

Ottawa, Tuesday, April 28, 1992

Appeal No. AP-91-150

IN THE MATTER OF an appeal heard on March 3, 1992,
under section 67 of the *Customs Act*, R.S.C., 1985, c. 1
(2nd Supp.);

AND IN THE MATTER OF a re-determination of the
Deputy Minister of National Revenue for Customs and
Excise dated August 19, 1991, under subsection 63(3) of
the *Customs Act*.

BETWEEN

IEC-HOLDEN INC.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The hydraulic stabilizers in issue are properly classified under tariff item No. 8607.99.20 of the *Customs Tariff* as parts of non self-propelled rolling-stock.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

Desmond Hallissey

Desmond Hallissey
Member

Robert J. Martin

Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-150

IEC-HOLDEN INC.

Appellant

AND

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

Respondent

The goods in issue are various models of hydraulic stabilizers used in freight car spring nest to control rocking and bouncing. The issue is whether the hydraulic stabilizer units should be classified under tariff item No. 8479.89.90 of the Customs Tariff, as other machines and mechanical appliances having individual functions, not specified or included elsewhere in Chapter 84 or, as determined by the respondent, under tariff item No. 8607.99.20 as parts of non self-propelled rolling-stock on the basis that the goods in issue are similar to shock absorbers.

HELD: *The appeal is dismissed. Based on the evidence and the Explanatory Notes to the Harmonized Commodity Description and Coding System, the Tribunal finds that the hydraulic stabilizers are properly classified under heading No. 86.07. According to the Explanatory Notes, heading No. 86.07 includes parts of rolling-stock such as hydraulic shock absorbers. Although the hydraulic stabilizers in issue are distinct from shock absorbers in the trade, the evidence reveals that they constitute a supplemental device to regular dampers. As dampers and shock absorbers have the same ordinary meaning, this clearly indicates that the goods in issue are properly classified under heading No. 86.07. The goods, therefore, were properly classified under tariff item No. 8607.99.20.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: March 3, 1992

Date of Decision: April 28, 1992

*Tribunal Members: Arthur. B. Trudeau, Presiding Member
Kathleen E. Macmillan, Member
Desmond Hallissey, Member*

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Dyna Côté

*Appearances: J.A.B. Quenneville, for the appellant
Rosemarie Millar, for the respondent*

Appeal No. AP-91-150

IEC-HOLDEN INC.

Appellant

AND

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

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
KATHLEEN E. MACMILLAN, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ from nine decisions made by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister).

Between June 14, 1988 and April 12, 1989, the appellant imported into Canada goods described as hydraulic stabilizers. Customs officers re-determined the classification of the goods under tariff item No. 8607.99.20 as shock absorbers. On August 19, 1991, the Deputy minister confirmed this tariff classification.

The goods in issue are various models of hydraulic stabilizers. In the adjustment request form B-2, filed by the appellant, they are described as hydraulic dampers that fit into the freight car spring nest to control rocking and bouncing.

The issue in this appeal is whether the hydraulic stabilizer units should be classified, as contended by the appellant, under tariff item No. 8479.89.90. of the *Customs Tariff*,² as other machines and mechanical appliances having individual functions, not specified or included elsewhere in Chapter 84, or as determined by the respondent, under tariff item No. 8607.99.20 as parts of non self-propelled rolling-stock on the basis that they are similar to shock absorbers.

At the hearing, the appellant called an expert witness, Mr. Dennis L. Rhen, Manager of the Engineering Services at A. Stucki Company of Pittsburgh, the manufacturer of the goods in issue. Mr. Rhen testified that the primary function of the hydraulic stabilizers is to control resonant rocking that may cause derailments of high-centre-of-gravity freight railway cars. Resonant rocking, he explained, is caused by the cumulative effect of low spots, at the joints of jointed rails, and higher areas, in the centre of the rails. This phenomenon creates a sinusoidal input which forces the resonant rocking condition that may ultimately cause the wheels to lift off the rails and increase the chance of derailment. High-centre-of-gravity freight cars, which

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

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

are defined as cars that are 90 inches or greater above the rails, are sensitive to that input. The resonant rocking condition, he continued, is at its worst for this type of car when the distance between their truck wheels is close to the length of the rails. In Mr. Rhen's view, the hydraulic stabilizers' function is to control resonant rocking which differs from the function of the shock absorbers. The latter are indeed designed to absorb shocks that result from instantaneous irregularity or stress from high impacts. According to his testimony, shock absorbers cannot control the input of a regular periodic function, such as the resonant rocking caused by the conditions of the rails.

Mr. John Coleman, who is an engineer and Head of the Vehicle Dynamics Laboratory at the National Research Council of Canada, was called by the respondent as an expert witness. Mr. Coleman disagreed with Mr. Rhen's statement that shock absorbers cannot reduce resonant rocking. The witness explained that there are several ways to build in damping or shock absorbing devices such as dry friction and hydraulic viscous fluid action mechanisms. In the former case, friction wedges fitted below with springs absorb dry friction energy by sliding up and down as the bolster moves up and down due to the bouncing or rocking. The goods in issue, he said, constitute a supplemental damping, or shock absorbing device, as it replaces one of the springs. It absorbs energy from the resonant rocking with a piston moving into a viscous fluid. Mr. Coleman also provided the Tribunal with encyclopedia references showing that damper and shock absorbers are synonymous as both reduce harmonic motion and control shocks. In cross-examination, the witness also said that a stabilizer is not an energy-absorbing device while a shock absorber is because it absorbs shocks as well as energy; a stabilizer function is to transfer motion or force from one side of the vehicle to another or from the front to the back of the vehicle.

