TAX APPEALS TRIBUNAL

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 111 OF 2020

TATA UGANDA LIMITED. :: APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY:: RESPONDENT

BEFORE DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MR. GEORGE MUGERWA

RULING

This ruling is in respect of an application challenging an import duty assessment of Shs. 200,115,987 arising from purported misclassification of goods on certificates of origins issued under the Common Market for Eastern and Southern Africa (COMESA) Rules.

The applicant is in the business of distribution of industrial chemicals. In July 2017, the applicant imported short alkyd resin from El-Obour Paints and Chemical Industries in Egypt for the manufacture of oil paint. As required by Rule 3, COMESA Rules of Origin Protocol, the applicant's supplier processed COMESA certificates of origin and declared the origin criterion of the imported products as "P". On 8th June 2020, the respondent wrote to the applicant notifying it that is certificates had an erroneous criterion of "P" instead of "X". On 5th August 2020, the applicant's supplier wrote to the applicant confirming that the raw materials it used were 100% local and the criterion "P" was applicable. On 6th August 2020, the applicant wrote to the respondent availing information from the supplier that the raw materials used were 100% local and requested that it withdraws its demand. On 10th August 2020, the respondent disallowed the applicant's request and demanded payment of taxes by 17th August 2020.

The following issues were agreed upon.

1. Whether the applicant is liable to pay the tax assessed?
2. What remedies are available to the parties?

The applicant was represented by Mr. Cephas Birungi and Mr. Patrick Kabagambe while the respondent by Ms. Gloria Twinomugisha.

The dispute revolves around the proper classification of goods under the certificates of origins under COMESA which were imported from Egypt in 2017. The respondent contends that the use of wrong letter should result in denial of preferential treatment under COMESA.

The applicant's witness, Ms. Christina Namaganda, its manager counts testified that the applicant imported short alkyd resin from El Obour Paints and Chemical Industries in Egypt for manufacture of oil paint. As required under Rule 3 of the COMESA Rules of Origin, the applicant's supplier processed certificates of origin declaring the origin criterion of the imports with letter "P". On 8th June 2020, the respondent wrote to the applicant informing the latter that the certificates of origin had an erroneous criterion of "P" instead of "X". On 5th August 2020 the applicant's supplier wrote to the applicant and confirmed that all the raw materials used were local. On 6th August 2020, the applicant wrote to the respondent and availed the information from the supplier. It requested the respondent to withdraw its demand. On 10th August 2020, the respondent disallowed the applicant's request and demanded payment of taxes. On 14th August 2020, the applicant requested for time to resolve the matter with the Egyptian Revenue Authority which the respondent rejected. The witness contended that under the COMESA Rules of Origin where goods have been produced using raw materials from outside the member state or of undetermined origin they qualify for preferential treatment.

The respondent's witness, Mr. Timothy Malinga, a supervisor in its international trade unit under customs department, testified that the respondent carried out a post import review of the applicant. It established that certain certificates of origin were defective. The applicant imported long oil alkyd resin under HSC 39.07.50 from El-Obour Paint and Chemical Industries in Egypt. On 8th June 2020, the respondent demanded taxes of Shs. 200,115,987 from January 2016 to December 2018 from the applicant for wrongfully conferring preferential treatment on its imports. He stated that the applicant's certificates declared the origin criterion as "P" instead of "X". "P" is for wholly produced goods as

agreed by the COMESA members. He contended that Rulle 2(i)(b(iii) of the COMESA Protocol on the Rules of Origin provide for the application of the origin criterion. He submitted that it indicates that the origin criterion "X" is for where there is a change in tariff heading. He testified that the applicant's supplier confirmed the the production and composition of raw materials for another Uganda company, Desbro (U) Ltd trading in the same product fell under HSC 39.07.50. He stated that the applicant's supplier indicated that long oil alkyd fell under the said tariff heading. Mr. Malinga testified that the products imported from outside the member states used in the manufacture of long oil alkyd resin include Phethalic Anhydride under HSC 35.17.29, Penta AER under HSC 42.05.29 and Fumaric Acid HSC 29.50. He stated that soya bean oil fell HSC 15079010, white spirit fell under HSC 27101221 while solvent fell under HSC 38140010. He testified that the HS Codes for the raw materials confirm that the classification of the finished products derives its origin criterion under a substantial transformation following a change in tariff heading.

