CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, June 25, 1992

**Appeal No. AP-91-172**

IN THE MATTER OF an appeal heard on April 27, 1992, pursuant to section 61 of the *Special Import Measures Act*, R.S.C., 1985, c. S-15, as amended;

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

**BETWEEN**

**WILSON MACHINE CO. LIMITED** **Appellant**

**AND**

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

**AND**

**THE BRITISH HIGH COMMISSION** **Intervenor**

**AND**

**MAWDSLEY'S LIMITED** **Intervenor**

## DECISION OF THE TRIBUNAL

The appeal is dismissed.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Charles A. Gracey
Charles A. Gracey
Member

Robert J. Martin
Robert J. Martin
Secretary

365 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

365, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

*UNOFFICIAL SUMMARY*

**Appeal No. AP-91-172**

**WILSON MACHINE CO. LIMITED** **Appellant**

**and**

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

**and**

**THE BRITISH HIGH COMMISSION** **Intervenor**

**and**

**MAWDSLEY'S LIMITED** **Intervenor**

*In February 1988, Wilson Machine Co. Limited ordered three motors from Mawdsley's Limited of Dursley, United Kingdom. On November 1, 1989, three electric motors of 30 kW were imported, which represent the goods in issue. They are custom-designed units due to both the application type and naval environment within which they must perform. Their design is governed by numerous U.S. and Canadian military defence specifications.*

*On March 29, 1990, as part of the enforcement of a Canadian Import Tribunal finding, it was redetermined under section 57 of the Special Import Measures Act that the imported goods were subject to that finding. In the absence of sufficient information, the normal value of goods like those imported was established on the basis of the export price of the goods, as determined under section 24 of the Special Imports Measures Act, multiplied by 1.17. Anti-dumping duties of $5,842.10 were assessed.*

*Counsel for the appellant raised the following issues in his argument. Are the goods in issue of the same description as goods described in the finding of the Canadian Import Tribunal dated October 11, 1985? What is the "normal export price" of the goods? Was material injury caused to the Canadian market by the sale of the imported motors? Has the respondent applied the Canadian Import Tribunal finding inequitably? Are the goods exempt from duty by virtue of the Canadian Patrol Frigate Project Remission Order?*

***HELD:** The appeal is dismissed.*

| | |
|---|---|
| *Place of Hearing:* | *Ottawa, Ontario* |
| *Date of Hearing:* | *April 27, 1992* |
| *Date of Decision:* | *June 25, 1992* |

| | |
|---|---|
| *Tribunal Member:* | *Sidney A. Fraleigh, Presiding Member* |
| | *Arthur B. Trudeau, Member* |
| | *Charles A. Gracey, Member* |

365 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

365, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

| | |
|---|---|
| *Counsel for the Tribunal:* | *David M. Attwater* |
| *Clerk of the Tribunal:* | *Dyna Côté* |
| *Appearances:* | *Michael R. Kincaid, for the appellant*<br>*Meg Kinnear, for the respondent*<br>*Lieutenant Colonel Sedrick Sloane, for the intervenors* |

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

**Appeal No. AP-91-172**

**WILSON MACHINE CO. LIMITED** **Appellant**

**and**

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

**and**

**THE BRITISH HIGH COMMISSION** **Intervenor**

**and**

**MAWDSLEY'S LIMITED** **Intervenor**

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

## REASONS FOR DECISION

On October 11, 1985, the Canadian Import Tribunal (the CIT) made a finding[1] of material injury concerning the dumping in Canada of polyphase induction motors, 1 h.p. to 200 h.p. inclusive, originating in or exported from certain countries including the United Kingdom. On October 10, 1990, the Canadian International Trade Tribunal (the Tribunal) continued the finding of the CIT[2] with respect to the United Kingdom.

In May 1985, Wilson Machine Co. Limited (Wilson) was awarded a contract by Saint John Shipbuilding Limited for six sets of capstans and windlasses for Canadian Patrol Frigates. Each ship set is comprised of three electric motor assemblies. They are custom-designed units due to both the application type and naval environment within which they must preform. Their design is governed by numerous U.S. and Canadian military defence specifications. In May 1987, Wilson ordered the motors from Etatech Industries Inc. (Etatech) of Brantford, Ontario. However, Etatech was unable to complete the contract due to financial difficulties.

In February 1988, Wilson ordered the motors from Mawdsley's Limited (Mawdsley's) of Dursley, United Kingdom. On November 1, 1989, three electric motors of 30 kW were imported, which represent the goods in issue. On March 29, 1990, as part of the enforcement of the CIT finding, it was redetermined under section 57 of the *Special Import Measures Act* (SIMA)[3] that the imported goods were subject to that finding and anti-dumping duties of $5,842.10 were assessed.

