



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2010-036

Accessoires SportRacks Inc. de
Thule Canada Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Friday, January 13, 2012*

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IN THE MATTER OF an appeal heard on September 15, 2011, 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 September 9, 2010, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

ACCESSOIRES SPORTTRACKS INC. DE THULE CANADA INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Serge Fréchette
Serge Fréchette
Presiding Member

Gillian Burnett
Gillian Burnett
Acting Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: September 15, 2011

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WITNESS:

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STATEMENT OF REASONS

1. This is an appeal pursuant to section 67 of the *Customs Act*¹ from a re-determination of the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4), concerning the importation of roof-mounted bike racks.² The goods in issue are SportRack Elite 882 upright bike racks.

2. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8708.99.99 of the schedule to the *Customs Tariff*³ as parts and accessories of motor vehicles, as determined by the CBSA, or should be classified under tariff item No. 8714.99.90 as parts and accessories of bicycles, as claimed by Accessoires SportRacks Inc. de Thule Canada Inc. (SportRacks).

3. The relevant nomenclature provides as follows:

87.08 **Parts and accessories of the motor vehicles of headings 87.01 to 87.05.**

8708.99 **--Other**

8708.99.99 ---Other

...

87.14 **Parts and accessories of vehicles of headings 87.11 to 87.13.**

8714.99 **--Other**

8714.99.90 --Other

EVIDENCE

4. SportRacks filed the following physical evidence with the Tribunal: an Elite upright bicycle carrier, model A882-90420,⁴ which was an example of the goods in issue. For the purposes of these reasons, the goods in issue are described as bike racks. On behalf of SportRacks, Mr. Marc-André Paiement, sales representative at Thule Canada Inc., testified that the bike racks hold bicycles in an upright position,⁵ are for use with a single bicycle and are suited for carrying a complete, not disassembled, bicycle.⁶ The bicycle sits in a V-groove, parallel to the track of the roof rack, and is battened down with a pair of straps.⁷ For additional security, the straps come with a lock and key.⁸

5. Mr. Paiement testified that the bike racks are designed to be affixed to the roof of a vehicle, either by being attached to roof racks that are sold with the vehicle or to those that are sold separately as accessories to vehicles.⁹ A roof rack consists of a load bar and foot mounts. A fit guide is available to assist car owners in choosing the right roof rack for their vehicles.¹⁰ It is also possible to use the bike rack on a camper (on the rooftop, front tongue or rear), on a bus (through a bumper-mount rack) or in a workshop or

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

2. Tribunal Exhibit AP-2010-036-03A at para. 2; Tribunal Exhibit AP-2010-036-08A at para. 3.

3. S.C. 1997, c. 36.

4. Exhibit B-01.

5. *Transcript of Public Hearing*, 15 September 2011, at 6.

6. *Ibid.* at 7.

7. *Ibid.* at 8.

8. *Ibid.* at 9.

9. *Ibid.* at 10, 19, 24.

10. *Ibid.* at 24, 26.

garage.¹¹ The bike rack is used only for transporting bicycles, “. . . not for any other sporting goods or any other equipment such as lumber . . .”¹² The bike rack prevents damage to the bicycle and the vehicle while in transit.¹³ Car owners comprise the main market for bike racks¹⁴, and the main use of the goods is “to carry the bike from point A to point B.”¹⁵ Security is an added feature.¹⁶

6. The CBSA filed copies of packaging material stating that the bike racks can be mounted “. . . directly to all OEM or aftermarket crossbars with universal mounting [systems].”¹⁷ The CBSA filed a copy of Sportracks’s catalogue containing the following statement: “SportRack® is proud to offer safe, quality products that allow you to take full advantage of your *vehicle’s* carrying capacity. SportRack *accessories* perfectly adapt the gear and equipment you use to your *vehicle*, helping to fulfill your active lifestyle”¹⁸ [emphasis added]. The CBSA also filed copies of online catalogues from a number of major automobile manufacturers, parts dealers and retail stores that sold the bike racks as automotive “accessories”.¹⁹

FACTS

7. On the basis of the above evidence, the Tribunal finds that the bike racks are used primarily to transport bicycles from point A to point B. The Tribunal also finds that their transportation is effected by means of a motor vehicle, not by the bike rack directly. Although the bike rack may arguably enhance the use of the transported bicycle, any such enhancement would be, at best, very indirect. Finally, the Tribunal finds that the bike racks are principally marketed for use with automobiles and not with other mobile equipment, such as trailers, or as stationery stand-alone devices.