The applicant submitted that the respondent has not given reasons as to why its certificates bore the wrong criterion letter. It also contends that the respondent assessed taxes before exhausting the dispute resolution mechanisms under the COMESA Protocol Rules. The applicant further submitted that irrespective of what letter appeared on the certificate of origin its imports were entitled to preferential treatment.

The applicant submitted that the COMESA Rules provide that if the importer of goods must present to the custom authorities a certificate of origin issued by a designated issuing authority of a member state. If the authorities are satisfied that goods to which the document relate are eligible for preferential treatment they will be so admitted. The applicant submitted that on verification of its documents and payment of the duties due, the respondent cleared its imports which were released. This was proof that the respondent was satisfied with the certificate of origin presented to it.

The applicant stated it received a letter from the respondent dated 8th June 2020 notifying that the certificates of origin had an erroneous criterion of "P" instead of "X". The applicant submitted that though the letter stated that it had violated the preferential treatment under the COMNESA Rules of origin, it did not state which rules were violated. It contended that

Sections 135 and 203 of the East African Community Customs Management (EACCMA) referred to in the letter were not applicable as they apply to instances where a taxpayer knowingly makes false declarations. The documents submitted by the applicant were issued by a designated authority in Egypt. The applicant submitted that the respondent's witness admitted that the respondent did not have information from which countries the raw materials of the imports originated from. The applicant cited *Tobacco Uganda Limited v Uganda Revenue Authority* Application 62 of 2019 where the Tribunal stated that "In the absence of any evidence to show where the materials other than the tobacco originated from and their composition it is difficult to say the certificate of origin in Box 7 contained a wrong letter." The applicant contended that the communication to Desbro Limited which the respondent is seeking to rely on is misplaced as it is not the applicant.

The applicant submitted that Rule 1.5 of the COMESA Protocol on the Rules Origin stated that goods qualify for preferential treatment if they originate in the Member States. This means that all goods that meet the requirements of the COMESA Rules of Origin qualify for preferential treatment if they are traded within COMESA. Rule 3.5.2 provides for the different letters on certificates of origin. The applicant argued that irrespective of the letter on the certificate of origin, its imports are entitled to preferential treatment.

The applicant further submitted that Rule 3.12 of COMESA Protocol on Rules of Origin deals with dispute settlement procedures. It states that where serious doubts arise about the eligibility of any consignment of goods for COMESA tariff treatment, a formal query of the evidence of origin presented maybe communicated to the designated issuing authority of the exporting Member State. It submitted that the respondent's letter of 10th August 2020 indicates that origin criteria being "X" but not "P" makes it irrelevant for the it to verify the same. The applicant submitted that reasons advanced by the respondent for not seeking clarity from the designated authority contravene Rule 3.12 of the COMESA Rules of Origin Protocol. The applicant cited *British America Tobacco Uganda Limited v Uganda Revenue Authority* Application (supra) where the Tribunal noted that where Uganda has entered an international agreement it is bound by the said agreement. It was also stated that there is need to exhaust all the remedies and processes under the East African

Community Customs Management Act, the Rules of Origin and the applicable manual before preferential treatment is denied.

The applicant further submitted that the verification process under the COMESA Protocol on Rules of Origin is governed by time frame. The respondent did not seek verification form the designated authority because the time frame to seek verification had expired. The applicant cited *British America Tobacco Uganda Limited v Uganda Revenue Authority* (supra) where the Tribunal stated that an audit should not be carried out long after goods have been imported or where the certificates have expired. An importer should be given a chance to put right any inaccuracies immediately.

