Date: 20090109

Docket: T-944-07

Citation: 2009 FC 27

OTTAWA, ONTARIO, JANUARY 9, 2009

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

A&R DRESS CO. INC.

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review, pursuant to s. 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, from a decision made on behalf of the Minister of Public Safety and Emergency Preparedness, dated May 17, 2007, denying the applicant's claim for refund of customs duty with respect to leftover textile cuttings.

BACKGROUND

[2] On October 11, 2006, the applicant imported from Korea a 852 meter bolt of textile, described as a 92% polyester – 8% spandex knitted fabric, at a unit price of $1.50 USD per meter on which it paid duty at a rate of 14%.

[3] The applicant cut the imported fabric in Canada and manufactured or produced dresses from the cut fabric. The dresses were then eventually sold in Canada. As a result of the processing of the imported textile fabric, certain textile cuttings remained as leftover material.

[4] The applicant approached Leigh Textile, one of the world's largest pre-consumer textile waste processor in view of selling the textile cuttings. The applicant was offered $0.05 per pound or $4.00 for the 80 pounds or 188.66 square meters of textile leftover for which it claims a drawback.

[5] The applicant admitted that the price it was offered by Leigh for the textile cuttings is the best price it could get. Indeed, the applicant admitted that there is no market for that kind of textile waste. The applicant also admitted that in the course of the last five to seven years it was not economically feasible to sell the textile cuttings for which it now claims a drawback.

[6] Unable to market the leftover cuttings, the applicant decided to destroy the cuttings in order to qualify them as "obsolete or surplus goods" under paragraph 110(b) of the *Customs Tariff*, S.C. 1997, c. 36, (the Act), and obtain a refund of duties paid through the drawbacks program.

[7] Notwithstanding the fact that the respondent refused to give instruction with respect to the manner in which the textile cuttings should be destroyed, the applicant disposed of the leftover cuttings through normal waste collection.

[8] On May 1, 2007, the applicant filed a claim for a refund of the custom duty which had been paid in respect of the leftover textile cuttings by way of a "drawback claim". This claim was accompanied by a Certificate of Destruction/Exportation stamped by the respondent. The Certificate of Destruction was accompanied by a Notary's affidavit who witnessed the destruction of the leftover textile cuttings, and by an affidavit of the Manager of the building in which the applicant is located.

[9] The applicant's refund claim was also accompanied by an Affidavit of the President of the applicant, and by a Certificate of Importation, Sale or Transfer; that Certificate is the waiver of duty drawback entitlement as signed by the importer of the fabric from Korea.

THE IMPUGNED DECISION

[10] The respondent denied the applicant's refund claim by letter dated May 17, 2007. After a review of all the documentation submitted by the applicant, the decision-maker considered that neither the dresses nor the leftover cuttings were exported. Therefore, he rejected the applicant's drawback claim.

[11] The letter also mentioned that to allow a drawback for destroyed goods, the goods must fall within the definition of goods being "surplus or obsolete". In the applicant's case, it was concluded that the leftover cuttings were not "surplus or obsolete" but must rather be considered as "scrap and waste". Moreover, for the "scrap and waste" to be eligible for a drawback, the goods must be exported. If the "scrap and waste" goods are not exported, they would be subject to duties at the

rate applicable at the time the scrap and waste was produced to merchantable scrap and waste of the same kind imported.

[12] As a result, the manager of the Customs, Compliance Verification Division of the Ministry of Public Safety and Emergency Preparedness denied the applicant's claim for refund of customs duty with respect to the leftover textile cuttings.

THE ISSUE

[13] The only issue to be decided in this application for judicial review is whether the Minister was correct in refusing to consider the leftover cuttings as "obsolete or surplus goods" under paragraph 110(b) of the *Act* , and consequently, in denying the applicant's drawback claim.

STANDARD OF REVIEW

[14] There is no dispute between the parties as to the applicable standard of review. Both counsel agreed that the issue to be decided, being one essentially of statutory interpretation, calls for the standard of correctness.

