Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2011-020

Canadian Tire Corporation Limited

v.

President of the Canada Border Services Agency

Decision and reasons issued
Thursday, April 12, 2012

Canada

TABLE OF CONTENTS

IN THE MATTER OF an appeal heard on December 15, 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 June 2, 2011, with respect to a request for review of an advance ruling pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

CANADIAN TIRE CORPORATION LIMITED **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

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	December 15, 2011
Tribunal Member:	Jason W. Downey, Presiding Member
Counsel for the Tribunal:	Georges Bujold Ekaterina Pavlova
Manager, Registrar Programs and Services:	Michel Parent
Registrar Officer:	Julie Lescom
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Canadian Tire Corporation Limited	Andrew Simkins
Respondent	**Counsel/Representative**
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STATEMENT OF REASONS

1. This is an appeal filed with the Canadian International Trade Tribunal (the Tribunal) by Canadian Tire Corporation Limited (CTC) on June 27, 2011, pursuant to subsection 67(1) of the *Customs Act*.[1]

2. CTC is appealing a decision of the President of the Canada Border Services Agency (CBSA), dated June 2, 2011, made pursuant to subsection 60(4) of the *Act*, in respect of the tariff classification of a trampoline with a safety enclosure for use by children (the good in issue).

3. The good in issue is described as a round 55-in. (140-cm) band trampoline with a mesh enclosure, a zippered entrance and a powder-coated, rust-resistant steel tube frame, designed for use by children aged three to six years, with a maximum user weight of 100 lbs. (45.36 kg).[2] It is offered in either a Dora or Diego theme associated with the Nickelodeon cartoon shows "*D*ora the Explorer" and "Go, Diego, Go!"

4. CTC filed a sample of the good in issue as a physical exhibit, unassembled, in a box, along with its assembly, care, maintenance and use instructions. According to the instruction manual and user's guide, the attachment of posters of the Diego or Dora characters to the trampoline is optional. However, the "Safety Tips & Enclosure Safety Tips Placards" must be attached to the trampoline.[3]

5. The issue in this appeal is whether the good in issue is properly classified under tariff item No. 9506.91.90 of the schedule to the *Customs Tariff*[4] as other articles and equipment for general physical exercise, gymnastics or athletics, as determined by the CBSA, or should be classified under tariff item No. 9503.00.90 as other toys, as claimed by CTC.

6. The Tribunal heard the appeal on December 15, 2011. No witnesses were called upon to testify at the hearing.

STATUTORY FRAMEWORK

7. The Tribunal determines the proper tariff classification of goods in accordance with prescribed interpretative rules.

8. 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*[5] and the *Canadian Rules*[6] set out in the schedule.

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1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].
2. Tribunal Exhibit AP-2011-020-03A at paras. 7-10, tab 2; Tribunal Exhibit AP-2011-020-05A at para. 4, tab 1. The Tribunal notes that there is a discrepancy between the maximum user weight indicated by parties and in the product literature: Tribunal Exhibit AP-2011-020-03A, tab. 2 (100 lbs.), and Tribunal Exhibit AP-2011-020-05A, para. 4, tab 1 (100 lbs.), on the one hand, and Tribunal Exhibit AP-2011-020-03A, para. 7 (60 lbs.), and the User's Manual, Exhibit A-01 (60 lbs.), on the other. See, also, *Transcript of Public Hearing*, 15 December 2011, at 5.
3. Exhibit A-01, "Go, Diego, Go!", 55-in. trampoline with enclosure, Product No. 84-0273-0.
4. S.C. 1997, c. 36.
5. S.C. 1997, c. 36, schedule [*General Rules*].
6. S.C. 1997, c. 36, schedule.

9. 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 . . . ."

10. 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*.[7] Although the *Explanatory Notes* are not binding on the Tribunal, they should be respected, unless there is a sound reason to do otherwise.[8]

11. Thus, having regard to the *Explanatory Notes*, the Tribunal must first determine whether the good in issue can be classified according to the terms of the headings and the relevant section notes in the *Customs Tariff*.

12. If the good in issue 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.

13. Once this approach has been used to determine the heading in which the good in issue should be classified, the next step is to determine the proper subheading by applying Rule 6 of the *General Rules*.[9] The final step is to determine the tariff item by applying Rule 1 of the *Canadian Rules*.[10]

RELEVANT CLASSIFICATION PROVISIONS

14. The relevant terms of heading No. 95.03 provide as follows:

Section XX

MISCELLANEOUS MANUFACTURED ARTICLES

Chapter 95

TOYS, GAMES AND SPORTS REQUISITES; PARTS AND ACCESSORIES THEREOF

. . .

