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Monza Imports and Chief Executive Officer of Customs [2006] AATA 71 (31 January 2006)

Last Updated: 1 February 2006

Administrative

Appeals

Tribunal

DECISION AND REASONS FOR DECISION [2006] AATA 71

ADMINISTRATIVE APPEALS TRIBUNAL № V2005/468

GENERAL ADMINISTRATIVE DIVISION

Re: **MONZA** IMPORTS

Applicant

And: CHIEF EXECUTIVE OFFICER OF CUSTOMS

Respondent

DECISION

Tribunal: The Hon Howard Olney AM QC, Deputy President

Mr Egon Fice, Member
Date: 31 January 2006
Place: Melbourne
Decision: The Tribunal sets aside the decision made by Customs in its Tariff Advice Number 17174400 dated 16 May 2005 and remits the matter to Customs for reconsideration in accordance with the Tribunal's findings.

Egon Fice Howard Olney

Member Deputy President

CUSTOMS AND EXCISE – Tariff classification – protective leather motorcycle suits – apparel – protective clothing – articles or equipment for sports – safety equipment – essential character – intended use of goods – statutory interpretation – extrinsic material – more than one classification – Harmonised Commodity Description Encoding System

Customs Act 1901 *s167*, *s273GA*

Customs Tariff Act 1995 *s4(1)*, *s7(1)*, *Schedules 2, 3, Headings 4203.10.00, 9506.99.00*

Harmonised Commodity Description and Coding system Explanatory Notes 3rd Ed (2002), World Customs Organization, Chapters 42.03, 95.06

Re Gissing and Collector of Customs (1977) 14 ALR 555

Times Consultant Pty Ltd v Collector of Customs (Qld) (1987) 76 ALR 313

Chandler & Co v Collector of Customs [1907] HCA 81; (1907) 4 CLR 1719

Whitton v Falkiner [1915] HCA 38; (1915) 20 CLR 118

Blackwood Hodge (Australia) Pty Ltd v Collector of Customs(NSW)(No 2) [1980] FCA 96; (1980) 47 FLR 131

Anite Networks Pty Ltd v Collector of Customs [1999] FCA 26 *Re Tridon Pty Ltd and Collector of Customs* (1982) 4 ALD 615

Liebert Corporation Australia Pty Ltd v Collector of Customs (Unreported, Full Court of the Federal Court of Australia, 1 November 1993)

Barry R Liggins Pty Ltd v Comptroller General of Customs (1991) 103 ALR 565

Toyota Tsusho Australia Pty Ltd and Nippondenso Australia Pty Ltd v Collector of Customs (Unreported, Full Court, 14 May 1992)

Air International Pty Ltd v Chief Executive Officer of Customs; sub nom (2002) 121 FCR 149

Re Sussan (Wholesalers) Pty Ltd and Bureau of Customs (1977) 1 ALD 89

Customs Precedent ID 14971400, 30/09/99

REASONS FOR DECISION

31 January 2006 The Hon Howard Olney AM QC, Deputy President

Mr Egon Fice, Member

1. On 20 April 2005, Mainfreight International Pty Ltd lodged an application for a tariff advice on behalf of **Monza** Imports, which acts as trustee for the Chiodo Family Trust Number 1, claiming that goods described as TALOS PROTECTIVE LEATHER MOTORCYCLE SUITS should be classified as sporting articles or equipment under Subheading 9506.99.90 of Schedule 3 of the *Customs Tariff Act 1995* (the Tariff Act).
2. On 16 May 2005,the Chief Executive Officer of Customs (Customs) completed the tariff advice by classifying the subject leather motorcycle suits under Subheading 4203.10.00 of Schedule 3 of the Tariff Act. The Customs duty payable on goods which fall under Subheading 4203.10.00 is substantially higher than the Customs duty payable on goods which fall under Subheading 9506.99.90.
3. On 9 May 2005**,** the consignment of goods comprising the leather motorcycle suits was entered for home consumption and customs duty was paid under protest on the same day. **Monza** Imports seeks a review of the classification of the leather motorcycle suits made by Customs.

