# Administrative Appeals Tribunal of Australia



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## Re Tridon Pty Limited and Collector of Customs [1982] AATA 119 (17 June 1982)

### ADMINISTRATIVE APPEALS TRIBUNAL

**Re : TRIDON PTY LIMITED**
And: **COLLECTOR OF CUSTOMS**
No. N81/123
Customs Tariff

**COURT**

ADMINISTRATIVE APPEALS TRIBUNAL
GENERAL ADMINISTRATIVE DIVISION
Mr Allan N. Hall (Senior Member)
Mr P.C. Wickens (Member)
Mr I. Prowse (Member)

**CATCHWORDS**

customs Tariff _ classification of windscreen wiper blade refills _ whether parts used solely or principally with electric windscreen wipers _ whether goods of unhardened vulcanised rubber of a kind referred to in Note 1(a) to Division XVI _ classified as parts

Customs Tariff _ principles upon which goods identified and classified

Customs Tariff _ Divisional Notes, Chapter Notes and items based on Annex to Brussels Convention _ reference to Brussels text to resolve ambiguity _ reference to Explanatory Notes of Brussels Nomenclature Committee

Customs Tariff Act 1966, Schedule 1, Part II, items 39.06, 40.14, 73.40, 85.09, 87.06,Notes 1(a) and (e) to Division XVI, Note 2 to Division XVII, Note 1(g) to Division XV, Chapter Note 1(j) to Chapter 39,

Rules for Interpretation of Schedule 1, rules 1, 2 and 3

**HEARING**

CANBERRA
17:6:1982

**ORDER**

1. The Tribunal sets aside the decision of the **Collector of Customs** to classify the imported goods within sub-item 40.14.9 in Part II of Schedule 1 of the Customs Tariff Act 1966 and in substitution for that decision decides that the sub-item that applies to the imported goods is sub-item 85.09.9.

2. The Collector's demand for additional duty having been incorrectly made, the Tribunal remits the matter to the **Collector of Customs** with a direction to implement its decision accordingly.

**DECISION**

1. On 3 July 1981, Tridon Pty Limited entered for home consumption a quantity of windscreen wiper blade refills invoiced to it by Tridon Limited, its parent company in Canada, as 'ABR-M Refills'. The refills are composite goods consisting of the following materials or substances:

(a) a rubber blade or 'squeegee', made of unhardened vulcanised rubber;

(b) a flexible plastic spine or backing strip; and

(c) a metal clip at one end;

2. The applicant was of the opinion that the refills were classifiable within Chapter 85 in Part II of Schedule 1 to the Customs Tariff Act 1966 ("the Act") the heading to which refers to 'Electrical Machinery and Equipment: Parts therefor'. It was the applicant's contention that, by operation of

Note 2(2)(b)(i) to Division XVI (within which Chapter 85 falls) the refills, being parts of a kind that were used solely or principally with electrical windscreen wipers, should for the purposes of Schedule 1, be treated as if they were the entire apparatus. Note 2 provides as follows: '2. (1) Subject to note 1 to this Division, note 1 to Chapter 84 and note 1 to Chapter 85, this note applies to parts for machines (not being machines described in item 84.64, 85.23, 85.24, 85.25 or 85.27).

(2) Except where the contrary intention appears-

(a) parts to which this note applies that are of a kind described in an item in Chapter 84 or 85 (other than item 84.65 or 85.28) fall within that item;

(b) subject to sub-note (a) of this note, parts to which this note applies that are-

(i) of a kind used solely or principally with a particular kind of machine, or with particular kinds of machines that fall within the same item, shall, for the purposes of this Schedule, be treated as if they were a machine of that kind or of the highest-rated of those kinds; or

(ii)of a kind that have two principal uses, one with machines falling within item 85.13 and the other with machines falling within item 85.15, the one use being not more common than the other use, fall within item 85.13; and

(c) other parts to which this note applies fall within-

(i) if they are electrical parts _ item 85.28; or

(ii)in any other case _ item 84.65."

