



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2006-009

Innovak DIY Products Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Thursday, November 16, 2006*

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IN THE MATTER OF an appeal heard on November 8, 2006, 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, dated April 20, 2006, with respect to a request for redetermination 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

The appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Elaine Feldman
Elaine Feldman
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 8, 2006

Tribunal Members: Pierre Gosselin, Presiding Member
James A. Ogilvy, Member
Elaine Feldman, Member

Counsel for the Tribunal: Eric Wildhaber

Registrar Officer: Valérie Cannavino

Parties: Michael Kaylor, for the appellant
Elizabeth Kikuchi, for the respondent

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STATEMENT OF REASONS

1. This is an appeal filed by Innovak DIY Products Inc. (Innovak) under subsection 67(1) of the *Customs Act*¹ from a decision made on April 20, 2006, by the President of the Canada Border Services Agency (CBSA) under subsection 60(4) of the *Act*. That decision dealt with an advance 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*,² 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.

5. At the request of the parties, this matter proceeded by way of written submissions pursuant to rules 25, 25.1 and 36.1 of the *Canadian International Trade Tribunal Rules*.³ A notice to this effect was published in the June 3, 2006, edition of the *Canada Gazette*.⁴

BACKGROUND

6. On December 20, 2005, the Tribunal issued a decision in *Innovak DIY Products Inc. v. President of the Canada Border Services Agency*.⁵ That case involved the same parties and dealt with the same goods as those in this proceeding. Indeed, that case also dealt with an advance ruling by the CBSA that was identical in substance to the one now before the Tribunal. However, on May 11, 2006, Innovak informed the Tribunal that the advance ruling that was the subject in the first appeal had been issued by a government official who had not received the requisite designation from the CBSA to issue such rulings. Innovak submitted that the Tribunal's decision in the first appeal was therefore without object. To remedy this defect, the parties made

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

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

3. S.O.R./91-499.

4. C. Gaz. 2006.I.1350.

5. AP-2004-016 (CITT) [the first appeal].

a joint submission requesting that the Tribunal issue a new decision identical to the one issued in the first appeal based on the evidence on the record of that appeal, but dealing with the advance ruling made by the CBSA on April 20, 2006.

7. In view of these circumstances, the Tribunal transferred the contents of the file in the first appeal to the record of the present proceeding.

ANALYSIS

8. The Tribunal agrees that it is in the interest of the proper administration of justice to proceed in the manner requested by the parties.

9. Having reviewed the documents and submissions made by the parties, the Tribunal has come to the same conclusion, and for the same reasons, as that expressed in its statement of reasons in the first appeal.

10. Consequently, the reasons given by the Tribunal at paragraphs 5 to 29 inclusive of its statement of reasons in the first appeal are hereby incorporated by reference into this statement of reasons.

DECISION

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

Pierre Gosselin
Pierre Gosselin
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Elaine Feldman
Elaine Feldman
Member