



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2011-018

HBC Imports c/o Zellers Inc.

v.

President of the Canada Border
Services Agency

*Decision issued
Wednesday, April 11, 2012*

*Reasons issued
Friday, April 13, 2012*

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DECISION	11

IN THE MATTER OF an appeal heard on December 13, 2011, pursuant to subsection 67(1) 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 May 12, 2011, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

HBC IMPORTS C/O ZELLERS 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

Dominique Laporte
Dominique Laporte
Secretary

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

Place of Hearing: Ottawa, Ontario
Date of Hearing: December 13, 2011
Tribunal Member: Jason W. Downey, Presiding Member
Counsel for the Tribunal: Nick Covelli
Ekaterina Pavlova
Manager, Registrar Programs and Services: Michel Parent
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STATEMENT OF REASONS

1. This is an appeal filed with the Canadian International Trade Tribunal (the Tribunal) by HBC Imports c/o Zellers Inc. (HBC) on June 21, 2011, pursuant to subsection 67(1) of the *Customs Act*.¹
2. HBC is appealing a re-determination by the President of the Canada Border Services Agency (CBSA), dated May 12, 2011, made pursuant to subsection 60(4) of the *Act*, in respect of the tariff classification of a Snow Boogie[®] Astra Sled (the good in issue).
3. The good in issue is 39 inches (99 cm) long, has two handles, a soft foam core and a slick skin, and is designed for riding down snow-covered hills.² The CBSA filed a sample of the good in issue as a physical exhibit.³ Both parties refer to it as a “sled”.⁴
4. The issue in this appeal is whether the sled is properly classified under tariff item No. 9506.99.90 of the schedule to the *Customs Tariff*⁵ as other articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in Chapter 95, as determined by the CBSA, or should be classified under tariff item No. 9503.00.90 as other toys, as claimed by HBC.
5. The Tribunal heard the appeal on December 13, 2011. No witnesses were called upon to testify.

STATUTORY FRAMEWORK

6. The Tribunal determines the proper tariff classification of goods in accordance with prescribed interpretative rules.
7. Subsection 10(1) of the *Customs Tariff* provides that the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*⁶ and the *Canadian Rules*⁷ set out in the schedule.
8. The *General Rules* comprise six rules. Classification begins with Rule 1 of the *General Rules*, which provides as follows: “. . . classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes”
9. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*.⁸ Although the *Explanatory Notes* are not binding on the Tribunal, they should be respected, unless there is a sound reason to do otherwise.⁹

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

2. Tribunal Exhibit AP-2011-018-03A at para. 10; Tribunal Exhibit AP-2011-018-05A at paras. 3-4.

3. Exhibit B-01, product No. 38078.

4. Tribunal Exhibit AP-2011-018-03A at paras. 28, 29, 30, 36; Tribunal Exhibit AP-2011-018-05A at paras. 36, 40, 42, 45, 46, 47; *Transcript of Public Hearing*, 13 December 2011, at 19, 26, 27, 30, 33, 41, 44.

5. S.C. 1997, c. 36.

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

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

8. World Customs Organization, 4th ed., Brussels, 2007 [*Explanatory Notes*]. It also refers to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*, but none of these opinions applies to the present appeal.

9. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17.

10. Thus, having regard to the *Explanatory Notes*, the Tribunal must first determine whether goods can be classified according to the terms of the headings and the relevant section notes in the *Customs Tariff*.
11. If the goods cannot be classified at the heading level through the application of Rule 1 of the *General Rules*, then it becomes necessary to consider subsequent rules in sequence, i.e. Rule 2 and so on.
12. Once this approach has been used to determine the heading in which the goods should be classified, the next step is to determine the proper subheading by applying Rule 6 of the *General Rules*.¹⁰ The final step is to determine the tariff item by applying Rule 1 of the *Canadian Rules*.¹¹
13. By way of section 13 of the *Official Languages Act*,¹² the English and French versions of the schedule to the *Customs Tariff* are equally authoritative.

