CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, September 26, 1997

Appeal No. AP-96-199

IN THE MATTER OF an appeal heard on May 26, 1997, 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 21, 1990, with respect to a request for re-determination under section 59 of the *Special Import Measures Act*.

BETWEEN

FLETCHER LEISURE GROUP INC. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed.

Anthony T. Eyton
Anthony T. Eyton
Presiding Member

Dr. Patricia M. Close
Dr. Patricia M. Close
Member

Lyle M. Russell
Lyle M. Russell
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-96-199

FLETCHER LEISURE GROUP INC. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

This is a re-hearing of an appeal arising out of the Tribunal's decision of March 19, 1993, in Appeal Nos. AP-90-023 and AP-90-127, *Fletcher Leisure Group Inc.* v. *The Deputy Minister of National Revenue for Customs and Excise*. In Appeal No. AP-90-023, pursuant to section 61 of the *Special Import Measures Act*, the appellant appealed the respondent's re-determination, pursuant to which anti-dumping duties were assessed on certain ski poles which the appellant imported into Canada from Italy. The Tribunal allowed the appeal and directed the respondent to re-determine the normal value of the ski poles in issue under section 15 of the *Special Import Measures Act*. The respondent appealed the Tribunal's decision to the Federal Court of Appeal which allowed the appeal. The Federal Court of Appeal found that there was no evidence before the Tribunal on which a finding of the normal value under section 15 of the *Special Import Measures Act* could have been made. It concluded that the only issue before the Tribunal in Appeal No. AP-90-023 was whether the evidence justified the respondent's reliance on subparagraph 11(*b*)(iii) of the *Special Import Measures Regulations*. The Federal Court of Appeal returned the matter to the Tribunal for re-determination.

HELD: The appeal is allowed. The respondent determined normal values for the goods imported by the appellant under section 19 of the *Special Import Measures Act*. In making that determination, the respondent was required to determine an amount for profits. The Tribunal is of the view that, in determining that amount, the respondent misconstrued and misapplied section 11 of the *Special Import Measures Regulations*. As a consequence, with respect to certain matters, the respondent did not have all the information necessary to properly carry out the profitability analysis.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	May 26, 1997
Date of Decision:	September 26, 1997
Tribunal Members:	Anthony T. Eyton, Presiding Member Dr. Patricia M. Close, Member Lyle M. Russell, Member
Counsel for the Tribunal:	John L. Syme
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Glenn A. Cranker, for the appellant Rosemarie Millar, for the respondent

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CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-96-199

FLETCHER LEISURE GROUP INC. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ANTHONY T. EYTON, Presiding Member
DR. PATRICIA M. CLOSE, Member
LYLE M. RUSSELL, Member

REASONS FOR DECISION

INTRODUCTION

This is a re-hearing of an appeal arising out of the Tribunal's decision of March 19, 1993, in Appeal Nos. AP-90-023 and AP-90-127, *Fletcher Leisure Group Inc.* v. *The Deputy Minister of National Revenue for Customs and Excise*. In Appeal No. AP-90-023, pursuant to section 61 of the *Special Import Measures Act*[1] (SIMA), the appellant appealed the respondent's re-determination, pursuant to which anti-dumping duties were assessed on certain ski poles which the appellant imported into Canada from Italy.[2] The anti-dumping duties were assessed on the basis of normal values issued by the respondent to the Italian exporter, S.P.F. S.p.A (SPF) on June 30, 1988. The normal values were determined pursuant to subsection 19(*b*) of SIMA and subparagraph 11(*b*)(iii) of the *Special Import Measures Regulations*[3] (the Regulations). Section 19 of SIMA provided, in part, as follows:

> 19. Subject to section 20, where the normal value of any goods cannot be determined under section 15 by reason that there was not, in the opinion of the Deputy Minister, such a number of sales of like goods that comply with all the terms and conditions referred to in that section or that are applicable by virtue of subsection 16(1) as to permit a proper comparison with the sale of the goods to the importer, the normal value of the goods shall be determined, at the option of the Deputy Minister in any case or class of cases, as
>
> (*b*) the aggregate of
> (i) the cost of production of the goods,
> (ii) an amount for administrative, selling and all other costs, and
> (iii) an amount for profits.