[15] Indeed, the matter before this Court has already been canvassed by my colleague Justice Shore in *A&R Dress Co.* v. *Canada (Minister of National Revenue),* 2005 FC 681. Applying a pragmatic and functional approach, Justice Shore concluded that the four factors to be taken into account pursuant to that approach inescapably led to the conclusion that the standard of review must

be that of correctness. That particular finding was endorsed by the Court of Appeal in *A&R Dress Co. Inc. v. Canada (Minister of National Revenue)*, 2006 FCA 298.

[16] Admittedly, there was no evidence in that case as to whether the leftover material had any merchantable value. This is precisely why the Court of Appeal left undecided the issue that must now be resolved, that is, whether the word "goods" in paragraph 110(b) of the *Act* must be taken to include merchantable scrap. That being said, the nature of the question at issue in that case was no different from the one raised in the present instance: to determine whether the Minister erred in dismissing a claim by the applicant for a refund of the customs duty which had been paid in respect of the leftover material. The Court has to determine the proper interpretation to be given to paragraph 110(b) of the *Act*.

[17] In *Dunsmuir* v. *New Brunswick*, 2008 SCC 9, the Supreme Court of Canada held that a standard of review analysis need not be conducted in every instance; when the analysis has already been made in previous cases, the Court can confidently rely on the result of that analysis. Accordingly, I am of the view that the standard applicable to the Minister's decision is that of correctness.

ANALYSIS

[18] Part 3 of the *Act* provides for duties relief on imported goods in some circumstances, as set forth in that Part of the Act and supporting regulations. Division 1 of that Part deals with reduction

of rates of custom duties, while Division 2 allows for the importation of some goods without full payment of duties in the circumstances described in sections 83 to 108 of the Act.

[19] More relevant for our purposes is Division 3 of Part 3, titled “Obsolete or Surplus Goods”. The relevant provisions of that Division are the following:

109. In this Division, "obsolete or surplus goods" means goods that are	**109.** Dans la présente section, « marchandises surannées ou excédentaires » s'entend des marchandises qui, à la fois :
(*a*) found to be obsolete or surplus (i) in the case of imported goods, by their importer or owner, or (ii) in any other case, by their manufacturer, producer or owner; (*b*) not used in Canada; (*c*) destroyed in such manner as the Minister of Public Safety and Emergency Preparedness may direct; and (*d*) not damaged before their destruction.	*a*) sont jugées surannées ou excédentaires par : (i) leur importateur ou propriétaire, dans le cas de marchandises importées, (ii) leur fabricant, producteur ou propriétaire, dans les autres cas; *b*) ne sont pas utilisées au Canada; *c*) sont détruites selon les instructions du ministre de la Sécurité publique et de la Protection civile; *d*) n'ont pas été endommagées avant leur destruction.
Relief for	
110. If an application is made in accordance with section 111, a refund shall be granted of (*a*) all duties, other than the goods and services tax, paid in respect of imported obsolete or surplus goods; (*b*) all duties, other than taxes imposed under the *Excise Tax Act*, paid in respect of imported goods processed in Canada,	**110.** Sur demande présentée en conformité avec l'article 111, est accordé un remboursement de la totalité des droits qui ont été payés : *a*) à l'exception de la taxe sur les produits et services, sur des marchandises surannées ou excédentaires importées; *b*) à l'exception des taxes imposées en vertu de la *Loi sur la taxe d'accise*, sur les

if the goods that result from the processing become obsolete or surplus goods; and

(*c*) all duties, other than taxes imposed under the *Excise Tax Act*, paid in respect of imported goods, other than fuel or plant equipment, that are directly consumed or expended in the processing in Canada of goods that become obsolete or surplus goods.

111. An application under section 110 must be

(*a*) made in the prescribed form and manner, with the prescribed information,

(i) if the obsolete or surplus goods were imported, by the importer or owner of those goods, or

(ii) in any other case, by the manufacturer, producer or owner of the obsolete or surplus goods;

(*b*) accompanied by a waiver referred to in section 119, if applicable, and by the prescribed documents; and

(*c*) made within five years, or such other time as may be prescribed, after the goods in respect of which it is made are released.

marchandises importées et transformées au Canada, si les marchandises découlant de la transformation deviennent des marchandises surannées ou excédentaires;

c) à l'exception des taxes imposées en vertu de la *Loi sur la taxe d'accise*, sur les marchandises importées — sauf le carburant, le combustible ou le matériel d'usine —, directement consommées ou absorbées lors de la transformation au Canada de marchandises qui deviennent surannées ou excédentaires.

