ARTICLE 1904
BINATIONAL PANEL REVIEW
UNDER THE
UNITED STATES-CANADA FREE-TRADE AGREEMENT

In the Matter of	
REPLACEMENT PARTS FOR SELF-PROPELLED BITUMINOUS PAVING EQUIPMENT FROM CANADA	Secretariat File No. USA-90-1904-01

Before: Donald J. M. Brown, Chairman
Harry B. Endsley
Simeon M. Kriesberg
Gerald A. Lacoste
Wilhelmina K. Tyler

October 28, 1992

BLAW KNOX CONSTRUCTION EQUIPMENT CORPORATION
and NORTHERN FORTRESS, LTD.,
Complainants

- versus -

INTERNATIONAL TRADE ADMINISTRATION,
U.S. DEPARTMENT OF COMMERCE,
Respondent

Brian F. Walsh, Barnes, Richardson & Colburn, argued for Blaw Knox Construction Equipment Corporation. With him on the brief was Robert E. Burke.

William K. Ince, Cameron & Hornbostel, argued for Northern Fortress, Ltd. With him on the brief was Michele C. Sherman.

Craig R. Giesze, Office of the Chief Counsel for Import Administration, argued for the Department of Commerce. With him on the brief were Stephen J. Powell and Berniece A. Browne.

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I. INTRODUCTION

This Panel was constituted pursuant to Article 1904.2 of the United States-Canada Free-Trade Agreement ("FTA") to review the final determination of the International Trade Administration, U.S. Department of Commerce ("ITA"), in the administrative review of the antidumping order on replacement parts for self-propelled bituminous paving equipment from Canada for the period September 1, 1987 through December 31, 1988. The present Opinion represents the third consideration by this Panel of aspects of that administrative review.

ITA's original determination in the administrative review, rendered on May 15, 1990, 55 Fed. Reg. 20175 (1990), was challenged both by the Canadian manufacturer, Northern Fortress, Ltd. ("Northern Fortress"), and by the U.S. petitioner in the original antidumping investigation, Blaw Knox Construction Equipment Corporation ("Blaw Knox"). Upon review, this Panel affirmed ITA's determination in part and remanded it in part. Panel Opinion and Order of May 24, 1991, Pub. Doc. No. 90 ("First Panel Opinion").[1]

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[1] References to documents in the public or proprietary record of this Panel's review of ITA's original and remand determinations are designated "Pub. Doc. No. __" or "Prop. Doc. No. __," respectively. References to documents in the public record of the original administrative review are designated "Admin. Rec. Doc. No. __." References to documents in the public record of the administrative review upon first remand are designated "First Remand Rec. Doc. No. __." References to documents in the public record of the administrative review upon second

(continued...)

ITA's determination upon remand, rendered on December 15, 1991, Pub. Doc. No. 119, satisfied neither Northern Fortress nor Blaw Knox. Upon review, this Panel affirmed ITA's determination in part and remanded it in part. Specifically, the Panel directed ITA to reconsider its inclusion of Northern Fortress sales of allegedly non-Canadian goods, and to verify the information on which it relied in this regard. Panel Opinion and Order of May 15, 1992, Pub. Doc. No. 172 ("Second Panel Opinion"). Upon a subsequent motion by Northern Fortress, Pub. Doc. No. 176, the Panel further directed ITA to explain its freight-cost deductions from the United States price of exporter-sales-price ("ESP") sales and its resort to and choice of "best information available" ("BIA") for such deductions. Panel Opinion and Order on Northern Fortress Motion for Re-Examination of Panel Decision, June 19, 1992, Pub. Doc. No. 187.

In its determination upon this second remand, ITA concluded that it could verify the non-Canadian origin of 22 of the parts in question but that it could not verify the origin of the other 31 parts. Therefore, ITA resorted to BIA with respect to the origin of the latter parts, and determined that they were of Canadian origin. Consequently, the sales of these parts were,

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[1](...continued)
remand are designated "Second Remand Rec. Doc. No. __." The proprietary versions of certain public documents in the record of the administrative review upon second remand are designated "Prop. Second Remand Rec. Doc. No. __." Whenever proprietary documents are cited, no proprietary information is disclosed.

ITA determined, subject to the antidumping order. ITA noted in passing that, even if it had not resorted to BIA with respect to the 31 parts, seven of those parts were substantially transformed in -- and therefore the products of -- Canada. ITA also provided an explanation of its deductions of freight costs in ESP sales and of its resort to and choice of BIA therefor. ITA's determination resulted in a weighted-average dumping margin of 19.50 percent. Pub. Doc. No. 198.