9503.00	**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.**

. . .

9503.00.90	- - -Other

7. 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.
8. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17.
9. 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."
10. 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".

15. The relevant terms of heading No. 95.06 provide as follows:

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.**
. . .	
	-Other:
9506.91	**- - Articles and equipment for general physical exercise, gymnastics or athletics**
. . .	
9506.91.90	- - -Other

16. The relevant *Explanatory Notes* to Chapter 95 provide as follows:

Chapter 95

Toys, games and sports requisites; parts and accessories thereof

. . .

GENERAL

This Chapter covers toys of all kinds whether designed for the amusement of children or adults. It also includes equipment for indoor or outdoor games, appliances and apparatus for sports, gymnastics or athletics, certain requisites for fishing, hunting or shooting, and roundabouts and other fairground amusements.

17. The relevant *Explanatory Notes* to heading No. 95.03 provide as follows:

This heading covers:

. . .

(D) **Other toys**.

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

All toys **not included in (A) to (C).** Many of the toys are mechanically or electrically operated.

. . .

Certain toys (e.g., electric irons, sewing machines, musical instruments, etc.) may be capable of a limited "use"; but they are generally distinguishable by their size and limited capacity from real sewing machines, etc.

(E) **Reduced-size ("scale") models and similar recreational models**.

This includes models of a kind mainly used for recreational purposes, for example, working or scale models of boats, aircraft, trains, vehicles, etc., and kits of materials and parts for making such models, other **than** sets having the character of competitive games of **heading 95.04** (e.g., sets comprising slot-racing motor cars with their track layout).

This group also includes life-size or enlarged reproductions of articles **provided** they are for recreational purposes.

18. The relevant *Explanatory Notes* to heading No. 95.06 provide as follows:

> This heading covers:
>
> (A) **Articles and equipment for general physical exercise, gymnastics or athletics**, e.g., :
>
> Trapeze bars and rings; horizontal and parallel bars; balance beams, vaulting horses; pommel horses; spring boards; climbing ropes and ladders; wall bars; Indian clubs; dumb-bells and bar-bells; medicine balls; rowing, cycling and other exercising apparatus; chest expanders; hand grips; starting blocks; hurdles; jumping stands and standards; vaulting poles; landing pit pads; javelins, discuses, throwing hammers and putting shots; punch balls (speed bags) and punch bags (punching bags); boxing or wrestling rings; assault course climbing walls.

POSITIONS OF PARTIES

CTC

19. CTC 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.*

20. CTC argued that the CBSA erred in classifying the good in issue on the basis of the wording of the *Customs Tariff* at the statistical level, i.e. the 10-digit level, since one of the statistical codes expressly refers to "trampolines". CTC submitted that the 10-digit statistical codes do not form part of the classification system.[11]

21. According to CTC, the CBSA erred in classifying the good in issue in heading No. 95.06 because it failed to apply the provision "not specified or included elsewhere in this Chapter", which forms part of the terms of heading No. 95.06 and makes it clear that this heading is a residual heading covering goods that are not classifiable elsewhere in Chapter 95. Thus, if goods are specified or included in another heading of Chapter 95, such as heading No. 95.03, as is contended in this appeal by CTC, they should therefore be excluded from classification in heading No. 95.06.

22. CTC submitted that the good in issue is a toy which meets the terms of heading No. 95.03 and is therefore specifically excluded from the ambit of heading No. 95.06. In support of its position, CTC referred to the *Explanatory Notes* to Chapter 95, which state that the chapter covers ". . . toys of all kinds whether designed for the amusement of children or adults." Further, the *Explanatory Notes* to heading No. 95.03 define "Other toys" as ". . . toys intended essentially for the amusement of persons (children or adults)." Relying on dictionary definitions of the term "toy",[12] CTC suggested that a toy is an object which provides amusement and play value. In this respect, CTC pointed out that the same meaning of the term "toy" is found in the Tribunal's jurisprudence.[13] On the basis of the product literature and customer reviews that it filed as documentary evidence,[14] CTC argued that the size, construction, design and intended users of the trampoline are indicative that it is for play and amusement.

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11. Tribunal Exhibit AP-2011-020-03A at paras. 18, 19.
12. 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-2011-020-03A at para. 26, tab 8.
13. Tribunal Exhibit AP-2011-020-03A at para. 27, tabs 9, 10, 11, 12.
14. *Ibid.* at para. 29, tabs 2, 13.

