

Ottawa, Monday, March 20, 1995

Appeal No. AP-93-331

IN THE MATTER OF an appeal heard on September 29, 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 dated October 20 and December 30, 1993, with
respect to requests for re-determination under section 63 of the
Customs Act.

BETWEEN

**CONTINENTAL INDUSTRIES
O/B R. SOLOM CO. LTD.**

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed, and the Tribunal finds that the goods in issue should be classified under tariff item No. 8424.81.00 as other horticultural appliances.

Raynald Guay
Raynald Guay
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Desmond Hallissey
Desmond Hallissey
Member

Nicole Pelletier
Nicole Pelletier
Acting Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-331

**CONTINENTAL INDUSTRIES
O/B R. SOLOM CO. LTD.**

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether Gardena “hand-held water spray guns” imported from Germany are properly classified under tariff item No. 8481.80.91 as other hand-operated or hand-activated appliances, as determined by the respondent, or should be classified under tariff item No. 8424.20.90 as other spray guns and similar appliances, under tariff item No. 8424.89.00 as other mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines or, alternatively, under tariff item No. 8424.81.00 as other horticultural appliances, as claimed by the appellant.

HELD: *The appeal is allowed. In the Tribunal’s opinion, the goods in issue meet the general description for other agricultural or horticultural appliances, namely, syringes, sprays and powder distributors, in that they are sprays for lawns that incorporate mechanical devices, namely, valves and nozzles, for dispersing a spray or jet of water. The Tribunal observes that the Explanatory Notes to the Harmonized Commodity Description and Coding System (the Explanatory Notes) to heading No. 84.24 specifically exclude hose pipe nozzles of Section XV or heading No. 84.81 if fitted with taps, cocks, valves or other appliances for regulating the liquid flow and that the Explanatory Notes to heading No. 84.81 provide that the heading includes fire hydrants (stand pipes), fire cocks, hosepipe nozzles and the like, fitted with cocks or with valves for forming a jet or a spray. However, the Tribunal is persuaded that the term “hosepipe nozzles” used in the Explanatory Notes to heading No. 84.81 should be interpreted in relation to all of the preceding words which are associated with firefighting and that the hose pipe nozzles which are excluded from heading No. 84.24 are used with respect to fires. The Tribunal acknowledges that the goods in issue could be used with respect to fires; however, that is not their intended purpose.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: September 29, 1994
Date of Decision: March 20, 1995*

*Tribunal Members: Raynald Guay, Presiding Member
Arthur B. Trudeau, Member
Desmond Hallissey, Member*

Counsel for the Tribunal: Shelley Rowe

Clerk of the Tribunal: Anne Jamieson

*Appearances: Brian J. Barr, for the appellant
Larissa L. Easson, for the respondent*

Appeal No. AP-93-331

CONTINENTAL INDUSTRIES
O/B R. SOLOM CO. LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: RAYNALD GUAY, Presiding Member
ARTHUR B. TRUDEAU, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ from decisions of the Deputy Minister of National Revenue dated October 20 and December 30, 1993.

The issue in this appeal is whether Gardena “hand-held water spray guns” imported from Germany are properly classified under tariff item No. 8481.80.91 of Schedule I to the *Customs Tariff*² as other hand-operated or hand-activated appliances, as determined by the respondent, or should be classified under tariff item No. 8424.20.90 as other spray guns and similar appliances, under tariff item No. 8424.89.00 as other mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines or, alternatively, under tariff item No. 8424.81.00 as other horticultural appliances, as claimed by the appellant.

