

Ottawa, Wednesday, January 12, 2000

Appeal No. AP-98-106

IN THE MATTER OF an appeal heard on September 20, 1999,
under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Deputy Minister of
National Revenue dated December 15 and 16, 1998, with respect
to a request for re-determination under section 63 of the *Customs
Act*.

BETWEEN

ATLAS GRAPHIC SUPPLY INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Peter F. Thalheimer

Peter F. Thalheimer
Member

Zdenek Kvarda

Zdenek Kvarda
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-98-106

ATLAS GRAPHIC SUPPLY 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 (now the Commissioner, Canada Customs and Revenue Agency) made under section 63 of the *Customs Act*. The issue in this appeal is whether certain rubber printing blankets imported by the appellant are properly classified under tariff item No. 5911.10.11 as laminated textile fabrics, for technical purposes, which are blankets, blanketing or lapping used on offset printing machinery, as determined by the respondent, or should be classified under tariff item No. 5911.90.10 as other textile products and articles, for technical uses, which are blankets, blanketing or lapping, as claimed by the appellant.

HELD: The appeal is dismissed. As the parties are in agreement that the goods in issue are properly classified in heading No. 59.11, the issue before the Tribunal is the classification of the goods at the subheading and tariff item levels. The Tribunal finds that the goods in issue are imported “in the piece”, as they are imported uncut in rolls. The Tribunal also finds that the goods in issue are not textile articles, as they have not been made up and are not endless and not fitted with linking devices. The Tribunal finds that the goods in issue are textile fabrics and that they have been laminated with rubber. Therefore, the Tribunal finds that the goods in issue meet the description of subheading No. 5911.10 as textile products specified in Note 7 to Chapter 59, which are fabrics laminated with rubber which are used for technical purposes. As the goods meet this description, they do not meet the description of subheading No. 5911.90 as other textile products and articles for technical purposes specified in Note 7 to Chapter 59. Therefore, the goods in issue are properly classified under tariff item No. 5911.10.11.

Place of Hearing: Ottawa, Ontario
Date of Hearing: September 20, 1999
Date of Decision: January 12, 2000

Tribunal Members: Arthur B. Trudeau, Presiding Member
Peter F. Thalheimer, Member
Zdenek Kvarda, Member

Counsel for the Tribunal: Tamra Alexander

Clerk of the Tribunal: Anne Turcotte

Appearances: Greg Coffey, for the appellant
Lynne Soublière, for the respondent

Appeal No. AP-98-106

ATLAS GRAPHIC SUPPLY INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
PETER F. THALHEIMER, Member
ZDENEK KVARDA, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ from decisions of the Deputy Minister of National Revenue (now the Commissioner, Canada Customs and Revenue Agency) made under section 63 of the *Act* on December 15 and 16, 1998. The issue in this appeal is whether certain rubber printing blankets imported by the appellant are properly classified under tariff item No. 5911.10.11 of Schedule I to the *Customs Tariff*² as laminated textile fabrics, for technical purposes, which are blankets, blanketing or lapping used on offset printing machinery, as determined by the respondent, or should be classified under tariff item No. 5911.90.10 as other textile products and articles, for technical uses, which are blankets, blanketing or lapping, as claimed by the appellant. The relevant tariff nomenclature is as follows:

- 59.11 Textile products and articles, for technical uses, specified in Note 7 to this Chapter.
- 5911.10 -Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes
 - Blankets, blanketing or lapping:
- 5911.10.11 ----Of a kind used on offset printing machinery
- 5911.90 -Other
- 5911.90.10 ---Blankets, blanketing or lapping

The relevant portion of Note 7 to Chapter 59 provides:

Heading No. 59.11 applies to the following goods, which do not fall in any other heading of Section XI:

- (a) Textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of heading Nos. 59.08 to 59.10), the following only:
 - (i) Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes . . .
- (b) Textile articles (other than those of heading Nos. 59.08 to 59.10) of a kind used for technical purposes (for example, textile fabrics and felts, endless or fitted with linking devices, of a kind

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

used in paper-making or similar machines (for example, for pulp or asbestos-cement), gaskets, washers, polishing discs and other machinery parts).

