



Ottawa, Thursday, January 31, 1991

**Appeal No. 2975**

IN THE MATTER OF an appeal heard on October 30, 1990,  
under section 47 of the *Customs Act*, R.S.C., 1970, c. C-40, as  
amended;

AND IN THE MATTER OF a decision of the Deputy Minister  
of National Revenue, Customs and Excise, dated December  
21, 1987, with respect to a request for a re-determination  
pursuant to section 46 of the *Customs Act*.

**BETWEEN**

**DONALD TUTT**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE  
FOR CUSTOMS AND EXCISE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed in part. The pumps, clamps and tubing are classified under tariff item 42701-1 as pumps and pump sets.

Michèle Blouin  
Michèle Blouin  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. 2975**

**DONALD TUTT**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE  
FOR CUSTOMS AND EXCISE**

**Respondent**

*Customs Tariff - Pumps - Sprinkler - Trickle - Agriculture - Irrigation equipment - Eo nomine provision - End-use provision.*

*This is an appeal under section 47 of the Customs Act from a decision of the Deputy Minister of National Revenue for Customs and Excise, classifying the imported long-hitch, economy pumps under tariff item 42701-1 as pumps, the tubing under tariff item 61800-1 as manufactures of rubber and gutta percha, n.o.p., and the clamps under tariff item 44603-1 as manufactures of iron or steel, n.o.p. The appellant seeks an order that the goods be classified as irrigation equipment to be used for agricultural purposes under any of the relevant tariff items that provide a duty-free treatment.*

**HELD:** *The appeal is allowed in part. The Tribunal finds that the goods shall be regarded as pumps and pump sets under tariff item 42701-1.*

*Place of Hearing: Winnipeg, Manitoba*

*Date of Hearing: October 30, 1990*

*Date of Decision: January 31, 1991*

*Tribunal Members: Michèle Blouin, Presiding Member*

*Arthur B. Trudeau, Member*

*Sidney A. Fraleigh, Member*

*Clerk of the Tribunal: Nicole Pelletier*

*Appearances: Donald Tutt, for the appellant*

*Geoffrey S. Lester, for the respondent*

**Case Cited:** *Allan Zukiwski v. The Deputy Minister of National Revenue for Customs and Excise, (1987) 12 T.B.R. 581.*

**Statutes Cited:** *Customs Tariff, R.S.C., 1970, c. C-41, as amended; Customs Act, R.S.C., 1970, c. C-40, as amended.*

**Appeal No. 2975**

**DONALD TUTT**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE  
FOR CUSTOMS AND EXCISE**

**Respondent**

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member  
ARTHUR B. TRUDEAU, Member  
SIDNEY A. FRALEIGH, Member

**REASONS FOR DECISION**

This is an appeal under section 47 of the *Customs Act*<sup>1</sup> from a decision of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister), classifying the imported long-hitch, economy pumps under tariff item 42701-1 as pumps, the tubing under tariff item 61800-1 as manufactures of rubber and gutta percha, n.o.p., (i.e., not otherwise provided) and the clamps under tariff item 44603-1 as manufactures of iron or steel, n.o.p. The appellant seeks an order that the goods be classified as irrigation equipment to be used for agricultural purposes under any of the relevant tariff items that provide a duty-free treatment.

**FACTS**

On March 8, 1986, the appellant imported the goods in issue, which were described as "LH16RE 16 in. long hitch economy pumps together with tubing and clamps" and classified under tariff item 40924-1. In fact, the goods consist of two LH16RE 16 in. long hitch economy pumps, two 16 in. by 50 ft. lengths of "nylon reinforced butyl" (i.e. synthetic rubber) tubing and two HC 16 in. heavy duty stainless steel clamps that are manufactured by the exporter, Crisafulli Pump Company.

On September 3, 1986, a customs appraiser determined the tariff classification as follows: the pumps under tariff item 42701-1 as pumps and pump sets other than high vacuum pumps (500 microns or less), and parts thereof; the tubing under tariff item 39700-1 as pipes or tubes of iron or steel, n.o.p. made of an alloy; and the heavy duty clamps under tariff item 44603-1 as manufactures, articles or wares, of iron or steel or of which iron or steel or both are the component materials of chief value, n.o.p.

On December 21, 1987, the Deputy Minister made a re-determination, classifying the goods under the same tariff items, except that the tubing was determined to best answer the description of tariff item 61800-1, as rubber cement and all manufactures of rubber and gutta percha, n.o.p. rather than that of pipes or tubes of iron or steel, n.o.p.

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1. R.S.C., 1970, c. C-40, as amended.

The appellant now appeals to this Tribunal.

THE ISSUE

The issue is whether the imported goods are properly classified under the separate tariff items determined by the respondent or whether they should be classified as a whole under any of the tariff items of the *Customs Tariff* that would encompass these goods, subject to any duty-free agricultural provision.