RELEVANT CLASSIFICATION PROVISIONS

Terms of the Headings

14. Heading No. 95.06 provides as follows:
- 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.**
15. Heading No. 95.03 provides as follows:
- Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds.**

Relative Section and Chapter Notes

16. Note 1 to Chapter 95 provides as follows:
1. This Chapter *does not cover*:
- ...
- (n) Sports vehicles (other than bobsleighs, toboggans *and the like*) of Section XVII.
- [Emphasis added]
17. Note 1 to Section XVII provides as follows:
1. This Section does not cover articles of heading 95.03 or 95.08, or *bobsleighs, toboggans or the like of heading 95.06*.
- [Emphasis added]

-
10. Rule 6 of the *General Rules* provides as follows: "For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires."
11. Rule 1 of the *Canadian Rules* provides that the tariff item shall be identified according to the terms of the tariff item and any related supplementary notes and, *mutatis mutandis*, to the *General Rules*, for example, by reading the word "heading" in Rule 1 of the *General Rules* as "tariff item".
12. R.S.C. 1985 (4th Supp.), c. 31.

Explanatory Notes

18. Note (ij) of the *Explanatory Notes* to heading No. 95.06 states that this heading *excludes* the following:

ij) . . . sport vehicles (**other than** bobsleighs (bobsleds), toboggans *and the like*) of **Section XVII**.

[Emphasis added]

19. Note (B)(14) of the *Explanatory Notes* to heading No. 95.06 states that this heading *includes* the following:

(B) **Requisites for other sports and outdoor games (other than** toys presented in sets, or separately, of **heading 95.03**), e.g.:

. . .

(14) . . . bobsleighs (bobsleds), luges *and similar non-motorised vehicles for sliding on snow or ice*.

[Emphasis added]

20. The general note of the *Explanatory Notes* to Chapter 95 provides as follows:

This Chapter covers toys of all kinds whether designed for amusement of children or adults. It also includes equipment for indoor or outdoor games, appliances and apparatus for sports, gymnastics and athletics

21. Note (D) of the *Explanatory Notes* to heading No. 95.03 provides as follows:

(D) **Other toys.**

This group covers toys intended essentially for the amusement of persons (children or adults).

POSITIONS OF PARTIES

HBC

22. HBC submitted that the good in issue is classifiable in heading No. 95.03 as other toys on the basis of Rule 1 of the *General Rules*.

23. HBC pointed out that heading No. 95.06 contains the proviso “not specified or included elsewhere in this Chapter”. According to HBC, the good in issue is a toy within the terms of heading No. 95.03 and is therefore excluded from heading No. 95.06.

24. HBC further relied on note (B) of the *Explanatory Notes* to heading No. 95.06, which excludes toys of heading No. 95.03 from the ambit of heading No. 95.06.¹³ Therefore, if the good in issue is “specified or included” elsewhere in Chapter 95, it is precluded from classification in heading No. 95.06.¹⁴

13. Note (B) of the *Explanatory Notes* to heading No. 95.06 provides as follows: (B) **Requisites for other sports and outdoor games (other than** toys presented in sets, or separately, of **heading 95.03**) . . .” [emphasis added].

14. HBC pointed out that the requirement of heading No. 95.06 is less restrictive because it does not require that the good be “more specifically included” in another heading, as provided in heading No. 90.13, for example. *Transcript of Public Hearing*, 13 December 2011, at 6-8.