Paragraph 11(*b*) of the Regulations provided, in part, as follows:

> 11. For the purposes of paragraph 19(*b*) and subparagraph 20(*c*)(ii) of [SIMA],
>
> (*b*) subject to section 13 of these Regulations, the expression "an amount for profits", in relation to any goods, means an amount equal to

1. R.S.C. 1985, c. S-15.
2. At the time of import, certain ski poles from Italy were subject to the Canadian Import Tribunal's order of December 23, 1986, in Review No. R-8-86, which continued the Anti-dumping Tribunal's finding of May 14, 1984, in Inquiry No. ADT-5-84.
3. SOR/84-927, November 22, 1984, *Canada Gazette* Part II, Vol. 118, No. 25 at 4286.

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> (iii) where subparagraphs (i) and (ii) are not applicable but there are a number of sales of like goods made by other producers located in the country of export which, taken together, produce a profit and are such as to permit a proper comparison, the weighted average profit made on such sales,…or
> (v) where subparagraphs (i) to (iv) are not applicable, 8 per cent of the sum of
> (A) the cost of production of the goods, and
> (B) the amount for administrative, selling and all other costs, as determined in accordance with paragraph (*c*), in relation to the goods.

In Appeal No. AP-90-023, the appellant did not take issue with the respondent's determinations under subparagraph 19(*b*)(i) of SIMA, "cost of production of the goods," or subparagraph 19(*b*)(ii) of SIMA, "administrative, selling and all other costs." The only issue before the Tribunal related to the "amount for profits" determined by the respondent under subparagraph 11(*b*)(iii) of the Regulations. The Tribunal allowed the appeal based on its view that, in applying section 19 of SIMA, the respondent had erred in construing "like goods" to mean only those goods which are "identical in all respects" to the goods sold for export. The Tribunal directed the respondent to re-determine the normal value of the ski poles in issue under section 15 of SIMA. That section provides that normal values are to be determined by comparing the sales of goods sold for export to sales of "like goods" in the country of export. For purposes of the re-determination, the Tribunal directed the respondent to consider SPF's sales in Italy of certain "private brand" ski poles, which the Tribunal considered to be "like" the ski poles which SPF sold to the appellant.

The respondent appealed the Tribunal's decision to the Federal Court of Appeal, which allowed the appeal. In its decision of October 28, 1996,[4] the Federal Court of Appeal found that the Tribunal had erred in directing the respondent to determine the normal value of the goods in issue under section 15 of SIMA. It noted that the respondent had re-determined the normal value of the ski poles under paragraph 19(*b*) of SIMA and calculated an "amount for profits" pursuant to subparagraph 11(*b*)(iii) of the Regulations. The Federal Court of Appeal also noted that, while in its appeal to the Tribunal the appellant had contested the "amount for profits" determined by the respondent, it had not challenged the applicability of paragraph 19(*b*) of SIMA or section 11 of the Regulations.

The Federal Court of Appeal found that, "[i]n such circumstances there was thus no evidence before the Tribunal on which a finding of normal value under Section 15 could have been made.[5]" It concluded that the only issue before the Tribunal in Appeal No. AP-90-023 was whether the evidence justified the respondent's reliance on subparagraph 11(*b*)(iii) of the Regulations. As that issue requires findings of fact that only the Tribunal can make, the Federal Court of Appeal returned the matter to the Tribunal for re-determination.

RE-HEARING

The record from Appeal No. AP-90-023 was put into the record of the re-hearing. The re-hearing was limited solely to argument, all of which was heard *in camera* due to the confidential nature of much of the evidence referred to by counsel.

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4. *The Deputy Minister of National Revenue for Customs and Excise* v. *Fletcher Leisure Group Inc.*, Federal Court of Appeal, Court File No. A-320-93, October 28, 1996.
5. *Ibid.* at 3.

Counsel for the appellant began his argument by referring the Tribunal to paragraph 11(*b*) of the Regulations which sets out the various means of determining "an amount for profits." Counsel submitted that there is a hierarchy under paragraph 11(*b*) and that, in determining an amount for profits for SPF, the respondent was correct in deciding that subparagraphs 11(*b*)(i) and (ii) had no application. That brought the respondent to subparagraph 11(*b*)(iii), which provided that, where there are a number of sales of like goods made by other producers located in the country of export which, taken together, produce a profit and are such as to permit a proper comparison, the weighted average profit made on those sales shall be the "amount for profits" for purposes of subparagraph 19(*b*)(iii) of SIMA.

