CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, July 26, 1994

Appeal No. AP-93-260

IN THE MATTER OF an appeal heard on February 25, 1994, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue dated June 28, 1993, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

QUADRA CHEMICALS LTD. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-93-260

QUADRA CHEMICALS LTD. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

The appellant imported nickel sulphate into Canada. After the goods were imported, the appellant obtained from its supplier certain price reductions that were not provided for in the purchase orders. The issue in this appeal is whether the price reductions should be disregarded in accordance with paragraph 48(5)(c) of the Customs Act for purposes of determining the value for duty of the goods.

HELD: *The appeal is dismissed. The price reductions that were effected after the importation of the goods into Canada, because the original prices caused the goods to be uncompetitive, are private business matters between the appellant and its supplier. Paragraph 48(5)(c) of the Customs Act is clear in that those transactions strictly have no bearing for purposes of determining the value for duty. Although a contractual arrangement providing that the final price is to be determined on the basis of a commodity market price at a certain date is not a rebate of the kind encompassed by paragraph 48(5)(c) of the Customs Act, the price reductions that were granted to the appellant in this case were not provided for in the purchase orders and occurred after importation. Therefore, the price reductions should be disregarded for purposes of determining the value for duty of the goods using the transaction value.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*February 25, 1994*
Date of Decision:	*July 26, 1994*
Tribunal Members:	*Arthur B. Trudeau, Presiding Member* *Charles A. Gracey, Member* *Desmond Hallissey, Member*
Counsel for the Tribunal:	*Gilles B. Legault*
Clerk of the Tribunal:	*Janet Rumball*
Appearance:	*Stéphane Lilkoff, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-93-260

QUADRA CHEMICALS LTD. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
CHARLES A. GRACEY, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*[1] (the Act) from four decisions of the Deputy Minister of National Revenue.[2]

The appellant imported nickel sulphate into Canada. After the importation of the goods, certain price reductions were granted to the appellant by its supplier, MHO, A division of S.A. ACEC-Union Minière N.V. (MHO).

The issue in this appeal is whether the price reductions should be disregarded in accordance with paragraph 48(5)(*c*) of the Act for purposes of determining the value for duty of the goods. Paragraph 48(5)(*c*) of the Act reads as follows:

> *48.(5) The price paid or payable in the sale of goods for export to Canada shall be adjusted*
>
> ...
>
> *(c) by disregarding any rebate of, or other decrease in, the price paid or payable for the goods that is effected after the goods are imported.*

The appellant chose not to appear at the hearing. Nevertheless, the facts of this case, gathered from the documents filed by the appellant and to which counsel for the respondent referred, can be briefly summarized as follows. On four occasions during the period from July 6 to October 3, 1990, the appellant ordered four containers of nickel sulphate in bags from MHO. The orders were sent by Telex. The Telex for the second order, sent on July 26, 1990, indicated that prices were subject to the London Metal Exchange to be determined at the end of July 1990. The Telex for the other three orders indicated only that prices were to be determined at the end of July 1990 or at a later date, which, however, was not specified. At the time of importation, the value for duty of the goods was estimated at a certain U.S. price per kilogram. After importation, the appellant either sought a refund of duty paid or offered to pay the extra duty, depending on whether the adjusted price was lower or higher than the estimated price on which duty was paid. The appellant obtained a refund for two orders for which prices were adjusted

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. See *An Act to amend the Department of National Revenue Act and to amend certain other Acts in consequence thereof*, S.C. 1994, c. 13, s. 7.

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downward. For all four orders, however, the prices were further reduced by MHO because those prices, as claimed by the appellant, still rendered the goods uncompetitive in Canada. The appellant then sought a refund of duty based on the reduced prices. The requests were denied on the ground that the price reductions were negotiated after the importation of the goods.

At the hearing, the Tribunal sought to understand why the appellant had been granted a refund of duty with respect to two orders. To this effect, the Tribunal heard the testimony of Mrs. Kim Sterling, a customs officer who was involved in the administrative review process leading to this appeal. She explained that two refunds of duty were granted because the appellant was able to prove that certain price adjustments occurred prior to importation. However, pertaining to the further price reductions granted by the appellant's supplier, Mrs. Sterling explained that refunds were denied because those price reductions occurred subsequent to the importation.

In its brief, the appellant essentially argued that the intricacy and nature of the nickel sulphate market justify the exemption of those goods from the application of paragraph 48(5)(*c*) of the Act. The appellant contended that the value for duty should be adjusted to reflect the real transaction, as the evidence indicates that the adjustment was a condition of sale. The appellant further submitted that the goods entered Canada as consigned goods and not as goods purchased by the appellant.

Counsel for the respondent first argued that section 48 of the Act does not make a distinction as to the kind of goods to which the provision applies and, therefore, that there is no exemption for any goods. He also submitted that paragraph 48(5)(*c*) of the Act is clear and that the evidence establishes that, in each case, the ultimate price reductions resulted from the appellant's request for a reduction subsequent to the importation of the goods. Counsel stated that several documents filed by the appellant indicate that the sales were made "Ex works." That term, he submitted, means that the appellant had to take delivery of the goods, as they were placed at its disposal, and that it had to pay the price as provided in the contract. Consequently, counsel concluded, a sale had taken place at the time of importation into Canada.

The Tribunal agrees with counsel for the respondent. The main ground for this appeal is that the price of the imported goods rendered them uncompetitive. This is clearly the reason for the appellant's supplier granting price reductions after the goods were imported into Canada. A Telex dated February 18, 1991, sent by Mr. Christian Godart from MHO to the appellant announces price reductions for the four orders at issue and mentions that MHO shows its support to the appellant by this action. In the Tribunal's view, these concessions granted to the appellant by its supplier are private business matters. Paragraph 48(5)(*c*) of the Act is clear in that those transactions have no bearing for purposes of determining the value for duty under the Act. Although a contractual arrangement providing that the final price is to be determined on the basis of a commodity market price at a certain date is not a rebate of the kind encompassed by paragraph 48(5)(*c*) of the Act, the price reductions that were granted to the appellant in this case were not provided for in the purchase orders and occurred after importation. Therefore, the price reductions should be disregarded for purposes of determining the value for duty of the goods using the transaction value.

As to the appellant's claim that the goods were imported as consigned goods, the appellant has failed to put forward any evidence to support its position. In fact, each provisional invoice or final invoice, as the case may be, sent by MHO contains a stipulation that the delivery is "Ex works," that the appellant is responsible for all import duties and taxes in Canada and that customs clearance must be made through the appellant's customs agent.

For the foregoing reasons, the appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

Desmond Hallissey
Desmond Hallissey
Member