



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2010-060

Outdoor Gear Canada

v.

President of Canada Border  
Services Agency

*Decision and reasons issued  
Monday, November 21, 2011*

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IN THE MATTER OF an appeal heard on September 30, 2011, pursuant to subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the President of the Canada Border Services Agency, dated December 9 and 12, 2010, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

**BETWEEN**

**OUTDOOR GEAR CANADA**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is dismissed.

Stephen A. Leach  
Stephen A. Leach  
Presiding Member

Dominique Laporte  
Dominique Laporte  
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	September 30, 2011
Tribunal Member:	Stephen A. Leach, Presiding Member
Counsel for the Tribunal:	Nick Covelli
Research Director:	Matthew Sreter
Research Officer:	Martine Gagnon
Manager, Registrar Office:	Michel Parent
Registrar Officer:	Cheryl Unitt

**PARTICIPANTS:****Appellant**

Outdoor Gear Canada

**Counsel/Representative**

Michael Kaylor

**Respondent**

President of the Canada Border Services Agency

**Counsel/Representative**

Luc Vaillancourt

**WITNESS:**

Stéphane Le Beau  
Road and Urban Bike Product Manager  
Outdoor Gear Canada

Please address all communications to:

The Secretary  
Canadian International Trade Tribunal  
Standard Life Centre  
333 Laurier Avenue West  
15th Floor  
Ottawa, Ontario  
K1A 0G7

Telephone: 613-993-3595  
Fax: 613-990-2439  
E-mail: [secretary@citt-tcce.gc.ca](mailto:secretary@citt-tcce.gc.ca)

## STATEMENT OF REASONS

1. This is an appeal filed by Outdoor Gear Canada (Outdoor Gear) with the Canadian International Trade Tribunal (the Tribunal) on February 3, 2011, pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from decisions of the President of the Canada Border Services Agency (CBSA), dated December 9 and 12, 2010, made pursuant to subsection 60(4).

2. The issue in this appeal is whether assembled bicycle rims, spokes and hubs, with no tubes, valves, nipples or tires (the goods in issue), are properly classified under tariff item No. 8714.99.10 of the schedule to the *Customs Tariff*<sup>2</sup> as bicycle wheels, as determined by the CBSA, or should be classified under tariff item No. 8714.99.90 as other parts and accessories of vehicles of heading Nos. 87.11 to 87.13, as claimed by Outdoor Gear.

## LEGAL FRAMEWORK

3. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization.<sup>3</sup> The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

4. 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<sup>[4]</sup> and the Canadian Rules<sup>[5]</sup> set out in the schedule.”

5. The *General Rules* comprise six rules structured in sequence so that, if the classification of the goods cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, and so on, until classification is completed.<sup>6</sup>

6. Rules 1 and 2 (a) of the *General Rules* are of particular relevance in this appeal. They provide as follows:

1. . . . 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.
2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. . . .

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

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

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

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

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

6. Rules 1 through 5 of the *General Rules* apply to classification at the heading level (i.e. to four digits). Pursuant to Rule 6 of the *General Rules*, Rules 1 through 5 are applicable to classification at the subheading level (i.e. to six digits). Similarly, the *Canadian Rules* make Rules 1 through 5 of the *General Rules* applicable to classification at the tariff item level (i.e. to eight digits).

7. Section 11 of the *Customs Tariff* provides that, in interpreting headings and subheadings, regard shall be had to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*.<sup>7</sup> While the *Explanatory Notes* are not binding on the Tribunal in its classification of imported goods, the Tribunal will apply them, unless there is a sound reason to do otherwise.<sup>8</sup>

8. Once the Tribunal has determined the heading in which the goods in issue should be classified, the next step is to determine the proper subheading, applying Rule 6 of the *General Rules*.

9. The headings and subheadings are not in dispute in the present appeal. Rather, the appeal concerns the tariff item. However, Rule 1 of the *Canadian Rules* provides that the classification of goods under a tariff item shall be determined according to the terms of that tariff item and any related Supplementary Notes and, *mutatis mutandis*, to the *General Rules*, for example, by reading the word “heading” in Rules 1 and 2 (a) of the *General Rules* as “tariff item”.