The following is the relevant tariff nomenclature from Schedule I to the *Customs Tariff*:

84.24	<i>Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines.</i>
8424.20	<i>-Spray guns and similar appliances</i>
8424.20.90	<i>---Other</i>
	<i>-Other appliances:</i>
8424.81.00	<i>--Agricultural or horticultural</i>

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

- 8424.89.00 --Other
- 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)

All of the models of the hand-held water spray guns in issue are attachable to a garden hose, but they consist essentially of two types. The first type has a gun-style nozzle incorporating a valve and a trigger and includes the following: hose nozzles (model nos. 160-C, 222-CB and 585-C), hose guns (model no. 6945), gun nozzles (model nos. 1915, 1910 and 1905), multi-purpose sprayers (model no. 1940) and pulse sprayers (model no. 6952). Some models of this type have a hand-adjustable head which permits various spray patterns. The second type attaches to both a reservoir and a garden hose and is used to spray substances, such as fertilizer, in combination with water and includes the following: root feeders (model no. 6605), fertilizer sets (model no. 1158-22) and fertilizer pulse sprayers (model no. 6601).

Counsel for the respondent, in her brief and at the hearing, conceded that the second type of hand-held water spray guns, namely, model nos. 6605, 1158-22 and 6601, should be classified under tariff item No. 8424.20.90. Therefore, these models are not in issue.

Samples of some of the models in issue, namely, model nos. 1915, 1910, 1905 and 1940, were introduced at the hearing by Mr. George Wayne Learn, President of Corporate Audit Services, a consulting firm specializing in duty and taxation matters. Mr. Learn explained that he was familiar with the goods in issue as a result of his involvement in preparing the appellant's requests for re-determination and in preparing for this appeal.

Mr. Learn did not introduce a sample of model no. 6601, the fertilizer pulse sprayer, but described it as a spray mechanism attached to a clear plastic container. When the fertilizer pulse sprayer is used for its intended purpose, a fertilizer tablet is placed in the container and is mixed with water that passes through the hose into the container. The fertilizer and water combination is then drawn out of the container through the sprayer. If there is no fertilizer tablet in the container, water will pass through the hose into the container and will be drawn out of the container through the sprayer. In Mr. Learn's view, when model no. 6601 is used without a fertilizer tablet, it serves the same purpose as that of the models in issue.

To show the type of product that may be considered a "hose nozzle," Mr. Learn introduced as an exhibit a brass hose nozzle sold by another client of Corporate Audit Services, Mueller Canada Inc., a manufacturer of fire hydrants. Mr. Learn also introduced diagrams of fire hydrants produced by Mueller Co. in the United States which identify the replacement parts for fire hydrants, as well as the special features and accessories of fire hydrants. He directed the Tribunal to the reference to a hose nozzle on the blown-up diagram of the hose gate valve and on the diagram of the Chattanooga and Centurion fire hydrants, as well as to a hose nozzle valve on the diagram of the American-Darling B-50-B fire hydrant.

The Tribunal qualified the respondent's witness, Mr. George F. Carscallen, a mechanical engineer, as an expert with respect to residential and commercial sprinkler systems and water distribution systems. Mr. Carscallen defined a nozzle as "an attachment used in a piping distribution system for the distribution of fluid or gas." He stated that a nozzle has "a pattern dispersment or pressure characteristic to it that may affect the flow distribution [unlike] a valve [which] has an on/off or flow-regulating feature" and further stated that the goods in issue, and in particular model no. 1940, are a combination of a valve and a nozzle. The nozzle is the chamber out of which the liquid is forced in a particular dispersion pattern, such as in a stream or a mist, and the valve is the mechanism inside the chamber which modulates the flow of the liquid. He indicated that the goods in issue are multi-use devices that can be used for delicate watering of flowers in a garden when the nozzle is in the mist position and for cleaning a car or a driveway when the nozzle is in the full stream position.

In comparing model no. 1940 to the brass hose nozzle, Mr. Carscallen stated that, in his view, they have a similar configuration and that their function and performance are the same. In comparing model no. 1940 to model no. 6601, Mr. Carscallen indicated that, in his view, model no. 6601 differs in that it uses a secondary substance, namely, water, to mix with a primary substance, namely, a fertilizer tablet, which are then distributed through an adjustable pattern flow nozzle. He further opined that the intermediate component in model no. 6601, the container, introduces a significant pressure or resistance to the water flow which reduces the throw pattern and dispersion of the liquid. However, during cross-examination, Mr. Carscallen agreed that the trigger mechanisms in model nos. 1940 and 6601 seem to work basically on the same principle as a plunger that is moved with a spring to close it.

