

Ottawa, Monday, June 12, 2000

Appeal No. AP-99-073

IN THE MATTER OF a re-hearing held on March 13, 2000,
under subsection 68(2) of the *Customs Act*, R.S.C. 1985
(2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Federal Court of
Appeal dated September 15, 1999, with respect to a decision of
the Canadian International Trade Tribunal made under section 67
of the *Customs Act*.

BETWEEN

ROLLINS MACHINERY LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

James A. Ogilvy
James A. Ogilvy
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-99-073

ROLLINS MACHINERY LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This appeal followed a decision of the Federal Court of Appeal which referred the matter back to the Tribunal for re-hearing. The goods in issue are rubber crawler tracks. They are composed of vulcanized rubber containing a cord and canvas, as well as steel components within the vulcanized material. They are used as tracks for vehicles. The Tribunal originally concluded that the goods in issue constituted conveyor belting and found that the goods should be classified under tariff item No. 4010.19.90 as other conveyor belting. On appeal to the Federal Court of Appeal, that decision was set aside and the matter remitted to the Tribunal because of an error of law regarding the application of a tariff item that was not in force at the time that the goods were imported into Canada. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 4016.99.90 as other articles of vulcanized rubber other than hard rubber, as determined by the respondent, or should be classified in heading No. 40.10 as conveyor or transmission belts or belting, of vulcanized rubber, as originally claimed by the appellant.

HELD: The appeal is dismissed. As the matter was returned to the Tribunal for reconsideration on the record as it presently stands, the Tribunal's decision is, thus, based on the expert evidence and the written submissions on the record in the original appeal. The Tribunal is not persuaded by the evidence that the goods in issue can be characterized as “[c]onveyor or transmission belts or belting”. Consequently, the appeal is dismissed.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	March 13, 2000
Date of Decision:	June 12, 2000
Tribunal Members:	Pierre Gosselin, Presiding Member Zdenek Kvarda, Member James A. Ogilvy, Member
Counsel for the Tribunal:	Marie-France Dagenais
Clerk of the Tribunal:	Anne Turcotte
Parties:	Douglas J. Bowering, for the appellant Jan Brongers, for the respondent

Appeal No. AP-99-073

ROLLINS MACHINERY LTD.

Appellant

AND

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Respondent

TRIBUNAL: PIERRE GOSSELIN, Presiding Member
ZDENEK KVARDA, Member
JAMES A. OGILVY, Member

REASONS FOR DECISION

This is the re-hearing of an appeal¹ under subsection 68(2) of the *Customs Act*² following a decision of the Federal Court of Appeal which set aside and referred a decision back to the Tribunal for reconsideration based on the record as it presently stands.

The goods in issue, rubber crawler tracks, were classified by the respondent under tariff item No. 4016.99.90 of Schedule I to the *Customs Tariff*³ as “[o]ther articles of vulcanized rubber other than hard rubber”. The appellant claimed, in the original proceeding, that the goods in issue should have been classified under tariff item No. 4010.19.10 as other conveyor belts of vulcanized rubber being reinforced with textile materials that are cut to length. The Tribunal, in its original decision, adopted the common meaning of conveyor belting and determined that the goods in issue, which can move an excavator from one place to another, are not conveyor belts, but a type of conveyor belting. Since no evidence was presented to establish that the goods were cut to length, the Tribunal concluded that the goods should be classified as other conveyor belting under tariff item No. 4010.19.90.

However, in requesting a classification in subheading No. 4010.19, the appellant relied on an addition to Schedule I to the *Customs Tariff* that was not in force at the time that the goods were imported into Canada.

The respondent appealed the Tribunal’s decision in Appeal No. AP-96-082 to the Federal Court of Appeal. It found that the Tribunal erred in law in so classifying the goods in issue, given that they were imported into Canada on June 9, 1994, and that subheading No. 4010.19 was only added to Schedule I to the *Customs Tariff* effective January 1, 1996. As subheading No. 4010.19 was not in force at the time that the goods were imported, the Federal Court of Appeal referred the matter back to the Tribunal for reconsideration based on the record as it presently stands. Therefore, to redetermine the classification of the goods in issue, the Tribunal relied on the evidence on the record in the original matter, including expert

1. (2 December 1997), AP-96-082 (CITT).
2. R.S.C. 1985 (2d Supp.), c. 1.
3. R.S.C. 1985 (3d Supp.), c. 41.

testimony on power transmission and on the design, engineering, manufacture and marketing of conveyor belting, as well as the written submissions of both parties.

The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 4016.99.90 as other articles of vulcanized rubber other than hard rubber, as determined by the respondent, or should be classified in heading No. 40.10 as conveyor or transmission belts or belting, of vulcanized rubber, as originally claimed by the appellant.

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*⁴ and the *Canadian Rules*.⁵ 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*⁶ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*.⁷

The competing headings in this appeal are as follows:

- 40.10 Conveyor or transmission belts or belting, of vulcanized rubber.
- 40.16 Other articles of vulcanized rubber other than hard rubber.

The parties agree that the goods in issue are made of vulcanized rubber. Given this consensus, the Tribunal must now determine whether the goods in issue can be defined as conveyor or transmission belts or belting of vulcanized rubber other than hard rubber.

The Tribunal agrees with the respondent that, if a word or term has a specific trade meaning, then the word or term should be construed as having that particular meaning, even though it may differ from the ordinary meaning of the word. The term “conveyor belt”, according to the generally accepted mechanical engineering definitions, can be defined as one of a number of material-handling systems. The belt runs between two fitted points which can range from a few metres to several kilometres in distance. The materials or goods are transported along the upper surface of the conveyor belt between these two fixed points.⁸ The term “belt” can be defined as “a continuous band of tough, flexible material used for transmitting power or conveying materials”.⁹

The Tribunal accepts the evidence that the rubber crawlers in issue provide the traction point for the excavator with the surface of the ground to assist in the movement of the machine and, thus, serve the same role as tires. However, in the Tribunal’s view, the evidence is clear that the goods in issue do not transport goods or materials along their upper surface nor do they transmit power from one point to another. In light of the foregoing, the Tribunal is of the view that the goods in issue cannot be characterized as “[c]onveyor or transmission belts or belting”.

4. *Supra* note 2, Schedule I.

5. *Ibid.*

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

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

8. *Marks’ Standard Handbook for Mechanical Engineers*, 8th ed. (New York: McGraw-Hill) at 10-55 and 10-56.

9. *Encyclopedia of Polymer Science and Engineering*, Vol. 2 (New York: John Wiley & Sons) at 193.

Consequently, the Tribunal finds that the goods in issue are properly classified under tariff item No. 4016.99.90 as other articles of vulcanized rubber other than hard rubber.

Accordingly, the appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

James A. Ogilvy
James A. Ogilvy
Member