

Ottawa, Monday, October 7, 1996

Appeal No. AP-95-109

IN THE MATTER OF an appeal heard on January 31, 1996,
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 dated May 11, 1995, with respect to a request
for re-determination under section 63 of the *Customs Act*.

BETWEEN

BENNETT FLEET INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Lyle M. Russell

Lyle M. Russell
Member

Anita Szlajak

Anita Szlajak
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-95-109

BENNETT FLEET INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether the goods in issue, called “Supertex 300, 400 or 500,” are properly classified in subheading No. 4811.90, as determined by the respondent, or should be classified under tariff item No. 4805.80.10, as claimed by the appellant.

HELD: The appeal is allowed. The Tribunal finds that the goods in issue should be classified in heading No. 48.05 and, more specifically, under tariff item No. 4805.80.10, which provides for the classification of shoeboard. The Tribunal is of the opinion that this tariff item specifically describes the goods in issue.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	January 31, 1996
Date of Decision:	October 7, 1996
Tribunal Members:	Arthur B. Trudeau, Presiding Member Lyle M. Russell, Member Anita Szlazak, Member
Counsel for the Tribunal:	Joël J. Robichaud
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Jocelyn Olivier, for the appellant Stéphane Lilkoff, for the respondent

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TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
LYLE M. RUSSELL, Member
ANITA SZLAZAK, 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 dated May 11, 1995, made under subsection 63(3) of the Act.

The goods in issue, called “Supertex 300, 400 or 500,” are described in the appellant’s brief as being shoeboards used in the manufacture of socklinings, also called interior soles. They are composed of alpha-cellulose fibres, styrene-butadiene latex, stabilizers, antioxidants and dyes. These products are mixed with water to form the pulp. “Supertex” is imported in sheets and then cut to make the interior soles.

The issue in this appeal is whether the goods in issue are properly classified in subheading No. 4811.90 of Schedule I to the *Customs Tariff*,² as determined by the respondent, or should be classified under tariff item No. 4805.80.10, as claimed by the appellant. For the purposes of this appeal, the relevant tariff nomenclature in Schedule I to the *Customs Tariff* is as follows:

48.05	Other uncoated paper and paperboard, in rolls or sheets.
4805.80	-Other paper and paperboard, weighing 225 g/m ² or more
4805.80.10	---Shoeboard
48.11	Paper, paperboard, cellulose wadding and webs of cellulose fibres, coated, impregnated, covered, surface-coloured, surface-decorated or printed, in rolls or sheets, other than goods of the kind described in heading No. 48.03, 48.09 or 48.10.
4811.90	-Other paper, paperboard, cellulose wadding and webs of cellulose fibres

The appellant’s representative called one witness, Mr. Clifford G. Wintemute, Manager, Board Mill, at Bennett Fleet Inc. Mr. Wintemute was accepted as an expert witness in the field of pulp and paper. He described the nature of the goods in issue and their manufacturing process. He explained that latex is added to the cellulose fibre, i.e. at the slurry stage, before the paperboard sheet is produced. Mr. Wintemute testified that the coating and impregnation usually involve the processing of a finished product. During cross-examination, he agreed that impregnation may, however, involve the addition of solutions when the

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

mixture is at the slurry stage of the manufacturing process. He testified that the goods in issue are not coated. According to him, the goods in issue are shoeboards. They are known in the industry and sold by the appellant as shoeboards.

The appellant's representative argued that the goods in issue are not impregnated within the meaning of the relevant nomenclature, because the addition of the latex is part of the normal manufacturing process of the goods in issue. He referred the Tribunal to Note (I) (A) of the *Explanatory Notes to the Harmonized Commodity Description and Coding System*³ (the Explanatory Notes) to Chapter 48, which provides, in part, that "[t]he processes admissible in headings 48.01 to 48.05 are performed as a part of the continuous paper-manufacturing run." According to the representative, the evidence shows that the goods in issue are not paper, paperboard, cellulose wadding or webs of cellulose fibres which have been otherwise processed. The latex is added to the cellulose fibre and not to the finished product. He therefore claimed that Note 2 to Chapter 48 of Schedule I to the *Customs Tariff* does not apply. As a result, the goods in issue cannot be classified in heading No. 48.11. According to the representative, the goods in issue are shoeboards and, consequently, should be classified under tariff item No. 4805.80.10.

Counsel for the respondent argued that the goods in issue are properly classified in subheading No. 4811.90 since they are made of paperboard "impregnated" with latex. Counsel claimed that the latex provides the paperboard with impermeability, resistance and flexibility, which regular paperboard lacks. According to counsel, the fact that the latex is added to the paper pulp and not to the finished product does not prevent the goods in issue from being classified in subheading No. 4811.90. To support his argument, counsel referred to the Tribunal's decision in *D. Dyck Industries Limited v. The Deputy Minister of National Revenue for Customs and Excise*.⁴ In that case, the Tribunal found that the internal sizing, i.e. the addition of solutions to the paper at the slurry stage, to which the Homasote paperboard was subjected, could be defined as an impregnation process. In light of Note 2 to Chapter 48 of Schedule I to the *Customs Tariff*, counsel claimed that the goods in issue cannot be classified in heading No. 48.05.

When classifying goods in Schedule I to the *Customs Tariff*, the application of Rule 1 of the *General Rules for the Interpretation of the Harmonized System*⁵ is of the utmost importance. This rule provides that classification shall be determined according to the terms of the headings and any relative Chapter Notes. As a result, the Tribunal must first decide whether the goods in issue are named or described in general terms in a specific heading of Schedule I to the *Customs Tariff*. If the goods in issue are named in a heading, they must be classified therein subject to any relative Chapter Notes. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, the Tribunal shall have regard to the Explanatory Notes.

Heading No. 48.05 provides for the classification of uncoated paper and paperboard, in rolls or sheets. Note 2 to Chapter 48 of Schedule I to the *Customs Tariff* provides that heading Nos. 48.01 to 48.05 do not apply to "paper, paperboard, cellulose wadding or webs of cellulose fibres which have been otherwise processed." The evidence shows that the goods in issue are not coated and that the latex is added to the cellulose fibre. It is, therefore, the cellulose fibre, and not the paperboard, that is impregnated. According to the Tribunal, the impregnation in this case does not mean that the goods in issue have been otherwise

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

4. Appeal No. AP-91-157, September 30, 1992.

5. *Supra* note 2, Schedule I.

processed, but rather that it is part of the normal process for manufacturing them. The Tribunal is, therefore, of the opinion that the goods in issue are not impregnated within the meaning of Note 2 to Chapter 48 of Schedule I to the *Customs Tariff*. The Tribunal also refers to Note (I) (A) of the Explanatory Notes to Chapter 48, which provides, in part, that “[t]he processes admissible in headings 48.01 to 48.05 are performed as a part of the continuous paper-manufacturing run.” Consequently, the Tribunal finds that the goods in issue should be classified in heading No. 48.05 and, more specifically, under tariff item No. 4805.80.10, which provides for the classification of shoeboard. The Tribunal is of the opinion that this tariff item specifically describes the goods in issue.

For the foregoing reasons, the appeal is allowed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Lyle M. Russell

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Member

Anita Szlazak

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