

Ottawa, Friday, February 7, 1997

Appeal No. AP-95-240

IN THE MATTER OF an appeal heard on May 6, 1996, 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 dated September 8, 1995, with respect to a request for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**INTEGRATED PROTECTION INC.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

Michel P. Granger

Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-95-240**

**INTEGRATED PROTECTION INC.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

This is an appeal under section 67 of the *Customs Act* from a decision of the Deputy Minister of National Revenue dated September 8, 1995, made under section 63 of the *Customs Act*. The appellant is involved in designing fire alarm and fire protection systems. The goods in issue are various components of a fire extinguishing system, specifically, the Kidde FM-200 fire suppression system. These include nozzles, orifices, flex hoses, adapters, cylinder straps, cylinder front clamps, control heads, pilot line adapter kits, pilot adapters, pressure switches and cylinders of FM-200, the extinguishing agent.

Originally, the issue in this appeal was whether the goods in issue were properly classified under tariff item No. 8424.10.00 as fire extinguishers, whether or not charged, as determined by the respondent, or should have been classified under tariff item No. 8424.89.00 as other mechanical appliances for spraying liquids or powders, as claimed by the appellant. At the hearing, the appellant's representative indicated that the appellant was in fact seeking classification of the goods in issue as parts of other mechanical appliances for spraying liquids or powders, under tariff item No. 8424.90.40.

**HELD:** The appeal is dismissed. The Tribunal is of the view that the term "fire extinguishers," as it is used in heading No. 84.24 and the *Explanatory Notes to the Harmonized Commodity Description and Coding System* (the Explanatory Notes), is very broad and refers generally to apparatus that extinguish fires. It is not limited to "portable" fire extinguishers nor to "simple" ones. The Explanatory Notes to heading Nos. 84.24 and 38.13 suggest that the term "fire extinguishers," as it is used in the nomenclature and the Explanatory Notes, includes fixed fire extinguishers, such as fire extinguishing systems, provided they use foam-producing or other charges. Accordingly, the Tribunal is of the view that the goods in issue are specifically described as fire extinguishers in heading No. 84.24 and, more specifically, under tariff item No. 8424.10.00.

The Tribunal notes that, although the goods in issue do not form a complete "fire extinguisher" at the time of importation, it is of the view that the term "fire extinguishers," as it is used in the heading and tariff item, includes the incomplete and unassembled article, provided the incomplete and unassembled article has the essential character of the complete or finished article. In this regard, the Tribunal is of the view that, at the time of importation, the goods in issue have the essential character of a fire extinguisher.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	May 6, 1996
Date of Decision:	February 7, 1997
Tribunal Member:	Arthur B. Trudeau, Presiding Member
Counsel for the Tribunal:	Heather A. Grant
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Ralph Philp, for the appellant Brian Tittlemore, for the respondent

**Appeal No. AP-95-240**

**INTEGRATED PROTECTION INC.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member

**REASONS FOR DECISION**

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> (the Act) from a decision of the Deputy Minister of National Revenue dated September 8, 1995, made under section 63 of the Act. The appeal was heard by one member of the Tribunal.<sup>2</sup>

The appellant is involved in designing fire alarm and fire protection systems. The goods in issue are various components of a fire extinguishing system, specifically, the Kidde FM-200 fire suppression system. These include nozzles, orifices, flex hoses, adapters, cylinder straps, cylinder front clamps, control heads, pilot line adapter kits, pilot adapters, pressure switches and cylinders of FM-200, the extinguishing agent.

At the time of importation, the goods in issue were classified under tariff item No. 8424.90.40 of Schedule I to the *Customs Tariff*<sup>3</sup> as parts of spraying machines. Pursuant to a review under section 58 of the Act, the goods were classified under tariff item No. 8424.90.10 as parts of fire extinguishers. As a result of a request filed by the appellant under section 60 of the Act, the classification of the goods under tariff item No. 8424.90.10 was maintained. The appellant subsequently requested a further re-determination of the goods under tariff item No. 8424.89.00 as other mechanical appliances for spraying liquids or powders, pursuant to subsection 63(1) of the Act. In a decision dated September 8, 1995, the respondent further re-determined the goods under tariff item No. 8424.10.00 as fire extinguishers, whether or not charged.

Originally, the issue in this appeal was whether the goods in issue were properly classified under tariff item No. 8424.10.00 as fire extinguishers, whether or not charged, as determined by the respondent, or should have been classified under tariff item No. 8424.89.00 as other mechanical appliances for spraying liquids or powders, as claimed by the appellant. At the hearing, the appellant's representative indicated that the appellant was in fact seeking classification of the goods in issue as parts of other mechanical appliances for spraying liquids or powders, under tariff item No. 8424.90.40.