Northern Fortress challenges ITA's remand determination on the grounds that: (a) there was sufficient evidence on the record for ITA to verify the non-Canadian origin of the 31 parts; and (b) the seven parts specified by ITA were not substantially transformed in Canada. Therefore, Northern Fortress argues, all sales of the 31 parts should have been excluded from the scope of the antidumping order. ITA responds to these challenges by urging the Panel to affirm ITA's remand determination in all respects. Blaw Knox supports ITA's remand determination.

On the basis of the administrative record (both in the original administrative review and on remand), the applicable law, the written submissions of the parties, and the hearing held on October 9, 1992 at which all parties were heard, the Panel:

REMANDS to ITA for reconsideration of its application of the antidumping order to Northern Fortress's sales of the 31 allegedly non-Canadian parts; and

AFFIRMS ITA's determination in all other respects.

II. THE ADMINISTRATIVE PROCEEDINGS AND DETERMINATIONS

The administrative proceedings and determinations leading to this Panel's second remand are thoroughly described in the First Panel Opinion and the Second Panel Opinion, Pub. Doc. Nos. 90, 172, and will not be revisited here. Northern Fortress challenges only that aspect of ITA's second remand determination that pertains to the origin of 31 parts, so our review of the administrative proceedings and determinations upon the second remand will be likewise circumscribed.

Following the second remand by this Panel, Blaw Knox requested that ITA verify the information upon which it would base its determination concerning country of origin. Second Remand Rec. Doc. No. 2. Pursuant to the terms of the Second Panel Opinion, see Pub. Doc. No. 172, at 108, therefore, ITA proceeded to conduct a verification of the origin of the 64 parts that Northern Fortress had alleged, First Remand Rec. Doc. No. 39, at 2, to be non-Canadian. On June 5, 1992, ITA issued to Northern Fortress a verification questionnaire, requesting by June 18 information on elements of cost, production methods, manufacturing equipment used in Canada, capital expenditures, worker skills and training, and the role of any Canadian assembly process in the "ultimate functioning of the parts in question." Second Remand Rec. Doc. No. 3, at 2. On June 10, ITA added a question regarding which of the parts were "paver parts" at the

time of importation into Canada; this question, too, was to be answered by June 18. Second Remand Rec. Doc. No. 4.

On June 18, Northern Fortress submitted its response to the ITA questions. Second Remand Rec. Doc. No. 6. On the same day, ITA began a two-day on-site verification of the Northern Fortress information.[2] Following the on-site verification, ITA requested additional information to resolve certain outstanding factual questions. Second Remand Rec. Doc. Nos. 7, 12. Northern Fortress submitted further information on June 26 and July 7. Second Remand Rec. Doc. Nos. 9, 10, 13.[3]

Early in the verification, the 64 parts originally alleged to be of non-Canadian origin were winnowed down to 53: four of the parts were excluded as attachments, and seven more were dropped after Northern Fortress discovered typographical and other errors in its original list. Pub. Doc. No. 198, at 5. Of the 53 remaining parts, ITA eventually identified two categories: 22 parts as to which non-Canadian origin could be verified and 31 parts as to which non-Canadian origin could not be verified. The verifiability of the costs incurred by Northern Fortress in Can-

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[2] For the sake of simplicity, Northern Fortress and its various predecessor companies, including Fortress Allatt, Ltd. and Allatt Limited, are referred to as "Northern Fortress." See Pub. Doc. No. 47, at 6.

[3] Upon ITA's motions, Pub. Doc. Nos. 189, 193, the Panel twice extended the time for completion of the second remand determination so that the post-verification information requests and responses could be accommodated. Pub. Doc. Nos. 191, 195.

ada, particularly the labor costs, marked the distinction between these two categories.

In reaching its determination that the non-Canadian origin of 22 parts could be verified and the non-Canadian origin of the other 31 parts could not be, ITA considered a body of evidence neither as complete nor as accurate as it wished. The principal form of cost documentation provided by Northern Fortress was its standard "cost sheet" for each part. The cost sheet was an internal statement routinely prepared by Northern Fortress managers to track the costs of material and labor for each part. Prop. Doc. No. 207, at Exhibit A (containing sample cost sheets). The cost of materials stated in the cost sheet was based on invoices and other pricing information about the particular part. The labor cost stated in the cost sheet was based on the wage rate and assembly time required to assemble the part in Canada, plus a factory-overhead factor that was computed as a multiple of the direct labor cost. Both the assembly time and the factory-overhead factor were derived by Northern Fortress managers in consultation with the shop foreman and other employees familiar with the assembly process. Id. at Exhibit B.

The cost sheet for a particular part was revised from time to time as costs of materials changed and as assembly times and factory-overhead factors were updated. Prop. Doc. No. 223, at 10, 32. Because Northern Fortress was able to submit to ITA the most current cost sheets during the period under review, but not

all of the cost sheets in use during that period, id. at 32, ITA could not determine whether the stated costs were representative of all parts sold during the period. Furthermore, Northern Fortress was unable to provide documentation of the aggregate costs of all the parts sold, so ITA could not compute an average cost for each part. Second Remand Rec. Doc. No. 14, at 6-7.

