No. 1517.90.99 as the proper classification, but mistakenly included an incorrect description of the goods.
4. *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994) [*NAFTA*].

September 30, 2009. The CBSA also provided a copy of the certificates of origin that Cargill had provided to the importer, which declared that the goods in issue qualified as originating goods under *NAFTA*.[5]

10. With Cargill having failed to respond to its first verification letter,[6] the CBSA, on October 22, 2009, sent a second letter in which it reiterated its request that Cargill complete the enclosed questionnaire, with a new response deadline of November 5, 2009.

11. Cargill did not reply to the CBSA's second letter until December 22, 2009.

12. On February 9, 2010, the CBSA issued a re-determination under section 59 of the *Act* in which it held that the goods in issue did not qualify as originating goods under *NAFTA* and, therefore, were not eligible for preferential tariff treatment.

13. In response to a request from Cargill, the Tribunal, on March 16, 2012, granted Cargill an extension of time to file a request for further re-determination under section 60 of the *Act*.

14. On April 16, 2012, Cargill requested a further re-determination pursuant to subsection 60(1) of the *Act*.

15. On February 4, 2013, the CBSA issued a decision under subsection 60(4) of the *Act*, affirming its previous decision under section 59.

16. Cargill filed the present appeal with the Tribunal on February 26, 2013.

17. On May 30, 2013, the CBSA filed a motion for an order dismissing the appeal on the grounds that it was plain and obvious that the appeal could not succeed.

18. On September 5, 2013, the Tribunal issued its decision dismissing the CBSA's motion.

19. The Tribunal held a public hearing on March 27, 2014, in Ottawa, Ontario. Cargill called Ms. Heather Gledhill, Canadian Customs Compliance Manager at Cargill, as its only witness. The CBSA did not call any witnesses.

LEGAL FRAMEWORK

20. In order for imported goods to receive preferential tariff treatment, the importer must submit proof of the origin of the goods. In this connection, the *Proof of Origin of Imported Goods Regulations*[7] requires the importer or owner of the goods in issue to provide a certificate of origin for the goods.

21. Where proof of origin has been given, the CBSA may conduct audits and verifications under sections 42, 42.01 and 42.1 of the *Act*. In this regard, paragraph 42.1(1)(*a*) authorizes a duly designated officer of the CBSA to conduct a verification of the origin of goods for which entitlement to preferential tariff treatment under *NAFTA* is claimed:

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5. Exhibit AP-2012-070-21A, tab B-7, Vol. 1A.
6. Ms. Heather Gledhill testified that the letter was sent to Cargill's U.S facility and, therefore was not received by Ms. Gledhill until after the response deadline set out in the letter. See *Transcript of Public Hearing*, 27 March 2014, at 18-19.
7. S.O.R./98-52.

> 42.1(1) Any officer, or any officer within a class of officers, designated by the President for the purposes of this section, or any person, or any person within a class of persons, designated by the President to act on behalf of such an officer, may, subject to prescribed conditions,
>
> (*a*) *conduct a verification of origin of goods* for which preferential tariff treatment under a free trade agreement, other than CEFTA, is claimed
>
> (i) by entering any prescribed premises or place at any reasonable time, or
>
> (ii) *in the prescribed manner* . . . .
>
> [Emphasis added]

22. For the purposes of subparagraph 42.1(1)(*a*)(ii) of the *Act*, and in lieu of a verification visit under subparagraph 42.1(1)(*a*)(i), section 2 of the *NAFTA and CCFTA Verification of Origin Regulations*[8] prescribes the following alternative manners of conducting a verification of origin:

> 2. In addition to a verification visit, an officer may conduct a verification of origin of goods in any of the following manners:
>
> (*a*) by reviewing a verification questionnaire completed by
>
> (i) the exporter or producer of the goods, or
>
> (ii) a producer or supplier of a material that is used in the production of the goods;
>
> (*b*) *by reviewing a written response received from a person referred to in paragraph (a) to a verification letter;* or
>
> (*c*) by reviewing any other information received from a person referred to in paragraph (*a*).
>
> [Emphasis added]

23. Pursuant to subsection 58(1) of the *Act*, a designated CBSA officer may determine the origin of imported goods at or before the time of their accounting for customs purposes. However, in the absence of an actual determination of origin under subsection 58(1), subsection (2) provides that the origin of the imported goods is deemed, for the purposes of the *Act*, to be as declared by the importer.

