



Thursday, January 16, 1992

Appeal No. 3053

IN THE MATTER OF an appeal pursuant to section 61 of the
Special Import Measures Act, R.S.C., 1985, c. S-15;

AND IN THE MATTER OF a decision of the Deputy Minister
of National Revenue for Customs and Excise dated August 10,
1988, pursuant to paragraph 59(1)(e) of the *Special Import
Measures Act*, R.S.C., 1985, c. S-15.

BETWEEN

DIRECT IMPORT DICO CORPORATION

Appellant

AND

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed. The Tribunal concludes that the date of sale should be used to redetermine the margins of dumping in respect of the entries in issue and that the respondent should have used the normal value calculated in respect of model No. RM-087-58C in calculating the normal value of the goods imported under Customs Entry No. A065250. Pursuant to subsection 61(3) of the *Special Import Measures Act*, the respondent is ordered to redetermine the margins of dumping of the goods entered into Canada subject to this appeal on the basis of the information set out in the worksheets of the respondent filed with the Tribunal as Exhibit 1 to the Agreed Statement of Facts and Proposed Order submitted jointly by the appellant and the respondent.

W. Roy Hines

W. Roy Hines
Presiding Member

Michèle Blouin

Michèle Blouin
Member

Charles A. Gracey

Charles A. Gracey
Member

Robert J. Martin

Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. 3053

DIRECT IMPORT DICO CORPORATION

Appellant

and

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

This is an appeal pursuant to section 61 of the Special Import Measures Act from a decision of the Deputy Minister of National Revenue for Customs and Excise reassessing anti-dumping duties on four shipments of rubber footwear from Korea, imported into Canada under Customs Entry Nos. A057431, A065248, A065250 and A065247. Anti-dumping duties were assessed on these imported goods pursuant to a decision of the Anti-dumping Tribunal dated May 25, 1979, that the dumping of waterproof rubber footwear and snowmobile boots, constructed wholly or in part of rubber, worn over the foot or shoe, with or without liners, linings, fasteners or safety features, originating or exported from Czechoslovakia, Poland, the Republic of Korea and Taiwan had caused, was causing and was likely to cause material injury to production in Canada of like goods.

The appeal was heard without an oral hearing on the basis of the material on the record. The Tribunal allowed the appeal and ordered the Deputy Minister to reassess the margins of dumping of the goods subject to the appeal on the basis of the information set out in the worksheets of the respondent filed with the Tribunal as Exhibit 1 to the Agreed Statement of Fact and Proposed Order by the parties.

HELD: *The appeal is allowed and the Deputy Minister is ordered to redetermine the margins of dumping of the goods subject to this appeal on the basis of the information set out in the worksheets of the respondent filed with the Tribunal as Exhibit 1 to the Agreed Statement of Fact and Proposed Order.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: December 23, 1991

Date of Decision: January 16, 1992

Panel Members: W. Roy Hines, Presiding Member

Michèle Blouin, Member

Charles A. Gracey, Member

Counsel for the Tribunal: Brenda C. Swick-Martin

Clerk of the Tribunal: Janet Rumball

Appeal No. 3053

DIRECT IMPORT DICO CORPORATION

Appellant

and

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

TRIBUNAL: W. ROY HINES, Presiding Member
MICHÈLE BLOUIN, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal pursuant to section 61 of the *Special Import Measures Act*¹ (SIMA) from a decision of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) reassessing anti-dumping duties on four shipments of rubber footwear from Korea, imported into Canada under Customs Entry Nos. A057431, A065248, A065250 and A065247. Anti-dumping duties were assessed on these imported goods pursuant to a decision of the Anti-dumping Tribunal of May 25, 1979, that the dumping of waterproof rubber footwear and snowmobile boots, constructed wholly or in part of rubber, worn over the foot or shoe, with or without liners, linings, fasteners or safety features, originating in or exported from Czechoslovakia, Poland, the Republic of Korea and Taiwan had caused, was causing and was likely to cause material injury to the production in Canada of like goods.²

Both parties requested that the appeal be determined without an oral hearing and filed an Agreed Statement of Fact and Proposed Order with the Tribunal directing the respondent to reassess the margins of dumping of the goods subject to this appeal on the basis of the information set out in the worksheets of the respondent filed as Exhibit 1 to the Agreed Statement of Fact and Proposed Order.

