CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, January 23, 1990

Appeal No. AP-89-007

IN THE MATTER OF an application heard October 10, 1989, pursuant to section 61 of the *Special Import Measures Act*, R.S.C. 1985, c. S-15;

AND IN THE MATTER OF a redetermination of the Deputy Minister of National Revenue for Customs and Excise pursuant to section 59 and with respect to a request under section 58 of the *Special Import Measures Act*.

BETWEEN

WIRTH LTD. **Appellant**

AND

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

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal declares that hot-rolled, carbon steel, wide flange beams originating in or exported from Spain and imported by the appellant under customs entry no. A247090 are subject to anti-dumping duties in the amount of $15,149.52.

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

W. Roy Hines
W. Roy Hines
Member

Robert J. Martin
Robert J. Martin
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-89-007

WIRTH LTD. **Appellant**

and

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

Special Import Measures Act - Whether dumped hot-rolled, carbon steel, wide flange beams originating in or exported from Spain are subject to anti-dumping duties - Whether the goods in issue were released on the date of presentation of customs clearance documents or on the date the goods were authorized for removal for use in Canada - What is the scope and meaning of the word "release" in the Special Import Measures Act?

***DECISION**: The appeal is dismissed. Parliament has established the following test: an anti-dumping duty is to be levied on all dumped goods, imported into Canada, that are of the same description as goods to which the Deputy Minister's preliminary determination of dumping applies and that have been authorized to be removed by a customs official from a customs office, etc., during the period that commences on the day the preliminary determination is made and ends on the day the Tribunal makes an order or finding (of material injury) in respect of goods to which the preliminary determination applies.*

The Department of National Revenue has chosen to manifest the authorization by having customs officials stamp customs clearance documents "MAINLEVÉE - RELEASED." Customs officials stamped the customs clearance document pertaining to the goods in issue (a form entitled "Canada Customs Import Entry Coding Form") on August 20, 1987, the day the Deputy Minister of National Revenue for Customs and Excise issued a preliminary determination of dumping in respect of the goods.

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*October 10, 1989*
Date of Decision:	*January 23, 1990*
Panel Members:	*Robert J. Bertrand, Q.C., Presiding Member* *Sidney A. Fraleigh, Member* *W. Roy Hines, Member*
Counsel for the Tribunal:	*Clifford Sosnow*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*Michael Kaylor, for the appellant* *Michèle Joubert, for the respondent*
Case Cited:	*Imperial Tobacco, Division of Imasco Limited v. The Deputy Minister of National Revenue for Customs and Excise, 11 T.B.R. 506; affirmed A-754-86, F.C.A.*
Statutes Cited:	*Customs Act, R.S.C. 1970, c. C-40, s. 22; R.S.C. 1985, c. 1 (2nd Supp.), ss. 2, 17, 31 and 32; Excise Tax Act, R.S.C. 1970, c. E-13, s. 58; Special Import Measures Act, R.S.C. 1985, c. S-15, ss. 2, 4 and 8.*

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Appeal No. AP-89-007

WIRTH LTD. **Appellant**

and

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

TRIBUNAL: ROBERT J. BERTRAND, Q.C., Presiding member
SIDNEY A. FRALEIGH, Member
W. ROY HINES, Member

REASONS FOR DECISION

SUMMARY

The appellant is an importer of hot-rolled, carbon steel, wide flange beams originating in or exported from Spain. On February 11, 1987, the appellant entered into a contract with a Spanish exporter of hot-rolled, carbon steel, wide flange beams.

On May 22, 1987, the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) initiated an anti-dumping investigation in respect of hot-rolled, carbon steel, wide flange beams originating in or exported from Spain.

The vessel "M/V Transocean Pearl," carrying the goods, arrived in Toronto on August 17, 1987, and the goods were unloaded on that date.

On August 19, 1987, the appellant, through its customs broker, presented to customs officials in Toronto a customs entry document (form B 3B) for the imported goods. The document, bearing Entry No. A247090, was stamped "Aug 19 11 04 a.m. '87."

