



Ottawa, Thursday, May 12, 1994

Appeal No. AP-92-265

IN THE MATTER OF an appeal heard on November 4, 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 September
17, 1992, with respect to a request for re-determination under
section 63 of the *Customs Act*.

BETWEEN

COMPUTALOG LTD.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

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

Anthony T. Eyton
Anthony T. Eyton
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-92-265

COMPUTALOG LTD.

Appellant

and

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

Respondent

The issue in this appeal is whether a certain cable was properly classified by the Deputy Minister of National Revenue for Customs and Excise under tariff item No. 8544.59.00 as other electric conductors, for a voltage exceeding 80 V but not exceeding 1,000 V. The appellant contended that the cable should be classified under tariff item No. 9015.90.10 as parts of geophysical instruments. In addition, the Tribunal must determine whether Code 1551, 1552 or 1570 of Schedule II to the Customs Tariff applies to the goods in issue.

HELD: *The appeal is dismissed. The Tribunal believes that the wireline cable is properly classified in heading No. 85.44 as insulated electric conductors. In making its determination, the Tribunal was guided by the Explanatory Notes to the Harmonized Commodity Description and Coding System (the Explanatory Notes) to heading No. 85.44, which indicate that the heading covers, inter alia, "(7) Cables for use in mine shafts; these have a longitudinal armouring to withstand the effects of tension." It is beyond doubt that the wireline cable is an electric conductor. In addition, the wireline cable is sufficiently similar to those described in the Explanatory Notes to convince the Tribunal that it should be classified similarly to those cables. With regard to Codes 1551 and 1552, the Tribunal does not believe that the wireline cable qualifies as well logging or well perforating machinery, apparatus or parts thereof. With regard to Code 1570, the Tribunal rejects the argument that the imported wireline cable is "for use in the manufacture of goods of Section XVI, of Chapter ... 90."*

Place of Hearing: Calgary, Alberta
Date of Hearing: November 4, 1993
Date of Decision: May 12, 1994

Tribunal Members: Robert C. Coates, Q.C., Presiding Member
Anthony T. Eyton, Member
Sidney A. Fraleigh, Member

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Anne Jamieson

Appearances: Ronald N. Pike, for the appellant
Anne M. Turley, for the respondent

Appeal No. AP-92-265

COMPUTALOG LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
ANTHONY T. EYTON, Member
SIDNEY A. FRALEIGH, 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) made under subsection 63(3) of the Act. The issue in this appeal is whether a certain cable was properly classified by the Deputy Minister under tariff item No. 8544.59.00 as other electric conductors, for a voltage exceeding 80 V but not exceeding 1,000 V. The appellant contended that the cable should be classified under tariff item No. 9015.90.10 as parts of geophysical instruments. In addition, the Tribunal must determine whether Code 1551, 1552 or 1570 of Schedule II to the *Customs Tariff*² applies to the goods in issue.

The cable was imported into Canada on March 28, 1991, and classified by the respondent under tariff item No. 8544.20.00 as co-axial electric conductors. This classification was confirmed on re-determination. A further re-determination was requested, when the appellant claimed that, although the goods in issue were classifiable under tariff item No. 8544.20.00, they qualified for the benefit of Code 1570. The Deputy Minister's decision, dated September 17, 1992, determined that the goods were properly classified and that Code 1570 did not apply.

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

85.44 *Insulated (including enamelled or anodized) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors.*

-Other electric conductors, for a voltage exceeding 80 V but not exceeding 1,000 V:

8544.51.00 *--Fitted with connectors*

8444.59.00 *--Other*

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

- 90.15 *Surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders.*
- 9015.80 *-Other instruments and appliances*
- 9015.80.10 *---Geophysical instruments, excluding theodolites of subheading No. 9015.20, magnetometers, gravimeters, and geophone stingers*
- 9015.90 *-Parts and accessories*
- 9015.90.10 *---Of the goods of tariff item No. ... 9015.80.10*

The relevant codes found in Schedule II to the *Customs Tariff* read as follows:

The following to be employed in the exploration, discovery, development, maintenance, testing, depletion or production of oil or natural gas wells or for use in drilling machinery to be employed in the exploration, discovery, development or operation of potash or rock salt deposits, excluding the motor vehicle chassis portion and parts thereof of special purpose motor vehicles of heading No. 87.05, all other motor vehicles of Chapter 87 and geophysical instruments of heading No. 90.15:

