

Ottawa, Tuesday, November 12, 1991

Appeal Nos. AP-89-216, AP-89-221, AP-89-222, AP-89-223

IN THE MATTER OF appeals heard on June 17, 1991, under section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.) as amended;

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue for Customs and Excise with respect to requests for re-determination pursuant to section 63 of the *Customs Act*.

BETWEEN

SKF CANADA LIMITED

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The Tribunal rules that it lacks the jurisdiction to hear Appeal No. AP-89-222, in part, with respect to the reclassification of spherical plain roller bearings. Appeal No. AP-89-222 is allowed, in part, in respect of the tariff classification of camfollowers under tariff item 42726-1. Appeal Nos. AP-89-216, AP-89-221, AP-89-222 and AP-89-223 are dismissed in respect of the tariff classification of the remaining goods in issue.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

W. Roy Hines
W. Roy Hines
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal Nos. AP-89-216, AP-89-221, AP-89-222, AP-89-223

SKF CANADA LIMITED

Appellant

and

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

Respondent

These are appeals under section 67 of the Customs Act from re-determinations of the Deputy Minister of National Revenue for Customs and Excise classifying ball screw and nut assemblies, pillow block housings, adapter sleeves for bearings, spherical plain roller bearings and camfollowers or manufactures of iron or steel under tariff item 44603-1, and deep groove Conrad ball bearings and the value of usual packaging under tariff item 42727-1. The appellant seeks a decision that the ball screw and ball nut assemblies, pillow block housings, bearing adapter sleeves and spherical plain roller bearings be classified as parts of machines, n.o.p. under tariff item 42700-1; that the subject importations of camfollowers and deep groove Conrad ball bearings be classified under tariff item 42726-1 as ball and roller bearings; and that the value of the packaging be classified under tariff item 71001-1 as usual coverings containing free goods only.

HELD: *The Tribunal rules that it lacks the jurisdiction to hear Appeal No. AP-89-222, in part, in respect of the reclassification of spherical plain roller bearings. Appeal No. AP-89-222 is allowed, in part, in respect of the classification of camfollowers under tariff item 42726-1. Appeal Nos. AP-89-216, AP-89-221, AP-89-222 and AP-89-223 are dismissed in respect of the tariff classification of the ball screw and nut assemblies, pillow block housings, bearing adaptor sleeves, deep groove Conrad ball bearings and the value of usual covering.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: June 17, 1991

Date of Decision: November 12, 1991

*Tribunal Members: Arthur B. Trudeau, Presiding Member
Kathleen E. Macmillan, Member
W. Roy Hines, Member*

Counsel for the Tribunal: Brenda C. Swick-Martin

Clerk of the Tribunal: Janet Rumball

*Appearances: R.R. Ducharme, for the appellant
H.A. Baker, for the respondent*

Appeal Nos. AP-89-216, AP-89-221, AP-89-222, AP-89-223

SKF CANADA LIMITED

Appellant

and

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

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
KATHLEEN E. MACMILLAN, Member
W. ROY HINES, Member

REASONS FOR DECISION

FACTS

The subject matter of these appeals is the tariff classification of ball screw and nut assemblies, pillow block housings, adapter sleeves for bearings, spherical plain roller bearings, deep groove Conrad ball bearings, usual packaging and camfollowers imported into Canada by the appellant, SKF Canada Limited (SKF), between March 20, 1987, and December 21, 1987, inclusive.

Particulars of the subject goods, entry number, date of entry and re-determination by the Deputy Minister of National Revenue for Customs and Excise (Deputy Minister) are as follows:

<u>Appeal No.</u>	<u>Entry No.</u>	<u>Date of Entry</u>	<u>Goods</u>	<u>Re-determination No.</u>
AP-89-216	K010698	87-10-09	Ball screws	KT12138
	E513587	87-10-02	Rolled thread ball screws	KT12142
	D646597	87-10-22	Ball nut	KT12359
	D648683	87-10-29	Ball screws	KT12419
	E729482	87-11-12	Ball screws	KT12141
	D662105	87-12-21	Ball screws	KT12361
AP-89-221	A368037	87-03-20	Pillow block housings	KQ-1764
AP-89-222	A259917	87-10-07	Deep groove Conrad ball bearings and usual coverings Pillow block housings Spherical plain roller bearings Sleeves for bearings	KT12351
AP-89-223	A268114	87-11-04	Pillow blocks Camfollowers Deep groove Conrad ball bearings	KT12343

