

Ottawa, Tuesday, December 2, 1997

**Appeal No. AP-96-127**

IN THE MATTER OF an appeal heard on May 20, 1997, 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 September 27, 1996, with respect to a request for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**KANENG INDUSTRIES INC.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-96-127**

**KANENG INDUSTRIES INC.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

This is an appeal under section 67 of the *Customs Act* from a decision of the Deputy Minister of National Revenue dated September 27, 1996. The goods in issue are strips of “laminates based on glass fabric bonded together with a modified epoxy resin,” imported in 50- and 100-m coils, designed for the production of doctor blades. Both the width and the thickness of the strips vary, but the physical exhibits introduced by the appellant at the hearing were approximately 2 cm wide and 1.5 mm thick, with a bevelled edge along one side of the strips.

The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 3926.90.99 as other articles of plastic, as determined by the respondent, or should be classified under tariff item No. 8439.99.90 as other parts of machinery for making or finishing paper or paperboard, as claimed by the appellant.

**HELD:** The appeal is allowed. Before considering whether the goods in issue are classifiable as “parts” within the tariff nomenclature, the Tribunal must decide whether the goods in issue are parts of machinery for making or finishing paper or paperboard, in the generic sense. In considering the evidence on the record regarding the characteristics and uses of the goods in issue, the Tribunal is persuaded that they are essential to the operation of paper-making machinery and, moreover, that they are necessary and integral components of such machinery. As such, the Tribunal is of the view that the goods in issue are parts of paper-making machinery. The goods in issue remove sheets of paper from the machinery or clean or condition calender rolls. In the Tribunal’s view, without the contribution of the goods in issue to the paper-making process, the paper-making machinery could not perform its intended function, that being to make paper.

The Tribunal notes that, although the goods in issue do not constitute finished doctor blades at the time of importation, Rule 2 (a) of the *General Rules for the Interpretation of the Harmonized System* extends the scope of any heading to include a reference to an article incomplete or unfinished, provided the incomplete or unfinished article, as presented, has the essential character of the complete or finished article. In this regard, the Tribunal is of the view that, at the time of importation, the goods in issue have the essential character of doctor blades, in that they are manufactured or machined to such a degree that they are committed for use as doctor blades. The only features of finished doctor blades not possessed by the goods in issue are length and, in some cases, holes for attaching them to the machine for which they are intended. In all cases, they have been machined for use as doctor blades.

With respect to the classification of the goods in issue as “parts” within the tariff nomenclature, the Tribunal acknowledges that the goods are not specifically named or generically described in any of the headings of Chapter 84 or 85, as contemplated by Note 2(a) to Section XVI. In the Tribunal’s view, the goods in issue are suitable for use solely with paper-making machinery, as contemplated by Note 2(b) to

Section XVI. In this regard, the Tribunal notes the extent to which the goods in issue have been manufactured, specifically in respect of the bevelling and rebating of the edges. In the Tribunal's view, at the time of importation, the goods are dedicated by design to papermaking. Accordingly, the goods in issue are classified with paper-making machinery in heading No. 84.39 as "[m]achinery ... for making or finishing paper or paperboard." The Tribunal does not consider the goods to be "parts of general use" within the meaning of Note 2 to Section XV.

Since Note 2(p) to Chapter 39 specifically excludes from classification in that chapter goods classified in Section XVI, the Tribunal finds that the goods in issue cannot *prima facie* be classifiable in heading No. 39.26.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	May 20, 1997
Date of Decision:	December 2, 1997
Tribunal Member:	Charles A. Gracey, Presiding Member
Counsel for the Tribunal:	Heather A. Grant
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Paul Hughes, for the appellant R. Jeff Anderson, for the respondent

**Appeal No. AP-96-127**

**KANENG INDUSTRIES INC.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member

**REASONS FOR DECISION**

This is an appeal, heard by one member of the Tribunal,<sup>1</sup> under section 67 of the *Customs Act*<sup>2</sup> from a decision of the Deputy Minister of National Revenue dated September 27, 1996. The goods in issue are strips of "laminates based on glass fabric bonded together with a modified epoxy resin," imported in 50- and 100-m coils, designed for the production of doctor blades. Both the width and the thickness of the strips vary, but the physical exhibits introduced by the appellant at the hearing were approximately 2 cm wide and 1.5 mm thick, with a bevelled edge along one side of the strips.

