

Ottawa, Friday, July 21, 1995

Appeal No. AP-94-166

IN THE MATTER OF an appeal heard on January 17, 1995,  
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 May 31, 1994, with respect to requests  
for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**R. B. PACKINGS & SEALS INC.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**AND**

**MERDRAULIC INC.**

**Intervener**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Lise Bergeron

Lise Bergeron  
Member

Michel P. Granger

Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-94-166**

**R. B. PACKINGS & SEALS INC.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**and**

**MERDRAULIC INC.**

**Intervener**

*This is an appeal under section 67 of the Customs Act from three decisions of the Deputy Minister of National Revenue dated May 31, 1994. The issue in this appeal is whether goods described as No. 53 rubber V-rings are properly classified under tariff item No. 4016.93.00 as gaskets, washers and other seals of vulcanized rubber other than hard rubber, as determined by the respondent, or should be classified under tariff item No. 8412.90.30 as parts of the goods of tariff item No. 8412.21.00, 8412.29.90, 8412.31.00 or 8412.39.90, as claimed by the appellant.*

***HELD:** The appeal is dismissed. The Tribunal observes that the General Explanatory Notes to Chapter 40 provide that it covers “rubber ... in the raw or semi-manufactured states, whether or not vulcanised or hard, and articles wholly of rubber or whose essential character derives from rubber, other than products excluded by Note 2 to [Chapter 40].” In the Tribunal’s view, the No. 53 V-rings meet the general description of goods covered by Chapter 40 and is persuaded that the essential character of the V-rings is derived from the rubber, without which they cannot perform their sealing function. Moreover, the Explanatory Notes to the Harmonized Commodity Description and Coding System to heading No. 40.16 provide that the heading includes “[g]askets, washers and other seals” and “other articles for technical uses (including parts and accessories of machines and appliances of Section XVI and of instruments and apparatus of Chapter 90).” In the Tribunal’s view, the No. 53 V-rings are covered by the phrase “[g]askets, washers and other seals.” The V-rings were referred to in the product literature, as well as by the witnesses, as seals and perform a sealing function.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: January 17, 1995  
Date of Decision: July 21, 1995*

*Tribunal Members: Arthur B. Trudeau, Presiding Member  
Raynald Guay, Member  
Lise Bergeron, Member*

*Counsel for the Tribunal: Shelley Rowe*

*Clerk of the Tribunal: Anne Jamieson*

*Appearances: John R. Peillard, for the appellant  
Stéphane Lilkoff, for the respondent  
Hardy Nissen, for the intervener*

**Appeal No. AP-94-166**

**R. B. PACKINGS & SEALS INC.**

**Appellant**

and

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

and

**MERDRAULIC INC.**

**Intervener**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member  
RAYNALD GUAY, Member  
LISE BERGERON, Member

**REASONS FOR DECISION**

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> from three decisions of the Deputy Minister of National Revenue dated May 31, 1994. The issue in this appeal is whether goods described as No. 53 rubber V-rings are properly classified under tariff item No. 4016.93.00 of Schedule I to the *Customs Tariff*<sup>2</sup> as gaskets, washers and other seals of vulcanized rubber other than hard rubber, as determined by the respondent, or should be classified under tariff item No. 8412.90.30 as parts of the goods of tariff item No. 8412.21.00, 8412.29.90, 8412.31.00 or 8412.39.90, as claimed by the appellant.

