



Ottawa, Monday, March 10, 2003

Appeal No. AP-2001-093

IN THE MATTER OF an appeal heard on September 19, 2002, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1, and section 61 of the *Special Import Measures Act*, R.S.C. 1985, c. S-15;

AND IN THE MATTER OF a decision of the Governor in Council, dated May 2, 2001, and of decisions of the Commissioner of the Canada Customs and Revenue Agency dated October 3 and 25 and December 2, 2001, with respect to a request for redetermination under section 60 or 61 of the *Customs Act* and section 59 of the *Special Import Measures Act*.

**BETWEEN**

**AMERSHAM HEALTH INC. (FORMERLY NYCOMED  
AMERSHAM CANADA INC.)**

**Appellant**

**AND**

**THE COMMISSIONER OF THE CANADA CUSTOMS AND  
REVENUE AGENCY**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Richard Lafontaine  
Richard Lafontaine  
Member

Ellen Fry  
Ellen Fry  
Member

Michel P. Granger  
Michel P. Granger  
Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-2001-093

AMERSHAM HEALTH INC. (FORMERLY NYCOMED  
AMERSHAM CANADA INC.)

Appellant

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND  
REVENUE AGENCY

Respondent

There are two issues in this appeal. The Tribunal must first determine whether it has jurisdiction under section 67 of the *Customs Act* or under section 61 of the *Special Import Measures Act* to hear the appeal. If so, it must determine whether the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) is required to pay interest on the anti-dumping duties that were refunded to Amersham Health Inc.

**HELD:** The appeal is dismissed. The Tribunal's jurisdiction to hear an appeal would be grounded under subsection 67(1) of the *Customs Act* or section 61 of the *Special Import Measures Act*. Subsection 67(1) of the *Customs Act* provides that a person aggrieved by a decision of the Commissioner regarding a redetermination or further redetermination of origin, tariff classification or value for duty pursuant to section 60 or 61 may appeal from the decision to the Tribunal. The Tribunal finds that the remission of the anti-dumping duties was not made pursuant to a decision of the Commissioner pursuant to subsection 60(1) or section 61 of the *Customs Act*, but was made pursuant to a remission order granted by the Governor in Council pursuant to section 115 of the *Customs Tariff*. It also finds that section 61 of the *Customs Act* does not apply because, for that section to apply, a redetermination by the Commissioner must "give effect" to a decision of the Tribunal. The Tribunal provided an opinion, with recommendations, to the Minister of Finance pursuant to section 45 of the *Special Import Measures Act*. The Minister of Finance was not bound by the Tribunal's recommendations. In any event, the decision "to be given effect to" was that of the Governor in Council. Consequently, the Tribunal finds that there is no decision of the Commissioner under section 61 of the *Customs Act* that may be appealed pursuant to section 67 of the *Customs Act*.

Furthermore, the issue in this case is whether interest is payable on the duties remitted, a matter that is not encompassed in subsection 60(1) or section 61 of the *Customs Act* or in section 59 of the *Special Import Measures Act*.

Having determined that it does not have jurisdiction to hear the appeal, the Tribunal did not rule on the merits of the claim.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	September 19, 2002
Date of Decision:	March 10, 2003
Tribunal Members:	Pierre Gosselin, Presiding Member Richard Lafontaine, Member Ellen Fry, Member
Counsel for the Tribunal:	Michèle Hurteau
Clerk of the Tribunal:	Anne Turcotte
Appearances:	Lawrence L. Herman, for the appellant Elizabeth Richards, for the respondent



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**AMERSHAM HEALTH INC. (FORMERLY NYCOMED  
AMERSHAM CANADA INC.)**

**Appellant**

**AND**

**THE COMMISSIONER OF THE CANADA CUSTOMS AND  
REVENUE AGENCY**

**Respondent**

TRIBUNAL: PIERRE GOSSELIN, Presiding Member  
RICHARD LAFONTAINE, Member  
ELLEN FRY, Member

