CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, May 3, 1994

Appeal No. AP-93-035

IN THE MATTER OF an appeal heard on October 7, 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 March 11, 1993, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

GARLOCK OF CANADA LTD. **Appellant**

AND

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

DECISION OF THE TRIBUNAL

The appeal is dismissed (Member Trudeau dissenting).

Charles A. Gracey
Charles A. Gracey
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Michèle Blouin
Michèle Blouin
Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-93-035

GARLOCK OF CANADA LTD. **Appellant**

and

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

The issue in this appeal is whether the Klozure oil seals in issue are properly classified under tariff item No. 4016.93.00 as gaskets, washers and other seals of vulcanized rubber other than hard rubber, as determined by the respondent, or should be classified under tariff item No. 8432.90.20 as parts of disc harrows, as claimed by the appellant.

HELD: *The appeal is dismissed (Member Trudeau dissenting). The majority of the Tribunal is not satisfied by the evidence that the Klozure oil seals should be classified as parts of machinery named in heading No. 84.32.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*October 7, 1993*
Date of Decision:	*May 3, 1994*
Tribunal Members:	*Charles A. Gracey, Presiding Member* *Arthur B. Trudeau, Member* *Michèle Blouin, Member*
Counsel for the Tribunal:	*David M. Attwater*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*John R. Peillard, for the appellant* *James Stringham and Gilles Villeneuve, for the respondent*

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TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-93-035

GARLOCK OF CANADA LTD. **Appellant**

and

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

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
ARTHUR B. TRUDEAU, 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 made under subsection 63(3) of the Act. The issue in this appeal is whether the Klozure oil seals in issue are properly classified under tariff item No. 4016.93.00 of Schedule I to the *Customs Tariff*[2] as gaskets, washers and other seals of vulcanized rubber other than hard rubber, as determined by the respondent, or should be classified under tariff item No. 8432.90.20 as parts of disc harrows, as claimed by the appellant. In the alternative, counsel for the respondent argued that the goods in issue are classifiable under tariff item No. 4016.99.90[3] as other articles of vulcanized rubber other than hard rubber.

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

40.16	*Other articles of vulcanized rubber other than hard rubber.*
	-Other:
4016.93.00	*--Gaskets, washers and other seals*
4016.99	*--Other*
4016.99.90	*---Other*
84.32	*Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers.*
	-Harrows, scarifiers, cultivators, weeders and hoes:

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. R.S.C. 1985, c. 41 (3rd Supp.).
3. Subsequent to the importation of the goods, on January 26, 1990, tariff item No. 4016.99.00 was retroactively revoked and substituted, in part, by tariff item No. 4016.99.90, *Customs Tariff Schedules Amendment Order, No. 10*, SOR/90-397, June 28, 1990, Canada Gazette Part II, Vol. 124, No. 15 at 2909.

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8432.21.00 --Disc harrows

8432.90 -Parts

8432.90.20 ---Of the goods of tariff item No. ... 8432.21.00

The appellant's representative called one witness, Mr. Robert M. Coleates, Vice-President and General Manager of the Klozure Oil Seal and Expansion Joint Operations of Garlock Inc. The goods in issue are Klozure oil seals that Mr. Coleates described as assembled seals. He indicated that they are intended to act as seals for oil- or grease-lubricated bearings on a rotating shaft. They are made of four components that include a metal outer casing, two rubber elements and a metal inner casing or adapter. During cross-examination, Mr. Coleates indicated that the adapter serves to position the rubber components within the seal.

Mr. Coleates noted that the rubber components are designed to retain lubricants along a rotating shaft with which they are in contact. The flexible rubber allows a seal to be maintained even with deflection in the shaft. During cross-examination, counsel for the respondent referred to Exhibit B-3, which indicated that the rubber components are composed of a synthetic non-cellular vulcanized rubber. Mr. Coleates acknowledged that he had no reason to take issue with this assertion. He testified that the rubber components comprised 50 percent of the cost of the goods in issue.

