

Federal Court of Appeal



Cour d'appel fédérale

Date: 20151020

Docket: A-368-14

Citation: 2015 FCA 220

**CORAM: NADON J.A.
TRUDEL J.A.
RENNIE J.A.**

Docket: A-368-14

BETWEEN:

**EASTERN DIVISION HENRY SCHEIN ASH
ARCONA INC.**

Appellant

and

**PRESIDENT OF THE CANADA BORDER
SERVICES AGENCY**

Respondent

Heard at Ottawa, Ontario, on October 20, 2015.
Judgment delivered from the Bench at Ottawa, Ontario, on October 20, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on October 20, 2015).

NADON J.A.

[1] This is an appeal from a decision of the Canadian International Trade Tribunal (CITT) dated May 20, 2014 wherein it held that the goods at issue were properly classified in heading No. 40.15 specifically under tariff item No. 4015.19.90, as other articles of apparel and clothing

accessories (including gloves, mittens and mitts), for all purposes, of vulcanized rubber other than hard rubber.

[2] We are all of the view that the appeal must succeed. First, the CITT did not, in our view, consider Note 2.(e) to Chapter 40 of the *Customs Tariff* which provides that Chapter 40 does not cover the articles of Chapter 90. Second, it is unclear to us whether the CITT concluded that the goods at issue did not fall under Chapter 90.

[3] For these reasons, the appeal will be allowed with costs and the matter will be returned to the same chairperson of the CITT for redetermination based on the existing record.

"M Nadon"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-368-14

STYLE OF CAUSE: EASTERN DIVISION HENRY SCHEIN ASH ARCONA INC. v. PRESIDENT OF THE CANADA BORDER SERVICES AGENCY

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: OCTOBER 20, 2015

REASONS FOR JUDGMENT OF THE COURT BY: NADON J.A.
TRUDEL J.A.
RENNIE J.A.

DELIVERED FROM THE BENCH BY: NADON J.A.

APPEARANCES:

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