



Ottawa, Tuesday, June 21, 1994

Appeal No. AP-93-124

IN THE MATTER OF an appeal heard on February 28, 1994,
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 dated June 4,
1993, with respect to a request for re-determination under
section 63 of the *Customs Act*.

BETWEEN

McDIARMID LUMBER LTD.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Lise Bergeron

Lise Bergeron
Presiding Member

Charles A. Gracey

Charles A. Gracey
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-124

McDIARMID LUMBER LTD.

Appellant

and

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

Respondent

The goods in issue are turbine ventilators used as exhaust fans to remove overly moist air from attics. They are wind-powered and use a rotor which is designed to draw air out of the space in which they are located. The goods in issue were originally classified under tariff item No. 7616.90.90 as "Other articles of aluminum ... Other." The appellant requested a re-determination, submitting that the goods in issue should be classified under tariff item No. 8414.59.00 as "Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters ... Other". By decision dated June 4, 1993, the Deputy Minister of National Revenue for Customs and Excise maintained the classification of the goods in issue. By letter dated November 15, 1993, counsel for the respondent informed the Tribunal and the appellant that the respondent had elected not to contest the appeal and believed that the goods in issue should be classified under tariff item No. 8414.59.00.

HELD: *The appeal is allowed. Having examined the facts of this case and the documents filed by the parties, the Tribunal finds that the goods in issue should be classified under tariff item No. 8414.59.00 as "Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters ... Other."*

Place of Hearing: Ottawa, Ontario
Date of Hearing: February 28, 1994
Date of Decision: June 21, 1994

Tribunal Members: Lise Bergeron, Presiding Member
Charles A. Gracey, Member
Robert C. Coates, Q.C., Member

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Anne Jamieson

Parties: Amie Decock, for the appellant
Pamela D. Owen-Going, for the respondent

Appeal No. AP-93-124

McDIARMID LUMBER LTD.

Appellant

and

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

Respondent

TRIBUNAL: LISE BERGERON, Presiding Member
CHARLES A. GRACEY, Member
ROBERT C. COATES, Q.C., Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act). The goods in issue are turbine ventilators used as exhaust fans to remove overly moist air from attics. They are wind-powered and use a rotor which is designed to draw air out of the space in which they are located. The goods in issue were originally classified under tariff item No. 7616.90.90 of Schedule I to the *Customs Tariff*² as "Other articles of aluminum ... Other." The appellant requested a re-determination, submitting that the goods in issue should be classified under tariff item No. 8414.59.00 as "Air or vacuum pumps, air or other gas compressors fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters ... Other." By decision dated June 4, 1993, the Deputy Minister of National Revenue for Customs and Excise maintained the classification of the goods in issue under tariff item No. 7616.90.90 on the basis that they are neither hand-operated nor power-driven mechanical appliances. McDiarmid Lumber Ltd. appealed this decision to the Tribunal.

By letter dated November 15, 1993, counsel for the respondent informed the Tribunal and the appellant that the respondent had elected not to contest the appeal and believed that the goods in issue should be classified under tariff item No. 8414.59.00. By notice dated February 2, 1994, the appellant requested that the appeal be heard on the basis of the documents filed with the Tribunal, including the November 15, 1993, letter from counsel for the respondent to the Tribunal, under rule 25 of the *Canadian International Trade Tribunal Rules*.³

After having examined the facts of this case and the documents filed by the parties, the Tribunal finds that the goods in issue should be classified under tariff item No. 8414.59.00 as "Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters ... Other."

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1. R.S.C. 1985, c. 1 (2nd Supp.).
 2. R.S.C. 1985, c. 41 (3rd Supp.).
 3. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

Accordingly, the appeal is allowed.

Lise Bergeron
Lise Bergeron
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member