Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2018-045

J. McElligott

v.

President of the Canada Border Services Agency

Decision and reasons issued
Monday, July 8, 2019

Canada

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IN THE MATTER OF an appeal heard on May 16, 2019, 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 Agency, dated August 20, 2018, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

J. McELLIGOTT **Appellant**

AND

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

DECISION

The appeal is granted.

Randolph W. Heggart
Randolph W. Heggart
Presiding Member

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	May 16, 2019
Tribunal Panel:	Randolph W. Heggart, Presiding Member
Support Staff:	Laura Colella, Counsel Eric Wildhaber, Counsel

PARTICIPANTS:

Appellant

J. McElligott

Respondent	**Counsel/Representative**
President of the Canada Border Services Agency	Fraser Harland

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STATEMENT OF REASONS

BACKGROUND

1. This matter concerns an appeal filed by Mr. McElligott under subsection 67(1) of the *Customs Act*[1] from a decision made by the President of the Canada Border Services Agency (CBSA) on August 20, 2018, pursuant to subsection 60(4) of the *Act*.

2. The issue under appeal is whether a sailboat imported by Mr. McElligott (the good in issue) can benefit from the United States (U.S.) Tariff treatment, pursuant to the *NAFTA Rules of Origin for Casual Goods Regulations*.[2] As such, the Tribunal had to determine whether or not the good in issue is of U.S. origin. For the reasons that follow the Tribunal finds that it is, and therefore that it can benefit from the U.S. Tariff.

PROCEDURAL HISTORY

3. Mr. McElligott purchased the good in issue in the United States for $68,500.00 USD on May 8, 2017.[3] He sailed it into Canada on May 30, 2017, where CBSA officers determined that it was subject to the Most-Favoured-Nation Tariff treatment and a duty rate of 9.5%.[4] Mr. McElligott paid customs duties and GST.

4. On August 15, 2017, Mr. McElligott filed a request for a refund with the CBSA alleging that despite the origin of its hull, the good in issue was manufactured in the United States. He argued then, as he does before the Tribunal, that all of the components of the good in issue (spars, rigging, sails and hull) were assembled in the United States. Mr. McElligott requested a refund of the duty and GST paid. Alternatively, he requested that the CBSA apply duty on the sailboat pro-rated to the current value of the hull which originated in Taiwan and that the remaining components of the sailboat be assessed free of duty. Mr. McElligott further submitted that because duty would have been paid in the United States at the time of original import of the hull, imposing duty at the time of import into Canada would constitute a double duty.

5. On September 1, 2017, the CBSA sent Mr. McElligott correspondence denying the request for a refund.

6. On November 20,[5] 2017, Mr. McElligott sent a request for further re-determination to the CBSA's Recourse Directorate on its decision to deny his request for a refund of duty and GST.

7. On August 20, 2018, the CBSA issued a decision pursuant to subsection 60(4) of the *Act* confirming that the good in issue could not benefit from the preferential tariff treatment under NAFTA. The CBSA found that the Hull Identification Number (HIN) was not issued by a boat builder in the United States and that there was no documentary evidence provided in support of the allegation with respect to the source of the other equipment, such as sails and rigging. As such, the CBSA found that the good in issue did not meet the requirements of the *Regulations*.

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1. R.S.C. 1985 (2nd Supp.), c. 1 [*Act*].
2. S.O.R./93-593 [*Regulations*].
3. Mr. McElligott wrote "2018" in his brief, but evidence suggests that this is a typo and he meant 2017.
4. Under tariff item No. 8903.91.00.
5. Though the parties refer to the letter as the November 17, 2017, letter, it is dated November 20.

DESCRIPTION OF THE GOOD IN ISSUE

8. The good in issue is a 12.8 metre sailboat. The hull bears a HIN, which indicates that it originates from Taiwan. The CBSA further describes it as follows:

> It is equipped with spars, sails, running and standing rigging, various electrical and electrical devices, steel storage cradle, and other various fixed and moveable items such a safety equipment and boat hooks.[6]

9. At the time of importation, the good in issue was assessed under tariff item No. 8903.91.00 as Other: -Yacht and other vessels for pleasure or sports; rowing boats and canoes. The tariff classification of the good in issue is not being disputed in these proceedings.

LEGAL FRAMEWORK

10. The parties agreed that the good in issue is a "casual good". As such, it is subject to the *Regulations*, which state the following:

> 3. Casual goods that are acquired in the United States
>
> (a) are deemed to originate in the United States and are entitled to the benefit of the United States Tariff if
>
> (i) the marking of the goods is in accordance with the marking laws of the United States and indicates that the goods are the product of the United States or Canada, or
>
> (ii) the goods do not bear a mark and there is no evidence to indicate that the goods are not the product of the United States or Canada;

POSITIONS OF THE PARTIES

11. In brief, Mr. McElligott submits that the good in issue is of U.S. origin because it was assembled in the United States. He argues that the origin of the hull is not determinative of the origin of the good in issue because the hull is but one of its parts. As such, he submits that the CBSA erred in considering the HIN to be determinative of the origin of the good in issue. Mr. McElligott described, at length, how the parts that constitute the good in issue had come together in the United States.

