



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2019-045

A.S.P. Management Inc.  
(dba PCT Vinyl Corp.)

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Friday, July 9, 2021*

*Corrigendum issued  
Friday, October 1, 2021*

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IN THE MATTER OF an appeal heard on December 17, 2020, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated December 11, 2019, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**A.S.P. MANAGEMENT INC. (DBA PCT VINYL CORP.)**

**Appellant**

**AND**

**THE PRESIDENT OF THE CANADA BORDER SERVICES  
AGENCY**

**Respondent**

**DECISION**

The appeal is dismissed.

Georges Bujold  
\_\_\_\_\_  
Georges Bujold  
Presiding Member

IN THE MATTER OF an appeal heard on December 17, 2020, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

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**BETWEEN**

**A.S.P. MANAGEMENT INC. (DBA PCT VINYL CORP.)**

**Appellant**

**AND**

**THE PRESIDENT OF THE CANADA BORDER SERVICES  
AGENCY**

**Respondent**

**CORRIGENDUM**

The first sentence of paragraph 16 of the Statement of Reasons should read as follows:

Following the hearing, on December 17, 2020, the Tribunal requested further submissions from the parties on the use of the term “thibaudes” as the translation for the term “underlays” in the notes to Chapter 57 of the tariff nomenclature.

Georges Bujold  
\_\_\_\_\_  
Georges Bujold  
Presiding Member

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	December 17, 2020
Tribunal Panel:	Georges Bujold, Presiding Member
Support Staff:	Jessye Kilburn, Counsel Michael Carfagnini, Counsel Ahmad Mahfouz, Paralegal-in-Training

**PARTICIPANTS:**

<b>Appellant</b>	<b>Counsel/Representative</b>
A.S.P. Management Inc. (dba PCT Vinyl Corp.)	Michael Kaylor
<b>Respondent</b>	<b>Counsel/Representative</b>
President of the Canada Border Services Agency	David DiSante

**WITNESS:**

Jonathan Pesner  
President of PCT Vinyl Corp.

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## STATEMENT OF REASONS

### OVERVIEW

[1] This is an appeal by A.S.P. Management Inc. (A.S.P.), pursuant to subsection 67(1) of the *Customs Act*,<sup>1</sup> from a re-determination by the President of the Canada Border Services Agency (CBSA) dated December 11, 2019.

[2] The appeal concerns the tariff classification of the following two similar but distinct goods: rug liners and grocery shelf liners. The dispute between the parties is at the heading level. A.S.P. contended that both the rug liners and the grocery shelf liners should be classified in heading No. 39.21 as other plates, sheets, film, foil and strip, of plastics. The CBSA argued that the two goods fall in separate headings. According to the CBSA, the rug liners fall in heading No. 39.18 as floor coverings of plastics in rolls, or in the alternative, in residual heading No. 39.26. As for the grocery shelf liners, the CBSA argued that they fall under residual tariff item No. 3926.90.99.

[3] For the reasons below, the Tribunal finds that both goods are classified under residual tariff item No. 3926.90.99. The appeal is therefore dismissed.

### GOODS IN ISSUE

[4] According to the parties' agreed statement of facts,<sup>2</sup> the rug liners are antislip mats to place underneath carpets. The grocery shelf liners are used to display fruit and vegetables at grocery stores. Both products are composed of a knitted open mesh, which has been entirely dip-coated with cellular plastics. The coating is a compounded polymer of vinyl chloride. Both products are produced and imported in rolls.

[5] According to the CBSA's laboratory analysis,<sup>3</sup> the rug liners have openings of approximately 7.51 mm by 6.80 mm. The grocery shelf liners have openings of variable size, which tends to be about 3.65 mm by 2.24 mm.

### PROCEDURAL HISTORY

[6] A.S.P. imported the goods in issue between September 6, 2014, and September 12, 2018, declaring them as "other plates, sheets, film, foil and strip, of plastics" under tariff item No. 3921.12.00.

[7] Pursuant to sections 42 and 42.01 of the *Customs Act*, the CBSA re-determined that the rug liners are classified under tariff item No. 3918.10.90 as "floor coverings of polymers of vinyl chloride, in rolls" and the grocery shelf liners under tariff item No. 3924.90.00 as "other household articles, of plastics." A.S.P. filed corrections according to these classifications and requested a further redetermination under subsection 60(1) of the *Customs Act*.

[8] The CBSA issued its decision under subsection 60(4) of the *Customs Act* on December 11, 2019, maintaining its classification of both goods.

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<sup>1</sup> R.S.C. 1985 (2nd Supp.), c. 1 [*Customs Act*].

<sup>2</sup> Exhibit AP-2019-045-14 at 1-5.

<sup>3</sup> *Ibid.* at 7-21.

[9] A.S.P. filed the present appeal on February 25, 2020, and its brief on April 20, 2020.

[10] On May 13, 2020, the CBSA requested an extension of time to file its brief in order to perform laboratory analysis on the goods. On May 14, 2020, the Tribunal granted this request.

[11] The CBSA filed its brief on August 18, 2020. At this point, the CBSA indicated that it agreed with A.S.P. that the grocery shelf liners could not be classified under tariff item No. 3924.90.00 as “other household articles, of plastics,” and it took the position that the grocery shelf liners can only be classified in residual heading No. 39.26.

[12] On August 25, 2020, A.S.P. requested permission to file a reply brief. On August 26, 2020, the Tribunal granted this request, and A.S.P. filed its reply brief on August 27, 2020.

[13] On August 26, 2020, the Tribunal requested the parties’ views on how to proceed with the hearing in light of the COVID-19 pandemic. The parties responded jointly on September 4, 2020, indicating that they would like to proceed by way of a videoconference hearing.

[14] On October 9, 2020, the Tribunal scheduled the videoconference hearing for December 17, 2020, and notified the parties that they were required to file any additional documents or authorities by November 27, 2020. The parties made several additional filings, as follows:

- On November 3, 2020, A.S.P. filed pictures of the goods at issue.
- On November 16, 2020, the parties filed an agreed statement of facts.
- On November 16, 2020, A.S.P. filed additional documents and authorities.
- On November 27, 2020, the CBSA filed additional documents and authorities.

[15] The Tribunal held a videoconference hearing on December 17, 2020.

[16] Following the hearing, on December 17, 2020, the Tribunal requested further submissions from the parties on the use of the term “thibaudes” as the translation for the term “liners” in the notes to Chapter 57 of the tariff nomenclature. The CBSA filed its submissions on December 22, 2020, and A.S.P. responded on December 23, 2020.

[17] On December 21, 2020, A.S.P. submitted that the CBSA had inaccurately argued that sheets with perforations are not advertised and sold as sheets, and A.S.P. referred the Tribunal to a website excerpt filed previously. The same day, the CBSA asked that this letter be struck from the record as it fell outside the scope of submissions requested by the Tribunal. On December 22, 2020, the Tribunal advised the parties that the letter would not be struck from the record but that CBSA would be given an opportunity to reply. CBSA replied on December 24, 2020.

## LEGAL FRAMEWORK

[18] The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).<sup>4</sup> The schedule is

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<sup>4</sup> Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.

divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

[19] Section 10(1) of the *Customs Tariff* provides that, subject to section 10(2), the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*,<sup>5</sup> and the *Canadian Rules*<sup>6</sup> set out in the schedule.

[20] The *General Rules* comprise six rules. Classification begins with Rule 1, which provides that 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 other rules.

[21] Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*<sup>7</sup> and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,<sup>8</sup> published by the WCO. While the *Classification Opinions* and the *Explanatory Notes* are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.<sup>9</sup>

[22] The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the *General Rules* as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. It is only where Rule 1 does not conclusively determine the classification of the goods that the other general rules become relevant to the classification process.<sup>10</sup>

[23] Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to use a similar approach to determine the proper subheading.<sup>11</sup> The final step is to determine the proper tariff item.<sup>12</sup>

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<sup>5</sup> S.C. 1997, c. 36, schedule [*General Rules*].

<sup>6</sup> S.C. 1997, c. 36, schedule [*Canadian Rules*].

