



Ottawa, Tuesday, August 25, 1992

**Appeal No. AP-90-121**

IN THE MATTER OF an appeal heard on May 20, 1992,  
under section 67 of the *Customs Act*, R.S.C., 1985, c. 1  
(2nd Supp.), as amended;

AND IN THE MATTER OF a decision of the  
Deputy Minister of National Revenue for Customs and Excise  
dated July 24, 1990, with respect to a request for  
re-determination made pursuant to section 63 of the *Customs  
Act*.

**BETWEEN**

**FLEETGUARD INTERNATIONAL CORPORATION**

**Appellant**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed in part. The Tribunal finds that the filters in issue, except for the "4B" type of filter, are eligible for the statutory concessionary provisions of Code 2482 of Schedule II to the *Customs Tariff*.

John C. Coleman  
John C. Coleman  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Michèle Blouin  
Michèle Blouin  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-90-121**

**FLEETGUARD INTERNATIONAL CORPORATION**

**Appellant**

**and**

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

**Respondent**

*The goods in issue are lube filters, hydraulic filters, water filters and fuel filters designed to be used with certain engines.*

*At issue in this appeal is whether those filters are eligible for the statutory concessionary provisions of Code 2482 of Schedule II to the Customs Tariff, as parts of internal combustion engines with a piston displacement exceeding 5,703.7 cm<sup>3</sup> for use in the repair of certain vehicles, as claimed by the appellant. The respondent claimed that the filters should not benefit from the statutory concessionary provisions because they are not integral parts of the engines in question and are used to maintain rather than repair the engines.*

**HELD:** *The appeal is allowed in part. The Tribunal finds that the filters in issue, except for the "4B" type of filter, are eligible for the statutory concessionary provisions of Code 2482 of Schedule II to the Customs Tariff.*

*Place of Hearing: Ottawa, Ontario*

*Date of Hearing: May 20, 1992*

*Date of Decision: August 25, 1992*

*Tribunal Members: John C. Coleman, Presiding Member  
Arthur B. Trudeau, Member  
Michèle Blouin, Member*

*Legal Services  
for the Tribunal: France Deshaies*

*Clerk of the Tribunal: Nicole Pelletier*

*Appearances: Michael Kaylor, for the appellant  
Rick Woyiwada, for the respondent*

**Appeal No. AP-90-121**

**FLEETGUARD INTERNATIONAL CORPORATION**

**Appellant**

**and**

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

**Respondent**

TRIBUNAL: JOHN C. COLEMAN, Presiding Member  
ARTHUR B. TRUDEAU, Member  
MICHÈLE BLOUIN, Member

**REASONS FOR DECISION**

**ISSUE AND APPLICABLE LEGISLATION**

The goods in issue are lube filters, hydraulic filters, water filters and fuel filters designed to be used with certain engines.

At issue in this appeal is whether those filters are eligible for the statutory concessionary provisions of Code 2482 of Schedule II to the *Customs Tariff*<sup>1</sup> (Code 2482), as parts of internal combustion engines with a piston displacement exceeding 5,703.7 cm<sup>3</sup> for use in the repair of certain vehicles, as claimed by the appellant. The respondent claimed that the filters should not benefit from the concessionary provisions because they are not integral parts of the engines in question and are used to maintain rather than repair the engines.

Code 2482 states:

*The following, of Section XVI or of Chapter 87, under such regulations as the Minister may make:*

...

*Internal combustion engines with a piston displacement exceeding 5,703.7 cm<sup>3</sup>;*

...

*Parts of the foregoing,*

...

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1. R.S.C., 1985, c. 41 (3rd Supp.).

2482 *For use in the repair of road tractors of tariff item No. 8701.20.00, vehicles of heading No. 87.02, ambulances and hearses of heading No. 87.03, vehicles of heading No. 87.04, vehicles of tariff item No. 8705.30.00 or chassis for the above of heading No. 87.06, or for use in the manufacture of repair parts thereof*

## FACTS AND EVIDENCE

Mr. Steven F. Robbins, Manager of Corporate Systems Engineering, appeared as a witness for the appellant and testified as to the company's activities and products. The appellant manufactures filtration products for large diesel engines, primarily on-highway trucks, and a few for mining and agricultural equipment. The appellant works in conjunction with the various engine manufacturers in designing the filters in issue.