25. In support of its position that the good in issue is a toy, HBC referred to note (D) of the *Explanatory Notes* to heading No. 95.03, which defines “Other toys” as “. . . toys intended essentially for amusement of persons (children and adults).”¹⁵
26. HBC submitted that, according to the dictionary definitions, a toy is an object which provides amusement and play value.¹⁶ HBC further noted that, in previous decisions, the Tribunal found a toy to be an object which provides amusement and play value.¹⁷
27. HBC also relied on the common knowledge that sleds are “. . . ridden (i.e. played with) . . .” by children and/or adults on snow-covered hills for fun and amusement “. . . as can be witnessed every winter in communities across Canada.”¹⁸ HBC noted that the dictionary definitions of “sled” also refer to “play” and “amusement”.¹⁹
28. According to HBC, the good in issue provides play value and amusement in the same manner as a tricycle, scooter or other non-wheeled ride on toys which are specifically provided for, as toys, in heading No. 95.03 and the related *Explanatory Notes*.²⁰
29. HBC also pointed to the wording of the marketing materials, which describe the good in issue as being “for action-packed fun”, “1 rider action and fun” and “head first (prone) riding for advanced fun”.²¹ HBC submitted that certain sleds are commonly referred to as snow toys, winter toys or simply toys.²²
30. Finally, while HBC conceded that the *Explanatory Notes* to heading No. 95.06 imply certain toboggans and like goods, it was of the view that heading No. 95.06 does not encompass all toboggans or like goods, as they still have to be considered “sport vehicles” before being excluded from the scope of the heading. Moreover, they are to be excluded if considered toys of heading No. 95.03.²³

15. Tribunal Exhibit AP-2011-018-03A at para. 22.

16. The *Canadian Oxford Dictionary*, 2d ed., defines “toy” as “**1a** a plaything, esp. for a child . . . **2a** a thing, esp. a gadget or instrument, regarded as providing amusement or pleasure. **b** a task or undertaking regarded in an unserious way.” The *Collins English Dictionary*, Canadian Edition, defines “toy” as “**1** an object designed to be played with”. The term “toy” is defined in the *ITP Nelson Canadian Dictionary* as “**1**. An object for children to play with. . . **3**. An amusement; a pastime.” The *Merriam-Webster’s Collegiate Dictionary*, 11th ed., defines “toy” as “. . . **b**: PASTIME . . . **3**: something for a child to play with”. Tribunal Exhibit AP-2011-018-03A at para. 23, tab 7.

17. *Zellers Inc. v. Deputy M.N.R.* (29 July 1998), AP-97-057 (CITT) [*Zellers*]; *Regal Confections Inc. v. Deputy M.N.R.* (25 June 1999), AP-98-043, AP-98-044 and AP-98-051 (CITT) [*Regal*]; *Franklin Mint Inc. v. President of the Canada Border Services Agency* (13 June 2006), AP-2004-061 (CITT) [*Franklin*]; *Korhani Canada Inc. v. President of the Canada Border Services Agency* (18 November 2008), AP-2007-008 (CITT) [*Korhani*]; Tribunal Exhibit AP-2011-018-03A at para. 24, tabs 8, 9, 10, 11.

18. Tribunal Exhibit AP-2011-018-03A at para. 26.

19. The *Gage Canadian Dictionary* defines “sled” as “**2** a child’s plaything consisting of a flat surface on runners, for sliding down the hills on snow.” The *Canadian Oxford Dictionary*, 2d ed., defines “sled” as “. . . **2** a similar but usu. smaller vehicle, or any of various devices made of moulded plastic, used esp. by children to coast down hills for amusement.” As a verb, “sled” is defined in *Cambridge Dictionary Online* as “to ride on a sled over snow or ice, esp. in play”. Tribunal Exhibit AP-2011-018-03A at para. 27, tab 7.

20. Tribunal Exhibit AP-2011-018-03A at para. 29.

21. *Ibid.* at para. 28, tab 4.

22. *Transcript of Public Hearing*, 13 December 2011, at 12-15; Tribunal Exhibit AP-2011-018-03A, tab 2; Tribunal Exhibit AP-2011-018-09A, tab 5.

23. Tribunal Exhibit AP-2011-018-03A at paras. 33-34. See also *Transcript of Public Hearing*, 13 December 2011, at 21-29.

CBSA

31. It is the CBSA's position that the good in issue is properly classified in heading No. 95.06 on the basis of Rule 1 of the *General Rules*.

32. The CBSA submitted that the good in issue is a non-motorized vehicle for sliding on snow, just like a toboggan.²⁴ The CBSA referred to dictionary definitions for "bobsled", "toboggan", "tobogganing" and "sled",²⁵ which, accordingly, demonstrate that the good in issue is quite similar to a toboggan.

