



Ottawa, Thursday, June 21, 1990

Appeal Nos. 2437, 2438, 2485,
2591 and 2592

IN THE MATTER OF an appeal heard on May 9, 1990,
pursuant to section 47 of the *Customs Act*, R.S.C., 1970,
c. C-40, as amended;

AND IN THE MATTER OF decisions of the Deputy
Minister of National Revenue for Customs and Excise dated
November 22 and November 29, 1985, and January 29 and
May 20, 1986, with respect to requests for re-determination
filed pursuant to section 46 of the *Customs Act*.

BETWEEN

UNICARE MEDICAL PRODUCTS INC.

Appellant

AND

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

DECISION OF THE TRIBUNAL

The appellant did not appear at the hearing of these appeals, and the Tribunal finds that there is no *prima facie* reason to grant the appeals on the basis of the record. Accordingly, as the appellant failed to discharge the onus of showing that the goods in issue were not properly classified by the respondent, the appeals are dismissed.

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.
Presiding Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member

W. Roy Hines

W. Roy Hines
Member

Robert J. Martin

Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal Nos. 2437, 2438, 2485, 2591, 2592

UNICARE MEDICAL PRODUCTS INC.

Appellant

and

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

Customs Act - Tariff classification - Whether Flotation Bed Pad No. 6100 should be classified under tariff item 93907-1 as an article of materials of the kinds described in headings 93901 to 93906 inclusive, n.o.p. or, as claimed by the appellant, under tariff item 47835-1 as an accessory for alternating pressure mattresses - Whether Cervical Neck Pillows should be classified under tariff item 56300-1 as textile manufactures or, as claimed by the appellant, under tariff item 47805-1 as spinal and other orthopedic braces - Whether Heel Cushion Insoles and Full Cushion Insoles should be classified under tariff item 61105-1 as insoles of any material, n.o.p. or, as claimed by the appellant, under tariff item 47826-1 as all other aids to locomotion, specially designed for the disabled, of a class or kind not made in Canada - Whether "Hygenique" should be classified under tariff item 71100-1 as goods not enumerated; "Spray Wand" under tariff item 93907-1 as articles of materials of the kinds described in headings 93901 to 93906 inclusive, n.o.p.; Cleansing Cartridges under tariff item 23400-1 as toilet preparations, non-alcoholic, namely: washes, n.o.p. used for the skin or, as claimed by the appellant, under tariff item 47826-1 as toilet, bath and shower seats, accessories for the foregoing - Whether the Convoid Compax 17C Folding Wheelchair should be classified under tariff item 47825-1 as an invalid chair with wheels, all specially designed for the disabled, of a class or kind made in Canada or under tariff item 47826-1 as an invalid chair with wheels, specially designed for the disabled, of a class or kind not made in Canada - Non-appearance of appellant at hearing of appeals.

DECISION: *The appellant did not appear at the hearing of the appeals, and the Tribunal finds that there is no prima facie reason to grant the appeals on the basis of the record. Accordingly, as the appellant failed to discharge the onus of showing that the goods in issue were not properly classified by the respondent, the appeals are dismissed.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: May 9, 1990
Date of Decision: June 21, 1990*

*Tribunal Members: Robert J. Bertrand, Q.C., Presiding Member
Sidney A. Fraleigh, Member
W. Roy Hines, Member*

Clerk of the Tribunal: Nicole Pelletier

*Appearances: René LeBlanc and
Dominique Gagné, for the respondent*

Case Cited: *The Deputy Minister of National Revenue for Customs and Excise v. Unicare Medical Products Inc., unreported, DD-90-005.*

Statute Cited: *Customs Act, R.S.C., 1970, c. C-40.*

Appeal Nos. 2437, 2438, 2485, 2591, 2592

UNICARE MEDICAL PRODUCTS INC.

Appellant

and

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

TRIBUNAL: ROBERT J. BERTRAND, Q.C., Presiding Member
SIDNEY A. FRALEIGH, Member
W. ROY HINES, Member

REASONS FOR DECISION

DECISION

These are appeals filed pursuant to section 47 of the *Customs Act*.¹ The appeals are from decisions of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) dated November 22, 1985, November 29, 1985, January 29, 1986, and May 20, 1986.