23. CTC put forward the idea that there are many different types of trampolines—for sport, for recreation, for children's amusement, etc. In its view, some of these trampolines are classifiable in heading No. 95.06 as sport equipment and others, such as the good in issue, are especially intended for the amusement of children and are therefore "toys" within the meaning of heading No. 95.03.[15] According to CTC, the physical exercise obtained from using the good in issue is only an ancillary benefit and does not exclude the good in issue from classification in heading No. 95.03.[16] In this respect, CTC asserted that the good in issue is a miniature version of the recreational trampoline used by older children and adults in their backyard.[17]

CBSA

24. It is the CBSA's position that the good in issue is equipment designed to provide general physical exercise, not specified elsewhere in Chapter 95 and, as such, that it is properly classified in heading No. 95.06 as per Rule 1 of the *General Rules*.

25. The CBSA emphasized that the primary purpose of the good in issue is to provide physical exercise. It is noted that trampolines provide children with a number of physical and health benefits, such as flexibility, balance and increased cardiovascular health.[18] According to the CBSA, irrespective of the size of the good in issue and the age group for which it is designed, it is best described by its primary function as equipment that is used for general physical exercise.

26. While it conceded that the good in issue provides play value and amusement, the CBSA argued that it is not a toy within the meaning of the terms of heading No. 95.03. Citing the Tribunal's jurisprudence, the CBSA noted that merely because a product provides amusement and play value does not mean that it should necessarily be classified as a toy.[19]

34. According to the CBSA, the good in issue is not a "toy version" of what could be called a "real" trampoline; rather, it is simply a trampoline, of which there are a number of sizes and styles based on the user and its intended use. The CBSA argued that, had Parliament intended to differentiate between child-size trampolines and those meant for adult use, it could have done so, as it has done for other goods under heading No. 95.03.[20]

35. Finally, the CBSA relied on a decision made by the administrative authorities in the United States in which a similar trampoline was classified in heading No. 95.06.[21] The Tribunal usually gives little weight to such decisions, which are outside of its jurisdiction and for which the full parameters of the case are unknown.

15. *Transcript of Public Hearing*, 15 December 2011, at 9-10, 11-22.
16. Tribunal Exhibit AP-2011-020-03A at para. 20.
17. *Transcript of Public Hearing*, 15 December 2011, at 22-23.
18. Tribunal Exhibit AP-2011-020-05A at paras. 21-24, 26, 39, tabs 7, 8, 9, 10.
19. *Regal Confection Inc. v. Deputy M.N.R.* (25 June 1999), AP-98-043, AP-98-044 and AP-98-051 (CITT) [*Regal*]; Tribunal Exhibit AP-2011-020-05A at para. 33, tab 13.
20. Tribunal Exhibit AP-2011-020-05A at para. 38.
21. *Ibid.* at paras. 40, 41, tab 15.

ANALYSIS

36. As mentioned, the parties agree that the good in issue can be classified on the basis of the 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.

37. 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.

38. In particular, the Tribunal has to determine whether the good in issue can be described as "other toys" within the meaning of the terms of heading No. 95.03, as claimed by CTC. If the Tribunal determines that the good in issue can be described as "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 it can be classified in heading No. 95.06.

Is the Good in Issue Classifiable in Heading No. 95.03 as a Toy?

39. While the term "toy" is not defined in the tariff nomenclature, in the relevant section and chapter notes or in the *Explanatory Notes*, the Tribunal has in the past interpreted the term "toy" broadly as encompassing a wide range of articles that provide amusement or play value.[22]

40. The Tribunal has previously held that heading No. 95.03 ". . . covers objects that children . . . play with."[23] The play value is viewed as an ". . . identifying aspect of . . . a toy."[24]

41. In *Regal*, however, the Tribunal affirmed that ". . . amusement alone does not make an object a toy for the purpose of tariff classification."[25] The Tribunal was also of the view that the fact that goods are ". . . miniatures . . . does not necessarily make the products toys."[26]

42. The determination of whether an item constitutes a toy is a factual issue to be determined on a case-by-case basis.[27] 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.[28]

43. It is clear that the good in issue provides amusement and play value, as CTC contended. It is also clear that the good in issue is designed for use by and marketed towards children. However, for the following reasons, the Tribunal finds that this is not sufficient to describe the trampoline as a "toy".