The appellant's representative argued that hydraulic stabilizers differ in their function from shock absorbers: a hydraulic stabilizer, he said, controls lateral instability at critical speeds while a shock absorber absorbs energy from sudden impulses or shocks in machinery. The representative also submitted that, according to the interpretative notes of Section XVI of the *Customs Tariff*, machines such as those in issue must be classified by using their principal function. As their principal function is to stabilize, that is to control resonant rocking, the goods in issue therefore fall within the meaning of tariff heading No. 84.79 which includes machines having individual functions, not specified or included elsewhere in Chapter 84. This classification, he further argued, is in accordance with Rule 4 of the General Rules for the Interpretation of the Harmonized System³ (the General Rules), which states that goods which cannot be classified in accordance with Rules 1 to 3 "shall be classified under the heading appropriate to the goods to which they are most akin."

Counsel for the respondent argued that hydraulic stabilizers have been classified as parts of railway rolling-stock, that is, hydraulic shock absorbers for bogies. She also argued that snubbers and dampers are defined as shock absorbers and that descriptive literature calls the goods in issue snubbers and dampers. The manufacturer, for instance, refers to the goods as a type of shock absorber for railway cars. The hydraulic stabilizers' function is like that of shock absorbers. She also asked the Tribunal to apply Rule 4 of the General Rules and argued that shock absorbers are the goods to which the hydraulic stabilizers are most akin. Counsel for the respondent also argued that the appellant's contention that an hydraulic stabilizer has a function distinct from a shock absorber is refuted by the respondent's expert witness testimony.

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

The Tribunal agrees with representatives for both parties as to the relevance of Rule 4 of the General Rules when classifying merchandise under a heading in Schedule I to the *Customs Tariff*. However, having to consider two very distinct headings and sub-headings, the Tribunal also has to address section 11 of the *Customs Tariff*. According to that section, in interpreting the headings and sub-headings of the *Customs Tariff*, regard shall be given to the Explanatory Notes to the Harmonized Commodity Description and Coding System⁴ (the Explanatory Notes). In this instance, the Explanatory Notes provide specific guidance as the Tribunal must determine whether the goods in issue can be considered "machines" within the meaning of heading No. 84.79 or "parts" within the meaning of heading No. 86.07. Indeed, the Explanatory Notes to both headings give a broad meaning to both machines and parts. For instance, "machines" in heading No. 84.79 include mechanical devices, while parts, in heading No. 86.07, include different devices such as hydraulic shock absorbers for bogies or "*dispositifs (devices) antichocs hydrauliques destinés à être montés sur les bogies*" in the French version.

That being said, evidence provided by both representatives through specialized encyclopedia, commercial advertisement and testimony establishes that hydraulic stabilizers are devices. Both expert witnesses testified that hydraulic stabilizers constitute supplemental devices to dampers specifically designed for bogies, or trucks, the term used for the wheel assembly in North America. Moreover, Exhibit A-1, entitled Stucki RFE-16 Resilient Friction Element, shows that the hydraulic stabilizers in issue are elements of a Stucki Inc. Dynamic Suspension Control Package.

In view of the evidence and taking into account the Explanatory Notes, the Tribunal is of the opinion that hydraulic stabilizers are more properly classified under heading No. 86.07. Although it is not necessary to conclude that hydraulic stabilizers such as the one in issue are shock absorbers, the evidence reveals that they constitute supplemental devices to regular dampers. As dampers and shock absorbers have the same ordinary meaning, and Explanatory Notes to heading No. 86.07 include parts designed for rolling-stock such as hydraulic shock absorbers, hydraulic stabilizers designed as supplemental devices for dampers are therefore properly classified under heading No. 86.07.

The Tribunal does not deny the appellant's contention that the hydraulic stabilizer's primary function might be to prevent resonant rocking. However, to classify the goods in issue under heading No. 84.79 on the sole basis that their primary function is distinct from that of shock absorbers or snubbers would tend to make heading No. 84.79 overlap heading No. 86.07, while it is clear that the former heading is drafted to encompass parts of rolling-stock such as the hydraulic stabilizers in issue.

The Tribunal also rejects the appellant's argument that the hydraulic stabilizers are excluded from the expression "parts" in section XVII because they are machines under heading No. 84.79 according to Note 2 to Section XVII of Schedule I to the *Customs Tariff*. Given the Tribunal's conclusion that the goods in issue are, first and foremost, devices under heading No. 86.07, they cannot be "machines" under heading No. 84.79.

4. Customs Cooperation Council, Brussels, 1986.

The Tribunal finds, therefore, that the hydraulic stabilizers in issue are properly classified under tariff item No. 8607.99.20 as parts of non self-propelled rolling-stock.

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