**REASONS FOR DECISION**

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> and under section 61 of the *Special Import Measures Act*<sup>2</sup> with respect to the payment of interest on the anti-dumping duties that were refunded to Amersham Health Inc. (Amersham) pursuant to the *Iodinated Contrast Media Anti-dumping Duty Remission Order*.<sup>3</sup>

There are two issues in this appeal. The Tribunal must first determine whether it has jurisdiction under section 67 of the Act or under section 61 of SIMA to hear the appeal. If so, it must determine whether the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) is required to pay interest on the anti-dumping duties that were refunded to Amersham.

**BACKGROUND**

On May 1, 2000, the Tribunal found that that the dumping in Canada of certain iodinated contrast media (the goods in issue) originating in or exported from the United States (including the Commonwealth of Puerto Rico) had caused material injury to the domestic industry. It commenced a public interest inquiry pursuant to section 45 of SIMA, following representations made by a number of persons.<sup>4</sup> On August 29, 2000, the Tribunal reported to the Minister of Finance (the Minister) that it was of the opinion that the imposition of the anti-dumping duties in the full amount, in respect of the goods in issue, was not in the public interest. On the Minister's recommendation, pursuant to section 115 of the *Customs Tariff*,<sup>5</sup> the Governor in Council made a remission order that covered the anti-dumping duties paid or payable on or after December 31, 1999, under SIMA, calculated pursuant to the applicable methodology set out in the schedule to the remission order.

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].
2. R.S.C. 1985, c. S-15 [hereinafter SIMA].
3. P.C. 2001-799, C. Gaz. 2001.II.880 [hereinafter remission order].
4. *Certain Iodinated Contrast Media* (29 August 2000), PB-2000-001 (CITT) [hereinafter public interest inquiry].
5. S.C. 1997, c. 36.

On September 7, 2001,<sup>6</sup> the Canada Customs and Revenue Agency (CCRA) informed Amersham that, pursuant to section 59 of the Act, it would receive a partial refund of the anti-dumping duties based on the methodology set out in the remission order for the period from March 6 to April 28, 2000. Amersham received the refund, which included accrued interest. On October 3, 2001, the CCRA informed Amersham that the remission order provides for the remittance of anti-dumping duties under section 115 of the *Customs Tariff* and that there was no provision under that section to pay interest.<sup>7</sup> The CCRA indicated that an adjustment was being issued to correct a portion of the refund that had been given in error in the previous adjustment.<sup>8</sup> On October 25, 2001, the CCRA remitted a partial refund of the anti-dumping duties paid pursuant to section 115 of the *Customs Tariff* for the period from March to September 2000. This payment did not include accrued interest. By letter dated November 20, 2001, Amersham requested a re-determination pursuant to sections 66 and 80.1 of the Act, in respect of interest on the refunded duties.<sup>9</sup> On December 5, 2001, the CCRA stated that the anti-dumping duties had been remitted pursuant to the remission order and that section 115 of the *Customs Tariff* does not provide for the payment of interest on those duties. Consequently, the request for a re-determination was not entertained by the CCRA.<sup>10</sup> On December 17, 2001, Amersham filed, with the Tribunal, its notice of appeal of the decisions of October 3 and 25 and December 5, 2001.

## ARGUMENT

### Jurisdictional Issue

Amersham argued that the Tribunal has jurisdiction to hear the appeal pursuant to section 67 of the Act or, in the alternative, pursuant to section 61 of SIMA.

Amersham first argued that the remission order flowed from a decision made by the Tribunal pursuant to section 45 of SIMA, recommending that it was in the public interest to grant a reduction in the anti-dumping duties on the goods in issue. In Amersham's view, the entire scheme in SIMA and the Act leads to the conclusion that, whenever duties are returned that were paid in excess of the amounts actually owing, or by way of refund, interest is to be paid. Amersham submitted that the calculation set out in the remission order is another way of adjusting the normal value and the export price and, thus, of determining the value for duty of the goods in issue, which arrives at the anti-dumping duties that are payable.