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22. *Zellers Inc. v. Deputy M.N.R.* (29 July 1998), AP-97-057 (CITT); *Regal*; *Franklin Mint Inc. v. President of the Canada Border Services Agency* (13 June 2006), AP-2004-061 (CITT); *Korhani Canada Inc. v. President of the Canada Border Services Agency* (18 November 2008), AP-2007-008 (CITT) [*Korhani*].
23. *Korhani*.
24. *Havi Global Solutions (Canada) Limited Partnership v. President of the Canada Border Services Agency* (10 October 2008), AP-2007-014 (CITT) [*Havi*] at para. 30.
25. *Regal* at 8.
26. *Ibid.*
27. *Havi; N.C. Cameron & Sons Ltd. v. President of the Canada Border Services Agency* (14 June 2007), AP-2006-022 (CITT) at para. 12.
28. *Korhani*.

44. 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.

45. 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)" [emphasis added]. In focussing on the pleasure-giving element, CTC has in fact omitted that the essential purpose of the good in issue is to enable children to perform the physical activity of jumping and bouncing. It is this physical action of jumping and bouncing on the trampoline that provides said amusement.

46. Indeed, both parties acknowledged that the good in issue is a trampoline and referred to it as such in their respective submissions. A "trampoline" is defined as "an apparatus for performing acrobatic tumbling and jumping feats, consisting of a sheet of strong canvas attached to a frame by springs and held tautly stretched above the floor"[29] or as "a strong fabric sheet connected by springs to a horizontal frame, used by gymnasts etc. for somersaults, as a springboard, etc."[30] It is not defined as a toy.

47. The Tribunal closely examined the sample of the good in issue that was filed as a physical exhibit and notes that its constituent materials are sturdy and appear durable, especially the jumping surface and the frame. In the Tribunal's opinion, it is a fully functional trampoline designed specifically for young children. Contrary to CTC's submissions, the argument that the good in issue is clearly intended to be used by children, through its design and packaging or the trims and decorations that may be attached to it, does not mean that it can no longer be described as an actual trampoline used to perform physical exercise.

48. In this regard, even tough the bright colours and the printed pictures of Dora or Diego demonstrate the obvious intention to attract young children's attention, the Tribunal is of the view that the main purpose of the good in issue is to encourage children to jump, bounce and generally exert themselves physically. It was further demonstrated that "[t]rampolines are especially good for kids who are reluctant to exercise on their own, since they will only think it is a game."[31]

49. As noted above, the Tribunal has previously held that, even though goods are miniatures, this fact alone does not necessarily make them toys.[32] While the good in issue might not allow children to perform the same type of physical exercise than that of gymnasts, athletes or other performers using larger trampolines, its fundamental purpose is similar to that of other types of trampolines, in that the activity of jumping and bouncing in the prescribed manner enables children to exercise and gain some athletic skills.

50. The User's Manual indicates that children can jump on the good in issue and learn some basic fundamental bounces before moving to the next level and attempting more difficult ones. Accordingly, the Tribunal is of the view that the good in issue is a fully functional trampoline, but designed specifically for beginners, that is, children aged three to six years.

29. The *Webster's New World College Dictionary*, online: <http://www.yourdictionary.com>, *s.v.* "trampoline".
30. The *Canadian Oxford Dictionary*, 2d ed., *s.v.* "trampoline".
31. Tribunal Exhibit AP-2011-020-05A, tab 9.
32. *Regal*.

51. The Tribunal further notes that, in the User's Manual,[33] the activity in which the children partake using the good in issue is not referred to as "play" or "playing" but rather as "jumping", "bouncing" and "recreational sport". The users are referred to as "jumpers" and "performers".[34] The fact that the good in issue is used for jumping and bouncing is conceded by CTC. It is undeniable that jumping and bouncing are physical activities which require muscular effort.[35]

52. The Tribunal therefore concludes that the good in issue is designed to be used by children as a trampoline and not merely as a toy for amusement. The Tribunal is unable to accept CTC's arguments that the good in issue is merely a diminutive variant of an actual trampoline and, for such a reason, is more akin to a toy meant for play rather than an item meant for exercise. Following this approach would deprive the good in issue of its fundamental purpose and nature. Despite its smaller size, weight limit, safety features, packaging and children's theme, the good in issue possesses the main characteristics of an actual trampoline and is used as such. The fact that children derive amusement from such an activity does not affect the nature of the good in issue.