Counsel for the appellant explained that, in determining an amount for profits for SPF, the respondent reviewed the profit earned by another Italian producer of ski poles, Giuseppe Pronzati S.P.A. (Pronzati), on the sale of 1,204 pairs of ski poles in the Italian market. The respondent determined that Pronzati had earned a profit of 31.6 percent on the sale of 1,204 pairs of ski poles. That profit figure was then used by the respondent under subparagraph 19(*b*)(iii) of SIMA in calculating normal values for SPF.

Counsel for the appellant noted that subparagraph 11(*b*)(iii) of the Regulations requires the respondent to determine an amount for profits by examining sales of like goods which are such as to permit a "proper comparison." Counsel noted that the words "proper comparison" appear in sections 15 and 19 of SIMA and in each of the subparagraphs of paragraph 11(*b*) of the Regulations. He submitted that the notion of a "proper comparison" is central to these provisions and that the respondent, having considered the sale of only 1,204 pairs of ski poles in the Italian market of 600,000 pairs of ski poles, had failed to make a proper comparison.

In support of the position that the 31.6 percent was an excessive profit figure, counsel for the appellant pointed out that, on its overall operations, SPF had a small loss in 1988 and a net profit in 1987 of 0.24 percent. Pronzati had net profits of 0.50 percent and 1.35 percent in 1988 and 1987 respectively. Rossignol Ski Poles Vallee D'Aoste S.p.A., another major ski pole producer in Italy, had a net profit of approximately 5.00 percent in each of 1988 and 1989. Counsel also referred the Tribunal to an analysis of the profitability of the Italian ski pole industry conducted by Mr. Louis Nadon, Customs Attaché with the Mission of Canada to the European Communities which concluded that "[i]nformation available to the Department showed that the weighted average profit earned by [Italian ski pole producers other than SPF] is 3.6 %.[6]"

Counsel for the appellant argued that the Tribunal should conclude that the respondent misapplied subparagraph 11(*b*)(iii) of the Regulations, in light of the fact that the respondent failed to make a proper comparison and the evidence that profit levels for Italian ski pole manufacturers were considerably lower than 31.6 percent. Counsel submitted that the Tribunal should direct the respondent to use the 3.6 percent profit figure in calculating an amount for profits for purposes of determining SPF's normal values. Alternatively, counsel suggested that the Tribunal could direct the respondent to use the 8.0 percent profit figure provided for in subparagraph 11(*b*)(v) of the Regulations.

Counsel for the respondent began her argument by indicating that she would make the same arguments at the re-hearing as she had when Appeal No. AP-90-023 was originally heard. She submitted that three Italian ski pole exporters, SPF, Pronzati and Rossignol, were contacted by the respondent for the purpose of the re-investigation which resulted in the normal values issued to SPF on June 30, 1988.

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6. Exhibit A-12.

Counsel for the respondent submitted that, as subparagraphs 11(*b*)(i) and (ii) of the Regulations could not be used to determine an amount for profits for SPF, the respondent proceeded under subparagraph 11(*b*)(iii). Counsel submitted that, of the two Italian ski pole exporters other than SPF, only Pronzati provided the respondent with information which could be used to calculate an amount for profits under that subparagraph. However, because in addition to manufacturing ski equipment Pronzati manufactured other goods, including tennis equipment, bicycles and roller skates, its profit figure from all operations could not be used as an amount for profits for purposes of subparagraph 11(*b*)(iii). Instead, the respondent conducted a "profitability analysis" of five models of ski poles that Pronzati sold in Italy. Counsel explained that those particular models were chosen because they were identical to ski poles which Pronzati had sold for export to Canada.

Counsel for the respondent explained that, in conducting its analysis, the respondent compared Pronzati's total revenue for each ski pole model with the fully absorbed costs of that model to determine the model's profitability. The respondent conducted this type of analysis on each of five ski pole models which were sold by Pronzati in Italy and also exported by Pronzati to Canada. The respondent used the 31.6 percent figure generated by its analysis in calculating SPF's normal values under paragraph 19(*b*) of SIMA.

