



Ottawa, Friday, September 25, 1998

**Appeal Nos. AP-97-048, AP-97-081 and AP-97-082**

IN THE MATTER OF appeals heard on May 8, 1998, 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 26 and August 5, 1997, with respect to requests for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**COOPER INDUSTRIES (CANADA) INC. AND  
COOPER CAMERON LTD.**

**Appellants**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeals are allowed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Raynald Guay

Raynald Guay

Member

Charles A. Gracey

Charles A. Gracey

Member

Michel P. Granger

Michel P. Granger

Secretary

**UNOFFICIAL SUMMARY**

**Appeal Nos. AP-97-048, AP-97-081 and AP-97-082**

**COOPER INDUSTRIES (CANADA) INC. AND  
COOPER CAMERON LTD.**

**Appellants**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

These are appeals under section 67 of the *Customs Act* of decisions of the Deputy Minister of National Revenue made pursuant to section 63 of the *Customs Act*. The issue in these appeals is whether the goods in issue, described as ball valves with mounting flange, are properly classified under tariff item No. 8481.80.91 as hand-operated taps, cocks, valves and similar appliances, as determined by the respondent, or should be classified under tariff item No. 8481.80.99 as other taps, cocks, valves and similar appliances, as claimed by the appellants.

**HELD:** The appeals are allowed. Having reviewed the evidence, the Tribunal is of the view that the goods in issue cannot be hand operated. The witness for the appellants testified that, although it may be possible to actuate the valve by attaching a wrench to the stem and then turning it, this would not be the ordinary method of operating the valve and that to do so would be extremely dangerous. Furthermore, the evidence clearly shows that the goods in issue are imported without handles. The Tribunal, therefore, finds that the goods in issue should be classified under tariff item No. 8481.80.99 as other taps, cocks, valves and similar appliances.

Place of Hearing: Vancouver, British Columbia  
Date of Hearing: May 8, 1998  
Date of Decision: September 25, 1998

Tribunal Members: Robert C. Coates, Q.C., Presiding Member  
Raynald Guay, Member  
Charles A. Gracey, Member

Counsel for the Tribunal: Joël J. Robichaud

Clerk of the Tribunal: Margaret Fisher

Appearances: Douglas J. Bowering, for the appellants  
Jan Brongers, for the respondent

Appeal Nos. AP-97-048, AP-97-081 and AP-97-082

**COOPER INDUSTRIES (CANADA) INC. AND  
COOPER CAMERON LTD.**

**Appellants**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
RAYNALD GUAY, Member  
CHARLES A. GRACEY, Member

### **REASONS FOR DECISION**

These are appeals under section 67 of the *Customs Act*<sup>1</sup> (the Act) of decisions of the Deputy Minister of National Revenue made pursuant to section 63 of the Act.

The issue in these appeals is whether the goods in issue, described as ball valves with mounting flange, are properly classified under tariff item No. 8481.80.91 of Schedule I to the *Customs Tariff*<sup>2</sup> as hand-operated taps, cocks, valves and similar appliances, as determined by the respondent, or should be classified under tariff item No. 8481.80.99 as other taps, cocks, valves and similar appliances, as claimed by the appellants. For purposes of these appeals, the relevant tariff nomenclature reads as follows:

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
8481.80.91	---Hand operated or hand activated (excluding multiple gear, pulley or chain valves, connective couplings equipped with valves)
8481.80.99	---Other

The appellants' representative raised a preliminary issue. He argued that the Tribunal does not have jurisdiction to hear Appeal No. AP-97-081 on the basis that the importer was not properly identified in the respondent's decision under subsection 63(3) of the Act. The evidence revealed that, on July 26, 1993, the goods in issue were accounted for under section 32 of the Act by Cooper Industries (Canada) Inc. A detailed adjustment statement was issued on June 3, 1994, under section 60 of the Act under the same name. On August 4, 1994, a request for re-determination of the tariff classification was filed under section 63 of the Act, again under the same name. On January 3, 1995, Cooper Industries (Canada) Inc. announced a reorganization of the company. In conjunction with this reorganization, the officials of the company announced that Cooper Industries (Canada) Inc. would be named Cooper Cameron Ltd. They also announced that all correspondence, invoices and other documents originating after January 1, 1995, would show notations, etc., that Cooper Cameron Ltd. is the legal entity represented. The Department of National Revenue (Revenue Canada), therefore, issued its decision on August 5, 1997, in the name of Cooper Cameron Ltd.

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

According to the appellants' representative, Cooper Industries (Canada) Inc. and Cooper Cameron Ltd. are different corporations and different "persons" under the Act. In his view, because the importer was Cooper Industries (Canada) Inc., the respondent's decision had to be issued under that name and no other. The fact that it was issued under that name means that the Tribunal does not have jurisdiction to hear Appeal No. AP-97-081. In response, counsel for the respondent argued that Cooper Industries (Canada) Inc. and Cooper Cameron Ltd. are the same "person" under section 2 of the Act and that either name could have been employed by the respondent. In any event, counsel submitted that, even if the Tribunal were to decide that it did not have jurisdiction to hear Appeal No. AP-97-081 due to the respondent having indicated the wrong name on the decision, the respondent would simply have to render another decision under section 63 of the Act using the correct name. Presumably, the Tribunal's decision on the merits of Appeal Nos. AP-97-048 and AP-97-082 could then be applied to the transaction at issue in Appeal No. AP-97-081.

