

Ottawa, Tuesday, October 22, 1996

Appeal No. AP-95-258

IN THE MATTER OF an appeal heard on April 19, 1996, under section 61 of the *Special Import Measures Act*, R.S.C. 1985, c. S-15;

AND IN THE MATTER OF four decisions of the Deputy Minister of National Revenue dated December 28, 1995, with respect to a request for re-determination under section 59 of the *Special Import Measures Act*.

**BETWEEN**

**SPECIALIZED BICYCLE COMPONENTS CANADA, INC.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed in part.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Desmond Hallissey

Desmond Hallissey  
Member

Susanne Grimes

Susanne Grimes  
Acting Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-95-258**

**SPECIALIZED BICYCLE COMPONENTS CANADA, INC.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

Pursuant to a finding of the Tribunal, an anti-dumping duty is imposed on certain bicycles imported into Canada from Taiwan and the People's Republic of China. The amount of duty payable on the bicycles is equal to the margin of dumping, which is defined as the difference between the normal value of the bicycles and their export price. In calculating the normal value of the bicycles, the appellant claims that certain deductions from the sale price of like goods in the United States should have been made, but were not. Specifically, the appellant claims that adjustments should have been made pursuant to the *Special Import Measures Regulations* to account for customer services provided only in the United States, for cash discounts generally granted to US retailers and for differences in the costs associated with product liability between Canada and the United States.

**HELD:** The appeal is allowed in part. An adjustment for customer services should not be allowed, as the US exporter is not engaged in a selling activity in the United States that would not be performed if it sold bicycles to purchasers that were at the same or substantially the same trade level as the appellant. An adjustment for cash discounts should be allowed, as sales to the appellant would have qualified for the discount if they had occurred in the United States. Finally, an adjustment for differences in the costs associated with product liability should be allowed as a difference in the conditions of sale that would be reflected in price differences.

Place of Hearing: Ottawa, Ontario  
Date of Hearing: April 19, 1996  
Date of Decision: October 22, 1996

Tribunal Members: Robert C. Coates, Q.C., Presiding Member  
Raynald Guay, Member  
Desmond Hallissey, Member

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Anne Jamieson

Appearances: Paul K. Lepsoe, for the appellant  
Frederick B. Woyiwada, for the respondent

**Appeal No. AP-95-258**

**SPECIALIZED BICYCLE COMPONENTS CANADA, INC.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
RAYNALD GUAY, Member  
DESMOND HALLISSEY, Member

**REASONS FOR DECISION**

This is an appeal under section 61 of the *Special Import Measures Act*<sup>1</sup> (SIMA) of a re-determination of “normal value” by the respondent made pursuant to section 59 of SIMA.

On December 11, 1992, the Tribunal found that the dumping of certain bicycles originating in or exported from Taiwan and the People’s Republic of China had caused, was causing and was likely to cause material injury to Canadian production of bicycles like those found to be dumped.<sup>2</sup> Consequently, an anti-dumping duty was imposed under SIMA on all bicycles of a similar description imported into Canada.

The amount of anti-dumping duty payable on the imported bicycles is equal to the margin of dumping of the bicycles. Subject to certain provisions of SIMA, the margin of dumping is defined as the amount by which the normal value of the bicycles exceeds their export price. At its simplest, the export price of the bicycles is the price at which they are sold to or bought by an importer in Canada, and the normal value would be the price at which identical bicycles would be sold in the country of export under identical circumstances. It is apparent, therefore, that a lower normal value will result in a lower amount of duty being imposed on the imported bicycles. However, no duty would be payable if the bicycles were sold to or bought by an importer in Canada at or above the normal value.