10. The relevant provisions of the *Customs Tariff* are as follows:

## Section XVII

## VEHICLES, AIRCRAFT, VESSELS AND ASSOCIATED TRANSPORT EQUIPMENT

...

## Chapter 87

**VEHICLES OTHER THAN RAILWAY  
OR TRAMWAY ROLLING-STOCK,  
AND PARTS AND ACCESSORIES THEREOF**

...

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

• • •

**-Other:**

• • •

**8714.93.00 - -Hubs, other than coaster braking hubs and hub brakes, and free-wheel sprocket-wheels**

...

**8714.99      - -Other**

8714.99.10 - - -Bicycle wheels

8714.99.90 - - -Other

7. World Customs Organization, 4th ed., Brussels, 2007 [*Explanatory Notes*]. Section 11 of the *Customs Tariff* also specifies that regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*, World Customs Organization, 2d ed., Brussels, 2003, but no classification opinion is applicable to the present appeal.

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

11. The relevant *Explanatory Notes* to Section XVII provide as follows:

**GENERAL**

...

**(C) Parts and accessories covered more specifically elsewhere in the Nomenclature.**

Parts and accessories, even if identifiable as for the articles of this Section, are **excluded** if they are covered more specifically by another heading elsewhere in the Nomenclature, e.g.:

...

- (3) Rubber tyres, interchangeable tyre treads, tyre flaps and inner tubes (**headings 40.11 to 40.13**).

12. The relevant *Explanatory Notes* to heading No. 87.14 provide as follows:

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

...

Parts and accessories of this heading include:

...

- (4) Wheels and parts thereof (hubs, rims, spokes, etc.).

**POSITIONS OF PARTIES**

13. The parties agree that the goods in issue are properly classified in heading No. 87.14 as parts and accessories of vehicles of heading Nos. 87.11 to 87.13, which apparently includes parts and accessories of bicycles. The parties also agree that the goods in issue fall under subheading No. 8714.99.

14. However, whereas the CBSA takes the position that it properly classified the goods in issue under tariff item No. 8714.99.10 as bicycle wheels, Outdoor Gear claims that they should be classified under tariff item No. 8714.99.90 as other parts and accessories of bicycles.

15. Both parties submitted that classification at the tariff item level can be determined through the application of Rule 1 of the *Canadian Rules* and Rule 1 of the *General Rules*.

16. In a nutshell, the CBSA argued that the goods in issue are properly classified as bicycle wheels because (i) there is nothing in tariff item No. 8714.99.10 or the accompanying notes that limits the meaning of the term “bicycle wheels” to bicycle wheels with tires and tubes, (ii) the goods in issue are specifically designed for bicycle frames, to hold tires and tubes, and perform as bicycle wheels, and (iii) they are known in the industry as bicycle wheels.<sup>9</sup>

17. Outdoor Gear bases its position on the argument that the term “bicycle wheels” is ambiguous. Outdoor Gear refers to the *Explanatory Notes* to heading Nos. 87.09 and 87.15, which it considers to be “... relative or related headings ...” to heading No. 87.14.<sup>10</sup> The *Explanatory Notes* to heading No. 87.09 refer to “[w]heels, whether or not fitted with tyres” and parts thereof, in the case of trucks, and the *Explanatory Notes* to heading No. 87.15 refer to “[w]heels (whether or not fitted with their tyres) and parts thereof”, in the case of baby carriages.<sup>11</sup> According to Outdoor Gear, because of these explanatory notes, it is unclear whether the term “bicycle wheels” means “bicycle wheels fitted with tires” or “bicycle wheels not fitted with tires”.<sup>12</sup>

9. Tribunal Exhibit AP-2010-060-06A at paras. 15, 18-19.

10. *Transcript of Public Hearing*, 30 September 2011, at 24.