3. On that basis the goods were entered on behalf of the applicant under item 85.09 which referred, inter alia, to 'electrical windscreen wipers', and in particular under sub-item 85.09.9, the residual 'other' sub-item. There was no dispute that the special preferential rate of duty applicable to such goods of Canadian origin was 17.5% (see s.17A of the Act and item 652 in Part I of Schedule 5). Duty at that rate in the sum of $5235.80 was duly paid.

4. The **Collector of Customs**, New South Wales, disagreed. It was his view that the imported goods could not be classified within Division XVI because of the operation of Note 1(a) in the Notes to Division XVI. Note 1, so far as relevant, provides as follows:

'1. The following goods do not fall within this Division:-

(a) transmission, conveyor or elevator belts or belting of artifical plastic material falling within an item in Chapter 39 or of vulcanised rubber falling within item 40.10, and goods of unhardened

vulcanised rubber falling within item 40.14 that are of a kind used on machinery or mechanical or electrical applicances or for other industrial purposes.'

5. It will be seen that Note (a) excluded from Division XVI '... goods of unhardened vulcanised rubber falling within item 40.14 that are of a kind used on machinery or mechanical or electrical appliances or for other industrial purposes'. It was said by the Collector that the imported goods met this description (see paragraph 9). Because Note 2 is expressed to be 'Subject to note 1', the Collector argued that goods which are excluded from Division XVI by Note 1, cannot be treated as 'parts' to which Note 2 applies. Accordingly, the applicant's classification, depending as it did upon the operation of Note 2 to enable the refill part to be treated as the entire apparatus, was said to be erroneous.

6. On 23 July 1981, the Collector issued a Post Note (No. 484) demanding additional duty in the sum of $2243.92 on the basis that the imported goods, being incapable of falling within Division XVI, were correctly classified within sub-item 40.14.9 in Chapter 40 (which is part of Division VII of Schedule 1) as 'Other goods made of unhardened vulcanised rubber _ other'. As such a rate of duty of 25% was prescribed for goods of Canadian origin. The applicant paid this amount under protest on 23 July 1981 by warrant 08007464 and on 6 August 1981 lodged an Application for Review in order to have the Tribunal review the Collector's demand.

7. On the evidence before us, which was substantially uncontested, there is no doubt that the goods as imported are windscreen wiper blade refills and that they are of a kind used solely or principally with electrical windscreen wipers. There was a suggestion by Mr Miller who appeared for the Collector that they might also be capable of being used in mechanical windscreen wipers, but no evidence was adduced in support of this contention. As earlier mentioned, the refills are composite goods having components of unhardened vulcanised rubber, plastic and metal. Both the rubber squeegee and the plastic spine are manufactured in Canada by an extrusion process. They both have a flexibility which enables the windscreen wiper blade refill when fitted to the windscreen wiper assembly to conform to the variable contours of a windscreen. The metal clip holds the squeegee in place so as to prevent it from sliding off the windscreen.

8. The goods as imported are so plainly identifiable as replacement parts for an electrical windscreen wiper and are so much committed by their manufacture to that particular use, and no other, that classification within item 85.09 by application of Divisional Note 2(2) would appear entirely appropriate and logical. The question which the Collector has posed, however, is whether Divisional Note 1(a) prevents the goods from falling within Division XVI and thus from being classified as 'parts for an electrical windscreen wiper'.

9. The argument which Mr Miller developed on behalf of the Collector in support of this contention involved the following steps:

(i) The imported goods, though identifiable as windscreen wiper blade refills, are nevertheless

composite goods consisting partly of unhardened vulcanised rubber.

(ii) There is no description of goods in the Tariff nomenclature to which such goods directly and immediately 'fall'.

(iii) Whilst Note 2 to Division XVII, if it was applicable, might enable the refills to be treated as if they were electrical windscreen wipers and to be classified as such, that consequence does not follow if Note 1(a) has the effect of precluding the goods from falling within Division XVI.

(iv) To resolve whether Note 1(a) does so operate, it is necessary, firstly, to consider whether, because the refills consist partly of unhardened rubber, they were capable of 'falling' to item 40.14 as 'other goods made of unhardened vulcanised rubber'.