On August 20, 1987, the Deputy Minister made a preliminary determination of dumping with respect to the goods. On that same day, a form entitled "Canada Customs Import Entry Coding Form," pertaining to the goods in issue, was stamped "20 AUG 1987 MAINLEVÉE - RELEASED" by customs officials.

On November 16, 1987, the Deputy Minister made a final determination of dumping with respect to the wide flange steel beams, and on December 18, 1987, the Canadian Import Tribunal issued a finding of past, present and future material injury, in respect of the steel beams, to the production of like goods in Canada.

On May 27, 1988, the appellant was assessed, by Notice of Assessment No. A500869, anti-dumping duties in the amount of $15,149.52 on its importation of such goods.

The issue in this dispute is simply this: were the goods in issue released prior to the date of the Deputy Minister's preliminary determination? If they were, then the appellant is not liable to pay anti-dumping duty.

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The appeal is not allowed. The Tribunal considers that Parliament has established the following test: an anti-dumping duty is to be levied on all dumped goods, imported into Canada, that are of the same description as goods to which the Deputy Minister's preliminary determination of dumping applies and that have been authorized to be removed by a customs official from a customs office, etc., during the period that commences on the day the preliminary determination is made and ends on the day the Tribunal makes an order or finding (of material injury) in respect of goods to which the preliminary determination applies.

The Department of National Revenue (the Department) manifests the authorization by having customs officials stamp customs clearance documents "MAINLEVÉE - RELEASED." Customs officials stamped the customs clearance document pertaining to the goods in issue (a form entitled "Canada Customs Import Entry Coding Form") on August 20, 1987, the day the Deputy Minister issued a preliminary determination of dumping in respect of the goods.

THE LEGISLATION

The following legislative provisions are relevant to this appeal:

The Special Import Measures Act[1]

2(1) In this Act,

...

"release", in respect of goods, means to authorize the removal of the goods from a customs office, sufferance warehouse, bonded warehouse or duty free shop for use in Canada;

2(8) For greater certainty this Act shall be considered, for the purposes of the Customs Act, to be a law relating to the customs.

4. There shall be levied, collected and paid on all dumped ... goods imported into Canada

...

(b) that were released

(i) during the period commencing on the day the preliminary determination is made and ending on the day the Tribunal makes the order or finding ...

...

a duty as follows:

(c) ... an anti-dumping duty in an amount equal to the margin of dumping of the goods,

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

...
but not exceeding ... the duty, if any, paid or payable in respect of the goods pursuant to section 8.

8(1) Where the Deputy Minister makes a preliminary determination of dumping ... the importer of dumped ... goods that are of the same description as any goods to which the preliminary determination applies and <u>that are released during the period commencing on the day the preliminary determination is made and ending on</u>

...

(b) <u>the day on which the Tribunal makes an order of finding with respect to goods of that description</u>,

shall, on demand of the Deputy Minister for payment of provisional duty on the imported goods,

(c) pay ... on the imported goods provisional duty in an amount not greater than the estimated margin of dumping ... or

(d) post ... security ... in an amount or to a value not greater than the estimated margin of dumping ...

at the option of the importer. (Emphasis added)

<u>The Customs Act</u>[2]

2(1) In this Act,

...

"duties" means any duties or taxes levied on imported goods under the Customs Tariff, the Excise Tax Act, the Excise Act, the Special Import Measures Act or any other law relating to customs;

17(1) Imported goods are charged with duties thereon from the time of importation thereof until such time as the duties are paid or the charge is otherwise removed.

31. Subject to section 19, no goods shall be removed from a customs office, sufferance warehouse, bonded warehouse or duty free shop by any person other than an officer in the performance of his duties under this or any other Act of Parliament unless the goods have been released by an officer.

32(1) Subject to subsections (2) and (4) and any regulations made under subsection (6), and to sections 33 and 34, no goods shall be released until

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

(a) they have been accounted for by the importer or owner thereof in the prescribed manner ... ; and
(b) all duties thereon have been paid.

(2) In such circumstances as may be prescribed, goods may be released prior to the accounting required under subsection (1) if the importer or owner of the goods makes an interim accounting in the prescribed manner and in the prescribed form containing the prescribed information, or in such form containing such information as is satisfactory to the Minister.