---

1. Canadian Import Tribunal, Polyphase induction motors originating in or exported from Brazil, Japan, Mexico, Poland, Taiwan and the United Kingdom, Inquiry No. CIT-6-85, October 11, 1985.
2. Canadian International Trade Tribunal, Review No. RR-89-013, October 10, 1990.
3. R.S.C., 1985, c. S-15, as amended.

365 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

365, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

On March 1, 1991, the respondent initiated a reinvestigation of the normal values and export prices with respect to polyphase induction motors covered by the CIT finding. Among others, exports of Mawdsley's were the subject of review. Mawdsley's did not provide the requested information so normal values for its future exports of motors were determined pursuant to section 29 of SIMA in the manner prescribed by the Minister of National Revenue (the Minister). Normal values were established on the basis of the export price of the goods, as determined under section 24 of SIMA, multiplied by 1.17. In the absence of sufficient information at the time of the importation, this method was used in the assessment of the motors that are the subject of this appeal.

On October 29, 1991, a decision was rendered on behalf of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister), under section 59 of SIMA, confirming that the imported motors were subject to the CIT finding and that the duties assessed would be maintained. On November 12, 1991, Wilson appealed the decision of the Deputy Minister to this Tribunal pursuant to section 61 of SIMA.

The British High Commission and Mawdsley's requested and were granted the right to act as intervenors in the appeal. Their participation was limited to providing a single written submission to the Tribunal.

Counsel for the appellant raised the following issues in his argument.

(1) Are the goods in issue of the same description as goods described in the finding of the CIT dated October 11, 1985?

(2) What is the "normal export price" of the goods?

(3) Was material injury caused to the Canadian market by the sale of the imported motors?

(4) Has the respondent applied the CIT finding inequitably?

(5) Are the goods exempt from duty by virtue of the *Canadian Patrol Frigate Project Remission Order* (the Remission Order)?[4]

Counsel for the appellant contended that the electric motors imported from Mawdsley's are not of the same description as goods described in the finding of the CIT. Reference was made to the Statement of Reasons to the CIT finding, where specific mention is made of electric motors for industrial and commercial applications only. Defence and naval applications are not mentioned. He also argued that the decision dealt with standard motors imported in large numbers that compete directly with those available from Canadian sources. Due to the specialized nature of the naval electric motors, they are neither standard nor imported in large numbers.

Counsel contended that the electric motors procured from Mawdsley's are unique. For an electric motor that is designed to a customer's particular requirements, the normal selling price is by definition the export price. He argued that it was improper to establish normal value by means of ministerial specifications pursuant to section 29 of SIMA. The motors produced by

4. SI/85-94, Canada Gazette Part II, Vol. 119, No. 12, p. 2684.

Mawdsley's are nearly always custom made to a customer's specific requirements and are priced according to the specific components used. As such, no price list for this type of motor exists. He noted that Mawdsley's was unable to provide the actual cost data due to introduction of a new computer system.

Counsel argued that section 4 of SIMA requires the application of anti-dumping duty when the importation of dumped goods causes material injury to Canadian industry. From the Statement of Reasons to the CIT finding, it is apparent that the complainants claimed that price was the only reason why market share was being gained by the exporters from the United Kingdom, etc.

Considering the exchange rates applicable at the time of purchase of the motors from Mawdsley's, their equivalent sale price was in excess of the Canadian producer's price. Counsel argued that the CIT finding identified price as the only factor causing market share loss. Therefore, the specialized military motors cannot be contributing to the injury. Also, Mawdsley's did not export any specialized naval motors to Canada until 1989, some 16 months after the Canadian manufacturer's bankruptcy. Therefore, it cannot be shown that the only Canadian supplier of naval motors lost any orders or market share of such motors to a United Kingdom exporter. Counsel submitted that no material injury occurred to Canadian manufacturers by the appellant importing military motors.

Counsel claimed that several Canadian equipment manufacturers import motors from Mawdsley's, yet, to the best of the appellant's knowledge, the CIT finding has only been applied against the appellant. Counsel contended that the Deputy Minister has applied the anti-dumping duty in an inequitable manner to Canadian naval equipment manufacturers. By singling out the appellant for this treatment, the appellant's competitors have been granted a definite economic advantage.

Counsel argued that it is the express intention of Parliament to exempt imported goods for use on the Canadian Patrol Frigates from duty, pursuant to the Remission Order. Counsel argued that the Remission Order removes all duties on imported goods for the Canadian Patrol Frigate contracts.