EVIDENCE

Mr. Richard Solnick, President, Atlas Graphic Supply Inc., testified on behalf of the appellant. Mr. Solnick stated that the appellant is a distributor of rubber printing blankets. The appellant imports the goods in issue in rolls 98 percent of the time. Certain goods with a special adhesive on the back are imported in 30 in. x 24 in. sheets. Once imported, the goods in issue (whether imported in rolls or sheets) are cut to size and, if required, metal bars are added. Depending on the type of printer on which the goods are used, they may not require the addition of metal bars. They will, however, have to be cut to size before they can be used.

Mr. Solnick described the goods in issue as cotton interply laminated on one side with rubber. He stated that all printing blankets are made with the same structure, the only difference being the formulation of the rubber compound. Mr. Solnick stated that the goods in issue are textile fabrics and that there is no other use for the goods in issue than in the printing industry. Mr. Solnick also stated that their use in the printing industry is a technical use.

Mr. Solnick did not provide the Tribunal with a definition of the term “in the piece”. In response to questions from the Tribunal, Mr. Solnick stated that the industry uses the term “roll” to describe the form in which the goods are imported.

No witnesses testified on behalf of the respondent.

ARGUMENT

The appellant’s representative stated that the appellant agrees with the respondent that the goods in issue are properly classified in heading No. 59.11 as textile products and articles, for technical uses, specified in Note 7 to Chapter 59. He stated that the dispute revolves around the classification of the goods in issue at the subheading level. The representative submitted that the goods in issue can be equally classified in subheading Nos. 5911.10 and 5911.90. Therefore, he submitted, Rule 3 (c) of the *General Rules for the Interpretation of the Harmonized System*³ should be used to classify the goods. Rule 3 (c) requires the goods to be classified in the subheading which occurs last in numerical order.

The appellant’s representative submitted that there is no basis on which to distinguish the tariff classification of the goods in issue from the tariff classification of similar goods which are imported with bars. He stated that the goods in issue can be used, once cut, with certain printers without the addition of bars. Therefore, the goods in issue should be classified in the same manner as similar goods which are imported with bars attached. The representative also submitted that the goods in issue should not be considered to be “in the piece”, as they are not like a bolt of cloth. The representative submitted that the industry refers to the goods in issue as being in “rolls”, not “in the piece”.

Finally, the appellant’s representative submitted that, for policy reasons, the goods in issue should be classified in subheading No. 5911.90 and not 5911.10. The representative submitted that classifying the goods in subheading No. 5911.10 penalizes Canadian manufacturers for importing goods which require manufacture after importation.

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

Counsel for the respondent submitted that the goods in issue are properly classified under tariff item No. 5911.10.11 and cannot be classified otherwise. Counsel submitted that the onus is on the appellant to demonstrate that the respondent's classification is incorrect. Counsel stated that the goods in issue are blankets composed of cotton weave fabric with a rubber laminate. The goods are imported in rolls without attachments and are cut to shape and fitted with attachments after importation. Counsel submitted that the application of Rule 1 of the *General Rules* requires classification to be determined according to the terms of the headings and relative Section Notes. Counsel submitted that Note 7 to Chapter 59 distinguishes between textile products, at paragraph (a), and textile articles, at paragraph (b). Counsel submitted that textile products include textile fabrics which are "in the piece" and provided the Tribunal with the *Fairchild's Dictionary of Textiles* definition of "in the piece" as "[f]abrics woven in lengths to be sold by the yard in retail stores. May also mean all goods which are not cut".⁴ Counsel submitted that, if a textile fabric is further worked or equipped with linking devices, etc., it becomes a textile article.⁵ Since the goods in issue have not been further worked or equipped with linking devices, they are textile fabrics.

Counsel for the respondent submitted that the goods in issue meet the criteria of subheading No. 5911.10 and that, since they are used on offset printing machinery, they are properly classified under tariff item No. 5911.10.11. Counsel submitted that, if it is determined that the goods in issue can be classified in both subheading Nos. 5911.10 and 5911.90, Rule 3 (a) of the *General Rules* should apply to classify the goods in subheading No. 5911.10, as it is the more specific description of the goods. Finally, counsel submitted that it is beyond the Tribunal's jurisdiction to classify the goods in issue on the basis of policy considerations.