THE FACTS

Both parties rely substantially on the statement of facts set out in the respondent's memorandum. However, counsel for the appellant also asked Mr. Wirth, the Chairman of Wirth Ltd., to testify in support of the appellant's position.

The appellant is an importer of hot-rolled, carbon steel, wide flange beams originating in or exported from Spain. The company makes the necessary overseas freight arrangements and is responsible for Canadian customs clearance. Once in Canada, the appellant resells the goods to Canadian users of steel.

Mr. Wirth presented evidence regarding the general practice and procedure of Canadian customs officials when goods are entered into Canada. According to the witness, when a company representative asks customs officials, on the day the customs entry documents are presented, to release the imported goods into Canada on that same day, customs officials comply with the request.

Mr. Wirth described the release of goods by customs officials as a formality. He said that goods are released without inspection. Mr. Wirth stated that, indeed, customs officials had released goods into Canada prior to their arrival at the port of entry. In support of this point, he presented a customs entry document (Exhibit A-1) pertaining to steel plates - goods not the subject of this appeal - which was stamped "MAINLEVÉE - RELEASED" by customs officials prior to the arrival of the goods at the port. The witness stated that customs officials had done this with several of the company's importations.

Against this general background, the facts that gave rise to the present dispute are as follows. On February 11, 1987, the appellant entered into a contract with Aristrain International, a Spanish exporter of hot-rolled, carbon steel, wide flange beams.

On May 22, 1987, the Deputy Minister initiated an anti-dumping investigation in respect of hot-rolled, carbon steel, wide flange beams originating in or exported from Spain. On the same day, the appellant was notified by the Department that the investigation had been initiated and that the appellant had been identified as one of the importers of the goods under investigation.

The vessel "M/V Transocean Pearl," carrying the goods that were the subject of the February contract, left for Canada on July 25, 1987, and on August 6, 1987, entered Canadian waters. The vessel arrived in Toronto on August 17, 1987, and the goods were unloaded on the same day.

On August 19, 1987, the appellant, through its customs broker, presented to customs officials in Toronto a customs entry document (form B 3B) for the imported goods. The document, bearing Entry No. A247090, was stamped "Aug 19 11 04 a.m. '87." Mr. Wirth stated that he did not know whether the customs broker had asked customs officials to release the goods that same day.

On August 20, 1987, the Deputy Minister made a preliminary determination of dumping with respect to the goods. On that same day, a form entitled "Canada Customs Import Entry Coding Form," pertaining to the goods in issue, was stamped "20 AUG 1987 MAINLEVÉE - RELEASED" by customs officials.

On August 28, 1987, the appellant paid customs duty on the goods in issue.

On November 16, 1987, the Deputy Minister made a final determination of dumping with respect to the wide flange steel beams and, on December 18, 1987, the Canadian Import Tribunal issued a finding of past, present and future material injury, in respect of the steel beams, to the production of like goods in Canada.

On May 27, 1988, the appellant was assessed, by Notice of Assessment No. A500869, anti-dumping duties in the amount of $15,149.52 on its importation of such goods. The duties were assessed on the basis of subparagraph 4(*b*)(i) and paragraph 8(1)(*b*) of the *Special Import Measures Act* (SIMA) which state that duties are to be assessed on dumped goods released into Canada during the period commencing on the day of the preliminary determination (in this case, August 20, 1987) and ending on the day the Canadian Import Tribunal, and now the Canadian International Trade Tribunal (the Tribunal), makes a finding of material injury (in this case, December 18, 1987).

The appellant objected to this assessment. The company argued that, although it imported wide flange steel beams from Spain, the goods that it imported were not subject to anti-dumping duties because they were released into Canada on the day the customs broker presented form B 3B to customs officials in Toronto, i.e., on August 19, 1987.

On July 27, 1988, the appellant filed a request to the Deputy Minister to redetermine the assessment. The original assessment was confirmed on December 19, 1988. Consequently, the appellant filed an appeal before the Tribunal under section 61 of SIMA.

