CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, August 31, 1993

Appeal No. AP-92-112

IN THE MATTER OF an appeal heard on February 10, 1993, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue for Customs and Excise dated June 19 and 30, 1992, with respect to requests for re-determination made under section 63 of the *Customs Act*.

BETWEEN

PRAHER CANADA PRODUCTS LTD. **Appellant**

AND

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

AND

XOMOX CANADA LTD. **Intervenor**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

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TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal No. AP-92-112

PRAHER CANADA PRODUCTS LTD. **Appellant**

and

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

and

XOMOX CANADA LTD. **Intervenor**

The issue in this appeal is whether the goods in issue, being various valve parts, are properly classified under tariff item No. 8481.90.40 as "Parts ... Of the goods of tariff item No. ... 8481.80.91," as asserted by the respondent, or more properly classified under tariff item No. 8481.90.10 as "Parts ... Of the goods of tariff item No. ... 8481.80.99," as claimed by the appellant. The respondent claimed that the parent valves are classifiable under tariff item No. 8481.80.91 as "Hand operated or hand activated" valves. On the other hand, the appellant claimed that the parent valves are classifiable under tariff item No. 8481.80.99 as "Other."

HELD: *The appeal is dismissed. The parent valves are prima facie classifiable under two tariff items. As such, the Tribunal applied Rule 3 (a) of the General Rules for the Interpretation of the Harmonized System and Rule 1 of the Canadian Rules. The Tribunal is of the opinion that tariff item No. 8481.80.91, being "Hand operated or hand activated," is more specific than the residual tariff item "Other." Accordingly, the Tribunal finds that the parent valves are classifiable under tariff item No. 8481.80.91. As such, the parts are properly classified under tariff item No. 8481.90.40, as claimed by the respondent.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*February 10, 1993*
Date of Decision:	*August 31, 1993*
Tribunal Members:	*Desmond Hallissey, Presiding Member* *Kathleen E. Macmillan, Member* *Charles A. Gracey, Member*
Counsel for the Tribunal:	*David M. Attwater*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*Brian J. Barr, for the appellant* *Ian McCowan, for the respondent* *Douglas J. Bowering, for the intervenor*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-92-112

PRAHER CANADA PRODUCTS LTD. **Appellant**

and

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

and

XOMOX CANADA LTD. **Intervenor**

TRIBUNAL: DESMOND HALLISSEY, Presiding Member
KATHLEEN E. MACMILLAN, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*[1] (the Act) from decisions rendered by the Deputy Minister of National Revenue for Customs and Excise on June 19 and 30, 1992, under subsection 63(3) of the Act.

The goods in issue are various valve parts, including balls, stems, ball seating joints and housings. These parts are made by injection moulding of PVC plastic. The parent valves to these parts are generally described in relation to their type, inside dimension and number of ports that they have. The parts in issue may be described as parts of two- or three-way (port) rotary ball valves having inside dimensions of between 3/8 in. and 3 in. Many of the parts may be used on either of the two-valve types. Typical applications for these valves include use in solar and filtration systems, swimming pools and hot tubs. The individual parts were imported into Canada in bulk in various shipments between February 1988 and July 1990. The appellant also imports complete valves, which account for about 10 percent of total imports.

The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8481.90.40 as "Parts ... Of the goods of tariff item No. ... 8481.80.91," as asserted by the respondent, or more properly classified under tariff item No. 8481.90.10 as "Parts ... Of the goods of tariff item No. ... 8481.80.99," as claimed by the appellant. The Tribunal, therefore, had to determine the proper tariff classification of the parent valves, of which the goods in issue are acknowledged to be parts, in order to classify the parts themselves. The respondent claimed that the parent valves are classifiable under tariff item No. 8481.80.91. The appellant claimed that the parent valves are classifiable under tariff item No. 8481.80.99.