Mr. Robbins declared that the filters in issue are designed to remove the fluid contaminants that are generated due to the moving parts in engines. The appellant develops the filters based on specific engine filtration requirements (i.e. the membrane being able to stop particles of a certain size at a certain rate) and mechanical specifications (e.g. pressure, vibration and operating temperature endurance, space, geometry of the sealing surfaces and the threads of the attachment constraints) given by the manufacturers. All the filters are designed to be used with engines having a piston displacement greater than 5,703.7 cm<sup>3</sup> (or 5.7 litres), except for the "4B" type of filter. Because of the above-stated requirements, a filter designed for a specific engine would not normally fit on another engine unless the specifications were identical. Furthermore, a filter not properly adapted to the engine would vibrate, unscrew itself, crack and/or leak, which would considerably damage or severely decrease the life expectancy of the engine.

This witness also stated that every engine needs a filter while it is running. If the filter were removed, the fluid would no longer circulate through the engine. It would blow out and, within minutes, the engine would burn up due to the lack of fluid flowing through the system.

Finally, Mr. Robbins stated that it is standard practice in the industry to replace the filters in issue as part of a regular maintenance program. After a certain period of time, the collected contaminants, being held in the filtration media, block the free flow of fluid. He declared that the purpose of replacing a filter is to restore the engine to its original operating efficiency. The periodical replacement is done by trained maintenance people and is generally part of a warranty attached to the engine. This approach prevents failure of the engine on the highway, which is more costly to correct than to replace a filter. He added that maintenance kits containing replacement filters are also sold by the appellant.

Mr. Barton Tettman, Manager of Product Engineering and Technical Sales of Allied Signal Canada Incorporated, Fram Canada Division (Fram Canada), served as an expert witness for the respondent. Fram Canada competes with the appellant in that it also manufactures similar filtration products for heavy-duty applications. Mr. Tettman provided information about the filters in issue. He referred to them as "spin-on filters" because it is easy to spin them onto the vehicle during a preventive maintenance program. He stated that filters have a finite life and that, over the lifetime of the engine, they may be changed at least 10 times. He further maintained that the filters in issue may be replaced relatively easily, depending upon where they are located in the vehicle. On transport trucks, they are located on the pump, the frame member, near the fuel tank or anywhere in the system. However, if a filter is not readily accessible, it can take some time to replace. If it is out in the open and readily exposed, it might take 5 to 10 minutes to replace.

Mr. Tettman also stated that it is common for truckers to carry these types of filters with them in their trucks. However, an owner-operator is more likely to wait until he returns to his home region where he can service the filters at his own facilities or take the vehicle to an organization that repairs them. At a garage, filters are treated either as repair items or as road repair items.

Finally, the witness for the respondent declared that when an oil filter wears out and stops functioning, it no longer has pressure integrity. Therefore, all of the liquids leak out. There may also be an alarm on the operating dash conveying the message: "You have no oil pressure, pull over." If the driver does not pull over, then the engine loses its lubrication and ceases to operate. The witness also explained that whenever an engine is started up, the cold oil is too thick to flow, and there is a brief period of time when the engine operates without the oil filter performing its function. He claimed that the engine could work without a filter as long as the oil was changed every day or every week to drain out, as much as possible, the contaminants from the system, thereby extending the life of the engine through the constant replenishment of the oil. Furthermore, the witness said that, in general, large filters like the ones in issue would not typically be found on a passenger car.

## ARGUMENTS

Most of the arguments before the Tribunal centred on the interpretation that should be given to the word "repair" and whether the filters are "parts" within the meaning of Code 2482.

Counsel for the appellant argued that the filters are "parts" within the meaning of Code 2482. He relied on various tests developed in previous decisions of the Tribunal and the Tariff Board, and submitted that the filters are "parts" because they pass those tests. First, they are committed for use with the engine. Second, although the filters are replaced on a reasonably regular basis, they are nonetheless placed on the engine as permanently as possible, being removed only in cases of accident, damage or repair. And third, no part of the filters is consumed in any way; they merely retain contaminants.

Counsel for the appellant also argued that the filters in issue are used in the "repair" of certain vehicles, as required by Code 2482. The *Customs Tariff* does not define the word "repair," and counsel relied on various dictionary definitions in order to secure its proper meaning.

