CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, November 27, 1992

Appeal No. AP-91-159

IN THE MATTER OF an appeal heard on August 31, 1992, under section 61 of the *Special Import Measures Act*, R.S.C. 1985, c. S-15;

AND IN THE MATTER OF a re-determination of the Deputy Minister of National Revenue for Customs and Excise dated October 11, 1991, pursuant to section 59 of the *Special Import Measures Act*.

BETWEEN

CANADIAN FOOTWEAR PROGRAMMING INC. **Appellant**

AND

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

DECISION OF THE TRIBUNAL

The appeal is allowed.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

John C. Coleman
John C. Coleman
Member

Michèle Blouin
Michèle Blouin
Member

Michel P. Granger
Michel P. Granger
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-91-159

CANADIAN FOOTWEAR PROGRAMMING INC. **Appellant**

and

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

Whether the normal value of goods subject to the Tribunal's finding of material injury in respect of certain women's leather footwear originating in Brazil should be calculated by advancing the export price by 33 percent, as submitted by the respondent, or by 12.78 percent, as claimed by the appellant.

HELD: *The appeal is allowed. The export price of the goods in issue should be advanced by 12.78 percent to determine their normal value.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*August 31, 1992*
Date of Decision:	*November 27, 1992*
Tribunal Members:	*Robert C. Coates, Q.C., Presiding Member* *John C. Coleman, Member* *Michèle Blouin, Member*
Counsel for the Tribunal:	*Brenda C. Swick-Martin*
Clerk of the Tribunal:	*Janet Rumball*
Appearance:	*R. Woyiwada, for the respondent*

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Appeal No. AP-91-159

CANADIAN FOOTWEAR PROGRAMMING INC. **Appellant**

and

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

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
JOHN C. COLEMAN, Member
MICHÈLE BLOUIN, Member

REASONS FOR DECISION

This is an appeal pursuant to section 61 of the *Special Import Measures Act*[1] (the Act) from a re-determination of the Deputy Minister of National Revenue for Customs and Exicse (the Deputy Minister) dated October 11, 1991, under section 59 of the Act in respect of certain women's leather footwear originating in Brazil and imported by the appellant. The importation of such footwear is subject to the imposition of anti-dumping duties pursuant to a finding[2] of the Tribunal that the dumping in Canada of women's leather footwear from Brazil has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

The goods in issue are women's leather shoes referred to by the appellant as the "VEGA" model. The goods were manufactured in Brazil and imported by the appellant on January 31, 1990, after being transshipped to Canada via the United States. In the Deputy Minister's decision of October 11, 1991, the normal value of the imported goods for the purposes of assessing anti-dumping duties was established by advancing the export price by 33 percent. This was the rate determined to be applicable where goods subject to the Tribunal's finding: (a) had been made by an unspecified manufacturer in Brazil; and (b) had been shipped indirectly to Canada through the United States.

The issue in this appeal is the rate that should apply in the determination of the normal value of the goods in issue.

Although the appellant did not appear at the hearing, it filed written submissions and provided evidence in this appeal. The appellant claimed that the normal value of the goods should have been calculated by advancing the export price by 12.78 percent, on the basis that the goods: (a) were manufactured by SIBISA Trading S/A (SIBISA) of Brazil; or (b) were shipped directly to Canada from Brazil.

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1. R.S.C. 1985, c. S-15.
2. Canadian International Trade Tribunal, Inquiry No. NQ-89-003, May 3, 1990.

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Counsel for the respondent, who appeared at the hearing, conceded that the normal value should be determined by advancing the export price by 12.78 percent if either of the two claims made by the appellant is substantiated, that is, that the goods were manufactured by SIBISA or that they were imported directly from Brazil. Counsel submitted that neither of these conditions was satisfied and that, therefore, the normal value should be determined by advancing the export price by 33 percent.