DECISION

At all times relevant to Appeal No. AP-90-023 and this re-hearing, sections 15 to 23, 29 and 30 of SIMA contained the provisions governing the calculation of normal values. Section 19 of SIMA provides that, where normal values cannot be determined under section 15 of SIMA, they shall be determined in accordance with one of two possible methods. The second of those methods is set out in paragraph 19(*b*) of SIMA. It provides that normal values shall be determined as the aggregate of: (i) the cost of production of the goods; (ii) an amount for administrative, selling and all other costs; and (iii) an amount for profits.

Paragraph 11(*b*) of the Regulations sets out the meaning of "an amount for profits." As noted above, paragraph 11(*b*) is constructed in a cascading fashion. If subparagraph (i) is not applicable, then resort must be had to subparagraph (ii) and so on. The parties are in agreement that neither subparagraph 11(*b*)(i) nor (ii) applies to the present case. The Tribunal agrees. That takes the Tribunal to subparagraph 11(*b*)(iii), which provides:

> (*b*) subject to section 13 of these Regulations, the expression "an amount for profits", in relation to any goods, means an amount equal to
>
> (iii)where subparagraphs (i) and (ii) are not applicable but there are a number of sales of like goods made by other producers located in the country of export which, taken together, produce a profit and are such as to permit a proper comparison, the weighted average profit made on such sales.

Subparagraph 11(*b*)(iii) of the Regulations, in essence, allows the respondent to use profits earned by other producers on sales of like goods as a proxy for "an amount for profits" for the producer (i.e. SPF) whose normal values are being determined. In the present case, the respondent used the sale by Pronzati of 1,204 pairs of ski poles for that purpose. The appellant has argued that the respondent failed to make a proper comparison in examining the sale of only 1,204 pairs of ski poles in a market of 600,000 pairs. In the Tribunal's view, this matter turns on the meaning to be given to the words "proper comparison." That meaning may be discerned by examining subparagraph 11(*b*)(iii) and the related provisions within SIMA and the Regulations.

Paragraph 11(*b*) of the Regulations is subject to section 13 of the Regulations, which provides:

> 13. For the purpose of determining "an amount for profits" pursuant to paragraph 11(*b*),
>
> (*a*) sales of like goods ... that are such as to permit a proper comparison are sales, other than sales referred to in paragraph 16(2)(*a*) or (*b*) of [SIMA], that satisfy the greatest number of conditions set out in paragraph 15(*a*) to (*e*) of [SIMA], taking into account subsection 16(1) of [SIMA];
> (*b*) the price of like goods shall be adjusted in the manner provided for in sections 3 to 10.

Paragraph 13(*a*) of the Regulations incorporates by reference paragraphs 15(*a*) to (*e*) of SIMA. Section 15 of SIMA provides, in part, as follows:

> 15. Subject to sections 19 and 20, 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
>
> (*a*) to purchasers
> (i) with whom the exporter is not associated ..., and
> (ii) who are at the same or substantially the same trade level as the importer,
> (*b*) in the same or substantially the same quantities as the sale of goods to the importer,
> (*c*) in the ordinary course of trade for use in the country of export in competitive conditions,
> (*e*) at a place from which the goods were shipped directly to Canada or, if the goods have not been shipped to Canada, at the place from which the goods would be shipped to Canada under normal conditions of trade.

Paragraph 13(*b*) of the Regulations provides that, in determining "an amount for profits," the price of the like goods is to be adjusted in the manner provided for in sections 3 to 10 of the Regulations. Pursuant to section 3 of the Regulations, the price of like goods is to be adjusted to reflect quantity discount generally granted in connection with a sale of like goods in the same or substantially the same quantities as the quantities of the goods sold to the importer in Canada.[7]

The remaining sections of the Regulations, 4 to 10, require, among other things, adjustments to the price of like goods for things such as qualitative differences (section 5), differences in conditions of sale (section 5), differences to reflect discounts associated with early payment or "cash discounts" (section 6), differences stemming from who pays, the vendor or the purchaser, for delivery of the goods (section 7) and differences associated with sales to different trade levels (section 9).

In the Tribunal's view, the object of the conditions set out in section 15 of SIMA is to ensure that the respondent, in determining normal values, compares sales of like goods in the domestic market of the exporting country which closely correspond to the sales of goods made for export to Canada. The object of sections 3 through 10 of the Regulations is to ensure that, to the extent that the sales of like goods being considered in the country of export are dissimilar to the sales of goods made for export to Canada, adjustments are made to the sale price of the like goods to reflect fairly these differences.

