



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2011-060

Cycles Lambert Inc.

v.

President of the Canada Border
Services Agency

*Decision issued
Wednesday, July 10, 2013*

*Reasons issued
Friday, July 12, 2013*

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IN THE MATTER OF an appeal heard on March 5, 2013, pursuant to section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated November 8, 2011, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

CYCLES LAMBERT INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Jason W. Downey
Jason W. Downey
Presiding Member

Daniel Petit
Daniel Petit
Member

Ann Penner
Ann Penner
Member

Gillian Burnett
Gillian Burnett
Acting Secretary

The statement of reasons will be issued at a later date.

Place of Hearing: Ottawa, Ontario
Date of Hearing: March 5, 2013

Tribunal Members: Jason W. Downey, Presiding Member
Daniel Petit, Member
Ann Penner, Member

Counsel for the Tribunal: Nick Covelli
Laura Little

Manager, Registrar Programs and Services: Michel Parent

Registrar Officer: Haley Raynor

Registrar Support Officer: Rosemary Hong

PARTICIPANTS:

Appellant	Counsel/Representative
Cycles Lambert Inc.	Marco Ouellet
Respondent	Counsel/Representative
President of the Canada Border Services Agency	Maude Miron Bilodeau

WITNESSES:

Dave Savard Product Manager Cycles Lambert Inc.	Derrick St John Community Health Nurse/Cyclist Sandy Hill Community Health Centre
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STATEMENT OF REASONS

INTRODUCTION

1. This is an appeal filed by Cycles Lambert Inc. (Cycles Lambert) on January 21, 2012, pursuant to subsection 67(1) of the *Customs Act*¹ from a decision made on November 8, 2011, by the President of the Canada Border Services Agency (CBSA), made pursuant to subsection 60(4), with respect to requests for re-determination of tariff classification.

2. Cycles Lambert disputes the tariff classification by the CBSA of bicycle trainers (the goods in issue) under tariff item No. 9506.91.90 of the schedule to the *Customs Tariff*² as other articles and equipment for general physical exercise and submits that the goods in issue should be classified under tariff item No. 8714.99.90 as other parts and accessories of vehicles of heading Nos. 87.11 to 87.13 or, in the alternative, under tariff item No. 9506.91.10 as exercise bicycles.

ISSUE

3. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9506.91.90, as determined by the CBSA, or should be classified under tariff item No. 8714.99.90 or, in the alternative, under tariff item No. 9506.91.10, as claimed by Cycles Lambert.³

PROCEDURAL BACKGROUND

4. Cycles Lambert imported the goods in issue between May 30 and October 31, 2007. At the time of importation, the goods in issue were classified under tariff item No. 9506.91.90.

5. On May 12, 2011, Cycles Lambert requested a re-determination of the tariff classification of the goods in issue, pursuant to subsection 74(1) of the *Act*, and requested that they be classified under tariff item No. 8479.89.90 as other machines and mechanical appliances having individual functions, not specified or included elsewhere in Chapter 84.

6. Between May 27 and July 26, 2011, pursuant to paragraph 59(1)(a) of the *Act*, the CBSA denied Cycles Lambert's request for classification of the goods in issue under tariff item No. 8479.89.90 and upheld the classification of the goods in issue under tariff item No. 9506.91.90.

7. On August 12, 2011, Cycles Lambert requested a further re-determination, pursuant to subsection 60(1) of the *Act*, this time requesting classification of the goods in issue under tariff item No. 9506.91.10.

8. On August 31, 2011, the CBSA issued a preliminary decision which indicated that the goods in issue were classifiable under tariff item No. 8714.99.90. The CBSA, however, amended this decision on September 22, 2011, this time stating that the goods were properly classified under tariff item No. 9506.91.90.

1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].

2. S.C. 1997, c. 36.

3. In its brief filed on March 14, 2012, Cycles Lambert also submitted that the goods in issue were eligible for the benefits of tariff item No. 9948.00.00; however, it withdrew this argument in a letter to the Tribunal dated February 11, 2013. Accordingly, the Tribunal has not considered the application of tariff item No. 9948.00.00 to the goods in issue.

9. On November 8, 2011, pursuant to subsection 60(4) of the *Act*, the CBSA confirmed the classification of the goods in issue under tariff item No. 9506.91.90.
10. Cycles Lambert filed its notice of appeal with the Tribunal on January 21, 2012.⁴
11. A hearing was held in Ottawa, Ontario on March 5, 2013. As a matter of convenience, the proceedings were conducted partly in French and partly in English.⁵
12. During the hearing, following the analysis of import records, it became apparent to the Tribunal that some goods included in the import records were possibly not subject to the debate under consideration.
13. Following the hearing, the Tribunal asked the parties to make a joint submission in order to clarify whether any of the imported goods listed in Cycles Lambert's materials⁶ needed to be excluded from this appeal because they were properly classified elsewhere in the schedule to the *Customs Tariff*. The parties identified five such goods for exclusion, which included DVD software and training mats.⁷ Following these precisions, on April 2, 2013, the Tribunal closed the record in this appeal.
14. Two witnesses testified at the hearing. Mr. Derrick St John testified on behalf of Cycles Lambert as an expert in cycling. Mr. Dave Savard, Product Manager at Cycles Lambert, appeared as a lay witness. The CBSA did not call any witnesses.