12. The CBSA's position is that Mr. McElligott failed to provide evidence that the good in issue originates from the United States. The CBSA alleges that the evidence demonstrate that the good in issue was manufactured in Taiwan. It argues that the good in issue does not qualify as being of U.S. origin.

TRIBUNAL'S ANALYSIS

13. The issue in this appeal is whether the good in issue is of U.S. origin or not.

14. The parties agree that (i) the good in issue was purchased by Mr. McElligott in the United States just prior to importation into Canada; (ii) the hull was imported from Taiwan into North America (seemingly into Canada) in or around 1986 (and then at some point sold and exported to the United States);[7] (iii) the HIN indicates that the hull was manufactured in Taiwan; (iv) spars, sails, rigging, and various other

6. Respondent's brief, p. 4, para. 2.
7. It appears that the hull may have originally been imported into Vancouver, BC, in Canada before being delivered to its owners in the United States. Exhibit 05A, Vol. 1, p. 19.

components were added to the hull in the United States; and that (v) the good in issue does not itself bear a mark indicative of its origin; to be sure, various components that make up the good in issue, including the hull, have origin markings, but the good in issue does not have an overall mark of its own.

15. According to paragraph 3(a) of the *Regulations*, when a casual good, such as the good in issue, is acquired in the United States it is *deemed* to be of U.S. origin in certain circumstances.

16. The first circumstance is set out in subparagraph 3(a)(i) of the *Regulations*: that the marking of the goods be in accordance with the marking laws of the United States and indicates that the goods are the product of the United States or Canada. That circumstance is not applicable to the facts of this case because the good in issue does not itself bear a mark indicative of its origin (see (v) in paragraph 14 above). As such, the Tribunal finds that subparagraph 3(a)(i) of the *Regulations* does not apply.

17. The second circumstance is set out in subparagraph 3(a)(ii) of the *Regulations* and is determinative of the Tribunal's finding that the good in issue is of U.S. origin. This circumstance is applicable if two conditions are met: (1) that the goods not bear a mark and (2) there be no evidence to indicate that the goods are not the product of the United States or Canada. For the reasons that follow, the Tribunal finds that both conditions are met.

18. Concerning the first condition, it important to stress, again, that the good in issue does not bear a mark (only various components of the good in issue do, but not the good in issue itself). Because of this, the Tribunal finds that the first condition of subparagraph 3(a)(ii) is met.

19. The second condition of subparagraph 3(a)(ii) requires there to be "no evidence to indicate that the goods are not the product of the United States". This condition sets out a double negative. The CBSA's position is that the HIN is evidence that the good is not the product of the United States. But the Tribunal does not find that argument to be helpful. The Tribunal recognizes that the hull was made in Taiwan, but, as discussed above, a hull is only part of a sailboat, and therefore the good in issue is more than its hull. This is recognized in the following note to Chapter 89, which reads as follows:

> A hull, an unfinished or incomplete vessel, assembled, unassembled or disassembled, or a complete vessel unassembled or disassembled, is to be classified in heading 89.06 if it does not have the essential character of a vessel of a particular kind.

20. The good in issue was classified under heading No. 89.03, not heading No. 89.06, thereby recognizing the distinction made in the nomenclature between a hull and a sailboat. In classifying the good in issue under heading No. 89.03, the CBSA recognized, as well, that the good in issue is a sailboat, and not just a hull.

21. It follows, in the Tribunal's view, that the origin of the good in issue cannot be reduced to the origin of its hull component. This is because even though the hull has a HIN, that mark which is found on a component of the good in issue cannot be assimilated to a mark for the good in issue itself.

22. Having established the foregoing, the Tribunal returns to the discussion of the second condition of subparagraph 3(a)(ii), which requires that there be no evidence to indicate that the goods are not the product of the United States or Canada. The Tribunal finds that there is in fact no such evidence before it in this matter.

23. Indeed, the evidence before the Tribunal shows that a hull (not a sailboat) was imported into North America in 1986.[8] The evidence also shows that the hull and other components were manufactured or assembled into the good in issue in the United States: the original agreement of purchase, which indicates that only the hull, less spars and rigging was being procured; the letter from Mr. Peterson; and the information relating to the commissioning of the vessel in the United States. Fundamentally, the good in issue is an assembly of parts that came into being in the United States; it was manufactured or assembled there.

24. As such, because there is "no evidence to indicate that the goods are not the product of the United States", the second condition of subparagraph 3(a)(ii) of the *Regulations* is also met. In fact, the evidence indicates that the good in issue was indeed manufactured or assembled in the United States. There is also no evidence on file to show that the good in issue came into being anywhere else, irrespective of the provenance of some of its components.

25. Accordingly, pursuant to paragraph 3(a) of the *Regulations*, the good in issue is deemed to be of U.S. origin.

DECISION

26. The appeal is granted.

Randolph W. Heggart
Randolph W. Heggart
Presiding Member

8. The Tribunal gives no weight to the statement contained in an email from Ms. Cheng to the effect that her company does not ship partially finished yachts. The Tribunal had no way to test the relevance of this statement nor its applicability to the goods in issue.