

Submission 6

22 July 2003

The Secretary,
House of Representatives Standing Committee on Legal and
Constitutional Affairs,
Parliament House,
Canberra ACT 2600

Inquiry Into Averment Provisions in Customs Legislation

Submission concerning the approach taken by the Australian Customs
Service in determining the Customs Value of certain goods imported
by Mr. Peter Tomson

Submission from Noel Clifford Balzary

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BY: *Gillian Gould*

Background

I took voluntary retirement from the Australian Customs Service in 1989, following completion of 37 years service. The majority of my service was related solely to the commercial operations of valuation, tariff preference, and the dumping and subsidies areas of Customs. This was both inside and outside of Australia. I also spent some years with the administration of the then quota control system applicable to imports in respect to apparel and footwear. I was a Customs Representative in New York from 1967 to 1971, and became the Senior Representative in 1970. I also relieved as Senior Customs Representative in Tokyo during 1986. I was responsible during these postings for the undertaking and oversight of many overseas customs investigations. In addition, I was responsible for the initiation of inquiries into many matters concerning commercial transactions when located in the Central Office of the Customs Service.

On retirement from the Customs Service I commenced work as a consultant specializing essentially in all matters concerning dumping and subsidy. I am still employed on a part time basis with the majority of my work being gained on a sub contract basis.

In 1995 I was asked by Mr. Ian Rodda of Rodda Castle & Company to appear as a witness the Downing Street Local Court Sydney concerning imports of apparel made by Mr. Peter Tomson. Mr. Rodda had been a friend and colleague of mine for some years and I agreed.

My evidence related basically to the low cost and price of apparel available in Asia [Thailand] and I believe centered around end of season, close outs, export over runs and marginally costed goods.

Since that time I have noticed some media publicity concerning the failure of the Tomson business allegedly because of actions taken by the Customs Service concerning his import supply. Following discussion with Mr. Rodda I learnt of this inquiry and was given access to documentation in the possession of Mr. Rodda for perusal.

I took particular notice of 5 specific shipments that were arranged and imported during the years 1987 and 1988 and were subsequently detained, seized and eventually valued by the Customs Service in 1992.

I have examined the available documents relative to the shipments, read the Customs Service records of interview conducted with the exporters and forwarding agents in the respective overseas countries, and focused on the reasoning and methods used by the Customs Service to finally determine values for the goods in 1992.

The importations I refer to are those the subject of a valuation determination made on 4 September 1992. [Attachment 1] The importations are:

- Bundle 1. Winelux Enterprise Co Ltd Taipei, Taiwan
Invoice 5 August 1987
- Bundle 2. Steady Export Company Bangkok, Thailand
Invoice 10 July 1987
- Bundle 3. New Calcutta Store [1969] Ltd Bangkok, Thailand
Invoice 22 September 1987
- Bundle 4. Gold Vincent & Company Hong Kong
Invoice 25 July 1987
- Bundle 5. Cameron Trading Company Hong Kong
Invoice 25 March 1988

The documents in each bundle are identified in the attached outline of the transaction and a flow chart of each transaction has been prepared for ease of understanding how the goods were ordered, invoiced and shipped to Australia.

My comments follow:

Bundle 1. In respect to this shipment, the Customs Service placed considerable emphasis on the role of all parties to the transaction and who prepared the invoice and export documentation. Reference is made to a "false shipper". Prior to this decision regarding the false shipper, a report of inquiries made by the Tokyo Office of the Customs Service shows that the forwarder, Unitrans Consolidated Inc prepared the invoices on instructions and information given by Tomson. Winelux, the exporting company, and Unitrans Consolidated, the forwarder, appear to have common ownership. Someone has to prepare the invoice and export documentation and ship the goods. I would conclude there was no false shipper.

The invoiced value of AUD 2592.80 was not accepted, and this followed a string of questions put by the Customs Service to Tomson under its right, using Customs Act Section 38B. The questions were answered by Mr Tomson's then solicitors, Pullinger Berecny and Co.

With respect, it would appear that "no further correspondence" was entered into by the Customs Service with Tomson or his representatives and although the goods, following examination, were found to be as entered and evidence of the invoiced amount paid was produced, eventual seizure occurred with culmination of a determined Customs value of AUD 8578.52, an increase of 230 odd percent.

In the attachment to the valuation decision, the Customs investigating officer points out that the documents produced are considered to be unreliable as they were prepared by a false shipper. Further it is pointed out that the Customs Service, on its own admission, does not have any admissible evidence from overseas in relation to this matter.

I see that nothing put by Tomson or his then representatives was accepted and a valuation opinion was sought by Mr Prelea, another importer of apparel from Asia. This opinion resulted in the determined higher value.

