



Ottawa, Wednesday, January 19, 1994

**Appeal Nos. AP-92-241 and AP-92-242**

IN THE MATTER OF appeals heard on June 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 November 12 and 20, 1992, with respect to requests for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**TOYOTA MOTOR MANUFACTURING CANADA INC.**

**Appellant**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeals are allowed (Presiding Member Macmillan dissenting).

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Presiding Member

W. Roy Hines  
W. Roy Hines  
Member

Lise Bergeron  
Lise Bergeron  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal Nos. AP-92-241 and AP-92-242**

**TOYOTA MOTOR MANUFACTURING CANADA INC.**

**Appellant**

**and**

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

**Respondent**

*The issue in these appeals is whether engine control units are properly classified under tariff item No. 9032.89.90 as other automatic regulating or controlling instruments and apparatus, as determined by the respondent, or should be classified under tariff item No. 9032.89.20 as process control apparatus, excluding sensors, which converts analog signals from or to digital signals, as claimed by the appellant. The English version of tariff item No. 9032.89.20 stipulates that the goods must be "[p]rocess control apparatus." However, the French version stipulates that the goods must be "[a]ppareils de processus industriel." Only the French version stipulates that the goods must control an industrial process. Thus, the issue in these appeals is whether goods classifiable under tariff item No. 9032.89.20 must control an industrial process.*

**HELD:** *The appeals are allowed. In resolving the difference between the English and French versions of tariff item No. 9032.89.20, the majority of the Tribunal was cognizant of the Official Languages Act, which indicates that both versions are equally authoritative. Further, it accepted the arguments of counsel for the respondent that, in the absence of statutory principles of interpretation applicable to bilingual federal legislation, the principles developed by Canadian courts for such interpretation would apply. The majority could not accept, however, that an interpretation of these provisions must be adopted that reconciles the two versions when the context of the provisions does not support the interpretation that a reconciliation would provide. The majority of the Tribunal concludes that the English version best reflects the object of heading No. 90.32 and the intent of Parliament (Presiding Member Macmillan dissenting).*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: June 10, 1993  
Date of Decision: January 19, 1994*

*Tribunal Members: Kathleen E. Macmillan, Presiding Member  
W. Roy Hines, Member  
Lise Bergeron, Member*

*Counsel for the Tribunal: David M. Attwater*

*Clerk of the Tribunal: Anne Jamieson*

*Appearances: Richard G. Dearden and Randall J. Hofley, for the appellant  
Anne M. Turley, for the respondent*

**Appeal Nos. AP-92-241 and AP-92-242**

**TOYOTA MOTOR MANUFACTURING CANADA INC.** **Appellant**

**and**

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

TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member  
W. ROY HINES, Member  
LISE BERGERON, Member

**REASONS FOR DECISION**

This represents the reasons for decision in two appeals, heard together, under section 67 of the *Customs Act*<sup>1</sup> (the Act). The issue in these appeals is whether engine control units (ECUs) are properly classified under tariff item No. 9032.89.90 of Schedule I to the *Customs Tariff*<sup>2</sup> as other automatic regulating or controlling instruments and apparatus, as determined by the respondent, or should be classified under tariff item No. 9032.89.20 as process control apparatus, excluding sensors, which converts analog signals from or to digital signals, as claimed by the appellant.

A description of the goods in issue was provided in the appellant's brief and accepted by the respondent. An ECU is described as a micro-processor which has five primary functions in the engine of a Toyota automotive vehicle: (1) fuel injection control; (2) ignition control; (3) engine speed control; (4) air conditioner control; and (5) overdrive stop control. An ECU's primary role is to process information received from various engine sensors, in analog form and, upon determining a given level, to send a digital signal to the device controlling that particular level. To fulfil these functions, an ECU employs a micro-computer to centrally control the Toyota Computer Controlled System.

Both parties agreed that the goods in issue are properly classified in subheading No. 9032.89. They agreed that ECUs are process control instruments or apparatus, excluding sensors, which convert analog signals from or to digital signals. It was further agreed that they do not control an industrial process.

On re-determination, the respondent denied the appellant's request that the ECUs be classified under tariff item No. 9032.89.20, holding that,

*[The goods in issue] are not classified under tariff item 9032.89.20 as requested, because they do not control an industrial process. The provision for process control apparatus in that tariff item is restricted to industrial processes as stipulated in the French text of the Customs Tariff.*

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

The English version of the tariff item requested by the appellant stipulates that the goods must be "[p]rocess control apparatus." However, the French version stipulates that the goods must be "[a]ppareils de processus industriel." As can be seen, only the French version stipulates that the goods must control an industrial process. Thus, the issue in these appeals is whether goods classifiable under tariff item No. 9032.89.20 must control an industrial process.

