Federal Court Cour fédérale

Date: 20220405

Docket: T-259-21

Citation: 2022 FC 472

Ottawa, Ontario, April 5, 2022

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

HONORABLE DAVID KILGOUR
MARIA REISDORF
MAYA MITALIPOVA
CANADIANS IN SUPPORT OF REFUGEES IN DIRE NEED (CSRDN)

Applicants

and

THE ATTORNEY GENERAL OF CANADA
CANADA (BORDER SERVICES AGENCY)

Respondents

and

UYGHUR RIGHTS ADVOCACY PROJECT

Intervener

JUDGMENT AND REASONS

I. Overview

[1] The Applicants and the Intervener ask the court to find that the Canada Border Services Agency [CBSA] has the authority under the *Customs Tariff*, SC 1997 c. 36 [*Tariff*] to implement a presumptive determination with respect to all goods imported from the Xinjiang region of China. They claim all such goods have an increased likelihood of being produced using forced labour, and thus should be presumptively prohibited from import into Canada, unless the importers provide clear and convincing evidence to the contrary. The subject of this application is an email response to the Applicants from a CBSA official, stating that the CBSA does not have the authority to implement such a presumption.

[2] The Respondent raises two preliminary issues: first, that the email at issue is not a matter subject to judicial review, as it does not affect the rights or obligations of the Applicants; second, that the Applicants do not have proper standing to bring this application. In any event, the Respondents contend that the position conveyed by the CBSA officer is reasonable and in conformity with the applicable legislation and with Canada’s international obligations.

II. Background and Impugned Decision

[3] On November 30, 2018, Canada, Mexico and the United States (U.S.) signed the *Canada-United States-Mexico Agreement* [CUSMA]. Pursuant to Article 23.6 of CUSMA, all signatories are obliged to prohibit the importation of goods produced wholly or in part by forced labour. On July 1, 2020, amendments to the *Tariff* came into force, implementing this prohibition under *Tariff* Item 9897.00.00.

[4] The Applicants are a group of three individuals and an organization who are united in their concern about Uyghur forced labour in Xinjiang. On November 24, 2020, the Applicants wrote to the Program and Policy Management Division of the CBSA. They requested that the CBSA institute a presumption that would generally prohibit the import of goods from Xinjiang, China, on the basis that they have been mined, manufactured or produced wholly or in part by forced labour, absent clear and convincing evidence to the contrary [the Presumption]. This correspondence cited the *Uyghur Forced Labour Prevention Act*, HR 6210, 116th Cong, 2020, passed by the U.S. House of Representatives, as providing the incentive for the request.

[5] On January 13, 2021, the Applicants received a reply from the Acting Manager Other Government Department (OGD) Programs, at CBSA. The Programs Manager thanked the Applicants for their inquiry and letter, but stated that the CBSA does not have the authority to prohibit or regulate goods for production by forced labour solely based on originating from specific region or country. The establishment of this type of legislation, according to the Programs Manager, falls under the purview of Global Affairs Canada. The Programs Manager goes on to summarily describe the process used by CBSA officers to identify goods that have been produced by forced labour and points to the fact that in doing so, CBSA works closely with Employment and Social Development Canada who is the lead department for labour-related programs. The CBSA’s research and analysis essentially focuses on entities (producers or importers) rather than on region/countries, and the prohibition is applied on a case by case basis.

[6] On February 12, 2021, the Applicants submitted a notice of application for judicial review of the Programs Manager’s email, on the grounds that he erred in law when stating that

the CBSA does not have the authority to apply the Presumption. The Applicants' record contains a number of government documents, academic articles and reports detailing the widespread use of forced labour in Xinjiang. They place the responsibility for this human rights abusing behaviour at the feet of the Chinese state and corporations that are complicit in the oppression of the Uyghur people and other minorities who are recruited for involuntary labour in large-scale work camps.