The outer casing is designed to be press fitted into a wheel hub and to create a seal. An oil seal must be concentric with the shaft that it surrounds in order to maintain a seal, and the outer casings of Klozure oil seals are manufactured to tight tolerances to ensure a proper fit. Mr. Coleates testified that, if the goods in issue were made completely of rubber, they would not create an effective seal along the outside diameter. However, some manufacturers use a composite material as an alternative to a metal outer casing.

Mr. Coleates estimated that Garlock Inc. manufactures 200 of these seals or less per year, all of which are sold to the appellant, Garlock of Canada Ltd. He did not know to whom the appellant sold the seals, but speculated that it was to, or included, John Deere Limited (John Deere) for use in agricultural disc harrows. In this regard, he referred to a purchase order from John Deere for 125 of the seals. During cross-examination, Mr. Coleates conceded that the goods in issue could be used with other pieces of equipment. In addition, they could be used as wipers on hydraulic systems, though Mr. Coleates has never seen the seals in issue used in that application. In addressing questions from the Tribunal, he clarified that the goods in issue were not designed for use as wipers.

Counsel for the respondent called Dr. Geza Kardos as an expert witness. Dr. Kardos referred to the rubber components as lip seals, explaining that they provide sealing around a moving surface. As the rubber is flexible, it maintains a seal even when there is deflection in the shaft. In his opinion, the rubber lips have the prime function of sealing. In addition, the metal casing serves only to position the rubber seals and to create a unit that is easy to handle. He explained that the hub or housing into which a seal is inserted could be engineered to function as the outer casing. The outer casing is not mandatory, but without it, more precision and better design are required in the housing. He opined that a press fitting is not necessary to create a seal and that it is used to prevent rotation of the seal. Dr. Kardos indicated that the seals could be used as wipers on hydraulic equipment and that there is nothing unique about the seals that would limit their use to disc harrows.

In argument, the appellant's representative referred to Note 2 (b) to Section XVI of Schedule I to the *Customs Tariff*, which states that "parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading ... are to be classified with the machines of that kind." In the appellant's brief, it was submitted that the seals may be used with a number of models of disc harrows, all of which would fall under heading No. 84.32. The Tribunal was reminded that only 200 of the seals are manufactured per year and that a purchase order from John Deere for 125 of the seals indicated that the goods in issue were for use in disc harrows. The representative argued that 125 of 200 would constitute principal use. Note 2 (b) directs that these seals be classified as parts of the machines classified under heading No. 84.32. As the disc harrows would be classified under tariff item No. 8432.21.00, the seals, as parts of those machines, would be classified under tariff item No. 8432.90.20.

As a second argument, the appellant's representative noted that the Klozure oil seals in issue are made of rubber and steel. As such, they are composite goods. He noted that Rule 1 of the General Rules for the Interpretation of the Harmonized System[4] (the General Rules) requires that classification of goods be "determined according to the terms of the headings." As there is no specific heading for such seals, classification cannot be determined according to Rule 1, and reference must be made to the rules that follow. In this regard, reference was made to Rule 2 (b), which states that "[t]he classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3."

In the appellant's brief, Rule 3 (a) of the General Rules, which indicates that "[t]he heading which provides the most specific description shall be preferred to headings providing a more general description," was discounted, as the "various subheadings under consideration are more general than specific in that they provide for one of the component materials only or for 'parts'." Reference was also made to Rule 3 (b), which indicates that "composite goods consisting of different materials or made up of different components ... shall be classified as if they consisted of the material or component which gives them their essential character." This provision was also discounted in that it is "the combination of the materials or substances which gives the seal its essential character." As both Rules 3 (a) and (b) are not applicable, the appellant's representative argued that classification of the composite goods must be determined by Rule 3 (c). This rule indicates that goods are to be "classified under the heading which occurs last in numerical order among those which equally merit consideration." As the appellant's proposed tariff item occurs last in numerical order, the seals must be classified there.

Counsel for the respondent noted that, according to Rule 1 of the General Rules, the classification of goods must be determined according to the terms of the headings and any relevant Section or Chapter Notes. It was submitted that there are no headings that specifically describe the goods in issue. However, there is a relevant Section Note.