(v) That question must be answered in the affirmative, in Mr Miller's submission, because of the operation of rule 2(3) of the Rules for the Interpretation of Schedule 1 which provides, so far as relevant, that:

'(3) A reference in an item ... to goods consisting of a specific material or substance shall be read as a reference to goods consisting wholly or partly of that material or substance' (emphasis added).

(vi) For the purpose of determining whether the goods come within the purview of Divisional Note 1 (a) it is only necessary that the goods should 'fall' within item 40.14. Composite goods, of course, may 'fall' into a number of separate items in the Tariff by reference to their several components. Which item of those items into which goods 'fall' is the item that 'applies' is to be resolved, if necessary, by application of Rule 3 of the Interpretative Rules (see Rule 2(4) and cf. Re Toner Distributors of Australia Pty Ltd and **Collector of Customs** (1980) 3 ALD 234 at 246-7). But the question does not arise, for present purposes, whether item 40.14 is the item that 'applies' to the goods.

(vii) The imported goods, it was said, are 'of a kind used on machinery or mechanical or electrical appliances or for other industrial purposes'.

(viii) All the requirements of Note 1(a) were therefore satisfied and the goods were thus prevented from 'falling' within Division XVI. As a consequence, Note 2 could not apply to the refills so as to enable them to be classified as 'electric windscreen wipers'.

10. Accepting for the moment the correctness of these arguments, the immediate consequence is no more than that the goods cannot 'fall' to Division XVI. One possible classification (i.e. within item 85.09) is thus excluded. It does not follow, simply because the goods have been found to 'fall' within item 40.14, that that is the item which 'applies'. As will later appear (see para 18) and as Mr Miller acknowledged, a number of other items need to be considered before a decision can be reached as to which is the item that 'applies' to the goods.

11. In the somewhat inconclusive state in which the argument was left, our understanding of the Collector's final position on the classification of the subject goods was as stated in paragraph 6 of his s.37 statement:

'6. The subject goods are rubber elements of unhardened vulcanised rubber and are considered to fall within item 40.14, and as such are excluded from Division 16. Within item 40.14 it is considered that the goods are classified within sub-item 40.14.9.'

It will be noted that, in the end result, goods which no-one would dispute to be windscreen wiper blade refills have been re-identified, as it were, as 'rubber elements' of unhardened vulcanised rubber and classified as such.

12. Mr Angus, who appeared on behalf of the applicant, initially sought to resolve the question whether Divisional Note 1(a) operated to exclude the goods from Division XVI by arguing that if the goods do 'fall' to item 40.14, they nevertheless also 'fall' to item 85.09 by operation of Divisional Note 2. As item 85.09 was the item which occurred last in Part II of Schedule 1 among those items which 'equally merit consideration' (see Interpretative Rule 3(1)(c)) that item, in his submission, was the item that 'applies'. But, that argument plainly misconceives the main thrust of the Collector's argument which was that if the goods 'fall' to item 40.14, they cannot also 'fall' to item 85.09, and thus item 85.09 cannot be the item that 'applies' to the goods.

13. As an alternative argument, Mr Angus submitted that Divisional Note 1(a) should be construed as applying only to goods consisting wholly of unhardened vulcanised rubber falling within item 40.14, and not to goods consisting partly of that substance. This was a possibility which the Tribunal itself had raised during the hearing. The basis for this argument was that Interpretative Rule 2(3) is expressed to apply only to 'a reference in an item (etc) to a material or substance' (see paragraph 9(v) above) and not to a reference in a Divisional Note or Chapter Note to such a material or substance. Accordingly, so the argument runs, rule 2 could not be used to give an expanded scope to the concept of what goods 'fall' to item 40.14 for the purposes of Divisional Note 1(a).

