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COMMENTS

CUSTOMS DUTIES: TOWARD A LESS RESTRICTIVE DEFINITION OF "WASTE"


Plaintiff imported old printing blocks, unusable for printing but sold and used in their imported condition as wall decorations. The Customs Collector sought an import duty of 40 per centum ad valorem, as "print blocks or print rollers, not specially provided for, of whatever material composed, used for printing, stamping, or cutting designs." Plaintiff-importer sued to change the classification of the print blocks to "waste, not specially provided for," which was subject to the lower import duty of 4 per centum ad valorem. A divided Customs Court approved the requested change in classification. Held: old or used print blocks, incapable of use—without remanufacture—for their original purpose of printing but sold and used in their imported condition as wall decorations, are waste under the Tariff Act of 1930.

In finding that the printing blocks were "waste", the Studner majority reasoned exclusively from the 1926 Customs Court's definition in Harley Co. v. United States. Harley established two types of waste: articles which had become "useless for the original purpose for which they were made and fit only for remanufacture into something else," known as "old waste", and by-products of a

3. Studner v. United States, 300 F. Supp. 1394 (Cust. Ct. 1969). Contra, Downing v. United States, 122 F. 445 (2d Cir. 1903). In this early case involving cannon which were useless as artillery but salable as relics and souvenirs, the Court of Customs Appeals did not cite the then-controlling Patton definition of waste, but decided that the cannon were not free of duty as "old brass" or "composition metal" basing its decision on general principles and statutory interpretation.
5. Id. (emphasis added).
6. Id. The court referred to "refuse, surplus and useless stuff resulting from manufacture or manufacturing processes." However, in subsequent discussions of the "new waste" category, the
manufacturing process—such as tangled spun thread, coat dust, broken or spoiled castings—"commercially unfit, without remanufacture, for purposes for which the original material was suitable. . . ." known as "new waste."

The Studner majority recognized that the old printing blocks were fit for use without remanufacture, and that they were not byproducts. Old printing blocks then, failed to meet the exact requirements of the Harley definition. The Studner court, however, to avoid an "illogical" holding,8 departed from the Harley definition. It first determined that old printing blocks were no longer suitable for their original purpose. It then examined a series of cases involving "new waste" articles for which prior Customs Courts had required no fitness for remanufacture. Instead, the articles were classified as new waste even though usable in their imported condition without further remanufacture.9 Finding no judicial requirement for "fitness for remanufacture" in these "new waste" cases and examining two "old waste" cases which circumvented the fitness for remanufacture requirement,10 the court reasoned that "old waste" articles could remain in the 4% waste classification even though the articles might be used for another purpose without remanufacture. To bolster this position, the majority cited sections of the Tariff Act which contained specific language limiting the term "waste" or "scrap" to merchandise fit only for remanufacture.11 Since the provisions for "waste, not specially

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9 Id at 1397; Cia. Algondonera v. United States, 23 C.C.P.A. 42, T.D. 47686 (1935) (cottonseed hulls—which were a necessary by-product in the course of the manufacture of cottonseed oil and meal—were not further manufactured but were mixed with meal in small percentages and fed to cattle); National Carloading Corp. v. United States, 22 Cust. Ct. 328, Abstract 53220 (1949) (pieces of sisal fiber which fell off in the process of manufacturing and were unsuitable for use in manufacturing shoes, bags, or brushes, used in their imported condition as stuffing for furniture, mattresses, and the like); W.R. Grace & Co. v. United States, 9 Cust. Ct. 59, T.D. 662 (1942) (a by-product obtained as a result of manufacturing buttons from tagua nuts, used as a filler in explosives); Koons, Wilson & Co. v. United States, 12 Cust. Ct. App. 418 (1924) (beet pulp—the dried residue from sugar beets after extraction of sugar—used for cattle feed).
11 The provision for waste, not specially provided for, in paragraph 1555 of the Tariff Act of 1930, is without other limitation. It does not contain a proviso, such as that in

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provided for" contained no such limitation, the *Studner* court found no Congressional intent to take "old waste" merchandise out of the waste classification merely because it could be used for another purpose without remanufacture.

The dissent pointed out an additional statement of the *Harley* court, that a manufactured article "which, without further remanufacture, has a valuable practical use, is *not* waste or old junk." Since these print blocks had an intrinsic commercial value without remanufacture, the dissent suggested that they did not conform to the meaning of the term waste and should not be dutiable at 4%. Because the Tariff Act of 1930 reenacted the provisions for "waste, not specially provided for" without change, the dissent further argued that Congress had adopted the 1926 *Harley* requirement that a "waste" article be "fit only for remanufacture into something else."