In Mr. Carscallen's opinion, the reference on the blown-up diagram of the hose gate valve to a "hose nozzle" is a misnomer, since the component labelled as a "hose nozzle" is merely a threaded pipe connection to which hoses, not nozzles, are connected. With respect to the link between the term "hose nozzle" and fire hydrants or such devices, Mr. Carscallen stated that a hose nozzle is frequently associated with a fire hydrant because the hose nozzle is the device that is on the end of the fire hose. However, he stated that, in his 30 years of experience, he had never seen a hose nozzle attached to a fire hydrant. He agreed with counsel for the appellant that, if a fire hydrant were turned on, and no hose were attached to it, the water would come out of what is described as a hose nozzle, but further stated that there would be no ability to control the pattern of the water as it came out, and his interpretation of a nozzle is a device used at an aperture.

Counsel for the appellant asked Mr. Carscallen whether he agreed with the following definition of a "spray gun:" "[a] gunlike device that forces liquid through a nozzle so that it emerges as a spray."³ Mr. Carscallen responded that, in his view, this definition is inconsistent with other definitions that he has reviewed that imply that a spray gun is a device used to mix and disperse two substances. Mr. Carscallen stated that, in his opinion, a spray gun is a device which uses a secondary substance to disperse a primary substance. However, he agreed with counsel for the appellant that a spray gun may be used to blow compressed air only without any primary substance, such as fine sand. In Mr. Carscallen's view, model no. 6601 is an example of a spray gun since it uses a secondary substance, namely, water, to spray fertilizer or pesticide, which is the primary substance.

3. Webster's Illustrated Encyclopedic Dictionary (Montréal: Tormont Publications, 1990) at 1607.

Specifically referring to model no. 1940 and the description of “spray guns and similar appliances” in the Explanatory Notes to the Harmonized Commodity Description and Coding System⁴ (the Explanatory Notes) to heading No. 84.24, Mr. Carscallen agreed with counsel for the appellant that model no. 1940 is hand-controlled with an adjustable trigger and valve to control the flow through the nozzle and is connected with a reservoir of pressurized water, namely, a well system or a municipal water supply. However, he stated that model no. 1940 is not designed to be attached to compressed air or steam lines, nor is it used for spraying paint or distemper, varnishes, oils, plastics, cement, metallic powders or textile dust.

Mr. Carscallen agreed with counsel for the appellant that the goods in issue are used for lawn and garden service and stated that, based on his experience, gun-like devices similar to those in issue are used to water plants in commercial nurseries and greenhouses.

In argument, counsel for the appellant submitted that the goods in issue should be classified in accordance with Rule 1 of the General Rules for the Interpretation of the Harmonized System⁵ (the General Rules) which provides that the classification of goods 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.” Counsel stated that “spray guns” are expressly named in the words of heading No. 84.24 and meet the following description in Part (B) of the Explanatory Notes to heading No. 84.24 entitled “Spray Guns and Similar Appliances:”

Spray guns and similar hand controlled appliances are usually designed for attaching to compressed air or steam lines, and are also connected, either directly or through a conduit, with a reservoir of the material to be projected. They are fitted with triggers or other valves for controlling the flow through the nozzle, which is usually adjustable to give a jet or more or less divergent spray. They are used for spraying paint or distemper, varnishes, oils, plastics, cement, metallic powders, textile dust, etc.

Counsel pointed out that the description provides that spray guns are “usually designed for attaching to compressed air or steam lines,” but that the heading is not limited to goods of that design. Furthermore, he submitted that the words of the Explanatory Notes do not limit the application of the heading to particular sources of pressure or types of dispersal substances and that the words need not be read conjunctively such that a spray gun must be attached to both a compressed air or steam line and a reservoir of the material to be projected.