When ITA sought spot-check corroboration of the cost of materials stated in the cost sheets, Northern Fortress was able to supply invoices that apparently satisfied ITA's verification needs. Id. at 20; Prop. Doc. No. 223, at 63. But with respect to labor costs, Northern Fortress's substantiation was not satisfactory to ITA. Northern Fortress did provide a detailed breakdown of the time required for each step of the assembly process with respect to sample parts, Prop. Doc. No. 207, at Exhibit B, as well as a written description of the assembly of each type of part, Prop. Second Remand Rec. Doc. No. 1, at Appendix A. But Northern Fortress had no time-and-motion studies to bolster the assembly-time estimates that had been made by its personnel and then entered on the cost sheets. Prop. Doc. No. 207, at Exhibit B. Furthermore, although Northern Fortress noted that the factory-overhead factor used by Northern Fortress during the period under review was little changed from the factor reported by it during a verification covering 1981-83, id.; Prop. Doc. No. 212, at 13, Northern Fortress conceded that it could no longer provide the monthly spreadsheets that Northern Fortress

had available to corroborate factory overhead during the verification held in July 1991.[4]

In the absence of desired documentation on direct labor and factory overhead, ITA requested that Northern Fortress submit copies of the invoices presented to the U.S. Customs Service upon entry of certain of the parts into the United States, so that ITA could determine how Northern Fortress identified the country of origin on the invoices. ITA asked for the customs invoices pertaining to two of the 22 parts and two of the 31 parts. Second Remand Rec. Doc. No. 14, at 14. Northern Fortress was able to provide only one of the two customs invoices from the 22-part category, which invoice reported non-Canadian origin; no customs invoices from the 31-part category were provided. Id. at 8, 16-17.

Based on invoices for materials showing that the components of the 22 parts had been imported into Canada, photographs of the parts showing that the parts were imported into Canada in the same condition that they were exported to the United States, the constructed-value questionnaire response submitted on July 2, 1991 in which Northern Fortress reported no labor costs for any

[4] Northern Fortress attributed its inability to submit certain documents requested by ITA to Northern Fortress's sale of its replacement parts business to Ingersoll-Rand Canada in December 1988 and Ingersoll-Rand's cessation of operations at the former Northern Fortress plant in late 1991. "As a practical matter," Northern Fortress advised ITA, "locating [certain requested] documents . . . at this time is impossible." Second Remand Rec. Doc. No. 9, at 3.

of the 22 parts, and the single corroborating customs invoice, ITA determined that the non-Canadian origin of the 22 parts was verified. Id. at 7-9. By contrast, ITA determined that, in the absence of time-and-motion studies substantiating the assembly-time estimates, in the absence of monthly spreadsheets substantiating the factory-overhead factor, and in the absence of any customs invoices pertaining to the 31 remaining parts, ITA could not verify the non-Canadian origin of those 31 parts. Id. at 14-19.

On July 15, ITA issued its preliminary remand determination. Second Remand Rec. Doc. No. 15. After considering comments by Blaw Knox and Northern Fortress, Second Remand Rec. Doc. Nos. 16, 17, ITA issued its final remand determination on July 30, with minor revisions from the preliminary version. Pub. Doc. No. 198. Northern Fortress timely requested panel review of ITA's final remand determination. Pub. Doc. No. 202.

III. THE STANDARD OF REVIEW

Under the FTA, an Article 1904 binational panel review of a U.S. antidumping determination is to be conducted in accordance with United States law. FTA Article 1902.1. The applicable United States law includes not only the U.S. antidumping laws -- the "relevant statutes, legislative history, regulations, administrative practice, and judicial precedents," FTA Article 1904.2

-- but also the "standard of review . . . and the general legal principles that a court of the [United States] otherwise would apply to a review of a determination of the competent investigating authority," FTA Article 1904.3. The "general legal principles" applied by a U.S. court include "standing, due process, rules of statutory construction, mootness, and exhaustion of administrative remedies." FTA Article 1911.

The "standard of review" requires the Panel to hold unlawful the ITA determination under review if it is found to be "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B) (1988) (incorporated by reference in FTA Article 1911). In the First Panel Opinion, this Panel surveyed the contours of the "substantial evidence" standard. Pub. Doc. No. 90, at 14-17. Rather than repeating that survey here, the Panel incorporates it by reference.

