CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, December 20, 1999

Appeal No. AP-98-067

IN THE MATTER OF an appeal heard on July 8, 1999, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue dated June 23, 1998, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

THE STEVENS COMPANY LIMITED **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is allowed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-98-067

THE STEVENS COMPANY LIMITED **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal pursuant to section 67 of the *Customs Act* from a decision of the Deputy Minister of National Revenue (now the Commissioner, Canada Customs and Revenue Agency). The goods in issue are see-through sterilization bags/pouches and rolls designed to hold medical instruments when being sterilized by gas or steam. Both parties agree that the goods in issue are properly classified under tariff item No. 4818.90.90 as other hospital articles of paper. The issue in this appeal is whether the goods in issue qualify for the benefits of Code 2516, which covers accessories for use with sterilizers.

HELD: The appeal is allowed. There is no definition in the tariff nomenclature of the word "accessories". The Tribunal, therefore, considered the dictionary definition to which both counsel referred. In light of this, it is the Tribunal's view that there is no requirement for the goods in issue to perform directly in the primary role of the sterilizer, i.e. the actual sterilization, to be considered accessories. The Tribunal is persuaded by the evidence that the goods in issue do enhance the sterilization process by contributing, in a subordinate degree, to the sterilization of the instruments and that they do improve the effectiveness of sterilizers. Therefore, the Tribunal finds that the goods in issue can be considered accessories and do qualify for the benefits of Code 2516 as accessories for use with sterilizers.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	July 8, 1999
Date of Decision:	December 20, 1999
Tribunal Member:	Arthur B. Trudeau, Presiding Member
Counsel for the Tribunal:	Marie-France Dagenais
Clerk of the Tribunal:	Margaret Fisher
Appearances:	Richard A. Wagner, for the appellant Susanne Pereira, for the respondent

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Appeal No. AP-98-067

THE STEVENS COMPANY LIMITED **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member

REASONS FOR DECISION

INTRODUCTION

This is an appeal pursuant to section 67 of the *Customs Act*[1] from a decision of the Deputy Minister of National Revenue (now the Commissioner, Canada Customs and Revenue Agency), dated June 23, 1998. The goods in issue are see-through sterilization bags/pouches and rolls designed to hold medical instruments when being sterilized by gas or steam. Both parties agree that the goods in issue are properly classified under tariff item No. 4818.90.90 of Schedule I to the *Customs Tariff*[2] as other hospital articles of paper. The issue in this appeal is whether the goods is issue qualify for the benefits of Code 2516 of Schedule II to the *Customs Tariff*, which covers accessories for use with sterilizers.

EVIDENCE

Mr. Scott Baker, Director of Material Management, The Stevens Company Limited, and Ms. Linda Carson, a registered nurse with the Hamilton Health Sciences Corporation, gave evidence on the appellant's behalf. Mr. Baker testified that the goods in issue, which are described in the literature as Steriking packaging materials, are manufactured by Wipak Medical in Finland and can generally be defined as medical packages used for the sterilization of instruments.

Mr. Baker described the goods in issue and stated that the sterilization bags/pouches come in different sizes to accommodate the various sizes of medical instruments and are basically made of a combination of specially manufactured plastic film, sealed to a specialty paper, that allows for sterilization and maintenance of sterility until the medical instrument is put to use. He further specified that, to make the sterilization package effective, the paper used on one side is a medical grade paper, while the plastic sheet on the other side, which is sealed to the paper, is a multilayer plastic film with particular properties and great tensile strength that allow it to be peeled away cleanly.

Mr. Baker testified that the goods in issue are designed to be used solely with medical or surgical sterilizers and have no other purpose or use than in a sterilizer. He stated that they are sold to hospitals, physicians' offices and dental clinics.

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

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Mr. Baker testified that the goods in issue have colour indicators to show whether the instruments that they contain have undergone steam or gas sterilization and whether they have been kept in sterile condition. There is also a special indicator on the outside of the pouch or bag which changes colour if the seam is broached and is no longer intact.

Mr. Baker also described the rolls that come in various sizes and offer the same combination of film and paper and the same characteristics as the sterilization bags/pouches. The see-through rolls allow the user to customize the length of a bag or pouch to meet particular needs.

Mr. Baker provided the Tribunal with a video describing the goods in issue and their use, as well as the proper sterilization techniques.

In cross-examination, Mr. Baker acknowledged that the goods in issue have a storage function and that it is possible to sterilize an instrument in a sterilizer without using the pouch or bag. He specified, however, that, except in one particular instance, some sort of packaging material must be used to sterilize instruments; otherwise, an instrument is no longer sterile once the sterilizer is opened and the item is exposed to the ambient air.