<sup>7</sup> WCO, 2d ed., Brussels, 2003 [*Classification Opinions*].

<sup>8</sup> WCO, 5th ed., Brussels, 2012 [*Explanatory Notes*].

<sup>9</sup> See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that the Explanatory Notes be respected unless there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to the Classification Opinions.

<sup>10</sup> *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) at para. 21.

<sup>11</sup> Rules 1 through 5 of the *General Rules* apply to classification at the heading level. Rule 6 of the *General Rules* provides that “. . . the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, mutatis mutandis, to the above Rules [i.e. Rules 1 through 5] . . .” and that “. . . the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

<sup>12</sup> Rule 1 of the *Canadian Rules* provides that “. . . the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, mutatis mutandis, to the [General Rules] . . .” and that “. . . the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires.” Classification opinions and explanatory notes do not apply to classification at the tariff item level.



[24] The relevant provisions of the *Customs Tariff* are as follows:

<b>Section VII</b> <b>Plastics and Articles Thereof; Rubber and Articles Thereof</b>	<b>Section VII</b> <b>Matières plastiques ou ouvrages en ces matières; Caoutchouc et ouvrages en caoutchouc</b>
<b>Chapter 39</b> <b>PLASTICS AND ARTICLES THEREOF</b>	<b>Chapitre 39</b> <b>MATIÈRES PLASTIQUES ET OUVRAGES EN CES MATIÈRES</b>
<b>39.18</b> Floor coverings of plastics, whether or not self-adhesive, in rolls or in the form of tiles; wall or ceiling coverings of plastics, as defined in Note 9 to the Chapter.	<b>39.18</b> Revêtements de sols en matières plastiques, même auto-adhésifs, en rouleaux ou sous formes de carreaux ou de dalles; revêtements de murs ou de plafonds en matières plastiques définis dans la Note 9 du présent Chapitre.
<b>3918.10</b> -Of polymers of vinyl chloride	<b>3918.10</b> -En polymères du chlorure de vinyle
...	[...]
<b>3918.10.90</b> - - -Other	<b>3918.10.90</b> - - -Autres
...	[...]
<b>39.21</b> Other plates, sheets, film, foil and strip, of plastics.	<b>39.21</b> Autres plaques, feuilles, pellicules, bandes et lames, en matières plastiques.
-Cellular	-Produits alvéolaires :
...	[...]
<b>3921.12.00</b> 00 - - Of polymers of vinyl chloride	<b>3921.12.00</b> 00 - -En polymères du chlorure de vinyle
<b>39.26</b> Other articles of plastics and articles of other materials of headings 39.01 to 39.14	<b>39.26</b> Autres ouvrages en matières plastiques et ouvrages en autres matières des nos 39.01 à 39.14
...	[...]
<b>3926.90</b> -Other	<b>3926.90</b> -Autres
...	[...]
<b>3926.90.99</b> - - - -Other	<b>3926.90.99</b> - - - -Autres

[25] The relevant section notes, chapter notes, and explanatory notes can be found at Annex I.

## ANALYSIS

[26] It is common ground between the parties that the goods in issue are properly classified in Chapter 39, which covers articles of plastics. According to the Federal Court of Appeal's recent decision in *Impex*,<sup>13</sup> the Tribunal must first consider whether the goods in issue, which combine textiles and plastics as their constituent materials, are articles of textiles of Section XI of the nomenclature before finding that they are properly classified in Chapter 39 as articles of plastics.<sup>14</sup>

[27] Following the Court's direction, the Tribunal examined whether the materials from which the goods in issue are made should be regarded as textile materials of Section XI. In that event, their classification in Chapter 39 would be precluded. However, having regard to the relevant section and chapter notes, as clarified by the related explanatory notes, the Tribunal finds that the constituent materials of the goods in issue cannot be considered textiles within the meaning of Section XI.

[28] In fact, the evidence indicates that both the rug and grocery shelf liners are composed of an open mesh knitted fabric of synthetic polyester filament yarns that is dip-coated with cellular plastics. The impregnation, coating or covering of the plastics is visible with the naked eye.<sup>15</sup>

[29] As the CBSA submitted, while, at first blush, open mesh knitted fabrics may be classified in Chapters 59 or 60 of the nomenclature (i.e. two chapters of Section XI), the cellular plastics coating of the goods in issue precludes their classification in those chapters. In short, Note 1(c) to Chapter 60 in conjunction with Note 2(a)(3) to Chapter 59 direct the classification of textile fabrics that are entirely coated or covered with plastics to Chapter 39, provided that such coating or covering can be seen with the naked eye.<sup>16</sup> At the hearing, A.S.P. agreed with the CBSA's assessment and conclusion on this issue.<sup>17</sup>

[30] The Tribunal further notes that in the agreed statement of facts, both the rug and the grocery shelf liners are described as being entirely covered with a plastics coating that is visible with the naked eye.<sup>18</sup> As such, by virtue of the relevant chapter notes, there is no doubt that the goods in issue cannot be regarded as articles of textile materials for tariff classification purposes and are, therefore, classifiable in Chapter 39 as articles of plastics.

[31] The dispute between the parties is at the heading level. The central issue is determining which heading of Chapter 39 covers the goods in issue.

[32] While A.S.P. submits that the goods in issue of both types should be classified in heading No. 39.21 as other sheets of plastics, the CBSA's primary position is that the rug liners are properly classified in heading No. 39.18 as floor coverings. In the alternative, the CBSA argues that the rug

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<sup>13</sup> *Canada (Attorney General) v. Impex Solutions Inc.* [Impex], 2020 FCA 171.

<sup>14</sup> *Ibid.* at paras. 76-86. The Court reasoned that, by virtue of the broad exclusionary rule found in Notes 1 and 2(p) to Chapter 39, while textile materials of Section XI are not to be considered plastics within the meaning of headings No. 39.01 to No. 39.14, the converse is not necessarily true. Therefore, before classifying the goods in Chapter 39 as articles of plastics, the Tribunal must ensure that they are not articles of textile covered by Section XI of the nomenclature.

<sup>15</sup> Exhibit AP-2019-045-07, Annex 8 (CBSA's Laboratory Report).

<sup>16</sup> The explanatory notes to Chapter 39 also support this conclusion.

<sup>17</sup> *Transcript of Public Hearing*, 17 December 2020, at 29.

<sup>18</sup> Exhibit AP-2019-045-14 at 4.

liners should be classified in heading No. 39.26 as other articles of plastics. As for the grocery shelf liners, the CBSA submits that they are properly classified in this residual heading of Chapter 39.

[33] The Tribunal will address the tariff classification of the two types of goods in turn, starting with the rug liners. Specifically, applying Rule 1 of the *General Rules*, the Tribunal must determine which of the competing headings describes the goods in issue.<sup>19</sup>

### **Classification of the rug liners**

[34] The explanatory notes to heading No. 39.21 provide that this heading covers plates, sheets, film, foil and strip, of plastics, *other than* those of, notably, heading No. 39.18. Therefore, the Tribunal must begin its analysis by determining whether the rug liners meet the terms of heading No. 39.18. In that event, the rug liners could not also be *prima facie* classifiable in heading No. 39.21 given that, based on the explanatory notes, this heading does not cover goods classifiable in heading No. 39.18.

### Heading No. 39.18

[35] Heading No. 39.18 covers the following two types of articles of plastics: (1) floor coverings, and (2) wall or ceiling coverings. The Tribunal has already found that the goods in issue are articles of plastics. As none of the parties submitted that the rug liners are used as wall or ceiling coverings, and given the absence of evidence indicating that they could serve this purpose, in order to classify the rug liners in heading No. 39.18, the Tribunal must conclude that they are “floor coverings” imported “in rolls or in the form of tiles.”

[36] The CBSA correctly noted, and the evidence demonstrates, that the rug liners are imported in rolls.<sup>20</sup> Therefore, to determine that the rug liners are properly classified in heading No. 39.18, the Tribunal must find that they are “floor coverings.”