53. Concerning the actual use of the good in issue, CTC filed customer reviews[36] taken from online vendor sites in an attempt to demonstrate certain parents' perspective of the good in issue as a toy.[37] The Tribunal, however, notes that there are numerous customer reviews in which parents have specifically stated that the good in issue helps their children to "burn off" some energy in jumping and bouncing.[38] It is therefore difficult to conclude from this evidence that the good in issue is predominantly viewed as a toy by its target public.

54. With respect to the marketing, packaging and advertising, the Tribunal carefully examined all the materials provided by the parties. Upon review of this evidence, the Tribunal is not persuaded that this establishes that the good in issue is marketed and advertised as a toy. Indeed, the Tribunal notes that the marketing is specifically targeted towards young children (three to six years of age), but, apart from procuring a certain attractiveness for these children, the good in issue remains a fully functional unit oriented towards physical exercise. It is also sold in the "Backyard Activities" section of CTC's own Web catalog.

55. It is noteworthy that the marketing materials, product literature and advertisement of the good in issue emphasize its safety features. CTC alleged that the reason why parents would prefer to buy the good in issue for their children instead of a "fitness trampoline",[39] for example, is that it contains certain safety features.[40] However, the Tribunal does not consider that these safety features contribute in an important way in determining that the good in issue is a toy; quite the contrary.

56. In the Tribunal's view, the safety features are in direct relation to the physical nature of the activity performed on the good in issue, allowing young children aged three to six years with a relatively low level of physical skills to jump on it without a high risk of injury.

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33. Exhibit A-01.
34. *Ibid.*
35. The *Canadian Oxford Dictionary*, 2d ed., defines the verb "jump" as "move off the ground or other surface (usu. upward, at least initially) by sudden muscular effort in the legs." Similarly, the *Merriam-Webster's Collegiate Dictionary*, 11th ed, defines the verb "jump" as "**1 a :** to spring into the air : LEAP; *esp* : to spring free from the ground or other base by the muscular action of feet and legs".
36. Tribunal Exhibit AP-2011-020-03A, tab 13.
37. *Transcript of Public Hearing*, 15 December 2011, at 26-32; Tribunal Exhibit AP-2011-020-03A at 171, 243, 250, 251, 257, 260, 268.
38. Tribunal Exhibit AP-2011-020-03A at 171-72, 175-76, 178-85.
39. Exhibit A-02.
40. *Transcript of Public Hearing*, 15 December 2011, at 67.

57. For example, the mesh enclosure is designed ". . . for added protection from falling".[41] When jumping, the padded foam poles protect children from hitting the metal frame. The spring coils have also been replaced by bungee-cord-type bands to prevent children from bouncing too high and hence aim to diminish the risk of injury. These elements all demonstrate a concern for safety in a setting that is active and physical.

58. The Tribunal also takes notice of all the included safety warnings found throughout the packaging and User's Manual. Such warnings are also indicative of the physical nature of the activity to be performed on the good in issue, notwithstanding the playful presentation of the good in issue.

59. Accordingly, on the basis of the evidence, the Tribunal is not convinced that, for the purposes of the tariff classification, the good in issue is considered "other toys" within the meaning of the terms of heading No. 95.03 and finds that it is not classifiable in that heading.

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

60. Having determined that the good in issue is not classifiable in heading No. 95.03, as claimed by CTC, the Tribunal must determine whether it is correctly classified in heading No. 95.06. Heading No. 95.06 covers "[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 . . . ."

61. 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.

62. The Tribunal has already found that the good in issue is not specified or included in heading No. 95.03. CTC has not presented alternative arguments claiming that the good in issue is covered by a heading of Chapter 95 other than heading No. 95.03. Other than heading No. 95.06, the Tribunal is unable to find any other heading of Chapter 95 that could potentially cover the good is issue. Thus, the Tribunal finds that the third requirement of heading No. 95.06 is met. The good in issue would therefore be classifiable in heading No. 95.06 to the extent that it is an article or equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games.

Is the Good in Issue an Article or Equipment?

63. 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,[42] the Tribunal is satisfied that the first requirement of heading No. 95.06 is met.[43] Moreover, the User's Manual refers to the good in issue as "equipment".[44]

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41. Tribunal Exhibit AP-2011-020-03A at 26.
42. *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).
43. The *Canadian Oxford Dictionary*, 2d ed., defines the term "article" as follows: "**1** a particular or separate thing, esp. one of a set . . . ." The word "equipment" is defined in the *Merriam-Webster's College Dictionary* as follows: "**1 a :** the set of articles or physical resources serving to equip a person or thing: as (1) : the implements used in an operation or activity : APPARATUS <sports ~>". The term "equipment" is defined in the *Canadian Oxford Dictionary* as "**1** tools, articles, clothing, etc. used or required for a particular purpose."
44. Exhibit A-01 at 1, 3.