For purposes of these appeals, the relevant tariff nomenclature, in English and in French, reads as follows:

90.32 *Automatic regulating or controlling instruments and apparatus.*

*-Other instruments and apparatus:*

9032.89 *--Other*

9032.89.20 *---Process control apparatus, excluding sensors, which converts analog signals from or to digital signals*

9032.89.90 *---Other*

90.32 *Instruments et appareils pour la régulation ou le contrôle automatiques.*

*-Autres instruments et appareils :*

9032.89 *--Autres*

9032.89.20 *---Appareils de processus industriel à l'exclusion des détecteurs, qui convertissent les signaux analogiques en signaux numériques ou vice-versa*

9032.89.90 *---Autres*

Counsel for the appellant argued that, in correctly interpreting the tariff nomenclature, the two versions of the tariff item must be considered in context. The other tariff items in heading No. 90.32 must be considered, as well as the relevant Chapter Notes and the Explanatory Notes.<sup>3</sup> An interpretation consistent with the object of this heading must be adopted. Heading No. 90.32 covers process control apparatus and not just industrial process control apparatus. To adopt the narrow interpretation as advocated by the respondent would defeat this object.

In reviewing the context of heading No. 90.32, counsel for the appellant noted that both the English and French versions refer to regulating and controlling instruments and apparatus. Counsel referred to other examples where the English and French versions mirror each other. For example, at classification Nos. 9032.81.10.10 and 9032.81.90.10, both versions are qualified as industrial (*industrielle*) process control instruments and apparatus. In other cases, the goods are similarly qualified as only control instruments. Counsel noted that, in the tariff item at issue, the word "control" in the English version has been substituted for "*industriel*" in the French version. Counsel contended that exclusion of the word "*contrôle*" and inclusion of the word "*industriel*" in the French version was a mistake.

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

In further support of the contention that the object of heading No. 90.32 is to cover process control apparatus, counsel for the appellant referred to the Explanatory Notes and Note 6 to Chapter 90 of Schedule I to the *Customs Tariff*. Counsel noted that the word "control" is found throughout these references, while no mention of an industrial qualification is made.

Counsel for the appellant argued that, if the restrictive interpretation advocated by the respondent were adopted, it would run contrary to the intent of Parliament and defeat, rather than attain, the object of heading No. 90.32. On this basis, counsel argued that it is within the Tribunal's right to adopt the broader meaning of the tariff item provided by the English version.<sup>4</sup> Counsel referred to section 13 of the *Official Languages Act*,<sup>5</sup> which indicates that "both language versions are equally authoritative," and argued that it is not necessary for the Tribunal to interpret the nomenclature in such a way as to come to a common meaning between the two versions. Further, as the statute is not explicit, resulting in ambiguity, it should be interpreted in favour of the taxpayer.<sup>6</sup>

In contrast, counsel for the respondent argued that the word "*industriel*" in the French version governs and that goods classifiable under tariff item No. 9032.89.20 must control an industrial process. Counsel submitted that the former *Official Languages Act*<sup>7</sup> contained principles of interpretation applicable to bilingual federal enactments that had been developed by Canadian courts. With its repeal, and because the new act contains no such principles, the law developed by the courts was restored.<sup>8</sup> Several cases were cited for the proposition that, where there is conflict between the two versions, the clearer or more precise version is preferred.<sup>9</sup> As both versions have equal authority, an interpretation must be adopted to reconcile the two versions. The more ambiguous version should be interpreted in such a manner as to be consistent with the more precise version. It was submitted that the French version is more precise and should prevail.

Counsel for the respondent referred to the French version of the former tariff nomenclature at tariff item 41417-2, which was similar to the tariff item at issue. Counsel argued that, if "*industriel*" in the French version had been added in error, Parliament would have corrected it with the introduction of the new nomenclature in 1988. As such, Parliament intended the tariff item to be reserved for process control apparatus with industrial applications. Counsel submitted that it cannot be presumed that Parliament would insert a meaningless provision.<sup>10</sup> Also, as the French version of heading No. 90.32 includes the expression "*pour la régulation ou le contrôle*," all goods classified within the subordinate nomenclature would be regulation or control instruments or apparatus. It is not necessary, therefore, for the French version of tariff item No. 9032.89.20 to specifically mention "*contrôle*."

As indicated earlier, the issue in these appeals is whether tariff item No. 9032.89.20 is reserved for apparatus that control an industrial process. The majority of the Tribunal has decided that it is not so limited. In rendering this decision, the majority has determined that the

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4. In support of this proposition, counsel for the appellant referred to *Her Majesty the Queen v. Compagnie Immobilière BCN Limitée*, [1979] 1 S.C.R. 865 at 871-72.

5. R.S.C. 1985, c. 31 (4th Supp.).

6. See, for example, *Johns-Manville Canada Inc. v. Her Majesty the Queen*, [1985] 2 S.C.R. 46 at 72.

7. R.S.C. 1985, c. O-3.

8. See, for example, note 6 in *Anita Lea Glynos and Leonidas Jason Glynos v. Her Majesty the Queen in Right of Canada*, [1992] 3 F.C. 691 at 704.

9. See, for example, *Cardinal et al. v. The Queen*, [1980] 1 C.F. 149; and *Charles Édouard Gravel v. City of St-Léonard*, [1978] 1 S.C.R. 660.

10. See, for example, *R. Mabit Inc. v. The Deputy Minister of National Revenue for Customs and Excise* (1988), 13 T.B.R. 1 at 13.

respondent's interpretation of this tariff item is contrary to the object of heading No. 90.32 and is inconsistent with the intent of Parliament. As a result, the majority has focused on the context of heading No. 90.32.

