

Ottawa, Thursday, September 23, 1999

Appeal Nos. AP-92-298, AP-92-348, AP-92-380, AP-93-038,
AP-93-121, AP-95-144 and AP-95-221

IN THE MATTER OF appeals heard on January 18, 1999, under
section 67 of the *Customs Act*, R.S.C. 1985 (2nd Supp.) , c. 1;

AND IN THE MATTER OF various decisions of the Deputy
Minister of National Revenue with respect to requests for
re-determination under section 63 of the *Customs Act*.

BETWEEN

MUELLER CANADA INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeals are dismissed.

Peter F. Thalheimer

Peter F. Thalheimer
Presiding Member

Raynald Guay

Raynald Guay
Member

Anita Szlczak

Anita Szlczak
Member

Susanne Grimes

Susanne Grimes
Acting Secretary

UNOFFICIAL SUMMARY

Appeal Nos. AP-92-298, AP-92-348, AP-92-380, AP-93-038,
AP-93-121, AP-95-144 and AP-95-221

MUELLER CANADA INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

These are appeals under section 67 of the *Customs Act* from various decisions of the Deputy Minister of National Revenue made under subsection 63(3) of the *Customs Act*. The issue in these appeals is whether the valves imported by the appellant are properly classified under tariff item No. 8481.80.91 of the *Customs Tariff* as hand-operated or hand-activated valves, as determined by the respondent, or should be classified under tariff item No. 8481.80.99 as other valves, as claimed by the appellant.

HELD: The appeals are dismissed. In the Tribunal's view, it is clear that "hand operated" and "hand activated" are adjectives which qualify the valves. The *Explanatory Notes to the Harmonized Commodity Description and Coding System* indicate that valves can be operated, notably, by hand, by a motor or by an automatic device. In the present appeals, the parties have agreed that the normal operation of the valves in issue is by means of a T-bar type wrench, that is, a hand tool. Therefore, in the Tribunal's opinion, it is clear that the valves in issue are of the sort which are hand operated or hand activated. Consequently, they are properly classified as hand-operated or hand-activated valves. The fact that the actuator, the hand tool, is not imported with the valves in issue does not modify their method of operation and has no bearing on their classification. In the Tribunal's view, such a classification is in accordance with the Federal Court of Appeal's decision in *Praher Canada Products v. Deputy Minister of National Revenue for Customs and Excise*, where the Court stated that valves which could, with the use of a key or other such tool, be operated by hand and which are designed to be so operated are hand operated.

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 18, 1999
Date of Decision: September 23, 1999

Tribunal Members: Peter F. Thalheimer, Presiding Member
Raynald Guay, Member
Anita Szlazak, Member

Counsel for the Tribunal: Philippe Cellard

Clerk of the Tribunal: Anne Turcotte

Appearances: Douglas J. Bowering, for the appellant
F.B. Woyiwada, for the respondent

Appeal Nos. AP-92-298, AP-92-348, AP-92-380, AP-93-038,
AP-93-121, AP-95-144 and AP-95-221

MUELLER CANADA INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: PETER F. THALHEIMER, Presiding Member
RAYNALD GUAY, Member
ANITA SZLAZAK, Member

REASONS FOR DECISION

These are appeals under section 67 of the *Customs Act*¹ (the *Act*) from various decisions of the Deputy Minister of National Revenue made under subsection 63(3) of the *Act*. The issue in these appeals is whether the valves imported by the appellant are properly classified under tariff item No. 8481.80.91 of Schedule I to the *Customs Tariff*² as hand-operated or hand-activated valves, as determined by the respondent, or should be classified under tariff item No. 8481.80.99 as other valves, as claimed by the appellant. The relevant tariff nomenclature is 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 ---Other:
8481.80.91	----Hand operated or hand activated (excluding multiple gear, pulley or chain valves, connective couplings equipped with valves)
8481.80.99	----Other

The relevant excerpts from the *Explanatory Notes to the Harmonized Commodity Description and Coding System*³ (the *Explanatory Notes*) to heading No. 84.81 read as follows:

This heading covers taps, cocks, valves and similar appliances, used on or in pipes, tanks, vats or the like to regulate the flow (for supply, discharge, etc.), of fluids (liquid, viscous or gaseous), or, in certain cases, of solids (e.g., sand). The heading includes such devices designed to regulate the pressure or the flow velocity of a liquid or a gas.

The appliances regulate the flow by opening or closing an aperture (e.g., gate, disc, ball, plug, needle or diaphragm). They may be operated by hand (by means of a key, wheel, press button, etc.), or by a motor, solenoid, clock movement, etc., or by an automatic device such as a spring, counterweight, float lever, thermostatic element or pressure capsule.

