

Ottawa, Monday, June 8, 1998

Appeal Nos. AP-97-030 and AP-97-031

IN THE MATTER OF appeals heard on January 19, 1998, 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 March 11, April 1, and May 2 and 14, 1997, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

ATOMIC SKI CANADA INC. AND WILSON SPORTS CANADA

Appellants

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeals are allowed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Raynald Guay

Raynald Guay

Member

Anita Szlczak

Anita Szlczak

Member

Michel P. Granger

Michel P. Granger

Secretary

UNOFFICIAL SUMMARY

Appeal Nos. AP-97-030 and AP-97-031

ATOMIC SKI CANADA INC. AND WILSON SPORTS CANADA 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 made under subsection 63(3) of the *Customs Act*. The issue in these appeals is whether goods described as plastic shells for in-line skates are properly classified under tariff item No. 9506.70.12 as roller skates or, alternatively, under tariff item No. 6402.19.90 as other sports footwear, as determined by the respondent, or should be classified under tariff item No. 6406.99.90 as other parts of footwear, as claimed by the appellants.

HELD: The appeals are allowed. The Tribunal concludes that, if it is possible to find that, absent the skates, a product can still be considered to have the essential character of roller skates and, therefore, be classified in heading No. 95.06 as roller skates, as argued by the respondent, the *Explanatory Notes to the Harmonized Commodity Description and Coding System* (the Explanatory Notes) will not expressly exclude from that heading roller skates without the skates attached.

The Tribunal accepts that the goods in issue are committed for use as components in skating boots, and, in turn, in-line skates. However, the Tribunal concludes that the goods in issue, presented on their own, without linings or buckles, lack one of the principal features of footwear, that is, the ability to be worn as a covering for the foot and part of the leg, and cannot be classified, pursuant to Rule 2 (a) of the *General Rules for the Interpretation of the Harmonized System*, as unassembled footwear with outer soles and uppers of rubber or plastics or, in this case, as unassembled skating boots, having the essential character of such footwear. As a result, the Tribunal is not persuaded that the goods in issue can be classified under tariff item No. 6402.19.90 as other sports footwear.

Having determined that the goods in issue do not have the essential character of skating boots and cannot, therefore, be classified under tariff item No. 6402.19.90, the Tribunal must further determine whether the goods in issue should be classified under tariff item No. 6406.99.90 as other parts of footwear, as claimed by the appellants. The Tribunal is persuaded that both the skating boots, absent the skates, and the finished in-line skates meet the definitions of “footwear.” The Tribunal observes that the Explanatory Notes to heading No. 64.05 provide that the heading “**excludes** assemblies of parts (e.g., uppers, whether or not affixed to an inner sole) not yet constituting nor having the essential character of footwear as described in headings 64.01 to 64.05 (**heading 64.06**).” The Tribunal interprets the Explanatory Notes to mean that, if the Tribunal finds that the goods in issue are parts of the finished skating boots, which are covered by heading No. 64.02, then they should be classified in heading No. 64.06.

In considering whether the goods in issue constitute parts of skating boots or in-line skates, the Tribunal observes that there is no universal test for determining whether a product is a part, and each case must be determined on its own merits. In the past, the Tribunal has considered that the following factors typically applied in the assessment of whether a product is a part: (1) whether the product is essential to the

operation of another product; (2) whether the product is a necessary and integral component of the other product; (3) whether the product is installed in the other product; and (4) common trade usage and practice applied to the goods in issue. In the Tribunal's view, the goods in issue are essential to and necessary and integral components of in-line skating boots. As such, the Tribunal is satisfied that the goods in issue should be classified under tariff item No. 6406.99.90 as other parts of footwear, namely, skating boots.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	January 19, 1998
Date of Decision:	June 8, 1998
Tribunal Members:	Robert C. Coates, Q.C., Presiding Member Raynald Guay, Member Anita Szlazak, Member
Counsel for the Tribunal:	Shelley Rowe
Clerk of the Tribunal:	Margaret Fisher
Appearances:	Raylene Van Vliet, for the appellants Janet Ozembloski, for the respondent

Appeal Nos. AP-97-030 and AP-97-031

ATOMIC SKI CANADA INC. AND WILSON SPORTS CANADA **Appellants**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
 RAYNALD GUAY, Member
 ANITA SZLAZAK, Member

REASONS FOR DECISION

These are appeals under section 67 of the *Customs Act*¹ (the Act) from decisions of the Deputy Minister of National Revenue made under subsection 63(3) of the Act. The issue in these appeals is whether goods described as plastic shells for in-line skates are properly classified under tariff item No. 9506.70.12 as roller skates or, alternatively, under tariff item No. 6402.19.90 as other sports footwear, as determined by the respondent, or should be classified under tariff item No. 6406.99.90 as other parts of footwear, as claimed by the appellants.