Amersham argued that section 67 of the Act provides that a person who has been aggrieved by a decision of the Commissioner made under section 60 or 61 may appeal from that decision to the Tribunal. Subsection 61(1) provides that the Commissioner may "re-determine or further re-determine the origin, tariff classification or value for duty of imported goods" at any time if such "re-determination or further re-determination would give effect to a decision of the . . . Tribunal". In Amersham's submission, pursuant to section 2 of the remission order, a complex methodology for revising the anti-dumping duties of the goods in issue under SIMA was provided for in the schedule. The methodology involved an increase in the export price of the goods in issue, which, in effect, revised the value for duty of the goods in issue. In Amersham's view, the Commissioner's decision respecting the refund of duties was based on a re-determination of the value for duty of the goods in issue and, therefore, falls squarely within subsection 61(1). Moreover, the remission order and the Commissioner's re-determination "gave effect" to

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6. Commissioner's brief, Tab 4.

7. *Ibid.* Tab 5.

8. *Ibid.*

9. *Ibid.* Tab 7.

10. *Ibid.* Tab 8.

the Tribunal's decision in the public interest inquiry and is subject to an appeal to the Tribunal pursuant to subparagraph 61(1)(a)(iii).

Amersham argued that, in the alternative, the Tribunal had jurisdiction to hear the appeal pursuant to section 61 of SIMA. Subsection 61(1) provides that a person who deems himself aggrieved by a redetermination of the Commissioner made pursuant to section 59, in respect of any goods, may appeal to the Tribunal. It argued that it was advised by letter dated September 7, 2001, that the CCRA had made a redetermination pursuant to paragraph 59(1)(e). In Amersham's submission, the request for redetermination was for normal values for the purposes of giving effect to a decision of the Tribunal pursuant to paragraph 59(1)(d). The letter also indicated that an appeal of the decision lies with the Tribunal pursuant to subsection 61(1). On this basis, Amersham submitted that the Tribunal has jurisdiction to hear the appeal.

The Tribunal asked whether its recommendations to the Minister could be called a decision, as typically, recommendations are not subject to appeal. Amersham responded that, while not a definitive decision, as that term is defined under section 42 or 43, a decision was made under section 45 of SIMA respecting a public interest concern from which recommendations were made. In Amersham's view, there is nothing that would restrict the definition of "decision" to a determination by the Tribunal under section 45. In this instance, the Tribunal provided an "opinion", with recommendations, that the imposition of the anti-dumping duties in the full amount would not be in the public interest. Amersham submitted that there was very little distinction between a "decision" and an "opinion" of the Tribunal. According to Amersham, the remission order gave effect to the recommendations and the Commissioner redetermined the value for duty of the goods in issue to give effect to both the remission order and the Tribunal's decision. Amersham conceded that the value for duty set out in the remission order was not based on the specific methodologies, such as the deductive value or computed value, found in the Act.

With respect to how the Tribunal's jurisdiction would be triggered pursuant to section 61 of SIMA, Amersham submitted that the CCRA was wrong in its application of section 115 of the *Customs Tariff*. Amersham sought a redetermination under SIMA, with which the Commissioner disagreed after having initially made the concession that the redetermination was made pursuant to section 59 of SIMA. It submitted that the Tribunal's jurisdiction could be grounded in the CCRA's letter of September 7, 2001, notwithstanding the fact that the Commissioner later indicated that he was wrong.

