



Ottawa, Thursday, December 17, 1992

Appeal No. AP-92-013

IN THE MATTER of an appeal heard on October 2, 1992,
under subsection 61(1) of the *Special Import Measures Act*,
R.S.C. 1985, c. S-15;

AND IN THE MATTER of a re-determination by the
Deputy Minister of National Revenue for Customs and
Excise dated February 5, 1992, pursuant to section 59 of the
Special Import Measures Act.

BETWEEN

SUGI CANADA LTÉE

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Michèle Blouin
Michèle Blouin
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-013

SUGI CANADA LTÉE

Appellant

and

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

Respondent

The appellant imported from Korea four different styles of waterproof rubber footwear which were subject to material injury findings under the Special Import Measures Act. The issue is whether these four different styles of footwear constitute new styles for which normal values were not determined and, if so, whether the Deputy Minister of National Revenue for Customs and Excise adhered to the applicable legislative and regulatory provisions in calculating the normal values for these products.

HELD: *The appeal is dismissed. The Department of National Revenue deemed that there had not been sufficient sales of like goods in Korea to enable it to compare prices and to determine the normal value under section 15 of the Special Import Measures Act. As permitted under the Special Import Measures Act, the normal value of the new styles was determined under paragraph 19(b) of that Act and its regulations. The appellant did not demonstrate in what way it had been aggrieved by the respondent. It could have argued the relevancy of calculating the normal values under section 19 rather than under the terms of section 15 of the Special Import Measures Act, but it did not do so. The Tribunal is of the opinion that a person who deems himself to be aggrieved by a re-determination under section 59 of the Special Import Measures Act has the burden to demonstrate how the re-determination is invalid or incorrect.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: October 2, 1992
Date of Decision: December 17, 1992*

*Tribunal Members: Desmond Hallissey, Presiding Member
Kathleen E. Macmillan, Member
Michèle Blouin, Member*

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Dyna Côté

*Appearances: Jean-Guy Morin, for the appellant
Rosemarie Millar, for the respondent*

Appeal No. AP-92-013

SUGI CANADA LTÉE

Appellant

and

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

Respondent

TRIBUNAL: DESMOND HALLISSEY, Presiding Member
 KATHLEEN E. MACMILLAN, Member
 MICHÈLE BLOUIN, Member

REASONS FOR DECISION

This appeal was filed under subsection 61(1) of the *Special Import Measures Act*¹ (SIMA) following a re-determination by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) with respect to waterproof rubber footwear imported from Korea, which is subject to material injury findings under SIMA (the goods in question).

On August 1, 1991, the appellant imported 12,432 pairs of waterproof rubber footwear in four different styles, specifically styles NV-200, NV-210, NV-300 and NV-310. No anti-dumping duties were paid at the time of release from customs. On August 15, 1991, following a re-determination by a customs officer in accordance with section 57 of SIMA, an amount of \$41,962.76 in anti-dumping duties was requested from the appellant. This re-determination was re-determined on January 15, 1992, following a request by the importer for separate normal values for each of the four styles in question. On February 5, 1992, following a re-determination under section 59 of SIMA, final anti-dumping duties were set at \$21,546.54. On May 5, 1992, Sugi Canada Ltée appealed this decision to the Tribunal.

The question at issue, therefore, is whether the four different styles of waterproof rubber footwear imported by the appellant constitute new styles for which normal values were not determined and, if so, whether the Deputy Minister adhered to the applicable legislative and regulatory provisions in calculating the normal values for these goods.

It is useful to remember that, under SIMA, anti-dumping duties are equivalent to the margin of dumping. Under subsection 2(1) of SIMA, the margin of dumping is the amount by which the normal value of the goods exceeds the export price thereof.

In order to fully understand how administrative review of normal values is made, the Tribunal deems it necessary to first refer to the testimony of the witness, Mr. Roger Émile Duprat, called by the respondent. Mr. Duprat is the manager of the Textiles and Footwear Section, Assessment Programs Division, Department of National Revenue, Customs and Excise (Revenue Canada). He is responsible for investigating adherence to findings of injury made pursuant to SIMA and establishing normal values.

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

Mr. Duprat explained that, on March 11, 1991, the appellant informed Revenue Canada that it would be importing three new styles of the goods in question in the fall of the same year. On March 27, 1991, Revenue Canada initiated a review of the normal values. But due to the concomitant of these dates, Revenue Canada decided that it was too late to modify its questionnaire to exporters in order to gather specific data related to these new styles. Moreover, during an audit in Korea, on May 14, 1991, representatives of Revenue Canada were unable to obtain information on the new styles from the exporter, Chin Yang.

