



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

Ottawa, Friday, July 18, 2003

Appeal No. AP-2002-099

IN THE MATTER OF an appeal heard on May 1, 2003, under section 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Commissioner of the Customs and Revenue Agency dated August 5, 2002, with respect to requests for a redetermination under section 60(4) of the *Customs Act*.

BETWEEN

FHP/ATLANTIC INC.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Patricia M. Close
Patricia M. Close
Presiding Member

Michel P. Granger
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Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-2002-099

FHP/ATLANTIC INC.

Appellant

AND

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

Respondent

This is an appeal under subsection 67(1) of the *Customs Act* from decisions of the Commissioner of Canada Customs and Revenue Agency (the Commissioner) made under subsection 60(4) of the *Customs Act* on August 5, 2002, regarding the classification of goods sold as Vileda® “Fibro-Contact” and “Fibro-Contact MicroActive” imported into Canada during the period from May 19, 1999, through July 25, 2001. The Commissioner classified the goods in issue under tariff item No. 9603.90.30 as “[m]ops of textile materials”.

In this appeal, FHP/Atlantic Inc. argued that the goods in issue should be classified under tariff item No. 9603.90.90 as “[o]ther”. Since the goods in issue are not consistent with the meaning attributed to the word “mop”, as found in the *Explanatory Notes to the Harmonized Commodity Description and Coding System (Explanatory Notes)* to heading No. 96.03, they cannot be classified in heading No. 96.03 according to Rule 1 of the *Canadian Rules*, as was determined by the Commissioner.

HELD: The appeal is dismissed.

It is the view of the Tribunal that the goods in issue may be classified either under tariff item No. 9603.90.30 as “[m]ops of textile materials” or under tariff item No. 9603.90.90 as an “[o]ther” type of cleaning tool that is neither a mop, a broom or a duster, but a combination of all three. While, according to section 11 of the *Customs Tariff*, regard shall be had to the *Explanatory Notes* in interpreting headings and subheadings, it is inappropriate to treat them as binding legislative enactments as suggested by FHP/Atlantic Inc.

Given that FHP/Atlantic Inc. describes the product as a mop to its clients, “[m]ops of textile materials” more specifically describes the goods in issue than does the residual category “[o]ther”. Therefore, the goods in issue are properly classified under tariff item No. 9603.90.30, in accordance with Rule 1 of the *Canadian Rules* and Rule 3 (a) of the *General Rules for the Interpretation of the Harmonized System (General Rules)*.

Place of Hearing: Ottawa, Ontario

Date of Hearing: May 1, 2003

Date of Decision: July 18, 2003

Tribunal Member: Patricia M. Close, Presiding Member

Counsel for the Tribunal: John Dodsworth

Clerk of the Tribunal: Margaret Fisher

Appearances: Jeffrey Goernert, for the appellant
Elizabeth Richards, for the respondent



Appeal No. AP-2002-099

FHP/ATLANTIC INC.

Appellant

AND

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

Respondent

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member

REASONS FOR DECISION

INTRODUCTION

This is an appeal under subsection 67(1) of the *Customs Act*¹ from decisions of the Commissioner of Canada Customs and Revenue Agency (the Commissioner) made under subsection 60(4) of the *Act* on August 5, 2002. The goods in issue, marketed under the name Vileda® “Fibro-Contact” and “Fibro-Contact MicroActive” and used in domestic and industrial cleaning, were imported into Canada during the period from May 19, 1999, through July 25, 2001. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9603.90.30 as “[m]ops of textile materials”, as determined by the Commissioner, or under tariff item No. 9603.90.90 as “[o]ther”, as contended by FHP/Atlantic Inc. (FHP).²

The relevant sections of the *Customs Tariff*³ are as follows:

- 96.03 Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees).
- 9603.90 -Other
- 9603.90.10 ---Brooms
- 9603.90.30 ---Mops of textile materials
- 9603.90.90 ---Other

The *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁴ to heading No. 96.03 state:

Mops consist of a bundle of textile cords or vegetable fibres mounted on a handle. They are used for floor cleaning, dish-washing, etc.

1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].
2. Although the goods in issue consist of two different products, the Vileda® “Fibro-Contact” and “Fibro-Contact MicroActive”, they will be treated as one product for the purposes of this decision, given that they have no differences that would affect their classification.
3. S.C. 1997, c. 36.
4. Customs Co-operation Council, 2d ed., Brussels, 1996 [*Explanatory Notes*].

EVIDENCE

FHP's witness was Mr. Martin Croteau, who is employed as Brand Manager for FPH/Atlantic Inc. Mr. Croteau testified that the goods in issue are not mops. The head of a mop is made of a bundle of textile cords that is used for the sole purpose of cleaning floors. The goods in issue consist of a micro-fibre pad that is machine washable. Further, they are multi-purpose, in that they may be used wet or dry, and are designed to clean walls, floors and ceilings by either sweeping or dusting. In contrast, a mop is not effective in cleaning ceilings and is not machine washable.