111. Les demandes de remboursement prévues à l'article 110 :

a) comportent les renseignements prescrits par le ministre de la Sécurité publique et de la Protection civile et sont présentées, en la forme qu'il prescrit, par :

(i) l'importateur ou le propriétaire des marchandises surannées ou excédentaires, dans les cas où ces marchandises ont été importées,

(ii) le fabricant, le producteur ou le propriétaire des marchandises surannées ou excédentaires, dans tous les autres cas;

b) comportent la renonciation visée à l'article 119, le cas échéant, et les documents réglementaires;

	c) sont présentées dans les cinq ans — ou, le cas échéant, dans le délai réglementaire — suivant le dédouanement des marchandises.

[20] Section 4 of the *Act* and subsection 2(1) of the *Customs Act* are also relevant:

4. Unless otherwise provided, words and expressions used in this Act and defined in subsection 2(1) of the *Customs Act* have the same meaning as in that subsection.	**4.** Sauf indication contraire, les termes et expressions utilisés dans la présente loi et définis au paragraphe 2(1) de la *Loi sur les douanes* s'entendent au sens de ce paragraphe.
2(1). "goods", for greater certainty, includes conveyances, animals and any document in any form;	2(1). «marchandises » Leur sont assimilés, selon le contexte, les moyens de transport et les animaux, ainsi que tout document, quel que soit son support.

[21] The basic principles which govern the way statutory interpretation is conducted are well known and are succinctly stated by the Supreme Court of Canada in the case of *Re: Rizzo & Rizzo Shoes*, [1998] 1 S.C.R. 27, at paragraph 21:

> 21. After much has been written about the interpretation of legislation (see, e.g. Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) (hereinafter "Construction of Statutes"); Pierre-André Côté, *The Interpretation of Legislation in Canada* (2nd ed. 1991)), Elmer Dredger in *Construction of Statutes* (2nd ed. 1993) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

> Today there is only one principle or approach, namely, the words of an Act are 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.

(…)

[22] On the other hand, tax legislation has frequently been applied more literally, owing no doubt to the particularity and detail with which tax statutes are drafted. More recently, the Supreme Court elaborated on the proper approach to be used in constructing taxation enactments:

> 21. In *Stubart Investments Ltd.* v. *The Queen*, [1984] 1 S.C.R. 536, this Court rejected the strict approach to the construction of taxation statutes and held that the modern approach applies to taxation statutes no less than it does to other statutes. That is, "the words of an Act are 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" (p. 578): see *65302 British Columbia Ltd.* v. *Canada*, [1999] 3 S.C.R. 804, at para. 50. However, because of the degree of precision and detail characteristic of many tax provisions, a greater emphasis has often been placed on textual interpretation where taxation statutes are concerned: *Canada Trustco Mortgage Co.* v. *Canada*, [2005] 2 S.C.R. 601, 2005 SCC 54, at para. 11. Taxpayers are entitled to rely on the clear meaning of taxation provisions in structuring their affairs. Where the words of a statute are precise and unequivocal, those words will play a dominant role in the interpretive process.
>
> On the other hand, where the words of a statute give rise to more than one reasonable interpretation, the ordinary meaning of words will play a lesser role, and greater recourse to the context and purpose of the Act may be necessary: *Canada Trustco*, at para. 10. Moreover, as McLachlin C.J. noted at para. 47,

> "[e]ven where the meaning of particular provisions may not appear to be ambiguous at first glance, statutory context and purpose may reveal or resolve latent ambiguities." The Chief Justice went on to explain that in order to resolve explicit and latent ambiguities in taxation legislation, "the courts must undertake a unified textual, contextual and purposive approach to statutory interpretation".
>
> The interpretive approach is thus informed by the level of precision and clarity with which a taxing provision is drafted. Where such a provision admits of no ambiguity in its meaning or in its application to the facts, it must simply be applied. Reference to the purpose of the provision "cannot be used to create an unexpressed exception to clear language": see P.W. Hogg, J.E. Magee and J. Li, *Principles of Canadian Income Tax Law* (5th ed. 2005), at p. 569; *Shell Canada Ltd.* v. *Canada*, [1999] 3 S.C.R. 622. Where, as in this case, the provision admits of more than one reasonable interpretation, purpose may not be used to supplant clear statutory language, but to arrive at the most plausible interpretation of an ambiguous statutory provision.
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> *Placer Dome Canada Ltd.* v. *Ontario (Minister of Finance)*, [2006] 1 S.C.R. 715.