In reply, the respondent submitted that Rule 10(1) of the COMESA Protocol on the Rules of Origin states that goods shall be accepted as originating from a Member State if supported by a certificate given the exporter or his authorized representative. Article 3.3.2 of Part 2, on the Procedure for the Implementation of the Protocol on Rules of Origin provides that goods that have been accepted as meeting all the requirements of the Rules of Origin are entitled to a COMESA Certificate of Origin. Article 3.12 states that the customs authorities of the importing Member State may refuse a claim of COMESA tariff treatment if there is reason to doubt the correctness of the particulars declared to them. The respondent contended that goods imported by the applicant bore the origin criterion "P" for goods that satisfy the wholly produced or obtained criterion instead of the "X" for goods satisfying the change in tariff heading transformation clause.

The respondent submitted that Rule 2(1)(b)(ii) of the COMESA Protocol on the Rules of origin provide that goods shall be accepted as originating from a Member State to a consignee in another Member State and the goods have been wholly produced as provided for in Rule 3 of the Protocol or have been produced or partially from materials imported from outside member states or of underdetermined origin by a process of production which effects a substantial transformation of those material as provided. The respondent submitted that under Rule 1(a) a member state means a Member State of the Common Market for Eastern and Southern Africa. The respondent submitted that Uganda and Egypt and Uganda are members of COMESA. The respondent submitted that in July

2017, the applicant imported long oil alkyd resin under HSC 3907.50.10 from El-Obour Paint and Chemical Industries in Egypt.

The respondent submitted that Rule 3 of the COMESA Protocol on Rules of Origin provides for goods wholly produced in Member States. It contended that wholly produced goods are those produced or manufactured exclusively from wholly obtained inputs. The respondent contended that long oil alkyd resin does not fall under the categories of wholly produced products listed under Rule 3 of the COMESA Protocol of Rules of Origin. It submitted that its witness, in exhibit R5 presented evidence that long oil alkyd resin is comprised of foreign materials imported from outside COMESA.

The respondent also contended that where goods are partially produced from materials imported from outside member states or of undetermined origin by a process which effects substantial transformation of those material they should be such that:

a) the CIF value of those material does not exceed 60 % of the total cost of the materials used in the production of the goods; or
b) Value addition resulting from the process of production accounts for at least 35% of the ex-factory cost of the goods, or
c) the goods are classified or become classifiable under a tariff heading other than the tariff heading under which they are imported.

The respondent submitted that there is no evidence to show that the value of non-originating materials used on the manufacture and production of the alkyd resins imported by the applicant exceeded 60% of the total costs of all materials used in production. The respondent submitted that the Protocol defines value-added as the difference between the ex-factory cost of the finished product and the CIF value of the materials imported from outside the member state and used in the production. Ex-factory is defined as the value of the total inputs required to produce a given product. The respondent also contended that there is no evidence that the value added from material imported from outside the COMESA Member States accounted for 35% of the ex-factory cost of the alkyd resins imported. The respondent further submitted that the its witness, Mr. Timothy Malinga confirmed that the production and composition of raw materials for an identical product to that imported by the applicant. It contended that the tariff headings of the raw

materials imported from outside the COMESA states differ from that of the final product. The respondent cited *United States v Gibson – Thomsen* Co. Inc. 27 CCPA 267, CAD 98 (1940) where it was stated that substantial transformation occurs when an article emerges from a process of production with a new name, character, or use different form that processed by that article prior to processing. The respondent contended that changes that are deemed cosmetic are insufficient for a finding of substantial transformation.

The respondent also contended that the applicant should have asked the supplier in Egypt to provide more information to clarify on the raw materials used in production. It cited *United States v Golden Ship Trading Company*, 25 C.I.T 40 (2001) where the court determined that the importer failed to exercise reasonable care because it failed to verify information contained in entry documents related to country of origin. The court explained that the taxpayer has the responsibility to verify information on an entry.

The respondent also contended that certificates of origin maybe verified by the respondent in exceptional cases. It cited Rule 10(3) of the Protocol on the Rules of Origin which provides that the competent authority may in exceptional circumstances and notwithstanding the presentation of a certificate require in case of doubt, further verification of the statement contained in the certificate. It contended that since a verification was carried out on an identical product imported from another supplier there was no need to carry out an additional verification.