In calculating the normal value of the bicycles, the respondent first considered the listed selling prices of the US exporter, Specialized Bicycle Components, Inc. (Specialized US),<sup>3</sup> to US dealers that buy bicycles at the trade level and in the quantity closest to those of the appellant. Under SIMA, the goods that are sold by the exporter in its own country that are used to calculate normal value are called “like goods” (being like goods to those exported to Canada). From Specialized US’s listed selling prices, adjustments were made pursuant to sections 15 and 16 of SIMA and sections 6, 7, 9 and 10 of the *Special Import Measures Regulations*<sup>4</sup> (the Regulations) to allow for price comparability. Adjustments were made for such things as price discounts generally granted by Specialized US on sales in the US market, delivery costs, taxes and duties and because sales in the United States are occurring at a trade level different from that of the

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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*, Inquiry No. NQ-92-002, *Finding*, December 11, 1992, *Statement of Reasons*, December 29, 1992.

3. The appellant is a wholly owned subsidiary of Specialized US.

4. SOR/95-26, December 20, 1994, *Canada Gazette* Part II, Vol. 129, No. 1 at 80.

appellant. The appellant has appealed the respondent's re-determination of normal value, claiming that certain deductions from the sale price of the like goods should have been made.

There are three issues in this appeal:

- (1) whether the respondent erred in refusing to adjust the price of the like goods, pursuant to sections 5 and 9 of the Regulations, to account for the cost of customer services provided only to US customers;
- (2) whether the respondent erred in refusing to adjust the price of the like goods, pursuant to section 6 of the Regulations, for cash discounts generally granted to retailers for prompt payment; and
- (3) whether the respondent erred in refusing to adjust the price of the like goods, pursuant to section 5 or 9 of the Regulations, to account for differences in the costs associated with product liability between Canada and the United States.

For purposes of this appeal, the relevant provisions of SIMA are as follows:

15. Subject to sections 19 and 20 [of SIMA], where goods are sold to an importer in Canada, the normal value of the goods is the price of like goods when they are sold by the exporter of the first mentioned goods

[to purchasers at the same trade level as the importer and in the same or substantially the same quantities sold to the importer, etc., for use in the country of export under competitive conditions]

adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer and the like goods sold by the exporter.

For purposes of this appeal, the relevant provisions of the Regulations are as follows:

5. For the purposes of sections 15, 19 and 20 of [SIMA], where the goods sold to the importer in Canada and the like goods differ

(*d*) in their conditions of sale, other than the conditions referred to in paragraphs (*b*) or (*c*) or any conditions that result in any adjustment being made pursuant to any other section of these Regulations,

and that difference would be reflected in a difference between the price of the like goods and the price at which goods that are identical in all respects, including conditions of sale, to the goods sold to the importer in Canada would be sold in the country of export, the price of the like goods shall be adjusted

(*e*) where the price of the like goods is greater than the price of the identical goods, by deducting therefrom the estimated difference between those prices.

6. For the purposes of sections 15, 19 and 20 of [SIMA], where any rebate, deferred discount or discount for cash is generally granted in relation to the sale of like goods in the country of export, the price of the like goods shall be adjusted by deducting therefrom the amount of any such generally granted rebate or discount for which the sale of the goods to the importer in Canada would qualify if that sale occurred in the country of export.

9. For the purposes of sections 15 and 19 and sub-paragraph 20(c)(i) of [SIMA], where purchasers of like goods who are at the trade level nearest and subsequent to that of the importer in Canada have been substituted for purchasers who are at the same or substantially the same trade level as that of the importer, the price of the like goods shall be adjusted by deducting therefrom

(a) the amount of any costs, charges or expenses incurred by the vendor of the like goods in selling to purchasers who are at the trade level nearest and subsequent to that of the importer that result from activities that would not be performed if the like goods were sold to purchasers who are at the same or substantially the same trade level as that of the importer.

The appellant's first witness was Mr. Gerald A. Davis, General Counsel, Secretary and a member of the Board of Directors of Specialized US. He explained that Specialized US has six people in its customer service department who support inside salespersons and provide after-order support for sales to US dealers only. For example, they handle queries from domestic customers regarding such things as product availability, status of orders, shipments, sales returns, warranty claims and account adjustments. In the appellant's brief, it is added that, for equivalent sales in Canada, such functions are performed by the appellant.