With respect to the issue concerning the identity of the manufacturer, counsel argued that the onus is on the appellant to provide the identity of the manufacturer of the goods in issue and that the appellant failed to submit sufficient evidence to do so. On the issue of direct shipment, counsel cited section 30 of the Act which provides that goods are considered to have been shipped directly from the country of origin even if they pass through a second country before arriving in Canada, provided that certain prescribed conditions are met; otherwise, they are considered to have been shipped indirectly from the country of origin through one or more other countries. One of the prescribed conditions is that the bill of lading show the ultimate destination of the goods as being a specified port in Canada. Counsel argued that the bill of lading for the goods in issue shows "NEW YORK - USA" as the "PORT OF DISCHARGE" and that, therefore, the goods have been shipped indirectly from the United States.

The Tribunal finds that there is sufficient evidence on the record to indicate that the goods in issue were manufactured by SIBISA and that, therefore, the normal value of such goods is properly determined by advancing the export price by 12.78 percent. The evidence shows that, in November 1989, the Bay placed an order with the appellant for 504 pairs of women's leather "VEGA" shoes in black, pearl and salmon.[3] A packing list dated November 16, 1989, for 31 cartons containing 540 pairs of women's leather shoes in black, pearl and salmon was signed by a representative of the Export Department of SIBISA and assigned Purchase Order No. 3911F027.[4] The pro forma invoice issued by United Footwear Corp. to the appellant on November 27, 1989, refers to the same purchase order number and is for 540 pairs of "VEGA" shoes in black, pearl and salmon.[5] The final invoice also indicates that 31 cartons containing 540 pairs of "VEGA" shoes in black, pearl and salmon were shipped to Canada from Brazil via the Sea Lion and refers to Bill of Lading No. 7135.[6] Bill of Lading No. 7135 shows BTI Freight Systems as agent for SIBISA and SIBISA as the factory responsible for Purchase Order No. 3911F027 consisting of 31 cartons of women's leather shoes.[7] The Canada Customs invoice also shows that the vendor and exporter of Purchase Order No. 3911F027, consisting of 31 cartons containing 540 pairs of women's leather "VEGA" shoes, as being SIBISA.[8]

Having found the presence of one of the conditions necessary to establish the normal value by advancing the export price of the goods by 12.78 percent, it is not necessary, in the Tribunal's view, to consider the second issue of whether or not the goods were shipped directly to Canada from Brazil.

During the hearing, counsel for the respondent moved to have the appeal dismissed on the grounds that the appellant did not appear and, thereby, did not establish that the

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3. Schedule A-1 to Document No. AP-91-159-6.
4. Schedule K to Document No. AP-91-159-6.
5. Tab 1 to Document No. AP-91-159-15.
6. Tab 2 to Document No. AP-91-159-15.
7. Tab 3 to Document No. AP-91-159-15.
8. Schedule J to Document No. AP-91-159-6.

re-determination of the Deputy Minister was incorrect. Counsel argued that there was no evidence before the Tribunal on which that kind of decision could be made and that the appellant must be subject to cross-examination and be present in order to have any written supporting documentation tendered through its representative.

The Tribunal reminds counsel that rule 22 of the *Canadian International Trade Tribunal Rules*[9] explicitly provides that the Tribunal may give whatever weight that it deems appropriate to any written submission or other document filed in the proceeding as evidence, if the party who filed the document is not present at the hearing to testify with respect to such document. In this appeal, the Tribunal has accorded the weight that it feels is appropriate to the submissions and evidence filed by the appellant. Having reviewed all of the evidence before it, the Tribunal is satisfied that there is sufficient evidence to support the position of the appellant, particularly as the respondent brought no conflicting evidence to the Tribunal's attention.

Finally, the Tribunal sees no purpose for adjournment as requested by counsel for the respondent at the end of the hearing. Counsel offered little reason to support such a request. The Tribunal is satisfied that it has treated the parties fairly in this appeal by providing each of them with sufficient opportunity, both in writing and in person, to bring to the attention of the Tribunal any fact or argument supportive of their case.

For the foregoing reasons, the appeal is allowed.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

John C. Coleman
John C. Coleman
Member

Michèle Blouin
Michèle Blouin
Member

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9. SOR/91-499, Canada Gazette Part II, Vol. 125, No. 18, p. 2912, August 14, 1991.