The following is the relevant tariff nomenclature from Schedule I to the *Customs Tariff*:²

64.02	Other footwear with outer soles and uppers of rubber or plastics. - Sports footwear:
6402.19	--Other
6402.19.90	---Other
64.06	Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable in-soles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof. -Other:
6406.99	--Of other materials
6406.99.90	---Other
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.
9506.70	-Ice skates and roller skates, including skating boots with skates attached ---Ice or roller skates attached to boots:
9506.70.12	----Roller skates

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

One witness appeared on behalf of the appellants, Mr. Bruce Davis, Controller at Amer Sports Canada Inc., a holding corporation under which the appellants operate. Amer Sports Canada Inc. is in the business of assembling, shipping and distributing various sporting goods and equipment. Mr. Davis introduced as an exhibit a sample of the goods in issue: an Oxygen brand, KR5.1 model, moulded in-line skate shell.³ In-line skates are composed of various components, including not only the goods in issue but also liners, wheels, axles, bearings, spacers and a brake assembly. The goods in issue, along with all of the other components of in-line skates, are imported and then assembled at the appellants' plant in Belleville, Ontario. Mr. Davis explained the whole assembly process, from the attachment of the wheels, with bearings and spacers, to the rail on the bottom of the moulded shell using nuts and bolts, to the insertion of the liners, the placement of the buckles and the addition of the label. The entire assembly process is done by hand.

In Mr. Davis's opinion, the wheel assembly comprises the skate component of an in-line skate, and an in-line skate is not functional without wheels and a moulded plastic shell fitted with a lining. Mr. Davis also stated that those moulded plastic shells cannot be used for walking without being fitted with liners.

In cross-examination, Mr. Davis confirmed that, in his opinion, the moulded plastic shells can only be used for in-line skates.

The appellants' representative submitted that, in order for the goods in issue to be classified under tariff item No. 9506.70.12, as determined by the respondent, both the skates and boot components of in-line skates would have to be present at the time of importation. In support of this contention, the representative referred to Note 1(g) to Chapter 95, which provides that the Chapter excludes "[s]ports footwear (other than skating boots with ice or roller skates attached)" and that skating boots alone are to be classified in Chapter 64. Note 1(f) to Chapter 64 provides that the Chapter excludes skating boots with skates attached and refers to them as being classified in Chapter 95. Based on these notes, the representative submitted that the goods in issue, with no skates attached, could not be classified in Chapter 95, as contended by the respondent.

With respect to the respondent's alternative contention, that the goods in issue be classified under tariff item No. 6402.19.90 as other sports footwear, the appellants' representative submitted that, without the other requisite components, namely, liners and buckles, the goods in issue cannot be considered footwear or, more specifically, boots. The representative referred to a definition of "footwear" as "things to wear on the feet other than socks or stockings"⁴ and submitted that, since the goods in issue cannot be worn as is, they cannot be classified as footwear.

The appellants' representative submitted that the goods in issue should be classified under tariff item No. 6406.99.90 as other parts of footwear. The representative submitted that there are three components to an in-line skate boot: the shell, the liner and the buckles. The representative then pointed out that liners are specifically provided for under classification No. 6406.99.90.10 and that buckles would also be classified thereunder were it not for the fact that the Chapter Notes to Chapter 64 expressly exclude buckles from being classified in Chapter 64.

3. Exhibit A-1.

4. *The New Lexicon Webster's Encyclopedic Dictionary of the English Language*, Canadian ed. (New York: Lexicon Publications, 1988) at 366.