Alternatively, counsel for the appellant submitted that the goods in issue meet the following description in Part (D) of the Explanatory Notes to heading No. 84.24 entitled “Syringes, Sprays and Powder Distributors:”

These are used for insecticides, fungicides, etc., in agriculture, horticulture or the home. The heading includes such appliances, with or without integral reservoirs, of the type operated by hand (including simple piston pump sprays) or by foot pedal ...

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

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

Provided they incorporate mechanical devices for producing or dispersing the spray or jet, or for automatically orientating the spray head (including simple mechanisms activated by water pressure), the heading includes ...

(1) Sprinklers and sprays for lawns, orchards, etc.

He submitted that the goods in issue incorporate at least three mechanical devices which produce, disperse or control the spray: a shut-off valve, a trigger-locking mechanism and a spray control. Furthermore, he referred to the evidence of Mr. Carscallen that the goods in issue are used in greenhouses and commercial nurseries and to the following definition of “horticulture,” “the cultivation of a garden; the art or science of cultivating or managing gardens, including the growing of flowers, fruit, and vegetables,⁶” to support his position that the goods in issue are used for horticulture.

Counsel for the appellant submitted that the goods in issue are not excluded from heading No. 84.24 by the following exclusion in Part (D) of the Explanatory Notes to that heading entitled “Syringes, Sprays and Powder Distributors:”

(b) Hose pipe nozzles (Section XV, or heading 84.81 if fitted with taps, cocks, valves or other appliances for regulating the liquid flow).

He pointed out that the goods of heading No. 84.24 and those of heading No. 84.81 may incorporate valves and nozzles, but that the distinction between the two headings is that goods in heading No. 84.24 require a mechanical device for controlling the flow or orientating the spray head.

Finally, counsel for the appellant referred to the following description in the Explanatory Notes to heading No. 84.81 of goods that are included in that heading:

(10) Fire-hydrants (stand pipes), fire cocks, hosepipe nozzles and the like, fitted with cocks or with valves for forming a jet or a spray.

Counsel submitted that the Tribunal should apply the *ejusdem generis* rule to interpret the phrase “hosepipe nozzles” in relation to the type of goods that go before it, which goods are all associated with firefighting. Counsel submitted that “hose-pipe” is a British term for a hose and that, pursuant to Rule 2 of the Canadian Rules,⁷ the commonly accepted meaning and scope of the international term, that a “hose-pipe” is a hose, shall take precedence.

Counsel for the respondent submitted that the goods in issue may be classified in accordance with Rule 1 of the General Rules, that is, in accordance with the terms of the headings and any relative Section or Chapter Notes. In counsel’s view, the goods in issue meet the description for “valves and similar appliances” in the Explanatory Notes to heading No. 84.81, which provide, in part, 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 ... of fluids.

6. The Oxford Universal Dictionary on Historical Principles, 3rd ed. (Oxford: Clarendon Press, 1955) at 924.

7. *Supra*, note 5.

Counsel further submitted that the Explanatory Notes to heading No. 84.81 contemplate that valves may be combined with other component instruments and referred to the following excerpt to illustrate this point:

Taps, valves, etc., remain classified here even if incorporating other accessory features (e.g., double walls for heating or cooling purposes; short lengths of tubing; short lengths of tube ending in a shower rose; small drinking fountain bowls; locking devices).

In counsel's view, the nozzle on the goods in issue is similar to the example of a shower rose in the Explanatory Notes to heading No. 84.81.

Counsel for the respondent referred to Mr. Carscallen's testimony that the goods in issue are a combination of a valve and a nozzle and submitted that, regardless of the gun shape of the goods in issue, they are still a hose and nozzle combination like the brass hose nozzle introduced as an exhibit by the appellant's witness.

