



Ottawa, Monday, August 31, 1992

Appeal Nos. AP-91-081 and AP-91-223

IN THE MATTER OF appeals heard on June 19, 1992,
under section 67 of the *Customs Act*, R.S.C., 1985,
c. 1 (2nd Supp.), as amended;

AND IN THE MATTER OF two decisions of the
Deputy Minister of National Revenue for Customs and
Excise dated January 23 and 29, 1991, with respect to
requests for re-determination made pursuant to section 63
of the *Customs Act*.

BETWEEN

ORIENTAL TRADING (MTL) LTD.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeals are dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

John C. Coleman
John C. Coleman
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal Nos. AP-91-081 and AP-91-223

ORIENTAL TRADING (MTL) LTD.

Appellant

and

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

Respondent

The goods in issue are cotton swabs made from a polypropylene stem approximately four inches long and covered at each end by a small quantity of cotton wadding. They are primarily used for personal hygiene. The issue is whether the cotton swabs are more properly classified as "Wadding ... Of cotton" or, more precisely, as "Articles of wadding" under tariff item No. 5601.21.20 of the Customs Tariff, as determined by the respondent, or under tariff item No. 3926.90.90 as articles "Other" than "Other articles of plastics" in heading No. 39.26, as contended by the appellant.

HELD: *The appeals are dismissed. The Tribunal finds that the cotton wadding, rather than the polypropylene stem, is the component that gives the essential character to the goods in issue. The Tribunal distinguishes between components that add specific characteristics to a product, such as the plastic stem, and components that give to such product its essential character, such as the cotton wadding. Thus, although the plastic stem adds value to the goods in issue and its design attracts certain customers and facilitates certain uses, it is the cotton wadding that makes the goods in issue what they are, primarily articles for personal hygiene.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: June 19, 1992

Date of Decision: August 31, 1992

Tribunal Members: Michèle Blouin, Presiding Member

John C. Coleman, Member

Charles A. Gracey, Member

Counsel for the Tribunal: Gilles B. Legault

Clerk of the Tribunal: Dyna Côté

Appearances: Cam McKechnie, for the appellant

Rosemarie Millar, for the respondent

Appeal Nos. AP-91-081 and AP-91-223

ORIENTAL TRADING (MTL) LTD.

Appellant

and

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

Respondent

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
JOHN C. COLEMAN, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

These are appeals under section 67 of the *Customs Act*¹ (the Act) from two decisions by the Deputy Minister of National Revenue for Customs and Excise under subsection 63(3) of the Act. The goods in issue are cotton swabs made from a polypropylene stem approximately four inches long and covered at each end by a small quantity of cotton wadding. They are primarily used for personal hygiene.

The issue is whether the cotton swabs are more properly classified as "Wadding ... Of cotton" or, more precisely, as "Articles of wadding" under tariff item No. 5601.21.20 of the *Customs Tariff*,² as determined by the respondent, or under tariff item No. 3926.90.90 as articles "Other" than "Other articles of plastics" in heading No. 39.26, as contended by the appellant.

The appellant's arguments in a nutshell are that, in accordance with Rule 3 (b) of the General Rules for the Interpretation of the Harmonized System³ (the General Rules), the goods in issue are more properly "classified as if they consisted of the material or component which gives them their essential character," that material being the polypropylene stem. Counsel for the appellant argued that the stem is the essential component of the goods in issue, insofar as these goods are distinct in the marketplace from rolls of otherwise amorphous wadding. The specific design and the different uses of the goods in issue, as well as their status as a commercial product distinct from amorphous wadding, are due to the stem. Therefore, the goods are more properly classified under tariff item No. 3926.90.90 as articles "Other" than "Other articles of plastics" in heading No. 39.26. The appellant also argued that the majority of the bulk and weight of the goods in issue is attributable to the polypropylene stem. Moreover, the polypropylene stem accounts for 13.6 cents of the cost of every package, while the wadding accounts for 8.6 cents.

Briefly summarized, the respondent's arguments proceed by way of elimination through the General Rules. Having eliminated General Rules 1, 2, 3 (a) and 3 (b), as it must be before

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1. R.S.C., 1985, c. 1 (2nd Supp.), as amended.
 2. R.S.C., 1985, c. 41 (3rd Supp.), as amended.
 3. *Ibid.*, Schedule I.

applying General Rule 3 (c), counsel for the respondent argued that, in accordance with this last rule, the goods in issue are more properly classified in the heading which occurs last in numerical order among those which equally merit consideration, namely, under tariff item No. 5601.21.20. It is to be noted that the respondent's argument is based on the assumption that both components of the cotton swab, i.e. the wadding and the plastic stem, are essential to the product and that it cannot be said, in counsel's view, that one gives the whole its essential character.

Contrary to counsel for the respondent, the Tribunal finds that General Rule 3 (b) applies in this case and, therefore, that recourse to General Rule 3 (c) is not necessary. That being said, the Tribunal also disagrees with counsel for the appellant on the conclusion that results from applying General Rule 3 (b) to the goods in issue. The Tribunal finds that the cotton wadding rather than the polypropylene stem is the component that gives the essential character to the goods in issue. The Tribunal distinguishes between components that add specific characteristics to a product, such as the polypropylene stem, and components that give to such product its essential character, such as the cotton wadding. Thus, although the polypropylene stem adds value to the goods in issue and its design attracts certain customers and facilitates certain uses, it is the cotton wadding that makes the goods in issue what they are, namely, articles used primarily for personal hygiene. Finally, the Tribunal observes, although it was not required to do so, that its decision favours one of the factors set forth in Explanatory Note⁴ (VIII) to Rule 3 (b). Stating that the factor which determines essential character will vary as between different kinds of goods, Explanatory Note (VIII), indeed, refers to "the role of a constituent material in relation to the use of the goods." In this case, the cotton wadding plays the essential role in making these swab articles primarily used for personal hygiene. The plastic stem is more in the nature of a support.

For the foregoing reasons, the appeals are dismissed.

Michèle Blouin
Michèle Blouin
Presiding Member

John C. Coleman
John C. Coleman
Member

Charles A. Gracey
Charles A. Gracey
Member

4. Explanatory Notes to the Harmonized Commodity Description and Coding System, Customs Co-operation Council, Brussels, First Edition, 1986.