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

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For purposes of this appeal, the relevant tariff nomenclature of Schedule I to the *Customs Tariff*[2] reads as follows:

84.81	*Taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves.*
8481.80	*-Other appliances*
8481.80.91	*----Hand operated or hand activated (excluding multiple gear, pulley or chain valves, connective couplings equipped with valves)*
8481.80.99	*----Other*
8481.90	*-Parts*
8481.90.10	*---Of the goods of tariff item No. ... 8481.80.99*
8481.90.40	*---Of the goods of tariff item No. ... 8481.80.91*

Mr. John Dirneder, General Manager of Praher Canada Products Ltd., served as its witness. He described the valves, of which the goods in issue are parts, as housing a ball with a cylindrical bore through which a medium may pass. Depending on the orientation of the bore in relation to the ports of the valve, the flow of a medium through the valve can be limited, or its direction can be affected in a three-way valve. The orientation of the ball is controlled by a stem, which is connected to the ball through the housing of the valve. The ball is turned by turning the stem, either by hand, using a handle supplied by the appellant or other tool, or by use of an electric motor.

When a valve is to be fitted with a motor, the bottom plate to the motor unit is secured to the housing of the valve with glue or other bonding material. A motor unit and gear box are then screwed onto the bottom plate. A motor may also be attached by brackets secured around the valve housing. When the motor is energized, the motion is transferred to the gear box which reduces the rotation speed. The motion is then transferred by gears to the stem which turns the ball. When fitted with a motor, no changes need to be made to any of the parts of the valve. The witness indicated that motors are often used for safety reasons or for valves that are not easily accessible.

The witness testified that a valve is a device used to regulate the flow of a medium through it. He indicated that it is the ball that actually regulates the flow, and it would continue to do so whether or not a handle is attached to the stem of the valve. He indicated that a valve without an actuator is still a complete valve. In designing a valve, consideration must be given to the temperature and pressure of the system, as well as the medium passing through the system. The witness indicated that only the pressure may affect the type of actuation required for a valve. Under high pressures, certain valves require power actuation.

The valves are assembled in Canada. When shipped to customers, they typically come with a handle. Mr. Dirneder indicated that between approximately 7 and 15 percent of valves

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

are sold as bare-stemmed valves, and that those sold with electric motors may account for less than 20 percent of sales. The balance are sold with handles. The witness indicated that, until a handle or motor is attached to the stem of the valve, it is impossible to tell how the valve will ultimately be actuated.

Mr. Bill Metz, General Manager of Xomox Canada Ltd., the intervenor, served as its witness. The intervenor is a manufacturer of rotary-type valves, including ball valves. Mr. Metz described ball valves as passive devices that typically stay in a fixed position for long periods of time. The witness opined that a bare-stemmed valve is a complete valve. He indicated that the intervenor's valves are not designed to be hand operated, in contrast to such valves as those used on aerosol cans that must be actuated by hand.

Counsel for the appellant acknowledged that the tariff classification of the parts in issue flows directly from the classification of the valves to which they relate. He argued that the classification proposed by the respondent is appropriate for hand-operated or hand-activated valves. The appellant's position was that the goods are more properly classified under tariff item No. 8481.90.10 as parts of "Other" valves.

Counsel submitted that the central point at issue in this appeal is the essential characteristic of the rotary ball valves into which the parts in issue are designed to be incorporated. In this regard, counsel submits that:

(a) The essential characteristic of a valve is as a valve in its bare-stemmed state and that the parts should therefore be classified as parts of bare-stemmed rotary ball valves. Bare-stemmed rotary ball valves are complete valves and, as they are classifiable under tariff item No. 8481.80.99, the parts in issue are classified under tariff item No. 8481.90.10.

(b) Alternatively, if the essential characteristic of the valve is to be determined with reference to whether it is hand activated within the meaning of tariff item No. 8481.80.91, then unless and until the required type of actuator is present, neither the valve nor its parts qualify as hand activated under, or in reference to, tariff item No. 8481.80.91.

Counsel for the appellant argued that, as the same parts are used regardless of whether the valves into which they are incorporated are fitted with a hand actuator, power actuator or no actuator, the classification of the parts must therefore be determined in reference to parts of a bare-stemmed valve. The function of a valve, and what gives it its essential characteristic, is the control or regulation of flow. The essential characteristic of a valve is determined before any actuator is added to it. The actuator is irrelevant to the essential characteristic of the valve.

