

Ottawa, Thursday, June 16, 1994

Appeal No. AP-93-237

IN THE MATTER OF an appeal heard on February 15, 1994,
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
August 26, 1993, with respect to requests for re-determination
under section 63 of the *Customs Act*.

BETWEEN

DANNYCO TRADING (CANADA) LTD.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The Tribunal finds that the air diffusers should be classified under tariff item No. 8516.90.10 as parts "[o]f the goods of tariff item No. 8516.31.10 or 8516.31.90," being parts of domestic hair dryers.

Kathleen E. Macmillan
Kathleen E. Macmillan
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-237

DANNYCO TRADING (CANADA) LTD.

Appellant

and

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

Respondent

This is an appeal under section 67 of the Customs Act from a decision of the Deputy Minister of National Revenue for Customs and Excise whereby air diffusers were classified under tariff item No. 3926.90.90 as other articles of plastics. The appellant claimed that the goods in issue should be classified under tariff item No. 8516.31.10 as parts of domestic hair dryers.

HELD: *The Tribunal finds that the air diffusers should be classified under tariff item No. 8516.90.10 as parts "[o]f the goods of tariff item No. 8516.31.10 or 8516.31.90," being parts of domestic hair dryers.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: February 15, 1994

Date of Decision: June 16, 1994

*Tribunal Members: Kathleen E. Macmillan, Presiding Member
Charles A. Gracey, Member
Lise Bergeron, Member*

Counsel for the Tribunal: Allan Cracower

Clerk of the Tribunal: Anne Jamieson

*Appearances: Saeed A. Bokhari, for the appellant
Anick Pelletier, for the respondent*

Appeal No. AP-93-237

DANNYCO TRADING (CANADA) LTD.

Appellant

and

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

Respondent

TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member
CHARLES A. GRACEY, Member
LISE BERGERON, 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 (the Deputy Minister) whereby air diffusers were classified under tariff item No. 3926.90.90 of Schedule I to the *Customs Tariff*² as other articles of plastics. The appellant claimed that the goods in issue should be classified under tariff item No. 8516.31.10 as parts of domestic hair dryers. Accordingly, the Tribunal must determine which tariff item is the most appropriate for the goods in issue.

For purposes of this appeal, the applicable tariff items read as follows:

8516 *Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electro-thermic hair-dressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric smoothing irons; other electro-thermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading No. 85.45.*

-Electro-thermic hair-dressing or hand-drying apparatus:

8516.31 *--Hair dryers*

8516.31.10 *---Domestic hair dryers*

8516.90 *-Parts*

8516.90.10 *---Of the goods of tariff item No. 8516.31.10 or 8516.31.90*

The goods in issue are non-electrical components made of plastic. The principal purpose of the goods in issue is to diffuse the air from the hair dryer, thereby permitting the use of the hair dryer to style hair. The goods in issue were imported between March 24, 1992, and February 1, 1993. On each occasion, they were classified under tariff item No. 3926.90.90 as other articles of plastics. The appellant, believing that the goods in issue should be classified in tariff item No. 8516.31.10, requested a re-determination under paragraph 60(1)(b) of the Act.

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

On August 26, 1993, the respondent's decisions confirmed the classification of the goods in issue under tariff item No. 3926.90.90.

In determining the appropriate classification of the goods in issue, it is incumbent upon the Tribunal to apply the relevant legislation. Under section 10 of the *Customs Tariff*, "[t]he classification of imported goods under a tariff item in Schedule I shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System and the Canadian Rules set out in that Schedule." Furthermore, section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in Schedule I, regard shall be had to the Explanatory Notes to the Harmonized Commodity Description and Coding System³ (the Explanatory Notes).

Rule 1 of the General Rules for the Interpretation of the Harmonized System⁴ (the General Rules), which are mentioned in section 10 of the *Customs Tariff*, reads as follows:

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.

