Ottawa, Tuesday, September 15, 1998

Appeal No. AP-97-045

IN THE MATTER OF an appeal heard on November 26 and 27, 1997, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue dated April 14, 1997, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

RIGEL SHIPPING CANADA INC. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

AND

ULTRAMAR LTD. (FORMERLY ULTRAMAR CANADA INC.) AND CANADIAN SHIPOWNERS ASSOCIATION **Interveners**

DECISION OF THE TRIBUNAL

The appeal is allowed in part.

Patricia M. Close
Patricia M. Close
Presiding Member

Raynald Guay
Raynald Guay
Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

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and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

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ULTRAMAR LTD. (FORMERLY ULTRAMAR CANADA INC.) AND CANADIAN SHIPOWNERS ASSOCIATION **Interveners**

This is an appeal under section 67 of the *Customs Act* (the Act) of a decision of the Deputy Minister of National Revenue dated April 14, 1997. The issue in this appeal is whether the appraisal of the value for duty was correct.

The appellant purchased three vessels, the *Emsstern* and the *Elbestern* which, when ordered in 1991, cost US$18,238,460 each, and the *Jadestern* which, when ordered later in 1991, cost US$19,140,460. The vessels were built by MTW Schiffswerft GmbH (MTW) of Wismar, Germany, and delivered in 1992 (the *Emsstern* and the *Elbestern*) and early 1993 (the *Jadestern*).

Ultramar Ltd. (Ultramar) is a Canadian refiner and marketer of petroleum products, primarily in Eastern Canada. In order to move its products from the refinery to the market, it requires access to tanker ships that have the capacity and ability to carry petroleum products in the St. Lawrence River and along Canada's east coast.

In 1992, Ultramar contacted a ship broker and gave him instructions to search the world market to find tankers which would be suitable for its needs. He identified three chemical and petroleum tankers under construction by MTW (the Rigel vessels).

The ship broker met with representatives from the Department of National Revenue (Revenue Canada) to decide upon the method of calculating the value for duty. Following a series of communications, it was agreed that the usual method for calculating the value for duty, i.e. the transaction value method in section 48 of the Act, would not be appropriate because, as the vessels were coming into Canada pursuant to a charter party agreement, there was no sale for export to Canada. Consequently, Revenue Canada decided, and the appellant agreed, to use the residual method found in section 53 of the Act. In order to determine this value, Revenue Canada directed Ultramar to average the values indicated by two appraisals of the Rigel vessels. The two appraisals were averaged, and duty was paid on the amount of US$11,280,000 for the *Emsstern* and the *Elbestern*, which were imported into Canada in November 1993, and on the amount of US$12,150,000 for the *Jadestern*, which was imported into Canada in March 1994.

Following receipt of a complaint by the Canadian Shipowners Association, Revenue Canada re-appraised the value of the Rigel vessels. On April 14, 1997, the respondent issued re-appraised values of the vessels pursuant to subsection 63(3) of the Act in the following amounts: US$15,370,000 each for the *Emsstern* and the *Elbestern*; and US$15,760,000 for the *Jadestern*.

HELD: The appeal is allowed in part. The Tribunal concludes that the respondent's calculation of the value for duty of the Rigel vessels was, in part, incorrect. The Tribunal is of the view that section 67 of the Act allows it to substitute what it believes to be the correct value for duty and that it is not simply limited to accepting or rejecting the respondent's determination. Taking into account all of the evidence, the Tribunal concludes that the correct values on the date of importation are US$14,860,926 each for the *Emsstern* and the *Elbestern* and US$14,807,000 for the *Jadestern*. It is these amounts on which the applicable duty should be paid.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	November 26 and 27, 1997
Date of Decision:	September 15, 1998
Tribunal Members:	Patricia M. Close, Presiding Member Raynald Guay, Member Peter F. Thalheimer, Member
Counsel for the Tribunal:	Gerry H. Stobo
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Glenn A. Cranker and Randall J. Hofley, for the appellant and Ultramar Ltd. Christopher Rupar, for the respondent Michael A. Kelen, for the Canadian Shipowners Association

CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

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and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

and

ULTRAMAR LTD. (FORMERLY ULTRAMAR CANADA INC.) AND CANADIAN SHIPOWNERS ASSOCIATION **Interveners**

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member
RAYNALD GUAY, Member
PETER F. THALHEIMER, Member

REASONS FOR DECISION

INTRODUCTION

This is an appeal under section 67 of the *Customs Act*[1] (the Act) of a decision of the Deputy Minister of National Revenue dated April 14, 1997. The issue in this appeal is whether the appraisal of the value for duty was correct.

BACKGROUND

The appellant is a subsidiary of Rigel Schiffahrts GmbH of Bremen, Germany. The appellant purchased three vessels, the *Emsstern* and the *Elbestern* which, when ordered in 1991, cost US$18,238,460 each, and the *Jadestern* which, when ordered later in 1991, cost US$19,140,460.[2] The vessels were built by MTW Schiffswerft GmbH (MTW) of Wismar, Germany, and delivered in 1992 (the *Emsstern* and the *Elbestern*) and early 1993 (the *Jadestern*).

Ultramar Ltd. (Ultramar) is a Canadian refiner and marketer of petroleum products, primarily in Eastern Canada. In order to move its products from the refinery to the market, it requires access to tanker ships that have the capacity and ability to carry petroleum products in the St. Lawrence River and along Canada's east coast. In 1992, Ultramar decided that it needed to replace the ageing ships that it had engaged by way of a charter hire agreement with Socanav Inc., a Canadian shipping consortium. This agreement was entered into in 1985 and was scheduled to expire in 1995. Ultramar wanted to engage the services of a newer generation of tankers.

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1. R.S.C. 1985, c. 1 (2nd Supp.).
2. *Transcript of Public Hearing*, November 26, 1997, at 34-35. Although the three vessels were sold for the same price in Deutsche marks, the *Jadestern* cost more because, when it was ordered slightly later than the other two, the exchange rate between the US dollar and the Deutsche mark had changed.