[7] On September 13, 2021, the proposed Intervener, Uyghur Rights Advocacy Project [URAP] submitted a motion for leave to intervene in this application under Rule 109 of the *Federal Courts Rules*, SOR/98-106. URAP is an advocacy organization formed two years ago with the purpose of promoting the rights of the Uyghur people. On October 22, 2021, Justice Richard Southcott granted URAP leave to intervene in this application. URAP argues that international law should be considered relevant context in the interpretation of the *Tariff*.

III. Issues and Standard of Review

[8] The Respondents raise two preliminary issues:

A. *Whether the email from the CBSA constitutes a matter subject to judicial review*; and

B. *Whether the Applicants have standing to this Application.*

[9] The Applicants submit that the only issue raised by this application is:

C. *Whether the CBSA' interpretation of the Tariff was reasonable.*

[10] On the standard of review, I agree with the Respondents that the applicable standard is reasonableness. Following the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at para 17, the presumptive standard applicable on judicial review is reasonableness, with only few limited exceptions.

[11] The Applicants argue this case is one such exception and call on this Court to review this matter on a correctness standard, citing *Vavilov* for the proposition that one of the issues to which a standard of review of correctness applies is jurisdictional boundaries imposed on decision makers.

[12] In my view, this is misleading. In fact, the Supreme Court in *Vavilov*, instructed, "the rule of law requires that the correctness standard be applied in order to resolve questions regarding the jurisdictional boundaries between two or more administrative bodies" (*Vavilov*, at para 63). This is a narrower category than is being advanced by the Applicants. Here there are no boundaries to be identified between the CBSA and any other administrative tribunal, just the interpretation of CBSA's governing statute and legislation that Parliament mandated it to apply.

IV. Analysis

[13] The CBSA is governed by program legislation, which includes both the *Customs Act*, RSC 1985, c. 1 (2nd Supp.), and the *Tariff*. The CBSA classifies goods at the border according to the *Tariff*, which reflects the Harmonized Commodity Description and Coding System [Harmonized System], an international system that ensures all internationally traded goods are classified using the same description and coding system. Under s. 58(1) of the *Customs Act*,

CBSA officers are tasked with determining the origin and tariff classification for imported goods either at or before the time that the goods are accounted for. The tariff classifications are set out in a Schedule to the *Tariff*, and Tariff Item 9897.00.00 provides for the prohibition on a number of imports, including “goods mined, manufactured or produced wholly or in part by forced labour.” The CBSA is also empowered to provide advanced rulings in respect of tariff classification. Furthermore, the *Customs Act* establishes an administrative review process that provides for determinations and re-determinations by CBSA officials, and those decisions are reviewable by the Canadian International Trade Tribunal [CITT] and further by the Federal Court of Appeal, if there is an appeal from the CITT decision on a question of law.

A. *Does the email from the CBSA constitute a matter subject to judicial review?*

[14] The Respondents argue that the CBSA’s email does not constitute a “matter” under section 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7, and thus is not subject to judicial review. They further argue that, because the Applicants have not imported any goods for classification, the email causes them no prejudicial effect, nor does it affect their rights or impose any obligations on them. The Respondents state that, unless seeking an advance ruling, only actual, physical goods present in Canada are classified. They say that what the Applicants seek is, in their own words, “a public statement of the existing law”, and that such statements are not subject to judicial review. Finally, the Respondents say that the email was purely informational, and that the CBSA did not assess any evidence, exercise any discretion, convey any final decision, or communicate a new departmental policy or interpretation that would be dispositive of a matter concerning the Applicants on its merits.

[15] The Applicants, on the other hand, argue that they are affected by the decision as parties interested in the elimination of forced labour. They also argue that they have adequately identified the goods at issue as those originating in Xinjiang. The Applicants submit that the decision they seek is that the CBSA presumptively ban importation of goods from Xinjiang, absent clear and convincing evidence that it was not produced by forced labour; the Respondents' legal justification in response does not insulate the email from being the subject of judicial review. They further claim that the CBSA's legal justification is an error of law, which is one of the grounds for judicial review codified in the *Federal Courts Act*. Finally, the Applicants argue that the email does communicate a new policy or interpretation, as the Respondents do not provide any evidence of where such a policy has been previously articulated.