GOODS IN ISSUE

15. The goods in issue are bicycle trainers, described as training devices which, when used in combination with a bicycle, enable a person to ride a bicycle while remaining stationary.⁸ They are commonly used to train indoors and/or when riding conditions outside are unfavourable, such as during the winter months. They are also used *in situ* before competitive races in order to help cyclists warm up and prepare themselves for an impending competition.
16. There are three different types of the goods in issue, which can be described as follows:
- basic rollers, consisting of a track with rollers set up under the bicycle wheels, which require that the cyclist remain balanced while pedaling in order to avoid going off the track;

4. On February 14, 2012, counsel for Cycles Lambert, who is also counsel for the appellant in Appeal No. AP-2011-059 (*Outdoor Gear Canada*), requested that the Tribunal hold that appeal in abeyance pending the outcome in the present appeal, given that both cases deal with the same type of goods (i.e. trainers) and that the same arguments would be presented by the appellants. The Tribunal, having considered the CBSA's submissions, granted the request.

5. As a preliminary matter, the Tribunal noted the very obvious fact that, although this appeal was filed in English, both counsel and a witness for Cycles Lambert were Francophones. Accordingly, the Tribunal gave the parties the option to express themselves freely, when desired, in either English or French during the hearing (simultaneous translation was provided). Parties acquiesced and the hearing was conducted alternately in both official languages.

6. Tribunal Exhibit AP-2011-060-09A, tab 2.

7. Tribunal Exhibit AP-2011-060-058.

8. The goods in issue comprise the following models: T1025/1026 Ecotrack, T1050 Sporttrack, T1200 Rollertrack, T1350 and T1810 Speedmatic, T1820 Magnetic, T1435 Sirius, T1850 Satori, T1857 Satori Pro Tour, T1684 Flow, T1975 Cosmos, T1945 Fortius, T1935 Fortius Multiplayer, T1912 iMagic and T1450 Cycletrack Speedmatic. The goods in issue also include accessories and parts for the bicycle trainers. Tribunal Exhibit AP-2011-060-09A, tab 2.

- motorized rollers, or “motorbrakes”, which are attached to the rear wheel of the bicycle and regulate the level of resistance applied to the wheel; and
- “virtual reality” trainers, equipped with sensors, a steering system and motorized rollers that are linked to a computer using a USB cable and software, creating a virtual environment where, through an Internet connection, cyclists can train and cycle with, or race against, other cyclists equivalently equipped, situated anywhere around the world.

17. Cycles Lambert filed as physical exhibits samples of the TacX Fortius Multiplayer, TacX Sirius and T1000 models, and six DVDs that demonstrate the use of the goods in issue.

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).⁹ The schedule is 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. Subsection 10(1) of the *Customs Tariff* provides that the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*¹⁰ and the *Canadian Rules*¹¹ 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*¹² and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,¹³ 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.¹⁴

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*. If the goods in issue cannot be classified at the heading level through the application of Rule 1, then the Tribunal must consider the other rules.¹⁵

9. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.

10. S.C. 1997, c. 36, schedule [*General Rules*].

11. S.C. 1997, c. 36, schedule.

12. World Customs Organization, 2d ed., Brussels, 2003 [*Classification Opinions*].

13. World Customs Organization, 5th ed., Brussels, 2012 [*Explanatory Notes*].

14. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) 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*.

15. Rules 1 through 5 of the *General Rules* apply to classification at the heading level.

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.¹⁶ The final step is to determine the proper tariff item.¹⁷

24. As mentioned above, the issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9506.91.90 as other articles and equipment for general physical exercise, as determined by the CBSA, or should be classified under tariff item No. 8714.99.90 as other parts and accessories of vehicles of heading Nos. 87.11 to 87.13 or, in the alternative, under tariff item No. 9506.91.10 as exercise bicycles, as claimed by Cycles Lambert.

25. Therefore, the first issue before the Tribunal is to determine the tariff classification of the goods in issue at the heading level (i.e. heading No. 95.06 or 87.14).

Relevant Classification Provisions

26. The relevant provisions of the *Customs Tariff* provide as follows:

- 87.12** **Bicycles and other cycles (including delivery tricycles), not motorized.**
...
- 87.14** **Parts and accessories of vehicles of headings 87.11 to 87.13.**
...
- 95.06** **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.**
...
- 9506.91** **--Articles and equipment for general physical exercise, gymnastics or athletics**
- 9506.91.10** -- -Exercise bicycles;
 Parts for use in the manufacture of physical exercise machines;
 Stair climbing machines
...
- 9506.91.90** -- -Other

16. 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."

17. 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." The *Classification Opinions* and the *Explanatory Notes* do not apply to classification at the tariff item level.

POSITIONS OF PARTIES

Cycles Lambert

27. Cycles Lambert argued that the goods in issue are accessories for bicycles and should therefore be classified in heading No. 87.14 as parts and accessories of vehicles of heading Nos. 87.11 to 87.13 (in this case, bicycles) pursuant to Rule 1 of the *General Rules*.

28. Cycles Lambert contended that the goods in issue are *accessories* because they play a subordinate role that is not essential to the function of a bicycle, but which adds to effectiveness by enabling the rider to train indoors and warm up, i.e. before a competition. In this regard, Cycles Lambert relied on the ordinary meaning of the term “accessory” and past Tribunal jurisprudence interpreting this term,¹⁸ as well as the CBSA’s own definition of “accessory” as “. . . an article which performs a secondary or subordinate role, not essential to the function, which could improve the effectiveness of the host machine, equipment, apparatus or appliance”.¹⁹

29. Cycles Lambert also referred to the industry usage of the term “accessory” in order to categorize the goods in issue in its product catalogues and those of other suppliers.²⁰ To this end, Cycles Lambert explained that it sold this product line under the heading of “accessories” in its catalogue and on its Web site.

30. Cycles Lambert further submitted that the goods in issue comply with the three conditions required for “accessories” under Chapter 87, as provided for in Note (III) of the *Explanatory Notes* to Section XVII, which provides as follows:

- (a) They must not be excluded by the terms of Note 2 to this Section
- and (b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88
- and (c) They must not be more specifically included elsewhere in the Nomenclature

31. The first condition is that the *accessories* must not be excluded by the terms of Note 2 to Section XVII.²¹ Cycles Lambert argued that the goods in issue are not found in this exhaustive list of exclusions provided for in the note.