ARGUMENT

CBSA

8. For convenience, the CBSA’s argument will be presented first. The CBSA argued, under Rule 1 of the *General Rules for the Interpretation of the Harmonized System*,²⁰ that the bike racks are properly classified in heading No. 87.08, since they are accessories of the motor vehicles of heading Nos. 87.01 to 87.05.²¹ The vehicles of these headings include tractors, vehicles for transporting people, motor cars, vehicles for transporting goods, and special-purpose motor vehicles.

11. *Ibid.* at 11-12, 15.

12. *Ibid.* at 15.

13. *Ibid.* at 17, 25.

14. *Ibid.* at 17-18, 22-23, 29.

15. *Ibid.* at 16-17, 30-32.

16. *Ibid.* at 32.

17. Tribunal Exhibit AP-2010-036-08A, tab 2.

18. *Ibid.* tab 10.

19. Tribunal Exhibit AP-2010-036-08A, tabs 13, 14, 15.

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

21. Tribunal Exhibit AP-2010-036-08A at para. 14.

9. The CBSA adds that Note (3), “**PARTS AND ACCESSORIES**,”²² of the *Explanatory Notes to the Harmonized Commodity Description and Coding System*²³ to Section XVII, which includes heading No. 87.08, stipulates three conditions for accessories to be classifiable in heading No. 87.08: first, they must not be excluded by the terms of Note 2 to Section XVII; second, they must be suitable for use solely or principally with the motor vehicles of heading Nos. 87.01 to 87.05; and third, they must not be more specifically included elsewhere in the Tariff, and the CBSA argues that all three conditions were met.²⁴

10. In terms of the first requirement, the CBSA submits that Note 2²⁵ to Section XVII contains an exhaustive list of accessories that must be classified elsewhere and that the bike racks are not found on that list.²⁶ Concerning the second requirement, the CBSA contends that the *Explanatory Notes* to Chapter 87²⁷ and heading No. 87.08²⁸ (about more later) provide support for the proposition that the bike racks are suitable for use solely or principally with the articles of Chapter 87. Regarding the third and final requirement, the CBSA merely adds the bald assertion that the bike racks are not more specifically included elsewhere in the Nomenclature.²⁹

11. Turning to the *Explanatory Notes* to Chapter 87 and heading No. 87.08, the CBSA explained that, consistent with the *Explanatory Notes*, the bike racks were “accessories” within the ordinary meaning of the word³⁰ and that they are suited solely or principally for use with motor vehicles, since their primary purpose, as part of a roof-rack system, is to increase the load-carrying capacity of the vehicle³¹ and that they are also the safest way to transport bicycles on a motor vehicle without damaging the vehicle’s body.³² It is worth noting that the bike racks are designed to be attached to a roof rack on the roof of a car and, in this manner, affixed to the car itself.³³ This is analogous to the emergency towing straps in *Rui Royal International Corp.*

22. Note (III) provides as follows: “It should, however, be noted that these headings apply **only** to those parts or accessories which comply with **all three** of the following conditions: (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”

23. World Customs Organization, 4th ed., Brussels, 2007 [*Explanatory Notes*].

24. Tribunal Exhibit AP-2010-036-08A at para. 14.

25. “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 (classified according to their constituent material or in heading 84.84) or other articles of vulcanised rubber other than hard rubber (heading 40.16); (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 84.789, 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).”

26. Tribunal Exhibit AP-2010-036-08A at para. 15.

27. 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, **subject** to the provisions of the Notes to Section XVII”

28. The *Explanatory Notes* to heading No. 87.08 provide as follows: “This heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05, **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”

29. Tribunal Exhibit AP-2010-036-08A at para. 15.

30. *Ibid.* at paras. 20-21.

31. *Ibid.* at para. 24; *Transcript of Public Hearing*, 15 September 2011, at 49, 54.

32. Tribunal Exhibit AP-2010-036-08A at para. 25.

33. *Transcript of Public Hearing*, 15 September 2011, at 50.