In responding to the request, the Tribunal published a notice in Part 1 of the Canada Gazette of November 30, 1991, to the effect that any party wishing to appear in the appeal must file an appearance with the Tribunal on or before December 23, 1991, and, if no appearances were filed by that date, the appeal would be determined without an oral hearing.

The Tribunal did not receive any notices of appearance by December 23, 1991, and, therefore, heard this appeal on the basis of the material contained on the record.

1. R.S.C., 1985, c. S-15, as amended.

2. Pursuant to subsection 76(2) of the *Special Import Measures Act*, the Canadian Import Tribunal reviewed the finding and, on October 22, 1987, it continued the finding without amendment.

The parties agree that, at the time of entry of the goods, there were no normal values available to permit the calculation of the margin of dumping. The dumping duties were, therefore, assessed on the basis of a ministerial prescription authorizing the respondent to apply an advance of 31 percent over the export price. In the course of reassessing anti-dumping duties on the goods in issue, the Deputy Minister used the rate of exchange for the Korean won and the Canadian dollar that was in effect at the date of shipment in each case, and not the rate that was in effect on the date of sale.

The parties also agree that under Customs Entry No. A065250 dated August 19, 1987, the appellant had entered 3,000 pairs of a boot, style No. RM-087-58C, manufactured by the exporter, Chin Yang Corporation. The Deputy Minister had previously established a normal value for model No. RM-087-58C, but not for model No. RM-087-58. Due to an inadvertent error, the commercial invoice issued by the exporter indicated that the model shipped was model No. RM-087-58. In reassessing the normal value for the boots imported under Entry No. A065250, the Deputy Minister considered that the boots imported were model No. RM-087-58 (i.e., the goods for which no normal value was assessed) and calculated the assessment on the basis of a ministerial prescription.

The issues before the Tribunal are (i) whether the date of sale or the date of shipment should be used to redetermine the margins of dumping in respect of the transactions in issue; and (ii) whether the Deputy Minister should have used the normal value calculated in respect of model No. RM-087-58C in calculating the normal value of the goods imported under Customs Entry No. A065250.

With respect to the first issue, the Tribunal concludes that the date of sale should be used to redetermine the margins of dumping in respect of the entries in issue. The Tribunal is satisfied that the appellant has furnished the respondent with information permitting her to establish the date of sale for the transactions in issue. As a result, the respondent has agreed to redetermine the margins of dumping in respect of the transactions in issue using the date of sale rather than the date of shipment. The respondent herself has submitted in this case that, if the dates of sale are available, it is obliged under section 19 of SIMA and section 44 of the Special Import Measures Regulations (the Regulations)³ to calculate a normal value for those specific dates and to apply the rate of exchange prevailing on the date of sale to that calculation. In this regard, section 44 of the Regulations explicitly provides that where an amount used in the administration or enforcement of SIMA is expressed in the currency of a country other than Canada, "the equivalent dollar value of that amount shall be calculated by multiplying that other currency by the exchange rate prevailing on the date of sale (emphasis added)."

With respect to the second issue, the Tribunal concludes that the respondent should have used the normal value calculated in respect of model No. RM-087-58C in calculating the normal value of the goods imported under Customs Entry No. A065250. The Tribunal concurs with the parties' agreement that the appellant has furnished the respondent with the necessary information permitting her to verify that, in respect of Customs Entry No. A065250, the appellant had, in fact, imported shoes of model No. RM-087-58C for which a normal value has been established. In this regard, the Tribunal notes that the respondent has indicated her willingness to recalculate the margins of dumping in respect of Customs Entry No. A065250, using the normal value established for model No. RM-087-58C.

3. P.C. 1984-3728, November 22, 1984.

The appeal is allowed. The Tribunal concludes that the date of sale should be used to redetermine the margins of dumping in respect of the entries in issue, and that the respondent should have used the normal value calculated in respect of model No. RM-087-58C in calculating the normal value of the goods imported under Customs Entry No. A065250. The Tribunal concurs with the parties' agreement that the calculations set out in the worksheets submitted by the respondent represent the proper calculation of the margins of dumping in respect of all the entries in issue. The Tribunal hereby orders the Deputy Minister to redetermine the margins of dumping of the goods subject to this appeal on the basis of the information set out in the worksheets of the respondent filed with the Tribunal as Exhibit 1 to the Agreed Statement of Fact and Proposed Order submitted jointly by the appellant and the respondent.

W. Roy Hines

W. Roy Hines
Presiding Member

Michèle Blouin

Michèle Blouin
Member

Charles A. Gracey

Charles A. Gracey
Member