The respondent also submitted that Article 3.12 of Part on the Procedure for the implementation of the Protocol on rules of origin provides for minor queries. It contended that customs authorities may refuse a claim of COMESA tariff treatment if there is reason to doubt the correctness of the particulars declared to them. On serious queries, it submitted that a formal query of the evidence of origin presented may be communicated to the designated issuing authority of the exporting member State. The respondent contended that the evidence does not show that there was any doubt or exceptional circumstances to warrant verification.

The respondent submitted that it cannot be estopped from carrying out its duties. It cited *Kampala Nissan v URA* HCCA 7 of 2009. It also cited Customs and *Excise Commissioners v Hebson* [1953] a Lloyd's Rep where the court held that custom officers who had mistakenly allowed imports of certain goods were not estopped from claiming goods of a similar type were being imported in contravention of the law.

In rejoinder, the applicant submitted that the respondent conceded that goods it imported were from one COMESA member to another. The applicant submitted that question for determination is whether the applicant's goods qualify for preferential treatment and not what parameters the respondent considered to arrive at its decision. The applicant also submitted that the COMESA Protocol of the Rules of Origin do not provide to the identical method as means of verification of an importer's certificate. It is not backed by any law. The applicant contends that the respondent did not take any steps to verify its documents.

The applicant reiterated its submission that, though the respondent contended it did not adduce evidence to show that the materials used in the manufacture and production of its imports did not exceed 60% of the total cost of all materials, the supplier confirmed that the imports were 100% locally manufactured in Egypt. The applicant also submitted that if the custom authorities are not satisfied with an explanation it should communicate to the issuing authority and seek clarification.

Having listened to the evidence, perused the evidence and read the submissions of the parties this is the ruling of the tribunal.

In July 2017, the applicant imported alkyd resin from El-Obour Paints and Chemical Industries in Egypt for the manufacture of oil paint. In some instances, the parties refer the alkyd resin as 'short' while in others as 'long'. Such discrepancies fuel the dispute and could be the reason why there are different findings as to the letters used. The applicant's supplier processed COMESA certificates of origin which declared the origin criterion of the imports as "P". On 8th June 2020, the respondent wrote to the applicant notifying it that is certificates had an erroneous criterion of "P" instead of "X". The respondent assessed the applicant import duty of Shs. 200,115,987 for misclassification of goods.

The COMESA Treaty establishes common markets for Eastern and Southern Africa. Article 2 provides for the Membership of the Common Market which includes Uganda and Egypt which are also listed as members under the Procedures Manual on the Implementation of the Protocol. Goods originating among the Member States are entitled to Common Market tariff treatment. Article 48 of the COMESA Treaty states;

> "1. For the purposes of this Treaty, goods shall be accepted as eligible for Common Market tariff treatment if they originate in the Member States.
>
> 2. The definition of products originating in the Member States shall be as provided for in a Protocol on the Rules of Origin to be concluded by the Member States."

Article 2.2.1 of the Procedures Manual on the Implementation of the Protocol states.

> "Article 48 of the Treaty Establishing the Common Market for Eastern and Southern Africa (hereinafter referred to as the "Treaty") provides that goods shall be accepted as eligible for Common Market tariff treatment if they originate in the member States, and the definition of products originating in the member States shall be as provided for in a Protocol on Rules of Origin referred to in Annex IX."

At times the common market treatment may be preferential treatment. Article 1.5 of the Procedures Manual states.

> "Under the COMESA trade regime, goods qualify for preferential tariff treatment if they originate in the member States. This means that all goods that meet the requirements of the COMESA Rules of Origin qualify for preferential tariff treatment when they are traded within COMESA."

Therefore, any goods originating from Egypt would qualify for preferential treatment if imported into Uganda. The applicant contends that the alkyd resin it imported originated from Egypt and was entitled to preferential treatment.

