



Ottawa, Tuesday, January 16, 2001

**Appeal No. AP-2000-017**

IN THE MATTER OF an appeal heard on November 7, 2000,  
under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Commissioner of  
the Canada Customs and Revenue Agency dated March 6, 2000,  
with respect to a request for redetermination under  
subsection 60(4) of the *Customs Act*.

**BETWEEN**

**INTERSAVE WEST BUYING AND MERCHANDISING SERVICE**

**Appellant**

**AND**

**THE COMMISSIONER OF THE CANADA CUSTOMS  
AND REVENUE AGENCY**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Peter F. Thalheimer  
Peter F. Thalheimer  
Presiding Member

Michel P. Granger  
Michel P. Granger  
Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-2000-017

INTERSAVE WEST BUYING AND MERCHANDISING SERVICE **Appellant**

AND

THE COMMISSIONER OF THE CANADA CUSTOMS  
AND REVENUE AGENCY **Respondent**

This is an appeal under section 67 of the *Customs Act* from a decision of the Commissioner of the Canada Customs and Revenue Agency pursuant to subsection 60(4) of the *Customs Act*. The issue in this appeal is whether the Mulan and Li Shang Fearless Rider Giftsets imported by the appellant are properly classified under tariff item No. 9503.70.10 as other toys of plastics, put up in sets or outfits, as determined by the respondent, or should be classified under tariff item No. 9502.10.00 as dolls representing only human beings, as claimed by the appellant. In the alternative, the appellant claimed that the goods in issue should be classified under tariff item No. 9503.49.00 as other toys representing animals or non-human creatures.

The goods in issue consist of a doll representing either Mulan or Li Shang who are two characters from a Walt Disney movie entitled "Mulan", a horse designed to be "ridden" by the doll and a sword which is the doll's "weapon". All items are packaged together and are made of plastic.

**HELD:** The appeal is dismissed. The Tribunal is of the view that Rule 3 (a) of the *General Rules for the Interpretation of the Harmonized System* does not guide classification of the goods in issue. The goods in issue satisfy the definition of a set found in the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to Rule 3 (b). Indeed, the goods in issue consist of at least two different articles which are, *prima facie*, classifiable in different headings; they consist of articles put up together to carry out the specific play activity of a rider going into battle on his/her horse; and they are put up in a manner suitable for sale directly to users without repacking. Given that two headings, heading Nos. 95.02 and 95.03, each refer to part only of the items in the set, those headings are, therefore, to be regarded as equally specific in relation to the goods in issue. The Tribunal finds that neither the doll nor the horse gives the goods in issue their essential character. Accordingly, the Tribunal finds that Rule 3 (b) is not determinative. Pursuant to Rule 3 (c), since heading No. 95.03 occurs last in numerical order, the goods in issue are classified in that heading. Pursuant to Rule 6, the Tribunal is convinced that, within heading No. 95.03, the goods in issue are properly classified in subheading No. 9503.70 as other toys put up in sets. As for classification under a specific tariff item, the goods being made of plastics, they are properly classified under tariff item No. 9503.70.10.

Place of Hearing: Ottawa, Ontario  
Date of Hearing: November 7, 2000  
Date of Decision: January 16, 2001

Tribunal Member: Peter F. Thalheimer, Presiding Member

Counsel for the Tribunal: Philippe Cellard  
Eric Wildhaber

Clerk of the Tribunal: Margaret Fisher

Appearances: Raylene Van Vliet, for the appellant  
Michael Roach, for the respondent



Appeal No. AP-2000-017

INTERSAVE WEST BUYING AND MERCHANDISING SERVICE **Appellant**

AND

THE COMMISSIONER OF THE CANADA CUSTOMS  
AND REVENUE AGENCY **Respondent**

TRIBUNAL: PETER F. THALHEIMER, Presiding Member

**REASONS FOR DECISION**

This is an appeal under section section 67 of the *Customs Act*<sup>1</sup> from a decision of the Commissioner of the Canada Customs and Revenue Agency, dated March 6, 2000, pursuant to subsection 60(4) of the Act. The issue in this appeal is whether the Mulan and Li Shang Fearless Rider Giftsets imported by the appellant are properly classified under tariff item No. 9503.70.10 of the schedule to the *Customs Tariff*<sup>2</sup> as other toys of plastics, put up in sets or outfits, as determined by the respondent, or should be classified under tariff item No. 9502.10.00 as dolls representing only human beings, as claimed by the appellant. In the alternative, the appellant claimed that the goods in issue should be classified under tariff item No. 9503.49.00 as other toys representing animals or non-human creatures.

The goods in issue consist of a doll representing either Mulan or Li Shang who are two characters from a Walt Disney movie entitled “Mulan”, a horse designed to be “ridden” by the doll and a sword which is the doll’s “weapon”. All items are packaged together and are made of plastic.