In this remand review, the Panel applies the standard of review to the determination by ITA that it was unable to verify the origin of 31 parts that Northern Fortress alleged were not Canadian. For two reasons, a determination concerning the verifiability of information is especially difficult for a court or a panel to review. First, the process of verification is inherently fraught with the exercise of judgment: in the context of each particular investigation and with respect to each issue of fact, ITA must assess the accuracy and completeness of the

body of evidence before it. Second, neither the antidumping statute nor ITA's regulations provide explicit rules for the conduct of a verification.[5] Thus, the courts have recognized that ITA has "broad discretion in verifying, scrutinizing, and interpreting the data in order to formulate its determination." Hercules, Inc. v. United States, 673 F. Supp. 454, 489 (CIT 1987). See PPG Indus., Inc. v. United States, 781 F. Supp. 781, 787 (CIT 1991).

Yet ITA's discretion in conducting a verification is not unbounded. As the U.S. Court of Appeals for the Federal Circuit has observed generally with respect to ITA's implementation of the antidumping laws, "[W]hile the law does not expressly limit the exercise of that discretion with precise standards or guidelines, some general standards are apparent and these must be followed." Smith-Corona Group v. United States, 713 F.2d 1568, 1571 (Fed. Cir. 1983), cert. denied, 465 U.S. 1022 (1984).

Most importantly, ITA's determination that specific information cannot be verified must meet the test of reasonableness.

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[5] The antidumping statute states only that ITA "shall verify all information relied upon in making [a determination in an administrative review]" and that ITA "shall use the best information available to it" if it is "unable to verify the accuracy of the information submitted." 19 U.S.C. § 1677e(b) (1988). The ITA regulations simply echo the statute: ITA "will verify all factual information [it] relies on in . . . the final results of an administrative review" and "will use the best information available whenever [it] is unable to verify the accuracy and completeness of the factual information submitted." 19 C.F.R. §§ 353.36(a)(1), 353.37(a) (1992).

See, e.g., PPG Indus., Inc. v. United States, 781 F. Supp. at 787; Hercules, Inc. v. United States, 673 F. Supp. at 485. This is not to say that this Panel may substitute its judgment for that of [ITA] when the "choice [is] between two fairly conflicting views, even though the [Panel] would justifiably have made a different choice had the matter been before [us] de novo." Universal Camera Corp. v. NLRB, 340 U.S. 474, 488 (1951). Accord Mitsubishi Electric Corp. v. United States, 700 F. Supp. 538, 558 (CIT 1988), aff'd on other grounds, 898 F.2d 1577 (Fed. Cir. 1990). This Panel is required, however, if it finds that ITA's determination regarding verifiability overstepped the bounds of reasonableness, to remand that determination. See, e.g., Industrial Quimica del Nalon, S.A. v. United States, ___ F. Supp. ___, ___, 1991 WL 94273, *3, 13 ITRD 1476, 1481 (CIT May 24, 1991); Nakajima All Co., Ltd. v. United States, 744 F. Supp. 1168, 1177 (CIT 1990).

IV. THE ISSUE AND HOLDING

Whether the International Trade Administration's Decision to Use "Best Information Available" with Respect to the Origin of 31 Allegedly Non-Canadian Parts was Supported by Substantial Evidence on the Record and was Otherwise in Accordance with Law

In considering the single issue presented for review, the Panel first considers the legal standard applicable to ITA's

resort to BIA and then applies that standard to ITA's consideration of the origin of the 31 parts in question.

A. The Resort to "Best Information Available": The Legal Standard

This Panel discussed the legal standard for ITA's resort to BIA in the Second Panel Opinion, Pub. Doc. No. 172, at 73-78, and in the First Panel Opinion, Pub. Doc. No. 90, at 26-31. Although those discussions focused on the resort to BIA where "a party . . . refuses or is unable to produce information required in a timely manner and in the form required, or otherwise significantly impedes an investigation," 19 U.S.C. § 1677e(c) (1988), the Panel noted that the unverifiability of information is an independent ground for using BIA. Pub. Doc. No. 172, at 74 n.46 (citing 19 U.S.C. § 1677e(b) (1988)). In its second remand determination, ITA based its use of BIA on its inability to verify certain information concerning the origin of the 31 parts in question.[6] If ITA reasonably determined that information on

[6] ITA did note, as "additional evidence" supporting its resort to BIA, that Northern Fortress was "less than cooperative in supplying [the] requested information." Pub. Doc. No. 198, at 21-22. In its brief to the Panel, ITA expanded on this point, characterizing Northern Fortress's behavior as "imped[ing]" the investigation and therefore as "additional grounds" for resorting to BIA. Pub. Doc. No. 213, at 45, 47. At the hearing before this Panel, however, in response to specific questions by Panelist Lacoste, ITA declined to state that the conduct of Northern Fortress was an independent ground for ITA's resort to BIA, saying that if the determination regarding verifiability of the country of origin were remanded, ITA would have to consider whether the conduct of Northern Fortress would be "grounds on its (continued...)

which it needed to rely could not be verified, then its resort to BIA was lawful under the legal standards previously articulated by this Panel. We therefore turn to a consideration of the reasonableness of ITA's determination that the origin of the 31 allegedly non-Canadian parts could not be verified.