[37] On this issue, the CBSA submitted that the rug liners are in direct contact with the floor and are therefore a type of floor covering—specifically a “floor covering underlay.” The CBSA referred to Note 2 to Chapter 57, which provides that floor covering underlays are not covered by Chapter 57, the chapter in the nomenclature that encompasses textile floor coverings.<sup>21</sup> The CBSA argued that if underlays were not considered a type of floor covering, there would have been no need to expressly exclude them from the ambit of this chapter in the Notes to Chapter 57. Consequently, the CBSA contends that if Parliament had intended to exclude underlays from the scope of floor coverings in Chapter 39, it would have done so explicitly in Chapter 39 as it did in Chapter 57.

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<sup>19</sup> The parties did not rely on other rules of the *General Rules* in support of their respective positions. The Tribunal agrees that Rule 1 is determinative in this appeal.

<sup>20</sup> Exhibit AP-2019-045-07 at paras. 47-48 and evidence therein referred to.

<sup>21</sup> The Notes to Chapter 57 read as follows:

1. For the purpose of this Chapter, the term “carpets and other textile floor coverings” means floor coverings in which textile materials serve as the exposed surface of the article when in use and includes articles having the characteristics of textile floor coverings but intended for use for other purposes.
2. This Chapter does not cover floor covering underlays.

[38] A.S.P. submitted that, contrary to the CBSA's argument, Note 2 to Chapter 57 does not imply that underlays are considered as a type of floor covering for tariff classification purposes. According to A.S.P., this note indicates that Chapter 57 "does not cover" underlays, which simply means that such underlays are to be classified elsewhere, not that they are "floor coverings" and would be classified as such but for the presence of this chapter note. Rather, A.S.P. argued that this note suggests that floor covering underlays are different goods that are not classifiable as "floor coverings."

[39] The Tribunal is not persuaded by the CBSA's argument based on Note 2 to Chapter 57. This note does not define the term "floor coverings" either for the purpose of Chapter 57 or for the purpose of Chapter 39.

[40] Specific guidance on the meaning of the phrase "carpets and other textile floor coverings" in Chapter 57 is found in Note 1 to this chapter. According to this note, textile floor coverings are limited to goods in which "textile materials serve as the exposed surface of the article when in use." Underlays do not serve this purpose. By definition, underlays are or are designed to be laid under another good, such as carpet.<sup>22</sup> As they are goods that are concealed underneath carpets or other floor coverings, underlays never display textile materials serving as an exposed surface when in use. Therefore, they are not classifiable in Chapter 57 on this basis alone.

[41] In the Tribunal's opinion, Note 2 to Chapter 57 merely confirms this conclusion by expressly indicating that floor covering underlays are not covered by this chapter. In that sense, this note appears to have been included out of abundant caution, in order to avoid any ambiguity on the distinction to be made between underlays (which are to be classified elsewhere) and "carpets and other textile floor coverings" of Chapter 57. Thus, the Tribunal does not consider that, without the presence of Note 2 to Chapter 57, floor covering underlays would be included within the scope of floor coverings covered by Chapter 57.

[42] Put another way, Note 2 to Chapter 57 does not imply that floor covering underlays are a type of floor covering and would be considered as such in its absence. This note simply makes it clear that floor covering underlays are not covered by Chapter 57. The CBSA's reliance on Note 2 to Chapter 57 to argue that the term "floor coverings" for the purposes of tariff classification includes "floor covering underlays" and that, by analogy, a similar note would be required to exclude such underlays from the ambit of the term "floor coverings" in another chapter is therefore misguided.

[43] The absence of a similar note in Chapter 39 does not indicate that the intention of Parliament was to signal that underlays made of plastics, such as the rug liners,<sup>23</sup> are a type of "floor coverings" within the meaning of this term in heading No. 39.18. The CBSA's argument in this regard erroneously posits that "floor covering underlays" (if made of plastics) are, by default, captured by the meaning of the term "floor coverings" in heading No. 39.18.

[44] However, a review of the explanatory notes to Chapter 57 and of the French version of Note 2 to Chapter 57 indicates that the term "floor covering underlays" has a specific meaning for the purpose of Chapter 57, which cannot apply in the context of Chapter 39. As such, Note 2 to

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<sup>22</sup> Exhibit AP-2019-045-07 at 165; Merriam-Webster Dictionary, online: <[www.merriam-webster.com](http://www.merriam-webster.com)>, s.v. "underlay".

<sup>23</sup> It is beyond dispute that the rug liners can be generically described as "underlays" since they are used to line the bottom of carpets to prevent them from slipping. See Exhibit AP-2019-045-03 at paras. 2, 10.

Chapter 57 is not a persuasive contextual element in the interpretation of the terms of heading No. 39.18.

[45] The term “floor covering underlays” is defined in the explanatory notes to Chapter 57 as follows: “. . . coarse fabric or felt padding placed between the floor and the carpet (classified according to its constituent material).” Thus “floor covering underlays,” as this term is used in the *Customs Tariff*, are limited to goods made of textiles (i.e. coarse fabric or felt) and will be classified according to their textile constituent material.<sup>24</sup> It follows that articles of plastics of Chapter 39 cannot constitute “floor covering underlays” within the meaning of this term in the nomenclature.

[46] Therefore, “floor covering underlays,” as defined in the nomenclature, are not made of plastics and are thus necessarily excluded from Chapter 39, without the need for Parliament to expressly state as much in a chapter note. In fact, given the specific meaning of the term “floor covering underlays” in the *Customs Tariff*, it would have been redundant for Parliament to specify in a chapter note that Chapter 39 or, for that matter, heading No. 39.18, does not cover “floor covering underlays.” Indeed, only plastics and articles of plastics may be classified in Chapter 39. As such, the reference to floor covering underlays in Note 2 to Chapter 57 is not helpful for classifying the goods in issue.

[47] Further support for this conclusion is provided by the translation of the term “floor covering underlays” with the word “thibaudes” in the French version of the *Customs Tariff*.<sup>25</sup> The following definition of this French term is limited to underlays that are made of textile materials: “Molleton de tissu grossier ou de feutre que l’on met entre le sol et les tapis” (fleece of coarse fabric or felt that is placed between the floor and the rugs).<sup>26</sup>

[48] The shared meaning between the terms “floor covering underlays” and “thibaudes” is therefore the narrower French version, which clearly indicates that the underlays referred to in Note 2 to Chapter 57 are restricted to goods made of textile materials. This confirms that the term “floor covering underlays” for tariff classification purposes does not include underlays of all kinds, but only padding made exclusively of textile fabrics placed between the floor and carpets. For this reason, while the rug liners in issue may be commonly described as “underlays” of plastics in accordance with the ordinary meaning of the word “underlay” when this term is examined without taking into account the context in which it is used, they are not “floor covering underlays” within the specific meaning of this term in the *Customs Tariff*. In short, it is legally incorrect to equate the meaning of the term “underlays” as used in Note 2 to Chapter 57 with the ordinary meaning of this term.

[49] Accordingly, contrary to the CBSA’s argument, there are no such things as “floor covering underlays” (that is, “thibaudes”) of Chapter 39. As a result, there was no need for Parliament to exclude these goods from the scope of Chapter 39 with a chapter note. In this context, the absence of such a note does not inform the meaning of the term “floor coverings” in heading No. 39.18 or otherwise suggest that Parliament’s intent was that plastic underlays be treated as a type of floor covering.

[50] Moreover, the mere fact that the rug liners serve a similar purpose as “floor covering underlays,” as defined in Note 2 to Chapter 57 and the related explanatory notes, is not determinative

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<sup>24</sup> For example, felt is a textile of Chapter 56.

<sup>25</sup> Exhibit AP-2019-045-07 at 84.

<sup>26</sup> Le Robert, dico en ligne, online: <<https://dictionnaire.lerobert.com>>, s.v. “thibaude”.

of their classification in Chapter 39. Indeed, there is no heading which specifically describes carpet underlays made of plastics such as the rug liners, nor are there any chapter or explanatory notes governing the classification of such goods. Therefore, it cannot be assumed that carpet underlays made of plastics are “floor coverings” within the meaning of heading No. 39.18.

