

Ottawa, Wednesday, February 9, 1994

Appeal No. AP-92-274

IN THE MATTER OF an appeal heard on August 5, 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 October
14, 1992, with respect to a request for re-determination under
section 63 of the *Customs Act*.

BETWEEN

CANADIAN HOSPITAL SPECIALTIES LTD.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed in part. The belts, body holders, vests and jackets in issue are properly classified under tariff item No. 6307.90.99, as determined by the respondent. The heel protectors in issue should be classified under tariff item No. 9021.19.30.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Presiding Member

W. Roy Hines

W. Roy Hines
Member

Michèle Blouin

Michèle Blouin
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-274

CANADIAN HOSPITAL SPECIALTIES LTD.

Appellant

and

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

Respondent

The issue in this appeal is the proper tariff classification of three types of goods which are designed primarily for a patient's safety and comfort. They include: (1) belts and body holders; (2) vests and jackets; and (3) heel protectors. Belts and body holders are used to secure a patient to either a bed or a wheelchair; vests and jackets are also used for the same purpose. Heel protectors are available in several models and are constructed from synthetic pile fabrics. The respondent classified these goods under tariff item No. 6307.90.99 as other made up articles of other textile materials. The appellant submitted that the goods should be classified under tariff item No. 9021.19.30 as other orthopaedic or fracture appliances.

HELD: *The appeal is allowed in part. With regard to the belts, body holders, vests and jackets, an examination of the manufacturer's 1993 Healthcare Product Catalog clearly indicates that these goods are intended and used for the safety and comfort of patients. The catalogue makes no reference to applications of an orthopaedic nature as defined above or as provided in the Explanatory Notes to heading No. 90.21. With regard to the heel protectors, the Tribunal is of the opinion that they qualify as orthopaedic foot appliances as enumerated in the Explanatory Notes to heading No. 90.21 and, as such, are classifiable under tariff item No. 9021.19.30.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: August 5, 1993

Date of Decision: February 9, 1994

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member
W. Roy Hines, Member
Michèle Blouin, Member*

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Janet Rumball

*Parties: Henry Enns, for the appellant
Ian McCowan, for the respondent*

Appeal No. AP-92-274

CANADIAN HOSPITAL SPECIALTIES LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
W. ROY HINES, Member
MICHÈLE BLOUIN, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act) from a decision of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) under section 63 of the Act. The appeal proceeded by way of written submissions, under rule 25 of the *Canadian International Trade Tribunal Rules*,² on the basis of the Tribunal's record as supplemented by an agreed statement of facts and briefs submitted by the parties.

The issue in this appeal is the proper tariff classification of the goods in issue. There are three types of goods in issue, produced by the Posey Company in the United States, which are designed primarily for a patient's safety and comfort. They include: (1) belts and body holders; (2) vests and jackets; and (3) heel protectors. Belts and body holders are used to secure a patient to either a bed or a wheelchair. Belts are constructed from a cotton fabric and come in a variety of styles depending upon the specific movement needs of the patient. The interior surface of a body holder is lined with comfort padding. Vests and jackets are also used to secure a patient to either a bed or a wheelchair. They come in a variety of fabrics and styles. Heel protectors are available in several models and are constructed from synthetic pile fabrics. The Deputy Minister classified these goods under tariff item No. 6307.90.99 of Schedule I to the *Customs Tariff*³ as other made up articles of other textile materials. The appellant submitted that the goods should be classified under tariff item No. 9021.19.30 as other orthopaedic or fracture appliances.

The relevant tariff nomenclature of Schedule I to the *Customs Tariff* reads as follows:

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

6307.90 *-Other*

---Other:

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1. R.S.C. 1985, c. 1 (2nd Supp.).
 2. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.
 3. R.S.C. 1985, c. 41 (3rd Supp.).

6307.90.99 ----*Of other textile materials*

90.21 *Orthopaedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability.*

-Artificial joints and other orthopaedic or fracture appliances:

9021.19 --*Other*

9021.19.30 ---*Other orthopaedic or fracture appliances*

In arguing that the goods should be classified in heading No. 90.21, the appellant's representative relied solely on the Explanatory Notes to the Harmonized Commodity Description and Coding System⁴ (the Explanatory Notes) to this heading, which list those products that are included as orthopaedic appliances. According to the Explanatory Notes, these appliances are for preventing or correcting bodily deformities or supporting or holding organs following an illness or operation. The belts and body holders are seen as "[a]ppliances for correcting scoliosis and curvature of the spine as well as all medical or surgical corsets and belts," with certain characteristics. The heel protectors are seen as "[o]rthopaedic foot appliances (talipes appliances, leg braces, with or without spring support for the foot, surgical boots, etc.)." The vests and jackets are seen as "[s]upporting or holding organs following an illness or operation."

Counsel for the respondent submitted that the classification of goods must be done in accordance with the General Rules for the Interpretation of the Harmonized System.⁵ The first consideration in determining the appropriate classification is the terms of the headings and any relative Section or Chapter Notes. Tariff item No. 6307.90.99 provides for "made up" articles of other textile materials not included more specifically elsewhere in the tariff nomenclature of Schedule I to the *Customs Tariff*. The expression "made up" is defined at Note 7(e) to Section XI of Schedule I to the *Customs Tariff* as:

Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded).

It was submitted that the goods in issue are made up articles of textile materials.

Referring to the Explanatory Notes to heading No. 90.21, counsel for the respondent argued that, in order for goods to be considered orthopaedic appliances, they can only be used for the purposes mentioned in the Explanatory Notes, as identified by the appellant's representative. It was noted that the belts, vests and jackets are designed primarily for a patient's safety and comfort in a bed or a wheelchair. Heel protectors are designed primarily for a patient's comfort, while protecting the heel. As such, these goods are not classifiable as orthopaedic appliances.

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

5. *Supra*, note 3, Schedule I.

Referring to The Oxford English Dictionary,⁶ which defines "appliance" as "[a] thing applied as means to an end; apparatus," counsel for the respondent submitted that the goods in issue are not appliances.

The Tribunal has carefully reviewed all the literature provided by the appellant in connection with this appeal and has come to the conclusion that, except for the heel protectors, the goods in issue were properly classified by the respondent under tariff item No. 6307.90.99 as other made up articles of other textile materials.

In making this decision, the Tribunal notes that, in order to qualify for classification in heading No. 90.21, goods must be orthopaedic appliances. The Concise Oxford Dictionary of Current English⁷ defines "orthopaedics" as the "branch of medicine dealing with correction of deformities of bones or muscles." The Webster's New Twentieth Century Dictionary of the English Language⁸ defines "orthopaedics" as "the branch of surgery dealing with the treatment of deformities, diseases, and injuries of the bones and joints."

With regard to the belts, body holders, vests and jackets, an examination of the manufacturer's 1993 Healthcare Product Catalog clearly indicates that these goods are intended and used for the safety and comfort of patients. The catalogue makes no reference to applications of an orthopaedic nature as defined above or as provided in the Explanatory Notes to heading No. 90.21. With regard to the heel protectors, the Tribunal is of the opinion that they qualify as orthopaedic foot appliances as enumerated in the Explanatory Notes to heading No. 90.21.

Accordingly, the appeal is allowed in part.

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

W. Roy Hines
W. Roy Hines
Member

Michèle Blouin
Michèle Blouin
Member

6. Vol. 1, 2nd ed. (Oxford: Clarendon Press, 1989) at 575.

7. Seventh ed. (Oxford: Clarendon Press, 1982) at 721.

8. Second ed. (New York: Simon and Schuster, 1979) at 1264.