

Ottawa, Friday, February 13, 1998

Appeal Nos. AP-96-241 and AP-96-242

IN THE MATTER OF appeals heard on September 2, 1997,
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 8 and 22, 1997, with respect to a
request for re-determination under section 63 of the *Customs Act*.

BETWEEN

**C.A.S. SPORTS INTERNATIONAL INC. AND
ATOMIC SKI CANADA INC.**

Appellants

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeals are dismissed.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

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**C.A.S. SPORTS INTERNATIONAL INC. AND
ATOMIC SKI CANADA INC.**

Appellants

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

These are appeals under section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue. The issue in these appeals is whether snowboards are properly classified under tariff item No. 9506.11.90 as other skis, as determined by the respondent, or should be classified under tariff item No. 9506.11.10 as “[s]kis - [d]ownhill,” as claimed by the appellants.

HELD: The appeals are dismissed. The Tribunal adopts its reasoning in *Gilmour Sports Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*, where it found that snowboards are a type of ski, but that they are clearly different from downhill skis. The Tribunal cannot accept the argument of the appellants’ representative that subheading No. 9506.11 describes all types of skis used to go downhill. In the Tribunal’s view, this subheading describes traditional downhill skis, regardless of whether the word “downhill” is placed before or after the word “skis.” To come to a different view would mean that all types of skis could essentially be classified in that subheading since, in the Tribunal’s opinion, at one point or another, all types of skis are used to go downhill, including cross-country skis. The Tribunal notes that, in the French version, subheading No. 9506.11 reads “*Skis alpin*” [sic]. In the Tribunal’s view, this supports its conclusion that the legislator intended that only traditional downhill skis or *skis alpins* be classified in that subheading. The Tribunal, therefore, finds that the goods in issue are properly classified under tariff item No. 9506.11.90 as other skis.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	September 2, 1997
Date of Decision:	February 13, 1998
Tribunal Member:	Arthur B. Trudeau, Presiding Member
Counsel for the Tribunal:	Joël J. Robichaud
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Michael Sherbo, for the appellants Edward (Ted) Livingstone, for the respondent

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C.A.S. SPORTS INTERNATIONAL INC. AND
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Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member

REASONS FOR DECISION

These are appeals under section 67 of the *Customs Act*¹ (the Act), heard by one member of the Tribunal,² from decisions of the Deputy Minister of National Revenue made under section 63 of the Act and dated January 8 and 22, 1997.

The issue in these appeals is whether snowboards are properly classified under tariff item No. 9506.11.90 of Schedule I to the *Customs Tariff*³ as other skis, as determined by the respondent, or should be classified under tariff item No. 9506.11.10 as “[s]kis - [d]ownhill,” as claimed by the appellants. For purposes of these appeals, 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.
	-Snow-skis and other snow-ski equipment:
9506.11	--Skis
9506.11.10.00	---Downhill
9506.11.90	---Other
10	----Cross country
90	----Other

At the hearing, one witness testified on behalf of the respondent, Mr. Jean-Yves Arsenault, Sales Manager for Grizzly Mfg. He was qualified as an expert in the manufacture of snowboards and in the instruction of snowboarding and downhill skiing. He testified that snowboards range in length from approximately 95 cm to 190 cm and can be as much as 14 in. wide and 1/2 in. thick. They are generally constructed out of wood and have sidewalls which are made of phenol, steel edges and a top sheet covered with fibreglass. The top sheet is the part of the snowboard on which the bindings are attached. Mr. Arsenault

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

explained that the bindings on snowboards are completely different from those on downhill skis. One major difference is that there is no release mechanism on snowboards. He testified that snowboards share similar manufacturing materials and techniques with downhill skis. Snowboards are generally constructed using the same presses and injection machines as are used to make downhill skis. Mr. Arsenault explained that snowboards are different from downhill skis in many respects. He noted, for example, that downhill skis come in pairs, are longer and thicker than snowboards and are used differently.

Mr. Arsenault explained the differences between the techniques used to ski and the techniques used to snowboard. He said that poles are generally used by skiers, while snowboarders never use poles. Furthermore, in his view, it takes much longer to learn how to ski than to learn how to snowboard. He explained that, until recently, it was prohibited to snowboard at downhill ski resorts. Now, there are special areas reserved for snowboarders. Furthermore, ski resorts will sometimes hold special events to allow snowboarders to practice their sport. Mr. Arsenault testified that a downhill skier cannot jump on a snowboard and automatically know how to snowboard. A person has to take lessons and practice going down the hill. Finally, Mr. Arsenault explained that snowboards are marketed as separate products. They are not sold as downhill skis. He testified that, while one may find snowboards in stores which sell downhill skis, there are specialty shops which sell only snowboards.

In cross-examination, Mr. Arsenault testified that snowboarders do not necessarily practice their sport on traditional ski hills. They sometimes go to special parks that are set up for acrobatics or half-pipes, which are types of manoeuvres performed by snowboarders in half-moon shaped slopes that are dug up in the snow. Mr. Arsenault acknowledged that snowboarders go downhill when they are on these slopes. He testified that, in his view, snowboarding and downhill skiing are two completely different sporting activities.