B. The Consideration of the Origin of the 31 Parts

The Panel reviews ITA's consideration of the origin of the 31 allegedly non-Canadian parts in four steps. First, we review ITA's stated criteria for determining the country of origin. Second, we review ITA's satisfaction with the information relevant to most of the stated criteria. Third, we analyze the application to the record evidence of the one criterion on which ITA principally focused: the value-added criterion. Fourth, we analyze the application to the record evidence of the additional criterion that ITA applied to seven of the 31 parts: the substantial transformation criterion.

1. The Criteria for Determining Country of Origin

In its remand determination, ITA identified seven criteria by which it determines whether finishing or assembly operations, such as those performed by Northern Fortress on the 31 parts in question, are "sufficient to confer country-of-origin status upon

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[6](...continued)
own" for resorting to BIA. Prop. Doc. No. 223, at 94. Therefore, the Panel focuses solely on whether the verifiability of the information submitted by Northern Fortress supports ITA's use of BIA.

the imported merchandise." Pub. Doc. No. 198, at 14-15 (footnote omitted). Northern Fortress did not dispute these criteria. Prop. Doc. No. 223, at 33. ITA's seven criteria are as follows:

> (1) whether the finishing or assembly operations are "extremely important to the technical performance" of the imported merchandise, (2) whether these operations are "sophisticated" and involve an "extremely high degree of technical precision," or whether such operations involve simple, rudimentary procedures, (3) whether the finishing or assembly operations require a "substantial capital outlay," (4) whether such operations add significant value to the imported merchandise, (5) whether the foreign exporter undertook the finishing or assembly operations to circumvent the relevant antidumping order or finding, (6) whether the assembly or finishing operations have changed the "essence" of the imported merchandise -- in other words, whether such operations have effected a "substantial transformation" of the merchandise at issue, and (7) whether the assembly or finishing operations have changed the end use of the imported merchandise.

Pub. Doc. No. 198, at 15-16 (footnotes omitted). For purposes of our analysis, this Panel considers the sixth and seventh criteria to be two aspects of the same "substantial transformation criterion": the substantial transformation test entails consideration of whether a processing operation alters the essential "character" or the ultimate "use" of the product in question. Anheuser-Busch Ass'n v. United States, 207 U.S. 556, 562 (1908); Superior Wire Co. v. United States, 867 F.2d 1409-10 (Fed. Cir. 1989).

Significantly, ITA stated in its remand determination that no one of the seven specified criteria "is dispositive or determinative" of the country of origin. Pub. Doc. No. 198, at 16. Indeed, none of the four antidumping determinations chiefly cited by ITA to demonstrate its use of the seven criteria actually uses all seven criteria. Rather, each determination rests on only two, three, or four criteria. See Limousines from Canada, 55 Fed. Reg. 11036, 11040 (1990) (finding origin of limousines to be the country in which conversion of basic chassis occurs, because conversion is "sophisticated process" that "more than doubles the value" of the base vehicle and that transforms it into "a new and different article of merchandise"); Photo Albums and Filler Pages from Korea, 54 Fed. Reg. 13399, 13399-400 (1989) (finding origin of photo albums to be the country in which album pages are sourced, because pages are "essence" of album, assembling pages in binder is "simple" operation, and filler pages have no alternative use than to be assembled into photo albums); 3.5" Microdisks and Coated Media Thereof from Japan, 54 Fed. Reg. 6433, 6434-35 (1989) (finding origin of microdisks to be the country in which coated media are finished into microdisks, because finishing process is "extremely important to the technical performance" of the microdisks, the finishing process requires "a substantial capital outlay and an extremely high degree of technical precision," the finishing operations employ "highly trained technical personnel," the value of the media

represents "a small fraction of the value of the microdisk," and the finishing operations cannot be "set up and undertaken easily in any country"); EPROMs from Japan, 51 Fed. Reg. 39680, 39692 (1986) (finding origin of EPROMs to be the country in which wafers or dice are fabricated rather than where they are encapsulated or assembled into EPROMs, because processed wafer or dice is the "essential active component" of an EPROM, intended use of merchandise is not changed by the assembly process, encapsulation is "not a sophisticated process," and assembly "is the mechanical stage which can be accomplished relatively easily in any country").[7] In accordance with this consistent administrative practice, no one criterion should be dispositive of the country of origin of the 31 parts in question here.

