

Ottawa, Tuesday, April 29, 1997

**Appeal No. AP-96-078**

IN THE MATTER OF an appeal heard on February 11, 1997,  
under section 67 of the *Customs Act*, R.S.C. 1985, c. 1  
(2nd Supp.);

AND IN THE MATTER OF several decisions of the Deputy  
Minister of National Revenue dated September 4, 1996, with  
respect to a request for re-determination under section 63 of the  
*Customs Act*.

**BETWEEN**

**FASTCO CANADA**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

Raynald Guay  
Raynald Guay  
Member

Patricia M. Close  
Patricia M. Close  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-96-078**

**FASTCO CANADA**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

The issue in this appeal is whether Coverite vehicle covers are properly classified under tariff item No. 6307.90.99 as other made up articles of textile materials, as determined by the respondent, or should be classified under tariff item No. 8708.99.99 as other parts and accessories of the motor vehicles of heading Nos. 87.01 to 87.05, as claimed by the appellant.

**HELD:** The appeal is dismissed. Though the goods in issue are accessories of motor vehicles in the grammatical and ordinary sense, they are more specifically described as loose covers for motor-cars. As loose covers for motor-cars are specifically included in heading No. 63.07, the Tribunal finds that they are properly classified under tariff item No. 6307.90.99.

Place of Hearing: Ottawa, Ontario  
Date of Hearing: February 11, 1997  
Date of Decision: April 29, 1997

Tribunal Members: Charles A. Gracey, Presiding Member  
Raynald Guay, Member  
Patricia M. Close, Member

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Margaret Fisher

Appearances: Peter E. Kirby, for the appellant  
Louis Sebastien, for the respondent

**Appeal No. AP-96-078**

**FASTCO CANADA**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
RAYNALD GUAY, Member  
PATRICIA M. CLOSE, Member

**REASONS FOR DECISION**

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> (the Act) from several decisions of the Deputy Minister of National Revenue made pursuant to section 63 of the Act. The issue in this appeal is whether Coverite vehicle covers are properly classified under tariff item No. 6307.90.99 of Schedule I to the *Customs Tariff*<sup>2</sup> as other made up articles of textile materials, as determined by the respondent, or should be classified under tariff item No. 8708.99.99 as other parts and accessories of the motor vehicles of heading Nos. 87.01 to 87.05,<sup>3</sup> as claimed by the appellant.

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

63.07	Other made up articles, including dress patterns.
6307.90	-Other
	---Other:
6307.90.99	----Of other textile materials
87.08	Parts and accessories of the motor vehicles of heading Nos. 87.01 to 87.05.
	-Other parts and accessories:
8708.99	--Other
	---Other:
8708.99.99	----Other

Mr. Glenn Chaplin, President of Fastco Canada, served as the appellant's witness. He told the Tribunal that the appellant is an importer and seller of automotive accessories. The goods in issue are sold in Canada by the appellant to large retail stores and wholesale distributors of automotive accessories that resell them to garages and dealers of automotive parts and accessories.

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1. R.S.C. 1985, c. 1 (2nd Supp.).
  2. R.S.C. 1985, c. 41 (3rd Supp.).
  3. Heading Nos. 87.01 to 87.05 include domestic cars and light trucks.

The goods in issue are marketed in six different sizes for cars<sup>4</sup> and in various fabrics, including polyester, polyester/cotton and nonwoven polypropylene. They are used to protect motor vehicles from damage due to exposure to the sun, dust, pollutants, salt and moisture.

The goods in issue have some or all of the following features: a driver's side door zipper, mirror pockets, a reinforced antenna patch, a speed strap for theft deterrence and easy installation, elastic hems, a drawstring storage bag, double stitched inseams and reinforced side grommets for tie-down or optional lock. Mr. Chaplin said that, because there is a specific cover for each vehicle and because of the features of the covers, they are "fitted covers." This is in contrast to "loose covers" such as sheets of plastic, blankets, etc.

In cross-examination, Mr. Chaplin explained that each of the six sizes of the goods in issue for cars can be used on various vehicles. For example, size "F" is designed to fit cars from 17 ft. 7 in. to 18 ft. 9 in. in length. He clarified, however, that, because of the elastic hem, the goods in issue are gathered at the bottom and remain relatively tight.