The relevant tariff nomenclature is as follows:

95.02	Dolls representing only human beings.
9502.10.00	-Dolls, whether or not dressed -Parts and accessories:
9502.91.00	--Garments and accessories therefor, footwear and headgear
9502.99.00	--Other
95.03	Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds. -Toys representing animals or non-human creatures:
9503.41.00	--Stuffed
9503.49.00	--Other
9503.70	-Other toys, put up in sets or outfits
9503.70.10	---Of plastics
9503.70.90	---Other
9503.90.00	-Other

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1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].  
2. R.S.C. 1985 (3d Supp.), c. 41.

## EVIDENCE

Neither party called witnesses at the hearing. Physical samples of each of the two varieties of the goods in issue were filed with the Tribunal. Product literature was filed by both parties.

## ARGUMENT

The appellant submitted that, by application of Rule 1 of the *General Rules for the Interpretation of the Harmonized System*<sup>3</sup> and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>4</sup> to heading Nos. 95.02 and 95.03, the goods in issue should be classified in heading No. 95.02 as dolls with accessories. In support of this submission, the appellant also relied on *Customs Notice N-024*.<sup>5</sup> In arguing that the horse is an accessory of the doll, the appellant pointed to their respective designs and colours.

In the alternative, the appellant submitted that the goods in issue should be classified, pursuant to Rule 3 (a) of the General Rules, in heading No. 95.02 because the doll provides the most specific description.

In the further alternative, the appellant submitted that, pursuant to Rule 3 (b) of the General Rules, the goods in issue should be classified in heading No. 95.02 because, in its view, the doll provides the essential character of the goods in issue. In support of this assertion, the appellant alleged that the horse is secondary in nature, is meant to enhance the doll and cannot be considered to provide the essential character of the set. The appellant also contended that this position is supported by the plot of a motion picture in which the likeness of the doll and horse components are portrayed. The appellant further submits that the essential character of the goods in issue can be determined by examining the intent driving the consumer's purchase.

Failing classification pursuant to Rule 3 (b) of the General Rules and in the further alternative, the appellant submitted that, pursuant to Rule 3 (c), the goods in issue should be classified under tariff item No. 9503.49.00, because this tariff item occurs last in the tariff nomenclature among those which merit equal consideration (the doll representing a human being – tariff item No. 9502.10.00; the sword, which is an accessory of the doll – tariff item No. 9502.91.00 or tariff item No. 9502.99.00; and the horse, which is a doll representing an animal – tariff item No. 9503.49.00). The appellant acknowledges that the goods in issue constitute a set, but argues that this is irrelevant in the present case.

The respondent also submitted that the goods in issue are a set, but argued that this issue is central to this appeal. Relying upon the Explanatory Notes to Rule 3 (b) and to subheading No. 9503.70, the respondent submitted that the goods in issue meet the definition of a set because: (1) they consist of two different types of articles - a doll (heading No. 95.02) and a horse (heading No. 95.03); (2) they are put up together in order to carry out a specific play activity, that of a rider going into battle on his/her horse; and (3) they are put up in a same packing for retail sale without repacking.

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3. *Supra* note 2, schedule [hereinafter General Rules].

4. Customs Co-operation Council, 2d ed., Brussels, 1996 [hereinafter Explanatory Notes].

5. The Canada Customs and Revenue Agency (CCRA), "Tariff Classification of Other Toys, Put Up In Sets or Outfits under Subheading 9503.70" (29 January 1996). The relevant passage of this notice is as follows: "Goods of headings 95.01 and 95.02 are excluded from subheading 9503.70 regardless of whether or not they are put up in sets. For example, dolls representing only human beings with accessories would be excluded".

The respondent also submitted that the horse is not an accessory of the doll. In support of this assertion, the respondent argued that the horse does not meet the definition of “accessory” contained in the Explanatory Notes to heading No. 95.02.<sup>6</sup> This definition, while not providing an exhaustive list, nonetheless refers to articles that relate specifically to the doll itself and not to separate and distinct articles, such as a toy horse. Nor, in the respondent’s submission, can the horse be considered an “accessory” of the doll pursuant to *Memorandum D10-0-1*, which defines “accessory” as follows: “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”.<sup>7</sup> In the respondent’s view, the goods in issue consist of more than just a doll packaged with its accessories because the doll and horse have equal play value, and it cannot be said that the horse performs a secondary or subordinate role. The respondent also submitted that neither article improves the function or effectiveness of the other.

