



Ottawa, Monday, November 1, 1993

Appeal Nos. AP-92-102 and AP-92-354

IN THE MATTER OF appeals heard on April 22, 1993,
under section 67 of the *Customs Act*, R.S.C. 1985, c. 1
(2nd Supp.);

AND IN THE MATTER OF two decisions of the
Deputy Minister of National Revenue for Customs and
Excise dated June 9 and December 14, 1992, with respect to
requests for re-determination under section 63 of the
Customs Act.

BETWEEN

GILMOUR SPORTS LTD.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeals are allowed.

W. Roy Hines
W. Roy Hines
Presiding Member

Charles A. Gracey
Charles A. Gracey
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal Nos. AP-92-102 and AP-92-354

GILMOUR SPORTS LTD.

Appellant

and

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

Respondent

These are appeals under section 67 of the Customs Act from two decisions of the Deputy Minister of National Revenue for Customs and Excise dated June 9 and December 14, 1992. The issue is whether goods described as "snowboards" are properly classified under tariff item No. 9506.99.90 of the Customs Tariff as other sports equipment, as determined by the respondent, or more properly classified under tariff item No. 9506.11.00 as other snow-skis, as submitted by the appellant.

HELD: *The appeals are allowed. Snowboards are more properly classified under tariff item No. 9506.11.00 as other snow-skis. Snowboards are similar to snow-skis in their usage and construction and are recognized in the snow-ski trade and industry as snow-skis.*

Place of Hearing: Ottawa, Ontario
Date of Hearing: April 22, 1993
Date of Decision: November 1, 1993

Tribunal Members: W. Roy Hines , Presiding Member
Charles A. Gracey, Member
Desmond Hallissey, Member

Counsel for the Tribunal: Shelley Rowe

Clerk of the Tribunal: Dyna Côté

Appearances: Jack R. Miller and Arthur L. Brunette, for the appellant
Christine Hudon, for the respondent

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GILMOUR SPORTS LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE

Respondent

TRIBUNAL: W. ROY HINES, Presiding Member
CHARLES A. GRACEY, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

These are appeals under section 67 of the *Customs Act*¹ (the Act) from two decisions of the Deputy Minister of National Revenue for Customs and Excise dated June 9 and December 14, 1992. The issue is whether goods described as "snowboards" are properly classified under tariff item No. 9506.99.90 as other sports equipment, as determined by the respondent, or more properly classified under tariff item No. 9506.11.00 as other snow-skis, as submitted by the appellant.

For the purposes of these appeals, the following are the relevant provisions from Schedule I of the *Customs Tariff*:²

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 tools.*

-Snow-skis and other snow-ski equipment:

9506.11.00 --Skis
9506.11.00.10 ----Downhill
9506.11.00.20 ----Cross country
9506.11.00.90 ----Other

9506.19 --Other

9506.19.90.00 ---Other

-Other:

9506.99 --Other

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. R.S.C. 1985, c. 41 (3rd Supp.).

9506.99.90 ---Other

----Other equipment:

9506.99.90.89 -----Other

In the testimonies given by Mr. Robert M. Gilmour, President of the appellant, and Mr. Rod Gilmour, Marketing Manager for the appellant and a user of snowboards and certified snowboard instructor, it was established that snowboards share similar characteristics, manufacturing materials and techniques with other skis, particularly with downhill skis. Snowboards range in length from approximately 90 cm to 230 or 235 cm, similar to the range in length of skis, but are wider than skis. They are generally constructed using the same presses and injection machines³ as are used to make other skis, are composed of wood laminates and fibreglass, are covered with polyurethane as are other skis, are in many cases produced by the same brand-name manufacturers as other skis and have "steel wrap-around edges" similar to other skis. The binding on the snowboards is different from that of other skis, in particular downhill skis, in that there is no release mechanism; however, the snowboards in issue were not imported with bindings, and bindings are therefore not the subject of these appeals.