The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 3926.90.99 of Schedule I to the *Customs Tariff*<sup>3</sup> as other articles of plastic, as determined by the respondent, or should be classified under tariff item No. 8439.99.90 as other parts of machinery for making or finishing paper or paperboard, as claimed by the appellant.

The relevant tariff nomenclature reads as follows:

39.26	Other articles of plastics and articles of other materials of heading Nos. 39.01 to 39.14.
3926.90	-Other
	---Other:
3926.90.99	----Other
84.39	Machinery for making pulp of fibrous cellulosic material or for making or finishing paper or paperboard.
	-Parts:
8439.99	--Other
8439.99.90	---Other

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1. Section 3.2 of the *Canadian International Trade Tribunal Regulations*, added by SOR-95-27, December 22, 1994, *Canada Gazette* Part II, Vol. 129, No. 1 at 96, provides, in part, that the Chairman of the Tribunal may, taking into account the complexity and precedential nature of the matter at issue, determine that one member constitutes a quorum of the Tribunal for the purposes of hearing, determining and dealing with any appeal made to the Tribunal pursuant to the *Customs Act*.

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

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

Mr. Paul R. Henzell, Vice-President of KanEng Industries Inc., appeared as the only witness on behalf of the appellant. Mr. Henzell explained that the appellant was a family business founded in 1982 by his father. Mr. Henzell was hired in late 1988 when the firm had only four employees. Consequently, he indicated that he is familiar with all of the appellant's operations. Mr. Henzell stated that, in his current position, he is responsible for overseeing client operations, quality control and purchasing.

Mr. Henzell testified that the appellant is a supplier of auxiliary equipment for paper-making machines and specializes in equipment used for the drying and calendering of paper. He explained that calendering consists of passing paper through heated rolls to obtain a glossy finish. The appellant's principal area of business is the manufacture of doctors and related accessories, such as finished doctor blades. Doctors hold the doctor blades in place on the paper-making machines. Mr. Henzell explained that doctor blades are crucial to the paper-making process. They are used for three different functions: (1) to remove sheets of paper from the machinery; (2) to clean the rolls on which the paper is made; and (3) to condition the rolls. According to Mr. Henzell, most machines have at least 20 doctors.

Mr. Henzell stated that the goods in issue are manufactured in Austria. The manufacturer continuously bonds glass fabric together with a modified epoxy resin until a sheet of Vetronite is produced. The coiled sheet is then trimmed of its rough edges and cut into strips. The manufacturer then machines the strips to exact specifications with a grinder to provide the required bevel, or bevel and rebate, for the type of blade holder for which it is ultimately intended. "Rebating" is a term used to describe the shaping of the edge that attaches to the paper-making machinery. Mr. Henzell explained that, in some cases, once the machined strips are cut to length, they can be installed into a blade holder for immediate use. In other cases, customers require the machined strips not only to be cut to length but also to have rivets or holes punched into them for the purpose of attaching the strips to the intended machines.

According to Mr. Henzell, the appellant only imports machined strips. In further testimony, he explained the steps involved from receipt of the coils to shipment of the finished goods to the appellant's customers. The coils are uncoiled, cut to length and punched, if necessary, with holes for rivets to attach the blade to a particular machine. Rivets with clips are inserted, end holes are punched to facilitate removal of the doctor blades when replaced, a label is applied, and the finished item is coiled and packaged for shipment. In some cases, slots are also cut into the blades to assist in heat dissipation. Further to questions from the Tribunal, Mr. Henzell explained that the doctor blades are subject to wear and, in some applications, are replaced once every work shift, while, in other applications, the blades might need changing only after two months' use.

In cross-examination, Mr. Henzell explained that the number of doctor blades cut from each imported coil depends on the width of the machine to which the blades would be attached. Furthermore, for each doctor blade, there is a precise drawing to indicate the exact rivet pattern to be cut. In further cross-examination, counsel for the respondent pointed out that, contrary to earlier explanations, a letter from the President of KanEng Industries Inc. indicated that, on occasion, the appellant did rebate and further machine some of the doctor blades. Mr. Henzell responded that, while the appellant had the capability to do such work, it did so only on an emergency basis.