Counsel for the respondent argued that the finding of the CIT applied to polyphase induction motors, 1 h.p. to 200 h.p. inclusive, without any restrictions other than the specific countries of origin and export. Motors from the United Kingdom were specifically covered. The goods at issue are polyphase induction motors, of between 1 h.p. and 200 h.p., from the United Kingdom. Counsel noted that the reference in the 1985 finding of the CIT to industrial and commercial uses of the motors in issue is merely illustrative of the types of motors available. This reference is in the context of a description of the product which notes the numerous applications of the product and the broad range of types of motors manufactured. It in no way limits the finding to industrial and commercial uses.

Counsel argued that because the goods are custom made and for export is irrelevant to determining normal values under SIMA. Where sufficient information is not available to apply sections 15 to 28 of SIMA, section 29 entitles the Minister to specify the normal value or export price. In this instance, sufficient information was not available to apply sections 15 to 28 and the Minister was required to determine the normal value pursuant to section 29 of SIMA.

Counsel for the respondent submitted that the consideration of material injury at the time of importation of the subject goods is irrelevant to this appeal. At the time of importation of the subject goods, the respondent was obliged to enforce the 1985 CIT finding covering the subject motors.

Counsel argued that the appellant is incorrect in asserting that the CIT finding has been applied inequitably. In fact, anti-dumping duties have been collected from two other companies with respect to similar motors exported by Mawdsley's for the same end-use contract. In any event, it was submitted that this is an irrelevant issue as the only question in issue is whether the CIT finding is properly applicable to the appellant. Further, given that the Tribunal is a statutory body, it does not have equitable jurisdiction and is limited to the jurisdiction established by the legislation it is applying.

Counsel further argued that SIMA duties are not refundable under the Remission Order. The Remission Order is restricted to the remission of customs duties paid or payable under the *Customs Tariff*[5] as specifically stated in the Remission Order. If the intent of the legislator had been otherwise, the Remission Order could have simply allowed for the remission of duty.

The Tribunal is in agreement with counsel for the respondent in her assertion that two of the five issues raised by the appellant are either irrelevant or beyond the jurisdiction of the Tribunal on an appeal under section 61 of SIMA. The issue of material injury is one addressed in an inquiry under section 42 or a review under section 76 of SIMA. Very briefly, under section 61, a person who deems himself aggrieved by a re-determination of the Deputy Minister made pursuant to section 59 may appeal therefrom to the Tribunal. Under section 59 of SIMA, the Deputy Minister is given the authority to re-determine any determination or re-determination referred to in section 55, 56 or 57 of SIMA. Under these latter sections, a designated officer may determine or re-determine whether imported goods are goods of the same description as goods described in an order or finding of the Tribunal or its predecessor, the normal value, export price or the amount of the subsidy on the goods so imported. As the question of material injury is not addressed in the initial determination or subsequent re-determination, it is not an issue in an appeal from the Minister's final re-determination.

Nor does the Tribunal have the jurisdiction to review whether the respondent has applied the finding of the CIT equitably. As identified by counsel for the respondent, the Tribunal is a statutory body whose jurisdiction is prescribed by its enabling legislation and any statutory instrument it may be applying. Such legislation does not extend to considerations of equity.

With regard to the first issue, namely, whether the military motors are of the same description as goods described in the finding of the CIT, the Tribunal is in agreement with the arguments presented on behalf of the respondent. It only adds that if it had been the intention of the CIT to exclude motors destined for military application it would have stated so in its Statement of Reasons.

With regard to the Minister's determination of the normal value of motors like those that form the subject of this appeal, the Tribunal notes that recourse to section 29 of SIMA was necessary because sufficient information was not furnished or was not available to enable a determination pursuant to sections 15 to 28 of SIMA. Counsel for the appellant explained to the

---

5. R.S.C., 1985, c. 41 (3rd Supp.).

Tribunal that a change in the company's accounting procedures prevented it from supplying the necessary information at the time of the final determination of dumping and they were still unable to supply that information at the hearing. Accordingly, the determination under section 29 of SIMA must remain in force.

With regard to the final issue involving remission of duties, the Tribunal notes that the Remission Order, at section 3, states that " ... remission is hereby granted of the customs duty paid or payable under the *Customs Tariff*...." The Remission Order does not affect duties payable under SIMA, which are the basis of this appeal.

Accordingly, the appeal is dismissed.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Charles A. Gracey
Charles A. Gracey
Member