24. Once a determination is made, or is deemed to have been made, under section 58 of the *Act*, subsection 59(1) provides as follows:

> 59.(1) An officer, or any officer within a class of officers, designated by the President for the purposes of this section may
>
> (*a*) in the case of a determination under section 57.01 or 58, *re-determine the origin*, tariff classification, value for duty or marking determination of any imported goods at any time within
>
> (i) four years after the date of the determination, on the basis of an audit or examination under section 42, a verification under section 42.01 or *a verification of origin under section 42.1*, or
>
> (ii) four years after the date of the determination, if the Minister considers it advisable to make the re-determination . . .
>
> . . .
>
> (2) An officer who makes a determination under subsection 57.01(1) or 58(1) or a re-determination or further re-determination under subsection (1) shall without delay give notice of the determination, re-determination or further re-determination, including the rationale on which it is made, to the prescribed persons.
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> [Emphasis added]

25. Section 60 of the *Act*, in turn, allows a person to request a further re-determination of a re-determination of origin under section 59.

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8. S.O.R./97-333.

26. Finally, subsection 67(1) of the *Act* allows recourse to the Tribunal from decisions of the CBSA under section 60.

ANALYSIS

27. It is not disputed, and the Tribunal accepts, that the goods in issue are properly classified under tariff item No. 1517.90.99 as other edible mixtures or preparations of animal or vegetable fats or oils.

28. The sole issue before the Tribunal is whether the goods in issue are originating goods under *NAFTA* and, therefore, entitled to the benefit of preferential tariff treatment.

29. In this regard, Cargill acknowledged that it did not adduce any positive evidence indicating that the goods in issue originated within the territory of a NAFTA country.[9] It argued however that no such evidence was necessary in the circumstances of the present case:

> MR. KAYLOR: . . . the difference between the Appellant and the Respondent in the present case seems to boil down to this: *The Respondent says that the Appellant has provided no proof that the goods in issue qualify for the benefit of the NAFTA origin tariff treatment for the 2008 calendar year. That is true based on the record. There is no positive evidence to that effect.*
>
> *The Appellant, on the other hand, contends that such proof is not necessary.* The reason . . . is because . . . the [section] 59 and section 60 tariff treatment denial decisions that were rendered against the importer of the goods in issue, Kraft Canada, are invalid because they did not follow the proper procedures set out in the relevant legislation.[10]
>
> [Emphasis added]

30. Cargill's line of argument, as understood by the Tribunal and confirmed by counsel for Cargill,[11] essentially runs as follows: an advance ruling on origin only applies on a prospective basis to importations made after the date of the advance ruling.[12] The CBSA, therefore, cannot invoke an advance ruling to re-determine the origin of goods that were imported before the advance ruling was made.[13] By invoking an advance ruling made subsequent to the importation of the goods in issue as the basis for the revocation of their status as originating goods under *NAFTA*, the CBSA fettered its discretion and failed to genuinely exercise its statutory decision-making power under section 59 of the *Act*. The result is that the re-determination of origin under section 59 is invalid.[14]

31. Cargill further contends that the invalidity of the CBSA's re-determination of origin under section 59 of the *Act*, in turn, rendered its further re-determination under subsection 60(4) (which purported to uphold the re-determination under section 59) invalid. With the CBSA's decisions under sections 59 and 60 being invalid, it is Cargill's view that the determination under subsection 58(2), pursuant to which the origin of goods is deemed to be as declared by the importer at the time of importation, is necessarily revived.[15] That being the case, ". . . there is no requirement for Appellant to make any proof concerning the origin or tariff classification of the goods in issue other than to produce copies of the origin entry (B3)