In argument, counsel for the appellant submitted that the evidence clearly shows that the goods in issue, as imported, were not merely cut and trimmed by the manufacturer, but were fully machined and, as such, have the essential character of doctor blades. Counsel argued that the goods in issue are neither blanks nor semi-manufactured articles, given the degree to which they are manufactured abroad. He submitted that only minor finishing steps are undertaken by the appellant subsequent to importation to ensure that the goods in issue can be attached to the appropriate blade holder. Once cut to length, the doctor blades are virtually ready for direct installation into a blade holder. Counsel submitted that at issue is the essential character of

the goods in issue and not their essential shape, size and dimensions, which criteria apply to consideration of the goods in issue as blanks and not otherwise.

With respect to a ruling issued by the U.S. Customs Service<sup>4</sup> pertaining to goods virtually identical to those in issue, on which counsel for the respondent relied, counsel for the appellant argued that it should be disregarded. First, he submitted that such rulings are not binding on the Tribunal. Furthermore, the ruling does not take into account that the imported goods are integral and necessary parts of paper-making machines and that the machines cannot function without them. He also argued that the ruling does not consider that the goods in issue are specifically committed by design to this particular function.

In support of the appellant's position, counsel for the appellant relied on the *General Rules for the Interpretation of the Harmonized System*<sup>5</sup> (the General Rules). In particular, counsel focused on Rule 2 (a) of the General Rules, which extends the scope of any heading to include a reference to an article incomplete or unfinished, provided the incomplete or unfinished article, as presented, has the essential character of the complete or finished article. Counsel further emphasized that the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>6</sup> (the Explanatory Notes) to heading No. 84.39 provide that parts of the machinery of that heading are also classified therein, subject to the general provisions regarding the classification of parts set out in Note 2 to Section XVI. Counsel further submitted that Note 2(p) to Chapter 39 excludes classification in that chapter of articles of Section XVI. Counsel submitted that, because the goods in issue are manufactured and solely committed by design to be incorporated, after further finishing, into blade holders for doctor assemblies to be used in the paper-making process, they cannot be considered as "parts of general use." Consequently, they are not subject to the exclusion of such articles from heading No. 84.39 set out in Note 1(g) to Section XVI.

Counsel for the respondent submitted that the goods in issue are classifiable in heading No. 39.26. In support of this view, counsel referred the Tribunal to the Explanatory Notes to Chapter 39. Specifically, he referred the Tribunal to paragraph (d) under "Combinations of plastics and materials other than textiles," which states that "[p]roducts consisting of glass fibres or sheets of paper, impregnated with plastics and compressed together, **provided** they have a hard, rigid character," are covered by Chapter 39, provided they retain the essential character of articles of plastics. Counsel argued that the goods in issue meet this description and that the only way that they can be excluded from classification in this chapter would be by virtue of Note 2(p) to Chapter 39, which excludes articles of Section XVI, specifically, "machines and mechanical or electrical appliances."

While counsel for the respondent conceded that the goods in issue are essential components of a pulp and paper machine, he emphasized that the respondent takes issue with the allegation found in a note from the manufacturer that a doctor blade is anything that has been bevelled, as opposed to something that fits the exact specifications of a machine. Counsel argued that the goods in issue are not complete doctor blades and do not have the essential characteristics of doctor blades at the time of importation. He submitted that it is the appellant that customizes each blade, making it suitable as a part for a specific machine.

In determining the classification of the goods in issue, the Tribunal is cognizant that Rule 1 of the General Rules is of the utmost importance. Rule 1 provides that classification is first determined by the wording of the headings and any relative Section or Chapter Notes. Rule 2 (a), furthermore, extends the scope of any heading to include a reference to that article incomplete or unfinished, provided the incomplete or unfinished article, as presented, has the essential character of the complete or finished article.

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4. File No. HQ 954366, September 7, 1993.

5. *Supra* note 3, Schedule I.

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

With respect to relative Section or Chapter Notes, Note 2 to Section XVI, which includes Chapter 84, is relevant. Note 2(b) provides that parts, other than parts which are goods included in any of the headings of Chapter 84 or 85 pursuant to Note 2(a), “if suitable for use solely or principally with a particular kind of machine, . . . are to be classified with the machines of that kind.”