The Commissioner argued that the Tribunal does not have jurisdiction to hear the appeal. In the Commissioner's submission, the evidence is clear that there was no redetermination pursuant to section 60 or 61 of the Act in respect of the decision at issue, namely, the refusal to pay interest on the anti-dumping duties remitted to Amersham. The Commissioner argued that the Tribunal's jurisdiction under section 67 flows from a decision of the Tribunal pursuant to subparagraph 61(1)(a)(iii) of the Act. In this case, the Commissioner submitted that subparagraph 61(1)(a)(iii) of the Act does not apply, as a recommendation made under section 45 of SIMA does not constitute a Tribunal decision. Moreover, in effecting the remission of the duties, the Commissioner was not doing so pursuant to a Tribunal decision, but was acting pursuant to the remission order made by the Governor in Council. Consequently, the remission of duties was not for the purposes of giving effect to a Tribunal decision, but for the purposes of giving effect to an Order in Council pursuant to section 115 of the *Customs Tariff*. In discussing sections 60 and 61 of the Act, the Commissioner further argued that these sections refer to decisions by the Commissioner and do not apply to this case, as the decision to remit the anti-dumping duties on the goods in issue was not made by the Commissioner.

In this case, the Governor in Council made an order that grants the remission of anti-dumping duties and that mandates the CCRA to carry out the effect of the order. The remission order does not give the

Commissioner the authority to determine whether to grant the remission of duties. The Commissioner was not responsible for making the decision; however, any request for remission was to be made to the CCRA, pursuant to section 6 of the remission order. The Commissioner argued that the schedule to the remission order contains the methodology by which the calculations are to be performed by the CCRA for the remission of the duties. Consequently, the Tribunal cannot consider an appeal pursuant to section 67 of the Act.

With respect to the issue of jurisdiction for an appeal under section 61 of SIMA, this section provides for an appeal to the Tribunal of a redetermination made pursuant to section 59 of SIMA. The Commissioner argued that the Commissioner has not made a redetermination, but was mandated by the Governor in Council to provide for the method to remit duties. The legislative authority for the remission of the anti-dumping duties is provided for in the Order in Council. The Commissioner argued that, by letter dated September 7, 2001, the Commissioner had erroneously advised Amersham that the Commissioner had redetermined the duties payable pursuant to paragraph 59(1)(e) of SIMA. Subsequently, Amersham was advised that the refund was made in error and that any remittance of the anti-dumping duties was to be made pursuant to section 115 of the *Customs Tariff*. Contrary to Amersham's assertions, the Commissioner did not redetermine the duties payable pursuant to section 59 of SIMA. Consequently, the Tribunal does not have jurisdiction to hear the appeal.

In response to the Tribunal's questions on the application of section 60 of the Act, the Commissioner submitted that that section applies when there is a redetermination made by the Commissioner pursuant to subsection 59(2) regarding origin, tariff classification or value for duty. In the Commissioner's view, that is not what occurred in this case and, therefore, section 60 does not apply.

## **Merits**

Amersham submitted that it was entitled to interest on the refunded duties pursuant to subsection 66(3) and section 80.1 of the Act or, in the alternative, subsection 62.1(2) of SIMA.

With respect to the interest to be paid pursuant to subsection 66(3) of the Act, Amersham submitted that the CCRA made a redetermination of the value for duty of the goods in issue pursuant to subparagraph 59(1)(a)(ii), which gave effect to the Tribunal's decision following the public interest inquiry. On the basis of this redetermination, the CCRA concluded that Amersham was entitled to a refund of duties in accordance with paragraph 59(3)(b). Pursuant to subsection 66(3), a person who receives a refund of amounts paid pursuant to paragraph 59(3)(b) is entitled to interest on that refund. Consequently, Amersham submitted that it was entitled to the interest on the amounts refunded.

With respect to its second argument, Amersham submitted that it had overpaid the duties or paid them in error under the remission order. It was granted a refund pursuant to paragraph 74(1)(g) of the Act. Pursuant to section 80.1, as Amersham was granted a refund under paragraph 74(1)(g) pursuant to a retroactive order, which applies to all the duties that were paid up to the point in time of the order, it was entitled to interest on those amounts.