11. Tribunal Exhibit AP-2010-060-04A at paras. 20-27.

12. *Ibid.* at para. 29.

18. Outdoor Gear cited jurisprudence to the effect that ambiguous tax provisions ought to be interpreted in favour of the taxpayer. This jurisprudence, according to Outdoor Gear, means that the term “bicycle wheels” should be interpreted as meaning “bicycle wheels fitted with tires”.<sup>13</sup>

19. Outdoor Gear also contended that the term “bicycle wheels” implicitly refers to bicycle wheels fitted with tires and tubes. Outdoor Gear refers to the fact that tires and tubes, when imported separately, are classified in heading Nos. 40.11 and 40.13 respectively.<sup>14</sup> According to Outdoor Gear, this implies that, when tires and tubes are attached to the bicycle wheel at the time of importation, the fully assembled bicycle wheel is classified under tariff item No. 8714.99.10 as bicycle wheels.<sup>15</sup>

20. For Outdoor Gear, this argument is confirmed by the *Explanatory Notes* to heading No. 87.14, which provide that the parts and accessories of this heading include, *inter alia*, “[w]heels and parts thereof (hubs, rims, spokes, etc.)”, which would include tires and tubes.<sup>16</sup>

21. In this respect, Outdoor Gear ascribed an alternative implication to the *Explanatory Notes* to heading Nos. 87.09 and 87.15, that is, where Parliament wanted the term “wheels” to mean “wheels, whether or not fitted with tires”, it has done so expressly.<sup>17</sup> Outdoor Gear cited jurisprudence to the effect that, when interpreting a statute, the judge should not add to the terms of the law as legislation is deemed to express completely what the legislator wanted to say.<sup>18</sup>

22. Outdoor Gear also argued that, without tubes, valves and tires, the goods in issue lack several of the essential features of a bicycle wheel.<sup>19</sup>

23. Outdoor Gear concluded that, because the goods in issue are not bicycle wheels fitted with tires, they must be classified under tariff item No. 8714.99.90 as other parts and accessories of bicycles.<sup>20</sup>

## ANALYSIS

24. As discussed, pursuant to Rule 1 of the *Canadian Rules* and Rule 1 of the *General Rules*, classification shall be determined according to the terms of the tariff items and any related notes.

25. If a term used in the *Customs Tariff* has a particular meaning in a trade, it should be interpreted in that sense; otherwise, it should be interpreted according to its ordinary meaning.<sup>21</sup>

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13. *Ibid.* at paras. 30-34.

14. *Transcript of Public Hearing*, 30 September 2011, at 17, 19. It seems that this classification stems from Note (C) of the *Explanatory Notes* to Section XVII, of which Chapter 87 is a part, which provides that parts and accessories are excluded from articles of this section if they are covered more specifically by another heading elsewhere in the nomenclature, and paragraph (3) of that note specifically refers to “[r]ubber tyres . . . and inner tubes (**headings 40.11 to 40.13**).”

15. *Transcript of Public Hearing*, 30 September 2011, at 19-21.

16. *Ibid.* at 22.

17. *Ibid.* at 24.

18. *Ibid.* at 27-28; Tribunal Exhibit AP-2010-060-04A at para. 35.

19. Tribunal Exhibit AP-2010-060-04A at paras. 36-39.

20. *Ibid.* 56-57.

21. *Olympia Floor and Wall Tile Company v. Deputy M.N.R.*, 5 C.E.R. 562 at 565. See also, for example, *S.F. Marketing Inc. v. President of the Canada Border Services Agency* (2 June 2010), AP-2009-012 and AP-2009-047 (CITT); *Dynamo Industries, Inc. v. President of the Canada Border Services Agency* (1 April 2009), AP-2008-007 (CITT); *Narco Canada Inc., Div. of North American Refractories Co. v. Deputy M.N.R.* (7 December 1994), AP-94-016 and AP-94-109 (CITT).

26. In the present case, it is clear that the term “bicycle wheels” is understood both in the bicycle trade and according to the ordinary sense as including the goods in issue.