*v. President of the Canada Border Services Agency*³⁴ wherein the Tribunal found that the straps were accessories of a motor vehicle because they were attached to the frame of the vehicle.³⁵ Moreover, the CBSA suggests that the bike racks are identified principally for use with motor vehicles throughout the channels of commerce.³⁶ Of the marketing materials filed by the CBSA, there were 35 pictures of automobiles being featured with the bike rack and only a single picture of it with a tent trailer.³⁷

12. The CBSA considers the Tribunal's previous decision in *Uvex Toko Canada Ltd. v. Deputy M.N.R.*³⁸ to be on point³⁹. In that case the bike racks consisted of a plastic luggage box or other components (e.g., for carrying bikes, canoes or skis) that were combined with a base rack to form a roof rack system suitable for what a motor car would be carrying. The Tribunal found that the component parts of the roof rack system were accessories for motor vehicles within the meaning of heading No. 87.08 because they were designed specifically to be attached to and carried by the vehicles.

Sporttracks

13. Sporttracks submitted that the bike racks could not be classified in heading No. 87.08 because they did not meet one of the conditions of the *Explanatory Note* for the heading, i.e. that they had to "... be identifiable as being suitable for use solely or principally with the above-mentioned vehicles..." According to Sporttracks,⁴⁰ the bike racks are suited principally for installation on the roofs of trailers, which are not motor vehicles at all, and on tent-trailers, which are not listed in the above headings, but rather covered under heading No. 87.16. Sporttracks contends that the bike racks serve as accessories to bicycles, not motor vehicles,⁴¹ since, by allowing a bicycle to be moved from one location to another, they add the feature of portability.⁴² Sporttracks implies that the bike racks are an accessory to a bicycle in much the same way that a seat, bell, horn or light would be.⁴³

14. Sporttracks contends that the bike racks would be properly classified as accessories for bicycles in heading No. 87.14 since they meet the conditions of the *Explanatory Notes* to that heading.⁴⁴ Sporttracks alleges that they are parts and accessories of a kind used with non-motorized cycles since they are: a) identifiable as being suitable for use solely or principally with vehicles of heading Nos. 87.11 to 87.13, and b) not excluded by the provisions of the Notes to Section XVII.⁴⁵ (The above headings include motorcycles, bicycles, and carriages for the disabled).

34. (30 March 2011), AP-2010-003 (CITT).

35. *Transcript of Public Hearing*, 15 September 2011, at 51.

36. Tribunal Exhibit AP-2010-036-08A at paras. 26-28; *Transcript of Public Hearing*, 15 September 2011, at 52-53, 55.

37. *Transcript of Public Hearing*, 15 September 2011, at 57.

38. (7 November 1996), AP-95-269 and AP-95-285 [*Uvex Toko*].

39. *Transcript of Public Hearing*, 15 September 2011, at 54.

40. Tribunal Exhibit AP-2010-036-03A at 12.

41. *Ibid.* at 27.

42. *Ibid.* at para. 34.

43. *Ibid.* at para. 36.

44. The *Explanatory Notes* to heading No. 87.14 provide as follows: "This heading covers parts and accessories of a kind used with motorcycles (including mopeds), cycles fitted with an auxiliary motor, side-cars, non-motorised cycles, or carriages for disabled persons, **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"

45. Tribunal Exhibit AP-2010-036-03A at para. 14.

15. Sportracks explains that an accessory is something that performs a secondary role,⁴⁶ which in this case is to enhance the ability of a vehicle, such as an SUV, to carry a bicycle, since otherwise the bicycles would be damaged in transit,⁴⁷ as would the vehicle itself.⁴⁸ Sportracks argues that the bike racks extend the pleasure that bicycle riders obtain from their bicycles, through expanding the range of locations in which they can go biking, in much the same way that a gaming chair extends the pleasure of playing a video game.⁴⁹ Sportracks suggests that the bike racks are analogous to kickstands for motorcycles and are therefore designed and sold for use exclusively with bicycles.⁵⁰

