

Ottawa, Monday, June 1, 1992

**Appeal No. AP-90-138**

IN THE MATTER OF an appeal heard on January 29, 1992,  
under section 67 of the *Customs Act*, R.S.C., 1985, c. 1  
(2nd Supp.), as amended;

AND IN THE MATTER OF a decision of the Deputy  
Minister of National Revenue for Customs and Excise dated  
December 17, 1990, with respect to a request for a  
re-determination pursuant to section 63 of the *Customs Act*.

**BETWEEN**

**PIGMALION SERVICES**

**Appellant**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed. The Slikwik SOC is more properly classified under tariff item No. 2302.10.00 as "Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals ... of maize (corn)." The Hazwik SOC is more properly classified under tariff item No. 3901.20.00 as "Polyethylene having a specific gravity of 0.94 or more," being a polymer of ethylene, in primary form.

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Presiding Member

Michèle Blouin  
Michèle Blouin  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-90-138**

**PIGMALION SERVICES**

**Appellant**

**and**

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

**Respondent**

*The issue in this appeal is the tariff classification of two goods, namely, the "Slikwik SOC" and the "Hazwik SOC." The respondent has classified the goods under tariff item No. 6307.90.99 as "Other made up articles ... of ... textile material." The appellant claims that the Slikwik SOC is properly classified under tariff item No. 2302.10.00 as "Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals ... of maize (corn)." The appellant claims that the Hazwik SOC is properly classified under tariff item No. 3901.20.00 as "Polyethylene having a specific gravity of 0.94 or more," being a polymer of ethylene, in primary form.*

*The Slikwik SOC is a polyester tubular sleeve containing the powdered pith/chaff component of a corncob. It is imported in two sizes: 4 in. in diameter by 46 in. long, and 2 in. in diameter by 29 in. long. The average weight of each unit is 1.2 lbs. The goods are imported to absorb spilled liquids, both oil- and water-based. The Hazwik SOC is a polypropylene tubular sleeve containing fibrous polyethylene. It is imported in one size: 3 in. in diameter by 48 in. long. It weighs, on average, 1.1 lbs. The Hazwik SOC is imported to absorb spills of hazardous liquids.*

**Held:** *The appeal is allowed. The Slikwik SOC is more properly classified under tariff item No. 2302.10.00 as "Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals ... of maize (corn)." The Hazwik SOC is more properly classified under tariff item No. 3901.20.00 as "Polyethylene having a specific gravity of 0.94 or more," being a polymer of ethylene, in primary form.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: January 29, 1992  
Date of Decision: June 1, 1992*

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member  
Michèle Blouin, Member  
Desmond Hallissey, Member*

*Counsel for the Tribunal: David M. Attwater  
Clerk of the Tribunal: Dyna Côté  
Appearances: John D. Richard, Q.C., for the appellant  
John B. Edmond, for the respondent*

**Appeal No. AP-90-138**

**PIGMALION SERVICES**

**Appellant**

**and**

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

**Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
MICHÈLE BLOUIN, Member  
DESMOND HALLISSEY, Member

**REASONS FOR DECISION**

The issue in this appeal is the tariff classification of two goods, namely, the "Slikwik SOC" and the "Hazwik SOC." The respondent has classified the goods under tariff item No. 6307.90.99 of the *Customs Tariff*<sup>1</sup> as "Other made up articles ... of ... textile material." The appellant claims that the Slikwik SOC is properly classified under tariff item No. 2302.10.00 as "Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals ... of maize (corn)." The appellant claims that the Hazwik SOC is properly classified under tariff item No. 3901.20.00 as "Polyethylene having a specific gravity of 0.94 or more," being a polymer of ethylene, in primary form.

The Slikwik SOC is a polyester tubular sleeve containing the powdered pith/chaff component of a corncob. This component represents 40 percent, by weight, of a corncob. The Slikwik SOC is imported in two sizes: 4 in. in diameter by 46 in. long, which represents 99 percent of imports, and 2 in. in diameter by 29 in. long. The average weight of each unit is 1.2 lbs, the processed corncobs representing 99.58 percent of this weight. The goods are imported to absorb oil- or water-based liquids that have leaked or spilled. This product is good for absorbing liquids of pH between 2 and 11.

The Hazwik SOC is a polypropylene tubular sleeve containing fibrous polyethylene. It is imported in one size: 3 in. in diameter by 48 in. long. It weighs, on average, 1.1 lbs. The absorbent material represents 90.91 percent of this weight. The Hazwik SOC is imported to absorb spills of hazardous liquids and those of extreme pH that would react with the organic filler of the Slikwik SOC.

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1. R.S.C., 1985, c. 41 (3rd Supp.).

