



Ottawa, Thursday, September 12, 1991

**Appeal No. AP-90-081**

IN THE MATTER OF an appeal heard on May 6, 1991,  
under section 67 of the *Customs Act*, R.S.C., 1985, c. 1  
(2nd Supp.);

AND IN THE MATTER OF a notice of decision of the  
Deputy Minister of National Revenue for Customs and  
Excise dated August 9, 1990, relating to a request for  
re-determination filed pursuant to subsection 63(2) of the  
*Customs Act*.

**BETWEEN**

**IMPORTATION/EXPORTATION Y&Y**

**Appellant**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed. The Tribunal finds that rectangular dark green marble slabs, simply or crudely sawn, measuring 5 ft. x 7 ft. x 3/4 in., with a polished flat surface on one side, imported into Canada to be cut to size and shape for use as counter and table tops, stairs and columns are classified under tariff item No. 6802.21.00 as "Other monumental or building stone and articles thereof, simply cut or sawn, with a flat or even surface."

Michèle Blouin  
Michèle Blouin  
Presiding Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

W. Roy Hines  
W. Roy Hines  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-90-081**

**IMPORTATION/EXPORTATION Y&Y**

**Appellant**

**and**

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

**Respondent**

*This is an appeal under section 67 of the Customs Act,<sup>1</sup> from a decision of the Deputy Minister for National Revenue, Customs and Excise, maintaining the classification of goods under tariff item No. 6802.91.00. The issue is whether the polishing of marble slabs before importation precludes their classification under tariff item No. 6802.21.00 as monumental or building stone and articles thereof, simply cut or sawn, with a flat or even surface and, therefore, whether the subject goods are more properly classified under tariff item No. 6802.91.00.*

**HELD:** *The appeal is allowed. Rectangular, dark green marble slabs, simply or crudely sawn, measuring 5 ft. x 7 ft. x 3/4 in., with a polished flat surface on one side, imported into Canada to be cut to size and shape for use as counter and table tops, stairs and columns are classified under tariff item No. 6802.21.00 as "Other monumental or building stone and articles thereof, simply cut or sawn, with a flat or even surface."*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: May 16, 1991  
Date of Decision: September 12, 1991*

*Tribunal Members: Michèle Blouin, Presiding Member  
Sidney A. Fraleigh, Member  
W. Roy Hines, Member*

*Counsel for the Tribunal: Gilles B. Legault*

*Clerk of the Tribunal: Janet Rumball*

*Appearances: C. McKechnie, for the appellant  
D. Gagné, for the respondent*

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1. R.S.C., 1985, c. 1 (2nd Supp.), as amended.

**Appeal No. AP-90-081**

**IMPORTATION/EXPORTATION Y&Y**

**Appellant**

**and**

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

**Respondent**

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member  
SIDNEY A. FRALEIGH, Member  
W. ROY HINES, Member

**REASONS FOR DECISION**

This is an appeal under section 67 of the *Customs Act*,<sup>2</sup> from a decision of the Deputy Minister for National Revenue, Customs and Excise (the Deputy Minister), maintaining the classification of goods under tariff item No. 6802.91.00.

The issue is whether the polishing of marble slabs before importation precludes their classification under tariff item No. 6802.21.00 of the *Customs Tariff*<sup>3</sup> as monumental or building stone and articles, simply cut or sawn, with a flat or even surface and, therefore, whether the subject goods are more properly classified under tariff item No. 6802.91.00 as goods other than monumental or building stone and articles thereof simply cut or sawn, with a flat or even surface.

On June 22, 1989, the appellant imported polished marble slabs into Canada at Montréal under entry number 14019010088723. At that time, the subject goods were accounted for under tariff item No. 6802.21.00. On July 5, 1989, an officer determined that the goods should be classified under tariff item No. 6802.91.00. The appellant asked for a re-determination and, on October 27, 1989, the earlier classification was confirmed. The appellant unsuccessfully appealed that determination to the Deputy Minister whom, on August 9, 1990, confirmed the re-determination, decision which is now appealed to the Tribunal.

The subject goods are rectangular dark green marble slabs, simply or crudely sawn, measuring 5 ft. X 7 ft. X 3/4 in., with a polished flat surface on one side. They are imported into Canada for the purpose of being cut to size and shape for use as counter and table tops, stairs and columns.