14. In our view, however, there is only one way of ascertaining what goods fall within an item, sub-item, paragraph or sub-paragraph and that is by application of the Rules for Interpretation of Schedule 1, rule 1(2) of which provides as follows:

'(2) For the purpose of ascertaining whether goods fall within an item, sub-item, paragraph or sub-paragraph or whether an item, sub-item, paragraph or sub-paragraph applies to goods, regard shall, subject to sub-rule (3) of this rule, be had to the terms of items (including sub-items, paragraphs and sub-paragraphs) and of notes to Divisions and Chapters and, except where those terms otherwise require, to rules 2, 3 and 4 of these Rules."

Serious anomalies in the application of the Tariff could arise if goods which, on a proper application

of the Rules, are found to 'fall' to an item etc. were treated differently when construing a reference to such goods in a Divisional or Chapter Note. Insofar as the Divisional Note itself gives any indication whether composite goods were in contemplation, the reference to 'transmission, conveyor or elevator belts or belting of artificial plastic material falling within an item in Chapter 39 or of vulcanised rubber falling within item 40.10' suggests very strongly that they were. It is, as Mr Miller pointed out, virtually unthinkable that the belts or belting referred to would be other than plastic or rubber reinforced with other materials to give them strength and durability (see in this regard Note 7 to Chapter 40). No doubt, however, it is the plastic or rubber component which would give the goods their essential character and would thus attract classification, in the case of plastic belting, in Chapter 39 and in the case of rubber belting in item 40.10. Furthermore, it would have been a simple matter for the draftsman to have specified 'goods wholly of unhardened vulcanised rubber' if that had been intended (cf. Divisional Note 1(f) to Division XVI which excludes from Division XVI articles which are 'of precious or semi-precious stones.. and articles wholly of such stones'). Whilst Note 1(a) to Division XVI undoubtedly applies to goods wholly of unhardened vulcanised rubber, we are not satisfied that it was intended to be limited to such goods and not to extend, for example, to composite goods the essential character of which was given by the unhardened vulcanised rubber component.

Identification

15. As the Tribunal has said on many previous occasions, the starting point in resolving questions of Tariff classification, is to identify the goods in their condition as imported (see Re Gissing and **Collector of Customs** (1977) 1 ALD 144). The principles with respect to identification of goods were recently restated by the Tribunal (Mr A.N. Hall, Senior Member, Mr L.G. Oxby and Mr P.C. Wickens, Members) in Re Sterns Playland Pty Ltd and **Collector of Customs** (No. N81/75). Those principles may be conveniently summarised (although not exhaustively stated) as follows:

(i) Identification must be objective, having regard to the characteristics which the goods, on informed inspection, present: Re Sterns Playland Pty Ltd (supra); cf. Re Toyworld (Vic) Ltd and **Collector of Customs** (1979) 2 ALD 837; Re Azsco Overseas Sales Pty Ltd and **Collector of Customs** (NSW) (No. 2) (1981) 3 ALN N65;

(ii) The identification of goods cannot be controlled by the descriptions of goods adopted in the nomenclature of the Tariff: Re Gissing (supra) at 146;

(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: Re Renault (Wholesale) Pty Ltd and **Collector of Customs** (No. 3) (1978) 2 ALD 111 at 115; Re Sterns Playland Pty Ltd (supra);

(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: Markell v Wollaston [1906] HCA 91; (1906) 4 CLR 141 at 140; Whitton v Falkiner [1915] HCA 38; (1915) 20 CLR 118 at 127; cf. D & R. Henderson v **Collector of Customs** for the State of NSW (1974) 48 ALJR 132; and see generally Re Pacific Films Laboratories Pty Ltd and **Collector of Customs** (1979) 2 ALD 144 at 155-6; Re Finnwad Australia Pty Ltd and **Collector of Customs** (1979) 2 ALN 513; Re Mayer Kreig & Co and **Collector of Customs** (1979) 2 ALN 667; Re Sterns Playland Pty Ltd (supra); Re Termolst (Australia) Pty Ltd and Department of Business and Consumer Affairs (1978) 1 ALN 350;

(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: Re Sterns Playland Pty Ltd (supra);