16. Finally, Sportracks contends that the bike racks are excluded from classification in heading No. 87.08, since they do not meet the third condition of *Explanatory Note 3* to Section XVII above, i.e. they must not be more specifically included elsewhere in the Tariff.⁵¹ Sportracks points out that the second sentence in Section Note 3 to Section XVII states that a “part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory” and contends that the principal, or main, use of the bike racks is with bicycles.⁵² Sportracks also suggests that bike racks are analogous to mudguards on trucks or stands for motorcycles and points out that both those items are listed in the *Explanatory Note* to heading No. 87.14 as examples of items that would be classified under the heading.⁵³

CBSA

17. By way of rebuttal, the CBSA submits that the main purpose of bicycles is for transporting people and that the bike racks not only do not enhance that function but would render the bicycle altogether unusable for that purpose.⁵⁴ Moreover, according to the CBSA, there is no comparison between the bike racks and kickstands for motorcycles, since the latter are designed to protect the appearance and integrity of the motorcycle by preventing damage to it, whilst the bike racks are designed to protect the appearance and integrity of the motor car on which the bicycle is mounted.⁵⁵ Nor are the bike racks analogous to any of the examples listed in the *Explanatory Note* to heading No. 87.14 such as toe-clips, saddle-covers or mud-guards.⁵⁶ They remain more specifically described in the *Explanatory Note* to heading No. 87.08.⁵⁷

18. Moreover, according to the CBSA, any use of the bike racks with trailers is purely secondary,⁵⁸ and the bottom line is that one is unlikely to buy a bike rack unless one intends to mount it on a roof rack on top of a car.⁵⁹

46. *Transcript of Public Hearing*, 15 September 2011, at 34.

47. *Ibid.* at 36.

48. *Ibid.* at 38.

49. *Ibid.* at 39.

50. Tribunal Exhibit AP-2010-036-03A at para. 26.

51. *Transcript of Public Hearing*, 15 September 2011, at 41-42.

52. *Ibid.* at 43.

53. *Ibid.* at 45-46.

54. Tribunal Exhibit AP-2010-036-08A at paras. 36-37.

55. *Ibid.* at para. 41.

56. *Ibid.* at para. 42.

57. *Ibid.* at para. 43.

58. *Transcript of Public Hearing*, 15 September 2011, at 56.

59. *Ibid.* at 55.

DECISION

19. As mentioned, the issue in this appeal is whether the bike racks are properly classified as parts and accessories of motor vehicles, under tariff item No. 8708.99.99, as determined by the CBSA, or should be classified as parts and accessories of bicycles under tariff item No. 8714.99.90, as claimed by Sportracks. The Tribunal's practice in tariff classification appeals is to hear the matter and then determine the proper classification of the goods under appeal in accordance with the relevant statutory interpretative rules.

20. The various tariff classifications are set out in considerable detail in the schedule, enacted as part of the *Customs Tariff*. Each section and chapter of the *Customs Tariff* has its own notes, and sometimes supplementary notes, followed by a list of goods categorized under a number of headings, subheadings and individual tariff items. The *Customs Tariff* contains its own method for interpreting the schedule, which is found in sections 10⁶⁰ and 11⁶¹ thereof.

21. The *General Rules* referred to in section 10 of the *Customs Tariff* originated in the International Convention on the Harmonized Commodity Description and Coding system. They are structured in serial form so that, if the classification of the goods cannot be determined in accordance with Rule 1,⁶² then regard must be had to Rule 2, and so on.

22. The above legislation requires the Tribunal to follow several steps before arriving at the proper classification of goods: first, to examine the schedule to see if the goods fit *prima facie* within the language of a tariff heading; second, to see if there is anything in the chapter or section notes that precludes the goods from classification in the heading; and third, to examine the *Explanatory Notes* and the Classification Opinions to confirm classification of the goods in the heading.⁶³

23. If this process leads to the classification of the goods in one, and only one, heading, the next step is to find the appropriate subheading and tariff item. If the process leads to classification in more than one heading, the remaining general rules must be applied in sequence until the most appropriate heading is found. If necessary, the same process is repeated at the subheading and tariff item levels, applying the Canadian Rules in the case of the latter.

24. For the reasons below, the Tribunal believes that the CBSA correctly classified the bike racks (under Rule 1) in heading No. 87.08 as accessories to motor vehicles. Both parties agree that the bike racks should be classified through recourse to Rule 1. The Tribunal also agrees.