As to Note 2 (b) to Section XVI of Schedule I to the *Customs Tariff*, counsel for the respondent noted that it is subject to Note 1 to that section. This note indicates that articles of a kind used in machinery or mechanical appliances of vulcanized rubber other than hard rubber are not included in Section XVI. In addition, Note 1 indicates that such goods are classifiable under heading No. 40.16.

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

Counsel for the respondent submitted that, as the goods in issue cannot be classified according to Rule 1 of the General Rules, reference must be made to the subsequent rules. Rule 2 (a) does not apply, as the goods in issue are not incomplete or unfinished. However, Rule 2 (b) does apply, which indicates that "[a]ny reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance." It was submitted that the seals in issue consist of two substances: non-hardened vulcanized rubber in the rubber rings and carbon steel in the outer casing and spacer. As such, reference to goods made of non-hardened vulcanized rubber or to goods made of carbon steel include a reference to the Klozure oil seals in issue. In this regard, counsel argued that heading No. 40.16, being "[o]ther articles of vulcanized rubber other than hard rubber" and heading No. 73.26, being "[o]ther articles of iron and steel," may be applicable in describing the goods in issue.

According to Rule 3 of the General Rules, when, by application of Rule 2 (b), goods are, *prima facie*, classifiable under two headings, classification shall be effected by reference to the provisions of that rule. Rule 3 (a) indicates that goods are classified under the heading which provides the most specific description. However, "when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods ... those headings are to be regarded as equally specific in relation to those goods." Counsel for the respondent submitted that, as the headings with respect to rubber and steel are equally specific, reference must be made to Rule 3 (b).

Rule 3 (b) of the General Rules indicates that "composite goods consisting of different materials or made up of different components ..., which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character." Referring to *Asea Brown Boveri Inc. v. The Deputy Minister of National Revenue for Customs and Excise*,[5] counsel for the respondent submitted that "the essential characteristic of an article can be defined by the function that gives that article its name.[6]" Therefore, the essential characteristic of a Klozure oil seal is that it seals. Referring to the testimony of Dr. Kardos, counsel argued that the rubber components of the Klozure oil seals provide the seal. The steel casing only serves to locate the rubber rings and to make it convenient to install the rings into a wheel hub.[7] As such, the goods in issue should be classified as if they consisted of the non-hardened vulcanized rubber under tariff item No. 4016.93.00.

Counsel for the respondent also argued in the alternative that the seals could be classified under tariff item No. 4016.99.90 as other articles of vulcanized rubber other than hard rubber. However, in light of its reasoning, the Tribunal felt it unnecessary to address this argument.

The Tribunal notes that any exercise in classifying goods must begin with Rule 1 of the General Rules. According to this rule, "classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes." Rule 1 further indicates that, if

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5. Canadian International Trade Tribunal, Appeal No. AP-89-180, September 9, 1991.
6. *Ibid*. at 5.
7. Counsel for the respondent argued that this is analogous to the Tribunal's reasoning in *Oriental Trading (MTL) Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*, Appeal Nos. AP-91-081 and AP-91-223, August 31, 1992, where it found that the polypropylene stem of a cotton swab is more in the nature of a support and that the essential characteristic of the goods was determined by the cotton component.

reference to these two sources is not sufficient for classifying the goods, reference shall be made to the subsequent rules.

The appellant's representative argued that Note 2 (b) to Section XVI was relevant to the classification of the oil seals under heading No. 84.32. However, this note is subject to several qualifications. First, the three classification rules contained in Note 2 are subject to various other notes. In this regard, counsel for the respondent argued that Note 2 is subject to Note 1, which indicates that Section XVI does not include "other articles of a kind used in machinery or mechanical ... appliances ... of vulcanised rubber other than hard rubber (heading No. 40.16)." Counsel argued that the oil seals are articles of vulcanized rubber classifiable under heading No. 40.16 and, as such, are excluded from the section under which the appellant wants to classify the goods in issue. Second, parts classifiable according to Note 2 (b) are other than those classifiable according to Note 2 (a).