[51] To the extent that the notes to Chapter 57 provide guidance on this issue, the Tribunal is of the view that, read together, they suggest that underlays are *not* a type of floor covering. Again, in and of itself, Note 2 to Chapter 57 does not establish that “floor covering underlays” are a type of floor covering. In addition, Note 1 to this chapter strongly supports the view that textile floor coverings have an “exposed surface” when they are in use. By analogy, floor coverings made of plastics of heading No. 39.18 should also have a surface that can be seen.

[52] This interpretation is consistent with the common meaning of the term floor coverings. The ordinary meaning of the expression “floor covering” is as follows: “material made from textiles, felts, resins, rubber, or other natural or man-made substances applied or fastened to, or laid upon, the level base surface of a room to provide comfort, durability, safety, *and decoration*”<sup>27</sup> [emphasis added]. It can also broadly mean “[a] piece of material used to protect or *decorate* a floor”<sup>28</sup> [emphasis added]. Furthermore, the French version of “floor covering” is “revêtement de sol,” which is defined as “[m]atériel servant de surface d’usure et de finition sur un plancher” (material serving as a surface for wear and finish on a floor).<sup>29</sup> As such, the fact that the rug liners are in direct contact with the floor when in use is insufficient to conclude that they are floor coverings.

[53] In ordinary parlance, floor coverings are commonly thought to be articles such as carpets, rugs, mats, linoleum, tiles, etc. These are articles which cover a floor area and are open to view. The rug liners, on the other hand, are not visible when in use. Rather, they are placed under another good, i.e. the rug or floor covering.<sup>30</sup> Their purpose is fulfilled only when used in conjunction with a visible floor covering, and not as a stand-alone item. Therefore, the Tribunal is unable to conclude that the rug liners are encompassed within the common meaning of the term “floor coverings.”

[54] There is a presumption that words used in the *Customs Tariff* which are words used in ordinary conversations in an everyday way are to be read in their ordinary sense.<sup>31</sup> In the absence of evidence to displace the presumption that the ordinary meaning of the term “floor coverings” should apply here,<sup>32</sup> the Tribunal finds that the rug liners are not “floor coverings” and, therefore, cannot be classified in heading No. 39.18.

#### Heading No. 39.21

[55] A.S.P. submitted that the rug liners fall in heading No. 39.21, which covers other plates, sheets, film, foil and strip of plastics. A.S.P. contended that the rug liners are “sheets” of plastics

<sup>27</sup> Encyclopedia Britannica, online: <<https://www.britannica.com/technology/floor-covering>>, s.v. “floor covering”.

<sup>28</sup> Lexico Dictionary, online: <[https://www.lexico.com/definition/floor\\_covering](https://www.lexico.com/definition/floor_covering)>, s.v. “floor covering”.

<sup>29</sup> Office québécois de la langue française, online: <[http://gdt.oqlf.gouv.qc.ca/ficheOqlf.aspx?Id\\_Fiche=8360858](http://gdt.oqlf.gouv.qc.ca/ficheOqlf.aspx?Id_Fiche=8360858)>, s.v. “revêtement de sol.”

<sup>30</sup> These facts were confirmed by Mr. Jonathan Pesner’s testimony. *Transcript of Public Hearing*, 17 December 2020, at 11-12.

<sup>31</sup> *Danby Products Limited v. Canada (Border Services Agency)*, 2021 FCA 82 at paras. 16-22.

<sup>32</sup> As discussed above, there are, in contrast, clear contextual indications that the term “underlays”, as used in the *Customs Tariff*, is not to be read in its ordinary sense.

within the meaning of this term in heading No. 39.21. It primarily relied on the dictionary definitions of the word “sheet” on the record in support of its position.<sup>33</sup>

[56] The CBSA submitted that the rug liners cannot be classified in heading No. 39.21 as they do not fit the terms of that provision. The CBSA referred to Note 10 to Chapter 39, the explanatory notes to heading No. 39.21 and emphasized a classification opinion and underlying report of the Secretariat of the WCO to argue that “plates, sheets, film, foil and strip” of heading No. 39.21 must all have a level, flat or solid surface—which the rug liners do not, as they have openings between the mesh that are not covered by the polymer coating.

[57] The classification opinion in question determined that a “reinforcement grid”<sup>34</sup> with “open parts of sizeable dimension” could not be classified in heading No. 39.21, in part because “plates” and “sheets” must have a “level, flat and solid surface.”<sup>35</sup> Additionally, the CBSA relied on dictionary definitions of “plates,” “sheets,” “film,” “foil” and “strip,” all of which, it argued, imply that these goods have a level, flat or solid surface.

[58] In response, A.S.P. submitted that the Tribunal is not bound by the WCO classification opinion and there are sound reasons to depart from its guidance in this case. Its position can be summarized as follows:

- The rug liners and the reinforcement grid subject to the classification opinion are not alike. The WCO opinion excluded the reinforcement grid from heading 39.21 on the basis that the open parts were “sizeable.” The openings of the reinforcement grid measured 35 by 40 mm. A.S.P. argues that, in contrast, the rug liners’ smaller openings of 7.51 mm by 6.80 mm<sup>36</sup> are not “sizeable,” and that therefore the WCO opinion does not apply to exclude the rug liners from heading 39.21. According to A.S.P., the obvious differences between the rug liners and goods used to reinforce earth filled structures, including the much smaller size of their apertures, make the classification opinion irrelevant in this appeal.
- A.S.P. cites dictionary definitions of “sheet,” noting that these definitions do not contain any express requirements that a sheet be rigid or solid. It also notes that textile fabric that is subsequently coated with plastic may constitute a “sheet,” as is recognized in the *Customs Tariff*. On this point, A.S.P. notably refers to an explanatory note to heading 56.03 stating that “a nonwoven is a sheet or web of predominantly textile fibres oriented directionally or randomly and bonded.”

<sup>33</sup> In particular, A.S.P. referred to the following definition submitted by the CBSA: “a large thin, flat usually rectangular piece of something.” See Exhibit AP-2019-045-07 at 166. It contends that the rug liners fall nicely within this definition.

<sup>34</sup> The goods to which the classification opinion applies were described as follows: “Flexible reinforcement grid, in rolls, made of high-strength polyester fibres (or yarns) woven and covered on all sides with a protective layer of poly (vinyl chloride) visible to the naked eye, used to reinforce earth fill structures. Each element of the grid takes the form of a narrow fabric made of parallel yarns, with the “weft” inserted at right angles between the yarns of the “warp”, forming mesh openings measuring 35 x 40 mm. The polymer coating bonds (reinforces) the grid’s elements and protects the yarn from UV and mechanical damage.” Exhibit AP-2019-045-07 at 126.

<sup>35</sup> Exhibit AP-2019-045-07 at 136.

<sup>36</sup> *Ibid.*

- A.S.P. argues that the WCO opinion on which the CBSA relies is contrary to an advance ruling by the CBSA, in which a good known as “PE tarpaulin in a roll” was classified under tariff item 3921.90.00.10.<sup>37</sup>

[59] The Tribunal notes that the parties’ submissions focused on whether the rug liners can be described as “sheets” of plastics. In this regard, A.S.P. supports a broad interpretation of the term, whereas the CBSA ascribes a narrower meaning to this term, based on the same dictionary definitions.

[60] While it is true that one of the dictionary definitions filed with the Tribunal mentions that sheets have a “continuous surface,”<sup>38</sup> which suggests that the term “sheet” would not comprise goods that have perforations (even small) such as the goods in issue, the Tribunal has previously adopted a more expansive interpretation of this term. In *Leeza Distribution Inc. v. President of the Canada Border Services Agency*,<sup>39</sup> it accepted the following definition of sheet from the *Webster’s Third New International Dictionary*: “a broad stretch or surface of something that is usu. thin in comparison to its length and breadth . . . .”<sup>40</sup>

[61] Given that the rug liners are thin in comparison to their total width and length, they could constitute sheets in accordance with this definition. However, the Tribunal does not consider that a finding that the rug liners are sheets would be dispositive of the matter. The reason is that sheets of plastics may be classified in either heading No. 39.21 or No. 39.26 depending on their characteristics. In fact, heading No. 39.21 is itself also a residual heading as it covers *other* plates, sheets, film, foil and strip of plastics (i.e. plates, sheets, film, foil and strip of plastics that are not classifiable elsewhere).