In 1992, Ultramar contacted Mr. Brian G. Ritchie, a ship broker, and gave him instructions to search the world market to find tankers which would be suitable for its needs. He identified three chemical and petroleum tankers under construction by MTW (the Rigel vessels), as well as three other vessels scheduled for delivery in late 1993 and early 1994 from a Korean shipyard for purchase by Knud I. Larsen Shipping Company of Denmark (Larsen). In some respects, the vessels that Larsen ordered (the Larsen vessels) were more sophisticated than the Rigel vessels. For example, he noted that the Larsen vessels could be operated by a crew of 8 rather than the minimum crew size of 14 for the Rigel vessels. Larsen officials were keen to win the Ultramar charter party contract and spent considerable time and money on legal fees and tax advice to this end. In the final analysis, however, Mr. Ritchie recommended, and Ultramar chose, the Rigel vessels over the Larsen vessels.

Mr. Ritchie testified that he was aware of the value for duty issue that the importation of ships would raise and, in November 1992, met with representatives from the Department of National Revenue (Revenue Canada) to discuss this issue and to decide upon the method of calculating the value for duty. Following a series of communications between Mr. Ritchie and Revenue Canada, it was agreed that the usual method for calculating the value for duty, i.e. the transaction value method in section 48 of the Act, would not be appropriate because, as the vessels were coming into Canada pursuant to a charter party agreement, there was no sale for export to Canada. Consequently, Revenue Canada decided, and the appellant agreed, to use the residual method found in section 53 of the Act.[3] In order to determine this value, Revenue Canada directed Ultramar to average the values indicated by two appraisals of the Rigel vessels.

The two appraisals were duly received from internationally known ship surveyors and valuators and provided to Revenue Canada. Those were in the form of:

(1) letters, dated March 15 and October 8, 1993, from Francis A. Martin and Ottaway, Inc., in which the *Elbestern* and the *Emsstern* were valued at approximately US$11.0 million each, and a letter, dated February 15, 1994, from Martin, Ottaway and van Hemmen, Inc., in which the *Jadestern* was valued at approximately US$11.3 million; and

(2) a letter, dated July 6, 1994, from Jacq. Pierot Jr. & Sons Inc., in which the *Elbestern* and the *Emsstern* were valued at US$11,562,000 each and the *Jadestern* at US$13 million.

As agreed between the appellant and Revenue Canada, these values were averaged, and duty was paid on the amount of US$11,280,000 for the *Emsstern* and the *Elbestern*, which were imported into Canada in November 1993, and on the amount of US$12,150,000 for the *Jadestern*, which was imported into Canada in March 1994.

In November 1993, the respondent received a letter written on behalf of the Canadian Shipowners Association (CSA) saying that the Rigel vessels were seriously undervalued.[4] The letter also indicated that

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3. Section 53 reads as follows:

53. Where the value for duty of goods is not appraised under sections 48 to 52, it shall be appraised on the basis of

(*a*) value derived from the method, from among the methods of valuation set out in sections 48 to 52, that, when applied in a flexible manner to the extent necessary to arrive at a value for duty of the goods, conforms closer to the requirements with respect to that method than any other method so applied; and

(*b*) information available in Canada.

4. Letter dated November 25, 1993, from Mr. Michael A. Kelen, counsel for the CSA, to Revenue Canada, Exhibit A-18.

Canadian shipbuilders would be adversely affected by the importation of these "undervalued" foreign-built vessels. Revenue Canada consequently conducted a re-appraisal of the value for duty pursuant to section 61 of the Act and ordered several other appraisals. These appraisals were performed by C.W. Kellock & Co. Ltd., A.P. Moller Sale and Purchase, Trafco UK Ltd. and Braemar Shipbrokers Limited (Braemar), again all highly regarded ship appraisers. Their approaches to valuation differed from each other, as well as from that used by Martin, Ottaway & van Hemmen, Inc. and Jacq. Pierot Jr. & Sons, Inc. For example, one relied on a replacement cost depreciated approach, another on a freight market analysis and yet another on the new building comparison approach. These different approaches led to different values, ranging from US$11.0 million to US$21.5 million.

After considering the various appraisals submitted and noting the different valuation approaches, the respondent settled on Braemar's evaluations, concluding that they were the most "technically sound and industry-supported valuations.[5]" Using the replacement cost of new shipbuilding methodology for its appraisals, Braemar evaluated the vessels' worth at US$16,650,000 each for the *Emsstern* and *Elbestern* and US$17,250,000 for the *Jadestern*.[6]

Following receipt of these values from Revenue Canada, the appellant entered into further discussions in an effort to work out mutually agreeable values. Not having been able to agree with Revenue Canada on final values, the appellant retained the services of another internationally known ship charter, brokerage and valuation house, H. Clarkson & Company Limited (Clarkson). On August 29, 1996, Clarkson provided its assessment of the values of the Rigel vessels. Based on the comparable sales methodology, Clarkson's opinion of the values of the Rigel vessels was: US$13,634,747 each for the *Elbestern* and the *Emsstern*; and US$13,585,500 for the *Jadestern*. This report was submitted to the respondent.

At the respondent's request, Braemar reviewed the Clarkson appraisals. Braemar then issued a revised report in December 1996 in which it changed its evaluation methodology, i.e. from the replacement cost of new shipbuilding methodology to the comparable sales methodology used by Clarkson. Braemar revised its values downwards to the following amounts: US$15,370,000 each for the *Emsstern* and the *Elbestern*; and US$15,760,000 for the *Jadestern*.

On April 14, 1997, the respondent, relying on Braemar's revised report, issued re-appraised values of the vessels pursuant to subsection 63(3) of the Act. While these figures came closer to those in the Clarkson appraisal, there was, nevertheless, still a difference of US$1,735,253 with respect to the *Emsstern* and the *Elbestern*, and US$2,174,500 with respect to the *Jadestern*. The appellant continued to disagree with the respondent's determination of the value for duty rendered on April 14, 1997, hence, the appeal to the Tribunal.

ISSUE

Were the respondent's re-appraised values of US$15,370,000 each for the *Emsstern* and the *Elbestern* and US$15,760,000 for the *Jadestern* correct?

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5. Letter dated November 10, 1995, from Revenue Canada to Mr. Brian Ritchie, Exhibit 9.2, Tab 1.
6. Initially, Braemar evaluated the *Elbestern* the same as the *Jadestern*, mistakenly believing that the *Elbestern* was built in 1993 rather than in 1992. Once this error was noted, Braemar appraised the *Emsstern* and *Elbestern* as if they were identical.