In cross-examination, Mr. Davis explained that Specialized US has one person in its international sales department, dedicated to handling questions from international distributors such as the appellant. Though queries may also be of a technical nature or about such things as the status of orders or warranty claims, Mr. Davis added that, because of the large size of orders from international dealers, their questions are different from those asked by US dealers. It is the international dealers that address questions from customers within their jurisdiction, as Specialized US's customer service department deals with questions from US customers.

As to cash discounts, Mr. Davis agreed that a discount is granted by Specialized US to its US customers most comparable in size to the appellant. Furthermore, if the sales to the appellant had occurred in the United States, it would have been eligible for the early payment discount. He clarified that the discount is only available to preferred dealers in the United States. In reviewing the "Preferred Customer Sales Program," under which the discounts are given, Mr. Davis said that the appellant purchased in sufficient quantity to qualify as a preferred customer. He added that 8 of 10 US customers most comparable in size to the appellant take advantage of the discount terms. In this regard, reference was made to Exhibit A-1 (protected), Tab 2, that illustrates the discount received by Specialized US's top 10 US dealers.

In cross-examination, Mr. Davis qualified that, in addition to purchasing 15 or more bicycles at a time, a dealer must also make early payment for the bicycles to be eligible for a discount.<sup>5</sup> He added that the appellant does not normally pay within 60 days after the shipment of bicycles.

With regard to the third issue, Mr. Davis explained that, because of US laws, Specialized US is exposed to significant potential product liability. As a result, many dealers inquire as to whether Specialized US is properly insured. He opined that dealers in the United States would not purchase from Specialized US if it did not maintain adequate insurance against product liability. In addition, as a condition of doing business with its largest customers, such as Price Costco, Mr. Davis explained that Specialized US

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5. Under the Preferred Customer Sales Program, a dealer will get a 4 percent discount if payment is made within 10 days, a 3 percent discount if payment is made within 30 days and a 2 percent discount if payment is made within 60 days, but, in any event, the net amount must be paid within 90 days.

must name them as a conditional insurer and put a specific vendor's endorsement, in a minimum amount of \$3 million, on a "Certificate of Insurance."<sup>6</sup> Other dealers require Specialized US to provide a certificate as proof that it possesses sufficient insurance coverage.<sup>7</sup>

As a result of US laws, Specialized US has experienced a substantial number of product liability claims. In contrast, there have been very few Canadian claims, and there is a substantial difference in product liability expenses between US and Canadian sales.<sup>8</sup> Mr. Davis opined that, if Specialized US had lower product liability expenses for sales in the United States, it could sell bicycles in the United States at a lower price.

In cross-examination, Mr. Davis explained that Specialized US has one insurance policy covering US sales and a second policy covering international sales. Both policies insure against the same risk and exposure to liability. Referring to Exhibit A-3 (protected), Mr. Davis explained that the insurance premiums paid per \$1,000 of sales in the United States are more than three times greater than premiums paid with respect to comparable sales in Canada. Furthermore, the "deductible" or self-insured retention paid under the policies was, in most cases, significantly higher for sales in the United States. Mr. Davis added that, as the cost of liability insurance varied from country to country, Specialized US's product is priced according to country. On questions from the Tribunal, he stated that, all other things being equal, the sale price of a bicycle in the United States would be higher than that in Canada, or there would be a lower profit margin in the United States because of the greater cost of liability insurance. He clarified, however, that the bicycles are sold to Canada at normal value, as determined by the respondent, to avoid the imposition of an anti-dumping duty.

The appellant's second witness was Mr. Larry Koury, Managing Director of Specialized Bicycle Components Canada, Inc. Mr. Koury explained that the function of inside sales and customer services with respect to sales in Canada are performed by two people. He added that the appellant does not deal with Specialized US's customer service department.

With regard to product liability, Mr. Koury said that no buyer in Canada has required a Certificate of Insurance as a condition of doing business with the appellant. He added that the appellant's cost of product liability is not a significant cost of doing business in Canada.

