

Ottawa, Thursday, June 10, 1999

**Appeal No. AP-98-061**

IN THE MATTER OF an appeal heard on March 15, 1999, 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 June 15, 1998, with respect to a request for re-determination under subsection 63(3) of the *Customs Act*.

**BETWEEN**

**XEROX CANADA LTD./THE DOCUMENT COMPANY**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Anita Szlazak  
Anita Szlazak  
Presiding Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-98-061**

**XEROX CANADA LTD./THE DOCUMENT COMPANY**

**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 made under section 63 of the *Customs Act*. The issue in this appeal is whether certain thermal transfer film rolls imported by the appellant are classified properly under tariff item No. 9612.10.90 as other typewriter or similar ribbons, inked or otherwise prepared for giving impressions, as determined by the respondent, or should be classified under tariff item No. 3920.62.00 as other plates, sheets, film, foil and strip of polyethylene terephthalate, with the benefits of Code 7934, or in subheading No. 8517.90 as parts of facsimile machines, as claimed by the appellant.

**HELD:** The appeal is dismissed. The Tribunal finds that the goods in issue are not parts of facsimile machines and, therefore, cannot be classified in subheading No. 8517.90. The Tribunal also finds that the goods in issue cannot be classified as other plates, sheets, film, foil and strip of polyethylene terephthalate under tariff item No. 3920.62.00. The Tribunal is of the view that the goods are typewriter or similar ribbons, inked or otherwise prepared for giving impressions and, therefore, are classified properly under tariff item No. 9612.10.90. The Tribunal finds that the goods in issue are ribbons in that they are “narrow bands” and that they are used in a machine which incorporates a device for printing by means of the ribbons, as required by the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to heading No. 96.12. The Tribunal also finds that the goods are “inked or otherwise prepared for giving impressions,” as required by heading No. 96.12.

Place of Hearing: Ottawa, Ontario

Date of Hearing: March 15, 1999

Date of Decision: June 10, 1999

Tribunal Member: Anita Szlazak, Presiding Member

Counsel for the Tribunal: Philippe Cellard  
Tamra Alexander

Clerk of the Tribunal: Margaret Fisher

Appearances: Michael Kaylor, for the appellant  
Elizabeth Richards, for the respondent

**Appeal No. AP-98-061**

**XEROX CANADA LTD./THE DOCUMENT COMPANY**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ANITA SZLAZAK, Presiding Member

**REASONS FOR DECISION**

**INTRODUCTION**

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> (the Act) from a decision of the Deputy Minister of National Revenue, dated June 15, 1998, made under section 63 of the Act. The issue in this appeal is whether certain thermal transfer film rolls imported by the appellant are classified properly under tariff item No. 9612.10.90 of Schedule I to the *Customs Tariff*<sup>2</sup> as other typewriter or similar ribbons, inked or otherwise prepared for giving impressions, as determined by the respondent, or should be classified under tariff item No. 3920.62.00 as other plates, sheets, film, foil and strip of polyethylene terephthalate, with the benefits of Code 7934, or in subheading No. 8517.90 as parts of facsimile machines, as claimed by the appellant. The relevant tariff nomenclature is as follows:

39.20	Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials.
3920.62	--Of polyethylene terephthalate
85.17	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones.
8517.21.00	--Facsimile machines
8517.90	-Parts
8517.90.22	----Of the goods of tariff item No. 8517.21.00 or 8517.50.11
96.12	Typewriter or similar ribbons, inked or otherwise prepared for giving impressions, whether or not on spools or in cartridges; ink-pads, whether or not inked, with or without boxes.
9612.10	-Ribbons
9612.10.90	---Other

**EVIDENCE**

Mr. Michael George Britz, Program Manager, Digital Desktop Business Unit, Office Document Products Group, Xerox Corporation, gave evidence on the appellant's behalf. Mr. Britz provided the Tribunal with samples of the goods in issue, which he described as imaging cartridge refills for Xerox

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

facsimile machine models 7024, 7032 and 7033. Mr. Britz stated that, in the trade, the goods are referred to as donor ink rolls. Mr. Britz described the goods as consisting of two fibreboard rolls with a blue leader attached to the smaller roll and the donor film, which would be fed from the supply (larger) roll. The donor film is made of polyethylene terephthalate, which has a coating of wax and ink. In the last two metres of the donor film, there is a stripe which, through a photodetector in the facsimile machine, alerts the machine when it is out of donor film. Mr. Britz stated that the donor film is 8.6 in. wide and approximately 656 ft. long.