1551 *Well logging machinery, apparatus and parts thereof*

1552 *Well perforating machinery, apparatus and parts thereof*

Materials for use in the manufacture of goods of Section XVI, of Chapter 40, 73 or 90, or of heading No. 59.10 or 87.05 (excluding the motor vehicle chassis portion and parts thereof), such goods being used in the following operations:

1570 *The exploration, discovery, development, maintenance, testing, depletion or production of oil or natural gas wells up to and including the wellhead assembly or surface oil pumping unit.*

Mr. Richard M. Greschner served as the appellant's witness. He told the Tribunal that the appellant is in the business of supplying the oil and gas industry with wireline logging, perforating and production logging services. These wireline service operations consist of three types: open hole logging, cased hole logging and production logging, all of which use the wireline cable in issue. Open holed logging involves the lowering of measuring sensors into a well on the wireline for use in defining the geophysical characteristics of the formation that has been penetrated. Measurements are made for the amount of pore space within the formation and the type of liquid in the pore space. The electrical signals from the logging instruments in the well are transmitted through the wireline cable to the surface computer system. The information is used in deciding whether to complete a well. Cased hole logging occurs during the drilling of a well to ensure that the well penetrates a region containing oil or gas. Production logging is used to identify problems on operational wells from which production is declining.

Mr. Greschner explained that the wireline cable has both electrical and mechanical applications and is designed and built specifically for logging instruments that are lowered below the earth's surface. The electrical part is designed to transmit electrical signals to and from the surface logging system and the instruments lowered into the well. The cable commonly has seven conductors, each of which carries a specific signal. The mechanical part, which is designed to be weight bearing, consists of two layers of corrosion-resistant armour wires wound

around the electrical elements. Mr. Greschner told the Tribunal that the instruments to be lowered into the wells are 30 to 60 ft. in length and weigh up to 1,500 lbs. In addition, the cable weighs 1 lb/m. As such, for logging at a depth of 3,000 m, the cable must withstand 4,500 lbs of tension. He added, however, that because an instrument may become stuck in a well and need to be pulled free, the cable must be capable of withstanding 9,000 lbs of tension.

The cable is imported in lengths of 21,000 ft. This is in part because of weight restrictions and because it represents a maximum length over which the electrical signal maintains its integrity. The cable is used in minimum lengths of 15,000 ft., in part to attenuate the signal to a proper strength. As the cable is never extended to its full length, some of the cable on a spool remains unused. When a cable becomes sufficiently worn, the used section will be discarded and the unused sections from two spools are spliced together. During cross-examination, Mr. Greschner added that a cable will be in use for approximately two to three years.

One end of a wireline cable is attached to a rotary connector that rotates while in use. This end is fixed to the truck and provides the connection between the rotating spool over which the cable is wound and the stationary truck. There is provision for nine connections: seven conductors and two armoured connections. At the other end of the cable, a bridle or stinger is permanently attached. These two differ in that the former includes a length of cable that provides electrical insulation between a stainless steel body and the wireline cable. The bridle or stinger provides a quick connection between the cable and logging instruments in use. In addition, it represents a weak point that will break at a known pressure. When there is a break, the cable is removed from the well and the logging instrument is subsequently retrieved. The bridle and cable are securely attached by a torpedo that transfers the weight of the instrument to the armour wires. In addition, two of the armour wires are used as grounds for the electrical cables.

During cross-examination, Mr. Greschner opined that the cable is designed specifically for use in logging wells and obtaining geophysical data. He contended to have no knowledge of other uses for the wireline cable. However, it was acknowledged that the cable was not made specifically for the appellant.

The appellant's representative argued that the wireline cable assembled with its cable heads form a complete part of a geophysical instrument or appliance, if not a complete instrument or appliance in its own right. Geophysical instruments and appliances are included under tariff item No. 9015.80.10. Parts of these instruments and appliances are included under tariff item No. 9015.90.10. He added that the wireline cable is much more complicated and sophisticated than goods classifiable in heading No. 85.44.

With regard to the applicability of the Codes found in Schedule II to the *Customs Tariff*, the appellant's representative argued that, with respect to Codes 1551 and 1552, the wireline cable qualifies as well logging or well perforating machinery, apparatus or parts thereof to be employed in the testing of oil or gas wells. With regard to Code 1570, the representative argued that wireline cable is a material for use in the manufacture of well logging equipment or parts thereof, classified in Chapter 90, for use below the wellhead in testing oil or gas wells. With regard to Code 1570, reference was made to a letter from the Department of National Revenue (Revenue Canada) dated December 30, 1991, in which it was stated that,

it has been decided that the bulk cable, imported by Computalog Limited, which is cut to length and finished with appropriate fittings, is eligible for Tariff Code 1570.³

3. However, this determination was retracted in a letter dated January 18, 1993, where it was stated that "the advice given in the [letter of December 30, 1991] was in error."