Historically, the tariff problem concerning waste which faced the courts seems to have involved first a determination of whether or not the imported article was waste. If the importation were not waste, a significantly higher duty was imposed. If it were waste, a further determination was required to classify the article into one of the many sub-categories of waste. The line of cases involved in the *Studner* decision arose within this context, beginning in 1895, when the Supreme Court, in *Patton v. United States*, synthesized prior definitions of waste into "refuse, or material that is not susceptible of being used for ordinary purposes of manufacture."

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12. *Id.* at 1400. The majority failed to rebut this statement.

13. *Id.* at 1402.

14. In the *Studner* case, for example, had the court decided that the print blocks were not waste, the duty imposed would have been 19% ad valorem instead of 4% ad valorem. *Studner v. United States*, 300 F. Supp. 1394, 1395 (Cust. Ct. 1969).


16. 159 U.S. 500, 503 (1895) (*Patton* involved a determination of whether an importation was "wool waste" dutiable at ten cents per pound or as "scoured wool, broken tops . . ." dutiable at sixty cents per pound).
demanded no absolute worthlessness of the article. It only required that
the article be "unmerchantable and used for purposes for which
merchantable material of the same class is unsuitable."17

Thirty-one years later in Harley Co. v. United States,18 the Customs
Court analyzed waste in terms of an "old waste-new waste"
dichotomy.19 Harley Company imported rags of cotton, wool and silk
which the Customs Collector classified as "[w]aste not specially
provided for, 10 per centum ad valorem."20 The importer, objecting,
seeking to have the merchandise enter duty free as any one of the four
sub-categories of waste.21 The controversy had therefore passed the
threshold question of whether or not the article was waste; the problem
centered instead upon which classification of waste ought to be applied.
At trial, the importer apparently relied primarily upon proving that the
merchandise was "[j]unk, old."22 As a result, by looking to prior tariff
definitions of junk,23 the Harley court found that junk traditionally
meant "a manufactured article rendered unsuitable for the purpose for
which it was originally made, which thereby became fit only for
remanufacture and had no value other than that of a manufacturing
material."24 Expanding upon this finding, the court then formulated a
definition of waste to include

manufactured articles which have become useless for the original
purpose for which they were made and fit only for remanufacture into
something else. It also includes refuse, surplus, and useless stuff resulting

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17. "Unmerchantable" when used here must mean unmerchantable for the original purpose
of manufacture, not unmerchantable for any purpose, since the latter interpretation would require
absolute worthlessness of an article before it is classified as waste, an idea the Court expressly
refused to endorse.
19. See notes 5 to 7, supra, and accompanying text.
21. "The paragraphs or parts thereof upon which the importer relies are as follows:
 PAR 1516. Waste bagging, and waste sugar sack cloth.
 PAR 1560. Cotton and cotton waste.
 PAR 1601. Junk, old.
 PAR 1651. Rag pulp; paper stock, crude, of every description, including all grasses, fibers,
rags, waste, including jute, hemp, and flax waste *** rope ends, waste rope, and waste
bagging, and all other waste not specially provided for, including old gunny cloth, and old
gunny used chiefly for paper making, and no longer suitable for bags."
Id. at 113
22. Id. at 113-114 (the testimony which the court cites in its opinion refers only to the junk
classification).
23. Id. at 115. (The Court looked back to the Tariff Acts of 1883, 1890, 1894, 1897, 1909 and
1913).
24. Id.
from manufacture or from manufacturing processes and commercially unfit, without remanufacture, for the purposes for which the original material was suitable and from which material such refuse, surplus or unsought residuum was derived. The latter class of waste might be appropriately designated as new waste and includes such things as tangled spun thread, coal dust, broken or spoiled castings fit only for remanufacture.25

The court concluded that the importation at issue fell into the old waste category. Thus, although the Harley court formulated a definition of waste as a generic term, it had in mind only that specific type of waste known as "junk, old". Arguably, the Harley definition of waste should have been confined by the courts in subsequent cases to articles of "junk, old" since that category is essentially the same as the "old waste" category of Harley. Instead, the courts applied the definition indiscriminately to any sub-category of waste.26

Although no court following either Patton or Harley has claimed to have altered the original definition, Customs Courts have utilized the following approaches to determine waste: (1) stating and applying the Harley definition to an article to find either "old waste" or "new waste";27 (2) stating the Harley definition without classifying the article as either "old waste" or "new waste";28 or, (3) applying the Patton definition, directly29 or indirectly,30 to determine waste.