18. *The Stevens Company Limited v. Deputy M.N.R.* (20 December 1999), AP-98-067 (CITT) [*Stevens Company*] at 5.

19. Memorandum D10-0-1, “Classification of Parts and Accessories in the *Customs Tariff*” (24 January 1994) at 2.

20. Tribunal Exhibit AP-2011-060-33A at 27-44.

21. Note 2 of the *Explanatory Notes* to Section XVII provides as follows: “The expressions ‘parts’ and ‘parts and accessories’ do not apply to the following articles, whether or not they are identifiable as for the goods of this Section: (a) Joints, washers or the like of any material . . . (b) Parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39); (c) Articles of Chapter 82 (tools); (d) Articles of heading 83.06; (e) Machines or apparatus of headings 84.01 to 84.79, or parts thereof; articles of heading 84.81 or 84.82 or, provided they constitute integral parts of engines or motors, articles of heading 84.83; (f) Electrical machinery or equipment (Chapter 85); (g) Articles of Chapter 90; (h) Articles of Chapter 91; (ij) Arms (Chapter 93); (k) Lamps or lighting fittings of heading 94.05; or (l) Brushes of a kind used as parts of vehicles (heading 96.03).”

32. The second condition is that the goods in issue must be suitable for use solely or principally with the vehicles of Chapter 87.²² On this point, Cycles Lambert contended that bicycle trainers are suitable for use solely with bicycles of heading No. 87.12, as their design, conception and nature are exclusively destined to be used with a bicycle. Cycles Lambert explained that the goods themselves have no real use on their own and cannot function without a bicycle.²³

33. Third, the goods in issue must not be more specifically included elsewhere in the tariff nomenclature; Cycles Lambert submitted that this condition was also met. In particular, it argued that heading No. 95.06 cannot apply to the goods in issue because they are not imported *with* a bicycle and, therefore, cannot be used as articles and equipment for general physical exercise or athletics at the time of importation.²⁴

34. Turning to the criteria for “accessories” found in the *Explanatory Notes* to heading No. 87.14,²⁵ Cycles Lambert made similar arguments by stating that the goods in issue are suitable for use solely with non-motorized bicycles and, therefore, that they are not excluded by the provisions of the notes to Section XVII.²⁶ Cycles Lambert further submitted that the list of parts and accessories under heading No. 87.14²⁷ is not exhaustive and, therefore, may also include other items, such as the goods in issue.²⁸

35. In the event that the Tribunal did not accept Cycles Lambert’s principal position, (i.e. classification in heading No. 87.14), it put forward an alternative argument. Its secondary position is to accept²⁹ the application of heading No. 95.06 to the goods in issue, while disputing the CBSA’s classification at the tariff item level.³⁰

36. In Cycles Lambert’s view, Rule 1 of the *General Rules* cannot be used to determine the applicable tariff item in this case because the goods in issue are not, at the time of importation, *prima facie* classifiable as exercise bicycles (tariff item No. 9506.91.10) or other articles and equipment for general physical exercise, gymnastics or athletics (such as provided by tariff item No. 9506.91.90).³¹

22. Similarly, the *Explanatory Notes* to Chapter 87 provide as follows: “This Chapter also covers parts and accessories which are identifiable as being suitable for use **solely or principally** with the vehicles included therein” Also, Note 3 and Note (III)(C) of the *Explanatory Notes* to Section XVII provide that parts and accessories which are not suitable for use solely or principally with the articles of Chapters 86 to 88 are excluded from those chapters.

23. *Transcript of Public Hearing*, 5 March 2013, at 145, 147.

24. *Ibid.* at 156-58.

25. The *Explanatory Notes* to heading No. 87.14 provide as follows: “This heading covers parts and accessories of a kind used with . . . non-motorised cycles . . . **provided** the parts and accessories fulfill **both** the following conditions: (i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles; and (ii) They must not be excluded by the provisions of the Notes to Section XVII”

26. *Transcript of Public Hearing*, 5 March 2013, at 152-53.

27. For example, this list includes handle-bar grips, toe clips, saddle-covers, mudguards, clothes protectors, windscreens and luggage racks.

28. *Transcript of Public Hearing*, 5 March 2013, at 153.

29. Tribunal Exhibit AP-2011-060-09A at para. 10.

30. Cycles Lambert also stated that it would accept, as part of its alternative argument, classification of the goods in issue in subheading 9506.91, pursuant to Rule 1 of the *General Rules*. See *Transcript of Public Hearing*, 5 March 2013, at 161-62.

31. *Transcript of Public Hearing*, 5 March 2013, at 163-64.

37. Cycles Lambert therefore argued that Rule 2 (a) of the *General Rules* directs the application of tariff item No. 9506.91.10 to the goods in issue, on the basis that they are incomplete stationary bicycles³² without use or function at the time of importation but which become complete and functioning articles when a bicycle is attached to or used with (in the case of basic rollers) the goods in issue *at a later date*. In this regard, Cycles Lambert argued that it is the trainer which gives the complete article its essential character as a *stationary bicycle*, once the bicycle is added.³³

CBSA

38. The CBSA's position is that the goods in issue are properly classified pursuant to Rule 1 of the *General Rules* in heading No. 95.06 because they are a type of equipment that is used, in combination with a bicycle, for the purposes of training and/or physical exercise.

39. According to the CBSA, the goods in issue do not meet two of the three conditions of Note (III) of the *Explanatory Notes* to Section XVII.³⁴

40. The CBSA did not challenge the first condition of Note (III) of the *Explanatory Notes* to Section XVII to the effect that *accessories* are not excluded by the terms of Note 2 to Section XVII.