Ms. Carson was qualified as an expert in the use of sterilizers and the process of sterilization. She described sterilization as being the death of all microbial life on inanimate objects and a sterilizer as being the machine that uses a type of agent to achieve sterilization. She further stated that the most commonly used sterilizers are those that use steam, which is the most reliable and cost-effective sterilizing agent for surgical instruments that are not heat or moisture sensitive.

Ms. Carson made a distinction between a flash sterilizer, located either in the operating theatre or right next to it, which is used for sterilizing instruments during a surgical procedure, and the traditional type of sterilizer, which sterilizes items for future use. The goods in issue are used with the traditional sterilizer. She testified that, over the years, the goods in issue have come to replace other packaging materials, such as special paper or towels, adding that some form of packaging has always been required in the sterilization process, except with flash sterilizers.

Ms. Carson described every step of the sterilization process in detail for the Tribunal. These can be summarized as follows:

1. the initial cleaning and decontamination of the instruments;
2. the inspection and assembling of the instruments;
3. the selection of the correct packaging;
4. the loading of the sterilizer;
5. the actual sterilization cycles within the machine; and
6. the correct unloading of the sterilizer and handling and storage of the sterilized instruments.

Ms. Carson testified that, when the door to the sterilizer is opened, if the instruments are not packaged, they are immediately contaminated, as they are removed from the sterile environment. Consequently, a hospital could not use these instruments, since they would not be sterile when needed.

Ms. Carson stated that, in her opinion, the packaging is critical to the function of a sterilizer. Without the packaging, it would be impossible to provide a sterile product in a clinical environment. She stated that the primary functions of the goods in issue are to allow the sterilization of their contents, to provide for removal of the contents without contamination and to maintain the sterility of the contents until

the package is opened. Ms. Carson further stated that the goods in issue enhance the operation and function of the sterilizers by providing a means for the sterilization and the preservation of sterilization while the instruments are handled and stored until used. She testified that the goods in issue are useful in allowing the instruments to be placed on edge in the sterilizers, a technique recommended to maximize exposure to the sterilant.

In cross-examination, Ms. Carson acknowledged that the goods in issue do not contribute directly to the sterilization process, in that they neither improve nor worsen the function of sterilization.

ARGUMENT

Counsel for the appellant submitted that the goods in issue are accessories for use with sterilizers and, therefore, qualify for the benefits of Code 2516. Counsel referred to the physical exhibits and the description of the goods in the brochures in support of his argument that the goods in issue are solely used for medical sterilization and are specifically designed for use with sterilizers, as they enhance the sterilization process by providing a means for the sterilization and then maintaining the sterilization of instruments until used.

Counsel for the appellant argued that, since there is no statutory definition available in the *Customs Tariff* as to what constitutes an accessory, reference must be made to case law. He referred to the Tribunal's decision in *Karl Hager Limb & Brace* v. *D.M.N.R.C.E.*,[3] where the Tribunal looked to the ordinary meaning, given by conventional dictionaries, of the term "accessory" and held that socks and sheaths are accessories to artificial parts of the body. Counsel further referred to the dictionary definition of the term "accessory". He suggested that its basic meaning, as found in *The Oxford English Dictionary*, is "something contributing in a subordinate degree to a general result or effect; an adjunct, or accompaniment".[4] He also made reference to the Tribunal's decision in *Fisher Scientific* v. *D.M.N.R.C.E.*[5]

Counsel for the appellant further submitted that a similar definition of the term "accessory" is also reflected in the departmental memorandum which provides for the classification of parts and accessories in the *Customs Tariff*.

Counsel for the appellant argued that the case law before the Tribunal points out that an accessory is something that assists and enhances the effectiveness of a certain purpose or result and that the goods in issue do fall within this proper interpretation of the word "accessory". He submitted that the goods in issue are necessary for the sterilizer to perform its function, which is to make instruments sterile, and that, without this kind of packaging, the sterilizer would be useless. He further submitted that the goods in issue contribute in a secondary or subordinate way to the sterilization and, as an adjunct, provide for the ability to make instruments sterile. Finally, counsel argued that the goods in issue improve the effectiveness of sterilizers by providing a means for the sterilization of the instruments and the preservation of their sterile state and, as such, should be considered "accessories" for use with sterilizers as provided for in Code 2516.

Counsel for the respondent argued that the definition of "accessory" found in *Karl Hager* and *Fisher Scientific*, which made reference to *The Oxford English Dictionary*'s definition, should be relied upon to determine the applicability of Code 2516.

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3. (19 May 1993), AP-91-183 (C.I.T.T.) [hereinafter *Karl Hager*].
4. Second ed., *s.v.* "accessory".
5. (3 May 1994), AP-89-181 and AP-89-244 (C.I.T.T.) [hereinafter *Fisher Scientific*].