4. Where a dispute arises as to the amount or rate of duty payable in respect of any goods under any Customs tariff, the owner may pay under protest the sum demanded by Customs and the sum so paid is deemed to be the proper Duty payable in respect of the goods unless the contrary is determined in an action brought pursuant to s 167 of the *Customs Act 1901* (Customs Act). Where a dispute has arisen and under s 167 of the Customs Act the owner of the goods has paid under protest the sum demanded by Customs, an application may be made to the Tribunal for a review of that decision pursuant to s 273GA of the Customs Act.
5. There is no question in this case that the application is properly made. It was lodged within six months after the date of the payment under protest, that date being 31 May 2005.

THE GOODS

6. **Monza** Imports described the goods as protective motorcycle suits, primarily designed for road racing. The motorcycle suits, one of which was tendered in evidence, are essentially made from full-grain leather with elasticised fabric and Kevlar ® inserts in "*high-flex*" areas. There are a number of protective and aerodynamic components of the suit including:

(a) a back space protector constructed of articulated, impact-resistant, plastic plates which incorporate a deformed internal light-weight aluminium honeycomb structure for impact absorption;

(b) honeycomb carbon and titanium protector plates for the shoulders and knees;

(c) composite knee and shin guards;

(d) composite protectors on elbows, forearms and shoulders;

(e) memory honeycomb foam on hips;

(f) high density / low memory foam inserts in collarbone, ribs, arms, thighs and lower back; and

(g) aerodynamic, anti-shock hump on the back.

7. The suit has been manufactured in such a way as to conform to a motorcycle rider's body shape when the rider is in the crouching position, which is the normal posture for a rider when racing a motorcycle. Each suit weighs in excess of six kilograms and costs between $2,000 and $3,000. It is manufactured as a "*single piece*" item with two zippers at the front allowing a "*chest flap*" to be opened to so that the suit can be donned. It is not a simple matter to put on the suit and it is not particularly comfortable to wear. It does require the wearer to walk in a stooped position due to its inherent shape.

IDENTIFICATION

8. Customs correctly submitted that the first task in tariff classification is to objectively identify the goods imported as they would appear to an informed observer. In *Re Gissing and Collector of Customs* (1977) 14 ALR 555 the Administrative Appeals Tribunal (Brennan J (President), VJ Skermer and RL Stock (Members), said (at p 557) that identification of the relevant goods for classification must be distinguished from the enquiry as to whether one or more of the Tariff provisions applies to the goods which have been identified. The Tribunal said that the identification is concerned with the goods themselves, not the description of the goods. The Tribunal also noted that in determining the identity of the goods, regard must be had to the imported goods themselves, in the condition in which they are imported. They are not to be identified by reference to the use to which the goods may be put in the future, although their present suitability for that use may be a relevant factor.
9. In *Times Consultants Pty Ltd v Collector of Customs (Qld)* (1987) 76 ALR 313• at p 327, the majority of the Full Court of the Federal Court, relying on *Chandler and Co v Collector of Customs* [1907] HCA 81; (1907) 4 CLR 1719 at p 1729; *Whitton v Falkiner* [1915] HCA 38; (1915) 20 CLR 118 at p 131 and *Blackwood Hodge (Australia) Pty Ltd v Collector of Customs* [1980] FCA 96; (1980) 47 FLR 131 at p 155, said that the authorities made it clear that when determining the essential character of goods, it is the state and condition of the goods at the time of importation that is the determining factor. It is wrong to classify goods or to determine their essential character by reference to the purpose of the importer or the purchaser. The majority also said that regard must be had to the characteristics of the goods as they would present themselves to an informed observer. The Court said, at p 328, that it should be remembered that classification of goods for tariff purposes is a practical "*wharf-side*" task. On some occasions it will be necessary for the classifier of the goods to obtain information to enable identification of the goods but it would be entirely inappropriate that he or she should enter into enquiries upon matters such as cost, commercial advantage and purchaser preference. The majority concluded:

... It ought normally be possible to classify goods merely by looking at them and by considering their nature and the function which they were designed to serve....

In *Anite Networks Pty Ltd v Collector of Customs* [1999] FCA 26 the Full Court of the Federal Court accepted the proposition that the first step for the Tribunal is to identify the goods, as a matter of fact, notionally as a "*wharfside"* process. The Full Court also accepted that classification, including any necessary application of the Interpretation Rules, was a later step, to be undertaken only after the Tribunal had decided what the goods were.

