

Ottawa, Monday, March 16, 1992

Appeal No. AP-91-131

IN THE MATTER OF an appeal heard on January 24, 1992,
under section 67 of the *Customs Act*, R.S.C., 1985, c. 1
(2nd Supp.) as amended;

AND IN THE MATTER OF a decision of the
Deputy Minister of National Revenue for Customs and
Excise dated May 28, 1991, with respect to a request for a
re-determination pursuant to section 63 of the *Customs Act*.

BETWEEN

YORK BARBELL CO. LTD.

Appellant

AND

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed. The Tribunal finds that the goods are properly classified as
cotton-pins.

Charles A. Gracey
Charles A. Gracey
Presiding Member

John C. Coleman
John C. Coleman
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-131

YORK BARBELL CO. LTD.

Appellant

and

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

The issue in this appeal is whether "quick-change pins" should be classified under tariff item No. 7318.24.00 as "Cotters and cotter-pins" or, as claimed by the appellant, under tariff item No. 9506.91.20 as "... parts of a kind used in physical exercise machines;" specifically, parts of rowing machines. The pins have solid steel shafts that have been fitted to the side of one end with a spring-loaded ball. The other end has a hole into which a steel wire ring has been fitted. They are inserted through holes in the arms of a rowing machine thus preventing the hydraulic mechanisms, which are mounted thereon, from sliding when pressure is exerted by the user.

HELD: *The appeal is dismissed. The Tribunal finds that the goods are properly classified as cotter-pins.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 24, 1992
Date of Decision: March 16, 1992

Tribunal Members: Charles A. Gracey, Presiding Member
John C. Coleman, Member
Robert C. Coates, Q.C., Member

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Dyna Côté

Appearances: Donald Petersen, for the appellant
Ian McCowan, for the respondent

Appeal No. AP-91-131

YORK BARBELL CO. LTD.

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and

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
JOHN C. COLEMAN, Member
ROBERT C. COATES, Q.C., Member

REASONS FOR DECISION

The issue in this appeal is whether "quick-change pins" should be classified under tariff item No. 7318.24.00 as "Cotters and cotter-pins" or, as claimed by the appellant, under tariff item No. 9506.91.20 as " ... parts of a kind used in physical exercise machines;" specifically, parts of rowing machines.

The pins have solid steel shafts that have been fitted to the side of one end with a small spring-loaded steel ball. The other end has a hole into which a steel wire ring has been fitted. The pins are inserted through holes in the collar of the hydraulic mechanisms of the rowing machine that are aligned with holes in the rowing arms. The collar is thus prevented from sliding down the arm when force is applied. The pins may be removed quickly, permitting the collars to be repositioned over one of several holes along the length of the arms, thus reducing or increasing the force necessary to operate the exercise machine.

The applicable tariff items read as follows:

73.18 Screws, bolts, nuts, coach-screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel.

-Non-threaded articles:

7318.24.00 --Cotters and cotter-pins

7318.29.00 --Other

95.06 Articles and equipment for 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 --Gymnasium or athletics articles and equipment
- 9506.91.20 ---Cycling exercise apparatus equipped with electronic monitors; parts of a kind used in physical exercise machines

Counsel for the appellant argued that quick-change pins are not considered cotter-pins in the trade. After referring to dictionary definitions of cotter-pin, counsel argued that such pins are of bifurcated construction. As the pins in issue have solid shafts, they cannot be considered cotter-pins. Counsel argued that cotter-pins are used for more permanent installation than the pins in issue. Also, the goods described in heading No. 73.18 are all single component items, while the pins in issue are an assembly of four components.

Counsel argued that the Explanatory Notes to the Harmonized Commodity Description and Coding System¹ (Explanatory Notes) are not legislative in nature. Goods are not classified according to those notes, as the *Customs Tariff*² provides interpretative rules. Counsel noted that if the Explanatory Notes were taken to their logical conclusion, a wooden dowel would be considered a cotter-pin. Simply because a thing may be used to prevent objects from moving along a shaft does not make that thing a cotter-pin. Also, the French text of the Explanatory Notes suggests that cotter-pins are used to fasten articles together. As the pins are used to prevent the hydraulic mechanisms from sliding along the arms of a rowing machine and not to fasten them together, the pins cannot be considered cotter-pins.

