

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20160411**

**Docket: A-351-15**

**Citation: 2016 FCA 110**

**CORAM: STRATAS J.A.  
WEBB J.A.  
GLEASON J.A.**

**BETWEEN:**

**CONTAINERWEST MANUFACTURING LTD.**

**Appellant**

**and**

**PRESIDENT OF THE CANADA BORDER  
SERVICES AGENCY**

**Respondent**

Heard at Toronto, Ontario, on April 5, 2016.

Judgment delivered at Ottawa, Ontario, on April 11, 2016.

**REASONS FOR JUDGMENT BY:**

**WEBB J.A.**

**CONCURRED IN BY:**

**STRATAS J.A.  
GLEASON J.A.**

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**REASONS FOR JUDGMENT**

**WEBB J.A.**

[1] This is an appeal from the decision of the Canadian International Trade Tribunal (CITT) dated July 27, 2015 (AP-2014-025). The CITT dismissed the appeal of ContainerWest Manufacturing Ltd. (ContainerWest) from the decision of Canada Border Services Agency (CBSA). The CBSA had determined that the containers purchased by ContainerWest did not qualify for General Preferential Tariff (GPT) treatment under the *Customs Tariff*, S.C. 1997, c.36 and the *General Preferential Tariff and Least Developed Country Rules of Origin Regulations*,

SOR/2013-165 (*GPT Regulations*) because they were not shipped from China to Canada on a through bill of lading.

[2] For the reasons that follow, I would dismiss this appeal.

I. Background

[3] ContainerWest purchased 1,678 containers of various sizes (from 6 to 40 feet) from Rich Glory (Hong Kong) Limited. The containers were made in China. In order to economically ship the containers to ContainerWest's facilities in Canada, some of the containers were shipped with goods of third parties inside them and others were temporarily welded together with smaller containers nested inside. When the containers were shipped from China, ContainerWest did not obtain through bills of lading or any other shipping documents for the containers.

[4] ContainerWest claimed that the containers qualified for GPT treatment. However, the CBSA, upon completing compliance verification, determined that the containers did not qualify for GPT treatment because the containers were not shipped from China to Canada on a through bill of lading.

II. Relevant Provisions of the *GPT Regulations* and the *Customs Tariff*

[5] Subsection 4(1) of the *GPT Regulations* provided, at the relevant time, that:

**4** (1) Goods are entitled to the General Preferential Tariff only if the goods are shipped directly to Canada, with or without transshipment, from a beneficiary country.

**4** (1) Les marchandises ne bénéficient du tarif de préférence général que si elles sont expédiées directement au Canada, avec ou sans transbordement, à partir d'un pays bénéficiaire.

Section 17 of the *Customs Tariff* provides that:

**17** (1) For the purposes of this Act, goods are shipped directly to Canada from another country when the goods are conveyed to Canada from that other country on a through bill of lading to a consignee in Canada.

(2) The Governor in Council may, on the recommendation of the Minister, make regulations deeming goods that were not conveyed to Canada from another country on a through bill of lading to a consignee in Canada to have been shipped directly to Canada from that other country, subject to such conditions as may be set out in the regulations.

**17** (1) Pour l'application de la présente loi, les marchandises sont expédiées directement au Canada à partir d'un autre pays lorsque leur transport s'effectue sous le couvert d'un connaissement direct dont le destinataire est au Canada.

(2) Sur recommandation du ministre, le gouverneur en conseil peut, par règlement, assimiler à des marchandises expédiées directement au Canada des marchandises dont le transport ne s'effectue pas sous le couvert d'un connaissement direct dont le destinataire est au Canada, et préciser les conditions de l'assimilation.

### III. Decision of the CITT

[6] The CITT reviewed the above provisions and determined that, as a result of the provisions of subsection 17(1) of the *Customs Tariff*, GPT treatment would only be available if the containers would have been shipped from China to Canada on a through bill of lading. The CITT noted in paragraph 44 of its reasons that:

[t]he mere fact that parties to an international sales transaction may have different options and preferences in organizing their affairs does not prevent Parliament from choosing one of those options—conveyance on a through bill of lading—as a condition for determining the tariff treatment applicable to imported goods.