41. The CBSA, however, argued that the goods in issue do not meet the second condition of Note (III) of the *Explanatory Notes* to Section XVII, as they are not suitable for use with vehicles of Chapter 87. In this regard, the CBSA relied heavily on the proposition that the main function of a bicycle of heading No. 87.12 is to transport people and thus, in order to qualify as *accessories* of heading No. 87.14, the goods in issue must enhance that function.³⁵ In its view, the goods in issue do not support a bicycle's transportation function (as it, in fact, prevents it), as the trainers are used for general physical exercise in a stationary way and therefore fall under heading No. 95.06.

42. The CBSA further argued that even if the goods in issue *were accessories* of heading No. 87.14, they still could not be classified in that heading because they are covered more specifically in heading No. 95.06 and thus fail to meet the third condition of Note (III) of the *Explanatory Notes* to Section XVII.

43. The CBSA submitted that, pursuant to Rule 1 of the *General Rules*, the goods in issue meet the terms of subheading No. 9506.91 as articles and equipment for general physical exercise and that the same rule directs their classification in the residual tariff item No. 9506.91.90 as other articles and equipment for general physical exercise, since none of the other tariff items specifically apply.

32. Cycles Lambert submitted, and the CBSA agreed, that the ordinary meaning of the term "exercise bicycle" is synonymous with the term "stationary bicycle", both of which are defined in *Merriam-Webster's Collegiate Dictionary*, 11th ed., s.v. "stationary bicycle" as "an exercise apparatus that can be pedaled like a bicycle – called also *stationary bike*", Tribunal Exhibit AP-2011-060-09A at 192; *Transcript of Public Hearing*, 5 March 2013, at 175.

33. *Transcript of Public Hearing*, 5 March 2013, at 165-66.

34. See paragraph 30 of this statement of reasons for the three conditions.

35. *Transcript of Public Hearing*, 5 March 2013, at 196-205, 207-13.

44. In particular, the CBSA disputed Cycles Lambert's claim that the goods in issue are exercise bicycles of tariff item No. 9506.91.10 because:

- the goods in issue do not meet the dictionary definition of “exercise bicycle” or “stationary bicycle”, as they, in and of themselves, do not have wheels, pedals, a seat or handlebars and do not resemble a bicycle;
- the goods in issue are marketed, sold and imported separately from bicycles; and
- at the time of importation, the goods in issue are complete and finished goods (i.e. trainers), which are ready for sale, and their use is subject to the subsequent addition of a bicycle (which is a different good in and of itself).

45. According to the CBSA, since the goods in issue are classifiable pursuant to Rule 1 of the *General Rules*, there is no need for the Tribunal to examine any of the remaining rules of the *General Rules*. However, even if the Tribunal were to consider the application of Rule 2 (a), the CBSA submitted that the goods in issue are not incomplete or unfinished exercise bicycles because they do not have the essential character of a finished exercise bicycle (the bicycle being a completely separate and complete good in itself) at the time of importation.

ANALYSIS

Heading No. 87.14 v. Heading No. 95.06

46. In order for the goods to be classified in heading No. 87.14, they must be *parts or accessories* of vehicles of heading No. 87.12 and meet all three conditions set out in Note (III) of the *Explanatory Notes* to Section XVII and the *Explanatory Notes* to heading No. 87.14.

47. The Tribunal will therefore first consider whether the ordinary and grammatical meaning of the term “accessories” applies to the goods in issue, since Cycles Lambert represented the goods in issue as *accessories* and not parts.³⁶

48. The term “accessories” is not defined in the tariff nomenclature. In keeping with past practice, the Tribunal regularly had regard to dictionary definitions of that word in order to determine its meaning.

49. The Tribunal has previously recognized the ordinary meaning of “accessory” as “. . . an additional or extra thing . . . a small attachment or fitting . . .”³⁷ or as “. . . something contributing in a subordinate degree to a general result or effect; an adjunct, or accompaniment.”³⁸ Cycles Lambert relied on similar dictionary definitions to give meaning to this term as a “. . . part designed to complete a main element or to contribute to its functioning. *Automobile accessories, electric robot*”³⁹ [translation] and as “. . . an object or device not essential in itself but adding to the beauty, convenience, or effectiveness of something else . . .”⁴⁰

36. *Transcript of Public Hearing*, 5 March 2013, at 145-46.

37. See *Accessoires SportRacks Inc. de Thule Canada Inc. v. President of the Canada Border Services Agency* (13 January 2012), AP-2010-036 (CITT) [*Accessoires SportRacks*] at para. 28.

38. See *Fastco Canada v. Deputy M.N.R.* (29 April 1997), AP-96-078 (CITT) [*Fastco Canada*] at 3.

39. *Le Petit Larousse Grand Format*, 100th ed., s.v. “accessoire”. See Tribunal Exhibit AP-2011-060-33A at 23.

40. *Merriam-Webster's Collegiate Dictionary*, 11th ed., s.v. “accessory”. See Tribunal Exhibit AP-2011-060-33A at 26.

50. Tribunal jurisprudence has established that an accessory must perform a function that supports the primary function of the object; however, unlike parts, there is no need for an accessory to be necessary to the product to which it relates.⁴¹ An accessory is something that contributes in a subordinate or incidental degree to the general result or effect of a process.⁴²

51. Although the Tribunal is not bound by the CBSA's administrative practices,⁴³ the CBSA's definition of the term "accessories" is generally consistent with the above interpretation by the Tribunal of the term "accessory".

52. In applying the above definition of "accessory" to the goods in issue, the Tribunal notes that there is no universally applicable test to determine whether certain goods are "accessories" and that each case must be determined on its merits, according to the unique facts of each case.⁴⁴

53. The testimonies of Mr. Savard and Mr. St John clearly established that, without a bicycle, the goods in issue cannot function and have no use.⁴⁵ In order for the goods in issue to function, it is absolutely necessary for them to be attached to (or placed on, in the case of basic rollers) a bicycle. The DVDs viewed at the hearing further demonstrated that the functionality of the goods in issue depended on their use by the cyclist together with a bicycle.