APPELLANT'S POSITION

The first witness to testify on behalf of the appellant was Mr. Brian Ritchie, who described the search and negotiation process which he undertook on behalf of Ultramar and which led to his recommending the Rigel vessels. While acknowledging the many positive characteristics of the Rigel vessels, he noted certain quality problems. For example, the Rigel vessels' loading lines could not hold pressure to an acceptable standard and, therefore, all the valves on the loading and discharge lines had to be changed. As well, the Rigel vessels' epoxy coating on the tanks was not adhering to the tank walls and had to be redone. As the vessels were the first chemical tankers ever produced by the MTW shipyards, it seemed certain that some start-up problems would occur, which lowered the value of the Rigel vessels. Also, the thermal heating lines on the Rigel vessels also had to be replaced. Furthermore, it was noted that the appellant was required to perform a retrofit in order to maintain the vessels' safety and efficiency.

Mr. Ritchie testified that, although the vessels were more sophisticated than those which the appellant had previously chartered from Socanav Inc., they were less sophisticated than similar ships built at the same time, such as the Larsen vessels. He noted that the Larsen vessels' level of sophistication allowed them to be operated by an 8-member crew, compared to the 14-member crew needed to operate the Rigel vessels. In his view, the Rigel vessels were of a satisfactory quality, but were not the "Mercedes Benz" of their category, as suggested by the CSA.

Another witness, Mr. Kieran J. Shanahan, a former Ultramar official, testified about the characteristics that the appellant sought in a vessel and confirmed comments made by Mr. Ritchie about the quality concerns that Ultramar experienced after taking possession of the vessels.

Mr. David J. Tantrum, a senior appraiser for ship valuations at Martin, Ottaway, van Hemmen and Dolan, Inc. of New Jersey, was called by the appellant to give evidence about his firm's appraisal. Mr. Tantrum was qualified as an expert in ship valuation. He gave evidence regarding the valuation performed by his firm in March 1993. Mr. Tantrum testified that his firm was initially asked by the appellant to provide an appraisal of the Larsen vessels (believing these to be the ships that were to be imported). He explained that his firm used the investment return methodology to value the Larsen vessels, yielding the values of US$11.0 million each for the *Elbestern* and the *Emsstern* and US$11.3 million for the *Jadestern*. His firm did not use the (preferred) comparable sales approach because, at the time of its appraisal in March 1993, there had not been any recent sales of comparable ships.

Several weeks later, Mr. Tantrum's firm was asked to compare the Larsen vessels with the Rigel vessels. In doing so, his firm identified some differences between the Rigel vessels and the Larsen vessels but, when all taken together, concluded that there was little or no difference in final values. In October 1993, his firm was asked to again update its valuations. In preparing this update, the May 1993 sale of the *Mikhail Romm* and her sister ships (the *Ivan Pyrev*, the *Vasily Mercurev* and the *Mikhail Kalatozov*) was noted. Although this sale was not taken into account in his firm's first appraisal, according to Mr. Tantrum, the US$12 million price tag for those ships supported its appraisals of the Larsen vessels and the Rigel vessels.

Mr. Michael Blayney, a ship appraiser with Clarkson, then gave evidence on behalf of the appellant. Mr. Blayney, who was qualified as an expert in ship valuation, indicated that he has 40 years' involvement in the shipping industry and has, for the past 35 years, specialized in the sale and purchase of merchant ships. He worked his way from a very junior position at Clarkson to become one of its senior and most highly respected officials. Mr. Blayney noted that Clarkson publishes widely read and highly regarded shipping trade publications, such as a quarterly review that contains a survey of, and forecast for, the chemical (and other ship) tanker market. He and his staff follow all sales transactions involving chemical/petroleum tankers throughout the world.

He noted that Clarkson, which was formed in 1852, now employs over 300 people worldwide and has one of the largest shipping research teams in the world. One of Clarkson's divisions, the Tanker Division, has almost 35 brokers dedicated to activities involving tankers, ranging from the smallest tankers carrying chemical products to the largest super tankers carrying oil products.

Mr. Blayney testified that the preferred way to value used ships, such as the Rigel vessels, is to use the comparable sales approach.[7] In its report dated August 29, 1996, Clarkson identified four chemical/oil tankers with roughly the same features as the Rigel vessels, the *Mikhail Romm* and her three sister ships which were sold in May 1993. The *Mikhail Romm* and her three sister ships were sold for about US$12 million. Despite Clarkson's reservations about the comparability of the *Mikhail Romm*, it felt that it was similar enough to the Rigel vessels to arrive at a fair market value. Appended to this decision is a chart setting out a comparison of the primary characteristics of the Rigel vessels and the *Mikhail Romm*.

In preparing its retrospective analysis of the price of a comparable petroleum/chemical tanker in late 1993 and early 1994 to a willing buyer, Clarkson considered the market conditions for ship sales and purchases at those times. In late 1993 and early 1994, it noted that the petroleum/chemical tanker market was depressed due to a recession in Europe, the Far East and North America. The evidence presented by Mr. Blayney indicated that the sale/purchase market for used petroleum/chemical tankers was also very flat. He also noted that the used chemical tanker sale market was so bleak that two roughly comparable chemical tankers, which had been for sale for a number of months at that time, were in fact taken off the market when no buyer could be found.

Clarkson noted in its autumn 1993 "Chemical Tanker Trends & Outlook" report that the freight earnings of the chemical tankers had been severely impacted by the decline in industrial activity. This directly led to a low level of freight earnings.

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7. Clarkson set out its methodology of valuation in its report dated August 29, 1996, Exhibit 6.2, Tab 2 at 3. It states:

> Whilst in theory ship valuation is in itself a fairly straightforward procedure it is not a precise science and inevitably involves a certain amount of opinion, consequently it is rare that any 2 or more brokers will agree exactly on the figures. The main criteria employed by most international ship brokers for valuation purposes is principally using comparable tonnage sold and thereafter comparing side by side the vessel to be valued against the vessel sold. An analysis of all the major characteristics will then be made, such as type/size/year of build/main machinery etc. and will also take any additional special features into consideration and these will be looked at on a plus or minus scale. It is generally accepted that the useful life of a vessel is about 20 years and in general, owners will depreciate their vessel over a 15/20 year period, and thus a broker will normally use 5/6 percent allowance for each year of age. In this respect, the year and not the month is considered to be the vessel's birthday irrespective of whether delivered in January or December.
>
> Unless we have been requested to value a vessel for a specific purpose such as replacement, scrap or including a charter, the basis upon which our assessment is made is as a going concern in charterfree and seaworthy condition on a "willing Buyer willing Seller" basis on the date of which the valuation is required. A broker will inevitably take account of the state of the market, but will not anticipate the future or calculate specifically high or specifically low figures, but will endeavour to take as balanced a view as reasonably possible based on all the known facts.