[16] On this first preliminary issue, I note that the availability of judicial review under section 18.1(1) of the *Federal Courts Act* is not limited to decisions and orders. It is rather broad enough to encompass other matters in which a prejudicial impact or effect on rights or obligations is felt by a person seeking review (*Morneault v Canada (Attorney General)*, [2001] 1 FC 30 (FCA) at paras 40-42). However, the Applicants have put no evidence on the record to suggest they have rights or obligations affected by the contents of this email, or that they are otherwise prejudiced, aside from a brief paragraph in their reply comments stating: "the importation of goods which are the produce of forced labour has a prejudicial effect on forced labourers. The applicants are a voice for this prejudicial effect. They have a genuine interest in opposing forced labour." While this may indeed be the case for the Applicants – and in fact for most people – I do not think the Applicants' general interest in preventing forced labour is sufficient to transform this email into a matter affecting their rights or obligations.

[17] A relevant consideration is whether the Applicants have any legal rights to make such a request, and whether the CBSA had any duty to respond. In *Democracy Watch v Conflict of Interest and Ethics Commissioner*, 2009 FCA 15, the Federal Court of Appeal considered an application for judicial review by Democracy Watch, a public interest organization dissatisfied with a letter from the Conflict of Interest and Ethics Commissioner stating there was insufficient evidence to proceed with an investigation. In its analysis, the Federal Court of Appeal stated, "where administrative action does not affect an applicant's rights or carry legal consequences, it is not amenable to judicial review" (at para 10). It further observed that the applicant had no statutory right to have a complaint investigated and nor was there a duty on the Commissioner to investigate (at para 11). They found the Commissioner's letter was not a matter amenable to judicial review.

[18] Similarly, in *CEP v Canada (Minister of Canadian Heritage and Official Languages)*, 2013 FC 34 [*CEP*], this Court considered an application for judicial review by the Communications, Energy and Paperworkers Union, claiming that the Minister of Canadian Heritage failed to conduct a review before a newspaper company acquired a rival media company. The Minister replied by letter to the Union, stating briefly his general understanding of the statutory framework governing Ministerial review (at paras 23-24). The Court considered the question of whether the Minister made a reviewable decision to be closely linked to the issue of whether he was under a duty to carry out a review in response to a request from a third party. The Court found nothing in the statutory framework obliging the Minister to do so, observing that "[h]ad Parliament so intended, explicit language to that effect would have been included" (at para 37).

[19] Here, I can see no element of the statutory framework—either in the *Customs Act* or in the *Tariff*—that imposes a duty on the CBSA to make a decision such as the one requested by the Applicants. In fact, if the Programs Manager had simply chosen not to respond to the initial email from the Applicants, there would have been no grounds for review on the basis that the CBSA failed to exercise a delegated duty.

[20] The Applicants, similar to the Union in CEP, argue that the email communicated a legal interpretation, constituting a new departmental policy that the CBSA cannot ban presumptively goods from a region, absent clear and convincing evidence to the contrary.

[21] I agree with the Applicants that the Programs Manager communicated a legal interpretation when he wrote that "the Tariff does not provide the authority to prohibit or regulate goods for production by forced labour solely on the basis of originating from specific region or country." However, regardless of whether this legal interpretation is new, I disagree with the Applicants that it amounts to a final determination on the issue of any imports from Xinjiang.

[22] Even without the Presumption requested by the Applicants, each shipment of goods that arrives in Canada is subject to an officer's determination on origin, tariff, and value, and such determinations can be appealed through administrative mechanisms provided for in the *Tariff*. The CITT has first hand jurisdiction to review the CBSA's finding and, importantly, the Federal Court of Appeal has exclusive jurisdiction to hear appeals from the CITT's decisions.