The appellants' representative argued that the goods in issue are more properly described under tariff item No. 9506.11.10 as "[s]kis - [d]ownhill," than under tariff item No. 9506.11.90 as other skis. Therefore, relying on Rule 4 of the *Canadian Rules*⁴ and Rule 6 of the *General Rules for the Interpretation of the Harmonized System*⁵ (the General Rules), he argued that the goods in issue should be classified under tariff item No. 9506.11.10. In the event that the Tribunal is of the view that the goods in issue are classifiable under both tariff items, the representative referred to Rule 3 (a) of the General Rules, which provides that, when goods are classifiable in two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description, in support of his argument that the goods in issue should be classified under tariff item No. 9506.11.10. Referring to Rule 3 (b) of the General Rules, the representative argued that the intrinsic and essential nature of snowboards is to go downhill.

The appellants' representative argued that the respondent is making an error by placing the word "skis" after the word "downhill" to make tariff item No. 9506.11.10 read "downhill skis." In his view, the word "skis" can only be placed in front of the word "downhill" to make the tariff item read "[s]kis - [d]ownhill." He argued that the tariff nomenclature does not name products; it describes them. For example, the tariff nomenclature does not name computers; computers are classified in heading No. 84.71, which covers "[a]utomatic data processing machines." Hence, the representative argued that the tariff nomenclature does not name snowboards or downhill skis. In his view, tariff item No. 9506.11.10 describes skis that go downhill and, therefore, includes the goods in issue. In support of this argument, the representative referred

4. *Ibid.* Schedule I.

5. *Ibid.*

to the Tribunal's decision in *San Francisco Gifts Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*,⁶ where it was decided that in-line skates are properly described as roller skates. He noted that the Tribunal made this finding despite the fact that there are many differences between in-line skating and roller skating.

The appellants' representative argued that the respondent's position in the present case is inconsistent with the position taken in *San Francisco Gifts*. He noted that, in the latter case, the respondent took the position that the heading was descriptive, while, in the present case, the respondent is taking the position that the heading names a particular product. The representative pointed to another inconsistency in the respondent's position. He noted that the respondent is arguing that snowboards are different from skis because they are much wider and are used as single articles rather than as pairs, even though the Tribunal decided in *Gilmour Sports Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*⁷ that these distinctions were irrelevant in determining the proper classification of snowboards. Finally, the representative submitted that the respondent cannot rely on the Tribunal's statement in *Gilmour Sports* that "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"⁸ in support of his position in the present case. He argued that it is well established that the 9th and 10th digits do not form part of the customs legislation.

Counsel for the respondent acknowledged that, as a result of the Tribunal's decision in *Gilmour Sports*, snowboards are now classified in subheading No. 9506.11 as skis. He also agreed with the appellants' representative that the terms "downhill" and "other," which are found in subheading No. 9506.11, are descriptive in nature. However, counsel argued that the expression "skis - downhill" or "downhill skis," whichever way it reads, describes a particular product which is different from a snowboard. In his view, subheading No. 9506.11 covers traditional downhill skis, i.e. a pair of skis that are used with poles to go down a snow-covered slope. Snowboards are used differently. The only common denominator that they have with downhill skis is that they are also used to go down a snow-covered slope. Counsel argued that this, however, is not enough to have them classified as downhill skis.

Counsel for the respondent noted that, at the time of the *Gilmour Sports* case, there was only a single tariff item that provided for the classification of all types of skis. There were three classification numbers: one for downhill skis, one for cross-country skis and one for other types of skis. Counsel argued that the Tribunal made it quite clear in *Gilmour Sports* that snowboards are different from downhill skis and cross-country skis. According to counsel, the inclusion of the classification numbers in subheading No. 9506.11 was only one of the factors on which the Tribunal relied in forming this view. Counsel argued that the fact that snowboards are considered to be a type of ski does not automatically mean that they are downhill skis. He argued that the *Gilmour Sports* case and the evidence presented before the Tribunal in the present case clearly show that snowboards are different from downhill skis and that they are properly classified as other skis.

As noted at the outset, the issue in these appeals is whether snowboards are properly classified under tariff item No. 9506.11.90 as other skis or should be classified under tariff item No. 9506.11.10 as "[s]kis - [d]ownhill." In *Gilmour Sports*, the Tribunal found that snowboards are a type of ski; however, it clearly

6. Appeal No. AP-92-300, March 18, 1994.

7. Appeal Nos. AP-92-102 and AP-92-354, November 1, 1993.

8. *Ibid.* at 4.

stated that snowboards are different from downhill skis. The Tribunal adopts its reasoning in *Gilmour Sports*. However, the Tribunal cannot accept the argument of the appellants' representative that tariff item No. 9506.11.10 describes all types of skis used to go downhill. In the Tribunal's view, this tariff item describes traditional downhill skis, regardless of whether the word "downhill" is placed before or after the word "skis." To come to a different view would mean that all types of skis could essentially be classified under that tariff item since, in the Tribunal's opinion, at one point or another, all types of skis are used to go downhill, including cross-country skis. The Tribunal notes that, in the French version, tariff item No. 9506.11.10 reads "*Skis alpin*" [*sic*]. In the Tribunal's view, this supports its conclusion that the legislator intended that only traditional downhill skis or *skis alpines* be classified under that tariff item. The Tribunal, therefore, finds that the goods in issue are properly classified under tariff item No. 9506.11.90 as other skis.

Accordingly, the appeals are dismissed.

Arthur B. Trudeau

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