THE ISSUE

Both parties agree that the goods are the same as the goods mentioned in the Deputy Minister's preliminary determination of dumping. Also, there are no objections to the amount of the anti-dumping duty assessed. The only issue is whether the goods were released prior to the date of the Deputy Minister's preliminary determination. If they were, then the appellant is not liable to pay the amount assessed.

The appellant argued that the goods were released on August 19, 1987, because the word "release" in SIMA is synonymous with the date on which customs entry documents, such as form B 3B, were presented to customs officials. As the appellant presented form B 3B to customs officials in Toronto at 11:04 a.m. on August 19, 1987, the goods should be exempt from anti-dumping duty.

The appellant presented several arguments in support of its position. First, the appellant argued that it would be unfair if the meaning of the word "release" in SIMA were to mean the date that customs entry documents were stamped "released" by customs officials. This interpretation would deprive the importer of controlling the date on which goods are entered into Canada and, in particular, of ensuring that the imported goods do not come within the period of time during which anti-dumping duties are assessed, viz., between the date of the preliminary determination of dumping and the finding of material injury by the Tribunal. Indeed, the appellant argued, customs officials could delay stamping customs clearance documents "released" in order to bring goods within the anti-dumping duty assessment period. However, the appellant did not claim that customs officials had acted with malice in the present dispute.

Second, the appellant submitted that the Tariff Board decision, subsequently affirmed by the Federal Court of Appeal, in *Imperial Tobacco, Division of Imasco Limited v. The Deputy Minister of National Revenue for Customs and Excise,*[3] supports the proposition that the word "release" in SIMA is synonymous with the date on which customs entry documents are presented to customs officials. In that case, the Tariff Board was asked to determine the applicable rate of excise tax imposed by the *Excise Tax Act* on the importation of cut tobacco. In turn, the resolution of that issue depended on whether the goods were imported for consumption at the time of presentation of a "B-3" customs clearance form.

While the appellant said that the case, dealing with an excise tax matter, was not on all points similar to the present dispute, the appellant submitted that the principles set forth in the following passage were relevant to this appeal:

> *Upon the entry of the goods by the filing of the B-3 form ... the importer had done all that was required. It was committed to the payment of the excise tax and the collector was required to release the goods. Obviously, the nature of the goods and the manner of the payment and the procedures of the port of entry would entail some delay in their physical delivery to the importer, but that does not affect the requirement for the payment of the tax and the release of the goods*.[4]

The appellant contended that this was the situation in the present case. As of 11:04 a.m. on August 19, 1987, the appellant had done all that it was required to do in respect of the declaration of the goods and, thus, customs officials were required to release the goods on that date.

Third, the appellant argued that subsection 2(8) of SIMA enabled the Tribunal to consider the *Customs Act* (the Act) in construing the provisions of SIMA (subsection 2(8) of SIMA states that "For greater certainty this Act shall be considered, for the purposes of the *Customs Act*, to be a law relating to the customs"). The appellant submitted that section 32 of the Act provided guidance regarding the meaning of the word "release" in SIMA.

According to the appellant, subsection 32(1) of the Act states that goods are not to be released until the goods have been accounted for and all duties on the goods have been paid. But, the appellant argued that subsection 32(2) of the Act created an exception to this rule. The

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3. 11 T.B.R. 506; affirmed, without reasons, by the Federal Court of Appeal in A-754-86.
4. Ibid, p. 511.

appellant contended that, by virtue of this subsection, goods might be released prior to payment of duties if there had been an interim accounting.

In the present dispute, customs duty on the goods was paid on August 28, 1987, several days after form B 3B had been presented to customs officials and the goods released by them. Therefore, the appellant contended that the goods in issue had been released, pursuant to subsection 32(2), on the basis of an interim accounting. The appellant argued that the presentation of form B 3B constituted the interim accounting. As the interim accounting occurred on August 19, 1987, that is the date on which the goods in issue were released.