In the alternative, Amersham submitted that it was entitled to interest payments on the refunded duties under subsection 62.1(2) of SIMA because the CCRA made a redetermination of the export price pursuant to section 59. Moreover, pursuant to paragraph 60(1)(b), part of the duties was returned to the importer and any refund made under that paragraph is subject to interest pursuant to subsection 62.1(2).

The Commissioner argued that the remission order was made pursuant to section 115 of the *Customs Tariff*. There is no provision in the remission order or in section 115 of the *Customs Tariff* for the payment of interest on the amount remitted. While Amersham pointed to various provisions that allow for the payment of interest, the Commissioner argued that the refund of duties was not provided for under any of those provisions. Consequently, Amersham was not entitled to interest on the duties remitted.

The Commissioner submitted that the duties were not paid in error. The duties were properly paid and the government exercised special powers given to it pursuant to the public interest provisions of SIMA to relieve the importers of those duties to give effect to the public interest. Moreover, the order is not a retroactive order to the extent that it goes back to provide for the remission of the duties that have been paid incorrectly.

## DECISION

The Tribunal will first deal with whether it has jurisdiction to hear the matter under section 67 of the Act or, alternatively, under section 61 of SIMA.

The relevant portions of subsections 60(1), 61(1) and 67(1) of the Act provide, in part, as follows:

60. (1) A person to whom notice is given under subsection 59(2) in respect of goods may, within ninety days after being given the notice, request a re-determination or further re-determination of origin, tariff classification or value for duty.

61. (1) The Commissioner may

(a) re-determine or further re-determine the origin, tariff classification or value for duty of imported goods

(iii) at any time, if the re-determination or further re-determination would give effect to a decision of the . . . Tribunal, the Federal Court of Appeal or the Supreme Court of Canada made in respect of the goods.

67. (1) A person aggrieved by a decision of the Commissioner made under section 60 or 61 may appeal from the decision to the . . . Tribunal by filing a notice of appeal in writing with the Commissioner and the Secretary of the . . . Tribunal within ninety days after the time notice of the decision was given.

In this case, Amersham argued that it requested a redetermination of the value for duty of the goods in issue by the Commissioner under subsection 60(1) of the Act, a request that was denied by the Commissioner. The process for the determination of the value for duty is set out in section 46, which states that “[t]he value for duty of imported goods shall be determined in accordance with sections 47 to 55.” The primary basis for the appraisal of the value for duty is based on the transaction value of the imported goods in accordance with the conditions set out in section 48.<sup>11</sup> Where the value for duty is not appraised in accordance with the conditions set out in section 48, the goods may be appraised on a subsidiary basis, such as the deductive value or the computed value.<sup>12</sup> Section 46 provides that the Commissioner, in redetermining the value for duty of imported goods, must use the methodologies set out in sections 47 to 55.

Based on the evidence presented, the Tribunal finds that the remission of the duties was not made to give effect to a decision of the Commissioner pursuant to subsection 60(1) of the Act as argued by Amersham, but was made to give effect to discretionary relief granted by the Governor in Council pursuant

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11. Subsection 47(1) of the Act.

12. Subsection 47(2) of the Act.

to section 115 of the *Customs Tariff*. The Tribunal notes that the Order in Council granting the remission of anti-dumping duties states that it is made under the authority of section 115 of the *Customs Tariff*. Moreover, the calculation of the remittance of duties was provided for in the schedule to the remission order and not pursuant to the methodologies set out in sections 47 to 55 of the Act. Consequently, the Tribunal finds that there has been no redetermination or further redetermination by the Commissioner of the value for duty pursuant to subsection 60(1) of the Act. Furthermore, the issue in this case is not the amount of the value for duty, rather it is whether interest is payable on the duties remitted, a matter that is not encompassed in subsection 60(1) of the Act. Accordingly, there is no decision of the Commissioner under section 60 that may be appealed to the Tribunal pursuant to section 67 of the Act.

