CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, February 28, 1994

Appeal No. AP-93-141

IN THE MATTER OF an appeal heard on January 11, 1994, under section 61 of the *Special Import Measures Act*, R.S.C. 1985, c. S-15;

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue for Customs and Excise dated July 20, 1993, with respect to requests for re-determination under section 57 of the *Special Import Measures Act*.

BETWEEN

APR IMPORTS LTD. **Appellant**

AND

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

DECISION OF THE TRIBUNAL

The appeal is allowed.

Michèle Blouin
Michèle Blouin
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Desmond Hallissey
Desmond Hallissey
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-93-141

APR IMPORTS LTD. **Appellant**

and

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

This is an appeal under section 61 of the Special Import Measures Act of decisions of the Deputy Minister of National Revenue for Customs and Excise confirming the assessment of anti-dumping duties on women's footwear imported from the People's Republic of China. The appeal concerns the Tribunal's material injury finding under section 43 of the Special Import Measures Act in Women's Leather Boots and Shoes Originating in or Exported from Brazil, The People's Republic of China and Taiwan; Women's Leather Boots Originating in or Exported from Poland, Romania and Yugoslavia; and Women's Non-Leather Boots and Shoes Originating in or Exported from The People's Republic of China and Taiwan, which specifically excluded "sports footwear." The issue in this appeal is whether the Deputy Minister of National Revenue for Customs and Excise correctly determined that the styles of footwear imported by the appellant are not "sports footwear" and are, therefore, goods to which the Tribunal's finding in Women's Leather Boots and Shoes applies and which are subject to anti-dumping duties.

HELD: *The appeal is allowed. In accordance with the plain and ordinary meaning of the words "sports footwear" in the finding in Women's Leather Boots and Shoes, and on the basis of the evidence in this appeal that the footwear in issue are designed for use in jogging, running and activities such as tennis and badminton, the Tribunal concludes that the footwear in issue are suitable for, pertain to and are for sports and are, therefore, "sports footwear." This conclusion is also supported by the description of "sports footwear" in the statement of reasons for the finding in Women's Leather Boots and Shoes which states that "sports footwear also referred to tennis shoes, jogging shoes and running shoes."*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*January 11, 1994*
Date of Decision:	*February 28, 1994*
Tribunal Members:	*Michèle Blouin, Presiding Member* *Sidney A. Fraleigh, Member* *Desmond Hallissey, Member*
Counsel for the Tribunal:	*Shelley Rowe*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*Jack R. Miller, for the appellant* *Stéphane Lilkoff, for the respondent*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-93-141

APR IMPORTS LTD. **Appellant**

and

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

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
SIDNEY A. FRALEIGH, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 61 of the *Special Import Measures Act*[1] (SIMA) of decisions of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) confirming the assessment of anti-dumping duties on women's footwear imported from the People's Republic of China (China). The appeal concerns the Tribunal's material injury finding under section 43 of SIMA in *Women's Leather Boots and Shoes Originating in or Exported from Brazil, The People's Republic of China and Taiwan; Women's Leather Boots Originating in or Exported from Poland, Romania and Yugoslavia; and Women's Non-Leather Boots and Shoes Originating in or Exported from The People's Republic of China and Taiwan*,[2] which specifically excluded "sports footwear." The issue in this appeal is whether the Deputy Minister correctly determined that the styles of footwear imported by the appellant are not "sports footwear" and are, therefore, goods to which the Tribunal's finding in *Women's Leather Boots and Shoes* applies and which are subject to anti-dumping duties.

There are three styles of women's footwear in issue: Nos. 9100, 9101 and 18054. Style Nos. 9100 and 9101, imported under Customs Transaction No. 17566-91000408-2 dated January 17, 1991, were manufactured and exported by Sonie Shoe Factory (Sonie) in Kowloon, China. In a letter dated July 22, 1992, from a representative of Sonie[3] to the appellant, these styles are described as "ladies court shoes ... designed and manufactured for the purposes of jogging, running, and playing sports such as tennis, badminton to name a few." The features of these styles are described in a letter dated November 10, 1992, from a representative of Sonie to the appellant. In that letter, it is stated that "styles 9101 and 9100 are designed for playing court sports. Mainly court tennis." Style No. 9100 is described as having a polyvinyl chloride (PVC)/polyurethane (PUR) injected sole, while style No. 9101 has a high-density PUR sole. Both style Nos. 9100 and 9101 are described as having uppers of PVC/PUR materials with textile backings and perforations, and a well-padded collar and tongue.