The Tribunal has difficulty understanding why the appellants' representative raised this preliminary issue. Essentially, the representative asked the Tribunal to quash the respondent's decision under section 63 of the Act. In the Tribunal's view, it does not have jurisdiction to render such a decision. Even if it did have the necessary jurisdiction to do so and actually did quash the respondent's decision, then the appellants would be left with the re-determination made under section 60, which also found that the goods in issue were properly classified under tariff item No. 8481.80.91. Hence, the appellants would lose. In the Tribunal's view, the real question is whether it has jurisdiction to hear Appeal No. AP-97-081. The facts showed that Revenue Canada, on the basis of the evidence which was presented to it, i.e. the announcement of January 3, 1995, by the officials of Cooper Industries (Canada) Inc., issued its decision in the name of Cooper Cameron Ltd. The appellants did not contest this. In fact, their representative filed the appeal from the respondent's decision in the name of Cooper Cameron Ltd. It is only in the appellants' brief that their representative argued that the decision was issued in the wrong name.

In the Tribunal's view, if the decision was issued in the wrong name, then the respondent should have been advised of this fact at the time that the decision was issued. If this had been done, then the respondent could have corrected the mistake, which is allowed as shown by the case law.<sup>3</sup> The Tribunal is not convinced that there was a mistake in that case. In fact, the witness for the appellants testified that, at the same time that Cooper Cameron Ltd. was created, Cooper Industries (Canada) Inc. was wound up. If this is so, then the respondent's decision was issued in the correct name. In any event, even if the decision was issued in the wrong name, the Tribunal is of the view that it would have had jurisdiction to simply change the name, as this is only a procedural matter which does not affect the merits of the case.

Turning now to the merits of these appeals, one witness testified on behalf of the appellants, Mr. Lawrence Gibson, Purchasing Manager for Cooper Cameron Corporation, Cameron Division. He testified that the goods in issue are made of carbon steel and that they are imported with a mounting flange and a bare stem on top of the ball valve, which allows a customer to actuate the valve. The valve is actuated with an electric or pneumatic gear operator. Mr. Gibson explained that, without the mounting flange, the valve would be operated with a handle, which would be actuated with the use of a wrench. He testified that, when the goods are imported with a mounting flange, no handle is incorporated with that shipment.

In cross-examination, Mr. Gibson testified that it would be possible to actuate the valve by attaching a wrench to the stem and then turning it. However, he testified that it is not possible to turn the stem by using one's bare hands. He explained that there is too much torque required to turn the ball. However, in answering questions from the Tribunal, Mr. Gibson testified that turning the ball with a pipe or hand wrench would not be the ordinary method of operating the valve. To do so would be extremely dangerous.

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3. See, for example, *Her Majesty the Queen v. Louis Riendeau*, 91 D.T.C. 5416, Federal Court of Appeal, Court File No. A-639-89, June 17, 1991.

The appellants' representative argued that the goods in issue should be classified under tariff item No. 8481.80.99 as other taps, cocks, valves and similar appliances because the evidence clearly shows that they are not "hand operated." He referred to Mr. Gibson's testimony to the effect that, when the mounting flange is added to a ball valve, it is always used with a mechanical operator. Valves which are sold without the mounting flanges are hand operated. The representative argued that the Tribunal's decision in *Praher Canada Products Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>4</sup> which was upheld by the Federal Court of Canada - Trial Division,<sup>5</sup> can be distinguished from the present appeals on the basis that, in the present appeals, none of the goods in issue are imported with a hand actuator.

Counsel for the respondent argued that the goods in issue can be hand operated and that, as such, they are properly classified under tariff item No. 8481.80.91 as hand-operated taps, cocks, valves and similar appliances. He argued that, even if the goods in issue could be actuated by power or some other method and could, therefore, possibly fall under the category of goods which are classifiable under tariff item No. 8481.80.99, according to Rule 3 (a) of the *General Rules for the Interpretation of the Harmonized System*,<sup>6</sup> they would still be classified under tariff item No. 8481.80.91, which is more specific. He relied on the decision of the Federal Court of Canada - Trial Division in *Praher* in support of his argument. Counsel argued that the appellants have not shown that the goods in issue cannot be hand operated. He referred to Mr. Gibson's testimony in which he admitted that the goods in issue can be hand operated, i.e. that the valve can be turned by using a wrench.

The issue in these appeals is whether the imported valves can be hand operated. Having reviewed the evidence, the Tribunal is of the view that they cannot be hand operated. The witness for the appellants testified that, although it may be possible to actuate the valve by attaching a wrench to the stem and then turning it, this would not be the ordinary method of operating the valve and that to do so would be extremely dangerous. Furthermore, the evidence clearly shows that the goods in issue are imported without handles. In the Tribunal's view, these facts are different from the facts in *Praher*. On the basis of this evidence, the Tribunal cannot conclude that the valves were properly classified by the respondent. The Tribunal must rule in favour of the appellants and finds that the goods in issue should be classified under tariff item No. 8481.80.99 as other taps, cocks, valves and similar appliances.

Accordingly, the appeals are allowed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Raynald Guay

Raynald Guay

Member

Charles A. Gracey

Charles A. Gracey

Member

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4. Appeal No. AP-92-112, August 31, 1993.

5. (1995), 97 F.T.R. 97, Court File No. T-2485-93, July 7, 1995.

6. *Supra* note 2, Schedule I.