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7. An example will illustrate how these sections are intended to operate. Where an exporter for whom an amount for profits was being determined under subparagraph 11(*b*)(iii) of the Regulations sold 50,000 snowboards to a purchaser in Canada and sales of that volume of like snowboards by the exporter in its home market would attract a 5 percent discount, but the exporter's sales of like goods in its home market being used by the respondent for purposes of establishing normal values were only of 1,000 snowboards each, the sale price for those home market sales of like goods would be adjusted downward by 5 percent in calculating the amount for profits.

The Tribunal is of the view that the words "proper comparison" in subparagraph 11(*b*)(iii) of the Regulations must be construed bearing these objects in mind. A proper comparison is, therefore, a comparison between exported goods and like goods, where most, if not all, of the conditions set out in section 15 of SIMA are satisfied. Moreover, to have a "proper comparison," the terms and conditions upon which those goods are sold must be similar and, to the extent that they are not, the price of the like goods must be adjusted to take into account the dissimilarities.

Under subparagraph 11(*b*)(iii) of the Regulations, "an amount for profits" means, where there are a number of sales of like goods made by other producers located in the country of export, an amount equal to the weighted average of such sales. In the Tribunal's view, subparagraph 11(*b*)(iii) requires the respondent to consider goods which are "like" those goods for which normal values are being determined. In testimony in Appeal No. AP-90-023, a witness for the respondent stated that, in selecting like goods to examine for purposes of conducting the profitability analysis, the respondent chose to consider ski poles sold by Pronzati in Italy which were identical to or "like" the ski poles exported by Pronzati to Canada. The witness indicated that, in this regard, the respondent was guided by the legislation. The Tribunal is of the view that the respondent's analysis was flawed in this regard. The Tribunal is of the view that, in order to make a "proper comparison," the respondent should have considered Pronzati's sales in Italy of ski poles which were "like" those ski poles which SPF exported to Canada, not those which were "like" the poles that Pronzati exported.

In addition, in order to determine an amount for profits under subparagraph 11(*b*)(iii) of the Regulations, in addition to the information necessary to determine whether paragraph 13(*a*) was satisfied by Pronzati's sale of 1,204 pairs of ski poles, pursuant to paragraph 13(*b*), the respondent required the information necessary to make any appropriate adjustments to Pronzati's sale price for the 1,204 pairs of ski poles.

Leaving aside the question of whether or not the requirements of paragraph 13(*a*) of the Regulations were satisfied, the Tribunal is of the view that the respondent did not have all of the information necessary to conduct the analysis required under paragraph 13(*b*). Moreover, the Tribunal is of the view that, in conducting the profitability analysis, the respondent misconstrued and misapplied certain of these provisions. The evidence reveals the following with respect to the application of sections 3 to 10 of the Regulations.

Section 3 - Quantitative Adjustments

Section 3 of the Regulations provides that the price of like goods shall be adjusted to reflect the quantity discount generally granted in connection with a sale of like goods in the same or substantially the same quantities as the quantities of the goods sold to the importer in Canada. Each of the individual sales by Pronzati which made up the sale of 1,204 pairs of ski poles in the aggregate were of a relatively low volume. However, the evidence indicates that, on certain high volume sales to large customers in Italy, Pronzati did provide volume discounts. These sales were not included in the respondent's profitability analysis. There was some question as to whether such discounts were only granted on sales of private brand ski poles, as opposed to ski poles of the type utilized for the respondent's profitability analysis. However, the record shows that one of the five models of ski poles included in the respondent's profitability analysis was sold to retailers at a unit price substantially higher than was charged to a large Italian purchaser for that same model.

The appellant purchased 50,000 pairs of ski poles from SPF. In the Tribunal's view, that fact coupled with the evidence that Pronzati provided volume discounts on sales of that magnitude should have led the respondent to adjust the weighted average price of the 1,204 ski poles downwards to take into account volume discounts.

Section 5 - Qualitative Differences

Section 5 of the Regulations requires the respondent to adjust the price of the like goods to take into account any differences in quality, structure, design, etc., between the like goods and the goods sold for export. Under subparagraph 11(*b*)(iii) of the Regulations, "an amount for profits" means, where there are a number of sales of like goods made by other producers located in the country of export, an amount equal to the weighted average of such sales. As noted above, the Tribunal is of the view that the respondent should have considered Pronzati's sales in Italy of ski poles which were "like" those ski poles which SPF exported to Canada, not those which were "like" the poles that Pronzati exported. Having chosen to compare the like goods sold by Pronzati in Italy to goods that Pronzati exported to Canada, it would appear that the respondent did not consider whether there were any qualitative differences between the like goods that were considered and the ski poles which SPF sold to the appellant and, if such differences existed, whether the price of the like goods should be adjusted accordingly.