The appellants' representative referred to Memorandum D10-0-1,⁵ which defines a "part" as follows for the purpose of the administration of the *Customs Tariff*: "an identifiable component of an article, machine, apparatus, equipment, appliance or specific good which is integral to the design and essential to the function of the product in which it is used." In the representative's view, the goods in issue are identifiable components of skating boots and are integral to their design and function. Accordingly, the representative argued that, in accordance with Rule 1 of the *General Rules for the Interpretation of the Harmonized System*⁶ (the General Rules), the goods in issue should be classified under tariff item No. 6406.99.90 as other parts of footwear.

Counsel for the respondent submitted that, in accordance with Rule 2 (a) of the General Rules, the goods in issue are properly classified under tariff item No. 9506.70.12 as in-line skates, as they have the essential character of in-line skates. Alternatively, counsel submitted that, in accordance with Rule 2 (a) of the General Rules, the goods in issue can be classified under tariff item No. 6402.19.90 as skating boots, as they have the essential character of skating boots.

Counsel for the respondent submitted that, in determining whether the goods in issue have the essential character of in-line skates or, alternatively, skating boots, there is no requirement that there be functionality. In other words, it is not necessary that one be able to use the goods in issue to skate in order for them to have the essential character of in-line skates or, alternatively, for one to be able to wear them as boots in order to find that they have the essential character of skating boots. In support of this view, counsel referred to the decision in *Viessmann Manufacturing Company Inc. v. The Deputy Minister of National Revenue*,⁷ in which the Tribunal stated the following with respect to the "essential character" requirement under Rule 2 (a) of the General Rules:

In the Tribunal's view, in referring to an article as incomplete, Rule 2 (a) manifestly includes an article that may lack some components and that is, therefore, likely not operational. Thus, the Tribunal is not persuaded that the fact that the goods in issue cannot operate safely, if at all, is determinative of whether or not they may be classified as a boiler.⁸

Applying this interpretation of "essential character," counsel for the respondent submitted that, although the wheels are missing, the goods in issue have the essential character of in-line skates or, alternatively, the essential character of skating boots.

In support of her view that the goods in issue have the essential character of in-line skates or, alternatively, skating boots, counsel for the respondent referred to the evidence of Mr. Davis about the short amount of time that it takes to complete the assembly of in-line skates incorporating the goods in issue. In addition, counsel referred to the Tribunal's decision in *Innovation Specialties Inc. v. The Deputy Minister of National Revenue*⁹ which, she submitted, provides that, even where many pieces are missing or further processing is necessary in order to make a complete or finished article, Rule 2 (a) of the General Rules can be applied to conclude that the goods have the essential character of the complete article.

5. *Classification of Parts and Accessories in the Customs Tariff*, Department of National Revenue, Customs, Excise and Taxation, January 24, 1994.

6. *Supra* note 2, Schedule I.

7. Canadian International Trade Tribunal, Appeal Nos. AP-96-196 to AP-96-198, November 14, 1997.

8. *Ibid.* at 6.

9. Appeal No. AP-95-265, December 6, 1996.

In response to the appellants' position that the goods in issue should be classified as other parts of footwear, counsel for the respondent referred to heading No. 64.06 which covers parts of footwear, including uppers whether or not attached to soles other than outer soles; removable insoles, heel cushions and similar articles. Counsel submitted that, although this is not an exhaustive list of the goods that would be considered parts of footwear, it is illustrative of the types of goods that were contemplated as being parts of footwear. In counsel's view, the goods in issue are not similar to those goods specifically named in heading No. 64.06.

In reply to the argument put forward by counsel for the respondent, to the effect that the goods in issue are properly classified as in-line skates, the appellants' representative submitted that the essential character or intrinsic nature of in-line skates is derived from the skate component. The representative submitted that, since the goods in issue do not have a skate component, they do not have the essential character of in-line skates. In further reply to the argument that the goods in issue are properly classified as skating boots on the basis that they have the essential character of skating boots, the representative submitted that the goods in issue cannot be worn without the liners.

The Tribunal is directed by section 10 of the *Customs Tariff* to classify goods in accordance with the General Rules and the *Canadian Rules*. The Tribunal is further directed by section 11 of the *Customs Tariff* to consider the *Explanatory Notes to the Harmonized Commodity Description and Coding System*¹⁰ (the Explanatory Notes) as a guide to the interpretation of the headings and subheadings in Schedule I to the *Customs Tariff*.