In cross-examination, Mr. Koury explained that the appellant will contact Specialized US on a weekly or bi-weekly basis. For issues such as ordering, shipments and product liability, the international sales department of Specialized US is contacted. For issues such as accounting, invoicing and monetary transactions, the finance department is contacted. He added that, because of the size of the transactions involved, the issues are on a "much broader macro scale" than what occurs at the "transactional scale" of the customer service department.

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6. In Exhibit A-1 (protected), Tab 5, it is explained that a Certificate of Insurance is formal evidence of insurance coverage. It provides information on such things as the terms of the insurance.

7. Exhibit A-1 (protected), Tab 5, illustrates the number of requests for a Certificate of Insurance that Specialized US received between 1992 and 1995.

8. Total product liability expenses for the years 1992 to 1995 on US sales and Canadian sales are illustrated in Exhibit A-1 (protected), Tab 4. A comparison of the number of claims for the same years is provided in Exhibit A-2 (protected).

On questions from the Tribunal, Mr. Koury acknowledged that the appellant is a wholly owned subsidiary of Specialized US. He stated that, if the appellant were considered a retailer of preferred specification or on the preferred customer list, it would qualify for the cash discount. He also confirmed that the appellant pays more than 60 days after the bicycles are shipped.

Counsel for the appellant argued that additional adjustments should have been made to the US domestic selling price of bicycles to arrive at a proper comparison with sales to Canada. This is required pursuant to section 15 of SIMA, which indicates that the price of like goods is to be “adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer and the like goods sold by the exporter.”

First, a trade level adjustment to the selling price of like goods should be made pursuant to paragraph 9(a) of the Regulations to compensate for the expense of providing customer services to US customers. Counsel for the appellant noted that Specialized US provides customer services as part of the selling function to bicycle retailers in the United States. It does not provide these services to national distributors such as the appellant. The expense of providing these services is not part of the general overhead of Specialized US.

Second, section 6 of the Regulations provides for an adjustment to the selling price of like goods to account for cash discounts generally granted on US sales that would be granted on sales to the appellant if made in the United States. Counsel for the appellant noted that discounts are generally granted to large purchasers in the United States that buy at a level and in a manner most comparable to the appellant. As the effective US selling price is reduced by the amount of the discount to the comparable US customers, normal value should be adjusted accordingly.

Finally, an adjustment to the selling price of the like goods should be made, pursuant to paragraph 5(d) of the Regulations, to account for differences in the costs associated with product liability, being a difference in the “conditions of sale” between sales in the United States and sales to the appellant in Canada.<sup>9</sup> Counsel for the appellant noted the uncontradicted testimony of the appellant’s witnesses to the effect that the costs associated with product liability are an inherent, essential and expensive part of being the principal distributor of bicycles to consumers in the US market. In contrast, the costs associated with product liability are not a large business expense of selling bicycles into the Canadian market. Counsel also highlighted Mr. Davis’s testimony that this difference in the costs of carrying on business in the two markets is reflected in a price difference in the two markets.

To explain the nature of adjustments contemplated by differences in the “conditions of sale,” counsel for the appellant referred to the decision in *Madison Industrial Equipment Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>10</sup> where the majority of the Tribunal opined that:

adjustments [under paragraph 5(d) of the Regulations] may only be allowed where the adjustments sought are sufficiently pertinent to the sales for which the adjustments are requested. In contrast,

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9. In the appellant’s brief, it was argued that such an adjustment could be made pursuant to section 5 or 9 of the Regulations. In argument, counsel for the appellant limited his argument to section 5 of the Regulations.