It was against this economic backdrop that Clarkson conducted its appraisal. In order to assess the value of the Rigel vessels using the *Mikhail Romm* as the benchmark, it was necessary for it, first, to arrive at a common base value, taking into account the age difference between the vessels, and, second, to compare and value their particular attributes.

To arrive at this common base value between the *Mikhail Romm* and the Rigel vessels, it was necessary to account for the age difference between the vessels. Clarkson used an industry norm of 6 percent per annum appreciation/depreciation rate. Using the US$12 million sale price of the *Mikhail Romm* as the starting point, Clarkson appreciated that amount by 6 percent per annum for four years to arrive at a value of US$15,149,718 each for the *Emsstern* and the *Elbestern*, because those vessels, being 1992 models, were four years newer than the *Mikhail Romm*, and appreciated it for five years to arrive at a value of US$16,058,700 for the *Jadestern*, being a 1993 model. Because the *Jadestern* was built in 1993 and not imported until 1994, one year later than her sister ships and almost one year after the May 1993 sale of the *Mikhail Romm*, Clarkson depreciated her value by 6 percent to account for her importation as a year-old ship. Her value at importation in 1994 was, therefore, US$15,095,000.[8]

Next, Clarkson looked at the differences in the ships' holding tanks. The Rigel vessels' tanks were epoxy coated. The *Mikhail Romm*'s tanks were, on the other hand, 50 percent stainless steel. Clarkson's evidence indicated that stainless steel tanks could hold a wider variety of cargo, including liquid chemicals, than epoxy-coated tanks. Consequently, ships with stainless steel tanks earn more in charter rates than those with epoxy-coated tanks. In short, stainless steel tanks improve the vessel's value.[9] In support of this, Mr. Blayney noted a 26 percent differential between what a 12,000-dead weigh ton (DWT) vessel with epoxy-coated tanks could earn per day in the spring of 1992 and what the same vessel with stainless steel tanks could earn. The differential increases to almost 40 percent when looked at in the spring of 1993 and the spring of 1994.[10]

Clarkson set about to determine what extra value should be given to the *Mikhail Romm* in view of her stainless steel tanks. Overall, Clarkson's conclusion was that this 26 to 40 percent earning differential

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8. *Ibid.* Appendix 6. The goal of these calculations is to give a starting point for the comparison. Because the *Mikhail Romm* was built in 1988, four years earlier than the *Elbestern* and the *Emsstern* and five years earlier than the *Jadestern*, it is necessary to calculate the value of ships, four and five years newer than the *Mikhail Romm*, in May 1993 when it was sold for US$12 million. Naturally, one would expect that ships built in 1992 and 1993 would be worth more than a ship built in 1988. The *Jadestern*, built one year later than her sister ships, would have a higher value. However, because it was imported one year later, it is necessary to depreciate it by 6 percent, hence, the different values.

9. This view was supported by Mr. Tantrum's testimony. *Transcript of Public Hearing*, November 26, 1997, at 259-60.

10. Public Expert Report of H. Clarkson & Company Limited, Exhibit 20.1, Tab C:

Timecharter Market, US$/Day			
Mid 1980s Built	**7,000 dwt/coated**	**12,000 dwt/coated**	**12,000 dwt/stainless steel**
Spring 1992	6,000	9,500	12,000
Spring 1993	5,800	7,500	10,500
Spring 1994	5,800	7,500	10,500

warranted an increase of 15 to 20 percent of the *Mikhail Romm*'s value over the Rigel vessels. Clarkson took the high end of this range, 20 percent, and reduced it by 50 percent to take into account the fact that only half of the *Mikhail Romm*'s tanks were made of stainless steel. To take into account the tanks' extra value, it reduced the Rigel vessels' value by 10 percent. Consequently, their values become US$13,634,747 each for the *Emsstern* and the *Elbestern* and US$13,585,500 for the *Jadestern*.

Clarkson next considered the difference in the ship's hull construction. The *Mikhail Romm* had a single hull, while the Rigel vessels had double hulls. The *Mikhail Romm* did, however, have a double bottom feature which gave it enhanced strength and safety, albeit not to the same degree as a double hull. Mr. Blayney explained that double hulls are not currently mandatory in Canada, although they were expected to become so around 2010. He indicated that it would cost slightly more to build a ship with a double hull, but that this feature would not in and of itself generate higher earnings in the charter hire market. Ship purchasers, being as frugal as they are, would not, according to Mr. Blayney, pay a premium for a vessel with this feature.

Mr. Blayney testified that Clarkson found it very difficult to determine what difference there would be on a double-hulled versus a single-hulled ship in terms of second-hand or used values. As he stated, "one would acknowledge that in the initial construction of the vessel there would be some additional costs in steel, but in the secondhand market that if you don't need a double hull to trade your vessel, then an owner is not likely to want to pay a premium for that facility.[11]" Clarkson did not give the Rigel vessels an increase in value for this feature. Instead, they "parked" this feature and came back to it later by offsetting it and the higher ice class rating of the Rigel vessels against the *Mikhail Romm*'s superior engine size, speed and carrying capacity.

Mr. Blayney then turned his attention to the ice class designation of the vessels. He noted that the Rigel vessels have an Ice Class 1A rating, while the *Mikhail Romm*'s rating is Ice Class 1B. The higher the ice class rating, the greater the ship's ability to navigate water in difficult ice conditions. It was Mr. Blayney's understanding that this feature was superfluous to the needs of Ultramar, as it did not intend to trade in Arctic waters. The closest that Ultramar intended to get to the Arctic was Goose Bay, Labrador, and then, only during the summer when no ice class requirements existed at all.

Mr. Blayney did admit that having a higher ice class designation meant that a vessel could navigate some waters that vessels with a lower ice class designation could not. However, he went on to say, that "this higher ice class is only actually needed in the Arctic and there are very few people trading in the Arctic.[12]" However, he acknowledged that the higher ice class designation may have some value and so, as mentioned above, this feature was offset against the *Mikhail Romm*'s larger cubic capacity, bigger engine size and faster speed.

The Clarkson report noted that the *Mikhail Romm* has a larger carrying capacity, bigger engine size and slightly higher speed than the Rigel vessels. In theory, these features would, according to Mr. Blayney, mean that a vessel could earn more with her capacity to carry more cargo and travel faster and longer with her larger engine at a higher speed. These latter features could mean one or two extra voyages throughout a year's trading. But he went on to say that Clarkson could not precisely quantify the value of these features because ships often do not carry a full cargo and, "in general," travel at about 13 knots, a speed that the

11. *Transcript of Public Hearing*, Vol. 1, November 27, 1997, at 408.
12. *Ibid*. at 488.

