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The Claytons Textile

Section XI of Schedule 3 of the Customs Tariff applies to "Textiles and Textile Articles". As we know, Interpretative Rule 1 states that the titles of sections are provided for ease of reference only. One would nevertheless expect that all of the goods that fall within Section XI would in fact be textiles given the fact that all of the headings and subheadings etc. would relate to textiles.

The recent AAT decision in the case of *Fletcher Insulation Pty Ltd and CEO of Customs* has unfortunately thrown a spanner into that type of logical thinking.

The product was described by the Tribunal:

> *"… a thin two layer sheet of plastic formed by the heat bonding of two layers placed one on top of the other, and at right angles to each other, each layer being the product of processes of extrusion, perforation and stretching."*

In other words, you had two plastic sheets which were perforated and which were put at right angles to each other and bonded together. The product was a plastic sheet with no fibres, filaments or threads. It was primarily used as a backing for insulation batts to provide rigidity and strength.

Customs initially tried to have the goods classified to 5407 as a woven product. In the light of the fact that there were no threads, filaments or yarns, the Tribunal had little difficulty in dispensing with that argument.

The Tribunal then proceeded to classify the goods to 5603 as a nonwoven. It ignored the definition of nonwoven provided from the book Textile Terms and Definitions – 11th Edition, published by the Textile Institute of the United Kingdom. That book had the following entry:

"Nonwoven; nonwoven fabric

Fabrics normally made from continuous filaments or from staple fibre webs or batts strengthened by bonding using various techniques: these include adhesive bonding, mechanical interlocking by needling or fluid jet entanglement, thermal bonding and stich bonding."

On that definition clearly the goods could not be a nonwoven. They were a continuous plastic sheet. The Tribunal then referred to the Wellington Sears Handbook which said "that a "reasonable definition" of a nonwoven fabric is a fabric "made directly from a web of fiber or film, without the intermediate step of yarn manufacture…". The Tribunal took the view that the goods fitted within that definition. With respect, we cannot agree.

Even the Wellington Sears definition provides that there must be a "web". In the context of a nonwoven according to the Textile Dictionary (which is regarded as the industry standard) the definition of "web" requires the sheets involved to be made of fibre. Thus in respect of nonwovens, web is defined *"Single or multiple sheets of fibre used in the production of nonwoven fabric".* That is not the case with the subject goods.

It is also worth noting that the relevant definition for the word "web" in the Macquarie Dictionary all refer to concepts of weaving, interweaving, tightly woven, interlaced or closely linked. Again, the product having a plastic sheet does not fit within that definition.

It is true that the importer calls the product CLAF which stands for Cross Laminated Airy Fabric. Much of the IDM referred to the product as a fabric. This had a historical basis as earlier versions of CLAF were manufactured with a weaving process. However, as we all know it has never been the case that what an importer choses to call its goods, can be said to be determinative of how the goods are to be classified. It is what the goods actually are that counts.

It is of some concern to also note that during the course of the hearing of the case, the above facts were made aware to Customs, but they still maintained their position of seeking to classify the goods under Section XI.

Apart from being a very disappointing decision, this case also makes it very difficult for customs brokers in the future to try and classify these types of goods. As always, a Tariff Advice is going to be a very advisable course of action.

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