33. In this respect, the CBSA pointed out that note 1 to Section XVII indicates that "toboggans and the like" fall within the scope of heading No. 95.06.²⁶ The CBSA supported its position by the wording of the notes to Chapter 95 and Section XVII,²⁷ note (ij) of the *Explanatory Notes* to heading No. 95.06²⁸ and note (B)(14) of the *Explanatory Notes* to heading No. 95.06, which indicate that the heading covers "... *bobsleighs (bobsleds), luges and similar non-motorised vehicles for sliding on snow or ice*"²⁹ [emphasis added].

34. According to the CBSA, the good in issue is not "elsewhere specified or included in Chapter 95", as the above note directs classification of the good in issue to heading No. 95.06.³⁰

35. The CBSA further observed that the Tribunal has previously defined the word "sport" as a "... game, contest, or other pastime requiring some skill and a certain amount of physical exertion."³¹ On this basis, the CBSA argued that sledding is a "sport" or "outdoor game" that provides "general physical exercise" within the meaning of these terms of heading No. 95.06.³²

36. While the CBSA admitted that the good in issue provides amusement and play value, it was of the view that the good in issue is not inasmuch a toy for that only reason.³³ Citing the Tribunal's jurisprudence, the CBSA noted that amusement value alone does not make a product a toy for the purpose of tariff classification.³⁴

24. Tribunal Exhibit AP-2011-018-05A at para. 26.

25. *Ibid.* at paras. 24-26.

26. *Ibid.* at para. 29.

27. The notes to Chapter 95 exclude from the scope of Chapter 95 "(n) Sports vehicles (*other than bobsleighs, toboggans and the like*) of Section XVII" [emphasis added]. The notes to Section XVII expressly exclude from Section XVII "... articles of heading 95.03 or 95.08, or *bobsleighs, toboggans or the like of heading 95.06*" [emphasis added]. Tribunal Exhibit AP-2011-018-05A at paras. 18-21.

28. Note (ij) of the *Explanatory Notes* to heading No. 95.06 excludes from the scope of heading 95.06 "(ij) ... sports vehicles (*other than bobsleighs (bobsleds), toboggans and the like*), of **Section XVII**" [emphasis added]. Tribunal Exhibit AP-2011-018-05A at paras. 22-26.

29. Note (B)(14) of the *Explanatory Notes* to heading No. 95.06 provides as follows: "(B) **Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03)**, e.g.: ... (14) ... *bobsleighs (bobsleds), luges and similar non-motorised vehicles for sliding on snow or ice*" [emphasis added]. Tribunal Exhibit AP-2011-018-05A at paras. 27-29.

30. Tribunal Exhibit AP-2011-018-05A at para. 29.

31. *International Imports for Competitive Shooting Equipment Inc. v. D.M.N.R.* (26 August 1999), AP-98-076 (CITT) at 5; Tribunal Exhibit AP-2011-018-05A at para. 34.

32. Tribunal Exhibit AP-2011-018-05A at paras. 25, 35-37, 42.

33. *Ibid.* at paras. 41-42, 47.

34. *Zellers; Regal; Franklin*; Tribunal Exhibit AP-2011-018-05A at paras. 31-32.

37. Moreover, the CBSA pointed to evidence that the good in issue is sold alongside toboggans, rather than toys, and is not specifically marketed as a toy.³⁵

ANALYSIS

38. As mentioned, the parties agree that the good in issue can be classified on the basis of Rule 1 of the *General Rules*, which provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

39. Given that heading No. 95.06 contains the proviso “not specified or included elsewhere in this Chapter”, the Tribunal will first examine whether the good in issue is specified or included in another heading of Chapter 95.

40. In particular, the Tribunal has to determine whether the good in issue is described as “other toys” in heading No. 95.03, as claimed by HBC. If the Tribunal determines that the good in issue constitutes “other toys”, it will be precluded from classification in heading No. 95.06. If the Tribunal determines that the good in issue does not constitute “other toys”, it will then determine whether the good in issue can be classified in heading No. 95.06.