[7] The CITT also indicated in paragraph 65 of its reasons, that “ContainerWest does not contest that the goods in issue were not conveyed from China on a through bill of lading”.

[8] As a result, the CITT did not review the documentation that ContainerWest had obtained after the containers had been shipped and dismissed the appeal of ContainerWest.

#### IV. Issue

[9] The issue in this appeal, as stated by ContainerWest in its Memorandum of Fact and Law, “is whether the [CITT] erred by reading-in to subsection 4(1) of the GPT Regulations a strict requirement for a through bill of lading to obtain GPT treatment”.

#### V. Standard of Review

[10] As a result of the provisions of section 68 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.), appeals to this Court are restricted to questions of law. Therefore none of the findings of fact made by the CITT are subject to appeal.

[11] ContainerWest submitted that the standard of review should be correctness because the issue involves a question of law and the CITT is a court of record.

[12] However, this Court has held that the standard of review from decisions of the CITT, including decisions related to the *Customs Tariff*, is reasonableness (*Skechers USA Canada Inc. v. Canada (Border Services Agency)*, 2015 FCA 58, 470 N.R. 155, at paragraph 34).

ContainerWest did not submit that this authority is “manifestly wrong” such that it should no longer be followed: *Miller v. Canada (Attorney General)*, 2002 FCA 370, 220 DLR (4<sup>th</sup>) 149. As a result, *Skechers* binds us and, therefore, the standard of review is reasonableness.

VI. Analysis

[13] ContainerWest's main argument in this appeal is that section 17 of the *Customs Tariff* should not be interpreted as imposing a requirement for a through bill of lading in order for the GPT treatment to be available. ContainerWest submits that imposing a requirement for this particular shipping document would result in a conflict with the *GPT Regulations* and result in unintended consequences.

[14] ContainerWest noted that subsection 4(1) of the *GPT Regulations* provides that GPT treatment will apply if goods are shipped "with or without transshipment". In ContainerWest's Memorandum of Fact and Law it stated that "[t]ransshipment is the transfer of goods from one mode of transportation to another". This definition is consistent with the CBSA Memorandum D11-4-4, *Rules of Origin Respecting the General Preferential Tariff and Least Developed Country Tariff* (9 March 2015), at paragraph 70 and was not contested by the Respondent.

[15] ContainerWest submitted that a through bill of lading was only applicable if more than one carrier is used and therefore requiring a through bill of lading would deny GPT treatment to goods that are shipped directly from a qualifying country to Canada if only one carrier is used to transport the goods. ContainerWest alleges that such a requirement would be inconsistent with the *GPT Regulations* that provide that GPT treatment will be available if goods are shipped without transshipment.

[16] This argument, however, is based on ContainerWest's misunderstanding, as reflected in paragraph 21 of its memorandum of fact and law, that the CITT had accepted its proposed definition of a "through bill of lading".

[17] In paragraph 42 of its reasons, the CITT set out the definitions of a through bill of lading, as proposed by ContainerWest:

42. In addition [sic], contrary to what was argued by ContainerWest, the reference to a through bill of lading does not in itself show that subsection 17(1) of the *Customs Tariff* creates a presumption or an example of direct shipment only, as opposed to a definition or general requirement. ContainerWest argued that a through bill of lading is a specific shipping document that is only relevant in particular circumstances, such as where more than one carrier or mode of transportation is used. It put forward the following two dictionary definitions, from *Black's Law Dictionary*, 7th ed., and the *Dictionary of International Trade*, 6th ed., respectively:

A bill of lading by which a carrier transports goods to a designated destination, even though the carrier will have to use a connecting carrier for part of the passage.

A single bill of lading covering receipt of the cargo at the point of origin for delivery to the ultimate consignee, using two or more modes of transportation.

(footnote references omitted)

[18] Although the CITT referred to the two definitions as proposed by ContainerWest, it did not specifically adopt these definitions in any part of its reasons. It is, however, implicit in paragraph 44 of its reasons that it did not necessarily accept that a through bill of lading could not be obtained if there was only one carrier:

44. ... Moreover, ContainerWest submitted no evidence of commercial practice that could show that an importer, particularly one cognizant of the requirements of the *Customs Tariff*, could not obtain a through bill of lading in various factual situations, including those where there is no transshipment or where a single carrier or mode of transportation is used....