In resolving the difference between the English and French versions of tariff item No. 9032.89.20, the majority of the Tribunal was cognizant of the *Official Languages Act*, which indicates that both versions are equally authoritative. Further, it accepted the arguments of counsel for the respondent that, in the absence of statutory principles of interpretation applicable to bilingual federal legislation, the principles developed by Canadian courts for such interpretation would apply. The majority could not accept, however, that an interpretation of these provisions must be adopted that reconciles the two versions when the context of the provisions does not support the interpretation that a reconciliation would provide. In support of this, the majority relies on the *BCN* case<sup>11</sup> cited by counsel for the appellant.

The majority considers the word "control" or "controlling" to be of paramount importance, as it appears in heading No. 90.32 and at the tariff item and classification number levels. The word is accurately translated throughout the entire heading, except for the one instance at issue before the Tribunal. The two versions of tariff item No. 9032.89.20 are not direct translations of each other, as the English version uses the word "control" and the French version uses the word "*industriel*." However, where Parliament intended to specify a breakdown for industrial instruments and apparatus, such as at classification No. 9032.81.10.10, it did so clearly and precisely, in both official languages. This is not the case for tariff item No. 9032.89.20, and it is impossible to reconcile the word "control" with the word "*industriel*." Based on the foregoing, the majority of the Tribunal can only conclude that Parliament intended heading No. 90.32 to deal with process control apparatus, both in its heading and subheadings. There was no intention to narrow the scope of tariff item No. 9032.89.20 to industrial process control apparatus.

In support of this interpretation, the majority of the Tribunal realizes that the Explanatory Notes to heading No. 90.32 make no reference to industrial process control apparatus nor does Note 6 to Chapter 90 of Schedule I to the *Customs Tariff*, which deals specifically with this heading. Further, the majority notes that the English version of the tariff item at issue accurately describes the goods in issue, in contrast to the residual category submitted by the respondent.

On the basis of the above, the majority of the Tribunal allows the appeals.

W. Roy Hines

W. Roy Hines

Member

Lise Bergeron

Lise Bergeron

Member

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11. *Supra*, note 4.

**DISSENTING OPINION OF PRESIDING MEMBER MACMILLAN**

I am unable to agree with my colleagues' analysis of the relevant tariff nomenclature and, therefore, arrive at a different conclusion with respect to these appeals.

We are instructed by the *Official Languages Act* that both versions are authoritative. Our basic task, therefore, given the different meanings of the French and English versions, is to find an interpretation that encompasses the two meanings harmoniously with the scheme of the *Customs Tariff*, the perceived object of the heading and the intent of Parliament.

I do not view the French and English versions as incompatible. Rather, I see the French version as narrowing the scope of the tariff item in the sense that it becomes a subset of the broader term "control." Consequently, in reconciling the two versions, I believe that we are forced into interpreting the English version in a narrow way in light of the French version.

This would not hold true if we felt that the narrower interpretation was inconsistent with the general intent and scheme of the *Customs Tariff*. This is where I part company with the majority since I see both the French and English versions of tariff item No. 9032.89.20 as entirely consistent with the scheme of the *Customs Tariff* and the intent of Parliament. Indeed, the whole structure of the tariff is such that a general heading, such as heading No. 90.32, is subdivided into narrower and more specific categories of items at the 6-, 8- and 10-digit levels. An industrial process control apparatus which converts analog signals from or to digital signals is simply a type of automatic regulating or controlling instrument and apparatus.

Unlike my colleagues, I do not believe that it is necessary to repeat the word "control" in the French version of the tariff item at issue. It is assumed that the goods must first be "*appareils pour la régulation ou le contrôle automatiques*" before being considered under tariff item No. 9032.89.20. The basic rule in tariff classification, as set out in Rule 1 of the General Rules for the Interpretation of the Harmonized System,<sup>12</sup> requires that goods first meet the description of the tariff heading before being considered under the subordinate tariff levels. Therefore, to be considered in this tariff heading, the goods must be control apparatus, and the wording of tariff item No. 9032.89.20 must be interpreted in light of this.

The Explanatory Notes and Chapter Notes are of limited relevance since they were drafted to deal directly with the 4- or 6-digit level only. The fact that they do not make any reference to industrial versus non-industrial applications is immaterial in my mind. They certainly do not preclude making such a distinction at lower levels of classification, as was done, in fact, in subheading No. 9032.81. Parliament is free to make any subdivisions below the 6-digit level that it sees fit, and not only does a distinction according to industrial and non-industrial uses occur in heading No. 90.32 but it is entirely reasonable in my mind.

In my opinion, to ignore the word "*industriel*" in the French version suggests that it is somehow less authoritative than the English version. I see nothing in the spirit and intent of the legislation that precludes the narrower interpretation set out in the French version.

On this basis, I conclude that goods classified under tariff item No. 9032.89.20 must control an industrial process. Accordingly, I would dismiss the appeals.

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Presiding Member

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12. *Supra*, note 2, Schedule I.