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

2. Section 3.2 of the *Canadian International Trade Tribunal Regulations*, added by SOR/95-27, December 22, 1994, *Canada Gazette* Part II, Vol. 129, No. 1 at 96, provides, in part, that the Chairman of the Tribunal may, taking into account the complexity and precedential nature of the matter at issue, determine that one member constitutes a quorum of the Tribunal for the purposes of hearing, determining and dealing with any appeal made to the Tribunal pursuant to the Act.

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

The relevant tariff nomenclature reads as follows:

- 84.24 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.
- 8424.10.00 -Fire extinguishers, whether or not charged
  - Other appliances:
- 8424.89.00 --Other
- 8424.90 -Parts
- 8424.90.10 ---Of the goods of tariff item No. 8424.10.00
- 8424.90.40 ---Of the goods of tariff item No. ... 8424.89.00

Mr. Mike Godara, President of Integrated Protection Inc., appeared as a witness on behalf of the appellant. Mr. Godara submitted that the goods in issue are parts of a “fire extinguishing system” and not a “fire extinguisher.” According to Mr. Godara, a fire extinguisher is a self-contained, portable unit which can be purchased at a store. Fire extinguishing systems, by contrast, are fixed and not portable. In support of this view, the appellant’s representative referred the Tribunal to dictionary definitions of the term “fire extinguisher.”<sup>4</sup>

Mr. Godara further testified that the term “fire extinguisher,” as it is used in the industry, does not apply to fire extinguishing systems and referred the Tribunal to a variety of industry documentation in support of this view, including literature from the National Fire Protection Association (NFPA), the Underwriters’ Laboratories of Canada and Factory Mutual.<sup>5</sup> Mr. Godara stated that the only difference between a fire extinguishing system and a sprinkler system is that a sprinkler system uses water as opposed to a chemical extinguishing agent.

In cross-examination, Mr. Godara stated that the system’s extinguishing agent is stored under pressure in a cylinder in liquid form and that, at the time of spraying, it continues to remain in liquid form until the pressure reduces, at which point it expands into a gas. He further indicated that the goods in issue constitute the mechanical portion of the fire extinguishing system and that the pipes and electrical portion of the system, which would include the electrical wires, conduits and smoke detectors, are purchased locally.

In argument, the appellant’s representative submitted that a fire extinguishing system is classifiable under tariff item No. 8424.89.00 and that the goods in issue, as parts of that system, are classifiable under tariff item No. 8424.90.40. He argued that a fire extinguishing system is not a fire extinguisher and, therefore, that the goods in issue cannot be classified as parts of a fire extinguisher. According to the representative, a fire extinguisher is a portable piece of apparatus, while a fire extinguishing system is a fixed system.

The appellant’s representative further submitted that, since a “[w]ater sprinkler system (extinguishers)” is included in classification No. 8424.89.00.10, the fire extinguishing system, of which the

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4. For example, the *Cambridge Dictionary of Science and Technology* (New York: Cambridge University Press, 1988) at 343: “Any of several portable apparatus for emergency use against fire.”

5. NFPA 12, which applies to “Carbon Dioxide Extinguishing Systems,” and NFPA 12A, which applies to “Halon 1301 Fire Extinguishing Systems,” contain a note which provides that portable carbon dioxide equipment and portable Halon 1301 extinguishers are covered in NFPA 10, *Standard for Portable Fire Extinguishers*.

goods in issue are parts, should also be classified under tariff item No. 8424.89.00, as the only significant difference between the two types of goods is the type of extinguishing agent used.

A further point made by the appellant's representative is that, if the respondent's classification of the goods in issue prevailed, the imported cylinders of FM-200 should be classified separately in heading No. 38.13 as preparations and charges for fire extinguishers, as the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>6</sup> (the Explanatory Notes) to heading No. 84.24 specifically exclude charges for fire extinguishers.

In response to the arguments of the appellant's representative, counsel for the respondent submitted that the reference to "fire extinguishers" in the tariff nomenclature is broad and not limited to portable units, as claimed by the appellant. In support of this view, counsel referred to the Explanatory Notes to heading Nos. 84.24 and 38.13. The Explanatory Notes to heading No. 84.24 provide that goods classifiable as "fire extinguishers, whether or not charged" in heading No. 84.24 include "extinguishers, filled or not, of the kind which use foam-producing or other charges, including simple extinguishers fitted with taps, valves, percussion caps or other opening devices." The Explanatory Notes to heading No. 38.13 further indicate that "[f]ire-extinguishers, whether or not portable and whether or not charged, which are operated by means of a pin, by upturning, striking a trigger, etc., fall in heading 84.24."<sup>7</sup> According to counsel, the Explanatory Notes support the view that fixed, more complex extinguishers, such as fire extinguishing systems, are meant to be classified as "fire extinguishers," provided they use foam-producing or other charges.