[23] The Applicants state that they only requested from the CBSA a public statement of the existing law related to specific facts. Yet, the facts they have plead are general: that forced labour is widespread in Xinjiang, and that importers who manufacture items in Xinjiang import them into Canada. They refer to no specific shipment, product, company, or goods.

[24] I agree with the Respondent that the email is not dispositive to a matter concerning the Applicants on its merits, and that as a result, it is not a matter subject to judicial review.

B. *Do the Applicants have standing to bring this Application?*

[25] The Respondents argue that the Applicants do not have standing as of right because they are not directly affected by the email; it does not have any direct impact on their rights nor does it impose obligations on the Applicants or harm them in any way. The Respondents further argue that the Applicants do not have public interest standing because they have failed to identify a serious and justiciable issue, and instead attempt to judicially review a matter of government policy that does not involve legal rights. The Respondents say that the Applicants have not identified a factual foundation ripe for resolution, and that, even if they had, that there is a statutorily-mandated administrative scheme governing appeals and redetermination of tariff classifications. This process, they argue, must be followed prior to seeking recourse from the courts.

[26] In response, the Applicants claim that they have standing as of right under section 18.1(1) of the *Federal Courts Act* as a directly affected party. They argue that Uyghurs everywhere are affected by this policy, and Maya Mitalipova, one of the named Applicants, is thus directly

affected, as she is a Uyghur person. They further claim that human rights are collective rights, in addition to individual rights, and as such harm to the Uyghur people as a group is harm to individuals belonging to that group.

[27] In addition to having direct standing, the Applicants maintain that they do not need to directly seek public interest standing, but that they nevertheless meet the test. They identify the serious, justiciable issue as the CBSA's interpretation that it does not have the statutory authority to implement the requested Presumption. Instead of a factual dispute, the Applicants allege that the only real dispute is over the interpretation of the governing law. With respect to the existing administrative regime, the Applicants argue that there would be no way for them to challenge the CBSA's legal interpretation within that system. The Applicants also state that the Respondents have misstated the test for public interest standing, and that they need only have a genuine interest in the issue raised. The Applicants point to the initial letter sent to the CBSA requesting the Presumption as demonstrating that interest. Finally, the Applicants argue that to meet the third prong of test for public interest standing the application need only be a reasonable and effective way to bring the matter before the courts. However, they go on to state that this application is indeed the only way to bring this issue before the courts as the administrative process laid out in the *Customs Act* does not accommodate a challenge of the CBSA's legal interpretation.

[28] On this second preliminary issue, I again side with the Respondents. In order to be directly affected, the Applicants must show that the email affected their legal rights, imposed legal obligations upon them, or prejudicially affected them in some way (*League for Human*

Rights of B'Nai Brith Canada v Odynsky, 2010 FCA 307 [*Odynsky*]; see also *Laurentian Pilotage Authority v Corporation des Pilotes de Saint-Laurent Central Inc*, 2019 FCA 83 at para 31). Here, the Applicants have put no evidence on the record that meets this standard. To be sure, the evidence the Applicants submitted demonstrates a level of academic and political agreement that Uyghurs living in Xinjiang are subject to serious human rights abuses, including forced labour in detention camps. However, the Applicants' attempt to connect that rights-violating practice to an effect felt by them directly does not meet the test set out because they have not provided the required evidence to demonstrate such an impact.