Counsel for the appellant submitted that vehicle covers are named and/or generically described in heading No. 87.08 as other accessories of the motor vehicles of heading Nos. 87.01 to 87.05. Heading No. 87.03 includes domestic motor vehicles for which the goods in issue are designed. As such, the goods in issue should be classified under tariff item No. 8708.99.99.

Counsel for the appellant submitted that, in its ordinary and grammatical sense, the word "accessory" includes an object that contributes in a subordinate way to the usefulness, effectiveness, beauty and appearance of the principal object, in this case, the motor vehicle. This is consistent with the meaning of "accessory" adopted by the Tribunal in *Karl Hager Limb & Brace (Kelowna) Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*.<sup>5</sup> The goods in issue contribute in a subordinate way to motor vehicles by protecting them from wear and tear from such things as the elements, pollution and salt. By doing so, the outer appearance of a vehicle is better maintained, thus contributing to the value of the vehicle.

Within the automotive trade as well, vehicle covers are considered "accessories" of motor vehicles. Coverite Industries, Inc., the manufacturer of the goods in issue, is regularly present at major trade shows for manufacturers of automotive accessories. Furthermore, any full-service automotive accessory dealer would normally sell vehicle covers as part of its regular line of motor vehicle accessories. The goods in issue are sold to retail customers either in automotive departments of large retail stores or in garages or to other specialized motor vehicle accessory dealers.

The goods in issue meet the definition and requirements of "accessories" as stated in the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>6</sup> (the Explanatory Notes) to heading No. 87.08. The first requirement is that the accessories be used solely or principally with the motor vehicles of heading Nos. 87.01 to 87.05. On this point, counsel for the appellant submitted that the covers are used solely or principally with vehicles classifiable in these headings and have no other use. The second requirement is that the accessories not be excluded by the provisions of the notes to Section XVII of

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4. In addition, the appellant sells 19 sizes of the goods in issue for trucks, 4 sizes for vans and 7 sizes for all-terrain vehicles.

5. Appeal No. AP-91-183, May 19, 1993. The Tribunal referred to *The Oxford English Dictionary*, Volume I, 2nd ed. (Oxford: Clarendon Press, 1989) at 74, which defined "accessory" to mean "something contributing in a subordinate degree to a general result or effect; an adjunct, or accompaniment."

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

Schedule I to the *Customs Tariff*. On this point, counsel stated that the goods in issue are not excluded by any of these provisions and that they are not specifically named elsewhere in the nomenclature.

Counsel for the appellant noted that classification of the goods in issue by the respondent is based on the Explanatory Notes to heading No. 63.07, which state that heading No. 63.07 includes, amongst other things, “[l]oose covers for motor-cars.” Counsel submitted that the goods in issue are not “loose covers” within the ordinary meaning of this term. Rather, they are carefully fitted and are designed to match every individual vehicle that they cover.

Counsel for the respondent noted that, since the word “accessories” is not defined in the *Customs Tariff*, it is necessary to consider the relevant jurisprudence and dictionary definitions.

For the goods in issue to be defined as “accessories” based on the case law and the dictionary meaning, they must contribute in a subordinate degree to the general result or purpose for which motor vehicles are designed. Counsel for the respondent argued that the goods in issue do not contribute to the ability of the vehicles classified in heading Nos. 87.03 and 87.04 to transport either goods or people, the general purpose for which they were designed. Moreover, because they cannot safely be attached to a vehicle when in operation, which is its chief function, they cannot be considered accessories.

The Explanatory Notes to heading No. 63.07 state that this heading covers “articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.” Counsel for the respondent submitted that the goods in issue are not specifically included elsewhere in the nomenclature. Furthermore, the Explanatory Notes explicitly state that heading No. 63.07 includes “[l]oose covers for motor-cars.”

In deciding whether the goods in issue are accessories of motor vehicles, the Tribunal had regard to its caveat in *Dannycy Trading (Canada) Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*.<sup>7</sup> In approaching the question of whether certain goods were parts or accessories of domestic hair dryers, the Tribunal noted that “there is no universally applicable test and that each case must be determined on its merits.”<sup>8</sup>

For an understanding of the grammatical and ordinary meaning of “accessory,” the Tribunal referred to *The Oxford English Dictionary*,<sup>9</sup> where it is defined as:

something contributing in a subordinate degree to a general result or effect; an adjunct, or accompaniment.<sup>10</sup>

The Tribunal rejects the argument of counsel for the respondent that motor vehicles serve only to transport goods and people. As stated by Mr. Chaplin, if this were so, “we would all be driving Ladas.”<sup>11</sup> The Tribunal accepts the evidence of Mr. Chaplin to the effect that the goods in issue are accompaniments to motor vehicles in that they are designed, manufactured, imported and sold exclusively for use with motor vehicles. With use, they will protect and preserve the appearance, integrity and value of a motor vehicle. The

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7. Appeal No. AP-93-237, June 16, 1994.

