

Ottawa, Monday, December 7, 1998

Appeal No. AP-96-083

IN THE MATTER OF an appeal heard on September 23, 1998,
under 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 dated June 20, 1996, with respect to a request
for re-determination under section 58 of the *Special Import
Measures Act*.

BETWEEN

JARVIS IMPORTS AND SALES LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Peter F. Thalheimer
Peter F. Thalheimer
Presiding Member

Raynald Guay
Raynald Guay
Member

Richard Lafontaine
Richard Lafontaine
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-96-083

JARVIS IMPORTS AND SALES LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 61 of the *Special Import Measures Act* of a re-determination of the Deputy Minister of National Revenue that certain men's golf boots, style Nos. 1696 (Storm Master) and 1702 (Sun Burst), manufactured in Malaysia and imported by the appellant are goods of the same description as the goods to which the Tribunal's order in Review No. RR-92-001 respecting waterproof rubber footwear originating in or exported from Czechoslovakia, Poland, the Republic of Korea, Taiwan, Hong Kong, Malaysia, Yugoslavia and the People's Republic of China applied and are, therefore, goods subject to the imposition of anti-dumping duties.

HELD: The appeal is dismissed. The Tribunal is satisfied, based on the evidence, that the golf boots in issue fall within the description of "waterproof rubber footwear constructed wholly or in part of rubber." Moreover, on the basis of the evidence of the witness for the appellant, the Tribunal is persuaded that the golf boots in issue do not fall under the categories of "snowmobile boots" and "safety footwear" which are excluded from the Tribunal's order. However, the Tribunal heard conflicting evidence about the composition of the golf boots in issue, such that it is not clear to the Tribunal whether the golf boots in issue are composed of any material other than rubber and, more particularly, whether the golf boots have any leather trim and, if so, whether the golf boots in issue could be considered "rubber-bottom/leather-top boots" which are also excluded from the Tribunal's order.

Relying on the statement of reasons in Inquiry No. ADT-4-79, in which the Anti-dumping Tribunal described rubber-bottom/leather-top boots as "footwear with a rubber bottom of at least 2½" in height and a leather top that represented at least half the height of the completed boot," the Tribunal is satisfied that, even if the golf boots in issue do have some leather trim, the amount of leather trim is not significant enough for them to be covered by the exclusion for "rubber-bottom/leather-top boots" and that the golf boots would still be goods of the same description as those to which the Tribunal's order applies.

Place of Video Conference

Hearing: Hull, Quebec, and Vancouver, British Columbia
Date of Hearing: September 23, 1998
Date of Decision: December 7, 1998

Tribunal Members: Peter F. Thalheimer, Presiding Member
Raynald Guay, Member
Richard Lafontaine, Member

Counsel for the Tribunal: Shelley Rowe

Clerks of the Tribunal: Anne Turcotte and Margaret Fisher

Appearances: Maurice Jarvis, for the appellant
Jan Brongers, for the respondent

Appeal No. AP-96-083

JARVIS IMPORTS AND SALES LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: PETER F. THALHEIMER, Presiding Member
RAYNALD GUAY, Member
RICHARD LAFONTAINE, Member

REASONS FOR DECISION

This is an appeal under section 61 of the *Special Import Measures Act*¹ (SIMA) of a re-determination of the Deputy Minister of National Revenue that certain men's golf boots, style Nos. 1696 (Storm Master) and 1702 (Sun Burst), manufactured in Malaysia and imported by the appellant are goods of the same description as the goods to which the Tribunal's order in Review No. RR-92-001² (the 1992 order) applied and are, therefore, goods subject to the imposition of anti-dumping duties.

In the 1992 order, the Tribunal continued, without amendment, the finding made by the Canadian Import Tribunal on October 22, 1987, in Review No. R-7-87, continuing, without amendment, the findings made by the Anti-dumping Tribunal:

(1) on May 25, 1979, in Inquiry No. ADT-4-79, respecting 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, but excluding snowmobile boots, rubber-bottom/leather-top boots and safety footwear that is specially designed to protect the wearer from injury and which incorporates special features such as safety box toes, steel toes, steel safety soles, non-slip soles or specially compounded rubber impervious to acids and other chemicals; and

(2) on April 23, 1982, in Inquiry No. ADT-2-82, respecting waterproof rubber footwear constructed wholly or in part of rubber with or without liners, linings, fasteners or safety features, but excluding snowmobile boots, rubber-bottom/leather-top boots and safety footwear, originating in or exported from Hong Kong, Malaysia, Yugoslavia and the People's Republic of China.