10. 5 T.T.R. 300, Canadian International Trade Tribunal, Appeal No. 2936, February 21, 1991.

adjustments related to a general cost of doing business or circumstances of doing business in general should not be allowed.<sup>11</sup>

It was submitted that an adjustment for differences in the costs associated with product liability is sufficiently pertinent to the sale of bicycles in the United States, given the direct correlation between those costs and selling into that market. Furthermore, the costs associated with product liability are not general costs of doing business. The evidence clearly indicates that such costs vary depending on where or to whom the bicycles are sold.<sup>12</sup>

It was further argued that the expression “conditions of sale” should not be narrowly interpreted as referring to a contractual condition of sale. Regardless, there were, in fact, differences in the conditions of sale, in a contractual sense, between selling into Canada and selling into the US market. Counsel for the appellant noted that many US distributors and retailers require Specialized US to produce a Certificate of Insurance before they will purchase bicycles. In contrast, the appellant has never received a request to show such a certificate.

Counsel for the respondent argued that, when comparing sales of like goods to export sales that are not made at the same trade level, an adjustment to normal value can be made under paragraph 9(a) of the Regulations. This adjustment is for costs, charges or expenses that relate to activities that would not be performed if the like goods were sold domestically to purchasers at the same or substantially the same trade level as the appellant. Put another way, if Specialized US provides customer services to US retailers that it does not provide to the appellant as a national distributor and a cost is incurred by Specialized US for rendering such services, then an adjustment can be made for the costs under paragraph 9(a) of the Regulations.

It was submitted that an adjustment to normal value is not warranted for the customer services provided to US retailers because similar services are provided to the appellant. Mr. Davis testified that, if Specialized US were dealing only with a national distributor in the United States, it would be able to reduce the number of people providing the services, but not eliminate the function. Furthermore, customer services are now provided to the appellant. Mr. Koury testified that the appellant often contacts the international representative of Specialized US to discuss product availability, orders, shipments, sales returns, warranty replacements, account adjustments, etc. Counsel for the respondent submitted that, though these activities are not called customer services, they are the same functions.

With regard to cash discounts, it was argued that there is no evidence that the export sales would have qualified for the discount if they had occurred in the United States. Counsel for the respondent told the Tribunal that Mr. Koury could only say that the appellant could have claimed the discount if it qualified as a preferred retailer and if it paid within 60 days. As an adjustment will be made under section 6 of the Regulations for a “discount for which the sale of the goods to the importer in Canada would qualify,” counsel argued that payment is a relevant consideration. Specifically, the appellant was required to pay within 60 days to be eligible for the adjustment. He added that there is no evidence that the appellant paid within 60 days or that it was a preferred retailer. Therefore, sales to the appellant would not qualify for the discount if they were made in the United States.

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11. *Ibid.* at 317.

12. Exhibit A-1 (protected), Tab 4.



With regard to an adjustment under paragraph 5(d) of the Regulations for differences in the costs associated with product liability, counsel for the respondent argued that the expression “conditions of sale” must be interpreted to mean “terms of sale.” In support of this interpretation, counsel noted that paragraph 5(d) referred to conditions of sale other than those referred to in paragraph 5(b) or (c). Paragraph 5(b) refers to “warranty against defect or guarantee of performance” and paragraph 5(c) refers to “the time permitted from their date of order to the date of their scheduled shipment.” Both conditions, he submitted, are very specific terms relating to a contract of sale. Furthermore, in *Madison*, the majority of the Tribunal indicated that there must be evidence allowing a full examination of all the circumstances and the accounting relating to the claim for adjustments.<sup>13</sup> Interpreted this way, there are no differences in the conditions of sale, in that there are no differences relating to the sales contracts themselves, and there is no term or condition that reflects any differences between product liability concerns in the United States and Canada.

Counsel for the respondent suggested that it is irrelevant that a difference in the costs associated with product liability may result in a price difference between sales in the United States and sales for export to Canada. If there is a geographic attribution to the cost of insurance, it is merely a more accurate portrayal of the cost of doing business.

Similarly, an adjustment for differences in the costs associated with product liability is not justified under paragraph 9(a) of the Regulations. Counsel for the respondent noted that there is no evidence that product liability would be any different if Specialized US sold to a national distributor in the United States.