54. The Tribunal accepts the evidence that the goods in issue contribute in a subordinate degree to the use or effectiveness of bicycles by enabling their use for cycling indoors and/or training for a competition. According to Mr. St John's testimony, cyclists typically use the goods in issue when the weather outside is unfavourable or if they need to perform specific types of training in preparation for a competition. He explained as follows:⁴⁶

There are specific intervals that are actually easier and more efficient to perform on the trainer, because when you are on the trainer you are basically eliminating all the variables. So if I needed . . . to cycle down the road at 40 kilometres an hour for one hour for one hour to achieve a specific training goal, it's very hard to do this outside because . . . those kinds of conditions around here, like it just doesn't exist. So using a trainer as a tool to perform the workout to achieve a desired outcome is one reason that even in nice weather I would use the trainer . . .

55. The Tribunal also notes that the industry appears to use the term "accessories" to describe the goods in issue in product catalogues, as submitted by Cycles Lambert.

56. Although the goods in issue are not listed as parts and accessories in the *Explanatory Notes* to heading No. 87.14, this list is not exhaustive and, therefore, does not prohibit the goods in issue from being considered "accessories".

57. That being said, however, the Tribunal notes that the list of goods provided primarily refers to parts or accessories that go into the construction or constitution of the cycle itself. The goods in issue differ from the items in the list to the extent that they (1) do not attach to the cycle (but rather the cycle rests on or is

41. *Accessoires SportRacks* at para. 28; *Bureau de Relations d'Affaires internationales Inc. (Busrel Inc.) v. Deputy M.N.R.* (24 August 1999), AP-97-139 and AP-98-042 (CITT).

42. *Accessoires SportRacks* at para. 28; *Stevens Company* at 5.

43. *DSM Nutritional Products Canada Inc. v. President of the Canada Border Services Agency* (2 December 2008), AP-2007-012 (CITT).

44. *Fastco Canada* at 3.

45. *Transcript of Public Hearing*, 5 March 2013, at 56, 59, 119.

46. *Ibid.* at 114.

fixed to the goods in issue), and (2) are not components of the cycle itself. Therefore, a *prima facie* distinction exists between the nature of the goods listed in the *Explanatory Notes* to heading No. 87.14 and the goods in issue.

58. Nevertheless, in view of the broad meaning of the term “accessories” adopted in Tribunal jurisprudence and the fact that the list included in the *Explanatory Notes* is not exhaustive, the Tribunal is tentatively willing to accept that the goods in issue could be considered as “accessories” to bicycles, according to the ordinary meaning of that term. The Tribunal will now consider the three conditions for “accessories” of heading No. 87.14.

Condition 1—Are the Goods in Issue Excluded by the Terms of Note 2 to Section XVII?

59. With respect to the first condition, the CBSA did not dispute Cycles Lambert’s contention that the goods in issue are not excluded by the provisions of note 2 to Section XVII.⁴⁷ The Tribunal accepts this condition as being met.

Condition 2—Are the Goods in Issue Suitable for Use Solely or Principally With the Vehicles of Chapter 87?

60. For the purposes of heading No. 87.14, the Tribunal must also determine whether the goods in issue meet the specific conditions for parts and accessories as outlined above.

61. In the Tribunal’s view, it is clear that the goods in issue are suitable for use with bicycles of heading No. 87.12, which are considered vehicles⁴⁸ of Chapter 87. The nub of the issue is therefore whether they are for use solely or principally with bicycles.

62. As mentioned, the witness testimony and DVD videos demonstrating the use of the goods in issue clearly established that the goods in issue are exclusively designed for use with bicycles, i.e. for riding indoors and/or to perform specific types of training. Without a bicycle, the goods in issue cannot function and have no other use. This evidence was further supported by product catalogues and other marketing materials showing that the goods in issue are principally marketed for use with bicycles.⁴⁹

63. As stated by the CBSA in its amended preliminary decision dated September 22, 2011:⁵⁰

Notwithstanding the fact that these goods cannot be used as is to do cycling at the time of importation, since there is no bicycle, they are nonetheless *goods that have been designed specifically* for a physical activity, that is, cycling.

[Emphasis added, translation]

47. Tribunal Exhibit AP-2011-060-13A at paras. 45-46.

48. The term “vehicle” is defined in *Merriam-Webster’s Collegiate Dictionary*, 11th ed., as “. . . a means of carrying or transporting something (planes, trains, and other . . .)” and, in the *Oxford Canadian Dictionary*, 2d ed., as “. . . any conveyance for transporting people, goods, etc., esp. on land . . .” With respect to the CBSA’s submissions that the goods in issue, when used in combination with a bicycle, do not enhance the transportation function of a bicycle and, therefore, cannot be classified as accessories to a vehicle, the Tribunal is of the view that such a debate is not germane to its decision in this appeal.

49. Tribunal Exhibit AP-2011-060-09A, tab 1; Tribunal Exhibit AP-2011-060-20A, tab 1.

50. Tribunal Exhibit AP-2011-060-09A at 294.

64. The Tribunal agrees with the above passage, which clearly demonstrates that the goods in issue were designed specifically for use with a bicycle.

65. In light of the above, the Tribunal finds that goods in issue are clearly identifiable as being suitable for use solely or principally with bicycles and, therefore, that the second condition of Note (III) of the *Explanatory Notes* to Section XVII is met.

Condition 3—Are the Goods in Issue More Specifically Included in Another Heading?

66. Having recognized that the goods in issue met the first two conditions of the *Explanatory Notes*, the Tribunal must now consider whether the goods in issue are more specifically included elsewhere in the *Customs Tariff*.