Before considering whether the goods in issue are classifiable as “parts” within the tariff nomenclature, the Tribunal must decide whether the goods in issue are parts of machinery for making or finishing paper or paperboard, in the generic sense. In order to make this determination, the Tribunal adopted the approach previously taken in other appeals, namely, that there is no one universally applicable test to determine whether goods are parts of other goods and that each case must be determined on its own merits. In previous cases, the Tribunal has considered, among other things, the following factors: (1) whether the product is essential to the operation of another product; and (2) whether the product is a necessary and integral component of the other product.<sup>7</sup>

In considering the evidence on the record regarding the characteristics and uses of the goods in issue, the Tribunal is persuaded that they are essential to the operation of paper-making machinery and, moreover, that they are necessary and integral components of such machinery. As such, the Tribunal is of the view that the goods in issue are parts of paper-making machinery. The goods in issue remove sheets of paper from the machinery or clean or condition calender rolls. In the Tribunal’s view, without the contribution of the goods in issue to the paper-making process, the paper-making machinery could not perform its intended function, that being to make paper.

The Tribunal notes that, although the goods in issue do not constitute finished doctor blades at the time of importation, Rule 2 (a) of the General Rules extends the scope of any heading to include a reference to an article incomplete or unfinished, provided the incomplete or unfinished article, as presented, has the essential character of the complete or finished article. In this regard, the Tribunal is of the view that, at the time of importation, the goods in issue have the essential character of doctor blades, in that they are manufactured or machined to such a degree that they are committed for use as doctor blades. The only features of finished doctor blades not possessed by the goods in issue are length and, in some cases, holes for attaching them to the machine for which they are intended. In all cases, they have been machined for use as doctor blades.

The Tribunal does not agree with counsel for the respondent’s suggestion, as set out in the respondent’s brief, that goods not having the essential shape, size and dimensions of the finished goods would not have the essential character of the finished goods. The Tribunal further notes that its decision<sup>8</sup> on which counsel relied in support of the importance of shape, size and dimensions in classifying goods under the *Customs Tariff* does not specifically address the issue of “essential character,” as contemplated by Rule 2 (a) of the General Rules.

With respect to the classification of the goods in issue as “parts” within the tariff nomenclature, the Tribunal acknowledges that the goods are not specifically named or generically described in any of the headings of Chapter 84 or 85, as contemplated by Note 2(a) to Section XVI. In the Tribunal’s view, the goods in issue are suitable for use solely with paper-making machinery, as contemplated by Note 2(b) to Section XVI. In this regard, the Tribunal notes the extent to which the goods in issue have been

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7. *Philips Electronics Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*, Appeal No. AP-90-211, June 15, 1992; and *Snydergeneral Canada Inc. v. The Deputy Minister of National Revenue*, Appeal No. AP-92-091, September 19, 1994.

8. *Importation/Exportation Y&Y v. The Deputy Minister of National Revenue for Customs and Excise*, Appeal No. AP-90-081, September 12, 1991.

manufactured, specifically in respect of the bevelling and rebating of the edges. In the Tribunal's view, at the time of importation, the goods are dedicated by design to papermaking. Accordingly, the goods in issue are classified with paper-making machinery in heading No. 84.39 and, further, under tariff item No. 8439.99.90 as other parts of machinery for making or finishing paper or paperboard. The Tribunal does not consider the goods to be "parts of general use" within the meaning of Note 2 to Section XV.<sup>9</sup>

Since Note 2(p) to Chapter 39 specifically excludes from classification in that chapter goods classified in Section XVI, the Tribunal finds that the goods in issue cannot *prima facie* be classifiable in heading No. 39.26.

For the foregoing reasons, the appeal is allowed.

Charles A. Gracey

Charles A. Gracey

Presiding Member

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9. A finding that goods, 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 or in specific headings, as appropriate, is subject to Note 1 to Section XVI, Note 1 to Chapter 84 and Note 1 to Chapter 85. The relevant paragraph of Note 1 to Section XVI is (g), which provides that parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39), are not covered by Section XVI. Note 2 to Section XV provides that the expression "parts of general use" means: (a) articles of heading No. 73.07, 73.12, 73.15, 73.17 or 73.18 and similar articles of other base metals; (b) springs and leaves for springs, of base metal, other than clock or watch springs (heading No. 91.14); and (c) articles of heading Nos. 83.01, 83.02, 83.08 and 83.10 and frames and mirrors, of base metal, of heading No. 83.06. Neither Note 1 to Chapter 84 nor Note 1 to Chapter 85 appears to apply in this case.