Mikhail Romm and the Rigel vessels could handle. Taking these extra values into account, Clarkson decided to offset these against the Rigel vessels' higher ice class designation and double hull construction.

Clarkson's final values were US$13,634,747 each for the *Emsstern* and the *Elbestern* and US$13,585,500 for the *Jadestern*.

RESPONDENT'S POSITION

Mr. William Bays, who was qualified as an expert in ship valuation, testified on behalf of the respondent. Like Mr. Blayney, Mr. Bays has a long and distinguished career in the shipping industry. He began his work in the shipping industry in 1953 with Clarkson, where he remained until 1983 when he left, having attained the position of main Board Director, to start his own shipbroking and valuation company, Braemar. Braemar, like Clarkson, is a highly respected shipbroking and valuation firm.

Although Mr. Bays was not the first to handle the "Rigel file" at Braemar, he was familiar with the valuation work performed by his colleagues in late 1993 and 1994. In January 1994, when Braemar first offered its opinion on the Rigel vessels' value, it noted that "there were very few similar ships available and indeed we have not recorded any meaningful sales in the last year.[13]" In the absence of meaningful sales with which to compare the Rigel vessels, Braemar adopted a valuation method using the replacement cost of new shipbuilding. It noted that one would have had to pay, in January 1994, to replace a vessel with similar features and characteristics, about US$18 million to US$19 million. However, it noted that there had been a "weakening of the shipping markets since [the Rigel vessels] were ordered and delivered.[14]" Hence, its initial valuations were US$16,650,000 each for the *Elbestern* and the *Emsstern* and US$17,250,000 for the *Jadestern*. Braemar also noted, in its covering letter to that report, that the freight market was reasonably unattractive at that time, that there were more than enough ships around to take care of industry requirements and that, therefore, few orders for ships would likely be placed.

Following its initial appraisal, Braemar carried on an exchange of correspondence with the respondent, in which Braemar responded to a series of questions about the basis of its appraisal and commented on the appraisals of the other ship valuators. After Braemar reviewed the Clarkson report dated August 1996, Braemar changed its appraisal methodology to the comparable sales methodology. In December 1996, Braemar issued a revised report in which Clarkson's analysis was scrutinized item by item.[15]

In conducting its later appraisal, Braemar, like Clarkson, attempted to view the used chemical tanker market as it was in late 1993 and early 1994. In this regard, it took into account the general economic climate which, at that time, would have impacted on the used chemical tanker sale market. To this end, it concluded that the "product/chemical tanker market enjoyed a modest but consistently improving rise in values throughout 1993, with prices continuing to strengthen in 1994.[16]"

Braemar also felt that the market for "nearly new" ships similar to the Rigel vessels was sufficiently robust to warrant a 4 percent increase in value for the *Emsstern* and the *Elbestern* and a 7 percent increase in

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13. Letter from Braemar to Revenue Canada dated January 19, 1994, Exhibit A-57 at 2.
14. Letter from Braemar to Revenue Canada dated April 14, 1994, Exhibit A-57 at 23-24.
15. Letter dated December 12, 1996, with revised report from Braemar to Revenue Canada, Exhibit 6.2, Tab 3.
16. *Ibid*.

value for the *Jadestern*. Braemar's optimism found support for increasing the value of the Rigel vessels because, in part, the new shipbuilding market in 1993-94 was holding sale prices constant to prices in 1991-92. As well, it noted healthy sales activity in another sector of shipping, the Panamax sector which deals with ships carrying dry cargoes often weighing 60,000 to 70,000 DWT. According to Braemar, the robust or healthy state of the dry cargo market would, by its sheer kinetic energy, pull up the other trading sectors, such as the chemical/petroleum product sector.[17] Finally, Braemar cited a Clarkson research report entitled "Chemical Tanker Trends & Outlook," Autumn 1993, which pointed to a 2 to 3 percent per annum increase in trade growth in the longer term within the chemical tanker sector.[18] This economic analysis led Braemar to conclude that "the market was due for a rise and that an investment suggested by our values of the Rigel ships was by no means too high.[19]" It was against this backdrop that Braemar then looked at the differences in age and features between the ships.

Braemar begins by agreeing with Clarkson that a 6 percent per annum appreciation/depreciation rate was necessary to get a common base value to account for the age difference between the Rigel vessels and the *Mikhail Romm*. Consequently, Braemar's base values, taking into account the age difference of the vessels along with the 4 percent and the 7 percent economic increase yield values of US$15,755,706 each for the *Emsstern* and the *Elbestern* and US$16,151,650 for the *Jadestern*.

Braemar then turned its attention to Clarkson's treatment of stainless steel tanks. In Braemar's opinion, the *Mikhail Romm*'s stainless steel tanks should account for only a 7.5 percent increase over the Rigel vessels and not 10.0 percent as submitted by Clarkson. In its opinion, this feature should be assessed in view of its suitability for the kind of activity that the buyer intends for it, not on the impact that it has on earning capacity. Mr. Bays noted that Ultramar had little need for stainless steel tanks, given the cargo that it intended to carry, and that, therefore, these tanks would only be of marginal utility and value. Taking its 7.5 percent figure into account, Braemar's appraised values move the *Emsstern* and the *Elbestern* down to US$14,574,028 each and the *Jadestern* to US$14,940,276.

Another point of disagreement between Braemar and Clarkson relates to the value that should be given to the Rigel vessels' double hulls versus the single hull of the *Mikhail Romm*. Braemar felt that the double hull, while having little impact on a vessel's trading and earning ability (as noted by Mr. Blayney), does have a considerable impact on a vessel's value. Acknowledging that double hulls are not currently required in order to trade along Canada's east coast, Braemar stated that "[b]uyers regularly paid more for double hull tonnage whether ordering from a shipyard or purchasing second hand.[20]" According to Braemar, the extra cost of this feature on new shipbuilding is about 15 percent. Although it accepts that it would not be possible to receive a full return for this on a used ship in a willing seller/willing buyer scenario, in its opinion, this feature was worth less than 15 percent, but more than the percentage given by Clarkson. As a result,

17. Report of W.E.A. Bays, FICS, dated November 6, 1997, Exhibit 19.1, Tab 1 at 4.
18. *Ibid*. Tab 7. The relevant portion of that report reads as follows: "These are positive factors at a time of continuing economic recession which shows no signs of easing in the short term. Longer-term, there is some cause for optimism as trade growth is expected to climb back to about 2% per annum as scrapping gathers pace to possibly 3% per year as the fleet ages. Because this is such a small and specialised market these relatively small changes should be sufficient to improve rates to levels supportive of the ongoing investment required by this sector."
19. *Ibid.* Tab 1 at 4.
20. Exhibit 6.2, Tab 3 at 2.

it added 10 percent to the value of the *Elbestern* and the *Emsstern*, moving their value to US$16,031,430 each and the value of the *Jadestern* to US$16,434,303.