The appellant's representative argued that the wireline cable is an article committed by design to an exclusive use. The wireline imported by the appellant is used to manufacture the interface between the subterranean sensors and surface recorders. Reference was made to Memorandum D11-8-4,⁴ entitled Goods Committed by Design or Nature to a Use Specified in an End Use Provision, in which "Wireline Units - Oil Field Class" is listed.⁵ Several decisions⁶ pertaining to the classification of imported goods under the tariff nomenclature of the former *Customs Tariff*⁷ were referred to, presumably in support of the proposition that goods committed by design or manufacture for use with other goods can be considered parts of those other goods. These decisions were also used in support of the proposition that the appellant's activities of preparing the wireline cable for use in logging wells represents a manufacturing activity.

The appellant's representative explained that Revenue Canada rejected the applicability of Code 1570 on the basis that the appellant's activities do not constitute manufacturing, but rather are in the nature of repair work. He contended, however, that the appellant's activities constitute the manufacture of a complete part used to replace a worn part that is integral to logging or perforating operations. He added that Revenue Canada's opinion demonstrates a lack of understanding of the wireline industry as it relates to the oil and gas industry.

Counsel for the respondent reminded the Tribunal that the cable in issue must be classified at the time of importation. In the brief submitted on behalf of the respondent, reference was made to Rule 1 of the General Rules for the Interpretation of the Harmonized System⁸ (the General Rules), which states that the classification of an article must be determined according to the terms of the headings within Schedule I to the *Customs Tariff* and any relative Section or Chapter Notes. Heading No. 85.44 provides for insulated wire, cable and other insulated electric conductors, whether or not fitted with connectors. At the time of importation, the cable was not fitted with connectors, which is envisaged in this heading. It was also indicated in the brief that the conductors are rated for 600 V, and the armour has a mechanical breaking strength of 1,000 lbs and a working load of 400 lbs. However, no evidence was tendered at the hearing by counsel on the characteristics of the cable.

With regard to the classification proposed by the respondent, counsel for the respondent noted that, at the time of importation, the goods in issue were merely a cable and not a part of any article mentioned in heading No. 90.15. It was only subsequent to their importation and after the appellant had fitted the cable with its connections that the cable became useful in well logging. Counsel argued that, because the cable has uses other than for well logging, it cannot be considered a part of well logging equipment.⁹ In addition, the cable is properly considered a material and not a part.¹⁰

4. Department of National Revenue, Customs and Excise, May 18, 1990.

5. In reply, it was clarified that a wireline unit includes the surface instruments, truck, cable, down-hole instruments, etc. used in logging a well.

6. *Ingersoll-Rand Door Hardware Canada Inc. v. The Deputy Minister of National Revenue for Customs and Excise* (1988), 13 T.B.R. 219 and 16 C.E.R. 235; *Ocelot Chemicals - A Division of Ocelot Investments Ltd. v. The Deputy Minister of National Revenue for Customs and Excise* (1985), 10 T.B.R. 286 and 10 C.E.R. 208; and *Access Corrosion Services Ltd. v. The Deputy Minister of National Revenue for Customs and Excise* (1984), 9 T.B.R. 184 and 6 C.E.R. 228.

7. R.S.C. 1970, c. 41.

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

9. *Danfoss Manufacturing Company Limited v. The Deputy Minister of National Revenue for Customs and Excise* (1971), 5 T.B.R. 75.

10. *Anixter Canada Inc. v. The Deputy Minister of National Revenue for Customs and Excise* (1986), 11 T.B.R. 495.

Counsel for the respondent submitted that, although the cable is properly considered a material, it is not used in the manufacture of goods. Fitting a cable with connectors is in the nature of a repair and not manufacturing. It was argued that Schedule II to the *Customs Tariff* distinguishes between the activities of manufacturing and repair.¹¹ In addition, Code 1570 stipulates that the manufactured goods must be of certain classifications, none of which include the wireline that the appellant claims to be manufacturing.