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

40.16	<i>Other articles of vulcanized rubber other than hard rubber.</i>
	<i>-Other:</i>
4016.93	<i>--Gaskets, washers and other seals</i>
84.12	<i>Other engines and motors.</i>
	<i>-Hydraulic power engines and motors:</i>
8412.21.00	<i>--Linear acting (cylinders)</i>
8412.90	<i>-Parts</i>
8412.90.30	<i>---Of the goods of tariff item No. 8412.21.00, 8412.29.90, 8412.341.00 or 8412.39.90</i>

Mr. Gary Platukas, President and Acting General Manager of Power-Seal Corporation, in Rochester Hills, Michigan, appeared on behalf of the appellant. Power-Seal Corporation manufactures hydraulic seals, components and wear rings, including the No. 53 V-rings in issue. Mr. Platukas explained that the

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

manufacture of a seal assembly or V-Packing system involves both compression and injection moulding. He described a V-Packing system as being composed of male and female adapters (appellant's product No. 68). These adapters are made of glass-filled nylon and are produced through an injection moulding process. Between the male and female adapters are a combination of V-rings. The V-rings used in Power-Seal Corporation's V-Packing system may be either black, high-pressure rings, composed of neoprene-coated fabric (appellant's product No. 53), in which case they are produced through a compression moulding process, or white, low-pressure rings, composed of Dupont Hytrel, a polyester elastomer (appellant's product No. 70), in which case they are produced through an injection moulding process. Mr. Platukas stated that a normal V-Packing system consists of two No. 53 V-rings and two No. 70 V-rings.

In discussing the uses of V-rings, Mr. Platukas stated that they cannot be used by themselves and must be confined and compressed. He stated that, for almost all uses, the V-rings are confined between male and female adapters and are compressed when pressure is put on the adapters. Mr. Platukas indicated that Power-Seal Corporation sells the V-Packing systems to companies such as Dana Corporation, Custom Hoist and Commercial Intertech for use in telescopic cylinders typically found in dump trucks, hydraulic manlifts, etc., as well as to original equipment manufacturers. In addition, Power-Seal Corporation sells the individual components, namely, the male and female adapters and V-rings, to distributors that assemble the V-Packing systems based on customer specifications. According to Mr. Platukas, Power-Seal Corporation does not really sell to the repair market. However, he indicated that, from what he knows about that market, when there is a problem with a V-Packing system, customers generally replace the whole V-Packing system rather than replace individual components.

In describing the manufacturing process for the No. 53 V-rings in issue, Mr. Platukas explained that the neoprene comes in rolled sheets which are approximately 20 in. thick. The sheets are wrapped around an object that looks like a No. 53 V-ring, called a blank, in the compression moulding machine. The unfinished No. 53 V-ring is then removed from the machine, put into a die and punched to get rid of the rough edges.

Mr. Raymond Beaudin, President of R.B. Packings & Seals Inc., the importer of the goods in issue from Power-Seal Corporation, also appeared as a witness for the appellant. Mr. Beaudin explained that the appellant imports both the V-Packing systems and the individual components for the system for resale to hydraulic repair shops and hydraulic cylinder manufacturers. Mr. Beaudin stated that, in his experience, a customer would not repair a V-Packing system in a hydraulic cylinder by replacing individual components. Rather, a customer would put in a whole new V-Packing system. He also stated that the configuration of a V-Packing system required by a particular customer depends on the equipment incorporating the hydraulic cylinder and the space for the V-Packing system in the hydraulic cylinder.

Mr. Hardy Nissen, President of Merdraulic Inc., represented the intervener. Mr. Nissen stated that the intervener imports goods similar to the No. 53 V-rings from Merkel Hamburg - Dichtelemente in Germany. Mr. Nissen testified that, in his opinion, the textile material and the rubber which make up the No. 53 V-rings are equally necessary, as the textile material reinforces the rubber and gives the V-rings strength, and the rubber gives the V-rings elasticity. Moreover, Mr. Nissen opined that, in high-pressure applications, the rubber does not work without the textile. In his view, the sealing function could be performed by the rubber alone, but only in very low-pressure applications.

