



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2004-016

Innovak DIY Products Inc.

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Tuesday, December 20, 2005*

**TABLE OF CONTENTS**

DECISION OF THE TRIBUNAL .....i  
STATEMENT OF REASONS ..... 1  
    EVIDENCE..... 1  
    ARGUMENT ..... 2  
    DECISION ..... 4

IN THE MATTER OF an appeal heard on February 2, 2005, under subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

**BETWEEN**

**INNOVAK DIY PRODUCTS INC.**

**Appellant**

**AND**

**THE PRESIDENT OF THE CANADA BORDER SERVICES  
AGENCY**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Patricia M. Close  
Patricia M. Close  
Presiding Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

Place of Hearing: Ottawa, Ontario  
Date of Hearing: February 2, 2005

Tribunal Member: Patricia M. Close, Presiding Member

Counsel for the Tribunal: Roger Nassrallah  
Eric Wildhaber

Clerk of the Tribunal: Margaret Fisher

Appearances: Michael Kaylor, for the appellant  
Sonia Barrette, for the respondent

Please address all communications to:

The Secretary  
Canadian International Trade Tribunal  
Standard Life Centre  
333 Laurier Avenue West  
15th Floor  
Ottawa, Ontario  
K1A 0G7

Telephone: (613) 993-3595  
Fax: (613) 990-2439  
E-mail: [secretary@citt-tcce.gc.ca](mailto:secretary@citt-tcce.gc.ca)

## STATEMENT OF REASONS

1. This is an appeal filed by Innovak DIY Products Inc. (Innovak) under subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision made on June 15, 2004, by the President of the Canada Border Services Agency (CBSA) under subsection 60(4) of the *Act*. That decision was in review of an advanced ruling for tariff classification made under paragraph 43.1(1)(c) of the *Act*.

2. The issue in this appeal is whether packs of bungee cords of various lengths with hooks at each end (the goods in issue), should be classified in heading No. 40.16 of the schedule to the *Customs Tariff*,<sup>2</sup> as claimed by Innovak, or whether they are properly classified under tariff item No. 5609.00.00 or, in the alternative, under tariff item No. 6307.90.99, as determined by the CBSA.

3. Physical exhibits representative of the goods in issue were filed with the Tribunal.

4. The relevant nomenclature from the *Customs Tariff* reads as follows:

40.16 Other articles of vulcanized rubber other than hard rubber.

4016.10.00 -Of cellular rubber

...

56.04 Rubber thread and cord, textile covered; textile yarn, and strip and the like of heading 54.04 or 54.05, impregnated, coated, covered or sheathed with rubber or plastics.

...

56.07 Twine, cordage, ropes and cables, whether or not plaited or braided and whether or not impregnated, coated, covered or sheathed with rubber or plastics.

...

5609.00.00 Articles of yarn, strip or the like of heading 54.04 or 54.05, twine, cordage, rope or cables, not elsewhere specified or included.

## EVIDENCE

5. Mr. John Bazar testified on behalf of Innovak. He is Director of Product Development and Global Procurement at Innovak.

6. Referring to the physical exhibits on file, Mr. Bazar described the goods in issue as cords made of vulcanized rubber that are covered with plaited polypropylene that have hooks at each end. He added that the vulcanized rubber interior is made of smaller individual rubber strands that are neither twisted nor braided. In his view, the essential component of this product is its rubber interior because it is that which provides the elasticity and stretch that are used to hook and hold the bungee cord down over whatever one wants to hold in place. He stated that the outside plaited polypropylene component of these cords is simply a protective cover that prevents the interior rubber cords from premature wear and tear.

7. The CBSA did not call any witnesses.

8. In addition to the testimony, the evidence filed by the parties consists of all exhibits, documents, expert reports and other items on the Tribunal's record.

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1. R.S.C. 1985 (2nd Supp.), c. 1 [*Act*].

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

## ARGUMENT

9. This section is an overview of the parties' arguments. It is not a comprehensive statement of the arguments submitted by the parties in their briefs or at the hearing.

10. In its written submissions, Innovak agreed with the CBSA that the goods in issue in semi-manufactured form (i.e. without the hooks) were properly classified in heading No. 56.04.<sup>3</sup> In its oral argument, Innovak submitted that the goods in issue are not textile products and, therefore, are not properly classified in heading No. 56.09, but that, rather, because they are rubber products, they should be classified in heading No. 40.16.

11. In support of its position, Innovak pointed to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>4</sup> to heading No. 40.16, which read as follows:

...

The following are also **excluded** from this heading:

- (a) Articles of woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with rubber, falling in **Section XI** (see Note 3 to Chapter 56 and Note 4 to Chapter 59) and articles made from textile materials with rubber threads (**Section XI**).

12. Indeed, Innovak submitted that the goods in issue are not articles made from textile materials with rubber threads and that this position is reinforced by Note 10 of the *Explanatory Notes* to Section XI (Textiles and Textile Articles), which reads as follows:

10.- Elastic products consisting of textile materials combined with rubber threads are classified in this section [i.e. in Chapters 50 to 63].