[29] One of the named Applicants, Aliya Khan, is a Uyghur Muslim and President of the Boston Uyghur Association. Citing this, the Applicants argue that every Uyghur anywhere is directly affected by forced labour. In the *Odynsky* case, the applicant made a similar argument with respect to direct standing. There, the decision at issue was the Governor in Council's rejection of the Minister's recommendation to revoke the citizenship of two Ukrainian men who served with the Nazi forces during World War II. The applicant was the League for Human Rights of B'Nai Brith Canada—a Jewish service and advocacy group—and it argued it had standing on the basis that it was directly affected by the decision. In rejecting this argument, the Federal Court of Appeal cited the explanation of the motions judge with approval:

> Without doubt, the [appellant] and the family members it says it represents deeply care, and are genuinely concerned [...] However, that interest does not mean that the legal rights of the applicant, or those it represents, are legally impacted or prejudiced by the decision [...] Rather, their interest exists in the sense of seeking to right a perceived wrong arising from, or to uphold a principle in respect of, the non-revocation of Mr. Odynsky's citizenship. (para 58, quoting *League for Human Rights of B'nai Brith Canada v Canada*, 2008 FC 732 at para 26)

[30] Similarly, I do not think this email by the CBSA has directly affected the Applicants' legal rights or caused prejudice. That is not to suggest it has had no effect on the Applicants, but rather that such effects do not give rise to an actionable claim. In other words, the decision does not deprive the Applicants of a legal remedy to which they otherwise might have had recourse (*Dow v Canadian Nuclear Safety Commission*), 2020 FC 376 at para 15.

[31] Further, the Applicants make no submissions on what legal rights they hold that would have been affected, other than to broadly reference human rights. They do not state that the CBSA's email has had impact on any specific right(s) under provincial human rights codes, the Charter, the Bill of Rights, or international human rights instruments. Although the Applicants have submitted a lengthy record containing government documents, foreign legislation, and academic articles, they have not referenced this material in their submissions other than to say that it is "overwhelming publicly available evidence… both of the systematic and widespread use of forced labour in Xinjiang, China and the determined efforts of the Chinese Communist Party to cover up that evidence." In my view, the Applicants do not have direct standing.

[32] That said, in order for a litigant to be granted public interest standing, three criteria must be met: (1) they must raise a serious, justiciable issue; (2) they must have a real stake or genuine interest in the issue; and (3) the proposed suit must be a reasonable and effective way to bring the matter before the courts (*Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at para 37.

[33] On the first criterion, I agree with the Respondents that the Applicants' application for judicial review is a premature intervention that deprives the Court of the full record on which to decide the case (*Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10 at paras 35-36). Although I agree with the Applicants that the Programs Manager's interpretation of the statute is not itself a policy issue, I agree with the Respondents that there is no factual dispute to which the law can be applied. As a result, this Court should not expend scarce judicial resources on a question in which the Applicants have no live interest (Lorne M Sossin, *Boundaries of Judicial Review: The Law of Justiciability in Canada*, 2nd ed (Ontario: Thomson Reuters Canada Limited, 2012, at 71)).

[34] With respect to the second criterion, this Court has interpreted the real stake/genuine interest criterion to be concerned with whether the group seeking standing has experience and expertise with respect to the underlying subject matter of the litigation (*Sierra Club of Canada v Canada (Minister of Finance)*, [1999] 2 FC 211). The Applicants themselves advance the argument that the underlying subject matter in this case is the interpretation of the *Tariff*; however, they have put no evidence on the record about their expertise or experience related to matters of legal interpretation or the classification of goods entering Canada.

[35] Finally, on the third criterion, the Applicants go further than simply arguing that this is an effective way to bring the case before the courts; they say that there is no other way. Once again, if the issue is whether the CBSA has the legal authority to implement the Presumption requested by the Applicants, it is true that this is the only way to bring such an issue before the courts, as the Presumption is not currently in place; it is only being raised as an issue by the Applicants.

However, this is not, considering the above, sufficient to grant the Applicants public interest status.