Mr. Croteau agreed that the industry refers to the goods in issue as mops and that FHP refers to them as mops in its marketing material and packaging. However, he stated that mopping is only one of the functions that the goods in issue can perform.

The Commissioner's witness was Mr. Richard Erdeg, Senior Chemist at the Canada Customs and Revenue Agency. Mr. Erdeg was qualified as an expert in the analysis of the composition of textile goods. He testified that his laboratory report indicates that the goods in issue are made of a textile consisting of a pile fabric solely of cotton fibre or mixed with man-made polyester pile. He further testified that the goods in issue contain vegetable fibre since they are made of cotton, and are not man-made.

ARGUMENT

FHP stated that it agrees that the goods in issue are classified in heading No. 96.03, but according to a different rule and for reasons that are different from the Commissioner's. It referred to the *Explanatory Notes* to heading No. 96.03, which state: "**Mops** consist of a bundle of textile cords or vegetable fibres mounted on a handle." FHP argued that the goods in issue cannot be described as "a bundle of textile cords", since they consist of a pad.

Noting that the goods in issue are not mops, but perform functions that are consistent with the functions of mops, brooms and dusters and, therefore, are akin to mops, brooms and dusters, FHP argued that the rule that governs their classification in heading No. 96.03 is Rule 4 of the *General Rules for the Interpretation of the Harmonized System*,⁵ the rule used to classify goods according to the goods to which they are most akin. FHP pointed to the fact that the French version of the report prepared by FHP's own expert witness describes the goods in issue as "*balai*", which can be translated into English as "broom or brush".

FHP further argued that the goods in issue are not classified under tariff item No. 9603.90.30, as determined by the Commissioner. It argued that, since the goods in issue are akin to mops, brooms and dusters, and since each of those items has its own tariff item, they cannot be classified under any one of them. FHP argued that the goods in issue are, in fact, cleaning dusters or appliances and, as such, should be classified under tariff item No. 9603.90.90 as "[o]ther", in accordance with Rule 1 of the *Canadian Rules*⁶ and Rule 3 (b) of the *General Rules*, the rule that classifies goods according to their essential character. Alternatively, FHP argued that the goods in issue should be classified under tariff item No. 9603.90.90 in accordance with Rule 1 of the *Canadian Rules* and Rule 3 (c) of the *General Rules*, the rule that states that the last in numerical order is the correct classification when goods that can be classified in two or more places cannot be classified according to Rule 3 (a) or (b) of the *General Rules*.

5. R.S.C. 1985 (3d Supp.), c. 41, Schedule (*General Rules*).

6. R.S.C. 1985 (3d Supp.), c. 41, Schedule.

The Commissioner argued that the goods in issue are properly classified under tariff item No. 9603.90.30. He acknowledged that the goods in issue are not bundles of textile fibres. However, while, according to section 11 of the *Customs Tariff*, the Tribunal must have regard to the *Explanatory Notes*, the Tribunal is not bound by the narrow definition of “mop” contained therein. Instead, in determining the meaning of “mop” as used in the *Customs Tariff*, the Tribunal should also have regard to industry usage, dictionary definitions, the ordinary accepted meaning of “mop”, changes in the industry, and the marketing and literature regarding the goods in issue.

In this context, the Commissioner argued that the goods in issue are mops for the purposes of classification, given that they are described by FHP as mops and perform the same function as mops. He argued that the common meaning of “mop”, as illustrated in dictionary definitions, is much broader than that found in the *Explanatory Notes* and that the goods in issue clearly fall within these definitions. The Commissioner argued that the goods in issue are clearly used to clean floors. The fact that they are also used to clean walls and ceilings does not exclude them from being described as mops. The Commissioner also argued that the fact that this is a new product illustrates that it is incumbent on the Tribunal to interpret the *Customs Tariff* in such a way as to take into account new products and the developments and technology in the industry. Accordingly, he argued that the goods in issue are properly classified as “[m]ops of textile materials”, according to Rules 1 and 2 (a) of the *General Rules*.

DECISION

The Tribunal is of the view that the goods in issue are classified under tariff item No. 9603.90.30 as “[m]ops of textile materials”, in accordance with Rule 3 (a) of the *General Rules*.

Rule 1 of the *Canadian Rules*, which is part of the *Customs Tariff*, instructs the Tribunal to use the same *General Rules* as are used at the heading level, in classifying goods at the eight-digit tariff item level. Accordingly, given that the disagreement between the parties was at the tariff item level, the Tribunal examined the tariff items in dispute, starting with Rule 1, as the rules need to be assessed in cascading order.