With regard to classification, the respondent argued that, because of Rule 3 (a) of the General Rules, heading No. 95.02 and heading No. 95.03 cannot be preferred one over the other. Recourse must, therefore, be had to Rule 3 (b). Here, the respondent submitted that the goods in issue should be classified in heading No. 95.03, arguing that the essential character of the sets is derived from the combination of the two articles, along with their accessories, used to carry out a specific play activity, that of a rider going into battle on his/her horse. Moreover, neither article, by itself, conveys the essential character of the goods, since one is useless without the other, insofar as the theme of the movie is concerned.

## DECISION

Section 10 of the *Customs Tariff* directs the Tribunal to classify goods in accordance with the General Rules. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in the schedule, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*<sup>8</sup> and the Explanatory Notes.

The General Rules are structured in cascading form. If the classification of goods cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, and so on. Rule 1 is as follows:

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, 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 [subsequent rules].

The Tribunal notes that dolls representing only human beings are classified in heading No. 95.02, whereas other toys are classified in heading No. 95.03. The Tribunal, therefore, finds that Rule 1 of the General Rules is not determinative, given that the doll component of the goods in issue is classifiable in heading No. 95.02, while the horse is classifiable in heading No. 95.03.

Neither party has suggested that the goods in issue can be classified pursuant to the application of Rule 2 of the General Rules. The Tribunal does not suggest otherwise, agreeing that it cannot. Accordingly, the Tribunal now gives regard to Rule 3 (a), which is as follows:

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6. “**Parts and accessories** of dolls of this heading include: heads, bodies, limbs, eyes (**other than** those unmounted of glass, of **heading 70.18**), moving mechanisms for eyes, voice-producing or other mechanisms, wigs, dolls’ clothing, shoes and hats”.
  7. CCRA, “Classification of Parts and Accessories in the Customs Tariff” (24 January 1994).
  8. Customs Co-operation Council, 1st ed., Brussels, 1987.

When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

The Tribunal is of the view that Rule 3 (a) of the General Rules does not guide classification of the goods in issue. The Tribunal is convinced that the goods in issue constitute a set put up for retail sale because they satisfy the definition of a set found in the Explanatory Notes to Rule 3 (b). Indeed, the goods in issue consist of at least two different articles which are, *prima facie*, classifiable in different headings; they consist of articles put up together to carry out the specific play activity of a rider going into battle on his/her horse; and they are put up in a manner suitable for sale directly to users without repacking. Given that two headings, heading Nos. 95.02 and 95.03, each refer to part only of the items in the set, those headings are, therefore, to be regarded as equally specific in relation to the goods in issue. The Tribunal notes that this conclusion remains unchanged whether the sword component of the goods in issue is considered an accessory of the doll or another toy, in its own right. Therefore, the Tribunal cannot classify the goods in issue according to Rule 3 (a) and must now give regard to Rule 3 (b), which is as follows:

Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

At the hearing, the parties made competing representations to the Tribunal regarding the “essential character” of the goods in issue. The Tribunal notes that the goods in issue are composed of a figurine or doll representing a human being, a toy representing a horse and a toy sword. It further notes that the packaging and product literature of the goods in issue make reference to the doll being a “fearless rider set”, implying, in the Tribunal’s view, a certain synergy between the doll and the horse and perhaps even the sword. For the purposes of tariff classification, however, the Tribunal finds that neither the doll nor the horse gives the goods in issue their essential character. Accordingly, the Tribunal finds that Rule 3 (b) of the General Rules is not determinative and now gives consideration to Rule 3 (c), which is as follows:

When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

The Tribunal is of the view that heading Nos. 95.02 and 95.03 equally merit consideration. The goods in issue are composed of a doll (heading No. 95.02), a toy horse (heading No. 95.03) and a toy sword (either in heading No. 95.02, as an accessory, or in heading No. 95.03, in its own right). Therefore, pursuant to Rule 3 (c) of the General Rules, since heading No. 95.03 occurs last in numerical order, the goods in issue are classified in that heading.

Pursuing classification of the goods in issue at the subheading or six-digit level, the Tribunal is guided by Rule 6 of the General Rules, which is 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 [two through five], 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.

Pursuant to Rule 6 of the General Rules, the Tribunal is convinced that, within heading No. 95.03, the goods in issue are properly classified in subheading No. 9503.70 as other toys put up in sets. The Tribunal finds that the goods in issue satisfy the definition of “set” found in the Explanatory Notes to subheading No. 9503.70. Indeed, they are two or more different types of articles (principally for amusement), put up in the same packing for retail sale without repacking; a simple accessory or an object of minor importance, the sword, is also included. As for classification under a specific tariff item, the goods, being made of plastics, are properly classified under tariff item No. 9503.70.10.

For the foregoing reasons, the appeal is dismissed.

Peter F. Thalheimer

Peter F. Thalheimer  
Presiding Member