Unless there are some other considerations of the Customs Service that are unknown or not apparent to me, I cannot on the evidence to see or conclude that detention and seizure should have taken place.

Bundle 2. I cannot understand how these goods could have been detained and seized, let alone so valued. Evidence of the payment of the invoiced amount was given to the Federal Court, however the Customs investigating officer held the view there was documentary evidence of 2 payments for the goods. The sum of these supposed 2 payments was totaled in finally determining a value.

There was only one payment, which is that detailed on the invoice presented to the Australian Customs. The goods were from Thailand

and its internal exchange regulations and export procedures required additional documentation. The documents relating to the exchange control procedures were obtained and misconstrued as representing an additional payment. It is noted that the Customs Service conducted inquiries within Thailand in the company of a Thai Customs Official [see bundle 3.] The exchange control documentation is understood to have been obtained from the Thai Customs. This detail has been misconstrued as containing evidence of an additional payment to the Thai Customs. It is not known if this matter was clarified by the Customs Service during the course of its inquiries in Thailand.

Bundle 3. The documents relating to the exchange control procedures were obtained and misconstrued as representing an additional payment. It is noted that the Customs Service conducted inquiries within Thailand in the company of a Thai Customs official. [see bundle 3.] The exchange control documentation is understood to have been obtained from the Thai Customs. This detail has been misconstrued as containing evidence of an additional payment to the Thai Customs. It is not known if this matter was clarified by the Customs Service during the course of its inquiries in Thailand.

Bundle 4. Relates to a shipment from Gold Vincent & Co, Hong Kong. On importation the goods were detained and a string of questions asked of Tomson in accordance with the rights available to the Customs Service under Customs Act Section 38B. Replies to the questions asked in the notice were answered by the then Tomson solicitors, Pullinger Berecny and Co. Examination of the goods showed they were as per invoice.

Again, as with Bundle 2 and 3, the export documentation prepared for the Hong Kong authorities was found to show an amount different to that of the invoiced amount shown in the documents presented in Australia. The export declaration prepared by Gold Vincent was a total of 3 separate export licence applications, 2 of which had been prepared some time in advance of the actual purchase of the goods shipped. The licence applications were for a different quantity [20 cartons instead of 18 cartons] and the contents shipped cannot be reconciled to the export licence applications. The invoiced prices differ with the FOB values on the export licence applications being much higher [in fact 454% higher].

It is understood that a level of minimum FOB values were/are set by the Hong Kong authorities that are to be declared on export documentation. Such values would be used in determining internal Hong Kong taxes upon export. The record of interview of the Customs Service is inconclusive, especially the follow up to questions put at

pages 11 and 12 [underlined and in relation to export values declared to the Hong Kong authorities].

The inquiries in Hong Kong were conducted in the company of a Hong Kong Customs official, but there is no indication of an explanation being sought, if any, from the Hong Kong authorities.

It would appear the valuation decision taken in respect to the seized goods was based on unsubstantiated information.

Bundle 5. Again as with bundle 4, the export documentation prepared for the Hong Kong authorities was found to show a different amount to that of the invoiced amount that was presented in Australia. Reasons understood to account for the difference have been explained.

The export declaration prepared by Cameron Trading was a total of 2 separate export licence applications, which had been prepared some time in advance of the actual purchase of the goods shipped. The licence applications were for a different quantity [40 cartons instead of 37 cartons] and the contents shipped cannot be properly reconciled to the export licence applications. The difference in the reconciliation is included in bundle 5. The values differ with the values on the export licence applications being higher [in fact 21.67% higher].

There is no evidence of the apparent difference being taken into account. The Customs investigating officer pointed out "*because Vilaysack [Tomson] was the one who supplied the information that was shown in the various documents I believe it reasonable to consider the lower value invoices produced to Customs to be unreliable*"

I must comment that this seems to imply that whatever was said by Tomson was unreliable – Tomson was the importer – who else can provide the information or answer questions. It was because of this attitude expressed that Part XV of the Customs Act was repealed many years ago.

Summary

In summary I believe the valuation decisions were improperly based and they, along with other punitive and delaying actions, may have led to the demise of Tomson's business in Australia. I am not able to comment further in this regard. When the Customs Service has reasons to doubt the veracity of an importation it most certainly has the authority to have questions answered using its powers under Customs Act Section 38B. If it is not satisfied with the replies, or has

further reason to doubt, it can adopt other approaches available to it under the Customs Act. Securities can be taken from the importer as a form of liability, and if not satisfied, formal demands for the duty can be made. Alternatively if it is suspected that the value is incorrect then formal demands can be made and the importer can be permitted to pay the duty under protest. This then leaves the matter open and the importer can continue to trade, even although at penalty because of the additional duty paid but in dispute.

It would appear these courses of action were not made available to the importer, let alone considered by the Customs Service.



N C Balzary