A good maybe imported from Egypt but may not originate from there. Therefore, the rules of origin determine the origin criteria. Rule 2.1 of the Protocol on the Rules of Origin provides:

> "Goods shall be accepted as originating from a Member State if they are consigned directly from a Member State to a consignee in another Member State and:
>
> (a) They have been wholly produced as provided for in Rule 3 of this Protocol; or

(b) They have been produced in the Member States wholly or partially from materials imported from outside the Member States or of undetermined origin by a process of production, which effects a substantial transformation of those materials such that:

i. The c.i.f. value of those materials does not exceed 60 percent of the total cost of the materials used in the production of the goods; or

ii. The value added resulting from the process of production accounts for at least 35 percent of the ex-factory cost of the goods; or

iii. The goods are classified or become classifiable under a tariff heading other than the tariff heading under which they were imported (the workings and processing conferring origin under this Rule are in Appendix V); or

(c) They are produced in the Member State and designated in a list by the Council upon the recommendation of the Committee through the IC to be goods of particular importance to the economic development of the member States, and containing not less than 25 per cent of value added notwithstanding the provisions of sub-paragraph (b) (ii) of paragraph 1 of this Rule. The list of goods so designated by Council is in Appendix VI"

It is not in dispute that the applicant was the consignee of goods coming from Egypt

The Procedures Manual on the Implementation of the Protocol has the criteria for determining if goods originate from a Member State. Article 2.2.3 states

"The COMESA Rules of Origin have five independent criteria, and goods are considered as originating in a member State if they meet any of the five. The criteria are as follows:

(i) The goods should be wholly produced in a member State; or

(ii) The goods should be produced in the member States and the c.i.f. value of any foreign materials should not exceed 60% of the total cost of all materials used in their production; or

(iii) The goods should be produced in the member States and attain a value added of at least 35% of the ex-factory cost of the goods; or

(iv) The goods should be produced in the member States and should be classifiable under a tariff heading other than the tariff heading of the non-originating materials used in their production;

(v) The goods should be designated by the Council of Ministers as "goods of particular importance to the economic development of the member States" and

should contain not less than 25% value added, notwithstanding the provisions of paragraph (iii) above.

These rules are discussed in detail in paragraphs that follow."

What is in the Manual is a replica of what is stated in the Protocol.

In order to one to show that its good qualify for common market tariff treatment or preferential treatment one has to adduce a certificate of origin. Rule 10(3) of the COMESA Protocol on the Rules of Origin states that:

"The claim that goods shall be accepted as originating from a Member State in accordance with the provisions of this Protocol shall be supported by a certificate given by the exporter or his authorised representative in the form prescribed in Appendix I of this Protocol. The certificate shall be authenticated by an authority designated for that purpose by each Member State."

This echoed in Article 3.3.2 of the Procedures Manual on the the Implementation of the Protocol which states.

"Goods that have been accepted as meeting all the requirements of the Rules of Origin are entitled to a COMESA Certificate of Origin, a specimen of which appears at Annex I. The Certificate is issued by the Designated Issuing Authority in the exporting member State. [A list of member States' Designated Authorities is provided at Annex II]

The certificate of origin should be attached to the import goods declaration to enable the Customs authorities of the importing member State to grant preferential tariff treatment to the shipment."

The appendix to the Protocol on the Rule of Origin provides instruction for completing the certificate of origin. Its states

"The following letters should be used when completing a certificate in the appropriate place:

"P" for goods satisfying the wholly produced criterion [Rule 2.1(a).]

"M" for goods satisfying the material content of the substantial transformation criterion [Rule 2.1(b)(i)}.

"V" for goods satisfying the value- added content of the substantial transformation criterion [Rule 2.1(b)(ii)]'

"X" for goods satisfying the change of tariff heading of the substantial transformation criterion {Rule 2.1(b)(iii).

"Y" for goods satisfying the criterion of tariff heading of particular economic importance to the Member States [Rile 2.1(c)]."

