CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, February 19, 1998

Appeal No. AP-97-036

IN THE MATTER OF an appeal heard on November 28, 1997, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue dated March 21, 1997, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

SPALDING CANADA INC. **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

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-97-036

SPALDING CANADA INC. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal under section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue made under section 63 of the *Customs Act*. Both parties agreed that the goods in issue are properly classified under tariff item No. 9506.32.90. Therefore, the only issue in this appeal is whether the goods in issue qualify for the benefits of Code 6472 of the schedule to the *Customs Duties Reduction or Removal Order, 1988, No. 1*. More particularly, the Tribunal must determine whether the goods in issue were "primed" in Canada.

HELD: The appeal is dismissed. Code 6472, before it was amended, provided for duty-free entry of "[g]olf balls of tariff item No. 9506.32.90, requiring finishing in Canada, such finishing to include priming, labelling and lacquering." It was amended in March 1997 and now provides for duty-free entry of "[g]olf balls of tariff item No. 9506.32.90, requiring finishing in Canada, such finishing to include labelling and lacquering." The present appeal deals with Code 6472 as it read prior to the amendment. The Tribunal agrees with counsel that the three operations had to be performed in Canada in order for the goods in issue to qualify for the benefits of Code 6472. The evidence clearly shows that the "labelling and lacquering" were performed in Canada.

There was no definition in the tariff nomenclature of the word "priming." The Tribunal, therefore, considered the dictionary definitions to which counsel referred. The Tribunal agrees with counsel for the respondent that it must interpret the word "priming" within the context of the tariff nomenclature. In light of this, the Tribunal is of the view that "priming" had to refer to something much more than simply "to prepare or make ready for a particular purpose or operation," as argued by counsel for the appellant. The Tribunal is more inclined to agree with counsel for the respondent's argument that "priming," within the context of Code 6472 and the tariff nomenclature, meant the application of a first coat of paint, epoxy primer or some other kind of coat.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	November 28, 1997
Date of Decision:	February 19, 1998
Tribunal Member:	Charles A. Gracey, Presiding Member
Counsel for the Tribunal:	Joël J. Robichaud
Clerk of the Tribunal:	Margaret Fisher
Appearances:	Peter E. Kirby, for the appellant Jan Brongers, for the respondent

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Appeal No. AP-97-036

SPALDING CANADA INC. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*[1] (the Act), heard by one member of the Tribunal,[2] from decisions of the Deputy Minister of National Revenue made under section 63 of the Act and dated March 21, 1997.

The goods in issue, described as "unfinished golf balls," were classified under tariff item No. 9506.32.90 of Schedule I to the *Customs Tariff*[3] as other golf balls. At the time of importation, the respondent determined that the goods in issue did not qualify for duty-free entry under Code 6472 of the schedule to the *Customs Duties Reduction or Removal Order, 1988, No. 1*.[4] Code 6472 provides for duty-free entry of "[g]olf balls of tariff item No. 9506.32.90, requiring finishing in Canada, such finishing to include priming, labelling and lacquering." The respondent determined that the goods in issue did not qualify for the benefits of Code 6472, since the operation of "priming" was not performed in Canada. The appellant made requests for re-determination under sections 60 and 63 of the Act, which were both denied by the respondent.

Both parties agreed that the goods in issue are properly classified under tariff item No. 9506.32.90. Therefore, the only issue in this appeal is whether the goods in issue qualify for the benefits of Code 6472. More particularly, the Tribunal must determine whether the goods in issue were "primed" in Canada.

At the hearing, Mr. Al Luciani, Director of Operations, and Mr. Bernie Polillo, Plant Manager, Spalding Canada Inc., both testified on behalf of the appellant. They explained that the appellant is part of Spalding International, which has its head office in Massachusetts, United States. They further explained that the appellant has been a separate entity since the 1920s. Originally, the appellant's operations were in Brantford, Ontario, where go1f balls were manufactured. Over time, it became apparent that the manufacture of golf balls in Brantford was not competitive, and the company simultaneously closed its

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. 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 Act.
3. R.S.C. 1985, c. 41 (3rd Supp.).
4. SOR/88-73, December 31, 1987, *Canada Gazette* Part II, Vol. 122, No. 2 at 631.