With respect to the ice class designation, Mr. Bays felt that the Clarkson appraisal did not allocate sufficient value to the ice class feature of the Rigel vessels. Although the difference is minimal, 1A being able to withstand 0.8 metres of ice (first year) versus 1B being able to withstand 0.6 metres of ice (first year), Braemar felt that some value should be given to it. It stated that, although the Rigel vessels did not require an ice class designation for the work that they were intended to perform, this feature is a "significant selling point if the vessels are going to trade in this region year round.[21]" It would give this feature a 2 percent increase in value, whereas Clarkson did not give it a quantifiable value. Taking this 2 percent into account, the values become: the *Elbestern* and the *Emsstern*, US$16,352,058 each, and the *Jadestern*, US$16,762,989.

Finally, Braemar concluded that a reduction in value of 6 percent for the Rigel vessels is appropriate to account for the *Mikhail Romm*'s larger cubic capacity, bigger engine and greater speed. Simply put, in its opinion, these factors, although minor, would permit more trading of larger cargoes per year. This, again, conflicts with the Clarkson opinion that chose to offset these features against the higher ice class designation and double hull feature of the Rigel vessels. Taking this 6 percent reduction into account, Braemar's final values in its December 1996 revised report were US$15,370,934 each for the *Emsstern* and the *Elbestern* and US$15,757,209 for the *Jadestern*.

CSA'S POSITION

Counsel for the CSA called one witness, Mr. Terje Gilje, who was qualified as an expert in ship valuation. His experience in the shipping industry stretched back over 28 years, during which time he was involved in all aspects of that industry.

The essence of his evidence was that the vessels were worth far more than what either Braemar or Clarkson suggested. These ships were, to all intents and purposes, new ships and should have been valued as such. The fact that they had been "driven around the block" before importation did not detract from the fact that they were essentially new.

According to Mr. Gilje, the value of the Rigel vessels was between US$24.0 million and US$24.5 million in November 1993. This figure was arrived at by estimating the purchase price of the ships to be about US$25 million and depreciating them by 3 to 4 percent per year.

When Mr. Gilje was asked to give his views on the Rigel vessels' value in 1993, he began his analysis by looking, first, at the prospectus issued by the appellant to solicit investment. Mr. Gilje worked his way through the prospectus and deduced from it that the vessels were valued at about 40 million Deutsche marks or US$25 million. These values were, in his view, confirmed by articles in trade publications, such as *Shiff & Hafen* and *TradeWinds*. These articles claimed that the appellant had paid 480 million Deutsche marks for 10 vessels, three of which Mr. Gilje assumed to be the *Emsstern*, the *Elbestern* and the *Jadestern*.

Mr. Gilje maintained that the Rigel vessels should have been assessed as new shipbuilding because of their level of sophistication (and consequent slower rate of depreciation) and their newness. His view on the value of the Rigel vessels was bolstered by the fact that the Larsen vessels, which were delivered at about

21. *Ibid.*

the same time as the Rigel vessels, were valued for insurance and financing purposes at about US$25 million each. All of these factors supported a value in the range of US$24.0 million to US$24.5 million. In his view, it was incorrect to give values in the range of US$14.0 million to US$15.7 million as Clarkson and Braemar had done. Furthermore, Mr. Gilje received, through an intermediary, a quote from MTW, the shipyards which built the Rigel vessels, indicating that, in July 1993, identical vessels cost nearly 43 million Deutsche marks, or about US$26.0 million. The Rigel vessels, being so new and only slightly used, simply could not, in his view, be worth almost half of their new shipbuilding cost.

ANALYSIS

The first matter that the Tribunal must decide upon is the methodology for calculating the value for duty. Counsel for the CSA submitted that the residual method found in section 53 of the Act should not have been relied on to determine the value for duty in this case. Instead, counsel argued that the Act demands that the hierarchy of value for duty methodologies found in sections 48 to 53 be respected. Counsel noted that section 47 requires that the different transaction value methodologies be used sequentially. Only when one methodology cannot be used to calculate the value for duty can one move to the next section to use another. As there is no sale for export, section 48, according to the CSA, cannot be used, nor can section 49 which uses the transaction value of identical goods, nor can section 50 which uses the transaction value of similar goods, nor can section 51 which uses the deductive approach. However, according to the CSA, section 52, which uses the computed value, not only can but must be relied upon to calculate the value for duty.[22]

Counsel for the appellant and counsel for the respondent disagreed with this position. Setting aside the fact that this issue was only put on the table by the CSA shortly before the hearing began, and almost four years after the respondent and appellant settled on the methodology in section 53 of the Act, they agreed that section 53 was appropriate because there was no sale for export to Canada. In relying upon section 53, the respondent appears to have considered the other methodologies outlined in sections 48 to 52 and rejected them. In this case, the information necessary to conduct an analysis using section 52 was in the possession of a third party, MTW. Although the appellant may have been privy to some of that information, it is unlikely that it would have been given access to the information necessary to perform a computed value calculation. The computed value is more frequently used where the importer and manufacturer of the goods are related. Section 53 is, in the Tribunal’s view, an appropriate methodology upon which to rely, given the unusual nature of this transaction.

The Tribunal considered the arguments put forward by counsel for the CSA, regarding whether the vessels should be valued as new or used. Although the Rigel vessels were delivered to the appellant only months after beginning to trade on seas, they were not new ships. Nevertheless, the Tribunal heard evidence

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22. Section 52 reads, in part, as follows:

52. (1) Subject to subsection 47(3), where the value for duty of goods is not appraised under sections 48 to 51, the value for duty of the goods is the computed value of the goods if it can be determined.