The issue in this appeal is whether the golf boots in issue are goods of the same description as those to which the 1992 order applies.

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

2. *Waterproof Rubber Footwear Originating in or Exported from Czechoslovakia, Poland, the Republic of Korea, Taiwan, Hong Kong, Malaysia, Yugoslavia and the People's Republic of China, Order and Statement of Reasons*, October 21, 1992. It should be noted that, in Review No. RR-97-001, the Tribunal continued, with amendment, the order in respect of certain waterproof rubber footwear originating in or exported from the People's Republic of China.

Mr. Maurice Jarvis, President of Jarvis Imports and Sales Ltd., testified on behalf of the appellant. He described the golf boots in issue as rubber boots, with spikes on the bottom of the sole and standing about 14 in. in height. He stated that the goods in issue are not approved by the Canadian Standards Association (CSA) and are intended to be used for golf, although they could be used for walking in water, mud and snow. Mr. Jarvis accepted the photograph in the respondent's brief³ as a representation of the goods in issue. When asked whether the goods in issue were all rubber and, more particularly, what the reference to "Nappa Grained Upper" on the photograph meant, Mr. Jarvis responded that the goods in issue may have some nylon or leather trim on the top 2 in. of the boot or on the collar of the boot.

The written submissions filed with the Tribunal indicated that it may be argued that anti-dumping duties should not be assessed on the golf boots in issue on the basis that they are seconds or goods of inferior quality to other comparable goods. However, at the hearing, Mr. Jarvis was unable to confirm that any of the golf boots in issue were defective.

One witness appeared for the respondent, Ms. Karen Humphries, a senior program officer with the Anti-dumping and Countervailing Division of the Department of National Revenue. She indicated that she was familiar with the golf boots in issue, as she had worked on the rubber footwear case periodically since 1982. She introduced a photograph of a boot described as style No. 1696 which had been received from the manufacturer of the golf boots in issue, along with a letter, as part of a request that the Department of National Revenue establish a normal value for the boot.⁴ She stated, on the basis of the photograph, that the material of that boot is all-vulcanized rubber. No photograph was presented with respect to the boot described as style No. 1702.

When asked what "Nappa Grain Upper" meant to her, Ms. Humphries responded that, in relation to the rubber on the boot, it means that the rubber is not smooth and has a type of imprint on it.

With regard to the photograph introduced by Ms. Humphries, Mr. Jarvis indicated that it was a photograph of a boot, style No. 1696, and that it was possible that the golf boots in issue were all rubber. However, he indicated that he had photographs that showed the same boot with a nylon top and that, at one time, the boots had leather tops.

In argument, Mr. Jarvis submitted that the golf boots in issue are not made by any manufacturer in Canada and that the importation of such goods is not, therefore, likely to cause material injury to Canadian production, since there is no production in Canada. Accordingly, Mr. Jarvis submitted that the appellant should not have been assessed anti-dumping duties on the importation of the golf boots in issue.

Counsel for the respondent argued that the description of the goods in the 1992 order is clear and unambiguous. The 1992 order specifically refers to and includes rubber footwear constructed wholly or in part of rubber and must be interpreted to mean that all such boots are subject to the order unless specifically excluded.

Counsel for the respondent stated that the invoice dated January 8, 1993,⁵ from the manufacturer of the goods in issue with respect to a previous importation of style No. 1702 clearly indicates that the goods in

3. See Tab 5 of the respondent's brief.

4. See Exhibit B-1.

5. See Tab 9 of the respondent's brief.

issue are “rubber footwear (golf boots).” Further, the purchase order dated August 1, 1995,⁶ which relates to the importation of the goods in issue, refers to style Nos. 1696 and 1702 and describes them as “men[']s rubber golf boot[s].” It was submitted by counsel that, although Mr. Jarvis testified that the goods in issue may be used for an activity other than golf and may have leather or nylon on the top, the documentary evidence and testimony of Ms. Humphries made it clear that the goods in issue are boots made wholly of rubber and are not snowmobile boots or CSA-approved safety boots. As such, the goods in issue are of the same description as the goods to which the 1992 order applies and, accordingly, are subject to anti-dumping duties.

Finally, counsel for the respondent submitted that the issue of whether or not certain imported goods are produced in Canada or are causing material injury to Canadian producers is not relevant to the issue, in an appeal under section 61 of SIMA, of whether certain imported goods are of the same description as goods subject to an order or finding of the Tribunal.