Counsel argued that the rules of grammar and punctuation confirm that the qualifying words " ... and similar articles ... " in heading No. 73.18 refer only to " ... washers (including spring washers).... " He argued that the absence of a comma after the word "washers" leads to this interpretation.

Counsel for the respondent argued that the pins are "cotter-pins" or articles similar to cotter-pins and properly classified under tariff item No. 7318.24.00 or 7318.29.00, respectively. The pins cannot be classified under Chapter 95 as they are parts of general use. Counsel referred to Note 1(k) to Chapter 95, which reads:

1. This Chapter does not cover:

...

(k) Parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39);

...

1. Customs Co-operation Council, Brussels, First Edition, 1986.

2. R.S.C., 1985, c. 41, 3rd Supp.

Note 2 to Section XV reads:

2. Throughout the Nomenclature, the expression "parts of general use" means:

(a) Articles of heading No. 73.07, 73.12, 73.15, 73.17 or 73.18 and similar articles of other base metal;

...

Articles that are identical to the pins are available for purchase locally on the open market for use in a variety of applications.

When classifying goods as either parts of something or as entities in their own right, the application of Rule 1 of the General Rules for the Interpretation of the Harmonized System (General Rules) is of utmost importance. This rule states that classification is first determined by the wording of the tariff headings and any relevant legal note. Therefore, the first consideration of the Tribunal is whether the goods are named or generically described in a particular heading of the tariff schedule. If the goods are named in the heading, they are classified there, subject to any relevant legal note. If not, the Tribunal would give consideration to the heading of the product for which the goods are claimed to be a part.

Counsel for the respondent argued that the goods are properly characterized as cotter-pins and classified under heading No. 73.18, where they are specifically named. With this, the Tribunal is in agreement. The term "cotter-pin" is given a broad definition in the Explanatory Notes, where it is stated:

Cotter-pins, usually of bifurcated form, are used for fitting in holes in spindles, shafts, bolts, etc., to prevent objects mounted thereon from moving along them.

The Tribunal notes that the phrase "usually of bifurcated form" suggests that such pins are not always bifurcated and may, presumably, be of solid construction. This proposition is supported by the French text of the Explanatory Notes that state "*Les goupilles, à tige fendue ou non, ...*" meaning that heading No. 73.18 includes cotter-pins, whether or not split. Thus, the Tribunal would not be precluded from describing the pins in issue as cotter-pins merely because of their solid construction.

As used on a rowing machine, the pins are inserted through holes in its arms, thus preventing the hydraulic mechanisms, which are mounted thereon, from sliding when force is exerted by the user. Clearly, the way these pins are used mirrors the Explanatory Notes as to how cotter-pins are used. As section 11 of the *Customs Tariff* makes it mandatory for the Tribunal to have regard to the Explanatory Notes in interpreting the headings of Schedule I to that Act, the Tribunal referred to the Explanatory Notes in defining the term "cotter-pin" for purposes of heading No. 73.18. As the pins clearly fall within that description of a cotter-pin, the Tribunal concludes that the goods are cotter-pins as described in heading No. 73.18. As stated above, if goods are described in a heading, they are classified there.

Having regard to the legal notes as prescribed by Rule 1 of the General Rules, the Tribunal concludes that the "quick-change pins" are parts of general use. Thus, by virtue of Note 1(k) to Chapter 95, the pins are not classifiable as "... parts of a kind used in physical exercise machines."

In view of its decision that the goods should be classified as cotter-pins, the Tribunal need not address the appellant's argument concerning the meaning conveyed by the punctuation in heading No. 73.18.

Accordingly, the appeal is dismissed.

Charles A. Gracey

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Presiding Member

John C. Coleman

John C. Coleman
Member

Robert C. Coates, Q.C.

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Member