(2) The computed value of goods being appraised is the aggregate of amounts equal to

(*a*) subject to subsection (3), the costs, charges and expenses incurred in respect of, or the value of,

(i) materials employed in producing the goods being appraised, and

(ii) the production or other processing of the goods being appraised,

determined in the manner prescribed; and

(*b*) the amount, determined in the manner prescribed, for profit and general expenses considered together as a whole, that is generally reflected in sales for export to Canada of goods of the same class or kind as the goods being appraised made by producers in the country of export.

that ships, like automobiles, are considered used once taken "off the lot and driven around the block." There was no evidence presented that persuaded the Tribunal to value these vessels as new, despite the submissions of the CSA. The fact that they may still be under warranty and within an industry-accepted "break in" period does not change the fact that they were second-hand vessels when imported in late 1993 and early 1994.

This is not to say that the new shipbuilding price of a vessel should be ignored, particularly if the vessel is only slightly used. It can often provide another benchmark against which the appraised value can be assessed. However, the Tribunal accepts Mr. Blayney's evidence to the effect that little weight can be given to the new cost of other vessels (such as the Larsen vessels) which were, in some ways, more sophisticated than the Rigel vessels and were built in a more highly regarded shipyard. Setting aside the pros and cons of these different vessels, Mr. Blayney advised caution about using a new ship's cost to assess a used ship's value, as there could be a host of considerations, some of which may be irrelevant, that would determine what a new ship is worth to a particular purchaser.

The Tribunal finds that the most accurate methodology, in this case, for determining the value of a used ship is to compare it with the sales of similar vessels at roughly the same time between a willing seller and a willing buyer. This methodology, which is of course predicated on the existence of used ship sales with which to compare, was preferred by other experts, such as Mr. Tantrum, and was accepted as such by the respondent's expert, Mr. Bays. The Tribunal, therefore, rejects the valuation methodology urged on it by the CSA.

The Tribunal will review the value for duty calculations based on the comparable sales methodology using the *Mikhail Romm* as the benchmark. The Tribunal accepts the US$12 million sale price of the *Mikhail Romm* and her sister ships as a starting point for the purposes of assessing the value of the Rigel vessels.

Age

The value of the *Mikhail Romm* on the date of sale in May 1993 was US$12 million. The Tribunal notes that both Braemar and Clarkson accept the principle that a 6 percent per annum appreciation/depreciation rate is appropriate in order to arrive at a comparable starting point. Because both the *Emsstern* and the *Elbestern* were imported in the same year as the *Mikhail Romm* was sold, no depreciation factor need apply to them, whereas it is necessary for the *Jadestern*. Using the appreciation/depreciation rate of 6 percent per annum, the equivalent base price in November 1993 when the *Emsstern* and the *Elbestern* were imported is US$15,149,718 each and US$15,095,000 for the *Jadestern*, imported in March 1994.

Economic Upturn

The Braemar report states that a 4 percent increase for the *Emsstern* and the *Elbestern* and a 7 percent increase for the *Jadestern* are warranted because the used ship market was poised for an upturn, even though the market for chemical/petroleum tankers was clearly depressed in 1992, 1993 and early 1994 due to the recession in Europe, the Far East and North America.

The Tribunal finds that the used ship sales market and the timecharter market for ships like the Rigel vessels were depressed in 1993 and early 1994. Charts submitted by the appellant showed that the daily earnings of ships similar to those in issue went from about US$9,500 per day in the autumn of 1992 to about

US$7,500 per day in the spring of 1993.[23] It remained flat until mid-1994 and then only gradually began to rise. The Baltic Freight Index, another industry-accepted barometer of shipping activity, showed a similar decline from 1992 to early 1994 in dry cargo freight earnings.[24] These timecharter earnings and freight movement indicators support Clarkson's view that the used chemical tanker market was depressed.

The principal reason for Braemar's 4 and 7 percent increases was the healthy activity in the Panamax sector which involved very large vessels. In its view, this healthy state of trading would inevitably spill over to the chemical tanker market. However, given that the Panamax sector involved much larger vessels than the type of vessels in this case, the Tribunal rejects the necessary spillover effect upon which Braemar relies.

Another reason for Braemar's optimism was the fact that new shipbuilding kept its prices relatively stable in 1993-94 compared to 1991-92. However, as the Tribunal heard, there could be many reasons why new orders would be placed in a depressed market, including the opportunity to order at low or flat prices, gambling that, on delivery date (usually one to two years later), the value of the ship would be higher or where a company wishes to purchase a ship in order to transport that company's own products, etc.

The evidence also demonstrated that sales of used comparable ships in 1993 were almost non-existent. Indeed, it appears that used ships similar to the Rigel vessels were actually withdrawn from the market at the relevant time due to lack of interest from purchasers.

It seems to the Tribunal that Braemar, while relying on its accumulated experience and expertise, was engaged in some "crystal ball" gazing. Clarkson, on the other hand, appeared to focus on what was actually happening in the used ship market at the relevant times in 1993 and early 1994. Moreover, the evidence indicated that the economic upturn only began in 1994, after the *Jadestern* was imported. Consequently, the Tribunal rejects the 4 and 7 percent increases calculated by Braemar.

Stainless Steel Tanks

The *Mikhail Romm*'s stainless steel tanks, although they represent only 50 percent of its tank capacity, warrant an increase in value when compared to ships which only have epoxy-coated tanks and which are not capable of handling the more diverse and higher-paying liquid cargo. The Tribunal believes that the 10 percent value given by Clarkson for this feature was too high. On the other hand, Braemar's claim that this feature should be given less value because the appellant had little need for stainless steel tanks is too purchaser specific. The objective appraisal should focus on what this feature would be worth on the open market to a willing buyer. Having said this, the Tribunal is of the view that the true value lies between the two figures and, therefore, assesses the value of the *Mikhail Romm*'s stainless steel tanks to be 8.75 percent over the Rigel vessels. With this adjustment, the Rigel vessels' values are decreased by 8.75 percent and become US$13,824,118 each for the *Emsstern* and the *Elbestern* and US$13,774,000 for the *Jadestern*.

Double Hull v. Single Hull

Braemar and Clarkson disagreed over the value of the double hull on the Rigel vessels when compared to the single hull on the *Mikhail Romm*. Even though it would not be reasonable for a seller to recoup the full amount paid for this feature on a new ship (about a 15 percent premium), the Tribunal is of

23. Public Expert Report of H. Clarkson & Company Limited, Exhibit 20.1, Tab C.
24. Report of W.E.A. Bays, FICS, dated November 6, 1997, Exhibit 19.1, Tab 6.

the view that some value should be given to it. Clarkson states that, as there is no current requirement for double hulls, it does not affect the ships' trading ability, nor their market value in any material way. Consequently, it does not give this feature any specific value, even though it does trade this feature off against other features of the *Mikhail Romm*.