The issue in this appeal is whether the golf boots in issue are goods of the same description as those to which the 1992 order applies. The 1992 order applies to waterproof rubber footwear constructed wholly or in part of rubber, with or without liners, linings, fasteners or safety features. The Tribunal is satisfied, based on the evidence, that the golf boots in issue fall within the description of “waterproof rubber footwear constructed wholly or in part of rubber.” Moreover, the evidence of Mr. Jarvis confirmed that the golf boots in issue are not CSA approved and, therefore, not considered safety boots. He also confirmed that the golf boots in issue are not identified or sold as snowmobile boots, notwithstanding they may be used, in some circumstances, to walk in snow. Therefore, the golf boots in issue do not fall under the categories of “snowmobile boots” and “safety footwear” which are excluded from the 1992 order. However, the Tribunal heard conflicting evidence about the composition of the golf boots in issue, such that it is not clear to the Tribunal whether the golf boots in issue are composed of any material other than rubber and, more particularly, whether the golf boots have any leather trim and, if so, whether the golf boots in issue could be considered “rubber-bottom/leather-top boots” which are also excluded from the 1992 order.

In the Tribunal’s view, the category of “rubber-bottom/leather-top boots,” used to describe one of the types of waterproof rubber footwear excluded from the 1992 order, is a trade term which may refer to a broad range of footwear. It is not clear how broadly or narrowly the term “rubber-bottom/leather-top boots” is to be interpreted. Therefore, the Tribunal finds it helpful, in clarifying what footwear is included in the term “rubber-bottom/leather-top boots,” to refer to: (1) the statement of reasons for the 1992 order which continued, without amendment, the finding made by the Canadian Import Tribunal on October 22, 1987, in Review No. R-7-87; (2) the statement of reasons for the finding in Review No. R-7-87, which continued, without amendment, the findings made by the Anti-dumping Tribunal on May 25, 1979, in Inquiry No. ADT-4-79, and on April 23, 1982, in Inquiry No. ADT-2-82; and (3) the statements of reasons in Inquiry Nos. ADT-4-79 and ADT-2-82.⁷

Of the statements of reasons for the findings leading to the 1992 order, only the statement of reasons in Inquiry No. ADT-4-79 provided guidance. In the statement of reasons in Inquiry No. ADT-4-79, the Anti-dumping Tribunal discusses the category of “rubber-bottom/leather-top boots” as follows:

6. See Tab 10 of the respondent’s brief.

7. See *Deputy Minister of National Revenue for Customs and Excise v. Trane Company of Canada, Limited*, [1982] 2 F.C. 194 (C.A.), where the Federal Court of Appeal stated that it is acceptable to refer to a separately issued statement of reasons in order to interpret an otherwise ambiguous finding of the Tribunal.

The first category, rubber-bottom, leather-top boots, is easily disposed of. Counsel for the complainants informed the Tribunal at the public hearing that no injury was claimed in respect of products in this category, which was defined by the witness for Kaufman as footwear with a rubber bottom of at least 2½" in height and a leather top that represented at least half the height of the completed boot.⁸

While it is not certain from the evidence whether the golf boots in issue have leather trim, none of the evidence regarding the appearance and composition of the golf boots in issue indicates that the leather trim on the golf boots in issue would represent half the height of the boot. On the contrary, the evidence suggests that the leather trim, if any, would represent significantly less than half the height of the completed boot. Taking into account the description of "rubber-bottom/leather-top boots" in the statement of reasons in Inquiry No. ADT-4-79, the Tribunal is satisfied that, even if the golf boots in issue do have some leather trim, the amount of leather trim is not significant enough for them to be covered by the exclusion for "rubber-bottom/leather-top boots" and that the golf boots would still be goods of the same description as those to which the 1992 order applies.

Finally, with respect to the appellant's argument that anti-dumping duties should not have been assessed on the golf boots in issue because they are not made by any manufacturer in Canada and are not, therefore, likely to cause material injury to Canadian production, the Tribunal is of the view that such factors, although they are relevant in an inquiry or a review under section 42 or 76, respectively, of SIMA, are not relevant to the issue, in an appeal under section 61 of SIMA, of whether or not imported goods are goods of the same description as goods to which an order or finding of the Tribunal applies.

For the foregoing reasons, the appeal is dismissed.

Peter F. Thalheimer

Peter F. Thalheimer
Presiding Member

Raynald Guay

Raynald Guay
Member

Richard Lafontaine

Richard Lafontaine
Member

8. At 12.