[23] It is with these principles in mind that I must now approach the construction of the legislative provisions lying at the core of the present application for judicial review.

[24] A careful reading of paragraph 110(b) of the *Act* reveals that, in order to establish entitlement to the drawback, the following conditions must be met:

i) duty must have been paid on imported goods;

ii) the imported goods must be processed in Canada;

iii) goods must result from the processing;

iv) goods which result from the processing must become surplus goods as defined in s. 109.

[25] In the present case, there is no doubt that the first two conditions are met. Duty was paid in respect of the imported fabric, and dresses were made in Canada from that imported fabric. It is much less clear that the leftover textile cuttings resulting from this processing are to be considered "goods", let alone "obsolete or surplus goods" as set forth in s.109.

[26] When construing a legislative provision, one must first look at the words used by Parliament and at the definitions provided in the Act itself. In this respect, the applicant is no doubt correct in stressing that the word "goods" is quite broad in its ambit. Moreover, the definition provided in the *Customs Act*, to which section 4 of the *Act* refers, appears to be open ended; the use of the words "for greater certainty" indicates an extensive definition.

[27] That being said, the Court must also take into consideration the general terms of the scheme and the purpose of the legislation, more particularly of Division 3 of Part 3 dealing with "Obsolete or Surplus Goods". As can be seen from paragraph 2 of Memorandum D 7-2-3 released by the Canada Border Services Agency, (May 31, 1999), "[t]he purpose of this program is to assist the Canadian industry to compete by reducing costs on goods which will not enter the domestic market. By allowing the destruction of obsolete or surplus goods, the necessity of exporting imported goods to qualify for an export drawback is removed".

[28] It is fundamental to the very concept of duties relief that duties be paid before any relief of those duties be granted. Duties, in turn, are both a function of the merchantable value assigned to those goods by international trade and trade agreements, and of policy decisions made by Parliament. Under most circumstances, duties are established by means of a percentage of the merchantable value of the imported goods.

[29] Merchantability is the cornerstone of any taxation scheme, and customs are no exception to that rule. Consequently, I agree with the respondent that even if the definition of "goods" integrated in the *Act* is quite broad, it must necessarily import a notion of merchantability. When called upon to interpret the words "goods not subject to the consumption or sales tax" in section 1 of Part I of Schedule III of the *Excise Tax Act*, R.S.C. 1970, c. E-13, Justice Marceau, for the majority of the Federal Court of Appeal, adopted that reasoning and wrote:

> The ordinary and accepted meaning of the word "marchandises" (goods) is that of items circulated on the commercial market, items intended for sale.
> (…)
> In using the word "merchandise" and not a more general word such as "article" (article) (a word used elsewhere in the Act) or the word "bien" (good, item or property), in my opinion the legislator disclosed that the exemption was to apply only to containers in which are to be placed goods, items in circulation on the commercial market and destined to be sold, goods offered for sale.
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> *Enterprises Kato Inc.* v. *Canada (Deputy Minister of National Revenue, Customs and Excise – M.N.R.)*, [1983] F.C.J. No. 1064.

[30] The Court of Appeal explicitly reiterated that reasoning in upholding the decision reached by my colleague Justice Shore in the context of the previous litigation between the same parties. On behalf of the Court, Décary J.A. wrote :

> When examining the *Customs Tariff*, one must start from the premise that the word "goods" ("marchandises" in French) refers to "items in circulation on the commercial market and destined to be sold; goods offered for sale" (see *Enterprises Kato Inc.* v. *Canada (Deputy Minister of National Revenue, Customs and Excise – M.N.R.)* [reference omitted]. The need to resort to an authoritative jurisprudential definition arises because even though section 4 of the *Customs Tariff* imports the definition contained in subsection 2(1) of the *Customs Act*, the definition of "goods" in that subsection if of no held in the case at bar. We appreciate that *Enterprises Kato* dealt with the *Excise Tax Act*, R.S.C. 1970, c. E-13, but since "duties" is defined in the *Customs Act* as "any duties or taxes levied on imported goods under the *Customs Tariff*, the *Excise Tax Act…*", it is fair to say that the ordinary and accepted meaning of "goods" applies to both statutes.
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> *A & R Dress Co. Inc.* v. *Canada (Minister of National Revenue)*, op. cit. supra, at par. 5.