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facilities, discontinued the manufacture of golf balls and relocated to Concord, Ontario. Thereafter, the manufacture of golf balls was centralized in the United States.

The appellant then began importing unfinished golf balls from its US parent. These unfinished goods entered Canada under heading No. 95.06. These changes in procedures occurred around 1979. At that time, the golf balls qualified for duty-free entry under Code 6472. The priming stage included applying a coat of epoxy primer to the golf balls. This was followed by labelling and lacquering. Mr. Luciani and Mr. Polillo explained that, some time in 1992, due to environmental concerns, mostly in the United States, it was decided to discontinue applying the epoxy and to replace the epoxy with a water-based primer. A corporate decision was made by the US head office that this step in the procedure should be done in the United States, prior to shipment of the golf balls to Canada. This decision was based on the fact that the whole process was automated in the US plant and that it made no economic sense to continue to apply the primer coat in Canada.

Mr. Luciani and Mr. Polillo asserted, however, that some elements of the priming process continued to be done in the Concord plant after the discontinuation of the application of an epoxy primer. They explained that the unfinished golf balls are received in drums containing 150 dozen balls, which are placed in plastic baskets containing many small holes that expedite air flow. The baskets of golf balls are then placed in a heating room, where they are heated to 100°F in an atmosphere where the humidity is held constant at 30 percent. According to Mr. Luciani and Mr. Polillo, there is massive air circulation akin to a wind tunnel. The golf balls remain in this heating room for a minimum of eight hours. They testified that this heating process is necessary to precondition the balls for the labelling stage. Samples of golf balls which had been labelled without the heating process were introduced into evidence. The labels were not as clear or sharp on the balls that had not been preheated. Once the balls have been preheated, they are moved to a stamping area where the hoppers have been preheated, and heat lamps are turned on in order to maintain the temperature of the golf balls at or near 100°F. They are then fed onto a conveyor track and stamped with the appropriate name and special event logo. After stamping, the balls are coated with lacquer to provide a protective coating. The finished balls are then packed and shipped.

Mr. Luciani and Mr. Polillo testified that, when the epoxy stage was discontinued, no machinery was lost or taken out of service. The same machinery, once used to apply the epoxy coat, was also used to apply the final lacquer coat. In addition, they testified that no employees were laid off as a result of the discontinuation of the epoxy stage and that, in fact, employment increased due to growth in their specialty business, which involves the addition of promotional logos. Mr. Luciani and Mr. Polillo testified that, in their view, “priming” means the preparing of the golf balls for stamping. Mr. Luciani testified that, while the application of the epoxy coat had been a part of the priming stage, the heat treatment was also a priming activity, as it was necessary to prepare the goods for stamping.

In cross-examination, Mr. Luciani and Mr. Polillo testified that the only manufacturer of golf balls in Canada to benefit from Code 6472 was the appellant. They agreed that the tariff code was created to accommodate the production or finishing activities then carried out in Canada, namely, priming, stamping and lacquering. They testified that the decision to replace the epoxy finish with the water-based paint was made in 1995 and not in 1992, as previously suggested. They testified that, following a visit to the appellant’s premises, officials from the Department of National Revenue (Revenue Canada) determined that, as the epoxy coating stage had been discontinued, the appellant no longer qualified for the benefits of Code 6472. The appellant then retained a broker, and persistent efforts were made to have the tariff code reworded. This occurred in March 1997. Mr. Luciani and Mr. Polillo testified that the deletion of the word “priming” was

acceptable to them, not because they agreed that "priming" did not continue to occur in Canada, but because they were unsuccessful in convincing Revenue Canada that no change was necessary.