Mr. Britz stated that Xerox facsimile machines cannot work without the cartridge refills. Mr. Britz testified that the cartridge refills in issue can be used only in the particular models of Xerox facsimile machines for which they were designed because the path which the donor film must take through the machine differs by model. Mr. Britz stated that he never had heard of the cartridge refills being used in the facsimile machines of any of Xerox's competitors.

Mr. Britz testified that the donor film transfers its ink to the paper contained in the facsimile machine through a thermal transfer process. The film is moved across the thermal head, simultaneously with the paper, and selective elements of the thermal head are activated to melt the wax, allowing the ink to wick into the paper. Mr. Britz testified that this process involved the application of pressure only to the extent required to put the paper and the film together.

Mr. Britz provided the Tribunal with a number of different refill ribbons for different calculators and typewriters and indicated that their width ranged from half an inch to three eighths of an inch. Mr. Britz testified that all these ribbons transferred an image when impacted by a print head. Mr. Britz also presented the results of tests which he conducted whereby he attempted to transfer an image to paper from the donor film in issue through impact by a print head. The images which resulted were very faint.

During cross-examination, Mr. Britz testified that one cartridge refill prints approximately 800 pages.

## **ARGUMENT**

Counsel for the appellant started his argument with the application of heading No. 96.12. He stated that the goods are excluded from heading No. 96.12 because: (1) they are not ribbons; (2) they are not similar to typewriter ribbons; (3) they are used to produce copies, not originals; and (4) their width precludes them from being classified in heading No. 96.12.

Counsel for the appellant argued that the words of the *Customs Tariff* should be read in their entire context and given a meaning consistent with their grammatical and ordinary meaning.<sup>3</sup> He set out the definition of "ribbon" as a "narrow woven band."<sup>4</sup> It was his submission that the width of the goods in issue, at 8.5 in., distinguished them from other goods commonly known as ribbons, which had a width of only 0.5 in. Counsel stated that no one looking at the goods in issue ever would call them ribbons. It was on this basis that counsel distinguished the present appeal from *Brother International Corporation (Canada) Ltd. v. The Deputy Minister of National Revenue*.<sup>5</sup>

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3. In support of this view, counsel for the appellant referred to *Stuart Investments Limited v. Her Majesty the Queen*, [1984] 1 S.C.R. 536.

4. *The Compact Edition of the Oxford English Dictionary*, Vol. II (Oxford: Oxford University Press, 1971) at 642.

5. Canadian International Trade Tribunal, Appeal No. AP-97-100, November 27, 1998.

Further, counsel for the appellant maintained that the goods in issue were not similar to typewriter ribbons. He submitted that, in order for something to be similar to another thing, there must be more than only some common features or points of resemblance.<sup>6</sup> Counsel referred the Tribunal to *Hunt Foods Export Corp. of Canada Ltd. v. Deputy Minister of National Revenue for Customs and Excise*, wherein the Exchequer Court stated:

In my opinion the words [similar substances] are sufficiently wide to include products that are similar to a lard compound, as the products in issue are, in function, use, appearance, melting point, hardness, solidity at various temperatures, stability, flavour, odour and colour.<sup>7</sup>

Thus, counsel submitted that the goods in issue must be similar to typewriter ribbons across a broad range of characteristics.

Counsel for the appellant set out the definition of “typewriter”:

A writing-machine having types for the letters of the alphabet, figures, and punctuation-marks, so arranged on separate rods (or on the periphery of a wheel) that as each key of the machine is depressed the corresponding character is imprinted in line on a moving sheet.<sup>8</sup>

Counsel stated that it was clear from Mr. Britz’s testimony that a typewriter operates by way of impact on the ribbon to produce an image on paper. As the goods in issue do not operate by way of impact, they are not similar to typewriter ribbons. As already noted, counsel submitted that the goods in issue are wider than typewriter ribbons. He also submitted that the goods in issue produce a copy, not an original as do typewriter ribbons. Therefore, counsel submitted that the goods in issue were not similar to typewriter ribbons.

