CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, November 7, 1996

Appeal No. AP-95-308

IN THE MATTER OF an appeal heard on August 22, 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 January 4 and 29, 1996, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

CITY WIDE SPORTS **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Susanne Grimes
Susanne Grimes
Acting Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-95-308

CITY WIDE SPORTS **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal pursuant to section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue. The goods in issue are described in the respondent's brief as various models of motorized treadmills designed for running or jogging in place and rowing machines that are referred to as ergometers, all of which are equipped with electronic monitors for measuring and conveying to the user information such as running or rowing speed, time elapsed, time remaining in a preset routine and distance run or rowed. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9506.91.90 as other articles and equipment for general physical exercise, as determined by the respondent, or should be classified under tariff item No. 9506.91.20 as cycling exercise apparatus equipped with electronic monitors, as claimed by the appellant.

HELD: The appeal is dismissed. The Tribunal is of the view that the goods in issue do not fall within the definition given to the word "cycling" in *Wynne Biomedical Ltd.* v. *The Deputy Minister of National Revenue*, which the Tribunal adopts. They are, therefore, not cycling apparatus and cannot be classified under tariff item No. 9506.91.20, as claimed by the appellant. The fact that the goods in issue are equipped with electronic monitors is, therefore, irrelevant to the present case. In the Tribunal's view, the goods in issue are properly classified under tariff item No. 9506.91.90 as other articles and equipment for general physical exercise. In addition, the Tribunal notes that "[r]owing machines" are named in classification No. 9506.91.90.30.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	August 22, 1996
Date of Decision:	November 7, 1996
Tribunal Member:	Arthur B. Trudeau, Presiding Member
Counsel for the Tribunal:	Joël J. Robichaud
Clerk of the Tribunal:	Margaret Fisher
Appearances:	Norman Deschenes, for the appellant Josephine A.L. Palumbo, for the respondent

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-95-308

CITY WIDE SPORTS **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member

REASONS FOR DECISION

This is an appeal pursuant to section 67 of the *Customs Act*[1] (the Act) from decisions of the Deputy Minister of National Revenue dated January 4 and 29, 1996, made under section 63 of the Act. The appeal was heard by one member of the Tribunal.[2]

The goods in issue are described in the respondent's brief as various models of motorized treadmills designed for running or jogging in place and rowing machines that are referred to as ergometers, all of which are equipped with electronic monitors for measuring and conveying to the user information such as running or rowing speed, time elapsed, time remaining in a preset routine and distance run or rowed. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9506.91.90 of Schedule I to the *Customs Tariff*[3] as other articles and equipment for general physical exercise, as determined by the respondent, or should be classified under tariff item No. 9506.91.20 as cycling exercise apparatus equipped with electronic monitors, as claimed by the appellant. For purposes of this appeal, the relevant tariff nomenclature reads as follows:

95.06	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this Chapter; swimming pools and paddling pools.
9506.91	--Articles and equipment for general physical exercise, gymnastics or athletics
9506.91.10	---Of leather
9506.91.20	---Cycling exercise apparatus equipped with electronic monitors; parts of a kind used in physical exercise machines
9506.91.90	---Other

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 the 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.).

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No witnesses testified at the hearing. The Tribunal, therefore, relied on the written documents and briefs filed by both parties and oral argument presented by the appellant's representative and counsel for the respondent.

The appellant's representative argued that the goods in issue should be classified under tariff item No. 9506.91.20 as "[c]ycling exercise apparatus equipped with electronic monitors," even though he admitted that they are not cycling apparatus. He argued that the Tribunal should rely on Rule 4 of the *General Rules for the Interpretation of the Harmonized System*[4] (the General Rules) and that the goods in issue should be classified according to their essential character, which, in his opinion, are the electronic monitors. He argued that the goods in issue are more akin to the goods described in tariff item No. 9506.91.20 and should, therefore, be classified thereunder. The representative submitted that it does not make sense to classify the goods in issue as other exercise apparatus. In his view, this gives the term "other" too broad an interpretation. He also argued that, since cycling exercise apparatus equipped with monitors qualify for a remission for machinery in Schedule VI to the *Customs Tariff*, the goods in issue should also qualify and be classified similarly in Schedule I. In his view, Parliament must have meant to include the goods in issue in tariff item No. 9506.91.20, since they are also equipped with electronic monitors.

Counsel for the respondent argued that the goods in issue are properly classified under tariff item No. 9506.91.90 as other articles and equipment for general physical exercise. She argued that the goods in issue are not cycling apparatus and that, as such, they cannot be classified under tariff item No. 9506.91.20. In support of her argument, she relied on the Tribunal's decision in *Wynne Biomedical Ltd.* v. *The Deputy Minister of National Revenue*.[5] Counsel argued that the fact that the goods in issue are equipped with electronic monitors does not mean that they should be classified under tariff item No. 9506.91.20. According to counsel, the electronic monitors do not give the goods in issue their essential character. She mentioned this in response to an argument put forward by the appellant's representative and in case the Tribunal finds that it has to rely on Rule 3 (b) of the General Rules in order to classify the goods in issue. Counsel also argued that the fact that cycling exercise apparatus equipped with electronic monitors qualify for a remission for machinery in Schedule VI to the *Customs Tariff* does not mean that the goods in issue should also qualify. Furthermore, the status of goods in Schedule VI to the *Customs Tariff* is irrelevant to this appeal.

When classifying goods in Schedule I to the *Customs Tariff*, the application of Rule 1 of the General Rules is of the utmost importance. Rule 1 states that classification is first determined according to the terms of the headings and any relative Chapter Notes. Therefore, the Tribunal must determine whether the goods in issue are named or generically described in a particular heading. If they are, then they must be classified therein subject to any relative Chapter Notes. Section 11 of the *Customs Tariff* provides that, in interpreting the headings or subheadings, the Tribunal shall have regard to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*.[6]

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4 *Supra* note 3, Schedule I.

5. Appeal No. AP-94-240, October 12, 1995.

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

To be classified under tariff item No. 9506.91.20, the goods in issue must be cycling apparatus. In *Wynne Biomedical*, the Tribunal stated the following with respect to the proper meaning to be attributed to the word "cycling":

> Based on the plain meaning of the word "cycling," in the context of exercise or exercise equipment, the Tribunal is of the view that the words "cycling exercise apparatus" contemplate equipment which, in some manner, has the character of bicycling or a bicycle. The essential feature of that activity is, in the Tribunal's view, a repetitive circular motion, usually performed with one's legs. The climbers in issue do not allow the user to perform that motion. Furthermore, the climbers in issue do not have seats, pedals or any of the other physical characteristics commonly associated with a bicycle.[7]

The Tribunal is of the view that the goods in issue do not fall within the definition given to the word "cycling" in *Wynne Biomedical*, which the Tribunal adopts. They are, therefore, not cycling apparatus and cannot be classified under tariff item No. 9506.91.20, as claimed by the appellant. The fact that the goods in issue are equipped with electronic monitors is, therefore, irrelevant to the present case. In the Tribunal's view, the goods in issue are properly classified under tariff item No. 9506.91.90 as other articles and equipment for general physical exercise. In addition, the Tribunal notes that "[r]owing machines" are named in classification No. 9506.91.90.30. Having so found, the Tribunal does not need to refer to any of the other General Rules. Furthermore, the Tribunal agrees with counsel for the respondent that the status of goods in Schedule VI to the *Customs Tariff* is irrelevant to this appeal.

Accordingly, the appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

7. *Supra* note 5 at 3.