It was the position of counsel for the respondent that the goods in issue do not meet the description in the Explanatory Notes to heading No. 84.24. First, counsel submitted that they are not spray guns since they are not "connected, either directly or through a conduit, with a reservoir of the material to be projected." Second, counsel submitted that they are not sprinklers or sprays since they do not "incorporate mechanical devices for producing or dispersing the spray or jet."

Finally, counsel for the respondent submitted that the word "horticultural," like the word "agricultural" in tariff item No. 8424.81.00, does not relate to products that are used for lawn and garden service, but that it relates to products which are used primarily for commercial purposes.

Pursuant to section 10 of the *Customs Tariff*, the Tribunal is to determine the classification of goods in accordance with the General Rules. Rule 1 of the General Rules provides that the classification of goods shall be determined "according to the terms of the headings and any relative Section or Chapter Notes." The Tribunal is also directed by section 11 of the *Customs Tariff* to have regard to the Explanatory Notes in interpreting the headings and subheadings.

After having reviewed the terms of heading No. 84.24 and the relevant Explanatory Notes, the Tribunal is not persuaded that the goods in issue are spray guns and similar hand-controlled appliances. While the goods in issue do have some of the features described in the Explanatory Notes, the Tribunal is of the view that the goods in issue are not the type of spray guns or hand-controlled appliances contemplated by that description. In particular, the goods are not attached to a compressed air or steam line nor connected with a reservoir of the material to be projected. Furthermore, the goods in issue are not used for spraying the types of substances listed in that description.

However, in the Tribunal's view, the goods in issue do meet the description in the Explanatory Notes to heading No. 84.24 for other agricultural or horticultural appliances, namely, syringes, sprays and powder distributors. The Explanatory Notes to heading No. 84.24 refer to goods that "incorporate mechanical devices for producing or dispersing the spray or jet, or for automatically orientating the spray head (including simple mechanisms activated by water pressure)." The list of goods included in that description contains "sprays for lawns." In the Tribunal's opinion, the goods in issue are sprays for lawns that incorporate mechanical devices, namely, a valve and a nozzle, for dispersing a spray or jet of water. Contrary to the submissions of counsel for the respondent, the Tribunal is of the view that there is no indication in the

language of heading No. 84.24 or of the Explanatory Notes to heading No. 84.24 that the word “horticultural” refers only to commercial uses. Rather, the Tribunal is of the opinion that the word “horticulture,” defined as “the cultivation of a garden; the art or science of cultivating or managing gardens, including the growing of flowers, fruit, and vegetables,⁸” may relate to both commercial and residential uses.

The Tribunal notes that the description of “syringes, sprays and powder distributors” specifically excludes hosepipe nozzles of Section XV or heading No. 84.81 if fitted with taps, cocks, valves or other appliances for regulating the liquid flow and that the Explanatory Notes to heading No. 84.81 provide that the heading includes fire hydrants (stand pipes), fire cocks, hosepipe nozzles and the like, fitted with cocks or with valves for forming a jet or a spray. However, the Tribunal is persuaded by the arguments of counsel for the appellant that it should apply the *ejusdem generis* rule of statutory interpretation, which provides that general terms in a list are to be interpreted in relation to specific related terms that precede them.⁹ Applying this rule, the Tribunal finds that the term “hosepipe nozzles” used in the Explanatory Notes to heading No. 84.81 should be interpreted in relation to all of the preceding words which are associated with firefighting. Thus, the hose pipe nozzles that are excluded from heading No. 84.24 are hose pipe nozzles used with respect to fires. The Tribunal acknowledges that the goods in issue could be used with respect to fires; however, that is not their intended purpose.

Accordingly, the appeal is allowed, and the Tribunal finds that the goods in issue should be classified under tariff item No. 8424.81.00 as other horticultural appliances.

Raynald Guay
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Presiding Member

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8. *Supra*, note 6.

9. Driedger on the Construction of Statutes, Ruth Sullivan, 3rd ed. (Toronto: Butterworths, 1994) at 207-9.