Washington University Law Review

Volume 1970 | Issue 2

January 1970

Customs Duties: Toward a Less Restrictive Definition of "Waste", Studner v. United States, 300 F. Supp. 1394 (Cust. Ct. 1969)

COMMENTS

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

Studner v. United States, 300 F. Supp. 1394 (Cust. Ct. 1969).

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."[1] 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.[2] 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.[3]

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*.[4] *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,"[5] known as "old waste", and by-products[6] of a

1. TARIFF ACT OF 1930 ¶ 395, 19 U.S.C.A. § 1202 (1964), as modified by T.D. 51802, 82 Treas. Dec. 305 (1947). On protest, defendant admitted this classification to be erroneous and appeared willing to accept a 19% duty—applicable to "articles, whether partially or wholly manufactured, composed wholly or in chief value of base metal," TARIFF ACT OF 1930 ¶ 397, 19 U.S.C.A. § 1202 (1964), as modified by T.D. 54108, 91 Treas. Dec. 150 (1956)—which was claimed by plaintiff in the alternative. In this manner, the issue narrowed to a consideration of waste. Studner v. United States, 300 F. Supp. 1394, 1396 (Cust. Ct. 1969).

2. TARIFF ACT OF 1930 ¶ 1555, as modified by T.D. 52739, 86 Treas. Dec. 121 (1951).

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.

4. 14 Ct. Cust. App. 112, 115, T.D. 41644 (1926).

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. . . ,"[7] 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

---

phrase has become synonymous with "by-products". *See, e.g., Summary of Tariff Information*, 1948, Vol 15, part 9, at 136, as quoted in Studner v. United States, 300 F. Supp. 1394 (Cust. Ct 1969)

7 Harley Co. v. United States, 14 Ct. Cust. App. 112, 115, T.D. 41644 (1926) (emphasis added)

8 Studner v. United States, 300 F. Supp. 1394, 1398 (Cust. Ct. 1969).

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 Ct. Cust. App. 418 (1924) (beet pulp—the dried residue from sugar beets after extraction of sugar—used for cattle feed)

10 P. Silverman & Son v. United States, 27 C.C.P.A. 324, C.A.D. 107 (1940) (worn-out sanforizing blankets); Rachman Bag Co., Inc. v. United States, 57 Cust. Ct. 46, C.D. 2838 (1966) (slit burlap bags).

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

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."[12] 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."[13]

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.[14] If it were waste, a further determination was required to classify the article into one of the many sub-categories of waste.[15] 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."[16] The *Patton* court

---

paragraph 301, for example, "That nothing shall be deemed scrap iron or scrap steel except second hand or waste or refuse iron or steel fit only to be remanufactured." See also paragraph 394 (old and worn-out zinc, fit only to be remanufactured); Public Law 81- 869, 64 Stat. 1093, as amended; and items 911.10-911.12, Tariff Schedules of the United States. The restriction "fit only to be remanufactured" also occurs in earlier tariff acts. See paragraph 301, Tariff Act of 1922; paragraph 518, Tariff Act of 1913; paragraph 118, Tariff Act of 1909. It would appear, therefore, that when Congress intended to limit the terms "waste" or "scrap" to merchandise fit only for remanufacture, it so stated.

Studner v. United States, 300 F. Supp. 1394, 1398-99 (Cust. Ct. 1969).

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).

15. *See* Harley Co. v. United States, 14 Ct. Cust. App. 112, 113, T.D. 41644 (1926) (the importer of cotton, wool and silk rags relied on no less than four types of waste).

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, sought 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

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.

18 14 Ct. Cust. App. 112, 115 (1926).

19 *See* notes 5 to 7, *supra*, and accompanying text.

20. 14 Ct. Cust. App. 112 (1926).

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, directly[29] 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".

27. United States v. C.J. Tower & Sons, 31 C.C.P.A. 185, 190-91, C.A.D. 271 (1944); United States v. Katzenstein & Keene, 16 Ct. Cust. App. 93, 97, T.D. 42754 (1928).

28. Studner v. United States, 50 Cust. Ct. 149, C.D. 2404 (1963); Pelton Enterprises, Inc. v. United States, 44 Cust. Ct. 381, Abs. #63935 (1960); Midwest Waste Material Co. v. United States, 28 Cust. Ct. 8, 18, C.D. 1382 (1951).

29. National Carloading Corp. v. United States, 22 Cust. Ct. 328, 329 (1949); Cia. Algondonera v. United States, 23 C.C.P.A. 42 (1935); Willits & Co. v. United States, 11 Ct. Cust. App. 499, 500-01, T.D. 39657 (1923).

30. Rachman Bag Co., Inc. v. United States, 57 Cust. Ct. 465 (1966) [cites *Patton* definition through T.E. Ash v. United States. 16 Ct. Cust. App. 225 (1928)]; W.R. Grace & Co. v. United States, 9 Cust. Ct. 59, 62 (1942) (cites *Patton* definition through *Willits & Co.*, note 20 *supra*); Koons, Wilson & Co. v. United States, 12 Ct. Cust. App. 418, 419 (1924) (cites *Patton* definition through *Willits & Co.*, note 20, *supra*).

31. 27 C.C.P.A. 324 (1940).

the court stated the *Harley* "old waste" definition, slightly reworded, without attributing it to *Harley*.[32] Yet in support of this determination of waste, the trial court cited *Cia. Algondera v. United States*[33] 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,[34] worn-out rags,[35] exposed and developed X-ray films,[36] woven strips of jute no longer used in army camoflage nets,[37] slit burlap bags,[38] worn-out sanforizing blankets,[39] and old print blocks.[40] "New waste" articles include sisal fiber shavings,[41] cottonseed hulls,[42] beet pulp (the dried residue from sugar beets after extraction of sugar),[43] and residue from the manufacture of buttons from tagua nuts.[44]

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.[45]

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*,[46] worn-out sanforizing blankets, no longer fit for their original use in textile

32 *Id* at 325.
33 23 C C.P.A. 42, T.D. 47686 (1935).
34 Harley Co. v. United States, 14 Ct. Cust. App. 112 (1926).
35 United States v Katzenstein & Keene, 16 Ct. Cust. App. 93, T.D. 42754 (1928).
36 United States v. C.J. Tower & Sons, 31 C.C.P.A. 185, C.A.D. 271 (1944).
37 Midwest Waste Material Co. v. United States, 28 Cust. Ct. 8, C.D. 1382 (1951).
38 Rachman Bag Co., Inc. v. United States, 57 Cust. Ct. 465 (1966).
39 P Silverman & Sons v. United States, 27 C.C.P.A. 324 (1940).
40 Studner v. United States, 300 F. Supp. 1394, C.D. 3865 (Cust. Ct. 1969).
41 National Carloading Corp. v. United States, 22 Cust. Ct. 328 (1949).
42 Cia Algondonera v. United States, 23 C.C.P.A. 42 (1935).
43. Koons, Wilson & Co. v. United States, 12 Ct. Cust. App. 418 (1924).
44 W R. Grace & Co. v. United States, 9 Cust. Ct. 59 (1942).
45. *See* Cia. Algondonera 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.
46. 27 C C.P.A. 324, C.A.D. 107 (1940).

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.[47] In *Rachman Bag Co., Inc. v. United States*,[48] 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 bagginp when they were fit only for "conversion" into nursery squares and bale wrappers.[49]

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.[50] 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."[51]

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.[52]

---

47. *Id.*

48. 57 Cust. Ct. 465, C.D. 2838 (1966).

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.

51. Patton v. United States, 159 U.S. 500, 503 (1895).

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.