2. The Satisfaction of Most of the Criteria

Of the seven criteria identified by ITA as relevant to its consideration of the origin of the allegedly non-Canadian parts, ITA concluded that, on most of the criteria, the record evidence supported non-Canadian origin. Specifically, ITA stated,

> The record does establish that Northern Fortress's finishing or assembly operations undertaken in Canada were not "extremely important to the technical performance" of the imported merchandise, did not involve an "extremely high degree of technical

[7] At the hearing, the Panel asked ITA, Northern Fortress, and Blaw Knox to supplement these citations with any other judicial or administrative rulings concerning ITA's country-of-origin criteria, Prop. Doc. No. 223, at 5-6, but no directly relevant rulings could be found. See Pub. Doc. Nos. 225, 226.

> precision," but rather involved simple, rudimentary procedures, and did not require "substantial capital outlay."

Pub. Doc. No. 198, at 21 n.29. Thus, the first three of the seven criteria identified by ITA supported a determination that the 31 parts were not of Canadian origin.

Furthermore, there is no record evidence that the fifth of ITA's seven criteria -- whether the foreign exporter undertook the finishing or assembly operations to circumvent the relevant antidumping order or finding -- is applicable to the origin of the 31 parts. Indeed, after identifying this criterion as one that it ordinarily considers, ITA made no reference to this criterion in the balance of the remand determination.

In sum, with the exception of the fourth criterion -- the value-added criterion -- and the sixth and seventh criteria -- collectively, the substantial transformation criterion -- all of ITA's criteria supported Northern Fortress's allegation of non-Canadian origin. Given ITA's practice of relying on only a few of the criteria in each of its determinations of country of origin, ITA's seeming insistence on applying all but the fifth of the criteria in the instant case appears inconsistent with its past verifications. If it is ITA's policy that "[n]o one factor is dispositive or determinative," id. at 16, then ITA could reasonably have rested its country-of-origin determination solely on the four criteria satisfied by the record evidence. Perhaps if ITA had verified seriously adverse information with respect to

one of the remaining criteria, it might reasonably have overridden the weight of verified evidence supporting non-Canadian origin. But, as the next two sections of this Opinion conclude, the record evidence on the value-added and substantial transformation criteria was not seriously adverse to Northern Fortress's allegation of non-Canadian origin.

3. The Application of the Value-Added Criterion

The crux of the value-added criterion, as stated by ITA, is whether the Canadian operations of Northern Fortress added "significant value" to the components imported into Canada. In assessing whether the Canadian value-added was significant, ITA focused on two categories of value: the cost of the materials added in Canada, and the cost of the labor employed in Canada.

With respect to the cost of materials, Northern Fortress presented its standard cost sheets indicating the costs of materials associated with sales of each of the 31 parts during the period of investigation. Based on these cost sheets and on a spot-check of supporting invoices, ITA was able to corroborate the costs of materials stated in the cost sheets. Second Remand Rec. Doc. No. 14, at 20. Although ITA noted that it lacked the total cost of materials for all products sold during the period of investigation, Pub. Doc. No. 198, at 18, ITA did not seem to rely on deficiencies in the information on the cost of materials in ruling on the country-of-origin question, id. at 19-20.

Indeed, at the hearing before the Panel, ITA stated in response to a question by Panel Chairman Brown that it had "[a]bsolutely" been able to verify Northern Fortress's costs of materials. Prop. Doc. No. 223, at 63.

With respect to labor costs, Northern Fortress presented its standard cost sheets indicating the labor costs associated with sales of each of the 31 parts during the period of investigation. Although ITA had verified the wage rate during the first remand determination, First Remand Rec. Doc. No. 14, at 10, and although Northern Fortress supplied certain information to supplement and substantiate the cost sheets, ITA found that Northern Fortress's explanation of the assembly time was "sketchy," and that its inability to provide factory-overhead documentation, such as monthly spreadsheets, rendered the labor costs unverifiable. Pub. Doc. No. 198, at 19-20.

The Panel does not doubt that additional corroborative evidence of labor costs would have been reassuring as to the accuracy of the cost sheets. But in evaluating the reasonableness of ITA's conclusion of non-verifiability, it is critical that the issue be framed properly. The purpose of the verification conducted by ITA was not to determine the cost of production of Northern Fortress's products, but rather to determine whether "significant" value was added in Canada. Although quite precise information may be required to establish a specific cost of

production, the information required to verify whether "significant" value was added may be more relative and approximate.

In this regard, the Panel notes that the assembly-time estimates and the factory-overhead factor were computations made by experienced personnel in accordance with longstanding company practice and in the ordinary course of business, bolstering their credibility as reasonably reliable, if not precise, financial records. Furthermore, even if ITA were to suspect -- though there was no record evidence to substantiate the suspicion -- that Northern Fortress systematically understated the Canadian labor costs, the cost sheets indicate that only a sizeable increase in the Canadian labor costs would have made them a significant portion of the final value of the products in question. The written descriptions of the assembly process of each type of part and the detailed time estimates regarding sample parts may have been "sketchy" in comparison with formal time-and-motion studies, but they imparted sufficient information to corroborate the essential point: whatever might have been the exact assembly-time requirements for a particular part, the labor component of the assembly process did not add "significant" value to the final product.