Subsection 67(1) of the Act also provides a right of appeal to the Tribunal where a person is aggrieved by a decision of the Commissioner made under subsection 61(1). Amersham argued that the Commissioner's decision respecting the refund of duties was based on a redetermination of the value for duty of the goods in issue pursuant to subsection 61(1).

The Tribunal finds that there has been no redetermination or further redetermination by the Commissioner of the value for duty pursuant to section 61 of the Act. In reaching this conclusion, the Tribunal applied the same reasoning that it applied above concerning this issue in relation to section 60. Furthermore, as indicated above in relation to section 60, the issue in this case is not the amount of the value for duty, rather it is whether interest is payable on the duties remitted. This is a matter that is not encompassed in section 61. Accordingly, the Tribunal finds that there is no decision of the Commissioner under section 61 that may be appealed to the Tribunal pursuant to section 67.

Amersham also contended that the remission order flowed from a decision of the Tribunal pursuant to section 45 of SIMA, recommending a reduction in duties for public interest reasons. It argued that the remission order "gave effect" to the Tribunal's recommendations and that the Commissioner redetermined the value for duty of the goods in issue as per the methodology found in the remission order.

Section 45 of SIMA provides, in part, as follows:

45.(1) If, as a result of an inquiry referred to in section 42 arising out of the dumping or subsidizing of any goods, the Tribunal makes an order or finding described in any of sections 3 to 6 with respect to those goods, the Tribunal shall, on its own initiative or on the request of an interested person that is made within the prescribed period and in the prescribed manner, initiate a public interest inquiry if the Tribunal is of the opinion that there are reasonable grounds to consider that the imposition of an anti-dumping or countervailing duty, or the imposition of such a duty in the full amount provided for by any of those sections, in respect of the goods would not or might not be in the public interest.

(4) If, as a result of a public interest inquiry, the Tribunal is of the opinion that the imposition of an anti-dumping or countervailing duty, or the imposition of such a duty in the full amount provided for by any of sections 3 to 6, in respect of the goods would not or might not be in the public interest, the Tribunal shall without delay

(a) report to the Minister of Finance that it is of that opinion and provide that Minister with a statement of the facts and reasons that caused it to be of that opinion; and

(b) cause notice of the report to be published in the *Canada Gazette*.

The terms "decision", "opinion" and "recommendation" are not defined in the Act or in SIMA. *The Canadian Law Dictionary* defines "decision" as "[a] judgment or decree or order pronounced by a court in



settlement of a controversy submitted to it”<sup>13</sup> and “opinion” as “[a] conclusion or belief held with confidence, after analysis of the facts and the law relating to a matter. Frequently the term is synonymous with judgment.”<sup>14</sup>

*The Oxford English Dictionary* defines “recommendation” as “[t]he action of recommending a person or thing as worthy or desirable. Also, that which is recommended; a proposal or suggestion.”<sup>15</sup>

In this instance, the Tribunal, pursuant to a request made under section 45 of SIMA, conducted a public interest inquiry into whether it was in the public interest to impose anti-dumping duties in the full amount. Following the public interest inquiry, the Tribunal was of the opinion that the public interest would best be served if anti-dumping duties were not fully applied. The Tribunal reported its opinion to the Minister and provided a statement of the facts and reasons, which formed the basis for its opinion. Recommendations to the Minister flowed from the Tribunal’s opinion. The Minister was not bound by the Tribunal’s recommendations, which simply proffered advice on a course of action that the Minister might wish to follow. In the end, the Minister did in fact decide to make a recommendation to the Governor in Council, which culminated in the remission order. However, the Minister could have refrained from making such a recommendation to the Governor in Council, and the Governor in Council could also have refrained from passing an Order in Council. Furthermore, there was no requirement that the recommendation by the Minister or the Order in Council contain the same terms as the Tribunal’s recommendations. In any event, the Tribunal is of the view that the decision to be given effect to was that of the Governor in Council.