67. According to the third condition of Note (III) and Note (III)(C) of the *Explanatory Notes* to Section XVII,⁵¹ if the goods in issue are more specifically described in heading No. 95.06 as articles and equipment for general physical exercise, as argued by the CBSA, then they will be excluded from coverage under heading No. 87.14, even if they are identifiable as accessories for bicycles.

68. In order to determine which heading more specifically describes the goods, the first step is to confirm whether the goods are classifiable in heading No. 95.06.⁵² To be covered by that heading, the goods in issue must be (1) articles or equipment (2) for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games (3) not specified or included elsewhere in Chapter 95.

69. On the basis of their ordinary meaning, Tribunal jurisprudence has construed the terms “article” and “equipment”, respectively, as “. . . any finished or semi-finished product which is not considered to be a material. This includes items which are classified as parts, but is not limited to parts . . .”,⁵³ and as “. . . tools, articles, clothing, etc. used or required for particular purpose.”⁵⁴

70. As there is no dispute that the goods in issue are articles or equipment, and considering that these terms have been interpreted broadly in the Tribunal’s jurisprudence, the Tribunal is satisfied that the first component of the requirement under the *Explanatory Notes* to heading No. 95.06 is met.

71. Since neither party submitted that the goods in issue are specified or included elsewhere in Chapter 95 and following careful consideration of the chapter, the Tribunal also accepts the third component as being met.

51. Note (C) of the General Explanatory Note (III) to Section XVII provides that “[p]arts and accessories, even if identifiable as for the articles of this Section, are excluded if they are covered more specifically by another heading elsewhere in the Nomenclature. . . .”

52. The Tribunal notes Cycles Lambert’s admission in support of its alternative argument that it “. . . does not dispute the applicable chapter (95), heading (95.06) or the subheading (9506.91)”, Tribunal Exhibit AP-2011-060-09A at para. 25). However, the Tribunal has examined the applicability of heading No. 95.06 for the purposes of determining whether it covers the goods in issue more specifically than heading No. 87.14.

53. See *Prins Greenhouses Ltd. v. Deputy M.N.R.* (9 April 2001), AP-99-045 (CITT), note 3, where the Tribunal accepted the definition of the term “article” in Customs Notice N-278, *Administrative Policy Tariff Item No. 9948.00.00*, Department of National Revenue, 27 April 1999. See, also, *Grodan Inc. v. President of the Canada Border Services Agency* (7 June 2012), AP-2011-030 (CITT) at paras. 25-26.

54. *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency* (11 April 2012), AP-2011-018 (CITT) [*HBC Imports*], note 49.

72. The Tribunal will therefore focus its attention on the second component of heading No. 95.06, i.e. whether the goods in issue are *equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games*, as submitted by the CBSA and Cycles Lambert, in the alternative.

73. The Tribunal has previously examined the meaning of the phrase “for general physical exercise” for the purposes of heading No. 95.06, as follows:

The *Merriam-Webster’s Collegiate Dictionary* defines “**exercise**” as follows: “**2 . . . b : bodily exertion for the sake of developing and maintaining physical fitness . . .**” . . . Similarly, the *Canadian Oxford Dictionary* defines “exercise” as an “**1 activity requiring physical effort, done esp. as training or to sustain or improve health.**” The etymology of the words “exercise” and “exert” indicate their derivation from the Latin *exercitium*, from *exercitare*, which means to train, exercise; the frequentative of *exercere* comes from *ex-* (out) + *arcre* (to hold off), again referring to **some form of physical effort**. The Tribunal notes that the subheading refers to **general physical exercise**, implying that **an organized, structured, planned, repetitive and purposive framework is not required** to meet the terms of heading No. 95.06.⁵⁵

[Bold added for emphasis, footnotes omitted]

74. Note (A) of the *Explanatory Notes* to heading No. 95.06 further specifies that this heading covers articles and equipment for general physical exercise, such as “. . . rowing, cycling and other exercising apparatus . . .” [emphasis added].

75. It is important to mention at this point that there exists a difference between the English and French versions of the *Explanatory Notes* to heading No. 95.06. The English version refers to “. . . cycling and other exercising apparatus . . .”, whereas the French version refers to “. . . bicyclettes ergométriques (cyclettes) et autres appareils d’exercices . . .”. This issue was not addressed by the parties, either in their submissions or their arguments,⁵⁶ but the Tribunal cannot ignore the fact that the translation is not perfectly harmonized.

76. It appears that there are two differences between these the English and French versions. To begin, the term “cycling” found in the English version is not synonymous with the term “*bicyclettes ergométriques*” in the French version. Secondly, in the French version of the *Explanatory Notes* to heading No. 95.06, the term “*cyclettes*” is introduced, in parentheses, whereas there is no corresponding term provided in the English version.

77. Section 13 of the *Official Languages Act*⁵⁷ provides that the English and French versions of any act of Parliament are equally authoritative. As the Tribunal has stated in the past, neither the English nor the French version of the schedule to the *Customs Tariff* enjoys priority over the other.⁵⁸ Accordingly, when differences appear between French and English legislative texts, it is the Tribunal’s duty to try to resolve the differences by applying the “shared meaning rule”, whereby the ordinary meaning that is shared by both versions is presumed to be the meaning intended by Parliament and is therefore the one that ought to be adopted.

55. *HBC Imports* at para. 56.

56. *Transcript of Public Hearing*, 5 March 2013, at 139-40.

57. R.S.C. 1985 (4th Supp.), c. 31.

58. *Marmen Énergie Inc. and Marmen Inc. v. President of the Canada Border Services Agency* (14 December 2012), AP-2011-057 and AP-2011-058 at para. 80.