Is the Good in Issue Specified or Included Elsewhere in Chapter 95? Is the Good in Issue a Toy?

41. Tribunal jurisprudence has interpreted the term “toy” broadly as encompassing a wide range of articles that provide amusement or play value.³⁶

42. The Tribunal has previously held that heading No. 95.03 “. . . covers objects that children . . . play with.”³⁷ The play value is viewed as an “. . . identifying aspect . . . of a toy.”³⁸

43. In *Regal*, the Tribunal, however, affirmed that “. . . amusement alone does not make an object a toy for the purpose of tariff classification.”³⁹

44. The determination of whether an item constitutes a toy is a factual issue to be determined on a case-by-case basis.⁴⁰ In order to determine whether a good is a toy, its intended use and its actual use must both be considered, including the manner in which it is marketed, packaged and advertised.⁴¹

45. It is clear that the good in issue provides amusement and play value, as HBC contended. However, this factor, alone, is not sufficient to describe it as a “toy”.

46. If amusement or play value, alone, were sufficient, all kinds of articles and equipment for sport and games would necessarily be classified as “toys” *per se*, when clearly this was not the intention of Parliament as demonstrated by, *inter alia*, the express terms of heading No. 95.06.

35. Tribunal Exhibit AP-2011-018-05A at paras. 43-44, 46.

36. *Zellers; Regal; Franklin; Korhani*.

37. *Korhani*.

38. *Franklin; Korhani*.

39. *Regal*.

40. *Havi Global Solutions (Canada) Limited Partnership v. President of the Canada Border Services Agency* (10 October 2008), AP-2007-014 (CITT).

41. *Korhani*.

47. According to note (D) of the *Explanatory Notes* to heading No. 95.03, toys are "...intended essentially for the amusement of persons (children or adults)." In focussing on the pleasure-giving element, HBC has in fact omitted that the essential purpose of the good in issue is to enable children (and adults) to partake in the outdoor activity of sledding or sliding on snowy hills. It is this same sliding on the snow which, in turn, provides amusement.⁴²

48. The marketing materials and additional documents provided by HBC⁴³ indicate that the good in issue and similar foam sleds are often marketed as "snow toys". However, they are also sold in the following categories: "winter sports", "winter sports equipment" and "snow sports".⁴⁴ The good in issue, in particular, is sold in the "Snow Sports/Sleds & Snow Tube" section of HBC's Web catalog.⁴⁵

49. The Tribunal further notes that the individual items are presented as "sno-riders" "sleds", "discs", "boards",⁴⁶ etc.

50. The sole fact that the good in issue is sold by, among others, a toy company (Wham-O) is not determinative, as it is also marketed and sold by other companies.⁴⁷ Moreover, in the marketing materials describing the good in issue or similar articles, the word "toy" is never used alone without additional reference to snow equipment, winter sport, snow sport, sport toys and/or sled.⁴⁸

51. Accordingly, on the basis of the evidence, the Tribunal is not convinced that, for the purposes of tariff classification, the good in issue can be qualified as "other toys" within the terms of heading No. 95.03.

Is the Good in Issue Classifiable in Heading No. 95.06?

52. Heading No. 95.06 refers, in relevant part, to "[a]rticles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this Chapter" [emphasis added].

53. Thus, in order for the good in issue to be classified in heading No. 95.06, it must be (i) an article or equipment (ii) for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games (iii) not specified or included elsewhere in Chapter 95.

Is the Good in Issue an Article or Equipment?

54. Both parties referred to the good in issue as an "article" or "equipment". As there is no dispute that the good in issue is an article or equipment, and considering that these terms have been interpreted broadly in the Tribunal's jurisprudence, the Tribunal is satisfied that the first requirement of heading No. 95.06 is met.⁴⁹

42. In this regard, the decision reached by the Tribunal in *Korhani* can be distinguished from this appeal, as the Tribunal held that, in addition to be played with as a toy, the carpet in issue may also have an utilitarian purpose, but that it was not necessary.