The appendix clearly refers to provisions in Rule 2 of the Protocol which deals with goods originating from Member States. Letter "X" for goods satisfying the change of tariff heading under Rule 2.1 (b)(iii). Our understanding of the said Section does not stop goods classifying under a tariff heading in sub clause (iii) from being produced in the Member States wholly or partially from material imported from outside the Member States or of undetermined origin by a process of transformation as clearly stated in clause 1(b). In other words, if there is a change in tariff heading, there is need to show the goods classifiable under a tariff heading other than the tariff heading under which they were imported did not originate from COMESA for a party to be denied preferential treatment. The letters on the certificate of origin are informative of the nature of the goods imported.

The applicant presented certificates of origin for alkyd resin it imported. So, what is the problem? The respondent is disputing them. It contends that the letters used by the applicant were not correct. Rule 10(3) of the Protocol on the Rules of Origin states

"The competent authority designated by an importing Member State may in exceptional circumstances and notwithstanding the presentation of a certificate issued in accordance with the provisions of this Rule, require, in case of doubt, further verification of the statement contained in the certificate. Such further verification should be made within three months of the request being made by a competent authority designated by the importing Member State. The form to be used for this purpose shall be that contained in Appendix III of this Protocol."

Rule 10(3) mentions three aspects when a certificate of origin is queried. The first is there may be exceptional circumstances. The second aspect is doubt. The third is further verification.

Though Rule 10(3) states that there may be exceptional circumstances where a certificate of origin maybe queried it does not mention them. However, the Procedure Manual on the Implementation of the Protocol provides for minor and serious queries;

Article 3.11.1.1 states

> "The customs authorities of the importing member State may refuse a claim of COMESA tariff treatment if there is reason to doubt the correctness of the particulars declared to them."

On minor queries it states that;

> "Minor inaccuracies or omissions of a clerical nature or similar nature detected on a certificate of origin (e.g. the omission of the weight or other quantity or insertion of an incorrect customs tariff number) may be allowed to be corrected by the importer without rejection of the claim to COMESA tariff treatment."

On serious queries it states

> "Where serious doubts arise about the eligibility of any consignment of goods for COMESA tariff treatment (e.g. claim of "wholly produced" for certain kinds of machinery, description of goods on the invoice different from that appearing in the certificate of origin, indication of dubious transport route, etc), a formal query of the evidence of origin presented may be communicated to the designated issuing authority of the exporting member State. The procedures governing the raising of queries and the subsequent verification of the evidence of origin is discussed in the next section of this manual."

Where inserting a correct letter may not lead to denial of preferential treatment, one may consider it as a minor inaccuracy. However, where it may lead to denial of preferential treatment it must be considered as a serious query.

In this case, the respondent contends that certificate of origin of the applicant had an erroneous criterion of "P" instead of "X". The first question the Tribunal has to ask itself is whether the respondent was justified to doubt the certificates of origin of the applicant. If so, did the doubt result in a minor or serious query?

The respondent cannot deny that it doubted the applicant's certificates of origin. There is nothing wrong with the respondent doubting certificates of origin. It cannot deny a party preferential treatment or even raise a minor or serious query or ask for verification if there is no doubt. Doubt is defined in by *Oxford Advanced Learner's Dictionary* New 9th Edition p.447 as "a feeling of being uncertain about something or not believing something." However, for doubt to to invalidate an administrative decision, it must be irrational. Therefore, the Tribunal has to determine if the said doubt was reasonable. "Reasonable"

is defined by *Black's Law Dictionary* p. 1456 as "Fair, proper, or moderate under the circumstances, sensible." Reasonable doubt is defined on p.1457 as "The doubt that prevents one from being firmly convinced of a defendant's guilt, or the belief that there is a real possibility that a defendant is not guilty." In *Twinomuhangi Pastoli V Kabale District Local Government Council, Katarishangwa Jack & Beebwajuba Mary* [2006] HCB Vol. 1 p. 30 Kasule J. stated that one has to show that a decision or act complained of is tainted with illegality, irrationality and procedural impropriety.