Counsel for the respondent called two witnesses. The first witness was Mr. Slavomir Falicki. Mr. Falicki, a chemist with the Polymers Laboratory of the Laboratory and Scientific Services Directorate of

the Department of National Revenue, was qualified by the Tribunal as an expert in chemistry. Mr. Falicki explained that his function is to analyze commodity samples to determine their chemical composition and referred to a copy of his report on the analysis of samples of a male adapter, a female adapter and V-rings. In his report, Mr. Falicki states that the No. 53 V-rings “are composed of a textile material consisting of a heavy plain weave of cotton fabric (predominant by weight) that has been saturated and entirely coated with compounded, vulcanized, synthetic rubber.” He describes the rubber material as being “based on non-cellular chloroprene rubber” that is not hard rubber. At the hearing, Mr. Falicki elaborated that the No. 53 V-rings analyzed were composed of a textile material and synthetic rubber based on chloroprene and neoprene, as well as some styrene. Based on this analysis, Mr. Falicki concluded that the No. 53 V-rings were vulcanized rubber, which he defined as rubber that has been cured.

Counsel for the respondent’s second witness was Professor Geza Kardos, a professor of mechanical engineering at Carleton University. The Tribunal qualified Professor Kardos as an expert in mechanical engineering with expertise in hydraulic equipment. Professor Kardos identified the No. 53 V-rings in issue as being the same as the V-rings that he was asked by counsel for the respondent to examine. Professor Kardos stated that the V-rings are also commonly known as chevron rings and that the No. 53 V-rings would typically be used to provide a seal on a hydraulic cylinder shaft. In describing the function of the V-rings when used in a hydraulic cylinder, Professor Kardos explained that the V-rings sit in a backing and supporting member, which he called a housing, generally male and female adapters, and that as pressure is applied on the housing, the V-rings distort to increase the interference and provide a seal between the reciprocating member, otherwise known as the piston, the outer part of the hydraulic cylinder and the V-ring housing.

In discussing the composition of the No. 53 V-rings, Professor Kardos opined that the textile material is used primarily to increase the strength of the V-rings and possibly the wear resistance. He stated that, without the textile material, the V-rings would probably not perform a sealing function at a higher temperature since the rubber would break down. In Professor Kardos’ view, using a composite material of rubber and textile enables the V-rings to be used for a number of different pressure applications without having to control the rubber hardness, as had been required in the past when the rings were composed only of rubber. Professor Kardos stated that seals like the V-rings can and are made solely of rubber and function satisfactorily to provide sealing in many applications. However, today, to increase life, pressure range and strength, V-rings are generally made of composite materials.

In argument, the appellant’s representative submitted that the No. 53 V-rings in issue are part of a seal and are not a seal in and of themselves. He submitted that the No. 53 V-rings do not perform a sealing function on their own and that they are part of a V-Packing system or a sealing assembly which is, in turn, part of a hydraulic cylinder. The No. 53 V-rings must be coupled with other devices, namely, male and female adapters, to form a sealing assembly which is designed for a specific application in hydraulic cylinders. He relied on the testimony of Mr. Platukas that the V-rings, in combination with the male and female adapters, and not the V-rings alone, constitute a seal.

The appellant’s representative referred to Rule 1 of the General Rules for the Interpretation of the Harmonized System<sup>3</sup> (the General Rules) which provides that classification is to be determined according to

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

the terms of the headings and any relative Section or Chapter notes. He submitted that there is no definition of seals or sealing systems in the Section or Chapter Notes or the Explanatory Notes to the Harmonized Commodity Description and Coding System<sup>4</sup> (the Explanatory Notes) and that the words “other seals” in tariff item No. 4016.93.00 must be interpreted in relation to the preceding words, “[g]askets” and “washers,” which are used in stationary applications, unlike the V-rings which are used in hydraulic cylinders. Moreover, the representative referred to Note 2 to Section XVI of Schedule I to the *Customs Tariff*, which covers heading No. 84.12, “Other engines and motors” and parts thereof and which provides that parts included in any of the headings of Chapter 84 or 85 are to be classified in their respective headings and that parts suitable for use solely or principally with a particular kind of machine are to be classified with the machines of that kind.