10. In *Re Tridon Pty Ltd and Collector of Customs* (1982) 4 ALD 615 at pp 620 – 621, the Tribunal identified eight principles relevant to the process of identifying the goods. Those principles are:

> *(i) Identification must be objective, having regard to the characteristics which the goods, on informed inspection, present ... ;*
> *(ii) The identification of goods cannot be controlled by the descriptions of the goods adopted in the nomenclature of the Tariff ... ;*
> *(iii) Nevertheless in identifying goods it is necessary to be aware of the structure of the nomenclature, the basis on which goods are classified and the characteristics of goods which may be relevant to the frequently complex task of classification ... ;*
> *(iv) In the identification of goods, knowledge of how those who trade in the goods describe them will usually be relevant, but not necessarily conclusive ... ;*
> *(v) All the descriptive terms, both specific and generic, by which the goods may fairly be identified may be relevant to the classification of the goods within the Tariff... ;*
> *(vi) Descriptive terms may be of varying degrees of specificity (eg. windscreen wiper blade refills, parts for a windscreen wiper, or parts for a motor vehicle). Generic descriptions may be by reference to the materials or substances from which the goods are manufactured ... ;*
> *(vii) Identification will frequently extend to characterisation of goods by reference to their design features cf* Re Vergo Manufacturing Co Pty Ltd and Collector of Customs (Vic) *(1981) 3 ALN No 15 or by reference to their suitability for a particular use where those characteristics emerge from informed inspection of the goods imported ... . The extent to which those characteristics may be relevant to the ultimate classification of the goods and whether evidence of the use to which the goods are put to after importation is relevant, will depend upon the language of the Tariff Nomenclature...; and*
> *(viii) Composite goods, notwithstanding that they have components which are separately identifiable, may nevertheless be identifiable in combination as a new entity if the identity of the separate units is subordinated to the entity of the combination ... .*

11. Bearing in mind these principles, on the basis of our inspection of an item of the goods in question and from the evidence given to the Tribunal, we find that the goods are *special purpose single piece protective motorcycle racing suits*.

12. Although the suit is primarily made from leather, our inspection revealed that it is much more than a simple 'leather motorcycle riding suit'. It is clearly designed specifically for use when engaged in motorcycle racing. This is evident from the very sophisticated and extensive protection built into the suit, including the titanium shoulder and knee plates and the replaceable shin guards which are designed to protect the rider's legs as the motorcycle is "leaned over" when cornering at high speed. The evidence was that motorcycle riders, in the course of high-speed cornering, lean the motorcycle into the corner to the extent that the replaceable shin guard scrapes the ground. This allows the rider to gauge the extent to which he or she has angled the motorcycle into the corner. In addition, the suit has been constructed so that it is (relatively) comfortable when the wearer is in the crouching position. This is the normal posture adopted by road-racing motorcyclists. Standing upright in the suit is awkward and it is not comfortable to wear while walking.
13. The suit is particularly designed for motorcycle road racing and it complies with the protective clothing requirements of the road racing rules promulgated by Motorcycling Australia. Mr J. Chiodo and Mr M. Fattore, who race or have raced motorcycles and who gave evidence on behalf of **Monza** Imports, stated that the suit was particularly suited for use in motorcycle racing. Mr S. Howden, who gave evidence for Customs, also agreed in cross-examination that the principal use of the suit was "*sports oriented*".
14. It is not appropriate, in our view, to identify the imported goods simply as a one-piece protective motor cycle suit. Such a description is far too general and it fails to take into account the suit's specialised purpose, construction and built-in safety devices. The suit cannot be identified as a 'coverall', as was confirmed by Mr Howden, and it is not weather-protective clothing.