In reply, counsel for the appellant argued that an adjustment can still be made for the cost of providing customer services in the United States even if there is some overlap in function between the customer service and international sales departments.<sup>14</sup> It is the difference in expenditure in providing the two services that must be considered.

The Tribunal believes that, for a trade level adjustment to be made under paragraph 9(a) of the Regulations for the cost of the customer services provided by Specialized US, three conditions must exist. First, sales of the like goods in the United States by Specialized US must take place at the trade level nearest and subsequent to that of the appellant. Second, Specialized US must be engaged in a selling activity in the United States (at the retail level) that would not be performed if it sold bicycles to purchasers that were at the same or substantially the same trade level as the appellant (being a national distributor). Finally, there must be costs, charges or expenses incurred by Specialized US associated with these activities. At issue in this appeal is whether the second condition has been met.

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13. *Supra* note 10 at 317. The majority of the Tribunal stated that “[t]o claim adjustments, evidence allowing a full examination of all the circumstances and the accounting relating to the claim for adjustments must be submitted.”

14. In support of this proposition, counsel referred to *Madison* at 319, where the majority of the Tribunal stated, in part:

warehousing is performed in respect of both the sales in Taiwan and the sales to Canada ... although the costs in each case may be substantially different. Where such a difference exists, and there is evidence to verify that the staging [short-term storage for sales to Canada] is significantly different from the warehousing in respect of sales in Taiwan, the Tribunal is of the view that a claim for adjustment may be allowed under section 9 of the Regulations if that claim is justified on the basis of trade level rather than as a condition of sale.

The Tribunal believes that there are not significant differences between the customer services provided by Specialized US to its US customers and the services provided by its international sales department to the appellant. As such, the Tribunal finds that Specialized US would also provide customer services if it only sold to purchasers that are at the same or substantially the same trade level as the appellant. In support of this conclusion, the Tribunal notes Mr. Koury's testimony that the appellant often contacts Specialized US to discuss issues similar to those addressed by the customer service department. Furthermore, Mr. Davis testified that, if Specialized US were only dealing with national distributors in the United States, it would be able to reduce, but not eliminate, the activities performed by the customer service department. That the queries by the appellant as a national distributor are "quite different in the sense that [its] orders are larger<sup>15</sup>" from the queries by US customers at the retail level does not warrant a trade level adjustment to normal value.

Similarly, the Tribunal believes that an adjustment to normal value to account for the costs of customer services is not warranted under paragraph 5(d) of the Regulations. If provision of customer services can be characterized as a condition of sale, the Tribunal believes that considering an adjustment under this general provision is not warranted, as there is a specific provision found at paragraph 9(a) of the Regulations to deal with such trade level adjustments.

As to an adjustment to normal value for cash discounts available under Specialized US's Preferred Customer Sales Program, the Tribunal finds that the appellant purchased at a volume that qualified it as a preferred customer. To obtain such status, a purchaser is required to take shipments of 15 or more bicycles, which the appellant certainly did. In recognition of this, Mr. Davis testified that, if sales to the appellant had occurred in the United States, the appellant would have been eligible for the early payment discount. It was not questioned that the discount is generally granted in the United States.

To take advantage of the discount, however, a purchaser is required to pay within 60 days of shipment of the bicycles.<sup>16</sup> As the appellant does not make payment within this time, counsel for the respondent argued that the appellant would not qualify for the discount if the sales were made in the United States. In response, counsel for the appellant argued that the test for the adjustment is whether the sale to the importer would qualify for the discount and not whether the eventual payment by the importer for the purchase in question would qualify.

While acknowledging the technical nature of this latter argument, the Tribunal accepts that an adjustment can still be made regardless of the appellant not paying within 60 days. As a preferred customer, sales to the appellant would qualify for the discount if they occurred in the United States. That the appellant would notionally take advantage of the discount by making early payment is a different matter. As sales to the appellant did not occur in the United States, it is understandable why the appellant did not make early payments; there was no incentive. In fact, it is arguable that no astute business person under the same circumstances would pay before 90 days as required. If this were so, no Canadian company prudently managed would ever qualify for such an adjustment to normal value, as this provision has been interpreted by the respondent.

