CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, November 19, 1992

Appeal No. AP-91-006

IN THE MATTER OF an appeal heard on July 22, 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 February 19, 1991, with respect to a request for a re-determination pursuant to section 63 of the *Customs Act.*

BETWEEN

MIL DAVIE INC. **Appellant**

AND

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

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
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UNOFFICIAL SUMMARY

Appeal No. AP-91-006

MIL DAVIE INC. **Appellant**

and

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

The issue in this appeal is whether the marine evacuation system imported from Denmark by the appellant for installation on a ferry is eligible for the statutory concessionary provisions of Code 2351 or 2360 of Schedule II to the Customs Tariff.

***HELD**: The appeal is dismissed.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*July 22, 1992*
Date of Decision:	*November 19, 1992*
Tribunal Members:	*Michèle Blouin, Presiding Member* *Kathleen E. Macmillan, Member* *Desmond Hallissey, Member*
Counsel for the Tribunal:	*Robert Desjardins*
Clerk of the Tribunal:	*Dyna Côté*
Appearances:	*Gilles Desjardins and Zave Kaufman, for the appellant* *Rosemarie Millar and Stéphane Lilkoff, for the respondent*

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Appeal No. AP-91-006

MIL DAVIE INC. **Appellant**

and

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

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
KATHLEEN E. MACMILLAN, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal, under section 67 of the *Customs Act*[1] (the Act), of a decision dated February 19, 1991, of the Deputy Minister of National Revenue for Customs and Excise made under subsection 63(3) of the Act.

The issue is whether the marine evacuation system (the MES), imported from Denmark in 1989 by the appellant for installation on the ferry "M/V Joseph & Clara Smallwood," is eligible for the statutory concessionary provisions of Code 2351 or 2360 of Schedule II to the *Customs Tariff*.[2] The appellant and the respondent agree that the classification of the MES under tariff item No. 8907.10.00 as "Inflatable rafts" is correct.

Mr. David Christopher testified for the appellant, for which he is Director of Operations, Quality Assurance and Trials. He presented videos, which were entered in evidence at the hearing, to explain the operation of the MES. Mr. Christopher then described the main components of the MES, which consist of a stowage unit that holds bottles of nitrogen gas, cylinders, an inflatable slide and a receiving platform in the form of an inflatable raft. According to the witness, this unit, which is mounted in six locations on the vessel built by the appellant, weighs approximately 3,350 kg, 2,500 kg of which is the weight of steel. The system also includes inflatable life rafts stored on the launching ramps outside the stowage unit. These ramps are made entirely of metal. The witness also noted that each raft contains metal components (such as a radar antenna), which account for approximately 35 kg of the total 255-kg weight. Mr. Christopher also stated that he had no reason to question the accuracy of the documents submitted in evidence and provided by the manufacturer of the MES, and specifically that 56 percent of the total weight of the MES is made up of its metal components. Lastly, this witness stated that there is no Canadian manufacturer of such a system and that the MES was imported into Canada by the appellant in order to meet the current safety standards for ferries.

The main witness for the respondent was Mr. James Brock, whose expertise was not challenged by counsel for the appellant. Mr. Brock works for the Canadian Coast Guard as a

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

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Senior Surveyor - Ship Safety and Operations. He twice visited the facilities of the manufacturer of the MES in Denmark as part of the certification process. He stated that the stowage unit, which holds the slide and the gas bottles, could be made of something other than metal, such as fibreglass. He also explained that the metal cylinders are attached to each of the rafts. During cross-examination, Mr. Brock indicated that the MES, at the time that it was imported by the appellant, was a product not made in Canada.

The introduction to Code 2360 contains the following statement: "The following, of base metal, of Section XV, XVI, XVII ... for use in the construction or equipment of ships, boats." During the arguments, Mr. Desjardins, the appellant's representative, claimed that the eligibility conditions for the statutory concessionary provisions of this code had been met in this instance. He accordingly noted the metal content of the MES (56 percent of its weight), the classification of the MES under Section XVII and the use of the product in question in the construction of a ship. Moreover, relying on the testimony of Mr. Christopher, he stressed that the MES, in accordance with Code 2360, was one of the "Other goods, of a class or kind not made in Canada."

During his arguments concerning Code 2351, the wording of which is "The following imported by societies for the saving of lives: ... Liferafts of tariff item No. 8907.10.00," the appellant's representative referred to an administrative policy covered by Memorandum D10-8-15 (the Memorandum), which interprets tariff item 44006-1 that was replaced by Code 2351. This unpublished Memorandum of the Department of National Revenue, Customs and Excise (Revenue Canada), stipulates that the benefits conferred by this tariff item "are restricted to societies that are organized for the purpose of participating in rescue operations in the saving of human lives." Consequently, individuals, commercial establishments and even police forces could not import rescue equipment under the said tariff item. According to Mr. Desjardins, the long delay by the respondent in making this document public (10 years) allegedly shows a lack of willingness on the part of Revenue Canada to clarify its position. Relying on a note to file bearing the name of a manager with Revenue Canada, the appellant's representative indicated that Revenue Canada was aware of the ambiguity of the wording of Code 2351. Mr. Desjardins then used the Précis de grammaire française[3] by Maurice Grévisse and a number of other documents, including the Oxford English Dictionary,[4] to analyze this wording, with particular attention to the prepositions "by" and "to" and the word "society." With respect to this latter item, he objected to the interpretation given by the respondent to the word "society," which restricts its meaning to a group of individuals dedicated to a common activity. According to the appellant's representative, acceptance of such a restrictive interpretation would be the same as rescinding Code 2351, "because only a shipyard would be able to use it."

