CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, November 8, 1996

Appeal No. AP-95-008

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 March 10, 1995, with respect to a request for re-determination under section 58 of the *Special Import Measures Act*.

BETWEEN

PAULMAR CYCLE INC., DIVISION OF MARR'S LEISURE HOLDINGS INC. AND MARR'S LEISURE PRODUCTS INC. — **Appellants**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE — **Respondent**

AND

CANADIAN BICYCLE MANUFACTURERS' ASSOCIATION, VICTORIA PRECISION INC., GROUPE PROCYCLE INC. AND RALEIGH INDUSTRIES OF CANADA LIMITED — **Interveners**

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

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UNOFFICIAL SUMMARY

Appeal No. AP-95-008

PAULMAR CYCLE INC., DIVISION OF MARR'S LEISURE HOLDINGS INC. AND MARR'S LEISURE PRODUCTS INC. **Appellants**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

and

CANADIAN BICYCLE MANUFACTURERS' ASSOCIATION, VICTORIA PRECISION INC., GROUPE PROCYCLE INC. AND RALEIGH INDUSTRIES OF CANADA LIMITED **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 appellants.

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 appellants' shipments may be described as parts of 1,330 bicycles, in the Tribunal's view, for the purposes of this appeal, they may be equally described as 1,330 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 appellants Frederick B. Woyiwada, for the respondent C.J. Michael Flavell, Q.C., Paul M. Lalonde and Christopher J. Kent, for the interveners

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Appeal No. AP-95-008

PAULMAR CYCLE INC., DIVISION OF MARR'S LEISURE HOLDINGS INC. AND MARR'S LEISURE PRODUCTS INC. **Appellants**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

and

CANADIAN BICYCLE MANUFACTURERS' ASSOCIATION, VICTORIA PRECISION INC., GROUPE PROCYCLE INC. AND RALEIGH INDUSTRIES OF CANADA LIMITED **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 appellants.

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 consisting of "two shipments, the first being the frames and all other components necessary for 750 complete bicycles, all shipped together, and the second being the frames and all other components necessary for 580 complete bicycles, again all shipped together."

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 *pro forma* invoices provided to the appellants indicated a particular rate per bicycle. The goods

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.

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in issue were identified on commercial invoices presented to Canada Customs as bicycle parts, but their total value declared was equal to the amount on the *pro forma* invoices. The goods in issue were subsequently shipped to Mariah Cycles Inc., which assembled them into complete bicycles and charged the appellants a rate per bicycle for its work.

The appellants contend 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 appellants submit that the Tribunal did not define "assembled" or "unassembled" in its finding and, furthermore, that they are unaware of any published guidelines covering this terminology. In the appellants' 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 appellants to show that the respondent's determination is incorrect and that, if they do 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 1,330 complete bicycles without the addition of other parts shipped separately. Furthermore, the goods in issue 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 three bicycle manufacturers, Victoria Precision Inc., Groupe Procycle Inc. and Raleigh Industries of Canada Limited, were interveners in this case in opposition to the appellants' 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]."

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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.

The interveners also submit that the difficulty or complexity of assembly is irrelevant and rely on the Tribunal's decision in *Nova Aqua Sea* in further support of this view. Furthermore, the appellants' interpretation of the term "unassembled" (i.e. it was not "intended to cover containers of parts imported for assembly into bicycles in Canada") is illogical, in that, if the appellants' interpretation were to be accepted, the term "unassembled" would be meaningless, and there would be nothing left for it to cover.

The interveners submit that, had the Tribunal meant to limit the finding to assembled and semi-knocked-down bicycles, it could have used that term, since it is familiar with it.

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 appellants' shipments may be described as parts of 1,330 bicycles, in the Tribunal's view, for the purposes of this appeal, they may be equally described as 1,330 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.

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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.

While the appellants appear 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] they have offered no 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
Raynald Guay
Member

Lyle M. Russell
Lyle M. Russell
Member

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]