Further, counsel for the appellant submitted that, because the goods in issue produce a copy and not an original, they were meant to be excluded from heading No. 96.12. For this proposition, he relied on the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>9</sup> (the Explanatory Notes) to heading No. 96.12, which exclude rolls of carbon or other copying paper strip “designed to produce duplicate copies.”

Finally, counsel for the appellant submitted that the width of the goods in issue precludes their classification in heading No. 96.12. For this proposition, he relied again on the Explanatory Notes to heading No. 96.12, which exclude rolls of carbon or other copying paper strip. He noted that the Explanatory Notes refer to the excluded goods as “strips” and state that the strips are “usually much wider than typewriter ribbons (generally more than 3 cm in width).” It was his submission that this exclusion makes it clear that goods which are wider than 3 cm should be excluded from heading No. 96.12, as they are not meant to be considered “ribbons” and are not similar to typewriter ribbons.

Counsel for the appellant submitted that, as the goods in issue are rolls of polyethylene terephthalate, they should be classified under tariff item No. 3920.62.00, with the benefits of Code 7934.

In the alternative, counsel for the appellant submitted that the goods in issue should be classified as parts of facsimile machines in subheading No. 8517.90. He stated that the evidence shows that the goods are

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6. In support of this view, counsel for the appellant referred to the Federal Court of Appeal’s decision in *Crupi v. Canada Employment and Immigration Commission*, [1986] 3 F.C. 3 at 17.

7. [1970] Ex.C.R. 828 at 840.

8. *Supra* note 4 at 557.

9. Customs Co-operation Council, 2nd ed., Brussels, 1996.

committed for use in particular models of Xerox facsimile machines, that the goods cannot be used with other machines and that the machines cannot work without the goods in issue. He submitted that the fact that the goods are consumables does not prevent them from being classified as parts.

Counsel for the respondent submitted that the goods in issue are classified properly under tariff item No. 9612.10.90 as other typewriter or similar ribbons, inked or otherwise prepared for giving impressions. She pointed out that the manufacturer of the goods in issue described them as “cartons of thermal transfer fax ribbon.” She submitted that there is no restriction in the tariff classification or the Explanatory Notes as to the width of the goods.

Counsel for the respondent submitted that, in determining whether the goods are similar to typewriter ribbons, the Tribunal should focus on the function of the goods. Like typewriter ribbons, the goods in issue are inked to give impressions. She submitted that the lack of need for “impact” on the goods in issue in order to make the impression was a result of advances in technology and did not preclude the goods from being similar to typewriter ribbons in their use and function.

As to the classification of the goods under tariff item No. 3920.62.00, with the benefits of Code 7934, counsel for the respondent submitted that there was not sufficient evidence or argument before the Tribunal to make such a determination. Further, as a specific classification is to be preferred over any general classification, the goods are classified properly under tariff item No. 9612.10.90, which more specifically describes them.

Finally, counsel for the respondent submitted that the goods in issue could not be classified as parts, as they are consumables which are used up very quickly.

## **DECISION**

Section 10 of the *Customs Tariff* provides that the classification of imported goods under a tariff item shall be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*<sup>10</sup> (the General Rules) and the *Canadian Rules*.<sup>11</sup> Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in Schedule I, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*<sup>12</sup> and the Explanatory Notes.

The General Rules are structured in cascading form. If the classification of an article cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, etc. Rule 1 provides the following:

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the [subsequent rules].

The competing headings in this case are as follows:

39.20 Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials.

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10. *Supra* note 2, Schedule I.

11. *Ibid.*

12. Customs Co-operation Council, 1st ed., Brussels, 1987.

- 85.17 Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones.
- 96.12 Typewriter or similar ribbons, inked or otherwise prepared for giving impressions, whether or not on spools or in cartridges; ink-pads, whether or not inked, with or without boxes.

