

Ottawa, Thursday, July 22, 1993

Appeal No. AP-92-152

IN THE MATTER OF an appeal heard on March 2, 1993,
under section 67 of the *Customs Act*, R.S.C. 1985,
c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the
Deputy Minister of National Revenue for Customs and
Excise rendered under subsection 63(3) of the *Customs Act*.

BETWEEN

PROCEDAIR INDUSTRIES INC.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Michèle Blouin
Michèle Blouin
Presiding Member

John C. Coleman
John C. Coleman
Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-152

PROCEDAIR INDUSTRIES INC.

Appellant

and

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

Respondent

The issue in this appeal is whether the filter units imported by the appellant are more properly classified, as claimed by the appellant, under tariff item No. 8421.39.10 as "[a]ir separators of a kind used in the processing, smelting or refining of ... metals" or, as claimed by the respondent, whether they are properly classified under tariff item No. 5911.90.90 as "[o]ther ... [t]extile products and articles, for technical uses."

HELD: *The appeal is allowed.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: March 2, 1993
Date of Decision: July 22, 1993

Tribunal Members: Michèle Blouin, Presiding Member
John C. Coleman, Member
Kathleen E. Macmillan, Member

Counsel for the Tribunal: Robert Desjardins

Clerk of the Tribunal: Dyna Côté

Appearances: Jean-Pierre Boucher, for the appellant
Stéphane Lilkoff, for the respondent

Appeal No. AP-92-152

PROCEDAIR INDUSTRIES INC.

Appellant

and

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

Respondent

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
JOHN C. COLEMAN, Member
KATHLEEN E. MACMILLAN, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act) from a decision of the Deputy Minister of National Revenue for Customs and Excise rendered under subsection 63(3) of the Act.

The issue is whether "Vibrair" filter units are more properly classified, as claimed by the appellant, under tariff item No. 8421.39.10 of Schedule I to the *Customs Tariff*² as "[a]ir separators of a kind used in the processing, smelting or refining of ... metals" or, as claimed by the respondent, whether they are properly classified under tariff item No. 5911.90.90 as "[o]ther ... [t]extile products and articles, for technical uses."

Mr. Michel Lafrenière, Director, Applied Engineering Section, Procedair Industries Inc., testified on behalf of the appellant. After mentioning the appellant's relationship with the French company, Procedair Industries S.A., Mr. Lafrenière explained that the "Vibrair" filter units are the primary tool used in filtering the gas and fumes given off in the vat rooms found in aluminum-producing mills. These units have three main components: the filter cavity made from a polyester fabric, the metal frame (mannequin) and the rubber parts. Mr. Lafrenière also explained that the units are imported from France unassembled, apparently for economic reasons and in order to ensure the safety of the units.

The filter units in issue are extremely large, measuring 30 ft. high by 15 ft. wide. They are installed in an enormous device which, according to the witness, is the size of a 10-storey "factory." Finally, Mr. Lafrenière testified that, once these filter units are installed, they are good for many years and do not require periodic maintenance.

During cross-examination, Mr. Lafrenière provided more detailed information on the operation of the filter units and on the fact that they require very little maintenance.

The appellant's representative argued that the respondent had acknowledged that the goods imported from France were air filters used in the recovery of alumina. In his opinion, the filter units are neither blended goods nor composite items. He went on to argue that the respondent would have classified the filters in heading No. 84.21 if they had been "exported fully assembled." In this context, he pointed out that Rule 2 (a) of the General Rules for the Interpretation of the Harmonized System³ (the General Rules) applies.

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1. R.S.C. 1985, c. 1 (2nd Supp.).
 2. R.S.C. 1985, c. 41 (3rd Supp.).
 3. *Ibid.*, Schedule I.

In the opinion of counsel for the respondent, the Section or Chapter Notes found in Schedule I to the *Customs Tariff* are the authority for the purposes of classifying imported goods. He added that such classification must be established on the basis of various legislative texts that must be considered jointly. Along the same lines, counsel for the respondent cited Note 1 (e) of Section XVI of Schedule I to the *Customs Tariff* which excludes from this Section "articles of textile material for technical uses (heading No. 59.11)." He also quoted an extract from the Explanatory Notes⁴ to heading No. 84.21 and referred to Note 7 (b) of Chapter 59 of the *Customs Tariff*, as well as to the Explanatory Notes to heading No. 59.11. A review of these texts would result in the conclusion that the filter units must be classified in heading No. 59.11 and not in heading No. 84.21.

He argued, however, that should the Tribunal not find these texts sufficiently clear to assign the classification under Rule 1 of the General Rules, then Rule 3 (b) of the General Rules must be taken into consideration. According to counsel for the respondent, this rule leaves no doubt that it is the filtering fabrics which give the filter its essential character. Consequently, the units must be classified in heading No. 59.11.

After reviewing all the evidence and considering the arguments of the parties, the Tribunal finds that the appeal must be allowed. Firstly, there could be no question of classifying the filter cavities in isolation. The Tribunal is of the opinion that the goods imported from France do, together, truly constitute filters that are crucial to the proper operation of the system for filtering the gases and fumes given off during the production of aluminum. According to the witness for the appellant, this system, taken in its entirety, must be considered as an air separator. The Tribunal, therefore, finds that such a system could be classified under tariff item No. 8421.39.10 as an air separator of a kind used in the processing, smelting or refining of metals.

In the opinion of the Tribunal, the filter units in issue are parts of such a separator. The evidence showed that they are indeed the essence of the entire purification system installed in aluminum-producing mills, such as the one located in Bécancour, Quebec. For this reason, the Tribunal finds that these enormous filters are more properly classified under tariff item No. 8421.99.10 as parts of air separators.

In light of the foregoing, the appeal is allowed.

Michèle Blouin
Michèle Blouin
Presiding Member

John C. Coleman
John C. Coleman
Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

4. Explanatory Notes to the Harmonized Commodity Description and Coding System, Customs Co-operation Council, 1st ed., Brussels, 1986.