

Ottawa, Tuesday, August 24, 1999

**Appeal Nos. AP-97-139 and AP-98-042**

IN THE MATTER OF appeals heard on December 8, 1998,  
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 6, 1998, and April 27, 1998, with  
respect to requests for re-determination under section 63 of the  
*Customs Act*.

**BETWEEN**

**BUREAU DE RELATIONS D'AFFAIRES INTERNATIONALES INC.  
(BUSREL INC.)**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

Appeal No. AP-97-139 is allowed. Appeal No. AP-98-042 is dismissed.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Michel P. Granger  
Michel P. Granger  
Secretary

UNOFFICIAL SUMMARY

Appeal Nos. AP-97-139 and AP-98-042

BUREAU DE RELATIONS D'AFFAIRES INTERNATIONALES INC.  
(BUSREL INC.)

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

These are appeals under section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue made under section 63 of the *Customs Act*. The issue in appeal No. AP-97-139 is whether plastic mouse pads imported by the appellant are properly classified under tariff item No. 3926.10.00 of Schedule I to the *Customs Tariff* as office or school supplies of plastics, as contended by the respondent, or should be classified under tariff item No. 8473.30.99 as accessories of a machine of heading No. 84.71 (computer mouse), as claimed by the appellant. The issue in appeal No. AP-98-042 is whether rubber mouse pads, also imported by the appellant, are properly classified under tariff item No. 4016.99.90 as articles of vulcanized rubber, as determined by the respondent, or should be classified under tariff item No. 8473.30.99 as accessories of a machine of heading No. 84.71 (computer mouse), as claimed by the appellant.

**HELD:** Appeal No. AP-97-139 is allowed. Appeal No. AP-98-042 is dismissed. The Tribunal is of the view that the mouse pads in issue are accessories of a mouse. They are for use solely or principally with a machine of heading No. 84.71, a computer mouse, thereby satisfying the requirement found in the terms of heading No. 84.73 and in the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to this heading. It is the Tribunal's opinion that the second requirement of the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to this heading is also fulfilled. Mouse pads are designed to perform a particular service relative to the main function of the mouse since they offer a particular surface on which the mouse may track.

While both the rubber and the plastic mouse pads in issue are accessories of a computer mouse, it is the Tribunal's view that the rubber mouse pads are excluded from classification in heading No. 84.73 by Note 1(a) to Section XVI of the *Customs Tariff* because they are vulcanized rubber articles of a kind used for technical uses. The term "technical" is defined as follows: "marked by or characteristic of specialization". According to the Tribunal, the rubber mouse pad is marked by specialization in that it serves specifically as a particular surface on which a mouse may track. Since the rubber mouse pads are excluded from classification in heading No. 84.73 by Note 1(a) to Section XVI, they are properly classified, as indicated in this note, in heading No. 40.16, more specifically under tariff item No. 4016.99.90, as other articles of vulcanized rubber. The plastic mouse pads, however, are not excluded from classification in heading No. 84.73. Note 2(p) to Chapter 39 specifically excludes, from the coverage of this chapter, articles of Section XVI. Therefore, in the Tribunal's opinion, the plastic mouse pads should be classified in heading No. 84.73, more specifically under tariff item No. 8473.30.99, as accessories of a computer mouse.

Place of Hearing: Ottawa, Ontario  
Date of Hearing: December 8, 1998  
Date of Decision: August 24, 1999

Tribunal: Pierre Gosselin, Presiding Member

Counsel for the Tribunal: Philippe Cellard

Clerk of the Tribunal: Margaret Fisher

Parties: Robert Demers and Paul Allen, for the appellant  
Francis Archambault, for the respondent

Appeal Nos. AP-97-139 and AP-98-042

**BUREAU DE RELATIONS D'AFFAIRES INTERNATIONALES INC.  
(BUSREL INC.)**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: PIERRE GOSSELIN, Presiding Member

**REASONS FOR DECISION**

These are appeals under section 67 of the *Customs Act*<sup>1</sup> from decisions of the Deputy Minister of National Revenue dated March 6, 1998, and April 27, 1998, under section 63 of the Act. The issue in appeal No. AP-97-139 is whether plastic mouse pads imported by the appellant are properly classified under tariff item No. 3926.10.00 of Schedule I to the *Customs Tariff*<sup>2</sup> as office or school supplies of plastics, as contended by the respondent, or should be classified under tariff item No. 8473.30.99 as accessories of a machine of heading No. 84.71 (computer mouse), as claimed by the appellant. The issue in appeal No. AP-98-042 is whether rubber mouse pads, also imported by the appellant, are properly classified under tariff item No. 4016.99.90 as articles of vulcanized rubber, as determined by the respondent, or should be classified under tariff item No. 8473.30.99 as accessories of a machine of heading No. 84.71 (computer mouse), as claimed by the appellant. The relevant tariff nomenclature is as follows:

|             |   |
|-------------|---|
| 39.26       | Other articles of plastics and articles of other materials of heading Nos. 39.01 to 39.14.  |
| 3926.10.00  | -Office or school supplies  |
| 40.16       | Other articles of vulcanized rubber other than hard rubber.   |
| 40.16.99    | --Other   |
| 40.16.99.90 | ---Other  |
| 84.73       | Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of heading Nos. 84.69 to 84.72. |
| 8473.30     | -Parts and accessories of the machines of heading No. 84.71   |
| 8473.30.99  | ----Other   |