9. *Transcript of Public Hearing*, 27 March 2014, at 23-24, 28, 35-36.
10. *Ibid.* at 37-38.
11. *Ibid.* at 61-62.
12. Exhibit AP-2012-070-04A at para. 17, Vol. 1.
13. *Ibid.* at para. 20.
14. *Ibid.* at para. 32.
15. Exhibit AP-2012-070-12 at para. 24, Vol. 1A.

documents."[16] Moreover, the CBSA would be outside the limitation period to conduct an audit under section 42.1 to correct the situation.[17]

32. Subsection 152(3) of the *Act* provides as follows:

> . . . in any proceeding under this Act, *the burden of proof in any question relating to*
>
> (*a*) *the . . . origin of any goods,*
>
> . . .
>
> li*es on the person, other than Her Majesty, who is a party to the proceeding* . . . and not on Her Majesty.
>
> [Emphasis added]

33. This being a proceeding under section 67 of the *Act* in respect of the origin of the goods in issue, the burden of proof resides with Cargill to establish that the CBSA's decision under subsection 60(4) was invalid.

Limits to the Tribunal's Jurisdiction

34. The Tribunal derives its authority from its enabling statute, the *Canadian International Trade Tribunal Act*,[18] which provides as follows:

> 16. The duties and functions of the Tribunal are to
>
> . . .
>
> (*c*) hear, determine and deal with all appeals that, *pursuant to any other Act of Parliament or regulations thereunder,* may be made to the Tribunal, and all matters related thereto . . . .
>
> [Emphasis added]

35. In this respect, and as already noted, subsection 67(1) of the *Act* specifically allows for recourse to the Tribunal from decisions of the CBSA under subsection 60(4).

36. Appeals to the Tribunal proceed *de novo.*[19] In this connection, subsection 67(3) of the *Act* provides that, in appeals under subsection 67(1), the Tribunal ". . . may make such order, finding or declaration as the nature of the matter may require . . . ."

37. In delineating the parameters of the Tribunal's authority under section 67 of the *Act*, regard must be had to the broader statutory scheme within which that provision operates. As explained by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*:[20]

> Administrative powers are exercised by decision makers according to statutory regimes that are themselves confined. A decision maker may not exercise authority not specifically assigned to him

16. *Ibid.* at para. 25.
17. *Ibid.* at para. 12.
18. R.S.C., 1985, c. 47 (4th Supp.).
19. *Toyota Tsusho America, Inc. v. President of the Canada Border Services Agency* (27 April 2011), AP-2010-063 (CITT) at para. 8.
20. [2008] 1 S.C.R. 190.

> or her. By acting in the absence of legal authority, the decision maker transgresses the principle of the rule of law.[21]

38. In short, "the Tribunal must interpret the grant of authority correctly . . .",[22] as it cannot appropriate to itself jurisdiction that has not been conferred to it by enabling legislation.

39. In examining the statutory scheme of the *Act*, the Tribunal notes that the sequential schematic of the determination, re-determination and appeal provisions is girded by four separate privative clauses. In particular:

- as regards a determination of origin under subsection 58(1) and a deemed determination of origin under subsection 58(2), subsection 58(3) provides that "[a] determination made under this section is not subject to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by sections 59 to 61";
- as regards a re-determination of a determination of origin under subsection 59(1) or a deemed determination of origin under section 58, subsection 59(6) provides that "[a] re-determination or further re-determination made under this section is not subject to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by subsection 59(1) and sections 60 and 61";
- as regards a re-determination or a further re-determination of origin under section 60 or 61, section 62 provides that "[a] re-determination or further re-determination under section 60 or 61 is not subject to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by section 67"; and
- as regards Tribunal appeal decisions under section 67, subsection 67(3) provides that "an order, finding or declaration made under this section is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by section 68".[23]

40. The Tribunal, therefore, agrees with the CBSA's assertion that the Tribunal's authority in appeals under subsection 67(1) of the *Act* is limited to the granting of relief in respect of decisions under section 60, with the *orders, findings and declarations* that the Tribunal is empowered to make under subsection 67(3) not extending to the restraining, prohibiting, removing or setting aside of re-determinations made under subsection 59(1).[24]

41. That said, while the Tribunal cannot invalidate a re-determination under section 59 of the *Act*, it can consider the validity of the reasons proffered in support thereof insofar as they inform the rationale underpinning the decision under section 60, which, of course, is the proper subject of an appeal proceeding under subsection 67(1). Where the Tribunal considers the reasons provided for a re-determination under section 59 to be invalid, it can—within the context of its *de novo* consideration of the issue of origin under section 67—render a correct determination on the matter.