In answering questions from the Tribunal, Mr. Luciani and Mr. Polillo reaffirmed that the heating process was done prior to the discontinuation of the epoxy priming process. In their view, the entire process, i.e. the epoxy priming and the heat treatment, constitutes the "priming" operation. Furthermore, the heat treatment itself constitutes a type of priming. They could provide no evidence that the heat treatment process had been referred to as part of the priming process prior to 1996.

Counsel for the appellant argued that counsel for the respondent's reliance on the decision of the Supreme Court of Canada in *Walter G. Lumbers* v. *The Minister of National Revenue*[5] in support of the proposition that taxing statutes should be interpreted strictly against the taxpayer was outdated. He argued that the Tribunal should rely, instead, on the more recent decision of the Supreme Court in *Québec (Communauté urbaine)* v. *Corp. Notre-Dame de Bon-Secours*,[6] where it was decided that the interpretation of taxing statutes is subject to the ordinary rules of interpretation and that a legislative provision should be given a strict or liberal interpretation depending upon the purpose underlying it. The Supreme Court, in that case, added that the purpose must be identified in light of the context of the statute, its objective and the legislative intent.

Counsel for the appellant also relied on a recent decision of the Federal Court - Trial decision, *Continuous Colour Coat Limited* v. *The Deputy Minister of National Revenue for Customs and Excise*,[7] where the Federal Court found that words in statutes should generally be given their ordinary meaning in preference to a narrower or more restricted scientific meaning. Next, counsel referred to the Tribunal's decision in *Electronetic Systems Corp.* v. *The Deputy Minister of National Revenue for Customs and Excise*[8] as a guide to how the Tribunal should interpret static documents in changing times. Counsel's assertion was that, while the word "priming" is static, it could be given an enlarged or a more restricted meaning, depending on the changing production practices.

According to counsel for the appellant, although epoxy priming had been discontinued, heat priming continued to be done in Canada. He stressed the importance and necessity of this heat priming process. He also argued that the heat priming process is not a simple operation. It involves special equipment, a large heating chamber and controlled humidity. Counsel argued that the fact that there had been an increase in employment since the epoxy priming was discontinued was significant, because the very purpose of the tariff code was to increase employment in Canada. Counsel then referred to dictionary definitions of the word "prime." He suggested that its basic meaning, as found in *Webster's Unabridged Dictionary of the English Language*[9] is "to prepare or make ready for a particular purpose or operation.[10]" Counsel cited several other definitions, including a definition of the French verb "*apprêter*" ("to prime"), i.e. "*Rendre prêt, mettre en état en vue d'une utilisation prochaine*[11]" ("to prepare or make ready for a particular purpose or operation"). Counsel thus argued that "priming" involves more than the application of a coat of primer paint and that,

5. [1944] S.C.R. 167.
6. [1994] 3 S.C.R. 3.
7. Unreported, Court File No. T-2831-94, October 27, 1997.
8. Appeal No. AP-92-262, January 13, 1994.
9. (New York: Portland House, 1989).
10. *Ibid.* at 1143.
11. *Le Petit Robert 1* (Montréal: Les Dictionnaires ROBERT-CANADA S.C.C., 1989) at 88.

while this is a form of priming, it is too narrow a definition and should not be applied to exclude other priming operations.

In the alternative, counsel for the appellant argued that, if the Tribunal determined that priming, in the context of the tariff code, meant painting with an epoxy paint, this is a process no longer performed on the goods in issue and that it is not appropriate to require that goods undergo a procedure that is no longer required.

Counsel for the respondent argued that, in order to qualify for the benefits of Code 6472, the goods in issue must meet each and every requirement of the code, including the requirement that the finishing operation include "priming." Counsel contended that "priming" meant the application of the epoxy coat to the golf balls and did not include the heat treatment of the golf balls. He asserted that the evidence was clear that, since the golf balls received a primer coat of paint before importation, they did not require priming in Canada and that this should be determinative of the appeal. Counsel did acknowledge that Code 6472 had been amended in March 1997 to delete the word "priming" therefrom and that this indicated that priming in Canada was a requirement before and not after the amendment.