Perhaps it is analogous to a car purchased with an optional anti-lock brake system. Clearly, this feature, which carries with it an extra upfront cost, is a useful safety feature, even though not required on new vehicles. Would this feature factor into a used car purchaser's thinking and would a purchaser pay extra for it? In the Tribunal's view, extra safety features can motivate a purchaser to pay a premium. Given that the requirement for double hulls will be in place by 2010, and the bad publicity which would follow a petroleum/chemical spill, this feature can command a premium. However, the Tribunal disagrees with the 10 percent figure given by Braemar, in view of its statement that this feature would cost about 15 percent extra in new shipbuilding. It acknowledges that one cannot expect to recoup the full amount when the ship is sold as a used vessel. The *Mikhail Romm*, while not double-hulled, did have a double bottom which enhanced her strength and marketability. Taking these factors into account, the Tribunal assesses this feature to be worth 7.5 percent or one half of its cost as a new shipbuilding add-on. With this adjustment, the Rigel vessels' values increase to US$14,860,926 each for the *Emsstern* and the *Elbestern* and US$14,807,000 for the *Jadestern*.

Ice Class

Clarkson gave no specific quantifiable value to this feature, preferring to offset it and the double hull against the *Mikhail Romm*'s larger cubic capacity, bigger engine size and greater speed. Braemar, however, felt that a 2 percent premium is appropriate because the Rigel vessels carry an 1A rating, whereas the *Mikhail Romm* is rated as 1B. In the Tribunal's opinion, very little turns on the difference, as evidence was provided that both classes are more than sufficient for trading in all but the most remote areas of the world year-round. Both the 1A and 1B ratings are more than adequate for general international commerce and, as a result, the Tribunal feels that the 2 percent premium suggested by Braemar is not appropriate. Rather, the Tribunal believes that the difference in ice class designation should be offset against the *Mikhail Romm*'s larger engine size, bigger cubic capacity and faster top speed. The values of the Rigel vessels remain at US$14,860,926 each for the *Emsstern* and the *Elbestern* and US$14,807,000 for the *Jadestern*.

Cubic Capacity/Engine Size/Speed

It is apparent that the *Mikhail Romm* can carry more cargo at a quicker speed. Braemar would, as a consequence, give these factors a value of 6 percent over the slower, smaller Rigel vessels. While the evidence disclosed some support for Braemar's view, the advantage enjoyed by the *Mikhail Romm* is marginal. The difference in speed is not significant and would not enhance the trading abilities of the *Mikhail Romm* to any measurable extent. Similarly, the cubic capacity may have worth, but given that ships rarely travel fully loaded, this factor has only marginal value. As well, the engine size of the *Mikhail Romm*, while larger than that of the Rigel vessels, does not warrant any specific extra value because the difference in size is minor. The Tribunal agrees with Clarkson that the appropriate way to deal with these advantages is to offset them against the ice class advantage of the Rigel vessels. The values of the Rigel vessels remain at US$14,860,926 each for the *Emsstern* and the *Elbestern* and US$14, 807,000 for the *Jadestern*.

Other Factors

There was some evidence to the effect that the Rigel vessels were better built than the *Mikhail Romm*. It was suggested that the Spanish shipyard which produced the *Mikhail Romm* was inferior to the German shipyard that built the Rigel vessels. While it might be concluded that the Rigel vessels were better built, they were not so superior in workmanship as to warrant an increase in value for this factor alone. Indeed, the evidence shows that the Rigel vessels were the first chemical tankers ever produced by the MTW shipyards. This fact, coupled with the evidence of Messrs. Ritchie and Shanahan, suggests that the Rigel vessels have had many problems necessitating repair or retrofitting. Consequently, the Tribunal does not make any adjustment upward or downward for the "quality" factor.

In addition, there was some suggestion that, when using the willing buyer/willing seller approach, it should be done assuming that the vessel is charter free. It would seem that vessels, such as the Rigel vessels, which are imported pursuant to a multi-year charter agreement, should receive an increased value. No doubt, being engaged in a multi-year agreement enhances the vessel's value, but it is extremely difficult to quantify this when using the willing buyer/willing seller approach for comparable vessels. No evidence was given which could assist the Tribunal in settling on an appropriate amount and, on balance, the Tribunal does not feel that this factor should result in an increase in value of the Rigel vessels.

CONCLUSION

Taking all of the above factors into account, the Tribunal concludes that the respondent's calculation of the value for duty of the Rigel vessels was, in part, incorrect. The Tribunal is of the view that section 67 of the Act allows it to substitute what it believes to be the correct value for duty and that it is not simply limited to accepting or rejecting the respondent's determination. In this case, the evidence presented by all parties was sufficiently detailed to facilitate an independent calculation. Moreover, little purpose would be served by forcing the parties to go back and recalculate the amounts themselves or to just taking the midpoint of the calculation. Taking into account all of the evidence, the Tribunal concludes that the correct values on the date of importation are US$14,860,926 each for the *Emsstern* and the *Elbestern* and US$14,807,000 for the *Jadestern*. It is these amounts on which the applicable duty should be paid.

Patricia M. Close
Patricia M. Close
Presiding Member

Raynald Guay
Raynald Guay
Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

APPENDIX

	MIKHAIL ROMM	**RIGEL VESSELS**
Type:	Chemical/Oil Carrier	Chemical/Oil Carrier
Size:	9,990 DWT	10,345 DWT
Hull Construction:	Single	Double
Built:	1988	1992-93
Yard:	AESA Spain	MTW Germany
Class:	Lloyds Ice Class 1B	Germ Lloyd Ice Class 1A
Tanks/Coatings:	12 Epoxy 5 Stainless Steel	12 All Epoxy
Capacity (98 percent):	11,445 CBM	10,814 CBM
Grades:	15	13
Segregation (fully segregated with separate pump and line):	9	7
Heating (60 deg):	Deck Heaters	Deck Heaters
Pumps:	Framo Deepwell (17)	Framo Deepwell (12)
Tank Cleaning:	Portable Each Tank	Fixed Each Tank
Engine:	B + W 5,320	B + W 3,700
Speed:	ABT 14 Knots	ABT 12.5 Knots