27. The sole witness, a bicycle product manager who has been working for Outdoor Gear for 23 years, testified that he was very familiar with the bicycle industry.<sup>22</sup> When asked to describe a physical exhibit representing the goods in issue, he stated as follows: “We have here a product called in our industry a wheel . . . .”<sup>23</sup> Later in his brief testimony, he referred to the goods in issue as a “. . . wheel or incomplete wheel . . .” or “wheel”.<sup>24</sup> When asked how the goods in issue are marketed, the witness stated as follows: “In our industry, we label it as a wheel.”<sup>25</sup>

28. This testimony is consistent with marketing material filed by the CBSA. This material appears to describe some of the goods in issue, or similar goods without tires or tubes, as “wheels”, “wheel sets” or “bicycle wheels”.<sup>26</sup>

29. The witness distinguished the goods in issue from wheels with “. . . tires, tubes, and the rest of the balance, rim, spokes and hub”, which he called “. . . complete wheels . . .”, or “. . . rideable wheel[s].”<sup>27</sup>

30. The *Canadian Oxford Dictionary* defines the word “wheel” as follows: “. . . **1** a solid disc or circular frame with spokes radiating from the centre, attached or able to be attached at its centre to an axle around which it revolves, used to facilitate the motion of a vehicle or for various mechanical purposes. **2** anything resembling a wheel in function or appearance . . . .”<sup>28</sup> Notably, these definitions make no reference to tires or tubes.

31. The goods in issue appear to meet the first dictionary definition. An examination of the physical exhibit<sup>29</sup> filed by Outdoor Gear and marketing material shows that the goods in issue comprise a solid disc or circular frame (i.e. a rim) with spokes radiating from a hub or hub axle in the centre. The witness testified that the bicycle is not “rideable” without a tire and tube, but it is clear that the rim, spokes and hub play a role in propelling the bicycle.

32. The goods in issue also meet the second dictionary definition. In the Tribunal’s view, the physical exhibit certainly looks like a wheel.

33. There are no relative supplementary notes in this case that would affect this conclusion.

34. Moreover, there is nothing in the *Explanatory Notes* that would preclude classification of the goods in issue as “bicycle wheels”. The “relative” *Explanatory Notes* to heading Nos. 87.04 and 87.15, to which Outdoor Gear referred, deal with wheels that are completely different from bicycle wheels and do not in fact relate to the tariff items at issue, which fall in heading No. 87.14.

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22. *Transcript of Public Hearing*, 30 September 2011, at 4-5.

23. *Ibid.* at 5-6.

24. *Ibid.* at 7, 9, 10.

25. *Ibid.* at 11-12.

26. Tribunal Exhibit AP-2010-060-06A, tabs 2, 3.

27. *Transcript of Public Hearing*, 30 September 2011, at 6-9, 12.

28. Second ed., s.v. “wheel”.

29. Exhibit A-01.

35. The *Explanatory Notes* to heading No. 87.14 are relevant, but their reference to “[w]heels and parts thereof (hubs, rims, spokes, etc.)” does not preclude an interpretation of the term “bicycle wheels” as including the goods in issue. Given that the phrase “. . . parts thereof (hubs, rims, spokes, etc.)” specifically refers to individual parts and accessories of bicycle wheels, there is no grammatical reason to interpret the term “wheel” as referring only to wheels with tires and tubes; it could just as reasonably include combinations of components (e.g. the rim, spokes and hub), such as the goods in issue.

36. In addition, the Tribunal sees no inconsistency arising from the fact that tires and tubes are classified separately when imported on their own, in accordance with the *Explanatory Notes* to Section XVII.

37. In any event, the Tribunal recalls that section 11 of the *Customs Tariff* requires the Tribunal to have regard to the *Explanatory Notes* when interpreting the heading or subheading, not the tariff item.

