

Ottawa, Monday, May 10, 1993

Appeal No. AP-92-022

IN THE MATTER OF an appeal heard on March 1, 1993,
under section 67 of the *Customs Act*, R.S.C. 1985, c. 1
(2nd Supp.);

AND IN THE MATTER OF a decision of the Deputy
Minister of National Revenue for Customs and Excise dated
April 1, 1992, with respect to a request for a
re-determination under section 63 of the *Customs Act*.

BETWEEN

JOHN MARTENS COMPANY

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

Michèle Blouin
Michèle Blouin
Member

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

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-022

JOHN MARTENS COMPANY

Appellant

and

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

Respondent

The issue in this appeal is the proper tariff classification of fishing tackle boxes. The goods in issue were classified by the respondent under tariff item No. 3926.90.90. The appellant claimed that the goods in issue were more properly classified under tariff item No. 4202.92.90 or 4202.99.90. The fishing tackle boxes are moulded out of rigid plastic and designed with different compartments, levels, slots and shelves to store and tote fishing tackle, such as fishhooks, lures and bobbers.

HELD: *The appeal is dismissed. The fishing tackle boxes are not properly described by the terms of heading No. 42.02. Relying on Rule 4 of the General Rules for the Interpretation of the Harmonized System, the Tribunal classified the goods in issue in the heading appropriate to the classification of tool boxes not specifically designed to accommodate a particular tool. As such tool boxes of plastic are most akin to the goods in issue and classifiable in heading No. 39.26, so too are the fishing tackle boxes.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: March 1, 1993

Date of Decision: May 10, 1993

Tribunal Members: Sidney A. Fraleigh, Presiding Member

Michèle Blouin, Member

Robert C. Coates, Q.C., Member

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Janet Rumball

Appeal No. AP-92-022

JOHN MARTENS COMPANY

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE

Respondent

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member
MICHÈLE BLOUIN, Member
ROBERT C. COATES, Q.C., Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ heard on the basis of an agreed statement of facts and the Tribunal's record as supplemented by briefs submitted by the parties. The issue in this appeal is the proper tariff classification of fishing tackle boxes. The goods in issue were classified by the respondent under tariff item No. 3926.90.90. The appellant claimed that the goods in issue were more properly classified under tariff item No. 4202.92.90 or 4202.99.90.

For purposes of this appeal, the relevant tariff nomenclature of Schedule I to the *Customs Tariff*² reads as follows:

39.26 *Other articles of plastics and articles of other materials of heading Nos. 39.01 to 39.14.*

3926.90 *-Other*

3926.90.90 *---Other*

42.02 *Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, toilet bags, rucksacks, handbags, shopping-bags, wallets, purses, map-cases, cigarette-cases, tobacco-pouches, tool bags, sports bags, bottle-cases, jewellery boxes, powder-boxes, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fibre or of paperboard, or wholly or mainly covered with such materials or with paper.*

4202.92 *--With outer surface of sheeting of plastics or of textile materials*

4202.92.90 *---Other*

4202.99 *--Other*

4202.99.90 *---Other*

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. R.S.C. 1985, c. 41 (3rd Supp.).

In the agreed statement of facts, the goods in issue were described as fishing tackle boxes moulded out of rigid plastic and designed with different compartments, levels, slots and shelves to store and tote fishing tackle, such as fishhooks, lures and bobbers. The respondent's brief contained sample pamphlets describing various types of tackle boxes, though the parties did not indicate which models were in issue in this appeal.

The appellant's representative noted that the respondent had declined to classify the fishing tackle boxes in heading No. 42.02 because they were not similar to any of the containers mentioned in the first part of that heading. In response, it was observed that many of those containers were designed to house one specific article; however, no Section or Chapter Note limits containers classifiable under that part to those that are only capable of housing a single article. Rather, containers are classifiable under that part if they are considered similar to those identified by name.

Regardless, fishing tackle boxes are designed, moulded and sold to store and tote a specific product or commodity, being fishing tackle. In this way, they are similar to camera cases, musical instrument cases or gun cases. As such, fishing tackle boxes are similar to the containers mentioned in the first part of heading No. 42.02.

The appellant's representative submitted that, if the Tribunal could not classify the goods in issue under tariff item No. 4202.92.90 as the outer surfaces of the fishing tackle boxes were not of "sheeting of plastics," it could classify the goods in issue under tariff item No. 4202.99.90.

The Tribunal does not feel it necessary to repeat the arguments of the respondent, as it adopts them in its reasons for dismissing the appeal.

Pursuant to section 11 of the *Customs Tariff*, the Tribunal is directed to the Explanatory Notes to the Harmonized Commodity Description and Coding System³ (the Explanatory Notes) for purposes of interpreting the headings and subheadings in Schedule I to that act. The Explanatory Notes to heading No. 42.02, at page 613, indicate that this heading is composed of two parts, and the Tribunal observes that it is divided by a semicolon, which produces the division. The Explanatory Notes indicate that "[t]he articles covered by the second part of the heading must ... be only of the materials specified therein or must be wholly or mainly covered with such materials or with paper (the foundation may be of wood, metal, etc.)." As moulded plastic is not listed amongst the materials mentioned in the second part of heading No. 42.02, the Tribunal concludes that the goods in issue cannot fall within this part of the heading.

The first part of the heading includes a list of named articles followed by the expression "similar containers." Tackle boxes are not specifically named in this list and, therefore, for the goods in issue to be classifiable under the first part of the heading, they must be encompassed by the expression "similar containers."

The Explanatory Notes were amended in July 1992, elaborating on this expression as found in the first part of the heading. They state that:

The expression "similar containers" in the first part includes hat boxes, camera accessory cases, cartridge pouches, sheaths for hunting or camping knives, portable tool boxes or

3. Customs Co-operation Council, 1st ed., Brussels, 1986.

cases, specially shaped or internally fitted to contain particular tools with or without their accessories, etc.

The Explanatory Notes to heading No. 42.02 were further amended, indicating that the heading does not cover tool boxes or cases not specially shaped or internally fitted to contain particular tools with or without their accessories. Similarly, the Explanatory Notes to heading No. 39.26 were amended to indicate that such tool boxes are included within that heading. As such, tool boxes specially shaped to accommodate a particular tool are classifiable in heading No. 42.02, and, if not specially shaped, they are classifiable elsewhere.⁴

In finding that the goods in issue are not encompassed by the expression "similar containers," the Tribunal concludes that the expression must be interpreted to encompass containers that are designed to accommodate a particular item.

Pursuant to Rule 4 of the General Rules for the Interpretation of the Harmonized System⁵ (the General Rules),

Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.

The Tribunal is unable to classify the goods in accordance with the first three Rules. As it considers the fishing tackle boxes in issue to be most akin to tool boxes organized into various compartments and not designed to accommodate a particular item, then, pursuant to Rule 4 of the General Rules, it classifies them as the tool boxes would be classified. As such tool boxes made of plastic would be classified in heading No. 39.26, so too would the fishing tackle boxes.

Accordingly, the appeal is dismissed.

Sidney A. Fraleigh
Sidney A. Fraleigh
Presiding Member

Michèle Blouin
Michèle Blouin
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Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

4. These amendments appear to be based on an opinion of the Harmonized System Committee on the classification of portable tool boxes in subheading No. 4202.99, Annex H/4 to Doc. 36.600 E (HSC/7/Apr. 91), Compendium of Classification Opinions, Customs Co-operation Council, 1st ed., Brussels, 1987.

5. *Supra*, note 2, Schedule I.