Counsel for the respondent claimed that Code 2360 does not apply in this instance. According to them, the concept of "base metal" is a legal concept and not, as the appellant claims, a concept of common sense. The criterion that has to be used in determining this concept is the criterion of essential characteristics. This criterion is determined by making a value judgment, a general appraisal of the object to be classified, based on several factors. It is, therefore, not sufficient to consider only the object's weight. According to counsel for the respondent, when the question arises as to the applicability of Code 2360, it is necessary to look at the object that has already been classified under Schedule I. In this case, they are "Inflatable rafts." The next step is to analyze the object using the criterion of essential characteristics. The

3. M. Grévisse, Montréal, Éditions du Renouveau Pédagogique Inc., 1987.
4. Volume XV, Second Edition, Oxford: Clarendon Press, 1989.

primary material used in the manufacture of inflatable rafts is nylon-covered rubber. It is this material that is inflated to make the rafts float. This material also ensures, among other things, the real usefulness of the rafts. The other argument presented by counsel for the respondent to refute the application of Code 2360 is the rule of *ejusdem generis*. The objects that one would like to be included in the expression "other goods" must be of the same kind as those listed in Code 2360. According to them, the MES cannot be included in these "other goods."

With respect to Code 2351, counsel for the respondent claimed that the common meaning of the word "society" is not "companies" or "corporations," but rather a non-profit corporation. They went on to say that, in the absence of a definition of the word "society" in the said code, an effort must be made to determine the intention of the legislator. Schedule II must, therefore, be seen as an intention to provide concessions in certain specific cases to certain importers for certain specific goods. Counsel then cited *Nowegijick v. The Queen*[5] in which Dickson J. stated that administrative policies and interpretations can be an important factor when there is doubt as to the meaning of legislation. Counsel for the respondent then referred to the administrative policy that was mentioned earlier. Although not published, it is still applicable and can be used by the Tribunal to interpret the provisions of Code 2351. Moreover, the underlying purpose of the policy is to assist non-profit corporations whose aim or goal is the importation of life rafts to save human lives. Since the appellant is not a non-profit corporation, it cannot benefit from the statutory concessionary provisions of Code 2351.

After reviewing the evidence and considering the arguments, the Tribunal finds that the appeal must be dismissed. Firstly, the Tribunal agrees with the argument presented by the respondent with respect to Code 2360. Accordingly, it would appear appropriate to reiterate that the application of the rule of *ejusdem generis* in the interpretation of this provision effectively excludes the MES imported by the appellant from the application of this code.

With respect to Code 2351, the Tribunal agrees with the appellant that the Memorandum cannot guide the Tribunal in this instance since this document does not refer to Code 2351, but strictly to the former tariff item 44006-1. Having said this, the Tribunal finds it necessary to determine the meaning of the word "society." To do so, it is also necessary to identify the intention of the legislator. Louis-Philippe Pigeon, in his short work Rédaction et interprétation des lois,[6] outlines the general rules to follow. The first of these rules is the interdependence of legislative provisions. In a word, the whole of the legislation must be taken into consideration when interpreting a specific provision. Each provision must be interpreted with respect to the other provisions. As Elmer A. Driedger stated in Construction of Statutes,[7] "What the words say, either expressly or by necessary implication, is the intention of Parliament. That intention, therefore, is to be found in the words." It is with these principles in mind that we must look at the *Customs Tariff*. More specifically, we must examine the words used in drafting various codes in Schedule II, since it is in the words that it will be possible to find the intention of the legislator.

Code 2338, for example, uses the word "*compagnie*" in its French version and "company" in its English version. Part of the text pertaining to Code 2345 reads as follows: "The following for diesel-powered dumpers." In this case, the text does not state "imported by companies or specially imported by societies." Since no mention is made, this latter code applies to all

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5. [1983] 1 S.C.R. 29.
6. L.-P. Pigeon, Québec, Les Publications du Québec, 1986.
7. E.A. Driedger, Second Edition, Toronto: Butterworths, 1983, p. 131.

importers and not just to companies or societies. In the case of Code 2351, the question might well be asked what the justification was for the legislator adding the words "imported by societies for the saving of lives." If the legislator had wanted to include companies, as is the case with Code 2338, it would have been explicitly stated. Furthermore, if the legislator had wanted to grant a tariff concession to all importers of life rafts for the saving of lives, the words "*société*" and "society" would not have been used in the text of Code 2351. If that had been the intention, the legislator would have drafted the code differently; it would have read: "The following, imported for the saving of lives." Such a wording would have allowed all importers to benefit from this tariff concession.

The Tribunal finds that the benefit of Code 2351 is restricted to societies specifically formed to work toward the saving of lives. It is possible that this code is not applied frequently, but that is not a matter of consideration for the Tribunal. Consequently, this benefit cannot be obtained, for example, by commercial enterprises. Based on the evidence in the file, there is no doubt that the appellant constitutes such an entity, the activities of which include the construction of ships for profit. The appellant may not, therefore, benefit from the statutory concessionary provisions of Code 2351.

For all these reasons, the appeal is dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Desmond Hallissey
Desmond Hallissey
Member