With respect to the uses of snowboards, Mr. Rod Gilmour stated in his testimony that, in descending the terrain, the stance of the body and the body movement techniques, namely, "moving ... flexing and carving" and "weighting of [the] body" used in snowboarding or "riding" are similar to those used in downhill skiing, that generally the same facilities accommodate both "riders" and skiers and that about 20 to 25 percent of all snowboarders are "cross-over riders" who participate in both snowboarding and skiing. In Mr. Gilmour's view, the primary distinguishing features between snowboarding and skiing are that the user's feet are affixed to one ski in snowboarding, resulting in a different lower body movement, that the feet are affixed at an angle on a snowboard as opposed to being perpendicular facing down the hill on other skis and, finally, that no poles are used in snowboarding.

Mr. Rod Gilmour referred to a number of documents which, in his view, indicate that snowboarding and skiing are being treated as part of the same industry, namely, the programme from the National Ski Industries Association's "Ski and Snowboard Show 93" held in Montréal from February 21 to 24, Mr. Jim Rennie's book, What's New! What's Hot! What's Priced to Hit the Spot⁴ previewing 1993 ski and snowboard merchandise for the show in Montréal and an article entitled "Open Your Mind to Snowboarding"⁵ in the November 1991 issue of Ski Canada.

Mr. C. Paul Demers, International Traffic Manager for Burton Snowboards and a U.S. customs broker, responsible for customs clearance and transportation of goods, testified on behalf of the appellant with respect to a ruling of the Department of Treasury, U.S. Customs, in Washington, D.C.,⁶ that snowboards should be classified as "other skis," which he stated was still in effect in the United States. He stated that, of all the countries to which Burton Snowboards exports snowboards, Canada is the only one that does not classify the snowboards under tariff item No. 9506.11.00 as "other skis."

3. Tribunal Exhibit No. AP-92-102-354-A.13, letter dated January 20, 1993, from A. J. Rennie, a renowned ski industry newsperson, to Mr. Rod Gilmour.

4. (Collingwood: Rennie Publications, 1992).

5. Doug Brett, (1991) Vol. 20 No. 2 Ski Canada 62.

6. HQ 085523, December 28, 1989.

Counsel for the respondent presented one witness, Mr. Vincent Lo Monaco, Tariff Administrator with the Department of National Revenue (Revenue Canada) who, as the person responsible for addressing the issue of inconsistent classification of snowboards in Revenue Canada's regional customs offices across Canada, testified that, following a review of snowboards in 1990, Revenue Canada changed its policy so that snowboards would be classified in subheading No. 9506.99 as other sports equipment instead of under classification No. 9506.11.00 as other skis. This change in classification was based upon the view that snowboards could not be considered to be skis.

In argument, counsel for the appellant submitted that snowboards are a type of ski because of their function and close association and connection with other skis and the ski industry, in terms of equipment design and operation, and location of facilities. In addition, counsel adopted Mr. John A. Durant's reasoning in the ruling of the Department of Treasury, U.S. Customs, that snowboards should be classified as other skis.

Counsel for the respondent submitted that snowboards are separate and distinct from snow-skis. Counsel relied on the definition of the word "skis" in The Concise Oxford Dictionary of Current English,⁷ and, in particular, on the notion that skis are long and narrow and that they come in a set of two. In counsel's view, the snowboards do not fit this definition. Counsel further argued that snowboarding is a separate and distinct sporting activity, as was indicated in Mr. Rod Gilmour's testimony and described in articles from The Ottawa Sun,⁸ Ski Canada⁹ and throughout Snowboard Canada¹⁰ magazine. In particular, counsel referred to the different terminology, techniques, magazines, sportswear and retail outlets associated specifically with snowboarding, as distinguished from skiing, and to the comments of Ms. Catherine Jones, Vice-President of the Ontario Boarding Association, in a broadcasting of Canada AM, that "[snowboarding] is actually a sport of its own."