The Shorter Oxford English Dictionary<sup>2</sup> defines "repair" as:

*(the noun) 1. The act of restoring to a sound or unimpaired condition; the process by which this is accomplished, the result attained. b. Restoration of some material thing or structure by the renewal of decayed or worn out parts, by refixing what has become loose or detached; the result of this; (the verb) 1. To restore (a composite thing, structure, etc.) to good condition by renewal or replacement of decayed or damaged parts, or by refixing what has given way; to mend.*

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2. Oxford: Clarendon Press, Third Edition, Volume II, 1973, at 1796.

Finally, Webster's Third New International Dictionary<sup>3</sup> defines "repair" as follows:

*1 a: to restore by replacing a part or putting together what is torn or broken: FIX, MEND ... b: to restore to a sound or healthy state: RENEW, REVIVIFY.*

Counsel for the appellant submitted that nowhere in the various ordinary definitions of the word "repair" is it necessary that something be broken in order that it be repaired. He argued that repair includes restoring goods to serviceable condition. Counsel also referred to Excise Memorandum ET 208 (January 3, 1990) which, although issued under the authority of the *Excise Tax Act*, contains a useful definition of "repair" that can encompass the activity of replacing a filter:

*"Repair" is meant to convey the concept that used goods, through the replacement of worn, damaged or inadequate parts, are restored to a serviceable condition. The goods remain essentially unchanged except that their useful life has been prolonged.*

Counsel for the respondent argued that the filters in issue are not "parts." He submitted that their degree of permanence on the engine was not substantial enough. The filters could be replaced within 5 to 10 minutes. The evidence showed that the filters can be replaced at least 10 times during the life of an engine and that, once replaced, the filters are simply discarded. Counsel further submitted that the filters were not indispensable to the functioning of the engine.

Counsel for the respondent also argued that the filters in issue are not used in the "repair," but rather in the "maintenance" of vehicles. He submitted that there is a distinction to be made between these two words. He relied on Code 2435, which read prior to April 8, 1992, as follows:

*Goods ... for the manufacture or repair of aircraft, aircraft engines or parts thereof*

Code 2435 was amended by Notice of Ways and Means Motion to Amend the *Customs Tariff* to read:

*Goods ... for the manufacture, repair, maintenance, rebuilding, modification or conversion*

Counsel submitted that the addition of the word "maintenance" to the list inferred a difference in meaning between it and the word "repair." The filters in issue, being used for maintenance purposes, cannot be considered as being used for repairs.

In order for the filters in issue to be eligible for the concessionary provisions of Code 2482, they must be parts of internal combustion engines with a piston displacement exceeding 5,703.7 cm<sup>3</sup> for use in the repair of certain vehicles. Four conditions must be met in order to qualify for that concession: (1) the goods must be "parts" (2) of internal combustion engines with a piston displacement exceeding 5,703.7 cm<sup>3</sup> (3) for use in the repair (4) of road tractors of tariff item No. 8701.20.00, vehicles of heading No. 87.02, ambulances and hearses of heading No. 87.03, vehicles of heading No. 87.04, vehicles of tariff item No. 8705.30.00 or chassis for the above of heading No. 87.06, or for use in the manufacture of repair parts thereof.

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3. United States of America: Merriam-Webster Inc., 1986, at 1923.

The Tribunal finds that the filters in issue, except for the "4B" type of filter, are eligible for the concessionary provisions of Code 2482.

In the written submissions, the appellant claimed that the filters were more properly classified under tariff item No. 8409.99.93 as other parts of the engines of tariff item No. 8408.90.90 suitable for use solely or principally with the engines of heading No. 84.07 or 84.08 and with the benefit of Code 2482. The respondent claimed that they were more properly classified under heading No. 84.21 without the benefit of Code 2482. However, the appellant then argued that neither tariff classification precluded the eligibility of Code 2482.

The onus is on the appellant to prove that a tariff classification other than that presented by the respondent applies to the filters in issue. Because the appellant did not dispute the respondent's tariff classification, the Tribunal finds that the proper classification for the filters in issue is under heading No. 84.21, which states:

*84.21 Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases.*

...

*-Filtering or purifying machinery and apparatus for liquids:*

*8421.21.00 --For filtering or purifying water*

...

*8421.23.00 --Oil or petrol-filters for internal combustion engines*

...