Note 1(a) to Section XVI, which comprises Chapter 84, reads as follows:

This Section does not cover:

- (a) Transmission or conveyor belts or belting, of plastics of Chapter 39, or of vulcanised rubber (heading No. 40.10); or other articles of a kind used in machinery or mechanical or electrical appliances or for other technical uses, of vulcanised rubber other than hard rubber (heading No. 40.16).

---

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter *Act*].  
2. R.S.C. 1985 (3d Supp.), c. 41.

The *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>3</sup> to heading No. 84.73 read, in part, as follows:

**Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), this heading covers parts and accessories suitable for use **solely** or **principally** with the machines of headings 84.69 to 84.72.

The accessories covered by this heading are interchangeable parts or devices designed to adapt a machine for a particular operation, or to perform a particular service relative to the main function of the machine, or to increase its range of operations.

As requested by the parties, the present appeals have proceeded by way of a file hearing. The parties have agreed that the predominating materials, by weight, in the goods in issue are plastics for the mouse pads in appeal No. AP-97-139, and vulcanized rubber for the mouse pads in appeal No. AP-98-042.

The appellant submitted that a mouse pad is an accessory of a computer input-output device (mouse) which is classified in heading No. 84.71 and that, therefore, the goods in issue should be classified in heading No. 84.73 as accessories of a mouse. It submitted that a mouse pad is used solely with a mouse, meeting the first requirement of the *Explanatory Notes* to heading No. 84.73. It also suggested that the mouse pad performs a particular service relative to the main function of the mouse, which is to navigate through a computer program, satisfying, therefore, the second requirement of the *Explanatory Notes*. The mouse pad provides a surface for the mouse to track smoothly. Contrary to the respondent's contention, the appellant submitted that, to be classified as accessories of a mouse, the mouse pads do not have to be physically installed on the computer and to perform a necessary function with respect to the operation of the mouse and the operation of the entire data processing machine.

Specifically, as regards the plastic mouse pads in issue, the appellant contended that, pursuant to Note 2(p) to Chapter 39, articles of plastics of Section XVI (including Chapter 84) are not covered by Chapter 39.

Similarly, with respect to the rubber mouse pads in issue, the appellant submitted that, according to the *Explanatory Notes* to heading No. 40.16, articles of vulcanized rubber covered by other chapters are not covered by heading No. 40.16.

The appellant submitted that Note 1(a) to Section XVI does not exclude the rubber mouse pads in issue from classification under heading No. 84.73 as these mouse pads are not for a technical use with respect to the mouse. It submitted that the expression "technical uses" refers to a product which is "for use in" another product, i.e. wrought or incorporated into, or attached to, another product and that, therefore, the rubber mouse pads were not for technical use. The appellant also argued that, to have a technical use with respect to the computer mouse, a mouse pad must be necessary for it to function. It submitted that this was not the case.

Finally, the appellant submitted that, if the Tribunal came to the conclusion that the goods in issue could be classified under more than one heading, Rules 3(a) and 3(c) of the *General Rules for the Interpretation of the Harmonized System*<sup>4</sup> would support its position that the plastic mouse pads and the rubber mouse pads should be classified in heading No. 84.73.

---

3. Second ed. (Brussels: Customs Co-operation Council, 1996) [hereinafter *Explanatory Notes*].

4. *Supra* note 2, Schedule I [hereinafter *General Rules*].

The respondent maintained that the mouse pads in issue are to be classified according to their chief material. Consequently, it submitted that the plastic mouse pads should be classified in heading No. 39.26 as articles of plastics and that the rubber mouse pads should be classified in heading No. 40.16 as articles of vulcanized rubber.

The respondent stated that the goods in issue do not meet the “accessory” criteria of the *Explanatory Notes* to heading No. 84.73. The respondent argued that the mouse pad does not serve to adapt the computer mouse for a particular operation, that it does not perform a service relative to the mouse and that the mouse pad does not increase the range of operation of the computer mouse. The respondent also mentioned that the mouse pad is not installed on the computer itself and cannot be considered to be a necessary and integral part of the computer. Relying on the Tribunal’s decision in *Winners Only (Canada) v. Deputy Minister of National Revenue*<sup>5</sup>, the respondent suggested that, given that the mouse pad performs a function similar to that of a desk (i.e. provide a support for the placement of the mouse), it cannot be considered an accessory. The respondent also indicated that the mouse pad fulfils a function similar to that of a felt pad in that it provides a working cushion for the mouse. Considering that felt pads are excluded from classification in heading No. 84.73 by the *Explanatory Notes* to this heading, the respondent contended that the goods in issue should, similarly, be excluded.