C. *Is the CBSA's interpretation of the Tariff reasonable?*

[36] The Applicants argue that the CBSA's interpretation that the *Tariff* does not permit it to implement the Presumption is incorrect because, under the *Tariff* itself, the CBSA and its officers exercise the delegated authority to determine tariff classifications. The Applicants further argue that nothing in the legislation specifically states that determinations must be made on a case-by-case basis, or prevents the implementation of a general presumptive determination. They also state that the Respondents are incorrect in their assertion that the *Tariff* only permits classification on the basis of country of origin because the statute does not define what is meant by "origin", and thus the term could also include regions within a country.

[37] The Applicants argue that the email's reference to Employment and Social Development Canada's provision of research assistance is an improper delegation of statutory authority. Further, section 152(3) of the *Customs Act* puts the onus on an importer to prove that a CBSA officer is wrong in a specific determination, and thus it should be on an importer to displace a general determination.

[38] The Intervener's submissions focus on the role of international law as an interpretative aid for domestic legislation. They argue that international law is increasingly being applied to Canadian legislation as an interpretive aid and that Canada has signed a number of binding international treaties and conventions that are relevant context and must be considered when

interpreting the *Tariff*. The relevant treaties and conventions include the *Convention Concerning Forced or Compulsory Labour, 1930*, 28 June 1930, ILO Convention No. 29 (entered into force 1 May 1932), the *Protocol of 2014 to the Forced Labour Convention, 1930*, 28 May 2014 (entered into force 9 November 2016), and the *Convention concerning the Abolition of Forced Labour, 1957*, 25 June 1957, ILO Convention No. 105 (entered into force 17 January 1959). Pursuant to these agreements, URAP argues that Canada has an obligation to take effective measures to prevent and abolish forced labour practices. Additionally, they argue that CUSMA obliges Canada to eliminate forced labour, and that the manner in which the U.S. has implemented its CUSMA obligations, by issuing regional withhold and release orders (WROs) for certain products produced in Xinjiang, should be considered persuasive when interpreting Canada's domestic legislation. Finally, URAP cites a number of foreign initiatives including proposed legislation in the U.S. and Australia, as well as an investigation in France and a human rights complaint in Germany, to show that there is an emerging international trend to crack down on forced labour, which should be considered as relevant context to the interpretation of the *Tariff*.

[39] In response, the Respondents argue that the Applicants' interpretation of the *Tariff* is not supported by its text. As the statute does not expressly permit the implementation of general presumptions with respect to tariff classification, they argue that it is reasonable for the CBSA to conclude that such presumptions are prohibited. Instead, they argue that it was the intention of Parliament for goods to be classified on a case-by-case basis consistent with the Harmonized System on which the tariff items are based, and that this classification must be defensible to the CITT under the administrative process set out in the *Customs Act*. The Respondents also argue

that the CBSA cannot classify hypothetical goods, but rather only goods that are identified and imported (or intended to be imported).

[40] With respect to international law and the submissions of URAP, the Respondents first argue that the URAP references inadmissible evidence, including a website FAQ, a New York Times article, press releases from non-governmental organizations, and newspaper articles which are no longer retrievable at the links provided. On the substance of the Intervener's arguments, the Respondents state that, in general, Canada is free to choose how to best implement its international obligations and further that, while CUSMA is specific in requiring Canada to prohibit the import of goods produced by forced labour, the trade agreement is not prescriptive about the manner in which this must be achieved. Additionally, the Respondents argue that Canadian legislation is presumed compliant with international obligations unless there is a clear intention to the contrary. They acknowledge that binding international instruments may be used as an interpretive aid within a contextual and purposive approach to statutory interpretation, but argue that such instruments do not displace or amend the authentic meaning of a statute.

[41] Having considered all of the parties' submissions, I am of the view that the Programs Manager's interpretation of the *Customs Act* and *Tariff* is reasonable.

[42] In *Vavilov*, the Supreme Court cautions that a reviewing court applying reasonableness to a question of statutory interpretation should not undertake a *de novo* analysis of the question, but rather must "examine the administrative decision as a whole, including the reasons provided by the decision maker and the outcome that was reached" (at para 116). *Vavilov* also instructs that

statutory interpretation by an administrative decision maker may look different than when undertaken by a court, and advises reviewing courts to consider the context in which the decision was made and the specialized expertise of the decision maker (at para 119). *Vavilov* also endorses the modern principle of statutory interpretation, which requires the words of a statute to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (at para 117).