[62] Thus, even if the Tribunal were to find that the rug liners are sheets of plastics, such a finding would not suffice to classify them in heading No. 39.21. The conclusion that goods that constitute sheets are not necessarily properly classified in heading No. 39.21 is confirmed by the explanatory notes to Chapter 39, which provide as follows:

**Plates, sheets, film, foil and strip of heading 39.20 or 39.21**

The expression “plates, sheets, film, foil and strip”, used in headings 39.20 and 39.21 is defined in Note 10 to the Chapter.

Such plates, sheets, etc., whether or not surface-worked (including squares and other rectangles cut therefrom), with ground edges, drilled, milled, hemmed, twisted, framed or otherwise worked or cut into shapes other than rectangular (including square), are generally classified in **headings 39.18, 39.19 or 39.22 to 39.26**.

[63] These notes make it clear that only a certain type of “sheets” is covered by heading No. 39.21. In fact, they indicate that numerous plates, sheets, etc. (those that are drilled, milled, hemmed, twisted, framed or otherwise worked or cut into shapes other than rectangular) are classifiable in headings *other than* heading No. 39.21, including heading No. 39.26. Accordingly,

<sup>37</sup> Exhibit AP-2019-045-10 at 11-13.

<sup>38</sup> See the definition from *Webster’s New World Dictionary of the American Language* cited at Exhibit AP-2019-045-10 at 5.

<sup>39</sup> (17 August 2010), AP-2009-057 (CITT) at para. 63.

<sup>40</sup> 1986, s.v. “sheet.”



articles of heading No. 39.26 can also take the form of “sheets.” In other words, finding that the rug liners are sheets of plastics is a necessary but insufficient condition to conclude that they should be classified in heading No. 39.21.

[64] The explanatory notes to Chapter 39 also indicate that the expression “plates, sheets, film, foil and strip,” used in headings 39.20 and 39.21 is defined in Note 10 to the Chapter. Therefore, to be classifiable as “sheets” of plastics of heading No. 39.21, the goods in issue must satisfy the conditions set out in the definition found in this chapter note.

[65] Note 10 to Chapter 39 provides the following:

In headings 39.20 and 39.21, the expression “plates, sheets, film, foil and strip” applies only to plates, sheets, film, foil and strip (other than those of Chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

[66] Based on this definition, even assuming that the rug liners are sheets of plastics as argued by A.S.P., they can only be classified in heading No. 39.21 if they are sheets that are not “further worked.” Put differently, Note 10 to Chapter 39 establishes a distinction between sheets that are “surface-worked” and those that are “further worked.” Only the former category of sheets is classifiable in heading No. 39.20 or No. 39.21.<sup>41</sup>

[67] At the hearing, A.S.P. submitted that the holes or perforations in the rug liners amount to a type of “surface-working” and that they are therefore covered by heading No. 39.21 by virtue of the definition in Note 10 to Chapter 39. However, A.S.P.’s position in this regard conflicts with the views expressed by the WCO Secretariat in the report underpinning the classification opinion relied upon by the CBSA, as follows:

... a plastic sheet or plate containing holes or perforations covering a varying proportion of its surface would be excluded from headings 39.20 or 39.21, by application of Note 10 to Chapter 39, perforation being considered more than mere surface-working.<sup>42</sup>

[68] A.S.P. disputes the applicability of this statement because, in its submissions, Note 10 does not direct the Tribunal to examine whether something is more than mere surface-working. It appears to claim that the WCO applied the wrong test because Note 10 to Chapter 39 broadly indicates that sheets will be classified in heading No. 39.21 to the extent that they are printed or “otherwise surface-worked.” According to A.S.P., the phrase “otherwise surface-worked” must be given a broad meaning and there is no basis to exclude goods from heading No. 39.21 on the grounds that perforation is more than mere surface-working. In its view, it is perfectly acceptable to conclude that perforation is a type of surface-working.<sup>43</sup>

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<sup>41</sup> Heading No. 39.20 covers other plates, sheets, film, foil and strip of non-cellular plastics that are not combined with other materials. As the rug liners combine textiles and plastics and are, as noted above, coated with *cellular* plastics, they clearly do not meet the terms of heading No. 39.20.

<sup>42</sup> Exhibit AP-2019-045-07 at 136.

<sup>43</sup> *Transcript of Public Hearing*, 17 December 2020, at 19-21.

[69] The Tribunal is not persuaded by A.S.P.'s arguments. For the following reasons, the Tribunal finds that, even assuming that they are sheets of plastics, the rug liners are "further worked" within the meaning of Note 10 to Chapter 39 and are therefore excluded from heading No. 39.21.

[70] A plain reading of this note suggests that the expression "otherwise surface-worked" means operations performed solely on the surface of the sheet (e.g. printing or similar processes). In that sense, a sheet may be said to be "further worked" if it goes through additional or other types of manufacturing processes, including those that go beyond work on its surface.<sup>44</sup> In the Tribunal's opinion, any "work" on a sheet that affects components other than its surface should suffice to conclude that it is "further worked" within the meaning of Note 10 to Chapter 39. This would include perforation or other operations resulting in a sheet containing holes.

[71] Additional guidance on the meaning of the expressions "surface-worked" and "further worked" is provided by the explanatory notes to heading No. 39.21. These are consistent with the above interpretation. They provide as follows:

According to Note 10 to this Chapter, the expression "plates, sheets, film, foil and strip" applies only to plates, sheets, film, foil and strip and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked (for example, polished, embossed, coloured, merely curved or corrugated), uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

Plates, sheets, etc., whether or not surface-worked (including squares and other rectangles cut therefrom), with ground edges, drilled, milled, hemmed, twisted, framed or otherwise worked or cut into shapes other than rectangular (including square) are generally classified as articles of **headings 39.18, 39.19 or 39.22 to 39.26**.

[72] These notes confirm that, for tariff classification purposes, "sheets" of plastics may have holes or perforations (*drilled* sheets will necessarily be pierced). The Tribunal finds that they also strongly support the view that sheets containing holes or perforations are "further worked" in accordance with Note 10 to Chapter 39 and, therefore, excluded from heading No. 39.21.

[73] Indeed, read together with the definition set out in the chapter notes, these notes indicate that the expression "plates, sheets, film, foil and strip" in heading No. 39.21 can only cover articles that are "not further worked," that is, not worked beyond the type of surface-working processes mentioned in the explanatory notes, for example, printing, polishing, colouring, or merely curving. The meaning of the phrase "otherwise surfaced-worked" is also informed and, for that matter, constrained by the non-exhaustive list of examples of articles that are "further worked" included in the explanatory notes, namely those "with ground edges, drilled, milled, hemmed, twisted, framed or otherwise worked or cut into shapes other than rectangular."

[74] As such, when examined in context, the phrase "otherwise surface-worked" used in Note 10 to Chapter 39 has a narrower meaning than that submitted by A.S.P. Its meaning must be limited to operations of the same kind as those explicitly stated as examples of surface-working, without

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<sup>44</sup> Other than cutting it into rectangles (including squares) since Note 10 to Chapter 39 stipulates that heading No. 39.21 covers "plates, sheets, film, foil and strip" uncut "or cut into rectangles (including squares) but not further worked."

including processes akin to those that result in the type of “further worked” articles listed in the explanatory notes.

[75] In this regard, none of the examples of articles that are to be considered “otherwise surfaced-worked” include goods containing holes or perforations. The illustrative list of “surface-worked” articles only refer to operations such as embossing, curving or corrugating that clearly do not result in those articles having holes or perforations.