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21. *Ibid.* at para. 29.
22. *Ibid.* at para. 59.
23. Subsection 68(2) of the *Act* provides as follows: "The Federal Court of Appeal may dispose of an appeal by making such order or finding as the nature of the matter may require or by referring the matter back to the Canadian International Trade Tribunal for re-hearing."
24. Exhibit AP-2012-070-21A, tab A at para. 70, Vol. 1A.

Section 60 Decision

42. As noted earlier, section 60 of the *Act* explicitly allows a person to request a further re-determination of a re-determination of origin made under section 59:

> 60.(1) A person to whom notice is given under subsection 59(2) in respect of goods may, within ninety days after the notice is given, request a re-determination or *further re-determination of origin*, tariff classification, value for duty or marking. The request may be made only after all amounts owing as duties and interest in respect of the goods are paid or security satisfactory to the Minister is given in respect of the total amount owing.
>
> . . .
>
> (4) On receipt of a request under this section, the President shall, without delay,
>
> (*a*) re-determine or *further re-determine the origin*, tariff classification or value for duty;
>
> . . .
>
> (5) The President shall without delay give notice of a decision made under subsection (4), *including the rationale on which the decision is made*, to the person who made the request.
>
> [Emphasis added]

43. On April 16, 2012, Cargill requested such a further re-determination of the determination of origin under section 59. This resulted in the CBSA's decision of February 4, 2013, under section 60 in which it held that ". . . the decision rendered under section 59 will stand as is."[25]

44. The Tribunal notes that, in the CBSA's letter of February 10, 2010, communicating its decision under section 59, the CBSA stated that the goods in issue were "[a]lready ruled on",[26] in apparent reference to the CBSA's advance ruling on origin provided to Cargill in respect of goods essentially identical to those in issue. In short, it would indeed appear that the CBSA based its decision under section 59 that the goods in issue were not originating goods and, therefore, not entitled to preferential tariff treatment under *NAFTA*, on the advance ruling.

45. Cargill is correct in its assertion that an advance ruling on origin applies on a prospective basis to importations made after the date of the ruling. In this respect, paragraph 43.1(1)(*a*) of the *Act* provides as follows:

> 43.1(1) Any officer, or any officer within a class of officers, designated by the President for the purposes of this section shall, before *goods are imported . . . give an advance ruling with respect to*
>
> (*a*) *whether the goods qualify as originating goods and are entitled to the benefit of preferential tariff treatment under a free trade agreement*;
>
> . . .
>
> [Emphasis added]

46. Given that, by law, advance rulings only operate prospectively, and given that the advance ruling in this case was made subsequent to the importation of the goods in issue, the ruling could not constitute a valid reason for the purported re-determination of origin under section 59 in respect of those goods.

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25. *Ibid.*, tab B-15.
26. Exhibit AP-2012-070-04A, tab 4, Vol. 1.

47. It therefore follows, by necessary implication, that the CBSA's decision under subsection 60(4) of the *Act* that ". . . the decision rendered under section 59 will stand as is"[27] was itself fundamentally flawed.

De Novo Determination of Origin

48. As discussed above, appeals to the Tribunal proceed *de novo*.[28] Thus, the Tribunal is entitled to examine all the evidence put before it in order to arrive at a correct finding.

49. In the Tribunal's view, the evidence indicates that the goods in issue are neither in law nor in fact entitled to the benefit of preferential tariff treatment as originating goods under *NAFTA*. The considerations leading to this conclusion are discussed below.