CLASSIFICATION

15. Section 7(1) of the Tariff Act provides that the Interpretation Rules must be used when working out the Tariff classification under which goods are to be classified. The various classifications of goods are set out in Schedule 3 of the Tariff Act along with the general and special rates of duty applicable to each classification. Schedule 3 comprises Sections, Chapters, sub-Chapters, Notes and Headings.
16. The general rules for interpreting Schedule 3 are set out in Schedule 2 of the Tariff Act and they provide that the classification of goods in Schedule 3 shall be governed by the following relevant principles:

> *1. The titles of Sections Chapters and sub-Chapters are provided for ease of reference only; for legal proposes, 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 following provisions:*
> *2(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.*
> ...
> *6. For legal purposes, 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, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.*

17. Section 4(1) of the Tariff Act explains that the four digits in the first column of the Schedules indicate the beginning of a heading and that the 5, 6, 7 or 8 digits in the first column opposite to a dash or dashes in the second column indicate the beginning of a Subheading of the Heading under which the digits appear.
18. **Monza** Imports contends that the goods should be classified under Chapter 95 which bears the general title *Toys, games and sports requisites; parts and accessories thereof*. In particular, **Monza** Imports contends that the goods fall under Heading 9506 "ARTICLES AND EQUIPMENT FOR GENERAL PHYSICAL EXERCISE, GYMNASTICS, ATHLETICS, OTHER SPORTS (INCLUDING TABLE-TENNIS) OR OUTDOOR GAMES, NOT SPECIFIED OR INCLUDED ELSEWHERE IN THIS CHAPTER; SWIMMING POOLS AND PADDLING POOLS: ...". Further, **Monza** Imports contends that the goods fall under Subheading 9506.99.90 which is simply *Other*. There are Notes to Chapter 95 which exclude certain items from that Chapter, including Note 1(e), which excludes from Chapter 95 sports clothing or fancy dress made of textiles, which are set out in Chapter 61 or Chapter 62.
19. Customs contends that the goods in question should be classified under Chapter 42 of Schedule 3, and in particular Heading 4203 "ARTICLES OF APPAREL AND CLOTHING ACCESSORIES, OF LEATHER OR OF COMPOSITION LEATHER." Note 1(l) to Chapter 42 provides that Chapter 42 does not cover articles covered by Chapter 95.

20. The appropriate procedure for determining the proper classification of goods where goods might seem to fall under two Chapters is to first determine whether the goods in question can appropriately be classified under the Chapter which does not contain the exclusionary note (*Liebert Corporation Australia Pty Ltd v Collector of Customs* (Unreported, Full Court of the Federal Court of Australia, 1 November 1993)(Liebert Corporation). Therefore, if the goods in question can be classified under a Subheading of Chapter 95, then it is irrelevant that they may also fall under a Subheading of any other Chapter of Schedule 3.
21. Despite the decision in *Liebert Corporation*, Customs submitted that in deciding whether the goods are positively excluded from Chapter 95, the Tribunal should have regard to Note 3 of Chapter 42 and to construe Heading 9506 in a way that gives proper legal affect to that note. Note 3 of Chapter 42 provides:

For the purposes of 4203, "articles of apparel and clothing accessories" applies, inter alia, to gloves , mittens and mitts (including those for sport or for protection), aprons and other protective clothing, braces, belts, bandoliers and wrist straps, but excluding watch straps (9113).

However, such an approach would seem to fly directly in the face of what the Full Court said in *Liebert Corporation*. Properly construed, *Liebert Corporation* requires the Tribunal to determine whether the goods in question can be classified under any of the Subheadings of Chapter 95. If they can, then it is irrelevant that the goods might also fall under one of the Subheadings of Chapter 42. According to Customs, the apparent conflict can be resolved by construing Heading 9506 as not covering leather sports clothing. Customs submitted that such a construction is supported by the *Explanatory Notes to the Harmonised Commodity Description and Coding System*(HSEN). The HSEN relevant to Heading 4203, is found in Volume 1, Chapter 42.03 and is entitled ARTICLES OF APPAREL AND CLOTHING ACCESSORIES OF LEATHER OR COMPOSITION LEATHER. The HSEN sets out a number of exclusions including the following which refers directly to leather sports clothing:

(g) articles of Chapter 95 (for example, sports requisites such as shin-guards for cricket hockey, etc., or protective equipment for sports, e.g. fencing masks and breast plates). (Leather sports clothing and sports gloves, mittens and mitts, however, are classified in this heading.)

Customs claims that it is clear from the HSEN that it was intended that leather sports clothing is to be classified under Heading 4203 and therefore such clothing cannot be classified under Heading 9506. According to Customs, that also explains why Note 1(e) to Chapter 95 of the Tariff Act refers only to sports clothing made of textiles and omits any reference to leather sports clothing.