[76] In contrast, *drilled* or *otherwise worked* plates, sheets, etc. are expressly listed in the examples of articles that are “further worked.” This language suggests that goods containing holes or perforations are to be considered “further worked” within the meaning of Note 10 to Chapter 39. It is also consistent with the views expressed by the WCO Secretariat according to which perforation goes beyond surface-working. Altogether, the Tribunal finds that these notes support the view that “further worked” sheets include sheets that contain perforations or holes resulting from drilling or otherwise, i.e. from another manufacturing process.

[77] As for A.S.P.’s arguments calling into question the relevance of the classification opinion on the grounds that the rug liners are very different goods than the reinforcement grids to which it pertains, notably because the holes in the rug liners are much smaller, the Tribunal is of the view that, notwithstanding this fact, the opinion provides useful guidance on the meaning of the phrase “further worked” in Note 10 to Chapter 39. The key point in this opinion from a legal interpretation perspective is the WCO’s statement that a perforated sheet having holes covering a *varying* (i.e. not necessarily sizeable) proportion of its surface is excluded from heading No. 39.21. In that sense, while not directly applicable to the rug liners, this classification opinion remains pertinent to the issues raised in this appeal. Therefore, the Tribunal may have regard to it in interpreting the meaning of the phrase “further worked” in the relevant provisions of the *Customs Tariff*.

[78] The Tribunal also disagrees with A.S.P.’s submissions contesting the applicability or accuracy of the statement made in the classification opinion according to which “perforation [should be] considered more than mere surface-working.” In this respect, A.S.P. claimed that “Note 10 [to Chapter 39] does not talk about something that is more than mere surface-working,” and implied that, in this way, the WCO improperly restricted the meaning of the phrase “otherwise surface-worked.”<sup>45</sup> However, this argument appears inconsistent with the terms of Note 10 to Chapter 39 because this note expressly refers to an operation or “something” that is more than surface-working by excluding from the scope of heading No. 39.21 goods that are “further worked” than surface-worked.

[79] The Tribunal reads the use of the phrase “more than mere surface-working” in the classification opinion as an indication that the WCO properly contrasted the two different types of “working” that can be performed on a sheet, and then found that perforation involves more than merely altering its surface. In other words, this statement does not suggest that the WCO incorrectly narrowed down the meaning of the words “otherwise surface-worked.” According to the explanatory notes to heading No. 39.21, plates, sheets, etc., *whether or not surface-worked*, are excluded from this heading if they are “otherwise worked.” As such, it is perfectly reasonable to conclude that “further worked” sheets consist of sheets that are more than merely surface worked.

[80] The Tribunal notes that A.S.P. argued that perforation might be treated as a type of surface-working. However, it did not refer to any authorities in support of this assertion which, as

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<sup>45</sup> *Transcript of Public Hearing*, 17 December 2020, at 19-21.

discussed above, is at odds with the guidance provided by the explanatory notes and the classification opinion.

[81] Moreover, it follows from A.S.P.'s arguments at the hearing that it accepts that the holes in the rug liners are the result of "working" of some kind. The Tribunal agrees that the holes in the rug liners reflect them being "worked," but considers that the holes or perforations in the rug liners go beyond work on their surface. As such, they reflect a type of "further" working which excludes them from heading No. 39.21.

[82] According to the evidence, the rug liners have an "open-weave construction" that "promotes air circulation and makes vacuuming easy."<sup>46</sup> These features suggest that they are "further worked" sheets of plastics in that for them to serve their purpose, they must be more than surface-worked (for example, polished, embossed, coloured, merely curved or corrugated).

[83] Finally, with respect to A.S.P.'s argument based on an advance ruling by the CBSA, in which another good known as "PE tarpaulin in a roll" was classified in heading No. 39.21, the Tribunal notes that this product does not appear to have visible holes in it, given that it is "used in construction as a barrier to close off a room when removing materials in order to keep dirt and dust at a minimum."<sup>47</sup> As such, this product is not analogous to the rug liners. It appears to constitute a very basic or plain sheet of plastics, having a flat, solid or continuous surface that would seem to fit the terms of heading 39.21. For this reason, even if this CBSA's advance ruling was binding on the Tribunal (which it is not), it would not provide compelling support for classifying the rug liners in heading No. 39.21.

[84] For these reasons, the Tribunal finds that the rug liners are not sheets of plastics classifiable in heading No. 39.21.

#### Heading No. 39.26

[85] Having determined that the rug liners are not classifiable in either heading No. 39.18 or No. 39.21, the Tribunal must examine whether they should be classified as "other articles of plastics" in residual heading No. 39.26. The Explanatory Notes to heading No. 39.26 provide that the heading "covers articles, not elsewhere specified or included, of plastics." The Tribunal notes that the parties have not proposed any other heading in which the rug liners could be more specifically described in Chapter 39.

[86] Given that it is beyond dispute that the rug liners are "articles" which are made "of plastics," the Tribunal finds that they are properly classified in heading No. 39.26. It is also undisputed that, should heading No. 39.26 apply, the rug liners would also fall to be classified in residual subheading No. 3926.90 and residual tariff item No. 3926.90.99.

[87] Following Rule 1 and Rule 6 of the *General Rules* and Rule 1 of the *Canadian Rules*, the Tribunal therefore finds that the rug liners are properly classified in tariff item No. 3926.90.99.

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<sup>46</sup> Exhibit AP-2019-045-07 at 161.

<sup>47</sup> Exhibit AP-2019-045-10 at 11.

### Classification of the grocery shelf liners

[88] A.S.P. submitted that the grocery shelf liners should be classified in heading No. 39.21, relying on the same arguments than those invoked in support of the classification of the rug liners in that heading. It emphasized that the CBSA's laboratory analysis of the grocery shelf liners found that their openings do not all have the same shape, but are usually approximately 3.65 mm by 2.24 mm, which is smaller than the holes in the rug liners. Again, it distinguished the grocery shelf liners from the reinforcement grid at issue in the WCO classification opinion relied upon by the CBSA, which had openings of 35 by 40 mm, significantly larger than those of the grocery shelf liners.

[89] The CBSA submitted that heading No. 39.21 cannot apply to the grocery shelf liners for the same reasons that it cannot apply to the rug liners. Like the rug liners, the grocery shelf liners have mesh openings. Therefore, according to the CBSA, they do not have a level, flat and solid surface. As a result, they are not "plates, sheets, film or foil and strip" of plastics of heading No. 39.21 and can only be classified in residual heading No. 39.26.

[90] The Tribunal has already found that, in order to be classified in heading No. 39.21, a good that constitutes a sheet of plastics may be surface-worked but it cannot be "further worked" within the meaning of Note 10 to Chapter 39. Applying the analytical framework set out above to the grocery shelf liners, the Tribunal finds that they also constitute "further worked" "plates, sheets, film or foil and strip" of plastics and are therefore excluded from heading No. 39.21.

[91] The evidence indicates that, like the rug liners, the grocery shelf liners contain holes or perforations covering a proportion of their surface. In the Tribunal's opinion, even articles with openings of only a few millimetres can be considered "further worked" because, as a result, they do not have a continuous surface and are "worked" to an extent that exceeds the type of surface-working processes mentioned in the explanatory notes to heading No. 39.21. Any type of perforations or manufacturing process resulting in sheets containing visible holes transforms them into "further worked" articles within the meaning of Note 10 to Chapter 39.

[92] The evidence on the characteristics of the grocery shelf liners also suggests that, in order to serve their purpose, they must be more than surface-worked. According to the marketing materials filed by the CBSA, the grocery shelf liners "prolong freshness by wicking away moisture and providing cushioning and air circulation."<sup>48</sup> These features, particularly air circulation, involve "further" working than procedures on the surface of the grocery shelf liners. In other words, the grocery shelf liners are "worked" to a degree that goes beyond processes such as printing, polishing, embossing, colouring, etc.

[93] Accordingly, the Tribunal finds that the grocery shelf liners are "further worked" plates, sheets, etc. and, for this reason, not sheets of plastics classifiable in heading No. 39.21.