43. Tribunal Exhibit AP-2011-018-03A, tab 4; Tribunal Exhibit AP-2011-018-09A, tabs 8, 9.

44. Tribunal Exhibit AP-2011-018-05A, tab 1; Tribunal Exhibit AP-2011-018-09A, tab 9.

45. Tribunal Exhibit AP-2011-018-05A, tab 1.

46. Tribunal Exhibit AP-2011-018-09A, tab 9.

47. Tribunal Exhibit AP-2011-018-05A, tab 1.

48. Tribunal Exhibit AP-2011-018-03A, tab 4; Tribunal Exhibit AP-2011-018-05A, tab 1; Tribunal Exhibit AP-2011-018-09A, tabs 8, 9.

49. *P.L. Light Systems Canada Inc. v. President of the Canada Border Services Agency* (16 September 2009), AP-2008-012 (CITT); *Great West Van Conversions Inc. v. President of the Canada Border Services Agency* (30 November 2011), AP-2010-037 (CITT); *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (19 January 2012), AP-2011-009 (CITT). The *Canadian Oxford Dictionary*, 2d ed., defines the term "article" as follows: "1 a particular or separate thing, esp. one of a set . . .", and the term "equipment" as follows: "1 tools, articles, clothing, etc. used or required for particular purpose."

Is the Good in Issue for General Physical Exercise, Gymnastics, Athletics, Other Sports (Including Table-tennis) or Outdoor Games?

55. The uncontroverted evidence on the record shows that the good in issue is used for sledding or for sliding down snowy hills.⁵⁰ The CBSA's position is premised on the fact that sledding or sliding on snow is an activity for general physical exercise, a sport or an outdoor game.⁵¹

56. The *Merriam-Webster's Collegiate Dictionary* defines "exercise" as follows: "**2 . . . b** : *bodily exertion* for the sake of developing and maintaining physical fitness . . ."⁵² [emphasis added]. Similarly, the *Canadian Oxford Dictionary* defines "exercise" as an "**1** activity requiring physical effort, done esp. as training or to sustain or improve health."⁵³ 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 *exercēre* comes from *ex-* (out) + *arcēre* (to hold off), again referring to some form of physical effort.⁵⁴ 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. Children generally get their exercise through physical activities that involve some form of play.

57. As discussed above, the Tribunal is satisfied that, as long as children sit on the good in issue and begin sledding or sliding on snow, they are engaged in a form of physical activity requiring a physical effort (exertion), which corresponds to general physical exercise. The Tribunal cannot adhere to the view that, because of specific characteristics aimed at appealing to children, the good in issue has been modified to the point of losing its constituting nature and further becoming a toy designed for mere play and amusement. Notwithstanding the specific design adjustments, the good in issue remains an article or equipment that provides "general physical exercise".

58. The term "outdoor games" is not defined in the *Customs Tariff*. However, the ordinary meaning of this phrase clearly encompasses sledding. The verb "sledding" is defined as "to ride on a sled or sleigh". The verb "sliding" means "**1 . . . b** : to coast over snow or ice".⁵⁵

59. The *Merriam-Webster's Collegiate Dictionary* defines the term "game" as an "**1 a** (1) : activity engaged in for diversion or amusement : PLAY".⁵⁶ Similarly, the *Canadian Oxford Dictionary* defines the term "game" as "**1 a** an amusement, diversion, pastime, etc."⁵⁷ On the basis of these definitions, the Tribunal finds that sledding, or sliding on snow, is a kind of game.

60. The *Merriam-Webster's Collegiate Dictionary* defines the term "outdoor" as follows: "**1** : of or relating to the outdoors **2 a** : performed outdoors <~ sports>",⁵⁸ and the term "outdoors" as follows: "**1** : outside of building : in or into the open air".⁵⁹ It is common knowledge that sledding takes place outside in the open air and that sliding down snowy hills equally takes place outside.