Moreover, even if the Tribunal had made a decision, as indicated above, the issue in this case is not the amount of the value for duty, rather it is whether interest is payable on the duties remitted. This is a matter that is not encompassed in section 61 of the Act. Accordingly, the Tribunal finds that there is no decision of the Commissioner under section 61 of the Act that may be appealed to the Tribunal pursuant to section 67.

Finally, Amersham argued that, in the alternative, subsection 61(1) of SIMA applies, as it indicates that a person who deems himself aggrieved by a redetermination of the Commissioner made pursuant to section 59 with respect to imported goods may appeal from the decision to the Tribunal.

The relevant portions of sections 59 and 61 of SIMA provide, in part, as follows:

59. (1) Subject to subsection (3), the Commissioner may re-determine any determination or re-determination referred to in section 55, 56 or 57 or made under this section in respect of any imported goods

(d) at any time, for the purpose of giving effect to a decision of the Tribunal, the Federal Court or the Supreme Court of Canada with respect to the goods.

61. (1) Subject to section 77.012 or 77.12, a person who deems himself aggrieved by a re-determination of the Commissioner made pursuant to section 59 with respect to any goods may appeal therefrom to the Tribunal by filing a notice of appeal in writing with the Commissioner and the Secretary of the Tribunal within ninety days after the day on which the re-determination was made.

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13. 1980, s.v. “decision”.

14. 1980, s.v. “opinion”.

15. Second ed., s.v. “recommendation”.

The relevant portions of section 115 of the *Customs Tariff* provide, in part, as follows:

115. (1) The Governor in Council may, on the recommendation of the Minister or the Minister of National Revenue, by order, remit duties.

(2) A remission under subsection (1) may be conditional or unconditional, may be granted in respect of the whole or any portion of the duties and may be granted regardless of whether any liability to pay the duties has arisen.

(3) If duties have been paid, a remission under subsection (1) shall be made by granting a refund of the duties to be remitted.

The Tribunal's jurisdiction under subsection 61(1) is to hear an appeal of a redetermination by the Commissioner of the normal value or export price of imported goods made pursuant to sections 55 to 57 of SIMA. While the Tribunal notes that the CCRA referred to section 59 when it first remitted the anti-dumping duties, the Tribunal finds that, on the evidence presented, the Commissioner did not make a decision under section 59, as required, to trigger the Tribunal's jurisdiction under section 61 of SIMA. Instead, the anti-dumping duties were remitted because of the requirement imposed by the remission order made pursuant to section 115 of the *Customs Tariff*. Furthermore, in the case at bar, there has been no redetermination by the Commissioner of the normal value or the export price of the goods in issue pursuant to sections 55 to 57 of SIMA. Rather, the Commissioner determined the amount of the anti-dumping duties to be remitted pursuant to the methodology set out in the schedule to the remission order.

Furthermore, the issue in this case is not the amount of the normal value or export price, rather it is whether interest is payable on the duties remitted. This is a matter that is not encompassed in sections 55 to 57 of SIMA.

Consequently, the Tribunal finds that it does not have jurisdiction to hear this appeal pursuant to section 61 of SIMA.

Given that the Tribunal finds that it does not have jurisdiction to hear this appeal pursuant to either section 67 of the Act or section 61 of SIMA, the appeal is dismissed. Consequently, the Tribunal will not rule on the merits of the claim.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Richard Lafontaine  
Richard Lafontaine  
Member

Ellen Fry  
Ellen Fry  
Member



Ottawa, Wednesday, April 9, 2003

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**BETWEEN**

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**Appellant**

**AND**

**THE COMMISSIONER OF THE CANADA CUSTOMS AND  
REVENUE AGENCY**

**Respondent**

### **CORRIGENDUM**

In the English version of the statement of reasons, the second sentence of the ninth paragraph under the subheading "Jurisdictional Issue" is replaced by the following: "The Commissioner argued that the Commissioner had not made a redetermination, but was mandated by the Governor in Council to remit duties based on the method described in the remission order."

By order of the Tribunal,

Susanne Grimes  
Acting Secretary