As well, under the Canadian Rules,⁵ Rule 1 reads as follows:

For legal purposes, the classification of goods in the tariff items or a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, mutatis mutandis, to the above Rules, on the understanding that only tariff items at the same level are comparable. For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

The appellant's representative claimed that the goods in issue should be classified under tariff item No. 8516.31.10 as parts of hair dryers. Counsel for the respondent, on the other hand, maintained that the goods in issue are accessories and, given that the Harmonized Commodity Description and Coding System⁶ (the Harmonized System) does not permit the classification of the air diffusers as accessories to the hair dryers, that the air diffusers must be classified on their own. She stated that, as a result of the aforementioned, it is necessary to consider the "goods' component material of chief value." This led counsel to conclude that the air diffusers should be classified in heading No. 39.26 and, more specifically, under tariff item No. 3926.90.90 as other articles of plastics.

The Tribunal has carefully considered the submissions of counsel for the respondent in support of air diffusers being accessories, including those related to an interpretive analysis of "parts" and "accessories" under the Harmonized System, the legal citations and the dictionary definition of "accessory."

The question as to whether the goods in issue are parts or accessories for the purpose of tariff classification has been addressed in many cases. The prevailing view of the Tribunal is that there is no universally applicable test and that each case must be determined on its

3. Customs Co-operation Council, 1st ed., Brussels, 1986.

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

5. *Ibid.*

6. Customs Co-operation Council, 1st ed., Brussels, 1987.

merits. Moreover, common trade usage and practice must be considered when determining an issue of this kind.⁷

An air diffuser is solely dedicated for use with a hair dryer. It has no other application or use. Air diffusers are essential or integral to hair dryers, permitting the styling of hair in a particular manner. As well, air diffusers are generally imported and sold with hair dryers, typically at no extra charge. In brief, it is the Tribunal's view that the evidence submitted by the appellant's representative clearly establishes that the air diffusers are parts of hair dryers. Having concluded that they are parts, the Tribunal must determine the most appropriate classification for the goods in issue.

Applying the General Rules and the Canadian Rules, the Tribunal notes that the terms of heading No. 85.16 do not include parts of the goods mentioned in that heading. As the nomenclature of Schedule I to the *Customs Tariff* is structured in a hierarchical manner, the air diffusers, as parts of hair dryers, must be included within the terms of heading No. 85.16 to be classified under a tariff item in that heading. In this regard, Note 2 (b) to Section XVI of Schedule I to the *Customs Tariff* (applicable to Chapters 84 and 85) states that "[o]ther parts, if suitable for use solely or principally with a particular kind of machine,⁸ ... are to be classified with the machines of that kind." Consequently, as air diffusers are "parts" of hair dryers and are "suitable for use solely or principally" with hair dryers, they should be included within the terms of heading No. 85.16. Thus, they may be classified under a tariff item in that heading.

As parts, the air diffusers should be classified in the subheading dedicated to parts of hair dryers. In this regard, the Tribunal finds that the air diffusers should be classified under tariff item No. 8516.90.10 as parts "[o]f the goods of tariff item No. 8516.31.10 or 8516.31.90" and not under tariff item No. 8516.31.10, as claimed by the appellant. As in *F.W. Woolworth Co. Limited v. The Deputy Minister of National Revenue for Customs and Excise*,⁹ the appellant should have argued for the classification of the goods in the subheading dedicated to parts.

The Tribunal finds that the air diffusers should be classified under tariff item No. 8516.90.10 as parts "[o]f the goods of tariff item No. 8516.31.10 or 8516.31.90," being parts of domestic hair dryers.

Kathleen E. Macmillan
Kathleen E. Macmillan
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

Lise Bergeron
Lise Bergeron
Member

7. Canadian International Trade Tribunal, *York Barbell Company Limited v. The Deputy Minister of National Revenue for Customs and Excise*, Appeal No. AP-90-161, August 19, 1991.

8. For the purpose of the Notes to Section XVI, "machine" would include hair dryers (Note 5 to Section XVI).

9. Canadian International Trade Tribunal, Appeal No. AP-92-007, May 10, 1993.