The respondent classified the subject importations of ball screw and ball nut assemblies, pillow block housings, bearing adapter sleeves, spherical plain roller bearings and camfollowers as manufactures of iron or steel under tariff item 44603-1; and the deep groove ball bearings and value of the usual coverings (packaging) under tariff item 42727-1.

The appellant contends that the subject importations of ball screw and ball nut assemblies, pillow block housings, bearing adapter sleeves and spherical plain roller bearings should be all classified as parts of machines, n.o.p., under tariff item 42700-1; that the subject importations of camfollowers and deep groove ball bearings should be classified as ball and roller bearings under tariff item 42726-1; and that the value of the packaging should be classified under tariff item 71001-1 as usual coverings containing free goods only.¹

As a preliminary matter during the hearing, counsel for the respondent advised the Tribunal that the Deputy Minister was in agreement with the appellant that the subject importations of camfollowers should be classified as ball and roller bearings under tariff item 42726-1.

APPLICABLE LEGISLATION

The relevant tariff items are as follows:

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*

Machines, n.o.p., and accessories, attachments, control equipment and tools for use therewith; parts of the foregoing:

42700-1 *Other than the following*

Ball and roller bearings, n.o.p.; parts of the foregoing, n.o.p.:

42726-1 *Other than the following*

42727-1 ...

Single row radial ball bearings (not including maximum capacity or maximum type, or cartridge type bearings) up to and including 90 mm outside diameter;

...

71001-1 *Usual coverings, containing free goods only; usual coverings, except receptacles capable of holding liquids, containing goods subject to a specific duty only, n.o.p.*

1. By notices filed August 29, 1989 (Appeal No. AP-89-216), and September 28, 1989 (Appeal Nos. AP-89-221, AP-89-222 and AP-89-223), pursuant to subsection 67(1) of the *Customs Act*, SKF appealed the re-determinations of the Deputy Minister to the Canadian International Trade Tribunal.

71002-1 Usual coverings containing goods subject to any ad valorem rate of duty

If, in the case of sales of like or similar goods in the ordinary course of trade in the country of export, the value of the usual coverings is included in the selling price of the goods they contain, then for the purposes of items 71001-1 and 71002-1 the coverings shall be considered as part of the goods.

EVIDENCE

Mr. James B. MacIntosh, Manager of Engineering for SKF, testified for the appellant at the hearing. His testimony concerned the nature, purpose, function and material composition of the goods involved in these appeals. He informed the Tribunal that all of the goods were parts of machines and were composed primarily of iron or steel. Mr. MacIntosh further testified that the practice of the company is to import popular sizes of the goods in issue to be kept in stock as inventory, since the bulk of its sales are to the aftermarket and their ultimate end use is not known at the time of importation. SKF also imports goods specifically ordered for a particular requirement. With respect to the deep groove Conrad ball bearings, the witness testified that they were the same as single row radial ball bearings of no maximum or minimum capacity, having an outside diameter not in excess of 90 mm.

Regarding the spherical plain roller bearings described by the appellant in entry No. A259917, the witness testified that these goods had been improperly described on the customs documentation and that the goods imported were, in fact, plain sleeves.

Mr. Luc Dupont, a tariff administrator with Revenue Canada, testified on behalf of the respondent. He testified that as the end use of the goods in issue was not known at the time of importation, the goods were classified in accordance with the Department's established procedures. With particular reference to entry No. A259917, the witness testified that certain goods described as "sleeves/spherical bearings" on the B-3 entry form were, in fact, sleeves as indicated on the exporter's invoices. Further, these goods were described as "spherical plain roller bearings" on the K14D request for re-determination form.