60. Subsection 10(1) of the *Customs Tariff* provides as follows: "Subject to subsection (2), 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 and the Canadian Rules set out in the schedule."

61. Section 11 of the *Customs Tariff* provides as follows: "In interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System and the Explanatory Notes to the Harmonized Commodity Description and Coding System, published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time."

62. Rule 1 of the *General Rules* provides 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 following provisions."

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

25. As mentioned, the CBSA found that the bike racks should be classified as parts and accessories of motor vehicles in heading No. 87.08, since they enhance the load capacity of the vehicle by allowing it to carry bicycles safely. Sportracks contends that the bike racks should be classified as parts and accessories of bicycles in heading No. 87.14 since they enhance the enjoyment of the bicycle by allowing it to be ridden in a wider range of places after being transported on the roof of a car or other vehicle. The CBSA claims that the bike racks meet the conditions of the *Explanatory Note* to heading No. 87.08. Sportracks claims they meet the conditions of the *Explanatory Note* to heading No. 87.14.

26. Heading No. 87.08 captures “Parts and accessories of the motor vehicles of heading Nos. 87.01 to 87.05.” This has been construed by its concomitant *Explanatory Note* as meaning parts and accessories that are “. . . identifiable as being suitable for use solely or principally with the above-mentioned vehicles” meaning, among other things, accessories of motor vehicles. The parties are not in dispute on this point.

27. Heading No. 87.14 captures “Parts and accessories of heading Nos. 87.11 to 87.13.” This has also been construed by its concomitant *Explanatory Note* as meaning parts and accessories that are “. . . identifiable as being suitable for use solely or principally with the above-mentioned vehicles” meaning, among other things, accessories of bicycles. The parties are not in dispute on this point either.

28. Both parties are agreed that the bike racks are accessories. The ordinary meaning of “accessory” is “an additional or extra thing . . . a small attachment or fitting.”⁶⁴ In its body of decided cases, the Tribunal has added that there is no need for an accessory to be necessary to the operation of the product to which it relates, only that it perform a function that supports the primary function of the object;⁶⁵ an accessory is something contributing in a subordinate degree to a general result or effect.⁶⁶

29. Therefore, the nub of the dispute is whether the bike racks are accessories to motor vehicles or to bicycles.

30. As mentioned, the Tribunal has found that the the bike racks are used primarily to transport bicycles from point A to point B, that their transportation is effected by means of an automobile, not by the bike rack directly, and that the bike racks are principally marketed for use with automobiles and not with other mobile equipment, such as trailers, or as stationery standalone devices.

31. Therefore the Tribunal finds, under Rule 1, that the bike racks are accessories to motor vehicles and are classified in heading No. 87.08.

32. In making this finding, the Tribunal notes that its earlier decision in *Uvex Toko* is apposite. As mentioned, in that decision the goods in issue were containers for storing luggage and ski equipment used with a luggage rack system. The Tribunal found that both the container and the roof rack were accessories for motor vehicles because they were designed specifically to be attached to and carried by the vehicles.

33. Similarly, in this appeal, the bike racks were designed specifically to be attached to and carried by motor vehicles. They provide a subordinate function (carrying bicycles) to the main function (moving passengers or material from point A to point B) of the motor vehicle. The same cannot be said of the

64. *Canadian Oxford Dictionary*, 2nd ed., s.v. “accessory”.

65. *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).

66. *Fastco Canada v. Deputy M.N.R.* (29 April 1997), AP-96-078 (CITT), in which the Tribunal accepted the definition of “accessory” in *The Oxford English Dictionary*, Volume I, 2nd ed.

relationship between bike stands and bicycles. The main function of a bicycle is to move persons from point A to point B, often with a recreational or athletic purpose in mind. The bike rack in no way supports or contributes to this function and is therefore not its accessory.

34. The Tribunal agrees that, under Rule 6, the CBSA properly classified the bike racks under the residual category of sub-heading No. 8708.99 (Other) and, under Canadian Rule 1, under tariff item No. 8708.99.99 (Other). Moreover, classification at these levels was not part of the dispute.

35. For the above reasons, the appeal is dismissed.

Serge Fréchette
Serge Fréchette
Presiding Member