Finally, the appellant argued that, pursuant to section 2 and subsection 17(1) of the Act, imported goods were charged with duties, including anti-dumping duties, from the time of their importation until the duties were paid. Thus, the appellant argued that the goods in issue would be subject to anti-dumping duties only if they had been imported when the anti-dumping duties were in effect, i.e., the date of the Deputy Minister's preliminary determination. Since the goods were imported prior to the date of the preliminary determination, the goods in issue are not subject to anti-dumping duties.

The respondent submitted that the goods were released on the day that authorization was given by customs officials to remove the goods for use in Canada, i.e., August 20, 1987.

The respondent argued that, pursuant to section 4 of SIMA, anti-dumping duty was payable on dumped goods imported into Canada that are of the same description as goods to which the preliminary determination of dumping applies and that have been released during the period commencing on the day of the preliminary determination and ending on the day the Tribunal has made a material injury finding in respect of the dumped goods.

SIMA, according to the respondent, does not say that goods are released on the day on which the importer presents customs entry documents to customs officials. Rather, SIMA defines "release" in English as "to authorize the removal of the goods ..." and *dédouanement* in French as "Autorisation d'enlever des marchandises...." The respondent argued that, according to section 31 of the Act, this authorization was to be given by a customs official.

The respondent argued that the "Canada Customs Import Entry Coding Form," stamped "20 AUG 1987 MAINLEVÉE - RELEASED" by customs officials, indicated that the imported goods were authorized to be released on August 20, 1987, and, accordingly, that the goods in issue were subject to anti-dumping duties.

The respondent also replied to arguments raised by the appellant in support of its position. First, the respondent submitted that the Imperial Tobacco case was not applicable to the present appeal. According to the respondent, that case was decided on the basis of sections of the Act and the *Excise Tax Act* that no longer exist. Those sections stated that excise tax and customs duty were payable at the time of entry of goods. Unlike those sections, SIMA states that anti-dumping duty is payable in respect of goods that have been released during the period commencing on the day of the preliminary determination and ending on the day the Tribunal has made a material injury finding. Second, the respondent argued that, while subsection 32(2) of the Act does permit goods to be released on the basis of an interim accounting, the release still required the authorization of customs officials.

DECISION

The issue in this dispute is simply this: were the goods in issue released prior to the date of the Deputy Minister's preliminary determination? If they were, then the appellant is not liable to pay anti-dumping duty. In resolving this issue, the Tribunal wishes to emphasize that the appellant has not claimed, nor does the Tribunal consider that there is any evidence to support the claim, that customs officials acted with malice in stamping customs clearance documents "MAINLEVÉE - RELEASED" one day after form B 3B was presented to and filed with customs officials.

After carefully considering the relevant legislative provisions and arguments of the parties, the Tribunal concludes that the goods in issue were released on August 20, 1987, and thus are liable to anti-dumping duty.

The Tribunal considers that the pertinent sections of SIMA and the Act clearly support this conclusion. Section 4 of SIMA states that an anti-dumping duty is to be levied on all dumped goods imported into Canada that are of the same description as goods to which the Deputy Minister's preliminary determination applies and that were released during the period described in subsection 8(1) of SIMA. According to this subsection, the period runs from the day the Deputy Minister makes the preliminary determination of dumping and ends on the day the Tribunal makes an order or finding (of material injury) in respect of goods to which the preliminary determination applies.

Section 2 of SIMA states that release, in respect of goods, means "to authorize the removal of the goods from a customs office, sufferance warehouse, bonded warehouse or duty free shop for use in Canada." Finally, section 31 of the Act provides that the authorization of the removal of goods from these locations be given by a customs officer.

Reading these various sections together, the Tribunal considers that Parliament has established the following test: an anti-dumping duty is to be levied on all dumped goods, imported into Canada, that are of the same description as goods to which the Deputy Minister's preliminary determination of dumping applies and that have been authorized to be removed by a customs official from a customs office, etc., during the period that commences on the day the preliminary determination is made and ends on the day the Tribunal makes an order or finding (of material injury) in respect of goods to which the preliminary determination applies.