THE LEGISLATION

For the purpose of this appeal, the relevant tariff items of the *Customs Tariff*<sup>2</sup> read as follows:

*Articles which otherwise would be classified under tariff items 42700-1 to 42700-4, namely: compressor sets, electricity generating sets, fork lift trucks, front-end loaders or tractor shovels, gear reducers, pumps and pump sets, motor operated valves, positive displacement blowers and vacuum pumps, metal working lathes, metal working milling machines, cutting tools for use with metal working machines, articulated folding boom-type cranes designed for mounting on trucks; accessories, attachments and control equipment for use therewith; parts of the foregoing:*

42701-1      *Other than the following*

42701-2      *High vacuum pumps (500 microns or less), and parts thereof; accessories, attachments and control equipment for use therewith; parts of the foregoing; (...)*

.....

61800-1      *Rubber cement and all manufactures of rubber and gutta percha, n.o.p.*

.....

*Manufactures, articles or wares, of iron or steel or of which iron or steel or both are the component materials of chief value, n.o.p.:*

44603-1      *Other than the following*

*(...)*

.....

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2. R.S.C., 1970, c. C-41, as amended.

40924-1 Aluminum sluice-type devices for controlling water in irrigation ditches;  
Animal clippers;  
Automatic stock watering devices;  
Barn hay forks, carriage, pulleys and track;  
Barn litter carriers and track;  
Combination excavating and transporting scraper units;  
Egg cooling cabinets;  
Elevators (other than storage elevators);  
Grain crushers;  
Grain or hay dryers;  
Grain or hay grinders;  
Grain loaders;  
Gravity discharge farm wagon boxes;  
Hay stack forms;  
Heaters for orchards;  
Hitches and couplings;  
Hydraulic hoists for unloading vehicles;  
Land levellers;  
Machines and tools for use on tractors, including blades, loaders, rippers,  
rakes and related operating and controlling gear;  
Milk coolers;  
Sodium metabisulphite;  
Sprinkler irrigation systems;  
Steel stanchions for confining livestock either in pens or individually, and  
complete equipment for milking parlours;  
All the foregoing for use on the farm for farm purposes only;  
Brooders;  
Ensilage cutters;  
Fodder or feed cutters;  
Hay loaders;  
Hay tedders;  
Post hole diggers;  
Potato diggers;  
Potato planters;  
Snaths;  
Stumping machines;  
All other agricultural implements or agricultural machinery, n.o.p.;  
Parts of all the foregoing

(Emphasis added)

.....  
40962-1 *Trickle irrigation systems for use on the farm; sprinkle or trickle  
watering systems for use in greenhouses; parts of the foregoing*

## ARGUMENTS

In his brief, the appellant submitted that the pumps are used for agricultural irrigation and, therefore, should be subject to duty-free treatment as sprinkler irrigation equipment aimed to agriculture. The appellant argued that since the uses of the equipment are for the same purpose, both should receive duty-free treatment. The appellant added that the rules in this regard are vague and that their interpretation varies from one customs officer to another.

The respondent replied that the appellant does not dispute the correctness of the classification, but rather that the appellant bases his contention on the fact that the goods in issue are used for agricultural production and, therefore, should be accorded duty-free entry.

The respondent added that the appellant has the burden of proof as to classification under those tariff items and, as a question of fact, the goods cannot be used as a sprinkler system because they do not have a sufficient level of water pressure, nor can they be used for a trickle irrigation system.

Finally, the respondent submitted that the goods cannot be classified as other agricultural implements or agricultural machinery, n.o.p., because the three different articles are each otherwise provided for in the tariff items and, furthermore, because the goods are not agricultural within the meaning of the *Allan Zukowski*<sup>3</sup> case.

At the hearing, the appellant represented himself and testified on his own behalf. He also produced Exhibit A-1, which is a letter from the manufacturer and exporter of the pumps in issue. The main statement contained in that exhibit is that the exporter sells 90 percent of that kind of pump for agricultural purposes. However, the witness was unable to specify whether any of these pumps are sold for trickle irrigation purpose when questioned by the Tribunal.

In testimony, Mr. Tutt explained the physical features of his land, describing the minor slope that allows the water to trickle down his field. In this regard, he stated that trickle irrigation systems need a pump to disperse water, as well as hoses or tubing. He is also aware that pumps, similar to the goods in issue, with perforated hoses are being imported duty-free and classified as trickle irrigation systems.

The witness explained in detail the flood irrigation method he uses at his farm, the duration of the process, the surface covered, the quantity of water needed and, finally, how the irrigation operation is completed.

In cross-examination by counsel for the respondent, Mr. Tutt acknowledged the differences between a backflood irrigation system, a trickle system and a sprinkler irrigation system.

The respondent called Mr. Kenneth W. Thompson who is the acting manager of the communications division of the Prairies Farm Rehabilitation Administration in Regina. The witness appeared to have seen the pumps in operation on the appellant's farm in April 1986. The witness explained the different kinds of irrigation systems used in agriculture. He also explained the different backflood schemes that exist. With respect to the appellant's pumps, he stated that it is highly unlikely that they could be used in a trickle system because of the large volume of water they provide.