13. In this regard, Innovak also asked the Tribunal to consider Part (III) of the *Explanatory Notes* to Section XI, which reads as follows:

### (III) TEXTILE PRODUCTS COMBINED WITH RUBBER THREADS

Under Note 10 to this Section, elastic products consisting of textile materials combined with rubber threads are classified in Section XI.

Rubber thread and cord, textile covered, are included in heading 56.04.

Other textile products combined with threads are classified, in particular, in Chapters 50 to 55, 58 or 60 to 63, as the case may be.

14. Innovak submitted that the goods that are described in Chapters 50 to 63 of Section XI are textile goods. Various textile goods may contain some rubber, as does the elastic of socks or briefs, but this rubber plays a minor role, and such goods still remain identifiable as textile goods. Innovak submitted that Part (III) of the *Explanatory Notes* to Section XI states that textile products combined with rubber threads fall either in heading No. 56.04, which is very specific and not applicable to the goods in issue, or in the chapters that are listed in the third paragraph of that note. However, because the third paragraph makes no reference to Chapter 56 and no reference to heading Nos. 56.07 and 56.09, which are advanced by the CBSA, classification of the goods in issue cannot be directed in those headings.

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3. Appellant's brief, para. 4; respondent's brief, paras. 6, 19.

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

15. Innovak addressed the issue of whether heading No. 56.09 could comprise articles of heading No. 56.04. In this regard, it cited the *Explanatory Notes* to heading No. 56.09, which read as follows:

...

This heading covers articles of the yarns of Chapters 50 to 55, articles of strip or the like of heading 54.04 or 54.05, and also articles of twine, cordage, rope or cables of heading 56.07, **other than** those covered by a more specific heading in the Nomenclature.

It includes yarns, cordage, rope, etc., cut to length and looped at one or both ends, or fitted with tags, rings, hooks, etc., (e.g., shoe laces, clothes lines, towing ropes), ships' fenders, unloading cushions, rope ladders, loading slings, dish "cloths" made of a bundle of yarns folded in two and bound together at the folded end, etc.

The heading **does not cover**:

- (a) Bridles, reins, halters, harness, etc. (**heading 42.01**).
- (b) Cords cut to length, with knots, loops, or metal or glass eyelets, of a kind used on Jacquard or other machines (**heading 59.11**).
- (c) Textile fabrics and articles made from such fabrics, which are classified in their appropriate headings (e.g., shoe laces made from braids are classified in **heading 63.07**).
- (d) Rope soles for sandals (**heading 64.06**).
- (e) Articles for gymnastics and other articles of **Chapter 95**.

16. Innovak submitted that the preceding *Explanatory Notes* limit the articles to which heading No. 56.09 applies and, because they make no mention of heading No. 56.04, Innovak argued that articles of heading No. 56.04 are not covered by heading No. 56.09. Innovak was also of the view that neither heading No. 56.04 nor heading No. 56.07 pertains to articles.

17. The CBSA submitted that the goods in issue are cords of man-made fibres and rubber, cut to length and fitted with hooks, which are properly classified under tariff item No. 5609.00.00.

18. The CBSA argued that the goods in issue are not classifiable in heading No. 40.16 because the *Explanatory Notes* to Section XI specifically exclude "articles made from textile materials combined with rubber thread (**Section XI**)." In this connection, it also relied on Note 2(a) of the *Explanatory Notes* to Chapter 40, which reads as follows:

2. - This Chapter does not cover:

- (a) Goods of Section XI (textiles and textile articles);

...

19. The CBSA argued that the Tribunal should reject Innovak's argument that the goods in issue do not fall in heading No. 56.09 because that heading applies only to articles of, *inter alia*, heading No. 56.07 and not heading No. 56.04. In this regard, it submitted that the *Explanatory Notes* to heading No. 56.09 state as follows: "... This heading covers articles of the yarns . . . and *also* articles of twine, cordage, rope or cables of heading 56.07, **other than** those covered by a more specific heading in the Nomenclature . . ." [italics added]. The CBSA submitted that the use of the word "also" clearly indicated that articles of cordage are not exclusive to heading No. 56.07. In addition, it submitted that the second paragraph of the *Explanatory Notes* to heading No. 56.09 reinforces this argument, by making that heading apply to all types of textile cordage and not only cordage of heading No. 56.07, as the CBSA argued that Innovak incorrectly claimed.

## DECISION

20. Section 10 of the *Customs Tariff* provides that the classification of imported goods under a tariff item shall be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*<sup>5</sup> and the *Canadian Rules*.<sup>6</sup> Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in the schedule, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*<sup>7</sup> and to the *Explanatory Notes*. In dealing with the *General Rules*, the Tribunal must seek to apply Rule 1 first, only moving on to the following rule, and so on, if the preceding rule does not enable the goods in issue to be classified. Rule 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes. Rule 1 reads as follows:

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.

21. The Tribunal notes that the goods in issue are packs of bungee cords that consist of strands of rubber covered with a protective exterior of textiles with hooks at each end.