50. Tribunal Exhibit AP-2011-018-03A, tab 4; Tribunal Exhibit AP-2011-018-05A, tab 1.

51. Tribunal Exhibit AP-2011-018-05A at paras. 37, 42.

52. Eleventh ed., s.v. "exercise".

53. Second ed., s.v. "exercise".

54. The *Merriam-Webster's Collegiate Dictionary*, 11th ed., s.v. "exercise".

55. The *Merriam-Webster's Collegiate Dictionary*, 11th ed. s.v. "sliding".

56. Eleventh ed., s.v. "game".

57. Second ed., s.v. "game".

58. Eleventh ed., s.v. "outdoor".

59. *Ibid.*, s.v. "outdoors".

61. The Tribunal is therefore satisfied that sledding or sliding on snow is indeed an outdoor game.
62. Whether the activity of sledding or sliding on snow is viewed as general physical exercise or as a kind of outdoor game, it is an activity encompassed by the wording of heading No. 95.06. Consequently, the good in issue meets the terms of heading No. 95.06 and is classifiable therein, subject to the relative section or chapter notes, the *Explanatory Notes*, and the condition that the good in issue not be specified or included elsewhere in Chapter 95.
63. The relative section and chapter notes support this classification.
64. Note 1(n) of Chapter 95 states that the chapter does not cover “[s]ports vehicles (other than *bobsleighs, toboggans and the like*) of Section XVII” [emphasis added]. In turn, Note 1 to Section XVII expressly excludes “*bobsleighs, toboggans or the like of heading 95.06*” [emphasis added].
65. Read together, it is clear that heading No. 95.06 must then include “toboggans and the like”.
66. This reading is confirmed by the *Explanatory Notes* to heading No. 95.06. Note (ij) states that this heading *excludes* “. . . sport vehicles (**other than *bobsleighs (bobsleds), toboggans and the like***) of **Section XVII**” [emphasis added].
67. Note (B)(14) of the *Explanatory Notes* to heading No. 95.06 adds that this heading covers “. . . bobsleighs (bobsleds), luges *and similar non-motorised vehicles for sliding on snow or ice*” [emphasis added]. While note (B)(14) omits the word “toboggan”, the Tribunal observes that the French version also includes the word “luges” and that this translates back into English as meaning a “toboggan, sledge *UK*, sled *US*”.⁶⁰
68. These notes are significant, especially in light of the aforementioned association between the terms “luge”, “toboggan” and “sled”. Dictionary definitions reinforce the view that these goods are *ejusdem generis* (i.e. of the same kind).
69. The *Merriam-Webster’s Collegiate Dictionary* defines the term “sled” as follows: “**1** : a vehicle on runners for transportation esp. on snow or ice; *esp* : a small steerable one used esp. by children for coasting down snow-covered hills”.⁶¹ This term is defined in the *Canadian Oxford Dictionary* as follows: “**1** a low vehicle mounted on runners for conveying heavy loads or passengers over snow or ice . . . **2** a similar but usu. smaller vehicle, or any of various devices made of moulded plastic, used esp. by children to coast down hills for amusement.”⁶²
70. The term “toboggan” is also defined in the *Merriam-Webster’s Collegiate Dictionary* as follows: “**1** : a long flat-bottomed light sled made usu. of thin boards curved up at one end with usu. low handrails at the sides”.⁶³
71. The *Canadian Oxford Dictionary* defines “toboggan” as follows: “**1** a long narrow sled without runners, bent or curled upwards at the front, which may be drawn by a rope over compacted snow or ice or used to coast down hills.”⁶⁴

60. *Dictionnaire Larousse Français Anglais*, New Edition, 2007.

61. Tenth ed., s.v. “sled”; Tribunal Exhibit AP-2011-018-05A, tab 3 at 41.

62. Second ed., s.v. “sled”; Tribunal Exhibit AP-2011-018-05A, tab 3 at 36.

63. Tenth ed., s.v. “toboggan”; Tribunal Exhibit AP-2011-018-05A, tab 3 at 42.

64. Second ed., s.v. “toboggan”; Tribunal Exhibit AP-2011-018-05A, tab 3 at 35.

72. The term “luge” is defined in the *Shorter Oxford Dictionary* as follows: “A light toboggan for one or two people usu. ridden in a supine position”⁶⁵ The *Merriam-Webster’s Collegiate Dictionary* defines “luge” as follows: “a small sled that is ridden in a supine position and used esp. in competition”⁶⁶

73. While HBC emphasized that the good in issue was designed for amusement rather than sport, it admitted that “. . . the sled at issue obviously is similar [to bobsleighs (bobsleds), toboggans and the like of heading No. 95.06] in that it is a non-motorised vehicle for sliding on snow or ice”⁶⁷ On numerous occasions during the hearing, HBC referred to the good in issue as a *sled*.