The appellant’s representative submitted that the Tribunal should consider the following questions in determining whether the No. 53 V-rings are properly classified in Chapter 40 as “[r]ubber and articles thereof.” What are the goods? What are they made of? Where and how will they be used? The representative also submitted that the No. 53 V-rings are composite goods made from a number of materials and are dedicated to be used and to function as parts of linear acting cylinders. The representative argued that there is no specific provision for seals in any heading of the *Customs Tariff* and that the classification of the No. 53 V-rings could not, therefore, be determined in accordance with Rule 1 of the General Rules. As a result, the representative submitted that the Tribunal should consider the application of the subsequent rules.

The appellant’s representative referred to Rule 2 (b) of the General Rules, which provides that goods consisting of more than one material or substance must be classified according to the principles of Rule 3. The representative then referred to Rule 3 (b), which provides that mixtures and composite goods consisting of different materials or made up of different components are to be classified as if they consisted of the material or component which gives them their essential character. The representative submitted that the essential character of the No. 53 V-rings in issue is derived from both the textile material and the rubber component. Accordingly, he submitted that, since the No. 53 V-rings could not be classified in accordance with Rule 3 (b), they should be classified in accordance with Rule 3 (c), in the heading which occurs last in numerical order among those which equally merit consideration, that is, heading No. 84.12.

The intervener’s representative argued that the constituent materials of the No. 53 V-rings, namely, the rubber and the textile material, are both essential for the proper functioning of the V-rings and that the combination of the two materials gives the V-rings an excellent sealing ability, especially under high pressures required in heavy-duty conditions.

Counsel for the respondent submitted that the Tribunal should classify the No. 53 V-rings in accordance with Rule 1 of the General Rules. Counsel referred to the words of heading No. 40.16, “Other articles of vulcanized rubber other than hard rubber,” and to the Explanatory Notes to that heading which suggest, in his view, that heading No. 40.16 includes several types of goods and has a very wide application. In particular, counsel referred to the Explanatory Notes to Chapter 40 which state that it covers “rubber ... in the raw or semi-manufactured states, whether or not vulcanised or hard, and articles wholly of rubber or whose essential character derives from rubber.” Counsel submitted that the rubber allows the V-rings to perform their true function as seals, as supported by the testimony of Professor Kardos that the sealing

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

function is performed by the rubber and that the rubber gives the seal its impermeable quality. Counsel further submitted that the words of tariff item No. 4016.93.00, “Gaskets, washers and other seals,” is broad in scope and covers all types of seals, no matter how they perform their sealing function.

Counsel for the respondent submitted that the No. 53 V-rings are excluded from Chapter 84 by virtue of the Explanatory Notes. Counsel referred to Note 1(a) to Section XVI of Schedule I to the *Customs Tariff* which provides that the Section does not cover “articles of a kind used in machinery or mechanical or electrical appliances or for other technical uses, of vulcanized rubber other than hard rubber (heading No. 40.16).”

In reply argument, the appellant’s representative submitted that, if the V-rings are classified in accordance with Rule 1 of the General Rules, the Tribunal must also consider Rule 1 of the Canadian Rules,<sup>5</sup> which provides that only tariff items at the same level are comparable. The representative submitted that the Tribunal should be comparing proposed classifications at the subheading level, i.e. the appellant’s proposed classification of subheading No. 8412.90 as parts of cylinders versus the respondent’s proposed classification of subheading No. 4016.93 as other articles of vulcanized rubber other than hard rubber.

In considering the tariff classification for the V-rings, the Tribunal was guided by sections 10 and 11 of the *Customs Tariff* which direct it to determine classification in Schedule I to the *Customs Tariff* in accordance with the General Rules and the Canadian Rules and, in interpreting the headings and subheadings in Schedule I to the *Customs Tariff*, to have regard to the Explanatory Notes.