[94] As there is no other heading in Chapter 39 that more specifically describes the grocery shelf liners, they are not articles of plastics elsewhere specified or included. As such, the Tribunal finds that they are properly classified in the residual heading of Chapter 39, namely, heading No. 39.26.

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<sup>48</sup> Exhibit AP-2019-045-07 at 162.

[95] In the absence of indications that any other subheading or tariff item of heading No. 39.26 could potentially cover the grocery shelf liners, based on Rule 1 and Rule 6 of the *General Rules*, and Rule 1 of the *Canadian Rules*, the Tribunal therefore finds that they are properly classified in tariff item No. 3926.90.99.

## **DECISION**

[96] The appeal is dismissed.

Georges Bujold  
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Georges Bujold  
Presiding Member

## ANNEX I

A. The relevant section and chapter notes provide as follows:

<b>Chapter 39</b>	<b>Chapitre 39</b>
<b>PLASTICS AND ARTICLES THEREOF</b>	<b>MATIÈRES PLASTIQUES ET OUVRAGES EN CES MATIÈRES</b>
<p>Notes.</p> <p>1. Throughout the Nomenclature the expression “plastics” means those materials of headings 39.01 to 39.14 which are or have been capable, either at the moment of polymerisation or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticiser) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence. Throughout the Nomenclature any reference to “plastics” also includes vulcanised fibre. The expression, however, does not apply to materials regarded as textile materials of Section XI.</p> <p>2. This Chapter does not cover:</p> <p>...</p> <p>(p) Goods of Section XI (textiles and textile articles)</p> <p>...</p> <p>10. In headings 39.20 and 39.21, the expression “plates, sheets, film, foil and strip” applies only to plates, sheets, film, foil and strip (other than those of Chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surfaceworked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).</p>	<p>Notes.</p> <p>1. Dans la Nomenclature, on entend par matières plastiques les matières des positions nos 39.01 à 39.14 qui, lorsqu’elles ont été soumises à une influence extérieure (généralement la chaleur et la pression avec, le cas échéant, l’intervention d’un solvant ou d’un plastifiant), sont susceptibles ou ont été susceptibles, au moment de la polymérisation ou à un stade ultérieur, de prendre par moulage, coulage, profilage, laminage ou tout autre procédé, une forme qu’elles conservent lorsque cette influence a cessé de s’exercer. Dans la Nomenclature, l’expression matières plastiques couvre également la fibre vulcanisée. Ces termes ne s’appliquent toutefois pas aux matières à considérer comme des matières textiles de la Section XI.</p> <p>2. Le présent Chapitre ne comprend pas :</p> <p>[...]</p> <p>p) les produits de la Section XI (matières textiles et ouvrages en ces matières)</p> <p>[...]</p> <p>10. Au sens des nos 39.20 et 39.21, l’expression plaques, feuilles, pellicules, bandes et lames s’applique exclusivement aux plaques, feuilles, pellicules, bandes et lames (autres que celles du Chapitre 54) et aux blocs de forme géométrique régulière, même imprimés ou autrement travaillés en surface, non découpés ou simplement découpés de forme carrée ou rectangulaire mais non autrement travaillés (même si cette opération leur donne le caractère d’articles prêts à l’usage).</p>

**Section XI****TEXTILES AND TEXTILE ARTICLES**

Notes.

1. This Section does not cover:

...

(h) Woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of Chapter 39 . . .

**Chapter 57****CARPETS AND OTHER TEXTILE FLOOR COVERINGS**

Notes.

1. For the purpose of this Chapter, the term “carpets and other textile floor coverings” means floor coverings in which textile materials serve as the exposed surface of the article when in use and includes articles having the characteristics of textile floor coverings but intended for use for other purposes.

2. This Chapter does not cover floor covering underlays.

**Chapter 59****IMPREGNATED, COATED, COVERED OR LAMINATED TEXTILE****FABRICS; TEXTILE ARTICLES OF A KIND SUITABLE FOR INDUSTRIAL USE**

Notes.

1. Except where the context otherwise requires, for the purpose of this Chapter the expression “textile fabrics” applies only to the woven fabrics of Chapters 50 to 55 and headings 58.03 and 58.06, the braids and ornamental trimmings in the piece of heading 58.08 and the knitted or crocheted fabrics of headings 60.02 to 60.06.

**Section XI****MATIÈRES TEXTILES ET OUVRAGES EN CES MATIÈRES**

Notes.

1. La présente Section ne comprend pas :

[...]

h) les tissus, étoffes de bonneterie, feutres et non-tissés, imprégnés, enduits ou recouverts de matière plastique ou stratifiés avec cette même matière, et les articles en ces produits, du Chapitre 39 [...]

**Chapitre 57****TAPIS ET AUTRES REVÊTEMENTS DE SOL EN MATIÈRES TEXTILES**

Notes.

1. Dans ce Chapitre, on entend par tapis et autres revêtements de sol en matières textiles tout revêtement de sol dont la face en matière textile se trouve sur le dessus lorsque celui-ci est posé. Sont couverts également les articles qui possèdent les caractéristiques des revêtements de sol en matières textiles, mais qui sont utilisés à d'autres fins.

2. Le présent Chapitre ne couvre pas les thibaudes.

**Chapitre 59****TISSUS IMPRÉGNÉS, ENDUITS, RECOUVERTS OU STRATIFIÉS;****ARTICLES TECHNIQUES EN MATIÈRES TEXTILES**

Notes.

1. Sauf dispositions contraires, la dénomination tissus, lorsqu'elle est utilisée dans le présent Chapitre, s'entend des tissus des Chapitres 50 à 55 et des nos 58.03 et 58.06, des tresses, des articles de passementerie et des articles ornementaux analogues en pièces du no 58.08 et des étoffes de bonneterie des nos 60.02 à 60.06.



2. Heading 59.03 applies to:

(a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square metre and whatever the nature of the plastic material (compact or cellular), other than:

...

(3) Products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour (Chapter 39) . . .

2. Le no 59.03 comprend :

a) les tissus, imprégnés, enduits ou recouverts de matière plastique ou stratifiés avec de la matière plastique, quel qu'en soit le poids au mètre carré et quelle que soit la nature de la matière plastique (compacte ou alvéolaire), à l'exception :

[...]

3) des produits dans lesquels le tissu est soit entièrement noyé dans la matière plastique, soit totalement enduit ou recouvert sur ses deux faces de cette même matière, à condition que l'enduction ou le recouvrement soient perceptibles à l'œil nu, abstraction faite, pour l'application de cette disposition, des changements de couleur provoqués par ces opérations (Chapitre 39) [...]

### **Chapter 60**

#### **KNITTED OR CROCHETED FABRICS**

Notes.

1. This Chapter does not cover:

...

(c) Knitted or crocheted fabrics, impregnated, coated, covered or laminated, of Chapter 59. However, knitted or crocheted pile fabrics, impregnated, coated, covered or laminated, remain classified in heading 60.01 . . .

### **Chapitre 60**

#### **ÉTOFFES DE BONNETERIE**

Notes.

1. Le présent Chapitre ne comprend pas :

[...]

c) les étoffes de bonneterie, imprégnées, enduites, recouvertes ou stratifiées, du Chapitre 59. Toutefois, les velours, peluches et étoffes bouclées en bonneterie, imprégnés, enduits, recouverts ou stratifiés restent classés au no 60.01 [...]

B. The relevant explanatory notes provide as follows:

### **Chapter 39**

#### **Plastics and articles thereof**

... **Plates, sheets, film, foil and strip of heading 39.20 or 39.21**

The expression "plates, sheets, film, foil and strip", used in headings 39.20 and 39.21 is defined in Note 10 to the Chapter.

### **Chapitre 39**

#### **Matières plastiques et ouvrages en ces matières**

[...] **Plaques, feuilles, pellicules, bandes et lames du n° 39.20 ou du n° 39.21**

Les termes plaques, feuilles, pellicules, bandes et lames qui figurent dans les libellés des nos 39.20 et 39.21, sont définis dans la Note 10 du présent Chapitre.

