



Ottawa, Wednesday, September 30, 1992

**Appeal No. AP-91-157**

IN THE MATTER OF an appeal heard on April 24, 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 July 24, 1991, with respect to a request for  
re-determination made pursuant to section 63 of the  
*Customs Act*.

**BETWEEN**

**D. DYCK INDUSTRIES LIMITED**

**Appellant**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed. The Tribunal finds that the sheets of paperboard in issue are more properly classified under tariff item No. 4811.40.00 and are eligible for the statutory concessionary provisions of Code 0720 of Schedule II to the *Customs Tariff*.

Kathleen E. Macmillan  
Kathleen E. Macmillan  
Presiding Member

W. Roy Hines  
W. Roy Hines  
Member

Charles A. Gracey  
Charles A. Gracey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-91-157**

**D. DYCK INDUSTRIES LIMITED**

**Appellant**

**and**

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

**Respondent**

*The appellant is a manufacturer of paper and paperboard products, including packing case gaskets and other sealing devices. The goods in issue are sheets of paperboard imported from the United States that can be cut and assembled to create a variety of products such as customized packaging.*

*The issue is whether the goods in question are more properly classified under tariff item No. 4811.40.00 as paper and paperboard, coated, impregnated or covered with wax, paraffin wax, stearin, oil or glycerol and eligible for the statutory concessionary provisions of Code 0720 of Schedule II to the Customs Tariff, as claimed by the appellant, or whether the goods are properly classified under tariff item No. 4805.80.99 as other uncoated paper and paperboard, in rolls or sheets weighing 225 g/m<sup>2</sup> or more, without the benefit of Code 0720, as claimed by the respondent.*

**HELD:** *The appeal is allowed. The Tribunal finds that the sheets of paperboard in issue are more properly classified under tariff item No. 4811.40.00 and are eligible for the statutory concessionary provisions of Code 0720 of Schedule II to the Customs Tariff.*

*Place of Hearing: Ottawa, Ontario*  
*Date of Hearing: April 24, 1992*  
*Date of Decision: September 30, 1992*

*Tribunal Members: Kathleen E. Macmillan, Presiding Member*  
*W. Roy Hines, Member*  
*Charles A. Gracey, Member*

*Legal Services: France Deshaies*

*Clerk of the Tribunal: Dyna Côté*

*Appearances: David Zimmer and W. Harvey Jones, for the appellant*  
*Linda J. Wall, for the respondent*

Appeal No. AP-91-157

**D. DYCK INDUSTRIES LIMITED**

**Appellant**

and

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

**Respondent**

TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member  
W. ROY HINES, Member  
CHARLES A. GRACEY, Member

**REASONS FOR DECISION**

This is an appeal pursuant to section 67 of the *Customs Act*<sup>1</sup> (the Act), from two decisions made by the respondent on July 24, 1991, in respect of two lots of goods imported from the United States on November 22 and December 19, 1989.

The appellant is a manufacturer of paper and paperboard products including packing case gaskets and other sealing devices. The goods in issue are sheets of paperboard imported from the United States that can be cut and assembled to create a variety of products such as customized packaging.

The issue is whether the goods in question are more properly classified under tariff item No. 4811.40.00 as paper and paperboard, coated, impregnated or covered with wax, paraffin wax, stearin, oil or glycerol and eligible for the statutory concessionary provisions of Code 0720 of Schedule II to the *Customs Tariff*<sup>2</sup> (Code 0720), as claimed by the appellant, or whether the goods are properly classified under tariff item No. 4805.80.99 as other uncoated paper and paperboard, in rolls or sheets weighing 225 g/m<sup>2</sup> or more, without the benefit of Code 0720, as claimed by the respondent.

The relevant tariff nomenclature in Schedule I to the *Customs Tariff* is as follows:

48.05	<i>Other uncoated paper and paperboard, in rolls or sheets.</i>
4805.80	<i>-Other paper and paperboard, weighing 225 g/m<sup>2</sup> or more</i>
4805.80.99	<i>---Other</i>
48.11	<i>Paper, paperboard, cellulose wadding and webs of cellulose fibres, coated, impregnated, covered, surface-coloured, surface-decorated or printed, in rolls or sheets, other than goods of heading No. 48.03, 48.09, 48.10 or 48.18.</i>
4811.40.00	<i>-Paper and paperboard, coated, impregnated or covered with wax, paraffin wax, stearin, oil or glycerol</i>

1. R.S.C., 1985, c. 1 (2nd Supp.), as amended.

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

The General Information contained at the end of the legal notes to Chapter 48 of Schedule I to the *Customs Tariff* states that, in addition to codes referred to against specific tariff items, the goods of this Chapter may be eligible for the concessionary provisions of Code 0720.