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

64. CTC acknowledged that the good in issue is a trampoline and that trampolines are used for jumping or bouncing and did not dispute that jumping on a trampoline is a type of physical exercise.

65. The *Merriam-Webster's Collegiate Dictionary*[45] defines "exercise" as follows: **2** . . . **b :** *bodily exertion* for the sake of developing and maintaining physical fitness . . ." [emphasis added]. Similarly, the *Canadian Oxford Dictionary*[46] 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 *exercēre* comes from *ex-* (out) + *arcēre* (to hold off), again referring to some form of physical effort.[47] 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 term of heading No. 95.06. Children generally get their exercise through physical activities that involve some form of play.

66. As discussed above, the Tribunal is satisfied that, as long as children jump or bounce on the good in issue, 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 packaging and specific design adjustments, these good in issue remains an article or equipment that provides "general physical exercise".

67. The Tribunal notes that heading No. 95.06 also covers articles or equipment for outdoor games. The *Merriam-Webster's Collegiate Dictionary* defines the term "game" as an "activity engaged in for diversion or amusement : PLAY".[48] The *Canadian Oxford Dictionary* defines the term "game" as "an amusement, diversion, pastime, etc."[49] The *Merriam-Webster's Collegiate Dictionary* defines the term "outdoor" as follows: "**1 :** of or relating to the outdoors **2 a :** performed outdoors <~ sports>",[50] and the term "outdoors" as follows: "**1 :** outside of building : in or into the open air".[51]

68. It is not contested that the good in issue is designed for indoor or outdoor use. On the basis of these definitions and the fact that it is common knowledge that it can be used outdoors, the Tribunal finds that jumping and bouncing on the good in issue, under given conditions, may be characterized as an outdoor game.

69. Whether the activity of jumping and bouncing on the good in issue is viewed as general physical exercise or, under the appropriate circumstances, as a kind of outdoor game, it is an activity encompassed by the wording of heading No. 95.06. The Tribunal therefore finds that the good in issue is an article for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games covered by heading No. 95.06.

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45. Eleventh ed., *s.v.* "exercise".
46. Second ed., *s.v.* "exercise".
47. The *Merriam-Webster's Collegiate Dictionary*, 11th ed., *s.v.* "exercise".
48. Eleventh ed., *s.v.* "game".
49. Second ed., *s.v.* "game".
50. Eleventh ed., *s.v.* "outdoor".
51. *Ibid.*, *s.v.* "outdoors".

70. In summary, the Tribunal is of the view that the intended use of the good in issue is to enable young children to perform certain physical activities (i.e. general physical exercise) or participate in indoor or outdoor games (amusement). While it is clear that the good in issue is especially designed for children (considering its bright colours, Dora or Diego theme, safety features and maximum user weight), it is also clear that its use requires a form of bodily exertion (i.e. jumping or bouncing) and, in this way, enables children aged three to six years to perform physical exercise through play and amusement.

71. Consequently, the good in issue meets the terms of heading No. 95.06 and is classifiable therein, since the relevant section or chapter notes and the *Explanatory Notes* do not provide otherwise. Moreover, the good in issue is not specified or included elsewhere in Chapter 95.

72. 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.

Classification at the Subheading and Tariff Item Levels

73. A review of the subheadings of heading No. 95.06 reveals that none specifically names trampolines. Therefore, pursuant to Rule 6 of the *General Rules*, the good in issue should be further classified in subheading No. 9506.91, which is a residual subheading that includes "articles and equipment for general physical exercise, gymnastics or athletics" other than those that are specifically covered by other subheadings.

74. In terms of the relevant tariff item, there are two tariff items in subheading No. 9506.91. Tariff item No. 9506.91.10 covers "Exercise bicycles; Parts for use in the manufacture of physical exercise machines; Stair climbing machines" and is therefore not applicable to the good in issue. Therefore, the good in issue is classifiable under tariff item No. 9506.91.90, which covers all "other" articles and equipment for general physical exercise, gymnastics or athletics.

75. According to Rule 1 of the *Canadian Rules*, it follows that the good in issue is properly classified under tariff item No. 9506.91.90.

DECISION

76. For the foregoing reasons, the appeal is dismissed.

Jason W. Downey
Jason W. Downey
Presiding Member