Such plates, sheets, etc., whether or not surface-worked (including squares and other rectangles cut therefrom), with ground edges, drilled, milled, hemmed, twisted, framed or otherwise worked or cut into shapes other than rectangular (including square), are generally classified in **headings 39.18, 39.19 or 39.22 to 39.26.**

...

#### **Plastics and textile combinations**

... The following products are also covered by this Chapter:

...

(b) Textile fabrics and nonwovens, either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour . . .

**39.18 – Floor coverings of plastics, whether or not self-adhesive, in rolls or in the form of tiles; wall or ceiling coverings of plastics, as defined in Note 9 to this Chapter.**

...

The first part of the heading covers plastics of the types normally used as floor coverings, in rolls or in the form of tiles. It should be noted that self-adhesive floor coverings are classified in this heading. . .

Les plaques, feuilles, etc., même travaillées en surface (y compris les carrés et rectangles obtenus par découpage de ces articles), meulées sur les bords, percées, fraisées, ourlées, tordues, encadrées ou autrement travaillées ou encore découpées de formes autres que carrée ou rectangulaire relèvent généralement **des nos 39.18, 39.19 ou 39.22 à 39.26.**

[...]

#### **Matières plastiques combinées à des matières textiles**

[...] Le présent Chapitre couvre en outre les produits ci-après :

[...]

b) les tissus et les nontissés, soit entièrement noyés dans la matière plastique, soit totalement enduits ou recouverts sur leurs deux faces de cette même matière, à condition que l'enduction ou le recouvrement soient perceptibles à l'œil nu, abstraction faite pour l'application de cette disposition, des changements de couleur provoqués par ces opérations [...]

**39.18 – Revêtements de sols en matières plastiques, même auto-adhésifs, en rouleaux ou sous formes de carreaux ou de dalles; revêtements de murs ou de plafonds en matières plastiques définis dans la Note 9 du présent Chapitre.**

[...]

La première partie de cette position couvre les matières plastiques des types normalement utilisés comme revêtements de sols, en rouleaux ou sous formes de carreaux ou de dalles. Il est à souligner que les revêtements de sols auto-adhésifs restent classés dans la présente position[...]

**39.21 – Other plates, sheets, film, foil and strip, of plastics.**

...

This heading covers plates, sheets, film, foil and strip, of plastics, **other than those of heading 39.18, 39.19 or 39.20 or of Chapter 54.** It therefore covers only cellular products or those which have been reinforced, laminated, supported or similarly combined with other materials. (For the classification of plates, etc. combined with other materials, see the General Explanatory Note.)

According to Note 10 to this Chapter, the expression “plates, sheets, film, foil and strip” applies only to plates, sheets, film, foil and strip and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked (for example, polished, embossed, coloured, merely curved or corrugated), uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use). Plates, sheets, etc., whether or not surface-worked (including squares and other rectangles cut therefrom), with ground edges, drilled, milled, hemmed, twisted, framed or otherwise worked or cut into shapes other than rectangular (including square) are generally classified as articles of **headings 39.18, 39.19 or 39.22 to 39.26.**

**39.26 – Other articles of plastics and articles of other materials of headings 39.01 to 39.14.**

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14 ...

**39.21 – Autres plaques, feuilles, pellicules, bandes et lames, en matières plastiques**

[...]

La présente position couvre les plaques, feuilles, pellicules, bandes et lames en matières plastiques **autres que celles des nos 39.18, 39.19 ou 39.20 ou du Chapitre 54.** Elle ne couvre donc que les produits alvéolaires ou ceux qui ont été renforcés, stratifiés, munis d'un support ou pareillement associés à d'autres matières. (En ce qui concerne le classement des plaques, feuilles, etc., combinées à d'autres matières, voir les Considérations générales du présent Chapitre.)

Au sens de la Note 10 du présent Chapitre, l'expression plaques, feuilles, pellicules, bandes et lames s'applique exclusivement aux plaques, feuilles, pellicules, bandes et lames et aux blocs de forme géométrique régulière, même imprimés ou autrement travaillés en surface (polis, gaufrés, coloriés, simplement ondulés ou cintrés, par exemple), non découpés ou simplement découpés de forme carrée ou rectangulaire mais non autrement travaillés (même si cette opération leur donne le caractère d'articles prêts à l'usage). Sont en revanche généralement classés comme articles des **nos 39.18, 39.19 ou 39.22 à 39.26,** les plaques, feuilles, etc., même travaillées en surface (y compris les carrés et rectangles obtenus par découpage de ces articles), meulées sur les bords, percées, fraisées, ourlées, tordues, encadrées ou autrement travaillées ou encore découpées de forme autre que carrée ou rectangulaire.

**39.26 – Autres ouvrages en matières plastiques et ouvrages en autres matières des nos 39.01 à 39.14**

La présente position couvre les ouvrages non dénommés ni compris ailleurs en matières plastiques (tels qu'ils sont définis à la Note 1 du présent Chapitre) ou en autres matières des nos 39.01 à 39.14 [...]

**Chapter 57****Carpets and other textile floor coverings****Notes.**

1.- For the purposes of this Chapter, the term “carpets and other textile floor coverings” means floor coverings in which textile materials serve as the exposed surface of the article when in use and includes articles having the characteristics of textile floor coverings but intended for use for other purposes.

2.- This Chapter does not cover floor covering underlays.

**GENERAL**

This Chapter covers carpets and other textile floor coverings in which textile materials serve as the exposed surface of the article when in use. It includes articles having the characteristics of textile floor coverings (e.g., thickness, stiffness and strength) but intended for use for other purposes (for example, as wall hangings or table covers or for other furnishing purposes).

The above products are classified in this Chapter whether made up (i.e., made directly to size, hemmed, lined, fringed, assembled, etc.), in the form of carpet squares, bedside rugs, hearth rugs, or in the form of carpeting for installation in rooms, corridors, passages or stairs, in the length for cutting and making up. They may also be impregnated (e.g., with latex) or backed with woven or nonwoven fabrics or with cellular rubber or plastics.

**Chapitre 57****Tapis et autres revêtements de sol en matières textiles****Notes.**

1.- Dans ce Chapitre, on entend par tapis et autres revêtements de sol en matières textiles tout revêtement de sol dont la face en matière textile se trouve sur le dessus lorsque celui-ci est posé. Sont couverts également les articles qui possèdent les caractéristiques des revêtements de sol en matières textiles, mais qui sont utilisés à d'autres fins.

2.- Le présent Chapitre ne couvre pas les thibaudes.

**CONSIDÉRATIONS GÉNÉRALES**

Le présent Chapitre couvre les tapis et autres revêtements de sol en matières textiles dont la face en matières textiles se trouve sur le dessus lorsque celui-ci est posé. Il couvre également les articles qui possèdent les caractéristiques de revêtements de sol en matières textiles (par exemple, épaisseur, rigidité et résistance), mais qui sont utilisés à d'autres fins (destinés à être placés contre un mur, sur une table ou un autre meuble, par exemple).

Les tapis visés ci-dessus sont rangés dans le présent Chapitre qu'ils se présentent sous forme de tapis confectionnés (bordés, doublés, munis de franges, assemblés, etc.), par exemple de carpettes (c'est-à-dire de tapis destinés à être placés au milieu du plancher des pièces ou sur un escalier), de passages ou de couloirs, de descentes d'escaliers, de descentes de lits ou de devant de foyers, ou qu'ils soient en rouleaux de longueur indéterminée destinés à être débités par la suite. Les tapis dont le plancher est imprégné ou revêtu d'un enduit, ainsi que les tapis comportant sur l'envers un tissu ou un nontissé ou encore une feuille ou plaque en caoutchouc ou en matière plastique, alvéolaires, restent compris dans le présent Chapitre.

The Chapter does not cover:

(a) Floor covering underlays, i.e., coarse fabric or felt padding placed between the floor and the carpet (classified according to its constituent material) . . .

Sont exclus de ce Chapitre :

a) Les thibaudes, sorte de tissus ou de feutres grossiers de protection que l'on place entre le parquet et les tapis (classement d'après la matière constitutive) [...]