22. As far as reliance upon the HSEN is concerned, **Monza** Imports referred the Tribunal to *Barry R Liggins Pty Ltd v Comptroller General of Cu*stoms (1991) 103 ALR 565(*Barry R Liggins Pty Ltd)* at p 573, where Beaumont J quoted with approval this passage from EJ Cooper, Customs and Excise Law:

[the Brussels Notes] are a secondary guide only and cannot displace the plain words of the statute... or be used when there is no ambiguity in the legislation, eg a doubt cannot be created by the use of the explanatory notes and then have the doubt settled by reference to the same notes.

Justice Beaumont, at p 573, put it another way, saying:

That is, that although it may be permissible to refer to extrinsic material where the statute is ambiguous, it does not follow that the extrinsic material can be used to contradict the meaning of the language of an Act of parliament, that meaning being taken from its proper statutory context.

23. The Full Court in *Toyota Tsusho Australia Pty Ltd and Nippondenso Australia Pty Ltd v Collector of Customs* (Unreported, 14 May 1992) confirmed that limitations regarding the use of extrinsic materials must be kept in mind; but it nevertheless found that the Explanatory Notes were of assistance in confirming the meaning of the Heading in issue in that matter.
24. Be that as it may, the argument raised by Customs regarding the apparent conflict or ambiguity between Note 1(l) and Note 3 to Chapter 42 presupposes that the goods in question are properly described as articles of apparel or clothing accessories made of leather or of composition leather. If the goods do not fall within that description, but rather fall within the description urged on us by **Monza** Imports (that is, articles and equipment for other sports), then no conflict or ambiguity arises.
25. Justice Hill in *Air International Pty Ltd v Chief Executive Officer of Customs; sub nom* (2002) 121 FCR 149 at p 155-156 said that two general comments can be made concerning classification in the Customs Tariff context. He first noted that the Customs classification regime and the Interpretive Rules have their origin in International Treaty, namely the Brussels Convention of 15 December 1950. He found that the classification regime and the Interpretive Rules should therefore receive an interpretation consistent with the purpose of the Convention and in accordance with general rules of treaty interpretation. Those rules require that interpretation is performed in good faith and in accordance with the ordinary meaning of the words, in light of the object and purpose of the treaty. Secondly, and more importantly, Justice Hill said that the classification rules in the Tariff Act recognise that a particular item of goods may inherently fall under more than

one classification. He said that the rules are designed to ensure, as far as possible, that goods fall within only one category. He noted that there are rules to be found, in the notes to particular classifications, which operate to allocate to a particular classification, those items capable of falling within more than one classification. They may also exclude items from falling within particular classifications. His Honour then said:

It is this fact which more than any other, makes it essential, particularly where more than one heading may be applicable to a particular item of goods, to apply that heading or classification (subject to any statutory direction, such as s 8 of the (Tariff Act) that is most particularly appropriate to the particular goods requiring classification. The requirement to adopt the most appropriate classification, as well as the statutory reference to essential character, makes it important, at least where goods may fall within more than one category, that the category is chosen which most fits the essential character of the goods in question.

26. As far as the expression "*essential character*" is concerned, Justice Hill said, at p154:

... [it] emphasises the point that particular goods may have more than one character so that, at least in such a case, it will be necessary, when embarking on the task of characterisation to look at that character which is "essential" and disregard any other inessential character.

27. In our opinion, the goods in question bear the essential character of protective equipment, designed for use when racing motorcycles on a prepared racing track. There was no disagreement between the parties that motorcycle racing is a sport. The goods in question are designed to provide the specialised protection required when participating in that sport. In addition, the suit is equipped with replaceable knee scrapers or sliders which are specifically designed to allow the motorcycle rider to gauge the angle of lean of the motorcycle when cornering at high speed. This aspect of the suit is clearly designed solely for racing. Given the suit's essential character, it does not fall within the description expressed in Heading 4203 of Schedule 3. Although the protective suit is worn and may therefore, on one view, be regarded as apparel or clothing, its essential character, and therefore its most appropriate classification, is as protective equipment. It is similar to the specialised pants worn by roller/ice hockey players which are heavily padded to provide protection to the player from thigh to mid-torso, including the kidney region. This padding, which is not unlike the protectors in the motorcycle suit, is permanently built in by the manufacturer. Customs has identified these roller/ice hockey pants as "*mid body protection equipment for hockey in the form of pants or breeches*"(Customs Precedent ID 14971400, of 30 September 1999). The

precedent states:

The fact that [the pants] are worn does not automatically categorise them as sports clothing within the context of Note 1(e) to Chapter 95.