74. In previous decisions, the Tribunal has treated goods as being of the same kind when they share similar general, physical and functional characteristics.⁶⁸ Here, the Tribunal is of the view that the good in issue shares the same general physical and functional characteristics as toboggans and luges. In particular, it is a non-motorized vehicle used for sliding on snow by one or more persons sitting or lying down.

75. Evidence was brought before the Tribunal showing that the snow equipment for “sliding on snow or ice” encompasses sleds and toboggans of all sizes, forms, designs and performance, from cheap plastic sleds to wood toboggans or luges used in sport competitions.⁶⁹

76. It was represented that there are various forms of snow sleds,⁷⁰ in particular, wooden toboggans, plastic toboggans, luges, saucers, snow tubes and foam sliders, with or without runners, to mention only a few. Obviously, the materials, shapes and visual representations have changed and varied over time; however, sleds, such as the good in issue, are nothing more than an evolution of the traditional toboggan. This is moreover confirmed by the additional language used in the *Explanatory Notes* when referencing “and the like”.

77. Contrary to what has been suggested by HBC, the tariff nomenclature does not make a distinction between the high-performing sleds used in sport competitions and the sleds used for recreational purposes. Heading No. 95.06 unambiguously covers equipment used for either general physical exercise, a sport or an outdoor game.

78. Therefore, the Tribunal is of the view that the good in issue is an article or equipment for general physical exercise, sport or an outdoor game within the meaning of heading No. 95.06.

79. As discussed above, the Tribunal considers that the good in issue is not a toy and that it is not specified or included elsewhere in Chapter 95.

80. For the foregoing reasons, in accordance with Rule 1 of the *General Rules* and the applicable tariff nomenclature identified above, the good in issue is properly classified in heading No. 95.06.

65. Fifth ed., s.v. “luge”.

66. Eleventh ed., s.v. “luge”.

67. *Transcript of Public Hearing*, 13 December 2011, at 26-27.

68. *Ivan Hoza v. President of the Canada Border Services Agency* (6 January 2010), AP-2009-002 (CITT); *Nailor Industries Inc. v. Deputy M.N.R.* (13 July 1998), AP-97-083 and AP-97-101 (CITT); *Rui Royal International Corp. v. President of the Canada Border Services Agency* (30 March 2011), AP-2010-003 (CITT); *Canadian Tire Corporation Ltd. v. President of the Canada Border Services Agency* (23 November 2011), AP-2010-069 (CITT).

69. Tribunal Exhibit AP-2011-018-03A, tabs 5, 6, 7; Tribunal Exhibit AP-2011-018-05A, tab 7.

70. Tribunal Exhibit AP-2011-018-09A, tabs 5, 7, 9; Tribunal Exhibit AP-2011-018-05A, tab 1 at 19-20.

81. Pursuant to Rule 6 of the *General Rules*, the good in issue is properly classified in subheading No. 9506.99 because the other subheadings do not apply.

81. As the other tariff items of subheading No. 9506.91 refer to articles and equipment for badminton, baseball, climbing or mountaineering, trapshooting, curling, hockey and cricket and to power-operated equipment for the development of athletic skills, only tariff item No 9506.99.90 (“Other”) is applicable to the good in issue.

82. According to Rule 1 of the *Canadian Rules*, it follows that the good in issue is properly classified under tariff item No. 9506.99.90.

DECISION

82. Therefore, the appeal is dismissed.

Jason W. Downey
Jason W. Downey
Presiding Member