The Notes to Section XVI (which contains Chapter 85) provide, essentially, that parts which are not goods included in any of the headings of Chapters 84 and 85 are to be classified with the machines for which they “solely or principally” are used. Counsel for the appellant submitted that the goods in issue are parts of facsimile machines and, therefore, should be classified in heading No. 85.17. He referred the Tribunal to *Robert Bosch (Canada) Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>13</sup> *The Deputy Minister of National Revenue for Customs and Excise v. Androck Inc.*<sup>14</sup> and *Fleetguard International Corporation v. The Deputy Minister of National Revenue for Customs and Excise*.<sup>15</sup>

Although the goods in issue are committed for use in particular models of Xerox facsimile machines, though the goods cannot be used with other machines and though the machines cannot work without the goods, the Tribunal is of the view that the goods are not parts of the machines. The Tribunal notes the decisions of the Tariff Board in *Xerox Canada Inc. v. The Deputy Minister of National Revenue for Customs and Excise*<sup>16</sup> and *Canadian Totalisator Company, A Division of General Instruments of Canada v. The Deputy Minister of National Revenue for Customs and Excise*.<sup>17</sup> In *Xerox*, in finding typewriter ribbons not to be parts, the Tariff Board stated:

Goods which consist essentially of ribbon loaded with a supply of ink required for a typewriter’s production are not an integral part of the machine even though encased in a container designed to fit into the machine and provide such ink on demand so long as and to the extent that the ribbon and the container were designed to provide such. . . .

The whole notion of parts of a machine implies a degree of permanency. This is particularly true of an operating or working part, *i.e.*, one that moves in relation to the operation of the rest of the machine. Such movement of a true part is an essential element in the operation of the machine. In the goods at issue, the cartridge is fixed, while the reel of inked ribbon merely unreels to provide access in a passive manner to the typewriter mechanism which brings such ribbon into contact with and onto the copy paper where the ribbon leaves the amount of ink which the printing mechanism’s key has struck off it. The goods are a delivery system for the ink supply essential to record the typewriter’s strikings.<sup>18</sup>

In *Canadian Totalisator*, the Tariff Board found that tape rolls were not parts of printing machines as “[t]he mere fact that the system does not operate and the printer will not function without the tape, however, does not make the roll of tape a part of the printer.”<sup>19</sup> The Tariff Board also stated that “[p]arts of a machine are used for extended periods of time until they wear out or break and need to be replaced.”<sup>20</sup>

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13. (1985), 10 T.B.R. 110.

14. (1987), 13 C.E.R. 239, Federal Court of Appeal, File No. A-1491-84, January 28, 1987.

15. Canadian International Trade Tribunal, Appeal No. AP-90-121, August 25, 1992.

16. (1988), 17 C.E.R. 47.

17. (1986), 11 T.B.R. 120.

18. *Supra* note 16 at 70.

19. *Supra* note 17 at 124.

20. *Ibid.*

The Tribunal also notes its recent decision in *Brother International* wherein the Tribunal found that tape cassettes used in P-touch labelling machines were not parts of the machines, as the cassettes simply provided the supply of the various tapes required to make a label, were used up in a relatively short period of time and were discarded once the tape was utilized fully.

The Tribunal finds that the goods in issue are, in this regard, very similar to the typewriter ribbons in *Xerox*, the tape rolls in *Canadian Totalisator* and the tape cassettes in *Brother International*. The goods are simply a delivery system for the ink supply essential to record the images from a facsimile machine. The goods are used up in a relatively short period of time, and the rolls and donor film are discarded once the film is utilized fully. Therefore, in the Tribunal's view, the goods are not parts of facsimile machines as that term has been interpreted in the tariff classification context.

