



Ottawa, Friday, October 30, 1992

Appeal No. AP-90-209

IN THE MATTER OF an appeal heard on September 17, 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 February 12, 1991, with respect to a request for a re-determination pursuant to section 63 of the *Customs Act*.

BETWEEN

LACLEDE CHAIN MANUFACTURING CO.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal considers that the tire chains imported by the appellant were properly classified by the respondent under tariff item No. 7315.20.00 as skid chains.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Presiding Member

Kathleen E. Macmillan

Kathleen E. Macmillan
Member

W. Roy Hines

W. Roy Hines
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-209

LACLEDE CHAIN MANUFACTURING CO.

Appellant

and

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

Respondent

The issue in this appeal is whether tire chains for motor vehicles were properly classified by the respondent under tariff item No. 7315.20.00 as skid chains of iron or steel or whether they are more properly classified under tariff item No. 8708.29.99 as other parts and accessories of motor vehicles or, alternatively, under tariff item No. 7326.90.90 as other articles of iron or steel.

HELD: *The appeal is dismissed. The tire chains in issue were properly classified by the respondent.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: September 17, 1992
Date of Decision: October 30, 1992*

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member
Kathleen E. Macmillan, Member
W. Roy Hines, Member*

Counsel for the Tribunal: Clifford Sosnow

Clerk of the Tribunal: Dyna Côté

*Appearances: John D. Armstrong, for the appellant
Howard Baker, for the respondent*

Appeal No. AP-90-209

LACLEDE CHAIN MANUFACTURING CO.

Appellant

and

**THE DEPUTY MINISTER OF NATIONAL REVENUE
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Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
KATHLEEN E. MACMILLAN, Member
W. ROY HINES, Member

REASONS FOR DECISION

This appeal centres around the proper tariff classification of goods which, at the time of importation into Canada, were described by the appellant, Laclede Chain Manufacturing Co. (Laclede), as tire chains. Laclede is a division of the Canadian-owned corporation Laclede Steel Co. of St. Louis, Missouri.

Customs officials, and ultimately the respondent in this appeal, the Deputy Minister of National Revenue for Customs and Excise, classified the tire chains as skid chains of iron or steel under tariff item No. 7315.20.00. The appellant argued that the tire chains are more properly classified either under tariff item No. 8708.29.99 as other parts and accessories of motor vehicles or, alternatively, under tariff item No. 7326.90.99 as other articles of iron or steel.

Aside from documents submitted by both parties, testimony at the hearing was provided by Mr. Ford Rosborough, the sales manager of the appellant company. The chains in issue are made of steel and are put on the rubber tires of various kinds of motor vehicles such as trucks, cars, etc. Mr. Rosborough testified that the chains are devices used to improve vehicular traction in inclement weather and in various working conditions where such traction is important.

According to the witness, the tire chains are anti-skid chains, not skid chains. They are placed on tires to prevent skidding that would otherwise occur if there were no chains. Mr. Rosborough said that the term "skid chains" denotes tire chains with "lugs" welded to the chains and used exclusively in forestry operations to improve vehicular traction in "skidding" operations, i.e. the removal of logs from the forest.

The chains in issue, which are manufactured differently for each tire type and design, are shipped from Laclede's manufacturing operation in Maryville, Missouri, in plastic boxes or bags, one pair of chains per container, for immediate sale and mounting onto the tire. The tire chain may have, in some cases, a welded "V" bar reinforcement on the cross chain. In Mr. Rosborough's view, these chains are accessories in that they are not normally sold with a vehicle. The goods are an "aftermarket" product.

In argument, the appellant submitted that the respondent's classification, "skid chains," is incorrect because in common parlance, the goods in issue are called "tire chains" and not "skid chains." The appellant further argued that this tariff item is intended to cover goods used for operations such as log skidding. The appellant noted that tire chains are excluded under tariff item No. 7315.20.00 by virtue of the Explanatory Notes to the Harmonized Commodity Description and Coding System¹ (Explanatory Notes) to heading No. 73.15 which state that that heading does not include "articles in which chains play a subsidiary role." The appellant argued that the tire chains in issue perform a role subsidiary to that of a tire and, as such, are excluded under the respondent's chosen tariff item.

The appellant contended that the tire chains in issue are more properly classified as other parts and accessories of motor vehicles under tariff item No. 8708.29.99 because the chains have traditionally been considered as an accessory of a vehicle. They are akin to hub caps, running boards, mudguards, luggage racks, etc.

The respondent contended that the tire chains in issue are properly classified under tariff item No. 7315.20.00 because these tire chains are made of steel and are used as motor vehicle "skid chains," which mean, according to dictionary definitions, traction chains.

The respondent countered the appellant's contention that the Explanatory Notes exclude the chains in issue from the respondent's chosen tariff item by pointing out that these very same notes explicitly state that heading No. 73.15 includes "automobile skid chains."

The respondent also argued that the French version of tariff item No. 7315.20.00 uses the phrase "*chaînes antidérapantes*" which, according to the respondent, precisely describes the chains in issue.