[19] I would also note the wording in the *Haiti Deemed Direct Shipment (General Preferential Tariff and Least Developed Country Tariff) Regulations* SOR/2010-58. This Regulation was adopted under subsection 17(2) of the *Customs Tariff*, which would extend the GPT treatment to goods that are not shipped from Haiti to Canada on a through bill of lading. This Regulation provides that:

- |   |  |
|---|--|
| <p><b>1</b> Goods that are produced in Haiti are deemed, for the purposes of their entitlement to the General Preferential Tariff or the Least Developed Country Tariff, to have been shipped directly to Canada from Haiti on condition that</p> | <p><b>1</b> Aux fins d'établissement de leur admissibilité au tarif de préférence général ou au tarif des pays les moins développés, les marchandises produites en Haïti sont réputées être des marchandises expédiées directement d'Haïti au Canada si les conditions suivantes sont remplies :</p> |
| <p>(a) the goods are imported into Canada and accounted for in accordance with section 32 of the <i>Customs Act</i> after January 12, 2010;</p>   | <p>a) elles sont importées au Canada et font l'objet d'une déclaration conformément à l'article 32 de la <i>Loi sur les douanes</i> après le 12 janvier 2010;</p>  |
| <p>(b) the goods have been transhipped through a port in the Dominican Republic and <u>conveyed from that port on a through bill of lading to a consignee in a specified port in Canada</u>; and</p>  | <p>b) elles ont été transbordées dans un port de la République dominicaine et <u>transportées de ce port, sous le couvert d'un connaissance direct, vers un destinataire dans un port donné au Canada</u>;</p>   |
| <p>(c) the importer submits to the Minister of Public Safety and Emergency Preparedness any documentation requested by that Minister relating to the shipment of the goods.</p>   | <p>c) l'importateur remet sur demande au ministre de la Sécurité publique et de la Protection civile tout document relatif à l'expédition des marchandises.</p>  |

(emphasis added)

[20] It would appear that this Regulation could be interpreted as implying that a "through bill of lading" could be used if there is only one carrier or mode of transport. This provision refers to



a “through bill of lading” in relation to the conveyance of the goods from a port in the Dominican Republic to a port in Canada, which could be completed by one ship, since the Dominican Republic is located in the Caribbean.

[21] The expression “through bill of lading” is also used in the same way in the *Mexico Deemed Direct Shipment (General Preferential Tariff) Regulations*, SOR/98-37.

[22] In any event, the CITT found, in paragraph 10 of its reasons, that “ContainerWest did not obtain through bills of lading, or any other shipping documents, for the goods in issue at the time of their transport from China to Canada.” It was, therefore, not necessary for the CITT to define “through bill of lading”. There simply were no shipping documents. Since, as noted above, appeals to this Court are restricted to only questions of law, this finding of fact is not subject to review in this appeal.

[23] With respect to the determination by the CITT that a “through bill of lading” is required in order for goods to benefit from the GPT treatment, the CITT completed its analysis based on the principles of statutory interpretation as set out by the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 154 D.L.R. (4<sup>th</sup>) 193. I am not persuaded that the CITT committed any error in conducting its analysis and in reaching its conclusion.

[24] As a result, I would dismiss the appeal with costs.

"Wyman W. Webb"

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J.A.

"I agree.

David Stratas J.A."

"I agree.

Mary J.L. Gleason J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-351-15

**(APPEAL FROM A DECISION AND REASONS OF THE CANADIAN  
INTERNATIONAL TRADE TRIBUNAL DATED JULY 27, 2015, APPEAL NUMBER  
AP-2014-025)**

**STYLE OF CAUSE:** CONTAINERWEST MANUFACTURING  
LTD. v. PRESIDENT OF THE CANADA  
BORDER SERVICES AGENCY

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 5, 2016

**REASONS FOR JUDGMENT BY:** WEBB J.A.

**CONCURRED IN BY:** STRATAS, GLEASON J.J.A.

**DATED:** APRIL 11, 2016

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