With regard to the applicability of Codes 1551 and 1552, the cable is not a part. Furthermore, the preamble to the codes specifically excludes items classified in heading No. 90.15, geophysical instruments. As the appellant's representative maintains that the goods should be classified in heading No 90.15, they are excluded from these Codes.

In determining the proper tariff classification of an article, the Tribunal commences its inquiry with Rule 1 of the General Rules, which states that the tariff classification of an article shall be determined according to the terms of the headings found in Schedule I to the *Customs Tariff* and any relative Section or Chapter Notes. As prescribed by section 11 of the *Customs Tariff*, in interpreting these headings, the Tribunal has regard to the Explanatory Notes to the Harmonized Commodity Description and Coding System¹² (the Explanatory Notes).

With regard to the classification proposed by the appellant, the Tribunal notes that the terms of heading No. 90.15 do not include parts of the named instruments and appliances of that heading. As the nomenclature of Schedule I to the *Customs Tariff* is structured in a hierarchical manner, the wireline cable must first be included within the terms of heading No. 90.15 to be classified at the subordinate tariff item No. 9015.90.10, as a part of a geophysical instrument. In this regard, Note 2 (b) to Chapter 90 of Schedule I to the *Customs Tariffs* indicates that certain parts, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus of Chapter 90 are to be classified with the machines, instruments or apparatus of that kind. As such, for the wireline cable to be included within the terms of heading No. 90.15, it must be suitable for use solely or principally with the geophysical instruments of that heading.

Note 2 (b) to Chapter 90 is subject to two qualifications. First, it is subject to Note 1 to Chapter 90, which indicates that the chapter does not cover certain items. However, the wireline cable is not one of these items. Second, it is subject to Note 2 (a), which indicates that parts that are included in any of the headings of Chapter 84, 85, 90 or 91, with certain exceptions, are to be classified in their respective heading. In other words, if the part is an article named in any of the headings of those chapters, it is classified in that heading and not as a part of another machine, instrument or apparatus of Chapter 90. As such, if the Tribunal determines that the wireline cable is an article included in a heading of Chapter 85, as argued by counsel for the respondent, the cable could not be classified as a part of a geophysical instrument classified in heading No. 90.15.

The Tribunal believes that the wireline cable is properly classified in heading No. 85.44 as an insulated electric conductor. In making its determination, the Tribunal was guided by the Explanatory Notes to heading No. 85.44, at page 1404, which indicate that the heading covers, *inter alia*, "(7) Cables for use in mine shafts; these have a longitudinal armouring to withstand the effects of tension." It is beyond doubt that the wireline cable is an electric conductor. In addition, the wireline cable is sufficiently similar to the cables described in the Explanatory Notes to convince the Tribunal that they should be classified similarly to those cables. As the record indicates that the cable is rated for 600 V and that, upon entry into Canada, it was not fitted with connectors, the Tribunal believes that the wireline cable is properly classified under

11. See, for example, Codes 0057 and 0090.

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

tariff item No. 8544.59.00. As the wireline cable is classifiable in Chapter 85, it cannot be classified as a part of a geophysical instrument in Chapter 90. It is therefore unnecessary for the Tribunal to determine whether the wireline cable is suitable for use solely or principally with geophysical instruments of Chapter 90.

With regard to Codes 1551 and 1552, the Tribunal does not believe that the wireline cable qualifies as well logging or well perforating machinery, apparatus of parts thereof. In classifying the goods in issue as insulated electrical conductors, the Tribunal has rejected the argument that they are properly viewed as geophysical instruments or, more specifically, as well logging or well perforating machinery or apparatus. In addition, the Tribunal does not believe that the goods in issue could be classified in Schedule I to the *Customs Tariff* as insulated electrical conductors and qualify as parts of other articles in Schedule II to the *Customs Tariff*. To be considered a "part" of a particular article for purposes of Schedule II, the commodity must be classified as a "part" in Schedule I.¹³

With regard to Code 1570, the Tribunal rejects the argument that the imported wireline cable is "for use in the manufacture of goods of Section XVI, of Chapter ... 90." The Tribunal does not believe that the appellant's activities, in preparing the imported wireline cable for use in well logging, constitute the manufacture of goods.

Accordingly, the appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Presiding Member

Anthony T. Eyton

Anthony T. Eyton
Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member

13. See subsection 68(3) of the *Customs Tariff*, which states that "[t]he words and expressions used in Schedule II, wherever those words and expressions are used in Schedule I, have the same meaning as in Schedule I."