But no one approach is consistently followed. The resulting confusion is epitomized by the trial court's reasoning in Silverman & Son v. United States.31 In holding that the merchandise was "waste",

25. Id.

26. The majority opinion in Studner exemplifies this indiscriminate application. The court cites the Harley definition as an "oft-quoted statement," alluding not at all to the particular sub-category from which the court derived its generic definition of "old waste".


31. 27 C.C.P.A. 324 (1940).
the court stated the *Harley* "old waste" definition, slightly reworded, without attributing it to *Harley*. Yet in support of this determination of waste, the trial court cited *Cia. Algondera v. United States* and the cases cited therein. The *Cia. Algondera* decision relied heavily on the *Patton* definition in affirming a finding of waste, while making no mention whatsoever of the *Harley* definition.

On their facts, the line of cases involved in the *Studner* decision indicates that the basic *Harley* "old waste"—"new waste" distinction is generally workable. "Old waste" articles include worn-out wearing apparel, worn-out rags, exposed and developed X-ray films, woven strips of jute no longer used in army camouflage nets, slit burlap bags, worn-out sanforizing blankets, and old print blocks. "New waste" articles include sisal fiber shavings, cottonseed hulls, beet pulp (the dried residue from sugar beets after extraction of sugar), and residue from the manufacture of buttons from tagua nuts.

However, changing economic conditions pose a major definitional difficulty. Anytime a traditional by-product becomes a desired major end-product, and, through decreased demand, becomes useless for the original end-product purpose, the possibility of multiple *Harley* characterizations and confusion may result.

The problem stems from the *Harley* requirement that waste articles be fit only for remanufacture. Two opinions cited by the *Studner* majority demonstrate the judicial tendency to circumvent this requirement. In *Silverman & Sons v. United States*, worn-out sanforizing blankets, no longer fit for their original use in textile

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32 *Id.* at 325.
45 *See Cia. Algondera v. United States*, 23 C.C.P.A. 42 (1935), where plaintiff-importer unsuccessfully urged that an article, which was a definite, sought-for major product of a milling process, be deemed waste. *Id.* at 43. The importer in this case wanted duty free importation as "cotton waste" rather than the "waste, not specially provided for" duty.
finishing operations, were held to be waste because they were fit for another use only after "manipulation". The manipulation consisted solely of cleaning the blankets. In Rachman Bag Co., Inc. v. United States, burlap bags, slit for removal of their contents prior to importation and unfit in their imported condition for use as bags, were held to be waste bagging when they were fit only for "conversion" into nursery squares and bale wrappers.

The Studner court, recognizing the unworkability of the strict Harley dichotomy and using as a foundation prior judicial attempts to circumvent the rigid categories, could have specifically abolished the Harley categories. With the Harley dichotomy eliminated, the old print blocks would have been classifiable as waste under the Patton definition, as "not susceptible of being used for the ordinary purposes of manufacture.

However, by eliminating only the remanufacturing requirement, the Customs Court allowed Harley to stand as an elaborative adjunct to the Supreme Court's general definition of waste set forth in Patton. The Studner court retains the benefit of a line of precedents which determined waste under both Patton and Harley, while allowing retention of both the Patton definition and the modified Harley categories to aid in future determinations of waste. At the same time, Studner continues expansion of the waste definition.

47. Id.
49. According to a recent decision, a "cleansing treatment, which does not change the character of the merchandise or appropriate it to any new or different use," may not be considered a manufacturing process. Woodart Mills v. United States, 269 F. Supp. 381 (Cust. Ct. 1967). Therefore, although the definition of waste was not squarely presented in Silverman, the implication remained that no classification of waste required an article to have undergone remanufacture. Likewise, in Rachman Bag Co., the slit burlap bags were fit only for "conversion" into nursery squares and bale wrappers which leaves open the possibility that "conversion", like "cleansing", is not a manufacturing process.
50. Because the Studner facts involve a clear "old waste" article, any pronouncement about the corresponding "new waste" requirement would be dictum.
52. Perhaps the "logical" approach to and the accompanying expansion of the low-duty waste category implements long-standing United States policy to encourage importers in the United States to utilize fully every article, product or by-product cast off by foreign businessmen.