Note 2 (a) to Section XVI reiterates Rule 1 of the General Rules, such that if the parts are goods that are specifically named in a heading of Chapter 84 or 85, they are to be classified in that heading. However, as acknowledged by both parties, the oil seals in issue are not so named.

The Tribunal recognizes that the effect of Note 2 (b) to Section XVI is to qualify the terms of a heading. As such, though parts of the named articles may not themselves be named within the terms of a heading, the heading must be read to include those parts that are "suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading." Note 2 (b) is further qualified by its terms, though without effect to the appellant's argument.

The nomenclature of Schedule I to the *Customs Tariff* is organized into a hierarchical system, and classification of goods within the nomenclature is accomplished through a systematic process. In determining the tariff classification of a commodity, it must first be classified at the four-digit heading level. As such, for the appellant to succeed, the Klozure oil seals must, at least, be found to be parts suitable for use solely or principally with "[a]gricultural, horticultural or forestry machinery for soil preparation" of heading No. 84.32. Specifically, the appellant's representative argued that the oil seals are parts of disc harrows classifiable under this heading.

In understanding what is meant by the term "principally used," the Tribunal was guided by the Explanatory Notes to the Harmonized Commodity Description and Coding System to Section XVII.[8] The Tribunal believes that a part is used "principally" with a parent article if it is used most commonly or abundantly with that article, though it may have other uses. A part is used solely with a parent article if it is dedicated by design or nature to a single purpose.

In arguing that the oil seals were solely or principally for use with disc harrows, the appellant's representative noted that approximately 200 of the seals are produced each year and that, on one occasion, John Deere purchased 125 of the seals. In considering the sufficiency of this evidence, the majority of the Tribunal notes that it is unable to make the critical link between the oil seals purchased by John Deere and those designed to be used on disc harrows. No evidence was provided to link the item number of the oil seals in issue to that represented on the parts diagram of a John Deere disc harrow. Nor was the evidence sufficient to establish that the oil seals in issue are used most commonly or abundantly with disc harrows. Therefore,

8. Customs Co-operation Council, 1st ed., Brussels, 1986, Vol. 4 at 1412.

the majority of the Tribunal is unable to find that heading No. 84.32 must be read to include the oil seals in issue as parts of the named machinery of that heading. As the oil seals cannot be included at the four-digit heading level, they cannot be included in the subordinate tariff item proposed by the appellant.

Accordingly, the appeal is dismissed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Michèle Blouin
Michèle Blouin
Member

DISSENTING OPINION OF MEMBER TRUDEAU

With respect to my colleagues, I have interpreted the evidence differently and find that the Klozure oil seals are parts suitable for use principally with disc harrows classifiable under heading No. 84.32. Based on the testimony of Mr. Coleates, a description of the goods and the parts diagrams tendered as evidence, I am satisfied that the oil seals in issue are parts of disc harrows. It is understandable that Garlock Inc., the manufacturer of the oil seals, would have a product code different from the part number adopted by John Deere, the manufacturer of the disc harrows into which the oil seals are incorporated.

I am satisfied that the oil seals in issue are used principally with disc harrows. The testimony of Mr. Coleates was that Garlock Inc. manufactures no more than 200 of the seals per year. In addition, a purchase order for 125 of the seals from John Deere, the manufacturer of disc harrows, was provided to the Tribunal. In establishing that an article is a part suitable for use solely or principally with a particular kind of machine, I consider it unreasonable to require a party to provide numerical proof by document of sole or principal use. I accept the single purchase order to be indicative of a general trend of consumption of the oil seals by John Deere for use in disc harrows. As a part need only be principally used with a particular kind of machine to be classified in the tariff nomenclature as a part of that machine, I find it irrelevant that the oil seals may be used in different applications. Regardless, I reject the proposition that the oil seals in issue are used as wipers on hydraulic systems.

Accordingly, I would allow the appeal.

Arthur B. Trudeau
Arthur B. Trudeau
Member