> "2. Illegality is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or it's principles are instances of illegality.
>
> 3. Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.
>
> 4. Procedural impropriety is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in the non- observance of the Rules of natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision."

So, one has to ask was the doubt by the respondent reasonable to lead to a denial of preferential treatment addressing the facts to the law. Where there was doubt, did the respondent follow the correct procedure in addressing it? Also did the respondent address itself on the law properly?

The applicant adduced evidence, a letter from the supplier to it dated 5th August 2020, exhibit A" where the supplier confirmed that it used 100% local material in manufacturing the import. It states:

> "We would like to clarify to you that all of the raw materials that were utilized in our products till the end of 2019 were 100% local, therefore all the Certificates of Origin follow the rule (P"

This was reiterated in the letter of the applicant to the Assistant Commissioner Trade of the respondent of 6th August 2020.

However, doubt arose in the respondent's mind when as it alleged identical goods imported by other suppliers bore a different letter, V. The respondent tendered in a certificate of origin, exhibit R5, which shows that the supplier who imported the allegedly identical goods was Desbro Limited. The certificate of origin is dated 22nd March 2017. There was a request for additional information. Part A shows the particulars of goods. Part B shows the process of production used in producing the goods. It shows the items used in the goods have different HS codes. Part C has a declaration signed by an export manager on 30th September 2021.

The standard of origin attached to the certificate of origin is written in Arabic. Such an exhibit should not have been adduced in evidence without a translation from Arabic to English. However, when translated into English (using Google Translate) it states;

> "Please kindly note the standard or origin listed in COMESA certificate 153226 to the export in Uganda wrote by mistake P and the correct origin criterion is X.
>
> Please address the Uganda side on the authenticity of the certificate so that the damage is lifted from our client as URA ask for a fine of $ 45,000"

The said translation may not be 100% correct. In reply, the Egyptian Authority wrote, (once again using Google Translate)

> "With refence to the request submitted by the transit police for paints (Pachin) regarding a request five COMESA certificates of origin numbers (1532226 -153265-153278-153270-153239) regarding the authenticity of the origin or not
>
> We inform you that the above-mentioned certificates are valid in terms of seals and signature and are issued by a branch.
>
> Also, the letter P was mistakenly inserted in field no. 8 of the origin standard as the correct origin standard is X.
>
> The company has pledged that the matter will be rectified in the coming times...."

Though this translation may not be 100, correct, the respondent will bear the loss, as it did not attach a certified translation. But what is important to note is that the authorities dealt with the matter a minor discrepancy. The exporter promised to rectify the matters in coming times.

The Tribunal notes that the same exporter indicated in it letter of 5th August 2020 that it was until the end of 2019 that it was utilising in its products material 100% local. The said letter may or may not be accurate in light of exhibit RE5. The respondent did not adduce evidence to show the products of Desbro Limited were identical to those of the applicant. There was no lab report presented. In any case, it would be difficult to perform a lab analysis on the applicant's goods imported in 2017. However, the Tribunal cannot rely on rumours and mere suspicion that the applicant's goods were identical to those of Desbro Limited

The standard of origin is dated 30th September 2021 after addition information has been requested and submitted. The applicant imported its goods between 2016 to 2018. This alone, is enough to show that the respondent was not justified to doubt the applicant's certificates of origin. It did not have evidence that the applicant was using wrong letters. By the time the respondent wrote it letter of 8th June 2020 and made the taxation decisions of 10th and 18th August 2020 it did not have reasonable doubt to query the applicant's certificates of origin. The letter of 8th June 2020 and the taxation decisions of August 2020 were made arbitrarily without any reasonable basis. The respondent could not have relied on information made available in September 2021.

In respect of the certificate of origin of Desbro Limited, the evidence adduced shows that the Egyptian authorities considered it as minor. Exhibit RE5 states that the certificates are valid in terms of seal and signature. It further states that the letter "P" was mistakenly inserted in field no 8 The supplier promised to have the matter rectified. There is no evidence that Desbro Limited was denied preferential treatment. There is an African saying that a cane used on the main wife, is the same one used on co- wives. There is no reason why the Tribunal should use a bigger cane on the applicant when both companies imported from the same supplier. So, if the respondent had considered the inaccuracies as minor it ought to have allowed the applicant rectify them.