Counsel stated that the valves into which the parts are incorporated are equally capable of receiving either a hand actuator or a power actuator, and are sold and used with either or none. It was submitted that, unless the valve actually has a hand actuator attached, it cannot be a hand-operated or hand-activated valve under tariff item No. 8481.80.91. There is no basis in law, therefore, for the respondent to have classified the goods as parts of hand-activated or hand-operated valves.

Counsel for the appellant relied on Rule 1 of the General Rules for the Interpretation of the Harmonized System[3] (the General Rules) and stated that Rule 3 of the General Rules and

3. *Ibid*., Schedule I.

Rule 1 of the Canadian Rules[4] do not apply to the consideration of the two tariff items at issue in this case. Rule 3 of the General Rules requires that the goods be *prima facie* classifiable under two or more tariff items. As the goods are not parts of valves that are hand operated or hand activated, they cannot be classified as argued by the respondent.

Counsel for the respondent also acknowledged that, to classify the parts in issue, the tariff item of the parent valves must first be determined. The Explanatory Notes[5] to heading No. 84.81 define a complete valve as a flow-regulating device, with variable apertures, with one of three methods of operation, being either by hand, machine or automatic device.

Under Rule 2 (a) of the General Rules, the goods must be classified as if they were complete. Therefore, counsel for the respondent submitted that, if an operator is required to convert a valve into a flow-regulating device, the valve must be classified as though the operator is present.

Counsel for the respondent also submitted that the parent valves are *prima facie* hand operated if they are capable of being hand operated, unless there is some reason for that presumption to be displaced. As the valves can equally be hand operated or machine operated, they can *prima facie* be classified under either tariff item No. 8481.80.91 or 8481.80.99. According to Rule 3 (a) of the General Rules and Rule 1 of the Canadian Rules, when goods are classifiable under two tariff items, they must be classified under the tariff item which provides the most specific description. Counsel submitted that tariff item No. 8481.80.91 is the most specific in this case.

For the valves to become power operated, an actuator must be glued onto the valve body, which is considered a manufacturing process performed in Canada. Accordingly, the valves, as imported, are exclusively hand operated at the time of importation.

The onus is on the appellant to prove that the valves are not capable of being hand operated or hand activated, prior to giving consideration to the residual tariff item No. 8481.80.99, and the appellant has admitted that the valves in issue can be hand operated.

It has been acknowledged by all parties that the classification of the parts in issue flows directly from the classification of the parent valves. As such, in this appeal, the Tribunal must determine the classification of goods that are not in issue and for which the Tribunal has little knowledge.

The parent valves must be classified as either "Hand operated or hand activated" or "Other." Reference to "Other" must mean other than hand operated or hand activated and would include automatic activation and activation by machine or pneumatics. It is clear, therefore, that the two classes of valves are distinguished on the basis of how they are operated or activated. As such, the Tribunal must determine how the parent valves are operated or activated in order to classify them. In this regard, it has been acknowledged that the parent valves may be either hand operated or machine operated. Accordingly, the parent valves are *prima facie* classifiable under the two tariff items proposed by the parties.

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4. *Ibid.*

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

Paraphrasing the relevant elements of Rule 3 of the General Rules for this appeal, it indicates that when, for any reason, goods are *prima facie* classifiable under two or more headings, the heading that provides the most specific description of the goods being classified shall be preferred to the heading providing a more general description. Application of Rule 1 of the Canadian Rules makes this rule applicable to the tariff item level.

The Tribunal is of the opinion that the tariff item proposed by the respondent for the classification of the parent valves, being "Hand operated or hand activated," is more specific than the residual tariff item "Other" proposed by the appellant. Accordingly, on the basis of Rule 3 (a) of the General Rules and Rule 1 of the Canadian Rules, the Tribunal finds that the parent valves are classifiable under tariff item No. 8481.80.91. As such, the parts are properly classified under tariff item No.8481.90.40, as claimed by the respondent.

Accordingly, the appeal is dismissed.

Desmond Hallissey
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