On June 24 of the same year, new normal values were determined for some styles of the goods in question. A 31-percent additional charge on the export price was imposed on the other styles pursuant to section 29 of SIMA which stipulates that where sufficient information has not been furnished or is not available to make the calculation, the normal value and the export price of the goods are determined in such manner as specified by the Minister of National Revenue. It was not until July that information on four, not three, new styles was provided to Revenue Canada. On August 1, 1991, the four new styles were imported. Anti-dumping duties of 31 percent were imposed since no normal value had yet been determined for these styles. However, Revenue Canada did not insist on payment of the duties given the special circumstances of the case.

In December 1991, representatives of Revenue Canada once more conducted an audit of the exporter in Korea. This audit determined that there had been insufficient sales of like goods in Korea to make price comparisons and to determine the normal value under section 15 of SIMA. According to Mr. Duprat, Revenue Canada generally applies the following rule to determine the sufficient number of sales of like goods: a minimum volume of sales in the exporting country equal to 25 percent of the total sales in the foreign market, not including sales to Canada, is required. Since sales of like goods in the exporting country were less than 25 percent, the normal values for the four styles in question were therefore determined under the provisions of section 19 of SIMA. The normal values were calculated on the basis of information on the four styles provided by the exporter in July 1991 and verified by representatives of Revenue Canada during their visit in December of the same year. The cost of the goods was therefore calculated under paragraph 19(b) of SIMA and section 11 of the *Special Import Measures Regulations*.² This means that an amount for costs, notably administrative and selling costs, as well as an amount for profits, was added to the cost of production of the goods.

Lastly, Mr. Duprat explained that the cost of production of the four new styles included new cost elements that were not included in the cost of production for the styles for which normal values had previously been determined. The technical sheets for the new styles revealed that, in fact, no scrap rubber was used in the manufacture of the new styles and that they included an insulating lining as well as a steel shank to strengthen the arch of the footwear.

Testifying for the appellant, Mr. Nicolas Beetz of Sugi Canada Ltée, showed the Tribunal various styles of waterproof rubber footwear imported by the appellant. He explained the slight differences that exist, in his opinion, between the four new styles and the styles imported by the appellant in previous years. The difference existed sometimes, for example, in the use of a suede rather than a leather upper on the footwear. During cross-examination, the witness admitted that the four styles in question were new styles which did not have normal values determined in accordance with SIMA prior to being imported.

2. SOR/84-927, Canada Gazette Part II, Vol. 118, No. 25, November 22, 1984, p. 4286.

The Tribunal is of the opinion that a person who deems himself to be aggrieved by a re-determination made pursuant to section 59 of SIMA has the burden of proving that the re-determination is invalid or incorrect. In the case at issue, the appellant admitted that the four styles of goods in question that it imported were new styles for which normal values had not been determined. The letter signed by the witness for the appellant and dated March 11, 1991, also mentions new styles that the appellant was planning to import. The evidence clearly shows that these styles had characteristics not found in the samples presented in support of the appellant's arguments.

Revenue Canada, which had determined specific normal values as part of its review of the normal values concluded on June 24, 1991, therefore appears to have been justified in acting as it did, that is, in establishing other normal values specific to the four new styles. Revenue Canada determined that there had not been sufficient sales of like goods in Korea to enable it to compare prices and to establish the normal value under section 15 of SIMA. As SIMA prescribes, the normal value of the new styles was therefore determined under paragraph 19(b) of SIMA and its regulations.

In conclusion, the appellant did not show how it had been aggrieved when the respondent made the re-determination on the basis of the new normal values determined by Revenue Canada, whose officers, it is worthy to note, acted under the authority of the respondent pursuant to subsection 2(9) of SIMA. The appellant could have argued the appropriateness of calculating the normal values under section 19 rather than under section 15 of SIMA, but it did not do so. In this respect, it could have tried to show that a sufficient number of like goods had been sold in the exporting country. However, the appellant's argument was based primarily on the fact that, in its opinion, the normal values determined for the goods increased an average of 38.9 percent over the normal values determined for styles that it feels were comparable, while the comparable FOB sale price increased an average of 28.3 percent. The appellant therefore deems that the normal values are incorrect. In the opinion of the Tribunal, these arguments are insufficient in light of the evidence provided by the respondent, which shows that the respondent properly based his re-determination on normal values determined in accordance with SIMA.

For these reasons, the Tribunal dismisses the appeal.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Michèle Blouin
Michèle Blouin
Member