28. Customs submitted that the goods could also be used by the 'everyday' motorcycle rider. The example given was that motorcyclists from time to time attend what was described as 'ride days' where, although they do not race, they are permitted to ride their ordinary 'street motorcycles' around race tracks at high speeds. It was submitted that such activity lacks the element of competition which is necessary for sport. We do not accept that submission. We find that there is no practical distinction to be drawn between a person who is racing a motorcycle against other motorcycles on the racing track and a person who rides around a racing track with the intention of going as fast as they can. Customs also submitted that the suit could be used for road touring. However, having examined the exhibit provided by **Monza** Imports, it is clear that the goods in question are difficult to put on; they are heavy and uncomfortable to wear; and, because they are manufactured for optimum comfort when the wearer is in a crouching position, walking in the suit is difficult. It is not the kind of equipment that would ordinarily be worn by a motorcyclist while simply touring on public roads.
29. Customs also submitted that the use of the word "sports" in Heading 9506 of Schedule 3 together with the word "articles", which has a broad meaning, creates uncertainty regarding the scope of the class of goods which could be classified under that Heading. Therefore, in accordance with what was said by the Full Court in *Barry R Liggins Pty Ltd* about the use of the HSEN, Customs submitted that the Tribunal should have regard to the items listed in the HSEN as examples of articles covered by Heading 9506. However, we were only referred to the items listed under paragraph (A), of Chapter 95.06, Section XX, Volume 4 of the HSEN which includes *articles and equipment for general physical exercise, gymnastics or athletics*. What was not drawn to our attention is that the more relevant note of the HSEN is (B)(13) which includes *protective equipment for sports or games, e. g., fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards*. In our opinion, this note plainly supports the classification which we consider is most appropriate.

30. **Monza** Imports also put into evidence what is described as a ‘safety jacket’ or ‘Armadillo jacket’. It is an open-weave jacket supporting breast plate protection, shoulder protection, arm and elbow protection and back protection plates. We were told by Mr Chiodo that the jacket is used by persons participating in "off-road" motorcycle sports. Although superficially, it looks like a heavily padded jacket, closer inspection reveals that its essential purpose is to provide protection to a motorcycle rider. Mr Chiodo’s evidence was that this item was accepted by Customs as an article of protective sports equipment. That was not disputed by Customs. The subject goods are of the same nature as the ‘safety jacket’, except that they are designed for use on sealed motor racing circuits. The decision by Customs to classify the "safety jacket" under Heading 9506 supports our view that the road racing motorcycle protective equipment should be classified under the same heading. If it is required, further support for our view may be obtained from the Tribunal decision in *re Sussan (Wholesalers) Pty Ltd and Bureau of Customs* (1977) 1 ALD 89, where the Tribunal said, at p 91:

In seeking to establish whether goods fall within any specified category of goods at the time of importation, regard may be had to what may be their normal use or uses.

31. The normal use for the goods in question is clearly for protection when motorcycle racing on a sealed surface.

CONCLUSION

32. In our opinion, the subject goods are an article of protective equipment for a sport, namely, motorcycle racing. For that reason, they are appropriately classified under Subheading 9506.99.90. By reason of Note 1(l) to Chapter 42, the subject goods cannot be classified under Heading 4203 of the Tariff Act and, in any event, they cannot appropriately be classified as articles of apparel or clothing.
33. The Tribunal sets aside the decision made by Customs in its Tariff Advice Number 17174400 dated 16 May 2005 and remits the matter to Customs for reconsideration in accordance with the Tribunal’s findings set out herein.

I certify that the thirty-three [33] preceding paragraphs are a true copy of the reasons for the decision of:
The Hon Howard Olney AM QC, Deputy President
Mr E. Fice, Member
(sgd) Angela Dennis
Clerk
Date of hearing: 5 December 2005

Date of decision: 31 January 2006
Counsel for applicant: Mr L. Gross
Solicitor for applicant: Louis Gross and Associates
Advocate for respondent: Mr L Kennedy
Solicitor for respondent: Australian Government Solicitors