However, the appellant submitted that the time period that must be used to determine whether anti-dumping duties are leviable was in fact provided by section 2 and subsection 17(1) of the Act. The appellant argued that, pursuant to those provisions, imported goods were charged with anti-dumping duties from the time of their importation until the duties were paid. Thus, the appellant argued, the goods in issue would be subject to anti-dumping duties only if they had been imported when the anti-dumping duties were in effect, i.e., the date of the Deputy Minister's preliminary determination. Since the customs clearance document, form B 3B, was presented and filed and the goods were imported prior to the date of the preliminary determination, the goods in issue are not subject to anti-dumping duties.

It may very well be that the goods in question were imported on August 19, 1987, at 11:04 a.m. when form B 3B was presented to and filed with customs officials. But that being said, the Tribunal does not consider this argument well-founded. The essence of the argument is

that dumped goods are subject to anti-dumping duties if, and only if, they have been imported on or after the date of the Deputy Minister's preliminary determination.

As stated previously, sections 4 and 8 of SIMA, when read within the context of SIMA and the Act, provide that anti-dumping duty be payable on dumped goods imported into Canada that are of the same description as goods to which the preliminary determination of dumping applies and that have been released during the period commencing on the day of the preliminary determination and ending on the day the Tribunal has made a material injury finding in respect of the dumped goods.

Given the above, the Tribunal considers that the anti-dumping duty assessment period set out in sections 4 and 8 of SIMA can be read in harmony with the appellant's interpretation of subsection 17(1) of the Act only if the word "released" is construed as being synonymous with the word "imported." Yet Parliament, both in SIMA and the Act, has clearly indicated that the two words embody separate concepts. Both acts state that "release" in respect of goods means "to authorize the removal of the goods from a customs office, sufferance warehouse, bonded warehouse or duty free shop for use in Canada." The acts do not provide that "release" mean to import goods for use in Canada. Nor do the acts indicate that the word "release" is to be defined by reference to the word "import" or "imported."

Because the words "release" and "imported" embody two separate concepts, the Tribunal considers that acceptance of the appellant's argument would, in effect, render meaningless the very clearly enunciated time period set forth in sections 4 and 8 of SIMA. If Parliament had intended subsection 17(1) of the Act to override the anti-dumping duty assessment period established pursuant to sections 4 and 8 of SIMA, it could have very readily stated so.

SIMA is silent on the manner in which customs official authorization is to be expressed. The Department manifests the authorization by having customs officials stamp customs clearance documents "MAINLEVÉE - RELEASED." However, the appellant argued that the goods were authorized by customs officials to be removed from a customs office, etc., when the importer presented and filed customs clearance documents, such as form B 3B. The appellant contended that to decide otherwise would deprive the importer of controlling the timing of entry of goods into Canada.

The Tribunal does not agree that authorization is signified by the presentation and filing of customs clearance documents. In the Tribunal's view, this interpretation would render passive the function and role of customs officials in the customs entry process. As the appellant has suggested, the importer would, in substance, be the party controlling the release into Canada of imported goods.

Yet Parliament, through section 2 of SIMA and section 31 of the Act, has evinced a contrary intention. According to section 31 of the Act, "no goods shall be removed from a customs office, sufferance warehouse, bonded warehouse or duty free shop ... unless the goods have been released by an officer." When read together with section 2 of SIMA, it is clear that it is not the importer who has control over the release into Canada of imported goods, but the customs officer. It is that person, and only that person, who can authorize the removal of goods from customs offices, etc., for use in Canada.

For this reason, the Tribunal does not agree with the appellant's submission that subsection 32(2) of the Act enables goods to be released on the basis of an interim accounting merely by the presentation and filing of the customs clearance document form B 3B.

Indeed, the Tribunal does not consider section 32 supportive of the appellant's position. Subsection 32(1) of the Act states that no goods shall be released until they have been accounted for by the importer and all duties in respect of the goods have been paid. Subsection 32(2) of the Act provides that the goods may be released prior to the accounting required by subsection 32(1) if the importer or owner of the goods makes an interim accounting. Thus, even if it can be said that form B 3B constitutes an interim accounting, the customs officer must still authorize the removal of the goods from a customs office, bonded warehouse, etc., for use in Canada.