Section 6 - Discounts

Section 6 of the Regulations provides that, 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 such discount for which the sale of the goods to the importer in Canada would qualify if that sale had occurred in the country of export.

The evidence indicates that certain discounts of the type contemplated by section 6 of the Regulations were offered by Pronzati in connection with the sale of ski poles, but that none of its purchasers ever paid for goods in such a way as to avail themselves of the discounts. The witness for the respondent testified that, in light of that fact, in conducting the profitability analysis, the respondent did not make an adjustment to the weighted average price of the 1,204 pairs of ski poles to reflect these discounts.

Section 6 of the Regulations provides that, where a discount is generally granted, the price of the like goods shall be adjusted by deducting therefrom the amount of such discount for which the sale of the goods to the importer in Canada would qualify if that sale had occurred in the country of export. In the Tribunal's view, it is arguable that, even though none of Pronzati's customers availed themselves of the discounts offered by Pronzati, in conducting the profitability analysis, the respondent should have made an adjustment to the price of the like goods to take into account those discounts. In this regard, the Tribunal notes that section 6 refers to whether the sales of the goods to Canada would have qualified for a discount, not whether buyers in the export market actually availed themselves of the discount.

Section 7 - Delivery Costs

Section 7 of the Regulations provides that, where the like goods being considered for purposes of establishing an amount for profits are sold at a delivered price, the price of the like goods shall be adjusted by deducting therefrom the cost of delivery. The evidence indicates that Pronzati sold the 1,204 pairs of ski poles at delivered prices. The goods sold by SPF to the appellant were "ex-works" SPF. In other words, the appellant was paid for the transport of the ski poles to Canada.

However, in conducting the profitability analysis, the respondent did not make a deduction pursuant to section 7 of the Regulations. The witness for the respondent explained that the cost of transportation had been accounted for at a different stage of the profitability analysis. She indicated that, in calculating amounts for general, selling and administrative expenses (GS&A) associated with Pronzati's sale of like goods, an

amount for transportation had been included. By including this amount in GS&A, the respondent had increased expenses to account for transportation to the customer. The net result would be to reduce the profit earned by Pronzati on the sale of 1,204 pairs of ski poles. In the witness's view, it was therefore unnecessary to make a deduction under section 7.

The Tribunal makes two observations concerning this point. First, the respondent did not examine Pronzati's GS&A accounts, including transportation, on its ski pole business alone, but rather on its entire business, which included roller blades, bicycles and a variety of other goods. The Tribunal has serious doubts as to whether this rough approximation would have accurately picked up the transportation amount that should have been deducted under section 7 of the Regulations. In the Tribunal's view, this approach is not consistent with the requirements of section 7.

Section 9 - Substitution of Trade Level

The appellant purchased 50,000 ski poles from SPF as a distributor. Pronzati sold the 1,204 pairs of "like" ski poles to retailers. Section 9 of the Regulations contemplates an adjustment to the price of like goods where those goods have been sold at different trade levels from the level at which the goods were sold to the Canadian purchaser. It would appear as though the respondent did not make a "trade level" adjustment in conducting the profitability analysis.

CONCLUSION

The Tribunal is of the view that, in determining an amount for profits under subparagraph 11(*b*)(iii) of the Regulations, the respondent misconstrued and misapplied the referenced provisions of the Regulations. As a consequence, with respect to certain matters, the respondent did not have all the information necessary to properly carry out the profitability analysis. With respect to other matters, it had the necessary information, but did not employ it correctly. In light of these errors and in light of the difficulty associated with going back, at this late date, to try to gather the information necessary to perform "an amount for profits" analysis under subparagraph 11(*b*)(iii) of the Regulations, the Tribunal directs the respondent to calculate SPF's normal values in accordance with subparagraph 11(*b*)(v) of the Regulations.

Anthony T. Eyton
Anthony T. Eyton
Presiding Member

Dr. Patricia M. Close
Dr. Patricia M. Close
Member

Lyle M. Russell
Lyle M. Russell
Member