In appeal no. 2437, the Deputy Minister decided that a flotation bed pad should be classified under tariff item 93907-1 as an article of materials of the kinds described in headings 93901 to 93906 inclusive, n.o.p. The appellant claimed that the pad should be classified under tariff item 47835-1 as an accessory for alternating pressure mattresses. The pad was entered through the port of Lacolle, Quebec, under entry no. H120788.

In appeal no. 2438, the Deputy Minister decided that cervical neck pillows should be classified under tariff item 56300-1 as textile manufactures. The appellant contended that tariff item 47805-1, spinal and other orthopedic braces, was a more accurate description of the goods. These goods were entered through the port of Philipsburg, Quebec, under entry nos. A190879 and A191781.

In appeal no. 2485, the Deputy Minister declared that heel cushion insoles and full cushion insoles should be classified under tariff item 61105-1 as insoles of any material, n.o.p. The appellant claimed that the goods should fall under tariff item 47826-1 as all other aids to locomotion, specially designed for the disabled, of a class or kind not made in Canada. These goods were entered through the port of Lacolle, Quebec, under entry no. H100922.

1. *Customs Act*, R.S.C., 1970, c. C-40.

In appeal no. 2591, the Deputy Minister declared that goods under the trade name "Hygenique" should be classified under tariff item 71100-1 as goods not enumerated; that goods under the trade name "Spray Wand" should be classified under tariff item 93907-1 as articles of materials of the kinds described in headings 93901 to 93906 inclusive, n.o.p. and that cleansing cartridges should be classified under tariff item 23400-1 as toilet preparations, non-alcoholic, namely: washes, n.o.p, used for the skin. The appellant claimed that all the goods should be classified under tariff item 47826-1 as toilet, bath and shower seats; accessories for the foregoing. These goods were entered through the port of Philipsburg, Quebec, under entry no. A200274.

Finally, in appeal no. 2592, the Deputy Minister declared that Convaid Compax 17C Folding Wheelchairs should be classified under tariff item 47825-1 as invalid chairs with wheels, all specially designed for the disabled, of a class or kind made in Canada. The appellant contended that the chair was more accurately classified under tariff item 47826-1 as an invalid chair with wheels, specially designed for the disabled, of a class or kind not made in Canada. The wheelchairs were imported through the port of Philipsburg, Quebec, under entry nos. A197099 and A220687.

Unicare Medical Products Inc. (Unicare) filed the five appeals with the Tariff Board between December 26, 1985, and June 13, 1986. Not having received the appellant's briefs or other documents in support of its appeals, the Deputy Minister, on September 14, 1989, moved for dismissal of the five appeals for want of prosecution. The motions were based on the grounds that the appellant had neglected and/or refused, without cause, to take the necessary steps to proceed with its appeals because it had not submitted briefs in support of its appeals. At the time the motions were made, a hearing date had not been scheduled for the appeals.

The Tribunal denied the motions² on the basis that it was not empowered to grant the Deputy Minister's request. It declared that the appellant had a right, statutorily grounded in the *Customs Act*, to an opportunity to be heard at an oral hearing. However, the Tribunal noted that it was empowered to schedule the appeals for an oral hearing and that it was empowered to proceed *ex parte* and dispose of the appeals on the basis of the record if the appellant failed to appear at the scheduled hearing.

Consequently, the Tribunal ordered the appeals to be heard at Ottawa, Ontario, on May 9, 1990, at 10:00 a.m.

On April 9, 1990, the appellant was notified by registered mail that the appeals would be heard in accordance with the Tribunal order. The appellant was also instructed to file its briefs by April 25, 1990. Notice of the appeal hearings was published in the April 21, 1990, edition of the *Canada Gazette*. On May 3, 1990, the appellant was again informed of the May 9, 1990, hearing. This notification was made by hand.

The appellant never did file briefs or other supporting documents, nor, for that matter, did the respondent. As well, the appellant did not appear at the hearing.

2. *The Deputy Minister of National Revenue for Customs and Excise v. Unicare Medical Products Inc.*, unreported, DD-90-005.

The Tribunal finds that there is no *prima facie* reason to grant the appeal on the basis of the record. Accordingly, as the appellant failed to discharge the onus of showing that the goods in issue were not properly classified by the respondent, the appeal is not allowed.

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

W. Roy Hines
W. Roy Hines
Member