[43] The Applicants point to several sections of the *Tariff* and *Customs Act*, which they argue that, if read together, provide authority for the CBSA to implement the Presumption. First, they point to section 136(1) of the *Tariff*, which prohibits the import of goods under specific tariff items, including 9897.00.00, under which “goods mined, manufactured or produced wholly or in part by forced labour” is one category of prohibited good. The Applicants also direct the Court to section 152(3) of the *Customs Act*, which establishes that the onus is on importers to provide proof of the origin of the goods and that they are in compliance with the Act and regulations. The Applicants then point to section 57.1 of the *Customs Act*, which states that, for the purposes of determinations, redeterminations and the appeals, the origin of goods is to be determined in accordance with section 16 of the *Tariff*. Section 57.1 also states that tariff classification is determined in accordance with sections 10 and 11 of the *Tariff*, which codify the Harmonized System as applicable to tariff classification, provide guidance on how this system is interpreted and applied, and refers to the schedule where tariff items are set out.

[44] Two important conclusions flow from a grammatical and ordinary reading of these sections of the CBSA’s program legislation. First, section 16 of the *Tariff*, which provides

instruction on origin classification, states that "[s]ubject to any regulations made under subsection (2), for the purposes of this Act, goods originate in a country if the whole of the value of the goods is produced in that country." One of the Respondents' contentions about why the *Tariff* does not permit the CBSA to institute the Presumption is that goods are not classified on a regional basis, but rather on the basis of country. In response, the Applicants argue that "origin" is not defined in the legislation, and that an ordinary reading of "origin" could include a group of countries, a country, a region, a province, a territory or a locality. However, this suggestion isolates the word "origin" from its surrounding context, and, importantly, from other words in the sentence in which "origin" is used. While it is true that "origin" is not defined in either the *Customs Act* or the *Tariff*, reading section 16 in its grammatical and ordinary sense leads to the conclusion that goods are classified by country, not region.

[45] Second, section 10 of the *Tariff* states that "[s]ubject to subsection (2), the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System and the Canadian Rules set out in the schedule." The schedule to the *Tariff* is broken down by chapter, and in the chapter under which tariff item 9897.00.00 falls, there is nothing about presumptive determinations, and nor do the Applicants claim this is the case. Instead, they argue that simply because the statute does not expressly prohibit implementing the Presumption, then it must be allowed. However, reading section 10 in its grammatical and ordinary sense leads to the conclusion that the schedule presents a complete code that, unless otherwise provided, governs the classification of goods by tariff item as they are imported or as an advanced ruling is requested. Again, the Applicants do not suggest that there exists elsewhere instruction on how

tariff classification should be undertaken by CBSA officers. On the basis of these two observations alone, I think the CBSA's interpretation of the *Tariff* is reasonable because an ordinary reading of CBSA's program legislation confirms that goods are classified on a case-by-case basis by tariff item and country of origin.

[46] With respect to the issue of onus in section 153(2) of the *Customs Act*, the Applicants argue that, in combination with section 43.1, which permits CBSA officers to make advance rulings, would-be importers could apply for an advanced ruling and would then be required to provide evidence satisfying that the goods were not produced by forced labour or that they did not originate in Xinjiang. They further argue that the Programs Manager's reference to cooperation with Employment and Social Development Canada is an impermissible delegation of authority by the CBSA (*Therrien (Re)*, 2001 SCC 35 at para 93). With respect, I do not think it is a fair reading of the Programs Manager's comments to suggest that this reference amounts to a delegation of statutory responsibility. In his email, he states that CBSA "works closely with ESDC to identify goods that have been produced by forced labour entering Canada" and further that "ESDC conducts research and analysis on companies that are suspected to be using forced labour to produce goods and are importing them to Canada. The CBSA uses this information to identify and intercept shipments containing goods produced that have been identified as suspected to have been produced by forced labour." This explanation seems to be simply a description of how the process of intercepting goods by CBSA officials works. At no point does the Programs Manager suggest that Employment and Social Development Canada is empowered to make decisions about which goods or shipments are intercepted, but rather states that it provides research that is helpful to CBSA officers in making these decisions.