38. Finally, if Parliament intended for the term “bicycle wheels” to refer only to bicycle wheels with tires and tubes, notwithstanding that the meaning of that term in the trade and according to the ordinary sense includes bicycle wheels without tubes and tires, it could easily have reflected that intention. For example, it could have drafted the tariff item as follows: “bicycle wheels fitted with tires”. As Outdoor Gear itself has pointed out, however, it is a basic principle of statutory interpretation that an interpretation which requires the insertion of extra wording should not be accepted where there is another acceptable interpretation which does not require any additional wording.<sup>30</sup>

39. Therefore, pursuant to Rule 1 of the *Canadian Rules* and Rule 1 of the *General Rules*, the Tribunal finds that the CBSA properly classified the goods in issue under tariff item No. 8714.99.10 as bicycle wheels.

40. The result would be the same even if the term “bicycle wheels” referred only to bicycle wheels with tires and tubes, according to Rule 2 (a) of the *General Rules*. Rule 2 (a) would extend the scope of the term “bicycle wheels” to include incomplete or unfinished bicycle wheels if, in their incomplete or unfinished state, they had the “essential character” of complete or finished bicycle wheels.

41. In previous appeals, the Tribunal has held that an incomplete or unfinished article has the essential character of the complete or finished article when it is recognizable or identifiable as the complete or finished article.<sup>31</sup>

42. Outdoor Gear argued that this interpretation of the phrase “essential character” is erroneous because, where Parliament wished phrases such as “recognizable” and “identifiable” to apply in the tariff nomenclature, it has expressly done so.<sup>32</sup> According to Outdoor Gear, the correct test is whether the incomplete or finished article could function as the complete or finished article.

43. The Tribunal applied a similar functional test in *Atomic Ski Canada Inc. v. Deputy M.N.R.*<sup>33</sup> where it held that unassembled skating boots could not be classified pursuant to Rule 2 (a) of the *General Rules* because, without the linings and buckles, they lacked one of the principal features of skating boots, in that they did not have the ability to be worn as a covering for the foot.

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30. *Friesen v. Canada*, [1995] 3 S.C.R. 103 (S.C.C.).

31. See, for example, *Renelle Furniture Inc. v. President of the Canada Border Services Agency* (23 March 2007), AP-2005-028 (CITT) [*Renelle*]; *Rutherford Controls International Corp. v. President of the Canada Border Services Agency* (26 January 2011), AP-2009-076 (CITT).

32. Tribunal Exhibit AP-2010-060-04A at paras. 46-47.

33. (8 June 1998), AP-97-030 and AP-97-031 (CITT).

44. As the Tribunal has subsequently observed, however, in referring to an article as incomplete, Rule 2 (a) of the *General Rules* manifestly includes an article that may lack some components and that is therefore likely not fully operational.<sup>34</sup> Limiting the test to function, as Outdoor Gear proposes, would render Rule 2 (a) virtually meaningless.

45. The evidence shows that the goods in issue have the essential character of a bicycle wheel with tires and tubes, in the sense that they are recognizable or identifiable as bicycle wheels with tires and tubes. As discussed, the goods in issue look like bicycle wheels. They are known in the trade as bicycle wheels. They are marketed as bicycle wheels. Moreover, while a bicycle needs tires to move effectively, it is clear that the goods in issue also facilitate the motion of the bicycle.

46. Outdoor Gear argued, in the alternative, that, if the goods in issue cannot be classified on the basis of Rule 1 or Rule 2 of the *General Rules*, they should be classified under tariff item No. 8714.93.00 as hubs, other than coaster braking hubs and hub brakes, and free-wheel sprocket-wheels, on the basis of Rule 3. In light of the foregoing reasons, this alternative argument need not be considered.

## DECISION

47. The Tribunal finds that the goods in issue are properly classified under tariff item No. 8714.99.10 as bicycle wheels.

48. Therefore, the appeal is dismissed.

Stephen A. Leach  
\_\_\_\_\_  
Stephen A. Leach  
Presiding Member

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34. *Renelle; Bauer Nike Hockey Inc. v. Deputy M.N.R.* (14 February 2001), AP-99-092 (CITT).