[31] As previously mentioned, the Court of Appeal did not have to decide whether paragraph 110(b) applies to merchantable leftover material, as there was no evidence that the leftover was merchantable scrap. Accordingly, the appellant's claim for refund under that paragraph failed for lack of evidence. In the present case, the evidence is otherwise.

[32] Counsel for the applicant does not dispute that the "goods" referred to in section 110(b) of the *Act* must have a commercial value and meant to be sold. However, he somehow took for

granted that the leftover textile cuttings have a value and are merchantable scrap as they are "capable of sale". With all due respect, I cannot agree with that contention.

[33] There is no doubt the bolt of imported textile on which the applicant paid custom duty had a merchantable value. The dresses manufactured from the bolt of imported textile presumably had a merchantable value. Although the same cannot be said of the scrap and waste for which the applicant now seeks to obtain a drawback under section 110(b) of the *Act*. The President of A&R, Mr. Randy Rotchin, was blunt enough to admit that there is no market for textile scrap and waste, and that in the course of the last five to seven years, it was not economically feasible to sell the textile scrap and waste for which it claims a drawback (Transcript of Randy Rothin's examination on affidavit, pages 53 and 56 of the Applicant Record). The best price the applicant was able to get for its leftover textile cuttings was $0.05/pound or $4.00 for the 80 pounds of scrap and waste for which it claims a drawback. This is far less than the amount of the drawback claimed by the applicant, at $44.87 (Applicant Record, p. 29).

[34] In light of the very marginal value of the leftover textile cuttings, and bearing in mind that it appears to be virtually impossible to find a buyer for that scrap in the first place, I cannot bring myself to conclude that these cuttings were destined to be sold and that they have a real commercial value. On that basis alone, I would therefore conclude that the textile cuttings do not meet the conditions of paragraph 110(b) of the *Act* as they are not "goods" that result from the processing. Consequently, the respondent was correct in refusing the drawback claim of the applicant.

[35] While this would be sufficient to dispose of this application for judicial review, there is another reason for which the applicant cannot succeed. Even if I were prepared to accept that these leftovers are merchantable, they would still not fall within the ambit of the word “goods” in the context of paragraph 110(b) nor could they be considered as “obsolete or surplus goods” for the purposes of section 109 of the *Act*.

[36] The applicant does not contest that the leftover textile cuttings are a bi-product of the manufacturing process, and are for all intent and purposes scrap and waste. They cannot be assimilated to the “goods” referred to in sections 109 and 110. Had Parliament intended to apply a refund for “obsolete or surplus goods” to scrap and waste, it would have used those words specifically. Indeed, Parliament was well aware of the distinction and enacted a specific regime for by-products, scrap and waste in sections 120 to 122 of the *Act*.

[37] Section 122 is particularly interesting as it deals specifically with scrap and waste. Paragraph 89(1)(b) provides a relief of customs duty paid on imported goods processed in Canada and subsequently exported. Scrap or waste resulting from a processing operation is also eligible for relief under this program when the processed goods are exported. However, paragraph 122(1) provides that if the scrap or waste is merchantable and would be dutiable if imported, it is not entitled to the relief unless the scrap is exported. The rate of duty to use is that which applies to similar scrap, if it was being imported. In other words, any importer who imports dutiable materials into Canada that undergo a process resulting in scrap and waste does not receive a relief of 100% of the customs duties paid in respect of the imported material unless 100% of the imported material is

exported. Any imported material and any scrap and waste derived from the processing of that material in Canada that remains in Canada is subject to the applicable Customs duties if it is merchantable.