Mr. Tao, a shareholder of the appellant as well as an employee, testified for the appellant. He described the subject goods and explained how marble blocks were removed from the quarry and sawed into slabs, fired and polished at the Taiwanese manufacturer's site. He further indicated that the appellant imported marble slabs, not blocks, and that slabs are normally polished before importation in order to ensure that the colour meets the customer's requirements.

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2. R.S.C., 1985, c. 1 (2nd Supp.), as amended.
  3. R.S.C., 1985, c. 41 (3rd Supp.), as amended.

Mr. André Maheu, an employee of the Department of National Revenue, testified for the respondent. The witness explained that marble can be imported in blocks or slabs. He also indicated that although unpolished blocks and slabs were imported, most of the time polishing would be done on slabs before importation because of lower labour costs in certain foreign countries.

The appellant contends that the fact that imported marble slabs are polished does not preclude their classification under tariff item No. 6802.21.00. Counsel for the appellant argues that the word "Worked" in the heading No. 68.02 relates to the entire heading, including all its subheadings. Subheadings, he contends, exhaust the heading and do not cover goods that are not provided for in the heading. Therefore, the conditions set forth in subheading No. 6802.21, i.e., that the goods must be simply cut or sawn with a flat or even surface, constrains the scope of the "worked" that is contemplated. In consequence, subheading No. 6802.21 defines a specific subset of worked monumental stone goods and includes polished marble slabs simply cut or sawn, with a flat or even surface. In this regard, counsel adds that the Explanatory Notes<sup>4</sup> to heading No. 25.15, which relates to marble, travertine, ecaussine and other calcareous monumental or building stone, refer to polishing as an operation that has the effect of excluding polished marble slabs from that heading. In sum, both headings are not in contradiction, and polished, i.e., worked, marble slabs may be simply cut or sawn with a flat or even surface and, thus, fall within the meaning of subheading No. 6802.21.

Counsel for the respondent recognized that the subject goods were excluded from heading No. 25.15 and were more properly classified under heading 68.02. However, in order to qualify under subheading No. 6802.21, the subject goods, having been cut or sawn in thinner slabs, ought not to be further worked and processed, which is precisely the case here as the slabs have been polished. This interpretation, counsel suggested, is in accordance with the statutory framework of the *Customs Tariff* that provides two possible tariff items in two different subheading Nos., namely, 6802.21 and 6802.91, the former referring to simply cut or sawn marble slabs with a flat or even surface, and the latter, to further process, i.e., polished goods.

The Tribunal does not accept the respondent's position. In comparing both heading Nos. 25.15 and 68.02, the Tribunal takes into account the Explanatory Notes to heading No. 25.15 as required by section 11 of the *Customs Tariff*. The notes provide that:

...

*The heading is restricted to the stones specified, presented in the mass or roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape. In the form of granules, chippings or powder, they fall in **heading 25.17.***

*Blocks, etc., which have been further worked, i.e., bossed, dressed with the pick, bushing hammer or chisel, etc., sand-dressed, ground, polished, chamfered, etc., are classified in **heading 68.02.** The same classification applies to blanks of articles.*

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4. Explanatory Notes, Harmonized Commodity Description and Coding System, Customs Co-operation Council, Brussels, First Edition (1986), Volume 1.

In view of these notes, blocks or slabs that have been subject to a mere cutting or sawing fall within heading No. 25.15, except if they are polished, in which case they are classified in heading No. 68.02. The thickness of the slabs, as contended by the respondent, seems therefore irrelevant regardless of whether the cutting or sawing is done at the quarry or elsewhere. The crux of this case, however, is that heading 68.02 refers to "Worked monumental or building stone ... " which, in light of the notes to heading No. 25.15, is precisely the characteristic pertaining to the goods in issue at the time of their importation in Canada.

Further, the evidence reveals that the subject goods are rectangular marble slabs, simply or crudely sawn, measuring 5 ft. X 7 ft. X 3/4 in., with a polished flat surface on one side imported into Canada to be cut to size and shape for use as counter and table tops, stairs, etc. If the goods had been imported after being cut to size and shape for the above-mentioned uses, the Tribunal would have had no difficulty in classifying them under tariff item No. 6802.91.00 because they would not simply be cut or sawn, but, on the contrary, would be specifically cut or sawn into final products.

Accordingly, the Tribunal finds that the subject goods should be classified under tariff item No. 6802.21.00 as "Other monumental or building stone and articles thereof, simply cut or sawn, with a flat or even surface."

The appeal is allowed.

Michèle Blouin  
Michèle Blouin  
Presiding Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
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W. Roy Hines  
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