

Ottawa, Friday, November 8, 1996

Appeal No. AP-95-084

IN THE MATTER OF an appeal heard on July 4, 1996, under section 61 of the *Special Import Measures Act*, R.S.C. 1985, c. S-15;

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue dated June 9, 1995, with respect to a request for re-determination under section 58 of the *Special Import Measures Act*.

BETWEEN

MARR'S LEISURE PRODUCTS INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

AND

**CANADIAN BICYCLE MANUFACTURERS' ASSOCIATION,
VICTORIA PRECISION INC. AND GROUPE PROCYCLE INC.**

Intervenors

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Charles A. Gracey

Charles A. Gracey
Presiding Member

Raynald Guay

Raynald Guay
Member

Lyle M. Russell

Lyle M. Russell
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-95-084

MARR'S LEISURE PRODUCTS INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

and

**CANADIAN BICYCLE MANUFACTURERS' ASSOCIATION,
VICTORIA PRECISION INC. AND GROUPE PROCYCLE INC.**

Interveners

This is an appeal under section 61 of the *Special Import Measures Act* from a re-determination of the Deputy Minister of National Revenue confirming the assessment of anti-dumping duties on certain shipments of bicycle components which were imported into Canada by the appellant.

HELD: The appeal is dismissed. The Tribunal is of the view that the goods in issue are goods of the same description as those covered by its finding in Inquiry No. NQ-92-002 in respect of certain bicycles. While the numerous discrete pieces included in the appellant's shipments may be described as parts of 600 bicycles, in the Tribunal's view, for the purposes of this appeal, they may be equally described as 600 unassembled bicycles. In reaching this conclusion, the Tribunal took into account, in part, what it considers to be the ordinary meaning of the term "unassembled bicycles." The Tribunal is not persuaded that the ordinary meaning of the term would limit it, in this context, to bicycles in a semi-knocked-down condition.

Place of Hearing: Ottawa, Ontario
Date of Hearing: July 4, 1996
Date of Decision: November 8, 1996

Tribunal Members: Charles A. Gracey, Presiding Member
Raynald Guay, Member
Lyle M. Russell, Member

Counsel for the Tribunal: Heather A. Grant

Clerk of the Tribunal: Anne Jamieson

Parties: Anthony Gurniak, for the appellant
Frederick B. Woyiwada, for the respondent
C.J. Michael Flavell, Q.C., and Paul M. Lalonde, for the interveners

Appeal No. AP-95-084

MARR'S LEISURE PRODUCTS INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

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**CANADIAN BICYCLE MANUFACTURERS' ASSOCIATION,
VICTORIA PRECISION INC. AND GROUPE PROCYCLE INC.**

Interveners

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
RAYNALD GUAY, Member
LYLE M. RUSSELL, Member

REASONS FOR DECISION

This is an appeal under section 61 of the *Special Import Measures Act*¹ (SIMA) from a re-determination of the Deputy Minister of National Revenue confirming the assessment of anti-dumping duties on certain shipments of bicycle components which were imported into Canada by the appellant.

The issue in this appeal is whether the goods in issue are “goods of the same description” as those falling within the scope of the Tribunal’s finding in Inquiry No. NQ-92-002.² The Tribunal’s finding in that inquiry referred to “bicycles, assembled or unassembled” (emphasis added). The goods in issue are described as “frames and all other components necessary for 600 complete bicycles, all shipped together in an unassembled state.”

If the goods in issue are determined to be “goods of the same description” as those falling within the scope of the Tribunal’s finding, anti-dumping duties will be assessed on those goods pursuant to section 3 of SIMA.

This appeal proceeded by way of written submissions under rule 25 of the *Canadian International Trade Tribunal Rules*,³ on the basis of the Tribunal’s record, including an agreed statement of facts and briefs submitted by the parties.

The agreed statement of facts indicates that the goods in issue were shipped by the same exporter and that the invoices provided to the appellant indicated a particular rate per bicycle. The goods in issue were identified on the Canada Customs invoice, as well as on the commercial invoice, as “600 complete bicycles.” The goods in issue were subsequently shipped to Mariah Cycles Inc., which assembled them into complete bicycles in a “semi-knocked-down” condition. The bicycles were then individually packaged in cartons and

1. R.S.C. 1985, c. S-15.
2. *Bicycles and Frames Originating in or Exported from Taiwan and the People’s Republic of China, Finding*, December 11, 1992, *Statement of Reasons*, December 29, 1992.
3. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

shipped to retailers that completed their assembly by installing the handlebars, seats, front wheels and pedals included in each carton. Mariah Cycles Inc. charged the appellant a rate per bicycle for its work.

The appellant contends that the “assembly” of the bicycles in Canada for the wholesale trade is an “intense process” that consists of many steps and that requires significant technical expertise. For example, the wheel parts are imported as rims, spokes, hubs, tires, tubes and rim tapes and subsequently “built” into a complete wheel by a Canadian assembler. Other steps include the “installation” of a chain and front and rear derailleurs, as well as the “assembly” of handlebars, brake and gear levers and hand grips.

The appellant submits that the Tribunal did not define “assembled” or “unassembled” in its finding and, furthermore, that it is unaware of any published guidelines covering this terminology. In the appellant’s view, the intent of the Tribunal’s reference to “unassembled” bicycles in its finding was to prevent bicycles in a semi-knocked-down condition from entering Canada and avoiding the imposition of anti-dumping duties, and not to cover containers of parts imported for assembly by a domestic bicycle manufacturer.