The relevant tariff items are:

23.02                    *Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants.*

2302.10.00            *-Of maize (corn)*

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39.01                    *Polymers of ethylene, in primary forms.*

3901.20.00            *-Polyethylene having a specific gravity of 0.94 or more*

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63.07                    *Other made up articles, including dress patterns.*

6307.90                *-Other*

---Other:

6307.90.99            *----Of other textile materials*

Counsel for the appellant argued that classification of the goods should be determined pursuant to Rule 3 (b) of the General Rules for the Interpretation of the Harmonized System<sup>2</sup> (the General Rules), which is used to determine the classification of mixtures or composite goods. By application of this rule, goods are classified as if they consist of the material or component that gives them their essential character. Counsel noted that the goods are formed from more than a single component. The absorption, retention and non-leaching properties of the goods are the essential characteristics of the goods. These characteristics are dependent on the bulk material and the product has these characteristics regardless of the sleeve. Accordingly, the goods should be classified on the basis of the content of the sleeve. Counsel noted that the Slikwik material, when imported in bulk, is classified under tariff item No. 2302.10.00.

Counsel for the respondent argued that Slikwik SOCs have no specific classification in the *Customs Tariff*. They are not provided for in the terms of heading No. 23.02 and are therefore excluded from classification under that heading by Rule 1 of the General Rules. Counsel submitted that for the SOCs to be classified under heading No. 23.02, they must be a residue derived from the working of maize (corn). The goods are manufactured articles used for a specific purpose and are not described or marketed as a residue of corn.

Counsel for the respondent argued that Hazwik SOCs also have no specific classification in the *Customs Tariff*. He submitted that for the SOCs to be classified under heading No. 39.01,

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2. *Id.* Schedule I.

they must be a polymer of ethylene in primary form. The goods were not imported in primary form but are manufactured articles used for a specific purpose and are not described or marketed as polymers of ethylene in primary form.

Counsel submitted that Rule 3 (b) is not applicable as the goods must be "*prima facie* classifiable under two or more headings." As argued, the goods are not classifiable as claimed by the appellant and, therefore, not classifiable under two different headings.

Heading No. 63.07 which includes "Other made up articles, including dress patterns" "covers made up articles of any textile material which are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature," according to the Explanatory Notes to the Harmonized Commodity Description and Coding System.<sup>3</sup> "Made up" is defined in Note 7 of the legal notes to Section XI of Schedule I to the *Customs Tariff* to mean, in part, "[p]roduced in the finished state, ready for use...." Also, heading No. 63.07 contemplates the inclusion of certain manufactured items with textile covers, such as life-jackets, shoe-polishing pads and pin cushions.

The goods are marketed and sold as manufactured articles used by industry to contain various liquid spills and leaks and therefore cannot be classified under a heading devoted to materials. The textile tube does not serve merely as packaging for its material contents, but is essential to give the product form, allowing it to be placed in a desired location. In light of the method of manufacturing, marketing and use, the absorbent SOC's in issue are "made up" goods that have been properly classified by the respondent.

After careful consideration of the evidence and arguments of the parties, the Tribunal concludes that the most appropriate tariff classification of the goods in issue are those advocated by the appellant. The Slikwik SOC is more properly classified under tariff item No. 2302.10.00 as "Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals ... of maize (corn)." The Hazwik SOC is more properly classified under tariff item No. 3901.20.00 as "Polyethylene having a specific gravity of 0.94 or more," being a polymer of ethylene, in primary form.

Slikwik, which is the trade name given to the corncob meal, can be purchased in bulk form, pellet form or contained in the Slikwik SOC. The bulk form is typically sold in heavy paper bags with a net loose volume of 1.7 cu. ft., weighing approximately 20 lbs. The Slikwik SOC is a polyester textile container weighing approximately 1.2 lbs. In both instances, it is the Slikwik material that the purchaser is intent on acquiring, whether packaged in the large or small container. Nothing is added to the properties of the Slikwik material by being packaged in a polyester textile tube except, possibly, convenience.

Both forms represent alternative means of packaging the material and should be classified similarly. Just as black tea contained in tea bags or packaged in bulk up to 3-kg is classified similarly, so too should the Slikwik material.

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3. Customs Co-operation Council, Brussels, First Edition (1986).

With regard to the Hazwik SOC, the evidence is clear that it is the fibrous polyethylene material that has the absorption capacity and that it is this quality that the consumer desires. The Tribunal believes that it is the fibrous polyethylene, packaged in a polypropylene textile sleeve, that is being imported.

With regard to the classification advocated by counsel for the respondent, the Tribunal did not believe that it properly characterized the goods. It has interpreted "Other made up articles ... of ... textile materials" to imply that the article must be composed entirely of textile materials. This does not characterize the imported goods.

Accordingly, the appeal is allowed.

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Presiding Member

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Member

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