



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2003-010R

Agri-Pack

v.

Commissioner of the Canada
Customs and Revenue Agency

*Decision and reasons issued
Monday, May 15, 2006*

TABLE OF CONTENTS

DECISION.....i
STATEMENT OF REASONS1
 BACKGROUND.....1
 EXPLANATION.....2

IN THE MATTER OF an appeal heard on June 15, 2004, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a judgment of the Federal Court of Appeal, dated December 12, 2005, which set aside, in part, the judgment of the Canadian International Trade Tribunal in File No. PR-2003-010 made on November 2, 2004, and remitted the matter to the Canadian International Trade Tribunal.

BETWEEN

AGRI-PACK

Appellant

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY**

Respondent

DECISION

The appeal is allowed in part.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Hélène Nadeau
Hélène Nadeau
Secretary

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STATEMENT OF REASONS

BACKGROUND

1. This case deals with the remand of the decision of the Canadian International Trade Tribunal (the Tribunal) in *Agri-Pack v. Commissioner of the Canada Customs and Revenue Agency*.¹

2. There were two issues in the appeal. The first issue was whether the goods in issue were properly classified under tariff item No. 6305.33.00 of the schedule to the *Customs Tariff*² as other sacks and bags, of a kind used for the packing of goods of polyethylene strip or the like, as determined by the Commissioner of the Canada Customs and Revenue Agency (now the President of the Canada Border Services Agency [CBSA]), or whether they should have been classified under tariff item No. 5608.19.90 as other made up nets of man-made textile materials, as claimed by Agri-Pack.

3. On November 2, 2004, the Tribunal allowed the appeal with regard to the second issue, but not with regard to the first.

4. On January 28, 2005, the CBSA appealed the Tribunal's decision to the Federal Court of Appeal (the Court). Agri-Pack cross-appealed on the first issue.

5. On December 12, 2005, the Court ordered the following:

... [T]he Judgment of the Canadian International Trade Tribunal which holds that the seven bags in issue are properly classified under tariff item No. 6305.33.00 of the Schedule to the *Customs Tariff* rather than under tariff item No. 5608.19.90 of the same Schedule is set aside, and the matter is referred back to the Tribunal so that it may determine whether Note 2(a) to Chapter 63 to the Schedule ("Chapter Note 2(a)") has the effect of excluding the application of tariff item No. 6305.33.00 or explain why Chapter Note 2[a] has no application.³

6. Note 2(a) to Chapter 63 reads as follows: "Sub-Chapter I does not cover: (a) Goods of Chapters 56 to 62". Sub-Chapter I includes heading No. 63.05. Agri-Pack argued before the Court that the Tribunal erred and that the goods in issue could *not* be classified under tariff item No. 5608.19.90 since, under Rule 1 of the *General Rules for the Interpretation of the Harmonized System*,⁴ the goods were excluded from that tariff item by virtue of the above chapter note.

7. In its reasons, the Tribunal did not address Agri-Pack's argument on Note 2(a) to Chapter 63. On judicial review, the Court stated that it did "... not have the benefit of the reasons of the CITT on this issue ... " and that, therefore, "... it would be imprudent for [the] Court to dispose of this issue without the CITT reviewing it and disposing of it in the first instance ... " ⁵

8. The purpose of this decision, in accordance with the Court's remand, is to explain the Tribunal's reason for rejecting Agri-Pack's argument on Chapter Note 2(a) to Chapter 63.

1. (2 November 2004), AP-2003-010 (CITT).

2. S.C. 1997, c. 36.

3. A—34—05 (FCA).

4. *Supra* note 2, schedule [*General Rules*].

5. *Supra* note 3, para. 50.

EXPLANATION

9. The various tariff classifications are set out in considerable detail in the schedule, enacted as part of the *Customs Tariff*. Each section and chapter of the *Customs Tariff* has its own notes, and sometimes supplementary notes, followed by a list of goods categorized under a number of headings, subheadings and individual tariff items. The *Customs Tariff* contains its own rules for interpreting the schedule, which are found in sections 10 and 11 and read as follows:

10. (1) Subject to subsection (2), the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System and the Canadian Rules set out in the schedule.

...

11. In interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System and the Explanatory Notes to the Harmonized Commodity Description and Coding System, published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time.

10. If the process leads to the classification of the goods in one, and only one, heading, the next step is to find the appropriate subheading and tariff item. If the process leads to the classification in more than one heading, the remaining general rules must be applied in sequence, until the most appropriate heading is found.⁶

11. As directed to do so by the above-quoted legislation, in interpreting and applying heading No. 56.08 to the instant case, the Tribunal had regard to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁷ with regard to the heading. They read as follows: “. . . Made up nets of this heading are **restricted** to those nets not covered *more specifically* by other headings of the Nomenclature . . .” [Italics added for emphasis]

12. The Tribunal also had regard to the *Explanatory Notes* to heading No. 63.05, which state the following: “. . . This heading covers textile sacks and bags of a kind normally used for the packing of goods for transport, storage or sale. These articles . . . include in particular . . . *potato . . . or similar sacks . . .*” [Emphasis added]

13. In its argument before the Court, Agri-Pack stated that the Tribunal must invoke Note 2(a) to Chapter 63 so as to exclude recourse to the “more-specific-description” test found in Rule 3 (a) of the *General Rules*.⁸ But this argument misconstrues the Tribunal’s decision, which did *not* rely on Rule 3 (a). Rather, the “more-specific-description” test upon which the Tribunal relied was contained in the *Explanatory Notes* to heading No. 56.08, quoted above. Nothing in the above-quoted legislation says that the Tribunal must slavishly apply all the *General Rules* before resorting to the *Explanatory Notes*.

14. Indeed, the Tribunal may have regard to the *Explanatory Notes* whenever it makes sense to do so, which ordinarily will be when interpreting each heading and subheading. They represent a consensus of the Member States of the World Customs Organization as to the meaning of the headings and subheadings in the international nomenclature. Parliament mandated the Tribunal to take account of them, so as to ensure

6. *Puratos Canada Inc. v. Commissioner of the Canada Customs and Revenue Agency* (13 February 2004), AP-2002-117 at 6.

7. Customs Co-operation Council, 2d ed., Brussels, 1996 [*Explanatory Notes*].

8. *Supra* note 3, para. 44.

consistency with the international trading community, wherever possible. Therefore, in the Tribunal's view, applying the more-specific-description test in the *Explanatory Notes* at this point meant that the Tribunal was relying upon Rule 1 of the *General Rules* and not Rule 3 (a).

15. Agri-Pack argued that its goods cannot be classified in heading No. 63.05 because of Note 2(a) to Chapter 63, which reads as follows: "Sub-Chapter 1 [which includes heading No. 63.05] does not cover: (a) Goods of Chapters 56 to 62". The *Explanatory Notes* to Chapter 63 state that the Sub-Chapter "**does not include: . . . (c) Made up nets of heading 56.08.**" Agri-Pack contended before the Court that "Note 2(a) to Chapter 63 is clear in stating that heading 63.05 can have no application and that, accordingly, the CITT was bound to classify the goods under heading 56.08."⁹

16. The Tribunal disagrees with this argument. Note 2(a) to Chapter 63 only applies if goods fall in heading No. 56.08, the very issue that was before the Tribunal. Having found, under Rule 1 of the *General Rules*, that the imported goods did not fall in heading No. 56.08, it was the Tribunal's view that Note 2(a) had no application to the instant case and, for that reason, the Tribunal did not deem it necessary to refer to it in its reasons.

Pierre Gosselin
Pierre Gosselin
Presiding Member

9. *Supra* note 3, para. 49.