The latter conclusion is consistent with ITA's treatment of the 22 parts as to which it verified the information on the value-added criterion. Information on the assembly time and factory overhead associated with these 22 parts was no more

precise or substantial than the corresponding information pertaining to the 31 other parts. Northern Fortress could no more "prove" that the labor costs were zero for all of the 22 parts than it could "prove" that the labor costs were -- to use hypothetical numbers -- exactly $12.20 or $15.40 for any particular one of the 31 parts. ITA itself noted that it was "unable to verify the total cost of any of the [22] parts." Pub. Doc. No. 213, at 8. Nevertheless, ITA "was still able to verify that each of these [22] parts [was] of non-Canadian origin." Id.

ITA verified the Canadian labor costs -- or lack of Canadian labor costs -- of the 22 parts by looking beyond the cost sheets to other corroborating evidence: written descriptions of the assembly process, photographs of the parts, cost information submitted by Northern Fortress in prior verifications. Yet these same types of information were available with respect to the other 31 parts in question.[8]

Thus, in weighing the evidence on the Canadian labor costs of the 31 parts, ITA seemed to lose sight of the realities of

[8] Indeed, the only material distinction between the types of information available regarding the 22 parts and those available regarding the 31 parts is that, with respect to one of the 22 parts, Northern Fortress was able to provide, at ITA's request, an invoice submitted to the U.S. Customs Service in conjunction with one U.S. sale. Northern Fortress was unable to provide any customs invoices for the 31 parts. Since a customs invoice sheds no light on the labor costs associated with the Northern Fortress assembly process, the Panel finds the existence of this single invoice to be insufficient grounds for drawing the line between verifiability and non-verifiability.

verification, realities that it had taken into account in weighing the evidence concerning the other 22 parts. Verification is not intended to be an exacting or exhaustive process. Monsanto Co. v. United States, 698 F. Supp. 275, 281 (CIT 1988). Information is never as comprehensive nor data as readily reconciled as would be ideal, particularly with the passage of time. See Industrial Quimica del Nalon, S.A. v. United States, ___ F. Supp. ___, _____, 1991 WL 94273, *5-*6, 13 ITRD 1476, 1481 (CIT May 24, 1991) (ITA unreasonably disregarded data simply because original calculations could not be exactly reproduced four years later). Invariably, the state of the record leaves some questions unanswered, some doubts unresolved.

ITA's task is to consider the entire record, and to determine whether there is substantial evidence supporting a determination of verifiability. See Smith Corona Corp. v. United States, 771 F. Supp. 389, 398 (CIT 1991) (ITA must consider the record as a whole, including the results of any prior administrative reviews that bear on a present issue); Nakajima All Co., Ltd. v. United States, 744 F. Supp. 1168, 1177 (CIT 1990) (ITA should not have concluded that sales were below cost given evidence verified in previous investigation); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1114, 1116-17 (CIT 1989) (upholding ITA's discounting of invoice evidence in light of entire record); Agrexco, Agricultural Export Co., Ltd. v. United States, 604 F. Supp. 1238, 1244, 1245 (CIT

1985) (upholding ITA's reliance on oral statements). Considering the record as a whole, the Panel concludes that monthly spread-sheets, time-and-motion studies, and customs invoices should not have become "do-or-die" requirements of verification under the circumstances of this administrative review. See Industrial Quimica del Nalon, S.A. v. United States, ___ F. Supp. at ___, 1991 WL 94273 at *3, 13 ITRD at 1479 (ITA's "desire to obtain documentation should not fly in the face of established business practice, and should not be transformed into a do-or-die requirement").[9] Despite the deficiencies in the information available from Northern Fortress, there was compelling evidence on the record that the Canadian operations of Northern Fortress

[9] The Panel notes that the Court of International Trade has held repeatedly that a party subject to an administrative review discards relevant documents at its peril. See Sharp Corp. v. United States, _____ F. Supp. _____, _____, 1992 WL 175734, *8 (CIT July 13, 1992) (resort to BIA upheld where respondent discarded documents); Koyo Seiko Co., Ltd. v. United States, 796 F. Supp. 517, 525 (CIT 1992) (despite extraordinary delay by ITA in completing investigation, respondent's failure to retain documents was grounds for use of BIA); NSK Ltd. v. United States, 794 F. Supp. 1156, 1160 (CIT 1992) (respondent's inability to produce 10 years of cost records due to policy of discarding records after 5-6 years was proper basis for resort to BIA). The Panel is not prepared to rule that a company no longer in business should be exempted from the requirement that relevant documents be retained, particularly where, as in the instant case, the company -- Northern Fortress -- is the one requesting an administrative review. The Panel thus does not consider it unreasonable for ITA to have demanded documents of Northern Fortress; the Panel, rather, considers unreasonable ITA's weighing of the evidence -- documentary and otherwise -- that was submitted to it.

did not add "significant" value to the final products. ITA's denial of verifiability, therefore, was unreasonable.