The respondent submitted that, if the Tribunal were of the view that the mouse pads are accessories, the rubber mouse pads should be excluded from classification in heading No. 84.73 by virtue of Note 1(a) to Section XVI. The respondent argued that mouse pads are for technical use as they correspond to the dictionary definition of “technical”. The respondent submitted that the expression “for technical uses” does not have the same meaning as the expression “for use in”.

Finally, the respondent submitted that Rule 3(c) of the *General Rules* was not applicable in the present appeals.

The Tribunal is directed by section 10 of the *Customs Tariff* to classify imported goods in accordance with the *General Rules*. Rule 1 of the *General Rules* provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. Section 11 of the *Customs Tariff* provides, in part, that, in interpreting the headings, regard shall be had to the *Explanatory Notes*.

The Tribunal is of the view that the mouse pads in issue are accessories of a mouse. They are for use solely or principally with a machine of heading No. 84.71, a computer mouse, thereby satisfying the requirement found in the terms of heading No. 84.73 and in the *Explanatory Notes* to this heading. It is the Tribunal’s opinion that the second requirement of the *Explanatory Notes* to this heading is also fulfilled. Mouse pads are designed to perform a particular service relative to the main function of the computer mouse since they offer a particular surface on which the mouse may track. Mouse pads do more than just support the mouse. Therefore, the Tribunal’s decision in *Winners*<sup>6</sup>, where it was held that computer desks were not accessories of computers, is not applicable to the present appeals. Also, mouse pads cannot be likened to felt pads which are excluded from classification in heading No. 84.73 by the *Explanatory Notes* to this heading.

There is no need for an accessory to be necessary to the operation of the product to which it relates. Neither is there a need for it to be integrated to the other product. These two criteria, while applicable to the

---

5. (May 13, 1996), Appeal No. AP-94-142 (C.I.T.T.) [hereinafter *Winners*].

6. *Ibid.*

classification of a product as a part, are not applicable to the classification of a product as an accessory. This is illustrated by the following excerpt from the Federal Court of Appeal's decision in *Deputy Minister of National Revenue for Customs and Excise v. Androck*<sup>7</sup>:

Moreover, while we think it both unnecessary and undesirable to define the word "parts" in such a way that it might apply in any factual context, we are of the opinion that the goods in issue, to be classified as parts, must be related to the entity with which they will be used to form a necessary and integral part thereof and not simply as an optional accessory, as here.

While both the rubber and the plastic mouse pads in issue are accessories of a mouse, it is the Tribunal's view that the rubber mouse pads are excluded from classification in heading No. 84.73 by Note 1(a) to Section XVI because they are vulcanized rubber articles of a kind used for technical uses.

The term "technical" is defined as follows: "marked by or characteristic of specialization".<sup>8</sup> According to the Tribunal, the rubber mouse pad is marked by specialization in that it serves specifically as a particular surface on which a mouse may track. None of the arguments presented by the appellant in the present appeal convinces the Tribunal that "technical" should be ascribed a meaning different from its ordinary meaning. It is clear to the Tribunal that technical use is not limited to objects which are wrought or incorporated into other goods. This is shown by the *Explanatory Notes* to heading No. 59.11, cited by the appellant, which indicate that a tool can have a technical use as required by this heading. The French version of Note 1(a) to section XVI also clearly demonstrates that. Indeed, the French version includes the terms "*usages techniques*" ("technical uses") without any mention of incorporation.<sup>9</sup> In the Tribunal's opinion, to be for a technical use, a product does not have to be necessary to the operation of another product. Here again, reference can be made to a tool. Since the rubber mouse pads are excluded from classification in heading No. 84.73 by Note 1(a) to Section XVI, they are properly classified, as indicated in this note, in heading No. 40.16, more specifically under tariff item No. 4016.99.90, as articles of vulcanized rubber.

The plastic mouse pads, however, are not excluded from classification in heading No. 84.73. Note 2(p) to Chapter 39 specifically excludes, from the coverage of this chapter, products which are covered by Section XVI. Therefore, in the Tribunal's opinion, the plastic mouse pads should be classified in heading No. 84.73, more specifically under tariff item No. 8473.30.99, as accessories to a mouse.

For the foregoing reasons, appeal No. AP-97-139 is allowed and appeal No. AP-98-042 is dismissed.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

7. [1987] F.C.J. No. 45 (C.A.), online: QL (FCJ).

8. *Webster's New Collegiate Dictionary*, 1979, s.v. "technical".

9. 1. *La présente Section ne comprend pas :*

a) *les courroies transporteuses ou de transmission en matières plastiques du Chapitre 39, les courroies transporteuses ou de transmission en caoutchouc vulcanisé (n° 40.10), ainsi que les articles à usages techniques en caoutchouc vulcanisé non durci (n° 40.16).*