In the Tribunal's view, the goods in issue are classifiable as typewriter or similar ribbons, inked or otherwise prepared for giving impressions, in heading No. 96.12. Counsel for the appellant argued that the donor film was not a "ribbon" and, in fact, was precluded from being called a ribbon by the Explanatory Notes to heading No. 96.12, which provide that rolls of carbon or other copying paper strip "generally more than 3 cm in width" are excluded from the heading. The Tribunal finds that there is no restriction in the heading, the subheading, the Section or Chapter Notes or the Explanatory Notes as to the width of the goods in order for them to be classified as "ribbons." The dictionary definition of "ribbon" provided by counsel simply refers to a ribbon as a "narrow woven band." The Tribunal notes that the term "narrow" is defined in terms relative to its length, as "[h]aving little breadth or width in comparison with the length."<sup>21</sup> As the donor roll is only 8.5 in. wide in comparison with its length of 656 ft., the Tribunal finds that it is a "ribbon." The Tribunal notes that its finding is bolstered by the fact that the manufacturer of the goods in issue referred to them as "cartons of thermal transfer fax ribbon" and that an excerpt from a technical book submitted by counsel at the hearing describes the printing process using the goods in issue as follows:

A roll of white paper and a roll of black thermal-transfer film (often called ribbon) are used, with the film placed between the thermal head and the white paper.<sup>22</sup> (Emphasis added)

While the manner in which members of an industry refer to a product cannot be determinative of classification, it may be of assistance in determining classification.<sup>23</sup>

The Tribunal also finds that the ribbons are "similar ribbons" as that term is used in heading No. 96.12. The Explanatory Notes to heading No. 96.12 read, in part:

This heading covers:

- (1) **Ribbons**, whether or not on spools or in cartridges, for typewriters, calculating machines, or for any other machines incorporating a device for printing by means of such ribbons (automatic balances, tabulating machines, teleprinters, etc.). (Emphasis added)

It is the Tribunal's view that the Explanatory Notes provide that the heading covers ribbons for use in any machine, whether or not the machine is similar to a typewriter, which incorporates a device for printing by means of the ribbon. The Tribunal finds that the facsimile machine incorporates a device for printing by means of the ribbons in issue and, therefore, that the ribbons fulfil this requirement of the Explanatory Notes.

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21. *The Oxford English Dictionary*, Vol. 10, 2nd ed. (Oxford: Clarendon Press, 1989) at 222.

22. Exhibit A-4, D. Bodson, K.R. McConnell and R. Schaphorst, *FAX: Digital Facsimile Technology and Applications*, 2nd ed. (Boston: Artech House, 1992) at 140.

23. See, for example, *Steen Hansen Motorcycles Ltd. v. The Deputy Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-95-065, May 12, 1997.



Heading No. 96.12 requires that the ribbons be “inked or otherwise prepared for giving impressions.” The Tribunal finds that the ribbons in issue have been inked and adopts the reasoning in *Brother International* that, “when the thermal head comes into physical contact with the ink ribbon (which is itself in contact with the laminate) and transfers ink onto the laminate, the resulting mark is an impression.”<sup>24</sup> The Tribunal finds that the mark which results from the transfer of ink onto paper through contact between the thermal head of the facsimile machine and the ribbon and, at the same time, between the ribbon and the paper, is an impression. Therefore, the Tribunal finds that the ribbons in issue are “inked or otherwise prepared for giving impressions,” as required by heading No. 96.12.

The Tribunal also finds that there is no requirement in the heading, the sub-heading, the Section or Chapter Notes or the Explanatory Notes that the ribbon be used to produce an original, as opposed to a copy. Therefore, the Tribunal is of the view that the goods in issue are classifiable in heading No. 96.12.

Finally, counsel for the appellant submitted that the goods in issue are “[o]ther plates, sheets, film, foil and strip, of plastics” and should be classified in heading No. 39.20. The Tribunal finds that the goods in issue are more than simply a film or a strip of plastic. While one of the components of the goods in issue could be considered to be a film or a strip of plastic, the goods are composed also of rolls and a warning “stripe.” Accordingly, the goods in issue are described more specifically in heading No. 96.12. Further, the Tribunal notes that the Notes to Chapter 39 provide that the chapter does not cover articles of Chapter 96. As the Tribunal has found that the goods in issue are classifiable in Chapter 96, they cannot be classified in Chapter 39.

In conclusion, the Tribunal is of the view that the goods in issue are classified properly under tariff item No. 9612.10.90. Consequently, the appeal is dismissed.

Anita Szlajak

Anita Szlajak

Presiding Member

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24. *Supra* note 5 at 8.