



Ottawa, Friday, January 7, 1994

Appeal No. AP-92-235

IN THE MATTER OF an appeal heard on July 12, 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 November
21, 1992, with respect to a request for re-determination under
section 63 of the *Customs Act*.

BETWEEN

MAJESTIC INDUSTRIES (CANADA) LTD.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

W. Roy Hines

W. Roy Hines
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Desmond Hallissey

Desmond Hallissey
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-235

MAJESTIC INDUSTRIES (CANADA) LTD.

Appellant

and

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

Respondent

The appellant imported sleep shorts and sleep pants into Canada from the People's Republic of China. The imported goods are made of woven sandwash silk. The issue in this appeal is whether the sleep shorts and sleep pants are properly classified under tariff item No. 6203.49.00 as trousers, bib and brace overalls, breeches and shorts of other textile materials, as contended by the respondent, or should be classified under tariff item No. 6207.29.00 as nightshirts and pyjamas of other textile materials, as claimed by the appellant.

HELD: *The appeal is allowed. The uncontradicted evidence adduced by the appellant leaves no doubt that the goods in issue constitute sleepwear. Taking into account the sophistication of the sleepwear market, the Tribunal concludes that these goods constitute intrinsic components of a pair of pyjamas.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: July 12, 1993

Date of Decision: January 7, 1994

Tribunal Members: W. Roy Hines, Presiding Member

Robert C. Coates, Q.C., Member

Desmond Hallissey, Member

Counsel for the Tribunal: Robert Desjardins

Clerk of the Tribunal: Janet Rumball

Appearances: Zave Kaufman, for the appellant

Stéphane Lilkoff and Stéphane Roberge, for the respondent

Appeal No. AP-92-235

MAJESTIC INDUSTRIES (CANADA) LTD.

Appellant

and

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

Respondent

TRIBUNAL: W. ROY HINES, Presiding Member
ROBERT C. COATES, Q.C., Member
DESMOND HALLISSEY, 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 dated November 21, 1992, under section 63 of the Act.

In November 1991, the appellant imported kimonos, sleep shorts and sleep pants into Canada from the People's Republic of China. The imported goods are made of woven sandwash silk.

The issue in this appeal is whether the men's woven sandwash silk sleep shorts and sleep pants are properly classified under tariff item No. 6203.49.00 of Schedule I to the *Customs Tariff*² as trousers, bib and brace overalls, breeches and shorts of other textile materials, as contended by the respondent, or should be classified under tariff item No. 6207.29.00 as nightshirts and pyjamas of other textile materials, as claimed by the appellant.

Mr. Sam Landsman, Executive Vice-President of Operations of Majestic Industries (Canada) Ltd., the appellant, testified on its behalf. In his work, Mr. Landsman oversees the appellant's sales, marketing and shipping departments. He described to the Tribunal the appellant's line of business - the import and manufacture of men's sleepwear for the Canadian market. The appellant does not import nor manufacture men's outdoor trousers and shorts. Referring to samples of sleep shorts and sleep pants allegedly identical to the goods in issue (Exhibits A-1 and A-2), the witness pointed out that there are many differences that distinguish these goods with the outdoor garments. The sleep shorts have a loose-fitting fly and a drawstring at the waist, and are different from boxer shorts in that they constitute a looser-fitting garment. As to the "flyless" sleep pants, they are merely pyjama bottoms with a drawstring and an elasticized waist. Further, Mr. Landsman explained that the appellant's business dealings with department stores are exclusively with the sleepwear and intimate apparel buyers. In his view, these stores would not market the goods in issue as outdoor garments. Finally, in reply to questions from the Tribunal, Mr. Landsman touched upon the sophistication of the sleepwear market. In this connection, he explained that each part of a pair of pyjamas can be bought separately.

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

In essence, counsel for the appellant argued that the evidence adduced before the Tribunal clearly shows that the goods in issue do not fall within the same class of apparel as the outdoor clothes classified in heading No. 62.03. In his view, the significant difference between the type of goods that fall within the scope of this heading and the goods covered in heading No. 62.07 is not a difference of style, but one of function. Heading No. 62.07 covers nightshirts, pyjamas, dressing gowns and similar intimate articles of indoor apparel. By virtue of their styling and intended function, sleep shorts and sleep pants fall within this class of goods. Noting that the Explanatory Notes³ do not provide a definition of the word "pyjamas," counsel referred to the definition given by The Oxford English Dictionary. He contended that this term has come to include, in common parlance, suits of pyjama tops and bottoms.

Counsel for the respondent referred to Rule 1 of the General Rules for the Interpretation of the Harmonized System⁴ (the General Rules) which states that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In counsel's view, heading No. 62.03 is clear, and no other heading should be considered in the present case. Furthermore, counsel underlined Rule 3 (a) of the General Rules, pursuant to which the heading that provides the most specific description of goods shall be preferred to a heading offering a more general description. With respect to the distinction drawn by the appellant between indoor and outdoor garments, counsel for the respondent argued that such a distinction is in contradiction with Rule 3 (a) of the General Rules.

Having reviewed the evidence and carefully considered the arguments, the Tribunal is of the view that the appeal must be allowed. The appellant has long specialized in the import and manufacture of nightwear and intimate articles of indoor apparel. In the present case, the invoice from the Shanghai Silk Import & Export Corp. itemizes the goods in issue as "sleep short" and "sleep pant." The entire evidence adduced by the appellant before the Tribunal has not been disputed by the respondent. In the Tribunal's view, such evidence leaves no doubt that the goods in issue constitute sleepwear. Among various points, the Tribunal wishes to underline the styling, fabric and characteristics of the goods in issue. Furthermore, these goods are sold by the appellant solely to small specialty retail outlets and to the sleepwear and intimate apparel buyers of major Canadian department stores.

As to the classification of the sleep shorts and sleep pants, it appears to the Tribunal that they fall within the scope of heading No. 62.07. Taking into account the sophistication of the sleepwear market, the Tribunal considers that the goods in issue constitute intrinsic components of a pair of pyjamas. Therefore, these goods are classified under tariff item No. 6207.29.00 as nightshirts and pyjamas of other textile materials, as claimed by the appellant.

3. Explanatory Notes to the Harmonized Commodity Description and Coding System, Customs Co-operation Council, 1st ed., Brussels, 1986.

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

In light of the foregoing, the appeal is allowed.

W. Roy Hines

W. Roy Hines

Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Member

Desmond Hallissey

Desmond Hallissey

Member