In the Tribunal’s view, the goods in issue may be classified either under tariff item No. 9603.90.30 as “[m]ops of textile materials” or under tariff item No. 9603.90.90 as an “[o]ther” type of cleaning tool that is neither a mop, a broom or a duster, but a combination of all three. The parties agreed that the goods in issue were made of a textile material. The evidence before the Tribunal was that the goods in issue could be used as a broom, especially the newer “Fibro-Contact MicroActive”, and as a duster.

The Tribunal does not view Rule 2 (a) of the *General Rules*, the rule chosen by the Commissioner, as appropriate. Both the Commissioner and FHP agree that the goods in issue, although imported in an incomplete state, that is, without the handle, can be classified as if they were completely assembled. To this extent, Rule 2 (a) applies. However, the Tribunal is not convinced that Rule 2 (a), which classifies incomplete goods as if they were complete and according to their essential character, is the correct rule in this case. In the Tribunal’s view, the essential character of the goods in issue is not that of a mop, but rather a new versatile cleaning tool, a mop plus. As such, the Tribunal does not classify the goods in issue according to their essential character under Rule 2 (a), as did the Commissioner. Nor does the term “[o]ther” in tariff item No. 9603.90.90 describe the essential character of the goods in issue. Rather, this “[o]ther” is a residual tariff item. Such items are included in the *Customs Tariff* for goods that cannot be classified according to any of the more specific descriptions found therein and therefore the tariff term is not appropriate in this case as a description of the goods’ essential character.

The Tribunal then moves to Rule 3 (a) of the *General Rules*, which applies to goods that can be classified in two or more headings. Rule 3 (a) states in part:

The heading which provides the most specific description shall be preferred to headings providing a more general description.

In the Tribunal's view, the goods in issue are more specifically described as "[m]ops of textile materials" than as "[o]ther".

The goods in issue are made of a textile material. In the Tribunal's view, the goods in issue are mops in that they are marketed as mops to both retail customers and end-users. The evidence indicates that FHP's marketing information refers to the goods in issue as mops and that FHP considers its clients to be mop users. Further, the retail packaging of the goods in issue features them as cleaning floors in a mop-like fashion, while the back of the packaging indicates how to "remove the mop head", "wring the mop head", "[i]nsert the mop plastic sides" and "[a]djust the mop handle". Also, Mr. Croteau testified that the term "mop" is used by the industry to describe many products, for example dust mops, spray mops, roller mops and sponge mops.

In the Tribunal's view, the wording "[m]ops of textile materials" provides a more specific description of the goods in issue than do any of the other alternatives. Given that FHP describes the product as a mop to its clients, both retail customers and end-users, it would appear that the more specific tariff item No. 9603.90.30, "[m]ops of textile materials", is preferable. The fact that the goods in issue are also used to dust and act as a broom merely indicates that they, like many of the cleaning tools referred to by the industry as mops, have different functions. For example, the dust mop is meant to be used dry to remove dust. The fact that the goods in issue have different functions does not mean that they cannot be classified as mops.

With respect to the *Explanatory Notes* to heading No. 96.03, the goods in issue clearly do not consist of a "bundle of textile cords". However, the Tribunal is of the view that the goods in issue are nonetheless mops of textile materials and are classified under tariff item No. 9603.90.30. While, according to section 11 of the *Customs Tariff*, regard shall be had to the *Explanatory Notes* in interpreting headings and subheadings, it is inappropriate to treat them as binding legislative enactments as suggested by FHP. In *Reha Enterprises Ltd. and Cosmetic Import Co. Limited v. Deputy M.N.R.*,⁷ the Tribunal stated:

The Tribunal has interpreted the requirement to have "regard" to the *Explanatory Notes* to mean that it must take them into account when coming to a view as to the tariff classification of goods, but that it is not bound to follow them when classifying goods in specific headings. In *Fastco Canada v. D.M.N.R.*, the Tribunal held that it should not consider itself bound by the *Explanatory Notes* and that, after taking them into account in its deliberations, it will give them whatever weight it considers appropriate.⁸

Therefore, the Tribunal rejects FHP's argument that the *Explanatory Notes* to heading No. 96.03 constitute a definitive interpretation of "mop" for the purposes of classification in that heading.

7. (28 October 1999), AP-98-053 and AP-98-054 (CITT).

8. *Ibid.* at 10.

For the above reasons, the Tribunal concludes, under Rule 1 of the *Canadian Rules* and Rule 3 (a) of the *General Rules*, that the goods in issue are properly classified under tariff item No. 9603.90.30 as “[m]ops of textile materials”.

Patricia M. Close

Patricia M. Close
Presiding Member