ARGUMENT

Counsel for the appellant argued that the Deputy Minister erroneously classified all of the goods under appeal. With the exception of camfollowers, deep groove Conrad ball bearings and packaging, he argued that the goods in issue were machine parts and, since they were not specifically provided for in the *Customs Tariff*,² they were more appropriately provided for in the parts provision of tariff item 42700-1 than under the residual tariff item 44603-1 covering manufactures of iron or steel. Counsel cited a number of decisions dealing with the classification of parts for machinery in support of his proposition that tariff item 42700-1 is a basket item covering parts of machines.³ With respect to

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

3. *J.H. Ryder Machinery Company Ltd. v. The Deputy Minister of National Revenue for Customs and Excise* (1952), 1 T.B.R. 69; *Best Pipe Limited v. The Deputy Minister of National Revenue for Customs and Excise* (1970), 5 T.B.R. 58; *Ingersoll-Rand Door Hardware Canada Inc. v. The Deputy Minister of National Revenue for Customs and Excise* (1988), 13 T.B.R. 219.

the deep groove Conrad ball bearings, counsel argued that since these goods have the capability of providing both radial and thrust in either direction, they were more than a radial bearing and should be classified under tariff item 42726-1 as ball and roller bearings rather than under tariff item 42727-1, which provides only for radial bearings. Counsel further argued that the packaging for the deep groove Conrad bearings should also be free of duty under tariff item 71001-1 since the goods they contain should be duty free.

Counsel for the respondent cited various precedents to support the argument that a machine part cannot be classified under tariff item 42700-1 unless it is committed for use on a particular machine at the time of importation. According to counsel, the appellant led no evidence to establish that the goods in issue were committed for such use.⁴ Thus, in the respondent's view, the goods, with the exception of the camfollowers and deep groove Conrad ball bearings, were properly classified as manufactures of iron or steel under tariff item 44603-1. Counsel agreed with the appellant that the appropriate classification of camfollowers was under tariff item 42726-1. However, he argued that the deep groove Conrad bearings that were claimed by the appellant as free of duty under tariff item 42726-1 were more properly described as single row radial bearings under tariff item 42727-1. In his view, this was confirmed by the testimony of the appellant's witness. Since goods classified under this tariff item were dutiable, it followed that the packaging relating to the goods should have attracted the same rate of duty as the goods themselves.

Counsel for the respondent also raised the question of the Tribunal's jurisdiction to examine the tariff classification of spherical plain roller bearings in Appeal No. AP-89-222. He argued that since these goods had been improperly described on all of the customs documentation except the exporter's invoice, the Tribunal lacked jurisdiction to issue a decision on this matter.

REASONS

The substance of these appeals centers on the appropriate tariff classification of ball screw and ball nut assemblies, pillow block housings, bearing adapter sleeves and spherical plain roller bearings, all of which are claimed by the appellant to be parts of machines under tariff item 42700-1 and have been classified by the Deputy Minister as manufactures of iron or steel under tariff item 44603-1. In the Tribunal's opinion, there is no question that the goods in issue are indeed manufactures of iron or steel and that, while not committed for a specific use at the time of importation, they would eventually end up as a part of some machine. The choice here is not simply one of placing the goods in one category or the other, but rather determining which of the two tariff items most specifically describes the goods in question. In this regard, it is important to note that the legislation provides for different rates of customs duty to apply in respect of particular tariff items and it is only by classifying goods under their appropriate tariff item that the objective of the legislation is achieved.

Classification issues are, of course, not new and have been the subject of many appeals before the predecessor of this Tribunal and the courts. Over the years, the rule of specificity has played a

4. *Robert Bosch (Canada) Ltd. v. The Deputy Minister of National Revenue for Customs and Excise* (1985), 10 T.B.R. 110; *Staub Electronics Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*, Canadian International Trade Tribunal, Appeal No. 2764, November 2, 1989; *Mitel Corporation v. The Deputy Minister of National Revenue for Customs and Excise* (1985), 10 T.B.R. 90.

prominent role in resolving disputes in this area.⁵ The Tribunal sees no reason why it should depart from these rules in the present case. With this in mind, the Tribunal has carefully examined the precedents cited by counsel.