Cargill's Failure to Adduce Evidence of NAFTA Origin

50. As noted earlier, Cargill neither claims nor adduced any evidence indicating that the goods in issue had in fact originated within the territory of a NAFTA country. Indeed, when asked at the hearing whether Cargill had provided any evidence to the CBSA, during the verification audit or the re-determination under section 60 that the goods in issue qualified for preferential tariff treatment, Ms. Gledhill acknowledged that none was provided.[29]

Cargill's Response to the CBSA's Verification Letters

51. As noted earlier, paragraph 42.1(1)(*a*) of the *Act* authorizes a duly designated officer of the CBSA to conduct a verification of the origin of goods for which entitlement to preferential tariff treatment under *NAFTA* is claimed.

52. In this connection, section 2 of the *NAFTA and CCFTA Verification of Origin Regulations* provides as follows:

> 2. In addition to a verification visit, an officer may conduct a verification of origin of goods in any of the following manners:
>
> (*a*) by reviewing a verification questionnaire completed by
>
> (i) the exporter or producer of the goods, or
>
> (ii) a producer or supplier of material that is used in the production of the goods;
>
> (*b*) *by reviewing a written response received from a person referred to in paragraph (a) to a verification letter*; or
>
> (*c*) by reviewing any other information received from a person referred to in paragraph (*a*).
>
> [Emphasis added]

53. By letter dated September 15, 2009, the CBSA informed Cargill that it was verifying the eligibility of the goods in issue for preferential tariff treatment under *NAFTA* for the 2008 calendar year. To assist in the review, Cargill was asked to complete an enclosed questionnaire (i.e. "Fact Sheet for Determining NAFTA Eligibility") and return same by September 30, 2009. The CBSA also provided a copy of the

27. Exhibit AP-2012-070-21A, tab 15, Vol. 1A.
28. *Toyota Tsusho America Inc. v. President of the Canada Border Services Agency* (27 April 2011), AP-2010-063 (CITT) at para. 8.
29. *Transcript of Public Hearing*, 27 March 2014, at 23-24, 28, 35-36.

certificate of origin that Cargill had provided to the importer, which declared that the goods in issue qualified as originating goods under *NAFTA*.[30]

54. With Cargill having failed to respond to the first verification letter, the CBSA, on October 22, 2009, sent a second letter in which it again requested that Cargill complete the enclosed fact sheet, with a new response deadline of November 5, 2009.

55. Cargill did not reply to the CBSA's second letter until December 22, 2009. In its response, Cargill neither claimed nor adduced any evidence that the goods in issue originated in the territory of a NAFTA country. On the contrary, it conceded that ". . . the [goods in issue are] classified under 1517.90.99.00 and [do] not qualify for NAFTA, as per Advanced Tariff Classification and NAFTA ruling TRS 235526 dated March 23, 2009 (copy attached)", adding, in this connection, that "[t]he certificate that you are reviewing is incorrect . . . ."[31]

56. In the Tribunal's view, while the CBSA's purported re-determination of origin under section 59 of the *Act* in respect of the goods in issue appears to have been based on the subsequent advance ruling, Cargill, in its response to the CBSA's second verification letter, explicitly acknowledged that the goods in issue did not qualify as originating goods under *NAFTA* and that the certificate of origin that had been issued in respect of those goods was incorrect. That it did so by explicit reference to the advance ruling, which was attached to, and formed part of its response, constituted implicit acknowledgement on its part that the goods in issue were, for origin determination purposes, of the same description as those other goods to which the subsequent advance ruling applied and that application of the *NAFTA Rules of Origin Regulations*[32] to the goods in issue would therefore inevitably yield a result as to origin that was consistent with the advance ruling.

57. The Tribunal is of the view that, in accordance with paragraph 2(*b*) of the of the *NAFTA and CCFTA Verification of Origin Regulations*, the CBSA, in rendering its decision under section 59, was fully entitled to rely on the acknowledgement of the non-originating status of the goods in issue that was contained in Cargill's December 22, 2009, reply to the CBSA's verification letter. That said acknowledgement was based upon the identicality of the goods in issue to other goods, the origin and tariff treatment of which had already been ruled upon in a subsequent advance ruling, does not, in the Tribunal's view, undermine either the acknowledgement's relevancy or the CBSA's ability to rely upon it.