The issue, as put to the Tribunal, is whether snowboards are properly classified under tariff item No. 9506.99.90 as other sports equipment or more properly classified under tariff item No. 9506.11.00 as other snow-skis. In this connection, it is relevant to note that tariff item No. 9506.11.00 simply provides for "skis" and does not subdivide this heading into downhill, cross-country or other. These latter designations are relevant only for statistical purposes. Thus, in order to be classified under tariff item No. 9506.11.00, the goods in issue must merely be snow-skis without any further qualification, and the issue is whether a snowboard is a snow-ski. The Tribunal has concluded that a snowboard is a snow-ski, based on the testimony and evidence received relating to the general usage of, and terminology applied to, snowboards within the trade and the skiing industry.

The evidence before the Tribunal is that, while snowboarding is a relatively new sport, it is closely aligned to traditional downhill snow-skiing and to the industry associated with that sport. Snowboards themselves are generally made by the same manufacturers that produce downhill skis, are made from the same materials and are constructed in much the same manner. Snowboard "riders" use the same hills as skiers. The testimonies of the appellant's witnesses in this regard were unrefuted at the hearing.

The witness for the respondent, in explaining Revenue Canada's decision to reclassify snowboards in 1990, stated that "[t]he single most important factor ... in our classification work,

7. Eighth Edition (Oxford: Clarendon Press, 1990) at 1137.

8. "'Shredders' Head for the Slopes" (2 February 1993) 16.

9. Brian Peck, "Shred-Tested Boards" (1991) Vol. 20 No. 2 Ski Canada 95.

10. (1993) Vol. 1 No. 2 Snowboard Canada Magazine.

is what the product is. In order to be classified in subheading [No.] 9506.11 [the snowboard] has to be snow-skis or other snow-ski equipment. We have not found one person yet in the industry or associations who is willing to come forward and call a snowboard a ski, or skis.¹¹ Accordingly, in Revenue Canada's view, since the snowboards are not skis, they have to be classified in residual subheading No. 9506.99 as other sports articles or equipment.

Clearly, the difficulty in this case revolves around the terminology used in the trade to describe different products that are used for essentially the same purpose. Downhill skis, cross-country skis and snowboards are all used to glide or travel over snow. Downhill and cross-country skis, while quite different in physical characteristics, are both encompassed by the single term "skis" under tariff item No. 9506.11.00. However, even though snowboards are used for the same purpose, the Tribunal has not encountered any literature or evidence which describes a snowboard as a ski, except for the decision of U.S. customs authorities which calls the goods in issue a "snowboard ski." Indeed, all of the dictionary definitions examined refer to a ski as one of a pair of long thin runners of wood, metal, etc., although these definitions do not prescribe any specific length or width for skis.

The verb "to ski" is defined as "to engage in the sport of gliding down snow-covered inclines on skis."¹² There is no question in the minds of the members of the Tribunal that snowboards are used exclusively for the purpose of gliding down snow-covered inclines or over snow in much the same way as cross-country or downhill skis are used. As noted above, there are many similarities between these goods, especially in terms of their usage and construction. The fact that the snowboard is used as a single article rather than as a pair and that it is manufactured to a wider dimension than a traditional ski does not, in the Tribunal's view, make it something other than a ski. Moreover, the fact that the statistical classification under tariff item No. 9506.11.00 provides for the category "other" indicates that the legislator contemplated the inclusion of snow-skis other than downhill and cross-country under this tariff item.

Thus, while a snowboard is physically and visually distinguishable from a traditional snow-ski or a pair of skis, the Tribunal concludes that a snowboard is, nonetheless, a type of snow-ski and is recognized as such in the trade and the skiing industry.

Accordingly, the appeals are allowed.

W. Roy Hines

W. Roy Hines
Presiding Member

Charles A. Gracey

Charles A. Gracey
Member

Desmond Hallissey

Desmond Hallissey
Member

11. Transcript at 113.

12. Webster's New World Dictionary, Second College Edition (Toronto: Nelson, Foster & Scott, 1974) at 1334.