Style No. 18054, imported under Customs Transaction No. 17566-91000411-7 dated June 19, 1991, was manufactured and exported by Lok See Shoes Factory (Lok See) in Kowloon, China. In a letter dated July 23, 1992, from a representative of Lok See[4] to the appellant, it is stated that this style is a "ladies court [shoe] and [is] manufactured and designed for the purposes of jogging and playing sports such as tennis, badminton." In a letter dated

1. R.S.C. 1985, c. S-15.
2. 2 T.T.R. 251, Inquiry No. NQ-89-003, May 3, 1990, Statement of Reasons dated May 18, 1990.
3. The representative's signature is witnessed by J.M. Seto, a notary public in Hong Kong.
4. The representative's signature is witnessed by J.M. Seto, a notary public in Hong Kong.

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November 13, 1992, from a representative of Lok See to the appellant, this style is described as having the following features: (1) a sole with two separate layers, the outside being made of a rubberized compound and the inside being made of a shock-absorbing material; (2) a heel which is one-half inch higher than the sole and which is well padded; (3) stiffness through the arch area; and (4) an upper lined with textile backings and having perforations. This letter also states that the manufacturers designed this style "for the purpose of jogging or running."

The appellant's witness, Mr. Issie Roitman, President of APR Imports Ltd. and an individual with approximately 34 years experience in the footwear industry, introduced as exhibits samples of style Nos. 9100, 9101 and 18054. He described style No. 9100 as a shoe for indoor/outdoor sports and confirmed that style No. 9100 has the following features: (1) a PVC-injected, non-slip, non-marking sole; (2) a sock lining and inside collar made of material that absorbs perspiration; (3) a foam insole; and (4) a tongue lined with tricot. He described style No. 9101 as a running and court shoe and confirmed that it has the following features: a PUR sole and a slight arch cookie. He stated that the footwear in issue are "knockoffs," that is, copies of brand-name footwear. Style No. 18054 is a copy of a Reebok and style No. 9100 is a copy of an Adidas.

Mr. Roitman introduced four exhibits which he stated would be referred to as casual footwear in the shoe industry. He stated that casual footwear would not have the same lining as is used in the footwear in issue, that they would not necessarily have a rubber sole or an ethylene-vinyl acetate insert and that they would not be lined or have an arch cookie in the sock. Specifically referring to the styles in issue, he stated that the foxing from the toe to the heel and the high wall of style No. 9100 and the non-slip, non-marking sole of style No. 18054 distinguished them from casual footwear.

The respondent's witness, Mr. Pat Catizzone, an enforcement and appeals officer in the Anti-dumping and Countervailing Division of the Department of National Revenue, explained to the Tribunal that the original decision to impose anti-dumping duties on the footwear was made after the footwear were imported. The decision was made solely on the basis of the documentation which described the footwear as aerobic shoes, without any examination of the footwear in issue.

In argument, the appellant's representative referred to the following statement concerning "sports footwear" in the statement of reasons for the finding in *Women's Leather Boots and Shoes*:

> *Sports footwear was generally defined as footwear which was designed for a sporting activity and had, or had provision for, the attachment of spikes, sprigs, stops, clips, bars or the like. It also included skating boots, ski boots, cross-country ski footwear, wrestling boots, boxing boots, cycling boots, bowling shoes, curling shoes and moto-cross racing boots. For purposes of this inquiry, sports footwear also referred to tennis shoes, jogging shoes and running shoes.*[5]

In particular, the appellant's representative focused on the reference to "tennis shoes, jogging shoes and running shoes" and submitted that the footwear in issue are "tennis shoes, jogging shoes and running shoes" and not casual shoes, as determined by the respondent. He submitted that the letters from Sonie, which state that style Nos. 9100 and 9101 are principally tennis court shoes, and the letters from Lok See, which indicate that style No. 18054 is a jogging and/or running shoe, are evidence of the manufacturers' intentions.

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5. *Supra*, note 2 at 258.

Counsel for the respondent argued, based on the decision in *J.V. Marketing Inc. v. The Deputy Minister of National Revenue for Customs and Excise*,[6] that the statement of reasons for the finding in *Women's Leather Boots and Shoes* requires that footwear be "specifically named in the extended definition[7]" in the statement of reasons or "be designed for a sporting activity and have, or have provision for the attachment of, spikes, sprigs, stops, clips, bars or the like[8]" in order to be considered "sports footwear." Counsel submitted that the footwear in issue may only be considered tennis shoes, jogging shoes or running shoes if they are specifically designed to be used as such. Counsel argued that, although the footwear in issue have an athletic look, there is no evidence that there was a "deliberate intention in the mind of the manufacturer[9]" that the footwear's "ultimate use or ultimate function[10]" would be for tennis, jogging or running, and that they were, therefore, not designed for tennis, jogging or running. Counsel submitted, consequently, that the footwear should be described as "casual footwear" as opposed to "sports footwear."