Cargill's Incorrect Certificate of Origin

58. A prerequisite to imported goods being accorded preferential tariff treatment under *NAFTA* is proof of origin. In this respect, subsection 35.1(1) of the *Act* provides that ". . . proof of origin, in the prescribed form . . . shall be furnished in respect of all goods that are imported" by the importer or owner thereof.

59. More specifically, subsection 6(1) of the *Proof of Origin of Imported Goods Regulations*[33] provides as follows:: ". . . if the benefit of preferential tariff treatment under NAFTA . . . is claimed for goods, the importer or owner of the goods shall . . . furnish to an officer, as proof of origin for the purposes of section 35.1 of the [Customs] Act, a Certificate of Origin for the goods . . . ."

30. Exhibit AP-2012-070-21A, tab B-7, Vol. 1A.
31. *Ibid.*, tab B-1.
32. S.O.R./94-14.
33. S.O.R./98-52.

60. The April 29, 2008, certificate of origin for the goods in issue, as certified by an authorized official of Cargill, indicated the United States as the country of origin.[34]

61. Pursuant to section 40 of the *Act*, importers, or every person who ". . . causes goods to be imported for sale . . ." are required to keep records in respect of those goods, while both sections 40 and 43 require these documents be made available to the CBSA upon request.

62. In this respect, Cargill's certificate of origin for the goods in issue included the following undertakings:

> I AGREE TO MAINTAIN, AND PRESENT UPON REQUEST, DOCUMENTATION NECESSARY TO SUPPORT THIS CERTIFICATE, AND TO INFORM, IN WRITING, ALL PERSONS TO WHOM THE CERTIFICATE WAS GIVEN OF ANY CHANGES THAT COULD AFFECT THE ACCURACY OR VALIDITY OF THIS CERTIFICATE.[35]

63. In argument before the Tribunal, counsel for Cargill acknowledged the existence of these undertakings. Cargill also recognized that the CBSA could have revoked preferential tariff treatment under *NAFTA* simply because of a failure to adhere to these obligations.[36]

64. In this regard, Ms. Gledhill testified that Cargill did not provide any documentation or other evidence to support the contention that the goods in issue originated in the United States, nor did she review or have knowledge of the import data for the goods in issue.[37] In the Tribunal's view, this absence of knowledge does not absolve Cargill of its obligations to immediately rectify errors as to origin, as the CBSA is entitled to assume that a corporate officer attesting to the NAFTA origin of goods has duly informed herself/himself and is doing so on the basis of actual knowledge.

65. Having reviewed the record as part of its *de novo* consideration of the matter, the Tribunal finds that there is no evidence to support the contention that the goods in issue are originating goods under *NAFTA*. Indeed, Cargill (a) conceded that it had neither claimed nor adduced any evidence that the goods in issue actually originated in the territory of a NAFTA country, (b) acknowledged, in its December 22, 2009, letter to the CBSA that the goods in issue, which were the same as those to which the subsequent advance ruling applies, did not qualify for preferential tariff treatment under *NAFTA* and (c) admitted that the certificate of origin issued in respect of the goods was incorrect, although the error was never notified.

CONCLUSION

66. On the basis of the foregoing, the Tribunal finds that the goods in issue are not originating goods under *NAFTA* and, therefore, are not eligible for the benefit of preferential tariff treatment under *NAFTA*.

67. The CBSA's decision under subsection 60(4) of the *Act* is set aside and replaced with the Tribunal's finding under subsection 67(3) that the goods in issue are not originating goods under *NAFTA* and, therefore, do not qualify for preferential tariff treatment under *NAFTA*.

34. Exhibit AP-2012-070-21A, tab B-6, Vol. 1A.
35. *Ibid.*
36. *Transcript of Public Hearing*, 27 March 2014, at 98-99.
37. *Ibid.* at 23-24, 28, 32, 35-36.

DECISION

68. The appeal is dismissed.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member