(vi) Descriptive terms may be of varying degrees of specificity (e.g. 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: Re Hexham Textiles Pty Ltd and **Collector of Customs** (1978) 1 ALD 518, or by reference to the method of manufacture: Re Freudenberg (Aust) Pty Ltd and Department of Business and Consumer Affairs (1978) 1 ALD 295;

(vii) Identification will frequently extend to characterisation of goods by reference to their design features cf. Re Virgo Manufacturing Co Pty Ltd and **Collector of Customs** (VIC) (1981) 3 ALN N19, or by reference to their suitability for a particular use where those characteristics emerge from informed inspection of the goods as imported: Re Transactions Aust Pty Ltd and **Collector of Customs** (V80/68); Re Holstar Agencies Pty Ltd and **Collector of Customs** (V80/47); Re Koolatron Industries Pty Ltd and **Collector of Customs** (V81/34); Re Unibuilt Pty Ltd and **Collector of Customs** (N81/35); Re Tubemakers of Australia Pty Ltd and **Collector of Customs** (1980) 3 ALD 199: cf. Re J.S. Levy Corporation Pty Ltd and **Collector of Customs** (1978) 1 ALN 639 and Frank McKenna's Shoe Stores and **Collector of Customs** (V81/231). The extent to which these characteristics may be relevant to the ultimate classification of the goods and whether evidence of the use to which goods are put after importation is relevant, will depend upon the language of the Tariff Nomenclature: Re Gissing (supra) at 147; Re Beautiful Day Pty Ltd and **Collector of Customs** (Q'land) (1978) 1 ALN 206; Re James North (Aust) Pty Ltd and **Collector of Customs** (1979) 2 ALD 476 and Re Virgo Manufacturing Company Pty Ltd (supra): cf. Re David Linacre Pty Ltd and **Collector of Customs** (No. 2) (1979) 2 ALD 472 and see generally the cases referred to earlier in this Note;

(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 identity of the combination: Re Gissing (supra); cf. Re Companion Pty Ltd and **Collector of Customs** (1977) 1 ALD 84; Re Osti Holdings Ltd and **Collector of Customs** (NSW) (1978) 1 ALD 291; Re Impco Pty Ltd and **Collector of Customs** (Vic) (1980) 2 ALD 843 and Re Toner Distributors of Australia Pty Ltd and **Collector of Customs** (1980) 3 ALD 234.

16. In the present case, the goods are identifiable as follows:

(i) specifically, as windscreen wiper blade refills;

(ii) by reference to use, as parts for electrical windscreen wipers;

(iii) less specifically, by reference to use, as parts for a motor vehicle;

(iv) by reference to composition, as goods partly of unhardened vulcanised rubber, partly of plastic and partly of metal.

The imported goods are not identifiable simply as articles of unhardened vulcanised rubber. As imported they are more than that. The rubber squeegee, plastic spine and metal clip in combination, produce a new article of commerce in which the identity of the individual components is subordinated to the identity of the combination (cf. Re Gissing (supra) at 145).

Classification

17. In order to classify the goods, regard must be had to the descriptions employed in the Nomenclature of the Tariff (see, in particular, Interpretative Rule 1(2) _ paragraph 14 above). In the language of the Act (see s.14) and the Rules for the Interpretation of Schedule 1, the question more precisely is to ascertain firstly, into which items, etc. the goods 'fall' and, secondly, to determine which is the item that 'applies' (Re Toner Distributors Pty Ltd (supra)). Normally goods will be classified within the item etc. which most specifically describes the goods (cf. Rule 3(1)(a)). That result can be controlled, however, by the Divisional or Chapter Notes.

18. There is no item in the Nomenclature of the Tariff in which windscreen wiper blade refills are described by that specific name. It is necessary, therefore, to consider the other forms of identification referred to above. The items in Schedule 1 of the Tariff to which goods as so identified may potentially fall are as follows:

(a) Item 85.09 as electrical windscreen wipers, by operation of Note 2 to Division XVI (provided

Note 1(a) does not prevent that operation). The evidence establishes that the refills are parts of a kind used solely or principally with such wipers.