[38] The same reasoning applies to goods in respect of which an application was made under section 110 or 113. Whether the drawback or refund is claimed because the goods are surplus or obsolete (section 110), or because duties were paid on goods for which relief could have been granted under section 89 (section 113), it is clear that the amount of the drawback or the refund will have to be reduced by the amount of duty that would be applicable to the sales value of the scrap resulting from a processing operation. This is made clear by a careful reading of paragraph 122(3) of the *Act*, as explicated by paragraphs 30 and 31 of Memorandum D7-4-2 published by Canada Border Services Agency (January 31, 1996).

[39] This regime is clearly distinct and different from the regime put in place for obsolete or surplus goods. In the context of section 110 of the *Act*, the expression "obsolete or surplus goods" clearly refers to something that is no longer needed or that would have been in excess of what was needed for production. Dictionary definitions of "obsolete" and "surplus" support this understanding:

> "Obsolete": adj. No longer in general use; out-of-date.
> "Surplus": 1. The remainder of a thing, the residue or excess.

[40] A good cannot be considered "obsolete" or "surplus" if it never had a use or date to begin with. The *Act* legislative provisions clearly treat "scrap" and "waste" differently than "obsolete or

surplus good". The word surplus connotes something that has been manufactured and which could be used if there was a need for it, whereas "scrap" and "waste" is extra material which, by definition, is not used to make the finished product and cannot be considered as goods resulting from the processing nor as the by-product of that processing.

[41] Paragraph 110(a) of the *Act* contemplates a situation where an importer or a manufacturer, after having paid duties on bolt textile, decides for whatever reason not to use all or part of that imported textile. Provided the unused textile meets the requirement of section 109 of the *Act*, the importer or manufacturer can claim a drawback for the duties paid because it becomes obsolete or surplus good. The same is true if the manufacturer decides not to market some or all of the dresses made from the textile bolt. Paragraph 110(b) of the *Act* would entitle him to a drawback since the dresses would be obsolete or surplus good (assuming, of course, that the other requirement of section 109 are met). The French version ("marchandises surannées ou excédentaires") conveys these notions of old fashioned, out of date and in excess of the demand even more explicitly than its English equivalent. They have nothing to do with the concept of scrap and waste.

[42] Counsel for the applicant submitted that the phrase "in respect of which a … drawback cannot be granted", in subsection 122(3), would make no sense if merchantable scrap or waste were not a "good" in the first place. Since the first portal through which a potential claimant for drawback must pass is that the surplus goods in respect of which the drawback claim is made must first be "goods", the above quoted phrase would be redundant, so the argument goes, since merchantable scrap or waste could never qualify for a drawback.

[43] As ingenious as it is, this reasoning cannot hold sway. The situation contemplated by that subsection is completely different from that of the applicant in the present case. The merchantable scrap to which subsection 122(3) refers would be the leftover textile cuttings that would come into existence as a result of the processing of the textile bolt or dresses for which a refund has already been sought pursuant to section 110. The intention behind subsection 122(3) is to ensure that the drawback claimed for obsolete or surplus goods will be reduced by the amount of custom duties that would have to be paid on the merchantable scrap resulting from the processing of the obsolete or surplus goods. This is entirely different from saying that scrap and waste can itself be considered obsolete or surplus goods.

[44] The conditions set forth in section 109 of the *Act* make it even more of a stretch to import the notion of scrap and waste into the concept of "surplus goods". To fall within section 109 and qualify for the refund, imported goods cannot be damaged before destruction. No one can reasonably suggest that the left over cuttings in the instance are goods that could be "damaged"; they are already "scrap and waste".

[45] Finally, I think it is common sense that Parliament could not intend to allow for a refund of customs duties on all leftover and residue of manufacturing process. One only needs to envisage the difficulty of assessing the value of the sawdust resulting from the manufacturing of furniture from imported wood to grasp the incongruity of construing "surplus goods" as encompassing scrap and waste resulting from the processing of imported goods.

[46] For all of the foregoing reasons, I am therefore of the view that the respondent's representative did not err in denying the applicant's drawback claim. Accordingly, this application for judicial review is dismissed.

ORDER

THIS COURT ORDERS that this application for judicial review be dismissed, with costs in favour of the respondent.

"Yves de Montigny"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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