The respondent further argued that the chains in issue are not other parts and accessories of motor vehicles under tariff item No. 8708.29.99 because, if the chains in issue can be described as accessories, they are nevertheless more accurately described as wheel accessories, not motor vehicle accessories. As well, the respondent argued, it is an established principle of law that goods must be classified according to their characteristics at the time of importation. At the time of importation, the goods in issue were described as tire chains, and thus, they have the essential characteristics of tire chains.

The respondent finally noted that the goods cannot be considered under tariff item No. 7326.90.99 as other articles of iron or steel because this tariff item is a "basket" provision which is intended to be used only if imported goods cannot be more specifically described elsewhere. The respondent contended that the goods in issue are more specifically described under tariff item No. 7315.20.00.

After having examined the evidence and the applicable law, the Tribunal considers that the chains in issue were properly classified under tariff item No. 7315.20.00. The Tribunal comes to this conclusion bearing in mind that it is the legislation and the principles applicable to the interpretation of the legislation, including those set out in the General Rules for the Interpretation

1. Customs Co-operation Council, First Edition, Brussels, 1986.

of the Harmonized System² (the General Rules) and the corresponding Canadian Rules, that must govern the interpretation of the tariff items in issue.

The English language version of tariff item No. 7315.20.00 uses the phrase "skid chain." The appellant argued that the chains in issue cannot be classified under tariff item No. 7315.20.00 because such a tariff item is intended to cover only skid chains used in skidding operations and not motor vehicle skid chains such as those which the appellant imported. In the Tribunal's view, such a position is indefensible.

The Gage Canadian Dictionary³ defines the verb "skid" to mean "slip or slide sideways out of control, while moving" and gives the example: "The car skidded on the slippery road." Similarly, The Oxford English Dictionary⁴ defines the verb "skid" to mean, amongst other things, "To slip obliquely or sideways, esp. owing to the muddy, wet, or dusty state of the road; to side-slip. Usually said of cycle or motor-car wheels, but also of horse-vehicles or persons." Thus, at a minimum, the phrase "skid chain" in tariff item No. 7315.20.00 refers to chains that are related in function to the slipping or sliding of vehicles due to conditions that would otherwise reduce vehicular traction.

The corresponding French language version of tariff item No. 7315.20.00 uses the words "*chaînes antidérapantes*." The Tribunal recognizes that it is settled law that the one construction of a statutory provision common to both official language versions is to prevail, both versions being equally authoritative.⁵

According to Le Grand Robert de la langue française,⁶ the word "*antidérapant*" is defined to mean "*Propre à empêcher le dérapage des véhicules*" ([Translation] apt to prevent the "*dérapage*" of vehicles). In turn, the word "*dérapage*" is derived from the verb "*déraper*"⁷ which, amongst other things, is defined to mean "*Glisser latéralement sur le sol, en parlant des roues (d'une automobile, d'une bicyclette...)*" ([Translation] in speaking of automobile or bicycle tires, sliding sideways on the ground). To a similar effect is the dictionary definition of "*antidérapant*" found in Harrap's Shorter French-English Dictionary⁸ which defines "*antidérapant*" in relation to a tire to mean "non-skid."

In view of these definitions, the common and ordinary meaning of the equally authoritative French language phrase "*chaînes antidérapantes*" set out in tariff item No. 7315.20.00 is chains that are apt to prevent the tires of vehicles from sliding or skidding sideways on the ground. In view of the foregoing, restricting the definition of "skid chains" to chains used in forestry skidding operations could only be accomplished by ignoring the French version of the tariff item.

2. R.S.C. 1985, c. 41 (3rd Supp.), Schedule I, as amended.

3. Toronto: Gage Educational Publishing Company, 1983, p. 1051.

4. Volume XV, Second Edition, Oxford: Clarendon Press, 1989, p. 600.

5. *Slaight Communications Inc. v. Davidson* [1989] 1 S.C.R. 1038; *Official Languages Act*, R.S.C. 1985 (4th Supp.), c. 31.

6. Paul Robert, Volume I, Second Edition, Paris, p. 414.

7. *Ibid.*, Volume II, p. 386.

8. Harrap Diffulivre-Gage, 1982, p. 32.

Thus, common to both the French and English versions of tariff item No. 7315.20.00 is the notion of chains used to improve vehicular traction by preventing the vehicle from sliding or skidding. By the appellant's own testimony, the chains in issue are anti-skid chains, i.e. they are used to improve traction and prevent skidding that would otherwise occur if there were no chains.

This conclusion is reinforced, in the Tribunal's mind, by the principle of greater specificity enunciated in the General Rules and the Canadian Rules, i.e. that between competing tariff items, the more specific shall prevail. Even if the Tribunal were to conclude that the chains in issue could be classified either under tariff item No. 8708.29.99 as other parts and accessories of motor vehicles or, alternatively, under tariff item No. 7326.90.99 as other articles of iron or steel, a decision which the Tribunal refrains from making, the Tribunal considers that the tariff item chosen by the respondent more precisely and specifically describes the chains imported by the appellant.

Accordingly, the appeal is dismissed.

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

Kathleen E. Macmillan
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Member

W. Roy Hines
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