In an appeal under section 61 of SIMA, the Tribunal is to make an order or finding as to whether anti-dumping duties are payable on imported goods. Whether or not anti-dumping duties are payable depends upon whether the imported goods are goods of the same description as the goods to which a Tribunal's finding made under section 43 of SIMA applies. In deciding whether anti-dumping duties are payable, it is the description of the goods in the Tribunal's finding itself that is determinative. However, the Tribunal may seek guidance in interpreting the description of the goods in the finding by referring to the product description in the statement of reasons.

In the *J.V. Marketing* case, the Tribunal found it necessary to interpret the language of the finding in light of the product description in the statement of reasons and determined, based on the facts in that case, that footwear designed, manufactured, marketed and used as "fitness walking shoes" were not "sports footwear."

The finding in *Women's Leather Boots and Shoes* states that "sports footwear ... are not included in the product definition." Based on those words, it is clear that any footwear that come within the description of "sports footwear" are specifically excluded from that finding. In the Tribunal's view, "sports footwear" is a broad description and may include any footwear that are designed, manufactured, marketed or used for sports.

There is a description of "sports footwear" in the section of the statement of reasons in *Women's Leather Boots and Shoes* entitled "The Product" which is taken largely from the preliminary determination of dumping made by the Deputy Minister. However, the language of this description makes it clear that it is not intended to be an exhaustive list of what may be considered "sports footwear." Rather, the description provides guidance as to what general criteria may be used to determine if footwear are "sports footwear" and sets out some examples of types of footwear that would generally be considered "sports footwear."

Based on the evidence in this appeal, the Tribunal concludes that the footwear in issue, namely, style Nos. 9100, 9101 and 18054, are designed and manufactured for use in jogging, running and activities such as tennis and badminton. The letters from the representatives of Sonie and Lok See, respectively, indicate, in the Tribunal's view, that it was the intention of the manufacturers to design and manufacture style Nos. 9100, 9101 and 18054 as ladies' court shoes

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6. Canadian International Trade Tribunal, Appeal No. AP-91-188, September 1, 1992.
7. *Ibid.* at 4.
8. *Ibid.*
9. *Union Tractor Ltd. v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-92-213, September 8, 1993, at 3.
10. *Ibid.*

for use in jogging, running and activities such as tennis and badminton. The descriptions of the footwear in issue in the manufacturers' letters, as confirmed by Mr. Roitman, indicate that the footwear have been designed to include features such as soles made of PVC and PUR, linings with perforations, inserts and supports, which make them well-suited for jogging, running and playing tennis and badminton. Thus, the Tribunal must determine whether footwear designed for use in jogging, running and activities such as tennis and badminton qualify as "sports footwear."

To interpret the words "sports footwear," the Tribunal has examined the plain and ordinary meaning of these words. The adjective "sports" has been defined as "suitable for sports,[11]" "pertaining to a sport or sports[12]" and "of or for sports.[13]" "Sport" has been defined as "a game, contest or other pastime requiring some skill and a certain amount of exercise,[14]" "an athletic activity requiring skill or physical prowess and often of a competitive nature, as racing, baseball, tennis, golf, bowling, wrestling, boxing, hunting, fishing, etc.,[15]" and "an activity requiring more or less vigorous bodily exertion and carried on according to some traditional form or set of rules, whether outdoors, as football, hunting, golf, racing, etc., or indoors, as basketball, bowling, squash, etc.[16]" In the Tribunal's view, the activities for which the footwear in issue have been designed and manufactured, namely, jogging, running, tennis and badminton, fall within these general definitions of sports.

On the basis of the evidence in this appeal that the footwear in issue are designed for use in jogging, running and activities such tennis and badminton, the Tribunal concludes that the footwear in issue are suitable for, pertain to and are for sports and are, therefore, "sports footwear." This conclusion is also supported by the description of "sports footwear" in the statement of reasons for the finding in *Women's Leather Boots and Shoes* which states that "sports footwear also referred to tennis shoes, jogging shoes and running shoes."

Accordingly, the appeal is allowed.

Michèle Blouin
Michèle Blouin
Presiding Member

Sidney A. Fraleigh
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Desmond Hallissey
Desmond Hallissey
Member

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11. Gage Canadian Dictionary (Toronto: Gage Publishing, 1983) at 1086.
12. The Random House Dictionary of the English Language, 2nd ed. (Toronto: Random House, 1987) at 1844.
13. Webster's New Twentieth Century Dictionary of the English Language Unabridged, 2nd ed. (New York: Simon & Schuster, 1979) at 1757.
14. *Supra*, note 11.
15. *Supra*, note 12.
16. *Supra*, note 13.