The appellant has relied on the Imperial Tobacco case in support of its position. In the Tribunal's view, a careful reading of the Tariff Board decision indicates that the case and the principles arising from the case are clearly distinguishable from the present appeal. In that case, the Tariff Board was asked to determine the applicable rate of excise tax imposed by the *Excise Tax Act* on the importation of cut tobacco. The importer landed cut tobacco at the Port of Montréal on May 11, 1985. At 2:11 p.m., May 23, 1985, the importer presented an entry form (form B-3) to customs officials. At 3:30 p.m. of the same day, the rate of excise tax on importations of cut tobacco was increased. On May 24, 1985, the goods were taken out of the customs warehouse by the appellant. The lapse of time between the filing of the B-3 form and the removal of the goods was in keeping with normal and usual business practices.

The Tariff Board stated the issue before it as follows:

> *The issue ... is whether the goods were imported for consumption before or at the time of presentation of B-3 entry form, so that the rate of tax then in effect applies, or whether the applicable rate is that in effect on May 24 when the goods were physically removed from the customs warehouse.*[5]

In answering the question posed, the Tariff Board relied on the Privy Council decision in *Canada Sugar Refining Company Limited v. The Queen*[6] and stated as follows:

> *Upon the entry of the goods by the filing of the B-3 form ... the importer had done all that was required. It was committed to the payment of the excise tax and the collector was required to release the goods. Obviously, the nature of the goods and the manner of the payment and the procedures of the port of entry would entail some delay in their physical delivery to the importer, but that does not affect the requirement for the payment of the tax and the release of the goods. On the authority of the Canada Sugar Refining judgment (supra), the goods were imported into Canada at the time when the importer became liable for payment of the tax that arose upon entry of the goods at 2:11 p.m. on May 23.*[7]

The Tariff Board then consulted section 22 of the Act and section 58 of the *Excise Tax Act*, both of which have since been repealed,[8] to determine when the importer became liable for payment of the tax.

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5. Ibid.
6. (1898), A.C. 735.
7. 11 T.B.R. 506.
8. Section 22, R.S.C. 1970, c. C-40, repealed by S.C. 1986, c. 1, subs. 212(3), November 11, 1986; section 58, R.S.C. 1970, c. E-13, repealed and replaced by S.C. 1986, c. 1, s. 191, November 11, 1986.

Section 58 of the *Excise Tax Act* provided:

> *58. Where an excise tax is payable under this Act upon the importation of any article into Canada, the Customs Act is applicable in the same way and to the same extent as if that tax were payable under the Customs Tariff.*

Section 22 of the Act provided:

> *22(1) Unless the goods are to be warehoused in the manner provided by this Act, the importer shall, at the time of entry,*
>
> *(a) pay or cause to be so paid, all duties upon all goods entered inwards* ... (Emphasis added)

Consequently, the Tariff Board concluded that the importer became liable for payment of the tax at the time of entry of the goods. Thus, the cut tobacco was imported into Canada for consumption when the import entry form was presented to a customs official.

In short, the issue before the Tariff Board was different than that before this Tribunal. Whereas the Tariff Board was required to consider when goods were imported into Canada for consumption within the meaning of the *Excise Tax Act*, as the act read at the time of that appeal, the Tribunal must determine when goods are released, i.e., authorized for removal from customs offices, etc., for use in Canada, within the meaning of SIMA.

Furthermore, the statutory criteria which the Tariff Board had to consider in resolving the issue are different from those being considered by the Tribunal.

Therefore, the Tribunal does not consider that the principles emerging from the Imperial Tobacco case are applicable to the present dispute.

CONCLUSION

The evidence before the Tribunal indicates that customs officials stamped the customs clearance document pertaining to the goods in issue (a form entitled "Canada Customs Import Entry Coding Form") on August 20, 1987, the day the Deputy Minister issued a preliminary determination of dumping in respect of the goods.

On the basis of the foregoing analysis of the case law and the relevant statutory provisions, the Tribunal concludes that the goods in issue are subject to anti-dumping duties levied pursuant to Notice of Assessment No. A500869.

Accordingly, the appeal is not allowed.

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

W. Roy Hines
W. Roy Hines
Member