78. In the present case, the Tribunal has specifically cast its attention on these terms in order to reconcile the intent of the two official versions.

79. According to *Le Petit Robert 2011*,⁵⁹ the term “*bicyclette*” is defined as follows: “1. Locomotion apparatus composed of a frame which at the front bears a directional wheel, commanded by handlebars and a back wheel powered by a pedal mechanism. 2. Cycle, bike” [translation].

80. As for the term “*ergométrique*”, *Le Petit Robert 2011* defines it as follows: “from *ergometrics* Relates to ergometric. *Ergometric bicycle*: an exercise bicycle, without wheels, equipped with a pedal mechanism upon which torque/resistance can be adjusted” [translation].

81. According to dictionary definitions, the verb “cycle” (or “cycling”) means “. . . to ride a cycle; *specif*: BICYCLE . . .”,⁶⁰ and “. . . 1 travelling or touring on a bicycle etc. 2 the sport of bicycle racing, usu. on a lightweight bicycle with low handlebars . . .”.⁶¹

82. As for the term “*cyclette*” which appears in the French version of the *Explanatory Notes* to heading No. 95.06, the Tribunal did not find a definition for the word in commonly referred to French dictionaries⁶² and other linguistic tools at its disposition. It appears however that “*cyclette*” is a term that is used in common language, in Europe, particularly in France and Italy, in order to refer to an “interior bike⁶³ or an “apartment bike”.⁶⁴

83. The ordinary meaning of the term “apparatus” is “. . . 1 a : a set of materials or equipment designed for a particular use; . . . c : an instrument or appliance designed for a specific operation . . .”,⁶⁵ and “. . . the equipment needed for a particular purpose or function, esp. scientific or technical . . .”.⁶⁶ In the Tribunal’s view, this can be taken to have the same meaning as the term “*appareils*” in the French version.⁶⁷

84. In light of the above, the Tribunal understands the general meaning of the terms “. . . *bicyclettes ergométriques (cyclettes) et autres appareils d’exercices* . . .” in the French version and the terms “. . . cycling and other exercising apparatus . . .” in the English version as having a shared meaning of an apparatus with the general characteristics of a bicycle (i.e. frame, seat, pedaling mechanism), where the torque/resistance is adjustable, used to exercise in a stationary way, indoors.

59. (Paris: Dictionnaires Le Robert, 2011), s.v. “*bicyclette*”.

60. *Merriam-Webster’s Collegiate Dictionary*, 11th ed., s.v. “cycle”.

61. *Canadian Oxford Dictionary*, 2d ed., s.v. “cycle”.

62. For example, *Le Petit Robert*, *Robert*, *Larousse*, *Sensagent* and *Médiadico*.

63. For example, see France, Ministry of Culture and Communication, *FranceTerme*, s.v. “*cyclette*”, available online: Culture.fr <<http://www.culture.fr/franceterme/result?francetermeSearchTerme=cyclette&francetermeSearchDomaine=0&francetermeSearchSubmit=rechercher&action=search>>.

64. For example, see Reverso Traduction (Italian-French), s.v. “*cyclette*”, available online: Reverso <<http://dictionnaire.reverso.net/italien-francais/cyclette>> and <http://cherie.agence-presse.net/2013/01/16/l-entrainement-a-la-maison/>.

65. *Merriam-Webster’s Collegiate Dictionary*, 11th ed., s.v. “apparatus”.

66. *Canadian Oxford Dictionary*, 2d ed., s.v. “apparatus”.

67. *Le Petit Robert 2011* (Paris: Dictionnaires Le Robert, 2011), defines “*appareil*” as follows: “3. Assemblage de pièces ou d’organes réunis en un tout pour exécuter un travail, observer un phénomène, prendre des mesures. (3. Assembly of pieces or parts brought together as one to perform work, observe a phenomenon, take measurements).

85. It is important to remember that the goods in issue, at the time of importation, do not have the characteristics of a *cyclette*, an *interior bike* or an *apartment bike*. They are merely equipment which allows a cyclist to cycle in a stationary fashion, once a bicycle has been added; the distinction here is important. They are apparatus which allow for exercise comparable to cycling, only once a bicycle has been added.

86. This is how the expression, “other exercising apparatus” applies to the goods at issue in a more straightforward way. This expression is essentially identical in both English and French and refers more generally to equipment with a particular use or function related to an activity requiring physical effort, such as training for the sake of developing and maintaining physical fitness.

87. The evidence in this case clearly established that the goods in issue fall within the more general meaning of *other exercising apparatus*, particularly when read in conjunction with the preceding word “cycling” which draws a functional link to an exercise apparatus used for cycling.

88. Mr. St John’s expert testimony confirmed that the goods in issue are, with the addition of a bicycle, used for cycling. Without this functional link to a bicycle, the goods would be useless and without purpose. While they can be used for recreational purposes, bicycle trainers are primarily conceived for use by serious cyclists who want to train indoors and to train for competitions, time trials, performance, peak performance, etc. Specifically, he referred to their use for training purposes⁶⁸ and “. . . as a tool to perform the workout . . .”⁶⁹, for “. . . warming up . . .”⁷⁰ before a race and to “. . . perform certain drills.”⁷¹

89. Mr. St John also repeatedly alluded to the idea of cycling as a form of exercise. For example, he stated the following:

You would always need to put a bicycle on it to perform exercise.⁷²

Because the bike is moving and it’s not locked in, you are recruiting more of the muscles in your hips to ride and it actually simulates a little bit more what it feels like to be outside.⁷³

You need to create certain power. You just need to have really good endurance, be really fit, good power-to-weight ratio. And the way to do that is just to ride your bike like a lot⁷⁴

It definitely does give you some general fitness. . . . cycling is going to work your legs out and going to give you good aerobic fitness . . .⁷⁵

90. Mr. Savard’s evidence also implied that cycling is a form of exercise. Throughout his testimony, Mr. Savard referred to the goods in issue as a “training base” [translation], “trainers” and “exerciser” [translation]. He also described their use (with a bicycle) for the purposes of “training”⁷⁶ [translation], “improving cycling performance”⁷⁷ [translation] and “improving one’s physical capacities, one’s cardiovascular capacities”⁷⁸ [translation].