As to the quantum of adjustment that should be made, the Tribunal believes that one reasonable approach would allow for the average discount taken by Specialized US's top 10 preferred customers, or

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15. Testimony of Mr. Davis, *Transcript of Public Hearing*, April 19, 1996, at 40.

16. See *supra* note 5.

“presidential dealers” as described by Mr. Davis. Such information is readily available in Exhibit A-1 (protected) at Tab 2.

With regard to an adjustment under paragraph 5(d) of the Regulations for differences in costs associated with product liability, the Tribunal cannot accept that the expression “conditions of sale” means “terms of sale” as interpreted by the respondent. In coming to this conclusion, the Tribunal notes that section 15 of SIMA authorizes adjustments to the price of like goods “in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale.” It is clear to the Tribunal that SIMA has distinguished between terms of sale and conditions of sale, the latter, undoubtedly, being something different from the former.

Counsel for the appellant argued that the meaning of these provisions must be interpreted in light of the international law which they implement.<sup>17</sup> In this regard, counsel referred to Article 2.4 of the World Trade Organization *Agreement on Implementation of Article VI of GATT 1994*,<sup>18</sup> which states that “[d]ue allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale.” The Tribunal finds this supportive of its conclusion that the two expressions are different and have different meanings.

The Tribunal believes that the expression “conditions of sale” should be interpreted to mean “circumstances of sale.” In this regard, it is in agreement with Member Bertrand who, in separate reasons in *Madison*, dissenting in part, stated:

The expression “conditions of sale” should be given the broad meaning of “circumstances of sale,” which, in my view, is more in accordance with the scheme of [SIMA] and the Regulations, and as such refers to differences in circumstances under which selling activities are carried out in the domestic and export markets.<sup>19</sup>

For Member Bertrand, the key question was whether these differences “would be reflected” in price differences as described in section 5 of the Regulations.

The Tribunal is satisfied that the cost of liability insurance is a cost relating to the sale of bicycles. In this regard, the Tribunal notes Exhibit A-3 (protected) that illustrates the rates applicable per \$1,000 of sales to determine insurance premium costs for sales in the United States and Canada. That there are differences in the rates between the two countries reflects differences in the circumstance of risk in selling into those markets or, at least, an underwriter’s perception of that risk based on actuarial statistics. As stated by the majority in *Madison*, “adjustments may only be allowed where the adjustments sought are sufficiently pertinent to the sales for which the adjustments are requested.”<sup>20</sup> The Tribunal believes that the adjustment sought to reflect differences in the cost of liability insurance is sufficiently pertinent to the sale of like goods.

At issue, therefore, is whether differences in costs associated with product liability between Canada and the United States would be reflected in price differences between like goods and other goods, if sold in

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17. *Seaboard Lumber Sales Company Ltd. v. Her Majesty the Queen*, [1995] 3 F.C. 113 (C.A.), aff’g [1994] 2 F.C. 647 (T.D.), rev’g *Seaboard Lumber Sales Company Limited v. The Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-91-007, September 8, 1992.

18. Signed at Marrakesh on April 15, 1994.

19. *Supra* note 10 at 329.

20. *Ibid.* at 317.

the United States, identical in all respects, including conditions of sale, to those sold to the appellant. In this regard, the Tribunal notes Mr. Davis's testimony to the effect that, if the bicycles were not priced up to normal value for sale to the appellant, differences in the cost of liability insurance would be reflected in price differences between bicycles sold in Canada and those sold in the United States. The Tribunal finds that the difference in costs associated with product liability represents a difference in the conditions of sale that would be reflected in price differences.

Accordingly, the appeal is allowed in part.

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Presiding Member

Raynald Guay  
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Desmond Hallissey  
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