8. *Ibid.* at 2-3.

9. Volume I, 2nd ed. (Oxford: Clarendon Press, 1989).

10. *Ibid.* at 74.

11. *Transcript of Public Hearing*, February 11, 1997, at 23.

Tribunal also accepts the evidence of Mr. Chaplin that “people buy cars for their looks and for their presentation and for their sportiness.<sup>12</sup>” By protecting motor vehicles, the goods in issue contribute to this end. As such, the Tribunal is of the view that the goods in issue are accessories of motor vehicles.

That the goods in issue are accessories of motor vehicles is not, however, necessarily determinative of their tariff classification. Rather, it merely suggests that heading No. 87.08 may apply; it does not reveal the applicability of any other heading nor which heading amongst those potentially applicable is the most appropriate.

In coming to a view on what goods are contemplated in the two headings at issue, the Tribunal had regard to the Explanatory Notes.<sup>13</sup> As approved by the Customs Co-operation Council,<sup>14</sup> the Explanatory Notes constitute the official interpretation of the *Harmonized Commodity Description and Coding System* at the international (up to the sixth digit) level.<sup>15</sup> The Tribunal has interpreted the requirement to have “regard” to the Explanatory Notes to mean that it must take them into account when coming to a view on the tariff classification of goods. The Tribunal does not consider itself bound by the Explanatory Notes and, after taking them into account in its deliberations, it will give them whatever weight it considers appropriate.

The Explanatory Notes to heading No. 63.07 state that the heading includes “[l]oose covers for motor-cars, machines, suitcases, tennis rackets, etc.” In determining whether the goods in issue constitute loose covers for motor-cars, the Tribunal had regard to the Explanatory Notes to heading No. 63.06, which state that:

[t]arpaulins should not be confused with loose covers for motor-cars, machines, etc., made of tarpaulin material to the shape of these articles ... (heading 63.07).

The Tribunal takes this statement to indicate that loose covers for motor-cars include those covers made to the shape of motor-cars. The testimony of Mr. Chaplin was to the effect that the goods in issue are made to the general shape of motor vehicles. That the goods in issue may be regarded as loose covers in the grammatical and ordinary sense is supported by the fact that each of the six sizes of the goods in issue for cars is designed to be useable on several makes of vehicles.<sup>16</sup> Contrary to the assertions of counsel for the appellant, there is not a specific cover for each and every make of vehicle. Although the goods in issue have certain features, including elastic hems and side grommets, that may secure them over a vehicle, the Tribunal is not persuaded that the goods in issue are other than loose covers. The Tribunal is of the view that the goods in issue can be regarded as loose covers, as that term is used in the Explanatory Notes to heading No. 63.07.

The Explanatory Notes to Section XVII, which includes heading No. 87.08, indicate that various headings within the chapters of that section provide for the classification of accessories. They stipulate, however, that these headings apply only to those accessories that comply with three conditions. Of particular

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12. *Ibid.*

13. Section 11 of the *Customs Tariff* states that, “[i]n interpreting the headings and subheadings in Schedule I, regard shall be had to the ... [Explanatory Notes].”

14. The *Harmonized Commodity Description and Coding System* was developed under the auspices of the Customs Co-operation Council.

15. *Introducing the International Convention on the Harmonized Commodity Description and Coding System*, Customs Co-operation Council, 1987 at 36.

16. See Exhibit A-5.

relevance to the classification of the goods in issue is the condition that an accessory “must not be more specifically included elsewhere in the Nomenclature.”

As stated above, the Tribunal is of the view that the goods in issue are loose covers included within heading No. 63.07. It is also of the view that they are more specifically included in heading No. 63.07 as loose covers for motor-cars than in heading No. 87.08 as accessories to motor vehicles.

Accordingly, the appeal is dismissed.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member

Raynald Guay  
Raynald Guay  
Member

Patricia M. Close  
Patricia M. Close  
Member