

Ottawa, Thursday, November 7, 1996

Appeal Nos. AP-95-269 and AP-95-285

IN THE MATTER OF appeals heard on July 4, 1996, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue dated November 9 and December 19, 1995, with respect to requests for re-determination under section 63 of the *Customs Act*.

BETWEEN

UVEX TOKO CANADA LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeals are allowed.

Lyle M. Russell
Lyle M. Russell
Presiding Member

Susanne Grimes
Susanne Grimes
Acting Secretary

UNOFFICIAL SUMMARY

Appeal Nos. AP-95-269 and AP-95-285

UVEX TOKO CANADA LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

The appellant is a distributor of various products, including exterior luggage rack systems produced by Yakima in the United States. The goods in issue are containers for storing luggage and ski equipment, used with the luggage rack system produced by Yakima. The issue in these appeals is whether the storage containers imported by the appellant are properly classified under tariff item No. 3923.10.00 as articles of plastic for the conveyance or packing of goods, as determined by the respondent, or should be classified under tariff item No. 8708.29.99 as other accessories of bodies of motor vehicles, as claimed by the appellant.

HELD: The appeals are allowed. The Tribunal is of the view that the goods in issue are parts of exterior luggage rack systems for passenger automobiles and, therefore, should be classified under tariff item No. 8708.29.99 and qualify for the benefits of Code 9606.

Place of Hearing: Ottawa, Ontario
Date of Hearing: July 4, 1996
Date of Decision: November 7, 1996

Tribunal Member: Lyle M. Russell, Presiding Member

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Margaret Fisher

Appearances: Michael A. Sherbo, for the appellant
Lyndsay K. Jeanes, for the respondent

Appeal Nos. AP-95-269 and AP-95-285

UVEX TOKO CANADA LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: LYLE M. RUSSELL, Presiding Member

REASONS FOR DECISION

These are appeals under subsection 67(1) of the *Customs Act*¹ (the Act) from decisions of the Deputy Minister of National Revenue dated November 9 and December 19, 1995, heard by one member of the Tribunal.²

The appellant is a distributor of various products, including exterior luggage rack systems produced by Yakima in the United States. The goods in issue are containers for storing luggage and ski equipment, used with the luggage rack system produced by Yakima.

The goods in issue were imported in a number of transactions occurring in 1994 and 1995. At the time of importation, the goods in issue were classified under tariff item No. 8708.29.99 of Schedule I to the *Customs Tariff*³ as other accessories of bodies of motor vehicles. The appellant requested that the goods in issue receive the benefits of Code 9606 of Schedule II to the *Customs Tariff*. On August 9, 1994, a re-determination was made under subsection 60(3) of the Act, classifying the goods in issue under tariff item No. 3923.10.00 as articles of plastic for the conveyance or packing of goods and disallowing the appellant's request for the benefits of Code 9606. The appellant filed a request for re-determination and, by decisions dated November 9 and December 19, 1995, the respondent maintained the classification of the goods in issue under tariff item No. 3923.10.00 and disallowed the appellant's request that the goods in issue receive the benefits of Code 9606.

The issue in these appeals is whether the storage containers imported by the appellant are properly classified under tariff item No. 3923.10.00 as articles of plastic for the conveyance or packing of goods, as determined by the respondent, or should be classified under tariff item No. 8708.29.99 as other accessories of bodies of motor vehicles, as claimed by the appellant.

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. Section 3.2 of the *Canadian International Trade Tribunal Regulations*, added by SOR/95-27, December 22, 1994, *Canada Gazette* Part II, Vol. 129, No. 1 at 96, provides, in part, that the Chairman of the Tribunal may, taking into account the complexity and precedential nature of the matter at issue, determine that one member constitutes a quorum of the Tribunal for purposes of hearing, determining and dealing with any appeal made to the Tribunal pursuant to the *Customs Act*.
3. R.S.C. 1985, c. 41 (3rd Supp.).