Counsel for the respondent submitted, in the alternative, that, if the Tribunal does not find that the fire extinguishing systems are specifically described in heading No. 84.24 pursuant to Rule 1 of the *General Rules for the Interpretation of the Harmonized System*<sup>8</sup> (the General Rules), then Rule 4 applies. That rule provides that goods shall be classified in the heading appropriate to the goods to which they are most akin, which in this case are fire extinguishers in heading No. 84.24 and, more specifically, under tariff item No. 8424.10.00.

With respect to the argument of the appellant's representative that the reference to a "[w]ater sprinkler system (extinguishers)" in classification No. 8424.89.00.10 supports the view that fire extinguishing systems should also be classified under the same tariff item, counsel for the respondent submitted that the 9th and 10th digits of classification numbers are meant for statistical purposes only and do not form part of the tariff nomenclature. As such, they should not be taken into account in classifying the goods in issue.

In response to the argument of the appellant's representative that, if the respondent's classification of the goods prevailed, the imported cylinders of FM-200 should be classified separately in heading No. 38.13, counsel for the respondent submitted that, as the charges are imported in permanent cylinders in a system ready for use, the charges are not included in heading No. 38.13.

To determine the proper classification of the goods in issue, the Tribunal relies on section 10 of the *Customs Tariff*, which stipulates that the classification of goods is determined in accordance with the General Rules and the *Canadian Rules*.<sup>9</sup>

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

7. Heading No. 38.13 includes preparations and charges for fire extinguishers.

8. *Supra* note 3, Schedule I.

9. *Ibid.*

Rule 1 of the General Rules provides that classification is first determined by the wording of the headings and any relative Section or Chapter Notes. Rule 2 (a) furthermore extends the scope of any heading to include a reference to that article incomplete or unfinished, provided the incomplete or unfinished article, as presented, has the essential character of the complete or finished article. This includes an incomplete or unfinished article presented unassembled or disassembled.

Rule 1 of the *Canadian Rules* goes on to provide that the classification of goods under the tariff items of 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 General Rules. Finally, section 11 of the *Customs Tariff* provides that, in interpreting the headings or subheadings, the Tribunal shall have regard to the Explanatory Notes. With respect to the arguments of the appellant's representative regarding the relevance of the term "[w]ater sprinkler system (extinguishers)" in classification No. 8424.89.00.10, the Tribunal notes that the 9th and 10th digits in the *Customs Tariff* are generally used for statistical purposes only.

With respect to the classification of the goods in issue, although the Tribunal acknowledges that they constitute a fire extinguishing system and that a distinction is made in the industry between "fire extinguishers" and "fire extinguishing systems," the Tribunal is not persuaded that this distinction is relevant in determining the proper classification of the goods in issue.

The Tribunal agrees with counsel for the respondent that the term "fire extinguishers," as it is used in heading No. 84.24 and the Explanatory Notes, is very broad and refers generally to apparatus that extinguish fires. It is not limited to "portable" fire extinguishers nor to "simple" ones. The Explanatory Notes to heading Nos. 84.24 and 38.13 suggest that the term "fire extinguishers," as it is used in the nomenclature and the Explanatory Notes, includes fixed fire extinguishers, such as fire extinguishing systems, provided they use foam-producing or other charges. Accordingly, the Tribunal is of the view that the goods in issue are specifically described as fire extinguishers in heading No. 84.24 and, more specifically, under tariff item No. 8424.10.00.

The Tribunal notes that, although the goods in issue do not form a complete "fire extinguisher" at the time of importation, Rule 2 (a) of the General Rules extends the scope of the term "fire extinguishers" in the heading and, in conjunction with Rule 1 of the *Canadian Rules*, extends the scope of the same term in the tariff item to include incomplete and unassembled fire extinguishers, provided the incomplete and unassembled article has the essential character of the complete or finished article. In this regard, the Tribunal is of the view that, at the time of importation, the goods in issue have the essential character of a fire extinguisher. Even though the piping and electrical components of the system are purchased locally, subsequent to the importation of the goods in issue, the imported components include the main essential features of a fire extinguisher, specifically, nozzles, a control head and a charge. Accordingly, the Tribunal is of the view that the term "fire extinguishers," as it is used in the tariff nomenclature, includes a reference to the incomplete and unassembled fire extinguishers in issue.

For the foregoing reasons, the appeal is dismissed.

Arthur B. Trudeau  
Arthur B. Trudeau  
Presiding Member