DECISION

The parties are in agreement that the goods in issue are properly classified in heading No. 59.11. Given this agreement, the issue before the Tribunal is the classification of the goods in issue at the subheading and tariff item levels. Section 10 of the *Customs Tariff* provides that the classification of imported goods shall be determined in accordance with the *General Rules* and the *Canadian Rules*.⁶ Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in Schedule I of the *Customs Tariff*, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*⁷ 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].

4. Sixth ed., s.v. "Piece Goods".

5. Counsel relied on the *Explanatory Notes to the Harmonized Commodity Description and Coding System* [hereinafter *Explanatory Notes*], Customs Co-operation Council, 1st ed., Brussels, 1986, to heading No. 59.11 for this proposition.

6. *Supra* note 2, Schedule I.

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

Rule 6 provides that the classification of goods in subheadings is to be determined in accordance with the terms of the subheadings and any related Subheading Notes and, *mutatis mutandis*, in accordance with Rules 1 to 5.

All goods which are classified in heading No. 59.11 must be textile products and articles for technical uses. Although the appellant's representative suggested, at one point, that the goods in issue might not be textiles and might not be for technical uses, the appellant's agreement that the goods in issue are properly classified in heading No. 59.11 requires the goods in issue to be textiles for technical uses. Further, the testimony of Mr. Solnick confirms that the goods in issue are textiles for technical uses.

In order to be classified in heading No. 59.11, the goods in issue must also be goods specified in Note 7 to Chapter 59. Note 7 provides for two types of goods: textile products in the piece, cut to length or simply cut to rectangular (including square) shape, and textile articles which are used for technical purposes. The textile products provided for in Note 7 include textile fabrics laminated with rubber which are used for technical purposes. This description mirrors the terms of subheading No. 5911.10.

As the textile fabrics of subheading No. 5911.10 are included in the paragraph for textile products in Note 7, in order for the goods in issue to be classified in subheading No. 5911.10, they must be "in the piece, cut to length or simply cut to rectangular (including square) shape". If they do not meet this requirement, they can only be classified in heading No. 59.11 if they are textile articles. It is the Tribunal's view that the goods in issue are imported "in the piece". Mr. Solnick stated that the industry refers to the form in which the goods are imported as "rolls" and does not use the term "in the piece". However, the tariff nomenclature does use the term "in the piece"; therefore, some meaning must be ascribed to it. While Mr. Solnick did not provide the Tribunal with a definition of "in the piece", counsel for the respondent provided the *Fairchild's Dictionary of Textiles* definition of "in the piece" as "[f]abrics woven in lengths to be sold by the yard in retail stores. May also mean all goods which are not cut".⁸ Therefore, the Tribunal finds that "in the piece" means uncut. As the goods in issue are imported in rolls and later cut to size, the Tribunal finds that the goods in issue are imported "in the piece".

In order to classify the goods in issue in subheading No. 5911.10, the goods must also be "fabrics". The *Explanatory Notes* to heading No. 59.11 provide guidance as to what constitutes a "fabric" by describing what constitutes an "article". The *Explanatory Notes* state that articles are any of the fabrics mentioned in the paragraph describing textile products which have been "made up (cut to shape, assembled by sewing, etc.)" or which are "endless or fitted with linking devices". Therefore, if the textile has not been made up and is not endless and not fitted with linking devices, it is not an article and may be a fabric. The Tribunal notes that the goods in issue are made of cotton interply which has been laminated with rubber. The goods in issue are imported in rolls, have not been made up and are not endless and not fitted with linking devices. The Tribunal also notes that Mr. Solnick agreed that the goods in issue are textile fabrics. It is the Tribunal's view that the cotton interply is a textile fabric and, therefore, that the goods in issue are textile fabrics.

The final element of the description in subheading No. 5911.10 is that the textile fabric must be laminated with rubber. The evidence is clear that the goods in issue have been laminated with rubber.

Therefore, it is the Tribunal's view that the goods in issue meet the description of subheading No. 5911.10 as textile products specified in Note 7 to Chapter 59, which are fabrics laminated with rubber

8. *Supra* note 4.

which are used for technical purposes. As the goods meet this description, they do not meet the description of subheading No. 5911.90 as other textile products and articles for technical purposes specified in Note 7 to Chapter 59. Therefore, the goods in issue are properly classified under tariff item No. 5911.10.11.

Accordingly, the appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Peter F. Thalheimer

Peter F. Thalheimer
Member

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