Counsel for the respondent referred to several definitions of the word "priming." He agreed that the definitions cited by counsel for the appellant do exist, but that the rules of statutory interpretation require that the term be read within the context of Code 6472 and harmoniously with the scheme of the Act and the intention of Parliament. He argued that the purpose of the tariff code is to provide a beneficial reduction in customs duties to Canadian manufacturers that import golf balls in a sufficiently unfinished state so as to ensure that a sufficient amount of production is being done in Canada. In counsel for the respondent's view, the Federal Court's decision in *Continuous Colour Coat* does not provide support for counsel for the appellant's argument that the Tribunal should always adopt a broad definition of technical terms. He argued that, when the definition can be found in the legislation itself, such a definition must be preferred over the general definition. He acknowledged, however, that there was no apparent definition of the word "priming" in the legislation and that it was, therefore, appropriate to refer to dictionaries. Counsel for the respondent argued that the preferred and applicable definition was the one that related to the application of a first coat of paint. With respect to the French definition, counsel for the respondent indicated that the more appropriate definition could be found in *Collins•Robert French-English English-French Dictionary*,[12] i.e. "*couche d' apprêt*," the French equivalent for "priming."

Next, counsel for the respondent pointed out that the term used in Code 6472 was "priming," not "epoxy priming," and that priming with a different kind of paint is still carried out in the United States. Therefore, there is no merit to counsel for the appellant's argument that this kind of "priming" is no longer performed on the goods in issue. In counsel for the respondent's view, the heat treatment is more properly described as "curing."

In reply, counsel for the appellant pointed out that counsel for the respondent had introduced the term "curing" to describe the heat treatment process without any evidentiary basis for doing so. He reiterated that heat priming occurred both before and after the amendment to Code 6472. He argued that there was no clear evidence as to what Parliament had in mind when it chose the word "priming," i.e. whether it meant "epoxy priming," "heat priming" or both.

12. Second ed. (London: Collins, 1988) at 531.

As noted earlier, Code 6472, before it was amended, provided for duty-free entry of "[g]olf balls of tariff item No. 9506.32.90, requiring finishing in Canada, such finishing to include priming, labelling and lacquering." It was amended in March 1997 and now provides for duty-free entry of "[g]olf balls of tariff item No. 9506.32.90, requiring finishing in Canada, such finishing to include labelling and lacquering." The present appeal deals with Code 6472 as it read prior to the amendment. The Tribunal agrees with counsel that the three operations had to be performed in Canada in order for the goods in issue to qualify for the benefits of Code 6472. The evidence clearly shows that the "labelling and lacquering" were performed in Canada. The issue in this appeal is, therefore, whether the "priming" was performed in Canada. The Tribunal must determine whether the word "priming" included only epoxy priming of the golf balls or whether it was broad enough to include the heat treatment of the golf balls prior to stamping and lacquering.

There was no definition in the tariff nomenclature of the word "priming." The Tribunal, therefore, considered the dictionary definitions to which counsel referred. The Tribunal agrees with counsel for the respondent that it must interpret the word "priming" within the context of the tariff nomenclature. In light of this, the Tribunal is of the view that "priming" had to refer to something much more than simply "to prepare or make ready for a particular purpose or operation," as argued by counsel for the appellant. The Tribunal is more inclined to agree with counsel for the respondent's argument that "priming," within the context of Code 6472 and the tariff nomenclature, meant the application of a first coat of paint, epoxy primer or some other kind of coat.

The Tribunal notes that there was no evidence that "priming" was considered to include heat treatment when the tariff code was introduced.

Accordingly, the appeal is dismissed.

Charles A. Gracey
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Presiding Member