

Ottawa, Friday, August 29, 1997

Appeal No. AP-96-007

IN THE MATTER OF an appeal heard on June 13, 1997, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue dated January 31, 1996, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

TROSPORT ACQUISITIONS INC.

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

Michel P. Granger

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Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-96-007

TROPSPORT ACQUISITIONS INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether certain hockey pants are properly classified under tariff item No. 9506.99.70 as waist, thigh and hip protective equipment for hockey, as determined by the respondent. The appellant claimed that the hockey pants should be classified under tariff No. 9506.99.99 as other hockey equipment.

HELD: The appeal is dismissed. The Tribunal is satisfied that the hockey pants in issue are reasonably described as “waist, thigh and hip protective equipment” for hockey. Although this protective equipment is classified according to the areas of the body protected, the Tribunal is of the view that the tariff nomenclature under which it is classified need not list every part of the human anatomy that is protected.

Place of Hearing: Ottawa, Ontario
Date of Hearing: June 13, 1997
Date of Decision: August 29, 1997

Tribunal Member: Arthur B. Trudeau, Presiding Member

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Margaret Fisher

Appearances: Brian J. Barr, for the appellant
Ian McCowan, for the respondent

Appeal No. AP-96-007

TROSPORT ACQUISITIONS INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member

REASONS FOR DECISION

This is an appeal, which was heard by one member of the Tribunal,¹ under section 67 of the *Customs Act*² (the Act) from a decision of the Deputy Minister of National Revenue under section 63 of the Act. The issue in this appeal is whether certain hockey pants are properly classified under tariff item No. 9506.99.70 of Schedule I to the *Customs Tariff*³ as waist, thigh and hip protective equipment for hockey, as determined by the respondent. The appellant claimed that the hockey pants should be classified under tariff No. 9506.99.99 as other hockey equipment.

The relevant tariff nomenclature of Schedule I to the *Customs Tariff* is 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.
- 9506.99 --Other
- 9506.99.70 ---Shin-guards and elbow or shoulder pads excluding those for football; waist, thigh and hip protective equipment
- 9506.99.99 ----Other

The appellant's witness, Dr. Mark J. Aubry, was qualified as an expert witness in the field of sports medicine. Dr. Aubry played hockey for numerous years, was the team physician for the Canadian Olympic Hockey Team and has been associated with the Canadian Hockey Association, for which he helped prepare the participant's manual for the Hockey Trainers Safety Program.

Dr. Aubry addressed the top, middle and lower parts of hockey pants in describing how they provide protection. He explained that hockey pants should be high enough to come over the lower part of the rib cage. This way, protection is given to the spleen, liver and kidneys, as well as to the ribs. Along the sides, the upper part of the pelvic bones, or what is called the iliac crest, is protected. At the upper back, the lumbar

1. 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*.

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

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

spine is protected. In the middle, protection is provided to the abdominal area, the lower part of the pelvis or iliac bones, the lower spine or sacrum, the coccyx and upper buttocks. At the bottom, the thighs, groin, upper part of the knee area and lower buttocks are protected.

With regard to the coccyx, Dr. Aubry said that it is part of the spine and not part of the waist or hips. Similarly, the ribs are not part of the waist. He also said that hockey pants are hockey equipment and that there is no difference between the hockey pants worn by males and females.

In cross-examination, Dr. Aubry agreed that, as a general statement or in layman's terms, hockey pants cover the waist, thighs and hips. When asked by the Tribunal, in separate questions, about what equipment should be purchased to protect the waist, thighs and hips, Dr. Aubry consistently indicated hockey pants. He added that there is no separate equipment to protect these three areas of the body.

Counsel for the appellant argued that hockey pants are equipment that protects much more than the waist, thighs and hips. The testimony of Dr. Aubry established that hockey pants also protect the ribs, the organs below the ribs, including the spleen, kidneys and liver, the spine, sacrum and coccyx. As such, hockey pants are incompletely described and, thus, not properly described as "waist, thigh and hip protective equipment." Rather, the individual removable pads contained in hockey pants may be described as such protective equipment.

Counsel for the respondent argued that "waist, thigh and hip protective equipment" is a fairly precise description of hockey pants. He noted that Dr. Aubry agreed that this represented a good general description of hockey pants. As to the various bones and organs identified as also being protected, counsel submitted that they are underneath the general areas identified in the tariff nomenclature. In addition, this description is more specific than the "other" classification advanced by counsel for the appellant.

The Tribunal is satisfied that the hockey pants in issue are reasonably described as "waist, thigh and hip protective equipment" for hockey. Although this protective equipment is classified according to the areas of the body protected, the Tribunal is of the view that the tariff nomenclature under which it is classified need not list every part of the human anatomy that is protected. As Dr. Aubry testified, it is fair to say that hockey pants protect the waist, thighs and hips.

Accordingly, the appeal is dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member