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3. *Allan Zukowski v. The Deputy Minister of National Revenue for Customs and Excise*, (1987) 12 T.B.R. 581 (Tariff Board).

Relying primarily on his testimony, the appellant stated during final argument that the goods in issue are used to achieve the same end result as obtained using other types of irrigation systems, which are duty-free. Classifying the goods differently is then unfair. Therefore, he asked that they be classified under one of the relevant tariff items that provides duty-free treatment to those irrigation systems.

Counsel for the respondent argued that the goods in issue cannot be classified as a sprinkler system, taking into account the appellant's testimony, which concedes that the goods are not a sprinkler irrigation system, nor can they be classified as a trickle irrigation system. Indeed, counsel submitted that the meaning the appellant gives to the word "trickle" is not reconcilable with the clear and unequivocal evidence offered by the respondent's witness with respect to the operation and use of a trickle irrigation system.

Counsel for the respondent also argued that none of the goods in issue can be classified under one of the specific *eo nomine* provisions of tariff item 40924-1. In addition, counsel submitted that there is clear evidence that the three different articles in issue can be classified as pump sets. Therefore, he submitted, they cannot be regarded as agricultural implements or machinery not otherwise provided for as stated in tariff item 40924-1. Alternatively, counsel submitted that, taken separately from the pump, the tubing and the clamps still cannot be classified under that tariff item since they are passive elements and cannot be regarded as implement or machinery pursuant to that provision. Nevertheless, counsel submitted that, if the Tribunal finds that the tubing and the clamps can be regarded as such, they are otherwise provided for in two different tariff items. His last submission in this regard was that the goods are not agricultural within the meaning of that tariff item.

Finally, counsel added that there are no backflooding irrigation systems as such, but, rather, backflooding methods, while there are sprinkler and trickle irrigation systems that, contrary to the backflooding method, can be identified as such, that being the reason, ultimately, why they are specifically named.

#### FINDING OF THE TRIBUNAL

The main issue is to determine if the pumps, tubing and clamps are encompassed by one of the tariff items of the *Custom Tariff* that provide an agricultural duty-free treatment.

In this determination, the Tribunal is bound by law, that is, by the provisions of the *Custom Tariff* and the relevant tariff items. That the result seems to be unfair because goods that serve the same general purpose of irrigation can be classified differently is irrelevant to this Tribunal for it is its task to apply the law as it stands. There exist a lot of reasons why certain goods and not others get duty-free treatment or why certain goods are specifically named and do not permit a classification based on end use. Nevertheless, the Tribunal is not to analyse these reasons but to decide within the parameters set forth by the *Custom Tariff*.

In the case at point, the *Custom Tariff* has no general end-use provision for agricultural irrigation. Moreover, tariff items 40924-1 and 40962-1 name two irrigation systems, which are respectively the sprinkle and trickle irrigation systems. The evidence shows that the pumps at point do not offer enough pressure to be used as a sprinkler system and supply too much water to be used as a trickle system. Furthermore, it appears that the pumps are used for flood irrigation purposes, which, the appellant agrees, differs from sprinkler and trickle irrigation methods. Therefore, the Tribunal finds that the goods in issue cannot be classified under either of these items.

In regard to the basket provision of tariff item 40924-1, the Tribunal notes that it ends with the phrase "other agricultural implements or agricultural machinery, n.o.p." Thus, other agricultural implements or machinery that are not otherwise provided for in the tariff items can enter into that basket provision. It is unfortunate for the appellant that pumps and pump sets are otherwise provided for in tariff item 42701-1. Consequently, the goods in issue cannot be encompassed by that basket provision. Thus, the Tribunal needs not consider if they are implements or machinery pursuant to that provision or agricultural in the sense of the *Allan Zukowski* case cited by the respondent.

This being said, the Tribunal is convinced that the three different goods in issue are pumps and pump sets in tariff item 42701-1. The clamps are manufactured by the exporter of the pumps and serve to fix the tubing that is 16 in. in diameter and also sold with the pumps. The respondent itself admitted during the hearing that there was enough evidence before the Tribunal to lead to the conclusion that these goods are to be classified as pump sets. The Tribunal agrees with this admission. Therefore, the Tribunal finds that the goods shall be regarded as pumps and pump sets under tariff item 42701-1.

Finally, the Tribunal notes that, at the time the goods in issue entered in Canada, tariff item 42701-1, under which pumps and pump sets are classified, provided a lower duty than the two others tariff items under which the clamps and tubing were classified. Therefrom, the Tribunal deems the classification of the goods, according to the respondent's admission and to its own finding, to be a financial advantage for the appellant.

#### CONCLUSION

The Tribunal would allow the appeal in part and classify the pumps, clamps and tubing under tariff item 42701-1 as pumps and pump sets.

Michèle Blouin  
Michèle Blouin  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member