(b) Item 87.06 as 'parts and accessories for motor vehicles of a kind falling within item 87.01, 87.02 or 87.03'. By operation of Note 2(g) to Division XVII (which includes Chapter 87) however, a reference in that Division to 'parts or accessories for goods' is to be read as not including 'goods falling within an item in Chapter 85'. Thus if the goods fall to Chapter 85, they cannot fall to Chapter 87.

(c) Item 40.14 as 'other goods made of unhardened vulcanised rubber' by operation of Interpretative Rule 2(3) (see paragraph 9(v) above), the refills being partly of such rubber. For present purposes we accept, for the reasons given in the Collector's s.37 statement, that none of the preceding items in Chapter 40 referable to goods of unhardened vulcanised rubber (i.e. items 40.07 to 40.13 inclusive) are more appropriate. There is a Note to Chapter 40 (Note 3(c)) which excludes from that Chapter parts for electrical appliances that are of hardened rubber and fall within an item in Division XVI. But there is no similar exclusion of parts made of 'unhardened vulcanised rubber'.

(d) Item 39.07 as goods made of plastic also by operation of Interpretative Rule 2(3), the goods being partly of plastic. By operation of Note 1(i) to Chapter 39, however, the goods cannot fall to that Chapter if they are 'machinery and mechanical or electrical appliances and equipment falling within an item in Division XVI'. Similarly, they are excluded from Chapter 39 by Note 1(j) if they are 'parts for vehicles ... falling within an item in Division XVII'.

(e) Probably to item 73.40 as 'Other goods made of iron or steel' _ again by operation of Interpretative Rule 2(3). The precise nature of the metal clip and the item in the Tariff to which it would 'fall' were not identified at the hearing. Note 1(f) to Division XV (which includes Chapter 73) excludes from that Division 'goods falling within an item in Division XVI'.

19. A consideration of the various items to which the refills may potentially fall leaves no room for doubt that, amongst those potential classifications, classification within item 85.09 by operation of Note 2 to Division XVI would seem to be the most appropriate. It is the most specific description of the goods (cf. Interpretative Rule 3(1)(a)) and as between that item and all the other possible items (except item 40.14) there are Divisional or Chapter Notes which would preclude classification otherwise than in Division XVI if the goods 'fall' to item 85.09. Indeed, were it not for Note 1(a) to Division XVI which makes the composition of the goods relevant, no serious consideration would need to be given to item 40.14, it providing a far less specific description of the goods than item 85.09.

20. The first question, therefore, (but not necessarily the only question) is whether Note 1(a) to Division XVI precludes the operation of rule 2 in relation to the subject goods. There being no dispute that the goods are goods of unhardened vulcanised rubber which by application of Interpretative Rule 2(3) are capable of classification (i.e. they fall) within item 40.14, the question

which needs to be considered is whether, on the proper construction of that Note, the imported goods are of the kind referred to. Unfortunately, that question was not canvassed in any depth at the hearing.

Are the Goods of the Requisite Kind?

21. It is not all goods which fall to item 40.14 that come within the ambit of Note 1(a) in Division XVI. It is only such of those goods 'that are of a kind used on machinery or mechanical or electrical appliances or for other industrial purposes'.

22. As a matter of first impression the words 'or for other industrial purposes' tend to colour the preceding words namely 'machinery or mechanical or electrical appliances'. Indeed, the opening words of Note 1(a), namely 'transmission, conveyor or elevator belts or belting ...' carry the connotation of parts for industrial equipment. Literally, the Note can be read as referring to two quite separate classes of goods _ on the one hand, belts and belting and on the other, goods of rubber of the requisite kind. The two classes of goods referred to are linked by the words 'and goods'. If read disjunctively, the 'industrial' connotation in relation to the second group of goods may be weaker than if the paragraph is read as a whole. There is, in our view, some ambiguity in the language that has been used.