[47] Further, section 153(2) of the *Customs Act* states that the onus rests on the importer to prove the origin of goods and compliance with the Act when "party to a proceeding" or "accused of an offence". Although the Applicants claim that by engaging in a process to identify offending goods the CBSA is "assuming a burden of proof it does not have", section 153(2) of the *Customs Act* states that this burden arises only once a proceeding is commenced or an offence is alleged, not before. Therefore, I am of the opinion that it does not apply when an initial determination is made. If the Applicants wish to argue that the word "proceeding" includes an initial tariff classification, they have provided no explanation, and further no authority to support this interpretation.

[48] URAP's argument that international law should be brought to bear as an interpretive tool does little to advance the claim that the CBSA's interpretation of the *Tariff* is unreasonable. URAP devotes considerable space in its submissions to establishing the broad principle that domestic legislation should be interpreted with international law as relevant context, where said international law touches on the same subject matter. The Respondents do not dispute this point, but rather argue that the *Tariff* is consistent with the relevant international law cited by URAP, as Canada has unambiguously legislated a prohibition against the importation of any goods from any region of the world that were manufactured, in whole or in part, using forced labour. After all, Canada is free to choose how to best implement its treaty obligations (*Merck Frosst Canada Ltd v Canada (Health)*, 2012 SCC 3; *Takeda Canada Inc v Canada (Health)*, 2013 FCA 13).

[49] Not only is that a correct reading of the internal legislation but neither the Applicants nor the Intervener have filed or pointed to evidence that would lead to believe that Canada's

international obligations and the overall legislative goal are not achieved. There is no evidence that the current legislative scheme is not effective in preventing goods that were mined, manufactured or produced wholly or in part by forced labour from entering Canada. And even if that proof existed, the Applicants and the Intervener have also failed to make the case as to how such proof would render the CBSA's interpretation that it does not have the statutory authority to implement the Presumption unreasonable.

V. Conclusion

[50] For the foregoing reasons, I am dismissing this application for judicial review. In my view, the Programs Manager's email is not a matter amenable to judicial review; the Applicants do not have standing to bring this application and, in any event; the Programs Manager's interpretation of the *Tariff* is reasonable.

[51] The Respondents have claimed their costs, but neither the Applicants nor the Intervener did. I am therefore exercising my discretion not to award any costs.

JUDGMENT in T-259-21

THIS COURT'S JUDGMENT is that:

1. This Application for judicial review is dismissed;
2. No costs are granted.

"Jocelyne Gagné"

Associate Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-259-21
STYLE OF CAUSE:	HONORABLE DAVID KILGOUR, MARIA REISDORF, MAYA MITALIPOVA, CANADIANS IN SUPPORT OF REFUGEES IN DIRE NEED (CSRDN) v THE ATTORNEY GENERAL OF CANADA, CANADA (BORDER SERVICES AGENCY) and UYGHUR RIGHTS ADVOCACY PROJECT
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	DECEMBER 6, 2021
JUDGMENT AND REASONS:	GAGNÉ A.C.J.
DATED:	APRIL 5, 2022

APPEARANCES:

David Matas	FOR THE APPLICANTS
Dayna Anderson Beth Tait Alicia Dueck-Read	FOR THE RESPONDENTS
Sarah Teich	FOR THE INTERVENER

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Attorney General of Canada Winnipeg, MB	FOR THE RESPONDENTS
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