CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, June 16, 1992

Appeal No. 3100

IN THE MATTER OF an appeal heard on April 15, 1992, under section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.), as amended;

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue for Customs and Excise dated September 30, 1988, with respect to a request for a re-determination pursuant to section 63 of the *Customs Act*.

BETWEEN

GKN BIRWELCO LIMITED **Appellant**

AND

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

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Robert J. Martin
Robert J. Martin
Secretary

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UNOFFICIAL SUMMARY

Appeal No. 3100

GKN BIRWELCO LIMITED **Appellant**

and

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

The issue in this appeal is whether the value for duty of certain refuse-burning stokers, referred to as "grates," should be determined using the currency exchange rate prevailing on the date of direct shipment of the goods to Canada or, as claimed by the appellant, at the average currency exchange rate prevailing when stage payments for the goods were made during their manufacture. Also, it was contended that the respondent incorrectly used the transaction value method to calculate the value for duty of the imported goods rather than the residual method provided in section 53 of the Customs Act.

HELD: *The appeal is dismissed. There is no basis in the law to permit averaging as requested by the appellant, and there is no evidence that August 18, 1986, represents the date of direct shipment of the goods to Canada. As to the claim that the respondent incorrectly used the transaction value method to determine the value for duty of the goods or that the total cost of the goods included the cost of erection and installation, the Tribunal notes that the burden of proof was on the appellant. In this regard, the appellant was unable to furnish any evidence that an error had been committed or, in fact, to establish the costs of erection and installation that should have been deducted.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*April 15, 1992*
Date of Decision:	*June 16, 1992*
Tribunal Members:	*Charles A. Gracey, Presiding Member* *Arthur B. Trudeau, Member* *Sidney A. Fraleigh, Member*
Counsel for the Tribunal:	*David M. Attwater*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*Imelda Lawler, for the appellant* *Wayne D. Garnons-Williams, for the respondent*

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Appeal No. 3100

GKN BIRWELCO LIMITED **Appellant**

and

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

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
ARTHUR B. TRUDEAU, Member
SIDNEY A. FRALEIGH, Member

REASONS FOR DECISION

The issue in this appeal is whether the value for duty of certain refuse-burning stokers, referred to as "grates," should be determined using the currency exchange rate prevailing on the date of direct shipment of the goods to Canada or, as claimed by the appellant, at the average currency exchange rate prevailing when stage payments for the goods were made during their manufacture. Over the objections of counsel for the respondent, counsel for the appellant raised a second issue at the hearing. It was contended that the respondent incorrectly used the transaction value method to calculate the value for duty of the imported goods rather than the residual method provided in section 53 of the *Customs Act*[1] (the Act).

Mr. Jerry Smart, who is a representative of GKN Birwelco Limited (Birwelco) of the United Kingdom (U.K.), served as a witness for the appellant. He testified that a grate is a refuse-burning stoker that serves as the heart of an incineration plant. The plant receives municipal refuse and incinerates it, producing steam that is sold to local industry.

The grates in issue were purchased by the Greater Vancouver Regional District. From the documents on file, it would appear that Birwelco (U.K.) purchased the grates from MARTIN GmbH of the Federal Republic of Germany for DM 4,828,250, f.o.b. Bremerhaven. In turn it billed its branch office, Birwelco (Canada), which sold the goods to the Greater Vancouver Regional District. Birwelco procured the grates using Deutsche Marks that it purchased with 11 foreign exchange contracts, totalling DM 6,250,000, at an average exchange rate of DM 2.1103 per Canadian dollar.

The respondent calculated the value for duty of the goods based on the f.o.b. Bremerhaven price of DM 4,828,250. From this, the sum of DM 36,163 was subtracted, representing the inland freight costs from their place of manufacture to the German port of Bremerhaven. Documents submitted at the hearing indicate that the date of direct shipment of the goods to Canada was August 5, 1986, and that the goods left port on August 18, 1986. The respondent used the exchange rate in effect on August 5, 1986, to calculate the value of the goods in Canadian currency.

1. R.S.C., 1985, c. 1 (2nd Supp.), as amended.

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Counsel for the appellant argued that the value for duty of the grates should be determined using the average currency exchange rate prevailing when stage payments for the goods were made during their manufacture. On this basis, the value for duty of the grates, in Canadian dollars, was claimed to be $2,270,808.42. In the alternative, she argued that the proper exchange rate was that in effect on August 18, 1986, being the date of direct shipment of the goods to Canada. She further argued that the price of DM 4,828,250 included the cost of erection and installation of the grates and that these latter costs should be subtracted from the price to determine the actual cost of the goods for purposes of determining their value for duty. She also argued that the respondent incorrectly used the transaction value method to calculate the value for duty of the imported goods rather than the residual method provided in section 53 of the Act.

Counsel for the respondent noted that the *Currency Exchange for Customs Valuation Regulations* dictate that "For the purposes of the *Customs Act*, the rate of exchange used by the Minister for determining the value in Canadian dollars of a currency of a country other than Canada shall be the rate prevailing on the date of direct shipment to Canada of the goods whose value in Canadian currency is to be determined."[2] He noted that the customs brokers' documents used for customs clearance indicate the date of direct shipment as August 5, 1986. On this basis, the value for duty of the grates, in Canadian dollars, was calculated to be $3,174,278.43. Counsel noted that if it were determined that the place of direct shipment of the goods was Bremerhaven on August 18, 1986, as opposed to their place of manufacture on August 5, 1986, then, pursuant to subparagraph 48(5)(*b*)(i) of the Act, the appellant would lose the deduction of DM 36,163, which represents inland transportation costs incurred between August 5 and August 18, 1986. With regard to deductions for erection and installation, counsel noted that there was no evidence to support the claim, and the appellant's witness could not testify to that effect. On the transaction value method employed by the respondent to appraise the value for duty of the goods, counsel chose not to address the merits of the argument. Instead, he argued that the Tribunal lacked the jurisdiction to address the issue at the hearing and cited in support of this proposition, the decision in *SKF Canada Limited v. the Deputy Minister of National Revenue for Customs and Excise*.[3]

The appellant contended that the exchange rate used to calculate the value for duty should be the average rate that applied to the stage payments or that the rate in effect on August 18, 1986, should replace the rate in effect on August 5, 1986. However, there is no basis in the law to permit averaging as requested by the appellant, and there is no evidence that August 18, 1986, represents the date of direct shipment of the goods to Canada.

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2. SOR/85-900, Canada Gazette Part II, Vol. 119, No. 20, p. 4061.

3. Canadian International Trade Tribunal, Appeal Nos. AP-89-216, AP-89-221, AP-89-222, AP-89-223, November 12, 1991.

As to the claim that the respondent incorrectly used the transaction value method to determine the value for duty of the goods or that the total cost of the goods included the cost of erection and installation, the Tribunal notes that the burden of proof was on the appellant.[4] In this regard, the appellant was unable to furnish any evidence that an error had been committed or, in fact, to establish the costs of erection and installation that should have been deducted. Accordingly, the appeal is dismissed.

Charles A. Gracey
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Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
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4. See paragraph 152(3)(*c*) of the Act.