23. Given that the question as posed by the facts of this case depends entirely upon the proper construction of Divisional and Chapter Notes and Tariff items drawn from the Brussels Nomenclature, it is appropriate, in our view, to consult the provisions of the Annex to the Convention on Nomenclature for the Classification of Goods in Customs Tariffs ("the Brussels Convention") on which the Australian Tariff is based (see D & R. Henderson (Manufacturing) Pty Ltd v Forbes (**Collector of Customs**) (1974) 48 ALJR 132; affirmed (1975) 49 ALJR 335). As Mason J said in that case (48 ALJR at 135):

'If the language of a statute is ambiguous it is permissible to refer to the provisions of an international convention to which the statute is intended to give effect in order to assist in resolving an ambiguity, even if the statute is enacted before ratification of the convention (see Salomon v Commissioner of Customs and Excise (1967) 2 Q.B. 116 at pp.141, 149-150; Post Office v Estuary Radio Ltd. (1968) 2 Q.B. 740 at p.757; The Banco (1971) P137 at pp.151, 157.'

It is also appropriate to refer to the Explanatory Notes prepared by the Nomenclature Committee established by the Convention for such guidance as those Notes may properly give (see, most recently on this point, Re Bloomfield and Sub-**Collector of Customs** (A.C.T.) _ No. A80/46 and Re Holstar Agencies Pty Ltd and **Collector of Customs** _ No. V80/47 and Re Sterns Playland Pty Ltd and **Collector of Customs** (supra)).

The Brussels Nomenclature

24. The Brussels Nomenclature is intended to set out in systematic form the goods handled in international trade. Section (cf. our Divisional) Notes and Chapter Notes are part of the mechanism provided for resolving problems of competing classifications.

25. Comparison of Note 1(a) to Division XVI of the Australian Tariff with the equivalent Note 1(a) in Section XVI to the Brussels Annex is revealing. The Brussels Note is as follows:

'1. This section does not cover:

(a) Transmission, conveyor or elevator belts or belting, of artificial plastic material of Chapter 39, or of vulcanised rubber (heading No. 40.10); or other articles of a kind used in machinery or mechanical or electrical appliances or for other industrial purposes, of unhardened vulcanised rubber (heading No. 40.14);' (emphasis added)

26. The textual adaptations made pursuant to Article II of the Brussels Convention in order to give effect to this Note in the Australian Tariff are significant. By abandoning the words 'or other articles of a kind used in machinery etc.' in favour of the words 'and goods ... of a kind used on machinery etc.' the draftsman has, in our view, laid the ground for the ambiguity to which we referred. In addition the words 'in machinery' convey a different shade of meaning from the words 'on machinery'.

27. Comparison between the other sub-paragraphs in Note 1 to Division XVI of the Australian Tariff and in Note 1 to Section XVI of the Brussels Annex indicates that in the very similar Note (e) with respect to goods of textile, the adaptation of the Brussels Note into the Australian Tariff is much closer. The Australian Note excludes from Division XVI:

'(e) transmission, conveyor or elevator belts falling within item 59.16 or other goods of textile material of a kind commonly used in machinery or plant falling within item 59.17.'

The comparable Note in the Brussels Annex reads as follows:

'(e) Transmission, conveyor or elevator belts of textile material (heading No. 59.16) or other articles of textile material of a kind commonly used in machinery or plant (heading No. 59.17);'

Leaving aside Note 1(g) where the substance of the Australian Note remains the same as Brussels, but where some potentially misleading omissions have been made (see Note 2 to Division XV) the textual adaptations made in translating the rest of Brussels Note 1 into Australian law are of no apparent consequence.

28. Reference to the Explanatory Notes prepared by the Brussels Nomenclature Committee merely confirms what Note 2 to Division XVI makes obvious namely that 'In general, parts which are

recognisable as specialised to or mainly for use with particular machines or apparatus ... are classified under the same heading as those machines or apparatus, subject, of course, to the exclusions mentioned in Part (I) above'. (See Volume 3 at p1156). The exclusions, of course, are those referred to in our Note 1 to Division XVII. With respect to goods of unhardened vulcanised rubber excluded by Note 1(a) the Explanatory Notes give as examples _ 'rubber tyres, tubes etc (heading 40.11) and washers etc (heading 40.14)'.