68. *Transcript of Public Hearing*, 5 March 2013, at 113-14, 117.

69. *Ibid.* at 118.

70. *Ibid.* at 118.

71. *Ibid.* at 126.

72. *Ibid.* at 120.

73. *Ibid.* at 127.

74. *Ibid.* at 134.

75. *Ibid.* at 134-35.

76. *Ibid.* at 60, 67, 70, 96.

77. *Ibid.* at 103.

78. *Ibid.* at 103.

91. At this stage, the Tribunal wishes to point out that Cycles Lambert engaged in somewhat of a “double discourse” throughout the hearing with respect to the nature of the goods in issue. On the one hand, to support the classification of the goods in issue in heading No. 87.14, it submitted that they absolutely need a bicycle to function. Cycles Lambert effectively relied on this functional link to the bicycle to argue that the goods are accessories to bicycles. Cycles Lambert also linked the functionality of the goods and bicycles for the purposes of its alternate argument of tariff item No. 9506.91.10 (discussed further below).

92. On the other hand, Cycles Lambert clearly tried to steer away from the language used in Note (A) of the *Explanatory Notes* to heading No. 95.06, by attempting to de-link the goods in issue from the concept of equipment or apparatus for exercise on the basis that, at the time of importation, without a bicycle, the goods in issue alone cannot be used for exercise. This approach was evident from the examination and responses of Mr. Savard.⁷⁹ In the Tribunal’s view, Cycles Lambert cannot have it both ways, and its convoluted discussion regarding the nature/functionality of the goods in issue was not particularly helpful.

93. Considering the notion of exercise, and accepting that cycling is a specific form of exercise, it is clear from the testimony and the documentary and DVD evidence on file that the goods in issue are pieces of equipment or apparatus used in combination with a bicycle for an activity requiring bodily exertion/physical effort done as training or to improve or maintain physical fitness and health (i.e. exercise). As a result, the goods in issue enable cyclists to maximize their specific operational and training goals.

94. On the basis of the evidence, the Tribunal determines that the goods in issue are equipment for general physical exercise of heading No. 95.06. In particular, they qualify as cycling or other exercising apparatus of that heading.

Tariff Item No. 9506.91.10 v. Tariff Item No. 9506.91.90

95. Since the parties do not dispute the application of subheading No. 9506.91, the next step is to determine the classification at the tariff item level.

96. In order for the goods in issue to be classified under tariff item No. 9506.91.10, as claimed in the alternative by Cycles Lambert, they must be “exercise bicycles, parts for use in the manufacture of physical exercise machines; stair climbing machines.”

97. The Tribunal is not convinced by Cycles Lambert’s argument that the goods are incomplete stationary/exercise bicycles and, therefore, ought to be classified under tariff item No. 9506.91.10 pursuant to Rule 2 (a) of the *General Rules*; they are goods with a unique identity. Therefore, the proper classification of the goods in issue at the tariff item level can be determined on the basis of Rule 1.⁸⁰

98. The tariff nomenclature does not define the term “exercise bicycle” for the purposes of tariff item No. 9506.91.10. The Tribunal considered the dictionary definition of this term,⁸¹ which is synonymous with

79. *Ibid.* at 58-59.

80. As an alternative basis for classification under tariff item No. 9506.91.10, Cycles Lambert referred to Rule 4 of the *General Rules*, arguing that, if the goods in issue cannot be classified pursuant to the preceding rules, they should be classified in that tariff item because they are most akin to exercise bicycles. The Tribunal was not persuaded by this argument and further notes that it was only briefly addressed by counsel for Cycles Lambert in closing argument.

81. The Tribunal notes that Cycles Lambert cited definitions of the term “stationary bicycle” from Wikipedia and provided images resulting from a Google search of that term. As indicated at the hearing, the Tribunal does not consider these to be authoritative sources.

a “stationary bicycle” and defined as “. . . an exercise apparatus that can be pedaled like a bicycle”⁸² The CBSA also referred to the ordinary meaning of a stationary bicycle as “. . . a fixed exercise machine resembling a bicycle.”⁸³

99. A bicycle trainer is an exercise apparatus, as determined above, but, at the time of importation, it does not resemble a bicycle and cannot be pedaled like a bicycle. In fact, it cannot be pedaled at all. As Cycles Lambert and the witnesses explained repeatedly, the goods in issue have no use and cannot function without a bicycle. Only the bicycle itself can be pedaled, not the other way around.

100. One can certainly make a bicycle stationary by placing it on or attaching it to a bicycle trainer; however, the trainer itself is clearly not a stationary bicycle. It is an exercise apparatus that allows a cyclist to use the bicycle in a specific way, with its junction to the trainer, to perform a particular function, i.e. training indoors.

101. Therefore, the Tribunal determines that the goods in issue are properly classified under tariff item No. 9506.91.90 as other equipment for general physical exercise pursuant to Rule 1 of the *General Rules*, as determined by the CBSA.

DECISION

102. The appeal is dismissed.

Jason W. Downey
Jason W. Downey
Presiding Member

Daniel Petit
Daniel Petit
Member

Ann Penner
Ann Penner
Member

82. *Merriam-Webster's Collegiate Dictionary*, 11th ed., s.v. “stationary bicycle”.

83. *Canadian Oxford Dictionary*, 2d ed., s.v. “stationary bicycle”. See Tribunal Exhibit AP-2011-060-13A at para. 32.