The respondent submits that the onus is on the appellant to show that the respondent’s determination is incorrect and that, if it does not discharge this onus, the appeal must fail. The respondent further submits that the Tribunal’s finding is in respect of certain assembled or unassembled bicycles and that it makes no distinction with respect to the degree or difficulty of the assembly. As such, it is clearly intended to cover the entire range from completely unassembled to completely assembled bicycles.

The respondent submits that, in this case, the parts were not imported separately from a variety of sources and kept separate in inventory, rather the components, as shipped, could be and were assembled into 600 complete bicycles. Furthermore, the goods in issue were identified on both the customs invoice and commercial invoice as 600 complete bicycles; they were shipped from a single exporter, and that exporter charged a price based on a rate per bicycle, as did the assembler for its work. The respondent contends that, even without defining the term “unassembled bicycles,” the factors set out above indicate that the goods in issue were unassembled bicycles. The respondent further submits that this view is consistent with the purpose of SIMA, which is to prevent or reduce material injury to domestic producers and that, if the Tribunal were to hold otherwise, it would result in material injury to domestic bicycle producers.

The Canadian Bicycle Manufacturers’ Association and two bicycle manufacturers, Victoria Precision Inc. and Groupe Procycle Inc., were interveners in this case in opposition to the appellant’s position. In their joint brief, the interveners refer to the Tribunal’s decision in *Nova Aqua Sea Limited v. The Deputy Minister of National Revenue for Customs and Excise*,⁴ in which the Tribunal concluded that certain goods imported in an unassembled state, which required significant assembly to be complete, were “designed, engineered, manufactured, packaged and sold as ... complete unit[s]” and, therefore, found that they had been properly classified. The interveners submit that, even though that case was in respect of tariff classification, the principles of interpretation applied in that case apply equally in the case at hand and that the unassembled goods in issue in this case are similarly “designed, engineered, manufactured, packaged and sold as ... complete unit[s].”

4. Appeal No. 3027, July 26, 1990.

The interveners refer to Rule 2 (a) of the *General Rules for the Interpretation of the Harmonized System*⁵ (the General Rules) as an aid to understanding the meaning of the term “unassembled.” Rule 2 (a) provides that any reference in a heading in the *Customs Tariff*⁶ to an article includes a reference to that article incomplete or unfinished, provided it has the “essential character” of the complete or finished article. The rule also specifies that the reference includes the article complete or finished presented in an unassembled or disassembled state. The interveners submit that the goods in issue, in their unassembled state, have the “essential character” of complete or finished bicycles.

The interveners further submit that, since the description of the goods in the Tribunal’s finding specifically mentions “unassembled” bicycles, it gives further support for the view that goods in an unassembled state are meant to be included within the scope of the finding.

In an appeal under section 61 of SIMA, the Tribunal is to determine whether anti-dumping duties are payable on certain 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 an order or finding of the Tribunal applies. The Tribunal’s finding in this case is in respect of “bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, and frames thereof, originating in or exported from Taiwan and the People’s Republic of China.” [Emphasis added]

In the Tribunal’s view, the reference to “unassembled bicycles” in its finding clearly includes the goods in issue. *The Concise Oxford Dictionary of Current English*⁷ provides that the verb “assemble,” used in a mechanical context, means to “fit together the parts of [a machine].”⁸ While the numerous discrete pieces included in the appellant’s shipments may be described as parts of 600 bicycles, in the Tribunal’s view, for the purposes of this appeal, they may be equally described as 600 unassembled bicycles.

The Tribunal notes that the parts or components constituting the goods in issue were shipped in two shipments from a single supplier and in the exact proportions to permit the assembly of a specific number of bicycles. Moreover, the Canadian assembler charged a fee based on a rate per bicycle for its assembly work.

While the appellant appears to be seeking to restrict the meaning of the term “unassembled” so as not to cover components in a less assembled state than the “six basic components” to which the Tribunal referred in its *Statement of Reasons* in Inquiry No. NQ-92-002 to describe a bicycle,⁹ it has offered no

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

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

7. Seventh ed. (Oxford: Clarendon Press, 1982).

8. *Ibid.* at 51.

9. The product description in the Tribunal’s *Statement of Reasons* in Inquiry No. NQ-92-002 states, in part, the following:

The subject bicycles are composed of six basic components: the frame, drive train, wheels, seat, handlebars and brakes, each of which consists of several interlocking parts. The frame consists of three tubes welded together to create the triangular structure of the bicycle, to which is attached the back triangle consisting of backstays and chain stays which hold the rear wheel, as well as a fork which connects the front wheel to the frame.

[Emphasis added]

rationale to support this view, and the Tribunal is not persuaded that such an arbitrary limit to the meaning of the term “unassembled” is appropriate.

In reaching the conclusion that the goods in issue are included in the reference to “unassembled bicycles” in its finding, the Tribunal also took into account what it considers to be the ordinary meaning of the term “unassembled bicycles.” In the Tribunal’s view, this would include all of the component parts necessary to construct a complete bicycle that have not yet been fitted together. The Tribunal is not persuaded that the ordinary meaning of the term would limit it, in this context, to bicycles in a semi-knocked-down condition.

Accordingly, the Tribunal is of the view that the goods in issue are goods of the same description as those covered by its finding in Inquiry No. NQ-92-002 in respect of certain bicycles.

In light of the foregoing, the appeal is dismissed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Raynald Guay
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Member

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Member