4. The Application of the Substantial Transformation Criterion

Apart from the value-added criterion, ITA found only one other criterion regarding country of origin that supported, in its view, a finding of Canadian origin. That criterion, which ITA stated applied to only seven of the 31 parts, was the substantial transformation criterion. Pub. Doc. No. 198, at 21 n.29. ITA stated that with respect to seven parts, the Canadian operations of Northern Fortress "changed the `essence' of the parts imported into Canada . . . from that of constituent components parts to a finished replacement part with an ultimate end use different from that of its constituent components." Id. Furthermore, ITA determined, the assembly operations "added significant value" to the seven parts. Id. These factors, ITA concluded, demonstrated that "a `substantial transformation'" had occurred in Canada, resulting in a "`new and different article'" of commerce. Id.

After reviewing the entire record, the Panel determines that ITA's application of the substantial transformation criterion was unreasonable. The components imported into Canada for assembly into the seven parts in question were invariably the principal, or essential, components of the parts. Indeed, in the case of the parts for which the costs of Canadian materials were the

highest, those costs were attributable not to principal components sourced in Canada but to numerous small components with nominal unit costs. Compare Prop. Second Remand Rec. Doc. No. 1 (schedule of parts) with id. at Appendix A, page 4 (description of assembly of type of part). It does not appear from the record that the principal components for these seven parts had any ultimate use other than as principal components of the parts themselves. See id. at Appendix A, page 4 (describing components); id. at Appendix B (photographs of part types G and H). Nor does the value added in Canada during the assembly of these seven parts appear to the Panel to be "significant" for purposes of determining the country of origin, even acknowledging that Northern Fortress's cost data are estimations. Compare Limousines from Canada, 55 Fed. Reg. 11036, 11040 (1990) (conversion of base vehicle to limousine "more than doubles the value" of the base vehicle) with Second Remand Rec. Doc. No. 1 (schedule of parts, identifying the costs of Canadian materials and labor for each of the seven parts and total costs for each).

Finally, all of the other country-of-origin criteria cited by ITA -- the unimportance of the Canadian assembly operations to the technical performance of the parts, the "simple, rudimentary" procedures used in assembly, and the lack of a substantial capital investment in the operations -- militate against a finding of Canadian origin for the seven parts. For all of these reasons,

the Panel cannot affirm ITA's suggestion that the country of origin of these seven parts is Canada.

5. Conclusions

ITA's determination that the country of origin of the 31 allegedly non-Canadian parts could not be verified is not supported by substantial evidence. Of the seven criteria identified as relevant by ITA, most supported a finding of non-Canadian origin. The value-added criterion, which alone should not have been dispositive, was relied on almost exclusively by ITA in reaching its conclusion of non-verifiability. Yet, even with respect to that single criterion, the record evidence cannot reasonably be said to preclude verification. As for the substantial transformation criterion, which ITA suggested would support the Canadian origin of seven parts, the record evidence falls well short of substantiating that conclusion. On the record as a whole, therefore, the Panel considers ITA's determination of non-verifiability to be unreasonable.

V. ORDER

For the foregoing reasons, the final determination of ITA is remanded in part and affirmed in part.

A. We remand ITA's determination regarding the application of the antidumping order to Northern Fortress's sales of the 31 parts allegedly of non-Canadian origin. Within 30 days of the

date of this Opinion, ITA shall render a revised final determination consistent with this Opinion.

B. We affirm ITA's determination in all other respects.[10]

[10] One matter remains for the Panel's disposition. ITA moved to strike from the record of this remand review a document submitted by Northern Fortress. Pub. Doc. No. 220. In the course of the hearing, Northern Fortress agreed to withdraw the document. Prop. Doc. No. 223, at 104-05. Therefore, the Panel dismisses ITA's motion as moot. The Panel did not consider the withdrawn document in reaching its determination in this remand review.

Signed in the Original by:

Donald J. M. Brown	October 28, 1992
Donald J. M. Brown Chairman	Date
Harry B. Endsley	October 28, 1992
Harry B. Endsley	Date
Simeon M. Kriesberg	October 28, 1992
Simeon M. Kriesberg	Date
Gerald A. Lacoste	October 28, 1992
Gerald A. Lacoste	Date
Wilhelmina K. Tyler	October 28, 1992
Wilhelmina K. Tyler	Date