Code 0720 states:

*0720 Gasket stock, impregnated, coated or covered, of Chapter 48, for use in the manufacture of gaskets, washers, sealing strips or other sealing articles and materials*

In order for the goods to fall under tariff item No. 4811.40.00 and be eligible for the statutory concessionary provisions of Code 0720, the Tribunal must find that the goods are "impregnated" or "coated" with wax within the meaning of that tariff item. Further, it must find that the goods constitute gasket stock within the meaning of Code 0720.

At the hearing, both parties agreed that the goods were "internally sized" during the manufacturing process. However, counsel for the appellant submitted that internal sizing is equivalent to impregnation, a position not shared by counsel for the respondent.

The "Impregnated paper and paperboard" section of the General Notes to Chapter 48 of the Explanatory Notes,<sup>3</sup> gives some indication as to what impregnated paper and paperboard are intended to cover:

*Most of these papers and paperboards are obtained by treatment with ... waxes ... in such a manner as to permeate them and give them special qualities (e.g. to render them waterproof ...). They are used largely for protective wrapping or as insulating materials.*

Mr. André Côté, a laboratory and scientific analyst for the respondent, served as a witness for the respondent. He described internal sizing as a process where a chemical compound or elements such as rosin or paraffin wax are added to wood pulp while it is at the slurry stage. The elements, paraffin wax in this case, coat each of the individual fibres of the pulp. In the case of the Homasote paperboard, the wax holds the fibres together and renders the finished product stronger and more resilient to water. The wax is uniformly distributed throughout the paperboard. It is not a surface sizing, coating or covering.

In considering whether the internal sizing constitutes impregnation, the Tribunal carefully considered testimony of witnesses, arguments made by both parties and reference materials furnished by the respondent. For example, the Encyclopedia of Chemical Technology,<sup>4</sup> defines impregnation as:

*IMPREGNATION. (1) The process of treating a sheet or web of paper or paperboard with a liquid. This may be a molten material such as hot asphalt or wax, a solution of some material in a volatile solvent, or a liquid such as an oil. Pressure may or may not be used in the operation. (2) A term used to describe a treatment in which fibrous raw materials are infused with a chemical solution prior to a digesting or fiberizing process. Sometimes called preimpregnation.*

Mr. Côté confirmed that although impregnation usually involves treatment to a finished piece of paper or paperboard, it can refer to the addition of solutions at the slurry stage of paper

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

4. Kirk-Othmer, Vol. 16, Third Edition, Toronto: John Wiley & Sons, p. 233.

making. The Tribunal concludes, therefore, that the process of internal sizing undergone by the Homasote paperboard could be characterized as an impregnation process.

According to counsel for the respondent, however, the amount of wax added to the Homasote paperboard, less than 5 percent of the final product weight, was too small to constitute impregnation. Counsel referred to numerous dictionary definitions of "impregnate" that used words such as "saturate" and "permeate" in defining the term.

The Tribunal is of the view, however, that greater weight must be given to the trade meaning of the term "impregnate." The actual quantities of sizing material will depend on the product being manufactured and its application. Neither the *Customs Tariff* nor the Explanatory Notes offer guidance on what percentage of rosin, wax or other elements would be necessary to constitute impregnation. Moreover, the respondent's witness was unable to cite any reference material that stipulated a certain minimum level. The Tribunal's own review of the respondent's reference documents yielded no insight into the concentration of materials required to constitute impregnation.

Lacking guidance from the *Customs Tariff*, the Explanatory Notes and recognized trade literature as to whether the goods in issue are internally sized or impregnated, the Tribunal must form its own judgment. The Tribunal places emphasis on the fact that, through an internal sizing process undertaken at the paper-making stage, the individual paperboard fibres were coated with wax and fused together. The wax forms an important and constituent part of the final product. Consequently, the Tribunal finds that the Homasote paperboard has been impregnated with wax and classifies the goods under tariff item No. 4811.40.00 as paper and paperboard, coated, impregnated or covered with wax, paraffin wax, stearin, oil or glycerol.

The second issue is whether the goods in question can be described as gasket stock used in the manufacture of gaskets within the meaning of Code 0720. The Tribunal was shown examples of the types of products that were die cut, by the appellant, from the Homasote paperboard. These ranged from sealing rings for water coolers to buffers used in stereo speakers. The Tribunal was also told that the appellant considered itself, for many years, to be a gasket manufacturer and was given copies of recent trade directories where it was classified as such. It is clear that the term "gasket" is understood in the industry to apply to the types of goods manufactured by the appellant. While the Tribunal is not in a position to conclude that every product manufactured by the appellant is a gasket, it can find that the goods in issue, Homasote paperboard, can be and are used in the manufacture of gaskets. This conclusion is, in the Tribunal's view, sufficient to allow the appeal.

Kathleen E. Macmillan

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Presiding Member

W. Roy Hines

W. Roy Hines

Member

Charles A. Gracey

Charles A. Gracey

Member