The relevant tariff nomenclature in Schedule I to the *Customs Tariff* reads as follows:

39.23	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics.
3923.10.00	-Boxes, cases, crates and similar articles
87.08	Parts and accessories of the motor vehicles of heading Nos. 87.01 to 87.05.
8708.29	--Other
8708.29.99	----Other

The appellant's representative called one witness, Mr. Roland Smith, Controller of Uvex Toko Canada Ltd. Mr. Smith indicated that he had been involved with the appellant since 1980. He described the Yakima System as a modular car rack system designed primarily to be used on the tops of cars. The system includes various attachments for holding goods, such as bikes, skis and other products that people find difficult to put inside cars and which can be held on a rack system. Mr. Smith agreed that the system could be referred to as an "exterior luggage system." He stated that the appellant sells Yakima products in retail, sports and after-market automotive stores across Canada. With respect to the luggage carriers or "boxes" in issue, Mr. Smith testified that they were designed specifically for use with the Yakima rack system to which they are bolted when used. The boxes are made of flexible lightweight materials and are designed to withstand the wind drag created when a vehicle is moving.

In cross-examination, Mr. Smith agreed that all the items in the rack system were sold separately. He stated that he knew of only one other system, that of Yakima's primary competitor, Thule, with which the boxes or containers could be used. With respect to the statement in Yakima's product literature that "[t]he universal mounting hardware included lets you install [boxes] on any Yakima Rack ... as well as other racks with round or square crossbars," Mr. Smith stated that, as far as he knew, this referred only to Thule products, which have square crossbars, and Yakima products, which have round crossbars. Mr. Smith agreed that the goods in issue are made of plastic and are used for transporting a wide variety of goods, though only on the tops of cars. In response to questions from the Tribunal, Mr. Smith explained that the appeals related to different sizes of containers. He also explained that the rack systems were not permanently fixed to the roofs of cars.

The appellant's representative argued that, in accordance with Rule 1 of the *General Rules for the Interpretation of the Harmonized System*⁴ (the General Rules), the goods in issue should be classified as other accessories of bodies of motor vehicles under tariff item No. 8708.29.99. In his submission, Rule 3 of the General Rules does not come into play, as there is no competing heading. Heading No. 39.23 cannot apply, he argued, because the goods in issue are not "[a]rticles for the conveyance or packing of goods." Referring to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁵ (the Explanatory Notes) to heading No. 86.09 (intermodal freight containers), he argued that heading No. 39.23 was not meant to cover containers used for the transportation of goods without intermediate packing, designed for securing to a motor vehicle and intended for repeated use. However, even if the goods in issue were *prima facie* classifiable in either heading No. 87.08 or heading No. 39.23, he submitted that,

4. *Supra* note 3, Schedule I.

5. Customs Co-operation Council, 1st ed., Brussels, 1986.

according to Note 3 to Section XVII of the *Customs Tariff*, heading No. 87.08 should prevail because the goods in issue are suitable for use solely or principally with automobiles.

Pointing to the reference to “exterior luggage racks” in the Explanatory Notes to heading No. 87.08, the appellant’s representative argued that it was unreasonable to hold that this term covers only the bars and clips that attach to the vehicle and not the other components of the “rack system.” Citing a statement in the respondent’s brief that the goods in issue might be considered accessories to exterior luggage racks, he argued that such accessories are also accessories for motor vehicles within the terms of heading No. 87.08, as they are solely or principally used with motor vehicles and are not more specifically named elsewhere in the nomenclature. In essence, he argued, the boxes are themselves exterior luggage racks for motor vehicles or, at least, components of exterior luggage racks. They cannot be used for anything else, even though sold separately from other components of the rack system. Although not arguing for classification in heading No. 86.09, which he believed was limited to containers for commercial freight, he suggested that it would be more logical to classify the goods in issue in that heading rather than in heading No. 39.23.