22. The Tribunal notes that, in its written submissions, Innovak agreed with the CBSA that the semi-finished goods (i.e. without the hooks) are properly classified in heading No. 56.04 as “[r]ubber thread and cord, textile covered . . . .” Supporting this position is the first paragraph of Part (III) of the *Explanatory Notes* to Section XI, which states as follows: “Under Note 10 to this Section [Section XI], elastic products consisting of textile materials combined with rubber threads are classified in Section XI.” The second paragraph of Part (III) confirms the following: “Rubber thread and cord, textile covered, are included in heading 56.04.” In addition, Note (A) of the *Explanatory Notes* to heading No. 56.04 states as follows: “Provided they are covered with textiles (e.g., by gimping or plaiting), this group includes, thread (single strand) of rubber, of any cross-section, and cord (multiple strand) of rubber, made of these threads.”

23. The Tribunal notes that, although the goods in issue are referred to as bungee cords, dictionary definitions, such as the one found in *The Oxford English Dictionary*, appear to require that the strands of a cord be twisted or woven together in order to be a cord.<sup>8</sup> The witness for Innovak testified that the goods in issue were not twisted and, by implication, that the goods in issue are not cords. Nevertheless, in this case, it is a distinction that makes no difference, as heading No. 56.04 covers both thread and cord.

24. However, the goods in issue are not just textile covered rubber thread or cord, but are cut-to-length materials of heading No. 56.04 with hooks at each end. Accordingly, as properly advanced by both parties, once a material of heading No. 56.04 undergoes further manufacturing, it becomes an “article”, and the Tribunal must look to a heading that provides for the classification of “articles”. Two headings were suggested to the Tribunal: heading No. 56.09 by the CBSA, and heading No. 40.16 by Innovak.

25. Heading No. 56.09 covers “[a]rticles of yarn, strip or the like of heading 54.04 or 54.05, twine, cordage, rope or cables, not elsewhere specified or included.” As such, it does not appear, as argued by Innovak, that heading No. 56.09 covers articles of heading No. 56.04. Nevertheless, as directed by

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

6. *Supra* note 2, schedule.

7. Customs Co-operation Council, 1st ed., Brussels, 1987.

8. Second ed., s.v. “cord”.



section 11 of the *Customs' Tariff*, the Tribunal is to have regard to the *Explanatory Notes* and, in the Tribunal's view, the *Explanatory Notes* to heading No. 56.09 are inclusive in nature, in particular, the second paragraph, which states as follows: "[Heading No. 56.09] *includes* yarns, cordage, rope, *etc.*, cut to length and . . . fitted with . . . hooks . . ." [emphasis added]. In the Tribunal's view, the word "includes" and the first "etc." in those *Explanatory Notes* are meant to provide for the inclusion of goods such as those in issue.

26. Indeed, while technically not "cordage" or "rope", the goods in issue are akin to such products in look and in use; in other words, they naturally fall under "etc." in that list of similar products. Furthermore, the Tribunal notes that, unlike the position advanced by Innovak, it views the second paragraph of the *Explanatory Notes* to heading No. 56.09 as expanding on those products described in its first paragraph. Similarly, the third paragraph provides a list of goods that are explicitly excluded from heading No. 56.09; had the first paragraph been an exhaustive list of inclusions, the third paragraph would not have been necessary, and the Tribunal does not accept that such a redundancy exists in those *Explanatory Notes* or, generally, elsewhere in the nomenclature. Finally, paragraph (b) of the *Explanatory Notes* to heading No. 56.09 specifically excludes certain cut-to-length cords, namely, those "of a kind used on Jacquard or other machines (**heading 59.11**)", which buttresses the view that other "et cetera" type articles of cords or threads not similarly explicitly excluded are instead implicitly included in heading No. 56.09.

27. Innovak further argued that the goods in issue do not fall in heading No. 56.09, as they are "elsewhere specified or included" in heading No. 40.16, which covers "[o]ther articles of vulcanized rubber other than hard rubber." The Tribunal finds Innovak's argument problematic, given that it would imply that, by putting hooks onto a textile product, the product would become a rubber article! The Tribunal notes that the essential character of the bungee cords may well be their rubber interior, as testified by the witness for Innovak. The Tribunal recalls however that "essential character" is only relevant under Rule 3 (b) of the *General Rules* and should not be considered unless classification cannot be directed under Rule 1, 2 or 3 (a).

28. In the case at hand, given that the semi-finished goods (the cord without the hooks) would fall under heading No. 56.04 and, as a result, could not, in their finished form, fall in heading No. 40.16, the Tribunal concludes that, under the application of Rule 1 of the *General Rules* giving consideration to the *Explanatory Notes*, the goods in issue are properly classified in heading No. 56.09 and under tariff item No. 5609.00.00.

29. Given this finding, the Tribunal need not address the alternative classification advanced by the CBSA.

30. For the foregoing reasons, the appeal is dismissed.

Patricia M. Close  
Patricia M. Close  
Presiding Member