Taps, valves, etc., incorporating such mechanisms or devices remain classified in this heading. This applies, for example, to a valve equipped with a thermostatic element (double-leaf, capsule,

1. R.S.C. 1985 (2nd Supp.), c. 1.
2. R.S.C. 1985 (3rd Supp.), c. 41.
3. Customs Co-operation Council, 1st ed., Brussels, 1986.

bulb, etc.). The heading also covers valves, etc., connected to a thermostatic element by means of, for instance, a capillary tube.

The parties to these appeals have agreed on the following facts. The only valves in issue are curb gas and water shut-off valves. These valves are imported with an operating nut fixed to the stem of the valve. They are not equipped with any operating lever, wrench or handwheel, or with any mechanical actuator at the time of importation. These valves are used in either municipal or other corporate systems for the distribution of natural gas used as fuel in gas-burning appliances, and of potable water supplied to both residences and businesses. The valves are installed for service in the same condition as at the time of importation, two to four feet below ground, usually at or near the curb. The normal operation of the valves in issue is by means of a T-bar type wrench used by the operator above the ground surface. The valves are not designed to be equipped with any mechanical or power operator. The operating wrenches are not included in the shipments of valves, are not usually sold with the valves and are not permanently attached to the valves. These valves are not intended to be operated with bare hands, without the assistance of a wrench.

No witnesses were heard in the present appeals.

The appellant's representative submitted that the products in issue are not properly classified as hand-operated or hand-activated valves and should be classified as other valves. He argued that "operated" and "activated" are verbs in the past tense and that, therefore, only valves which are operated or activated at the time of importation can be classified as hand-operated or hand-activated valves. He submitted that, at the time of importation, the products in issue are "non-operated" valves because they can only be operated by an independent tool which is not part of the valves in issue. Finally, the representative compared the valves in issue to the bare-stemmed valves referred to in *Praher Canada Products v. Deputy Minister of National Revenue for Customs and Excise*.⁴

Counsel for the respondent submitted that the valves in issue are properly classified as hand-activated or hand-operated valves because they are normally operated by virtue of an extension of the hand (the T-bar type wrench) in which the force of the hand is used to open the valves. He suggested that "hand operated" and "hand activated" are used as adjectives to describe the valves. He further suggested that the fact that the activator is supplied separately does not mean that the valve itself is not properly described as hand operated or hand activated. According to counsel, the decision in *Praher* supports the respondent's position.

In the present appeals, the parties agreed that the goods in issue are properly classified in subheading No. 8481.80. Their disagreement lies at the tariff item level. Section 10 of the *Customs Tariff* provides, in part, that the classification of imported goods under a tariff item shall be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*⁵ and the *Canadian Rules*.⁶ Rule 1 of the *Canadian Rules* provides, in part, that the classification of goods under the tariff items of a subheading shall be determined according to the terms of those tariff items.

In the Tribunal's view, it is clear that "hand operated" and "hand activated" are adjectives which qualify the valves. The *Explanatory Notes* indicate that valves can be operated, notably, by hand, by a motor

4. (1993), 1 T.T.R. (2d) 54 (C.I.T.T.) (Appeal No. AP-92-112), aff'd (1995), 97 F.T.R. 97 (F.C.T.D.), aff'd (25 April 1996), A-476-95 (F.C.A.) [hereinafter *Praher*].

5. *Supra* note 2, Schedule I.

6. *Ibid.*

or by an automatic device. In the present appeals, the parties have agreed that the normal operation of the valves in issue is by means of a T-bar type wrench, that is, a hand tool. Therefore, in the Tribunal's opinion, it is clear that the valves in issue are of the sort which are hand operated or hand activated. Consequently, they are properly classified as hand-operated or hand-activated valves. The fact that the actuator, the hand tool, is not imported with the valves in issue does not modify their method of operation and has no bearing on their classification. In the Tribunal's view, such a classification is in accordance with the Federal Court of Appeal's decision in *Praher*, where the Court stated that valves which could, with the use of a key or other such tool, be operated by hand and which are designed to be so operated are hand operated.

For the foregoing reasons, the Tribunal concludes that the products in issue are properly classified under tariff item No. 8481.80.91 as hand-operated or hand-activated valves. Accordingly, the appeals are dismissed.

Peter F. Thalheimer

Peter F. Thalheimer
Presiding Member

Raynald Guay

Raynald Guay
Member

Anita Szlajak

Anita Szlajak
Member