Counsel for the respondent argued that the goods in issue play an important role in the overall sterilization cycle, but are separate and apart from the singular function that is performed by the sterilizer in the course of that cycle. She reiterated that, in Code 2516, the words used are "accessories for use with sterilizers" and not "accessories for the sterilization process".

Counsel for the respondent submitted that the primary function of the goods in issue is to provide packaging that will maintain the sterilization of the instruments while in storage and that the mere fact that the goods are contained within the sterilizer during one of the six stages of the process does not make them accessories for the purpose of Code 2516.

Counsel for the respondent submitted that the goods in issue are not accessories because they do not contribute to the result or effect of the sterilizer, which is the sterilization of the instruments. They have no function while the sterilizer is in operation, they do not add a feature to the sterilizer which it did not already have and they do not make any active contribution during the sterilization stage in any beneficial way. She further submitted that the real utility of the goods in issue comes into play in the unloading, handling and storage of the sterilized instruments, which is the sixth stage of the sterilization process, and that the sterilizer, in this final stage, has no involvement. She argued that the fact that the goods in issue are within the machine for one of the six stages of the sterilization process does not make them accessories for the machine.

Counsel for the respondent submitted that it would be illogical to categorize the goods in issue as accessories for the sterilizer simply because they are placed inside the machine at some point in time. She further submitted that the goods in issue are useful for the maintenance of sterilization, that is, after completion of the machine's function, but are not necessary to its function or the sterilization process.

DECISION

The Tribunal is satisfied, based on the evidence presented and the literature, that the goods in issue are for use with sterilizers. Having reached this conclusion, the Tribunal must further determine whether the goods in issue are "accessories" for use with sterilizers and qualify for the benefits of Code 2516, which provides as follows:

> **Sterilizers** of tariff item No. 8419.20.20 and **parts** thereof of tariff item No. 8419.90.80; **accessories** for use with sterilizers of tariff item No. 8419.20.10 or 8419.20.20.

There is no definition of the term "accessories" in the tariff nomenclature. As recognized by the Tribunal in previous decisions,[6] the Tribunal will, therefore, look to the ordinary meaning of the word as found in conventional dictionaries. The Tribunal considered the dictionary definition of "accessory" found in *The Oxford English Dictionary*, to which both counsel referred. The Tribunal further considered the definition of the term "adjunct" found in *The Concise Oxford Dictionary*, which is defined as a "thing subordinate or incidental (*to* or *of*)".[7]

The Tribunal is of the view that the see-through sterilization bags/pouches and the rolls are accessories for use with sterilizers.

6. *Supra* notes 3 and 5.
7. Seventh ed., *s.v.* "adjunct".

The Tribunal does not agree with counsel for the respondent that the goods in issue should not be considered accessories because they do not contribute directly to the result or effect of the sterilizer, which is the sterilization of the instruments.

In the Tribunal's view, there is no need for a product to be necessary to the operation of the machine to which it relates to be considered an "accessory". An accessory is something which contributes in a subordinate or incidental degree to the general result or effect of a process. This is consistent with the Tribunal's conclusion in *Bureau de Relations d'Affaires internationales* v. *D.M.N.R.*[8] In light of this, it is the Tribunal's view that there is no requirement for the goods in issue to perform directly in the primary function of the sterilizer, i.e. the actual sterilization, in order to be considered accessories.

The Tribunal accepts the evidence that the goods in issue do not themselves perform anything akin to sterilization. However, the evidence is clear that the goods in issue are specifically designed for use with sterilizers and the performance of sterilization. They are manufactured from plastic and paper which have specialized features to enhance the effectiveness of the sterilization process and allow the instruments to be handled and stored while remaining sterile until used. They also have indicators reflecting the type of sterilization and its effectiveness.

The Tribunal notes that the goods in issue are useful in allowing the instruments to be placed in a specific fashion in the sterilizers to facilitate the sterilization process. The Tribunal also acknowledged that, without the packaging function performed by the goods in issue, sterilized instruments would no longer be sterile once they leave the sterilizers; the only exception being flash sterilizers, where packaging the instruments is not required.

The Tribunal is persuaded by the evidence that the goods in issue do enhance the sterilization process by contributing, in a subordinate degree, to the sterilization of medical instruments and that they do improve the effectiveness of sterilizers. Therefore, the see-through sterilization bags/pouches and rolls can be considered accessories and do qualify for the benefits of Code 2516 as accessories for use with sterilizers.

For the foregoing reasons, the appeal is allowed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

8. (24 August 1999), AP-97-139 and AP-98-042 (C.I.T.T.).