The Tribunal considered the possibility of classifying the No. 53 V-rings in four headings: (1) heading No. 40.16, which covers “[o]ther articles of vulcanized rubber other than hard rubber;” (2) heading No. 59.06, which covers “[r]ubberized textile fabrics, other than those of heading No. 59.02;” (3) heading No. 59.11, which covers “[t]extile products and articles, for technical uses, specified in Note 7 to this Chapter;” and (4) heading No. 84.12, which covers “[o]ther engines and motors.”

The Tribunal observes that Note 2 of the Explanatory Notes to Chapter 40 provides that the Chapter does not cover goods of Section XI (textiles and textile articles) or mechanical or electrical appliances or parts thereof of Section XVI (including electrical goods of all kinds), of hard rubber. The General Explanatory Notes to Chapter 40 provide that the Chapter covers “rubber ... in the raw or semi-manufactured states, whether or not vulcanised or hard, and articles wholly of rubber or whose essential character derives from rubber, other than products excluded by Note 2 to [Chapter 40].” In the Tribunal’s view, the No. 53 V-rings meet the general description of goods covered by Chapter 40 and is persuaded that the essential character of the V-rings is derived from the rubber, without which they cannot perform their sealing function.

Moreover, the Explanatory Notes to heading No. 40.16 provide that the heading includes “[g]askets, washers and other seals” and “other articles for technical uses (including parts and accessories of machines and appliances of Section XVI and of instruments and apparatus of Chapter 90).” In the Tribunal’s view, the No. 53 V-rings are covered by the phrase “[g]askets, washers and other seals.” The V-rings were referred to in the product literature, as well as by the witnesses, as seals and perform a sealing function.

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

Even if the Tribunal were persuaded that the V-rings, as a component of a V-Packing system, are parts of linear acting cylinders, more commonly referred to as hydraulic cylinders, as argued by the appellant's representative, the Explanatory Notes to heading No. 40.16, as well as Note 1(a) to Section XVI, provide that heading No. 40.16 includes other articles of vulcanized rubber for technical uses, including parts and accessories of machines and appliances of Section XVI.

The Tribunal further observes that the General Explanatory Notes to heading No. 40.16 entitled "Rubber and textile combinations" provide that Chapter 40 includes textile fabrics (as defined in Note 1 to Chapter 59) impregnated, coated, covered or laminated with rubber, weighing more than 1,500 g/m<sup>2</sup> and containing 50 percent or less by weight of textile material. Although the No. 53 V-rings are composed of a textile material consisting of a cotton fabric coated with rubber, in the Tribunal's view, once the neoprene coated cotton fabric undergoes the compression moulding process where it is transformed into a No. 53 V-ring, it is no longer a textile fabric coated with rubber and is not, therefore, classifiable in heading No. 59.06.

Finally, the Tribunal observes that Note 7(b) of the Explanatory Notes to Chapter 59 provides that heading No. 59.11 applies to "[t]extile articles ... of a kind used for technical purposes (for example, textile fabrics and felts, endless or fitted with linking devices, of a kind used in papermaking or similar machines ... gaskets, washers, polishing discs and other machinery parts." Note (B) of the Explanatory Notes to heading No. 59.11, which covers textile products and articles, for technical uses, specified in Note 7 to Chapter 59, provides a list of examples of textile articles of a kind used for technical purposes, including textile bags and straining cloths for oil presses, bags for vacuum cleaners, and gaskets and diaphragms for pumps, motors, etc. In the Tribunal's view, the No. 53 V-rings are not covered by any of these examples nor are they the type of goods contemplated by the list of examples.

Accordingly, the appeal is dismissed. The Tribunal concludes that the No. 53 V-rings are properly classified under tariff item No. 4016.93.00 as gaskets, washers and other seals of vulcanized rubber other than hard rubber.

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Lise Bergeron

Lise Bergeron  
Member