Tariff item 44603-1 is what is known in the trade as a "basket item," which in effect provides a home in the *Customs Tariff* for all goods composed primarily of iron or steel that are not provided for more specifically elsewhere in the *Customs Tariff*. In other words, if a product is not specifically named in the *Customs Tariff*, is not a part or accessory of something that is named in the *Customs Tariff* and is not a material or component of something else provided for in the *Customs Tariff*, but is a product made of iron or steel, then it falls under tariff item 44603-1.

Counsel for the appellant argued that the goods in issue are more specifically provided for in tariff item 42700-1 as parts of machines. Tariff item 42700-1 is in a somewhat different category than tariff item 44603-1 because it does provide for "Machines, n.o.p., ... parts of the foregoing..." Thus, this tariff item is designed to cover all of those machines and their parts which are not provided for more specifically elsewhere in the *Customs Tariff*. Clearly, it is not intended that this tariff item cover all machinery, since the great majority of machinery is named in other areas of the *Customs Tariff* and, in some cases, attracts a higher or lower rate of duty than that established for tariff item 42700-1. The same is true for parts and components. Accordingly, tariff item 42700-1, like tariff item 44603-1, is also a residual item, but more specific in the sense that it covers only machines. In this instance, we are not concerned with machines, but rather with parts of machines. In this regard, the wording of tariff item 42700-1 is quite specific, i.e., " ... parts of the foregoing..." It does not provide for "parts, n.o.p.," "parts for machinery" or any other similar broadly defined category for parts. In the Tribunal's view, the wording clearly and unambiguously specifies that only parts of machines that qualify for entry under tariff item 42700-1 can be admitted under this tariff item.

Evidence provided by the appellant's witness confirmed that the bulk of the goods in issue were imported for inventory purposes and would likely be consumed in the aftermarket. As such, they were not committed to any specific machinery at the time of importation and it was not known whether their eventual end use would relate to a machine which itself qualified for entry under tariff item 42700-1. In the circumstances, the Tribunal concurs with the decision of the Deputy Minister that ball screw and ball nut assemblies, pillow block housing and bearing adapter sleeves should be classified under tariff item 44603-1.

With respect to the deep groove Conrad ball bearings, Mr. MacIntosh testified that these goods fitted the description of "Single row radial ball bearings (not including maximum capacity or maximum type, or cartridge type bearings) up to and including 90 mm outside diameter; ... " as provided for in tariff item 42727-1. Accordingly, the Tribunal agrees with the Deputy Minister that these goods should be classified under this tariff item. Since the issue of export packaging relates to this product, the charges for packaging should attract the same rate of duty as the goods themselves.

As noted above, the Deputy Minister accepts the position of the appellant that camfollowers should be classified under tariff item 42726-1, and the Tribunal received no evidence to indicate that they should be classified otherwise.

5. See, for example, *Accessories Machinery Limited. v. The Deputy Minister of National Revenue for Customs and Excise and Canadian Electrical Manufacturers' Association*, [1957] S.C.R. 358.

The final issue relates to the question of jurisdiction in respect of Appeal No. AP-89-222 with respect to spherical plain roller bearings. Evidence before the Tribunal indicates that these goods have been improperly described on the original customs entry documents and, subsequently, in the Deputy Minister's re-determination.⁶ While the Tribunal understands from the testimony heard during the hearing that the actual goods imported were "sleeves," it concurs with the argument of counsel for the respondent that it lacks jurisdiction to rule on the appropriate tariff classification in the absence of an accurate description of the imported goods by the Deputy Minister in her re-determination.

CONCLUSION

The Tribunal hereby rules that it lacks the jurisdiction to hear Appeal No. AP-89-222, in part, with respect to the reclassification of spherical plain roller bearings. Appeal No. AP-89-222 is allowed, in part, in respect of the classification of the camfollowers under tariff item 42726-1. Appeal Nos. AP-89-216, AP-89-221, AP-89-222 and AP-89-223 are dismissed in respect of the tariff classification of the remaining goods in issue.

Arthur B. Trudeau

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6. See entry No. A259917, October 7, 1987, and K14D No. KT12351, July 29, 1988.