*8421.29 --Other*

Section 11 of the *Customs Tariff* states that, in interpreting the headings and subheadings in Schedule I, regard shall be had to the Explanatory Notes to the Harmonized Commodity Description and Coding System<sup>4</sup> (Explanatory Notes). Part (II) of the General Explanatory Notes to Section XVI entitled "Parts" states:

*In general, parts which are suitable for use solely or principally with particular machines or apparatus ... are classified in the same heading as those machines or apparatus.*

...

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4. Customs Co-operation Council, Brussels, First Edition, 1986.

*The above rules do **not** apply to parts which in themselves constitute an article covered by a heading of this Section ...; these are in all cases classified in their own appropriate heading even if specially designed to work as part of a specific machine. This applies in particular to:*

...

*(2) Filtering machinery and apparatus of heading 84.21.*

(Emphasis added)

## REASONS

Evidence showed that the filters are designed for use solely or principally with internal combustion engines. No extensive reference to jurisprudence is needed to conclude that when the *raison d'être* of a product is to be inextricably connected to, or to function as an essential element of, a larger product, then such product is considered a part. In this case, a filter is designed to fit on a specific engine. If a filter is not properly adapted to the engine, it will vibrate, unscrew itself, crack and/or leak, which will considerably damage or severely decrease the life expectancy of the engine. Also, evidence revealed that if a filter were removed, the fluid would no longer circulate through the engine. It would blow out and, within minutes, the engine would burn up due to the lack of fluid flowing through the system. A filter thus functions as an essential and integral part of the engine for which it is designed. Furthermore, the above Explanatory Notes clearly permit the Tribunal to conclude that the filtering machinery and apparatus of heading No. 84.21 are "parts." First, heading No. 84.21 is covered under the general heading "PARTS." Furthermore, the words "specially designed to work as part of a specific machine" strongly support the fact that the filtering machinery and apparatus of heading No. 84.21 are "parts."

As to the second condition required for the filters to benefit from the concession, the Tribunal observes that the evidence showed that the filters were designed to go on engines larger than 5.7 litres, except for the "4B" type of filter. Consequently, the "4B" type of filter is the only one that does not meet the second condition and may not qualify for the concession.

The Tribunal agrees with counsel for the appellant that, in this case at least, the word "repair" need not be limited to a situation where something is broken. It includes, as dictionary definitions make clear, the concept of restoring used goods to a serviceable condition. Parliament has not elaborated on the meaning of "repair" in Code 2482, nor has it done so in many other tariff items or codes. However, counsel for the respondent brought to the Tribunal's attention the recent addition of the word "maintenance" after the word "repair" in Code 2435, arguing that this showed that a distinction should be made between the two terms. The Tribunal considers it more likely that the word was added to eliminate fruitless attempts to draw distinctions between two words that are used interchangeably. In the large diesel engine business, for instance, it would make no sense to replace a filter only when it is totally worn out, and thus risk damaging a very expensive engine. Keeping the engine in good repair requires regular changes of various parts, including filters. The fact that filters have to be changed more often than certain other parts is immaterial.

Finally, the Tribunal finds that the filters in issue were solely designed for large diesel engines used in on-highway trucks, which fall under heading No. 87.04, as follows:

*87.04 Motor vehicles for the transport of goods.*



...

*-Other, with compression-ignition internal combustion piston engine  
(diesel or semi-diesel):*

*8704.21.00--g.v.w. not exceeding 5 tonnes*

...

*8704.22.00--g.v.w. exceeding 5 tonnes but not exceeding 20 tonnes*

...

*8704.23.00--g.v.w. exceeding 20 tonnes*

...

*8704.90.00-Other*

The witness for the respondent agreed that large filters like the ones in issue would not typically be found on a passenger car. Further, pamphlets entered as exhibits by both the appellant and respondent showed that all the marketing and sales strategies for the filters in issue are directed to the industry of on-highway transport trucks having an engine displacement greater than 5.7 litres.

#### CONCLUSION

For the above reasons, the Tribunal finds that the filters in issue, except for the "4B" type of filter, are eligible for the concessionary provisions of Code 2482.

Accordingly, the appeal is allowed in part.

John C. Coleman

John C. Coleman  
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau  
Member

Michèle Blouin

Michèle Blouin  
Member