29. Having regard to the fact that Australia's international obligations under Article II of the Brussels Convention include an undertaking that 'it will make no changes in the chapter or section notes in a manner modifying the scope of the chapters, sections and headings as laid down in the Nomenclature' (see Article II(b)(ii)), we consider that we should construe Divisional Note 1(a) in such a way as to conform to that undertaking. When read in the light of the equivalent Brussels Note, the goods contemplated by Note 1(a) are, in our view, goods used in machinery or mechanical or electrical appliances for industrial purposes. So construed, Note 1(a) does not, in our view, apply to the imported goods. Windscreen wiper blade refills are not goods of that kind.

30. The view that Note 1(a) was not intended to apply to the imported goods is supported, we think, if one looks at the consequences of taking the goods out of Division XVI. For this purpose, we will assume that Note 1(a) achieves that result.

31. It was implicit in the arguments put to us by Mr Miller and as set out in the Collector's s.37 statement, that if the Note 1(a) operated to remove the goods from Division XVI, item 40.14 would not only be the item to which the goods 'fell' but would also be the item which 'applied' to the goods. In other words, the items to which the goods were potentially seen as 'falling' were simply item 40.14 or item 85.09. No other items appear to have been contemplated as relevant. If that had been the case the conclusion that item 40.14 applied to the goods would have followed logically, there being no other items in contention. But as we earlier observed, a number of other items become relevant if the goods are found incapable of falling to Chapter 85.

32. Because of the inconclusive state of the argument on this point, a further submission was invited from the respondent as to the item that 'applied' if the goods were taken out of Division XVI by Note 1(a). Unfortunately, no submission was received by us. We have therefore been left to resolve the ultimate classification of the goods as best we may on the evidence and material before us.

33. If Chapter 85 is excluded, the items remaining to be considered are items 39.06 (plastic), 40.14 (rubber), possibly 73.40 (metal) and 87.06 in Division XVII (parts for motor vehicles). Item 39.06 is incapable of applying if the goods are parts for vehicles falling within an item in Division XVII (see Note 1(j) to Chapter 39). Item 73.40 is similarly excluded by Note 1(g) to Division XV, if the goods fall within an item in Division XVII. Thus the only remaining items to which the goods fall and which need to be considered are item 40.14 and item 87.06. The question as to which of these items applies would have to be resolved in accordance with rule 3 of the Interpretative Rules. Rule 3(1)(a) says that if one item provides a 'more specific description' of the goods than the other, then the first

mentioned item is the item that applies. In the present case, it is our view that 'parts for a motor vehicle' is a more specific description than 'goods of unhardened vulcanised rubber'. In the result, if Note 1(a) were applied to take the goods out of Division XVI, they would, in our view, be classifiable in Division XVII within item 87.06. Instead of being classified under the most appropriate description as 'parts for an electrical windscreen wiper' in item 85.09, they would be classified less appropriately as parts for a motor vehicle in Division XVII. Note 2 to Division XVII indicates, however, that Division XVII was not intended to apply if the parts were more specifically described and more appropriately classified in Chapter 85.

34. The question may well be asked _ why would parts specifically designed for use as parts for an electric windscreen wiper be taken out of Division XVI because they have a component of rubber if they are not ultimately classified as goods of unhardened vulcanised rubber but rather as parts for a motor vehicle? To our minds, the answer to that question lies in the fact that the imported goods are not goods of the kind referred to in Note 1(a) to Division XVI and were not intended to be taken out of Division XVI by that Note.

The Appropriate Classification

35. In our view, therefore, the imported refills are not excluded from Division XVI by Note 1(a); they are goods to which Note 2 in that Division applies and they are properly classified as electrical windscreen wipers in item 85.09. The goods were correctly entered by the applicant by Warrant No. 07009551. We set aside the decision of the Collector to classify the goods within sub-item 40.14.9 and in substitution for that decision decide that the imported goods are correctly classified within sub-item 85.09.9. The Collector's demand for additional duty was incorrectly made and the Tribunal remits the matter to the Collector with the direction to implement the Tribunal's decision accordingly.

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