Counsel for the respondent argued that the references to heading No. 86.09 cited above served only to cloud the real issue in this case, which is whether heading No. 87.08 better describes the goods in issue than does heading No. 39.23. She submitted that, *prima facie*, the goods could fall in either of these two headings and that Rule 3 (a) of the General Rules should be invoked to resolve the matter in favour of heading No. 39.23. It was her contention that this heading provided a more specific description of the goods in issue than did heading No. 87.08. She felt that the following example given in the Explanatory Notes to the General Rules was directly on point: “Tufted textile carpets, identifiable for use in motor cars ... are to be classified not as accessories of motor cars in heading 87.08 but in heading 57.03, where they are more specifically described as carpets.” Similarly, in her view, heading No. 39.23, “Articles for the conveyance or packing of goods, of plastics,” by describing both the material composition of the goods and their purpose, gives a more specific description of the goods in issue than do the words of heading No. 87.08, “Parts and accessories of the motor vehicles of heading Nos. 87.01 to 87.05.” The evidence was clear, she said, that the goods in issue are used for the conveyance of goods and that they are made of plastic.

Counsel for the respondent submitted that the goods in issue are not exterior luggage racks, but rather distinct goods which sit on top of such racks. They are not advertised as “racks” in the appellant’s sales brochures; rather, they are illustrated under the heading “luggage.” They are sold separately from goods described as “racks”; accessories, other than the goods in issue can be, and are, attached to the racks; and the goods in issue can be fitted to at least one other brand of rack. Thus, they are not part of a “luggage rack system.” While the Yakima rack, by itself, is an accessory to a motor vehicle, this does not mean that anything that connects to the rack is also an accessory to a motor vehicle. Although the goods in issue may be used principally with motor vehicles, counsel submitted that this is not sufficient grounds to classify them in heading No. 87.08. They must fall in heading No. 39.23 because, in the words of Note III (C) of the Explanatory Notes to Section XVII, they are “covered more specifically” in that heading. It follows, she said, that the goods in issue do not qualify for the benefits of Code 9606, since it does not make reference to tariff item No. 3923.10.00.

The Tribunal considers that the goods in issue should be classified under tariff item No. 8708.29.99 as other accessories of bodies of motor vehicles and, thus, qualify for the benefits of Code 9606. The Tribunal comes to this conclusion bearing in mind that it is the legislation and the principles applicable to the

interpretation of the legislation, including those set out in the General Rules, that must govern the classification of the goods in issue. The Tribunal is particularly cognizant of Rule 1 of the General Rules. As noted by the Tribunal in *York Barbell Co. Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*,⁶ Rule 1 is of the utmost importance when classifying goods. Rule 1 states that classification is first determined by the wording of the tariff headings and any relative Section or Chapter Notes. In this case, the Tribunal must, therefore, first consider the wording of heading Nos. 39.23 and 87.08.

In considering the wording of heading No. 39.23, the Tribunal acknowledges that the goods in issue may be described as being made of plastic and used for conveying goods. However, the Tribunal is persuaded by the evidence that the goods in issue are more clearly or specifically described as being accessories of motor vehicles. Note III (B) (1) of the Explanatory Notes to Section XVII states that “when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its **principal use**.” The Tribunal accepts the argument of the appellant’s representative that the goods in issue are, themselves, accessories of motor vehicles, even though they must be combined with a rack to be used with a vehicle. It is clear from Yakima’s 1996 sales brochure⁷ that the company sees itself as a supplier of a “roof rack system” and that the “base rack” is designed to be combined with other components to form a “customized system” suitable for the model of car driven by the user and the load to be carried. Different components are added to the basic rack to carry bikes, canoes, skis and luggage. In the Tribunal’s view, the rack itself is not, strictly speaking, a “luggage rack.” It is a “roof rack” which becomes a luggage rack only when a container such as those in issue, a “luggage box” to quote from Yakima’s brochure, is mounted on it. Both parts of the combination, or system, are accessories for motor vehicles because they are designed specifically to be attached to and carried by such vehicles. Taken together, the rack and the goods in issue are an “exterior luggage rack” as provided for in Note (B) of the Explanatory Notes to heading No. 87.08.

Accordingly, the appeals are allowed.

Lyle M. Russell
Lyle M. Russell
Presiding Member

6. 5 T.C.T. 1150, Appeal No. AP-91-131, March 16, 1992.

7. Exhibit A-1.