However, the respondent did not consider them minor. The respondent did not require the applicant to rectify inaccuracies. If the mere change of letters resulted in rectifying a

certificate of origin to correct the inaccuracies, then the provisions of the COMESA Protocol on Origin in respect of minor queries would apply. However, if the queries would lead to cancellation of preferential treatment, they ought to be considered as serious. Where there is a serious query Article 3.11.1.1 of the Procedure Manual on the Implementation of the Protocol requires a formal query of the evidence of origin presented be communicated to the designated issuing authority of the exporting member State. This was not done by the respondent. If it was done it may have cleared the air.

Furthermore, Rule 10(3) of the Protocol on the Rules of Origin requires a competent authority where there is case of doubt to make a further verification of the statement contained in the certificate. Such further verification should be made within three months of the request being made by a competent authority designated by the importing Member State. The respondent contended that this was not necessary as it had been done when doubting the purported identical goods of another supplier, Desbro Limited. The Tribunal finds this explanation wanting. Not only natural justice but the Constitution of Uganda Article 42 requires that a person should be treated fairly and justly when making administrative decisions. An administrative body cannot arbitrarily declare that one's goods are identical to another's without further verification.

We already stated that the use of letters on certificates of origin are informative. The letter shows the nature of the product. For one to be denied preferential treatment one has to show that goods did not fall under Rule 2 of the Protocol on the Rules of Origin. For goods under letter X, i.e. change of tariff heading one has to show that they do not fall under Rule 2.1(b)(iii) which provides for workings and processings conferring origin as in Appendix V. Rule 2.1(b)(iii) clearly states

> "The goods are classified or become classifiable under a tariff heading other than the tariff heading under which they were imported (the workings and processing conferring origin under this Rule are in Appendix V);"

Note 3 of the Appendix V Rule dealing with workings and processing conferring orgin states

> "3.1 Rules of origin that refer to a change in tariff heading, in terms of Rule 2(1)(b) (iii) of the Protocol, apply to non-originating materials only and such change in classification is

at the level of the Harmonized Commodity Description and Coding System (hereinafter referred to as the Harmonized System or "HS") by reason of production, other than by minimal operations or processes defined in Rule 5 of the Protocol

The applicant's supplier indicated that it used 100% local material. That cannot be used to deny it preferential treatment because the raw materials used fell under different tariff heading. The certificate of origin of Desbro Limited, the respondent is relying on, does not indicate the origin of the materials used in producing in alkyd resin though under different tariff heading did not comply with the working and proceedings conferring origin under Appendix V. Appendix V does not provide for value added resulting from the process of production accounting for at least 35% which is under Rule 2.1(b)(i) (i.e. for the letter "v" satisfying the value- added content of the substantial transformation criterion) or the CIF value of those materials does exceed 60% of the total costs of the materials used in production for goods (i.e. for the letter "M" satisfying the material content of the substantial transformation criterion). The Protocol on the Rule of Origin providing instructions for completing the certificate of origin clearly states which criterion should be used when using different letters. In *BAT v Uganda Revenue Authority* Application 62 of 2019 the Tribunal noted that the evidence on record does not show, apart from the tobacco, where the other materials came from. One cannot tell whether the said materials were originating or non-originating materials. In this matter, there is no evidence that though the goods used by the applicant, even where they may fall under different tariff heading, did not originate from Egypt.

Taking the above into consideration, the respondent did not have any reasonable doubt to challenge the certificate of origin. It did not address itself properly on the procedure when the doubt arose. This application is allowed with costs to the applicant.

Dated at Kampala this 28th day of October 2022

DR. ASA MUGENYI	DR. STEPHEN AKABWAY	MR. GEORGE MUGERWA
CHAIRMAN	MEMBER	MEMBER