Rule 1 of the General Rules provides that classification is to be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the principles set out in Rules 2 through 6, as well as the *Canadian Rules* which follow. Rule 2 (a) of the General Rules extends the scope of any heading to include "a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled." The Explanatory Notes to Rule 2 (a) provide, in part, that the rule applies to the following:

"articles presented unassembled or disassembled" means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, **provided** only assembly operations are involved.

No account is to be taken in that regard of the complexity of the assembly method. However, the components shall not be subjected to any further working operation for completion into the finished state.

The Tribunal notes that, in *San Francisco Gifts Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*,¹¹ it was decided that in-line skates were a type of roller skates and that, as roller skates are named in subheading No. 9506.70, in-line skates were classified therein. However, the Tribunal is not persuaded that the goods in issue are properly classified in heading No. 95.06. The Explanatory Notes to heading No. 95.06 specifically exclude skating boots without the skates attached. In the Tribunal's view, if it were possible to find that, absent the skates, a product could still be considered to have the essential character

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

11. Canadian International Trade Tribunal, Appeal No. AP-92-300, March 18, 1994.

of roller skates and, therefore, be classified in heading No. 95.06 as roller skates, the Explanatory Notes would not expressly exclude from that heading skating boots without the skates attached.

The Tribunal observes that the Notes to Chapter 64 and, more particularly, the Subheading Note provide, in part, that, for the purposes of subheading No. 6402.19, the expression “sports footwear” applies to skating boots. While the respondent does not contend that the goods in issue are, in fact, skating boots, the respondent contends that the goods in issue have the “essential character” of skating boots and can, therefore, be classified, pursuant to Rule 2 (a) of the General Rules, under tariff item No. 6402.19.90 as such, under the general description other sports footwear.

The parties did not dispute the fact that, as imported, the goods in issue could not be worn and served no real use unless assembled with the liners, buckles, wheel assemblies, etc. Like on roller skates, the wheel assemblies on in-line skates constitute the skates. Therefore, the remaining components, namely, the goods in issue, the liners and the buckles, constitute the boot portion of the in-line skates.

The appellants’ representative submitted that “footwear” could be defined as “things to wear on the feet other than socks or stockings.” Another source defines “footwear” as “shoes, slippers, stockings, etc.”¹² “[B]oot” has been defined as “a protective covering of leather, rubber, cloth, etc., for the foot and part or all of the leg¹³” and as “a covering for the foot and lower part of the leg, made of leather, rubber, or a synthetic material such as vinyl.”¹⁴

Taking into account these definitions of “footwear” and “boot,” as well as an examination of the goods in issue and a description of how they are components in the assembly of in-line skates, the Tribunal is of the view that the goods in issue cannot be classified, pursuant to Rule 2 (a) of the General Rules, as unassembled footwear with outer soles and uppers of rubber or plastics or, in this case, unassembled skating boots, having the essential character of such footwear. The Tribunal accepts that the goods in issue are committed for use as components in skating boots and, in turn, in-line skates. However, the Tribunal is of the view that the goods in issue, presented on their own, without linings or buckles, lack one of the principal features of footwear or, in this case, skating boots, in that they do not have the ability to be worn as a covering for the foot and part of the leg. As a result, the Tribunal is not persuaded that the goods in issue can be classified under tariff item No. 6402.19.90 as other sports footwear.

Having determined that the goods in issue do not have the essential character of skating boots and cannot, therefore, be classified under tariff item No. 6402.19.90, the Tribunal must further determine whether the goods should be classified under tariff item No. 6406.99.90 as other parts of footwear, as claimed by the appellants. The Tribunal is persuaded that both the skating boots, absent the skates, and the finished in-line skates meet the above definitions of “footwear.” The Tribunal observes that the Explanatory Notes to heading No. 64.05 provide that the heading “**excludes** assemblies of parts (e.g., uppers, whether or not affixed to an inner sole) not yet constituting nor having the essential character of footwear as described in headings 64.01 to 64.05 (**heading 64.06**).” The Tribunal interprets the Explanatory Notes to mean that, if it finds that the goods in issue are parts of the finished skating boots, which are covered by heading No. 64.02, then they should be classified in heading No. 64.06.

12. *Gage Canadian Dictionary* (Toronto: Gage Educational Publishing, 1997) at 605.

13. *Webster’s New World Dictionary*, 3rd College ed. (New York: Simon & Schuster, 1988) at 161.

14. *Supra* note 12 at 176.

In considering whether the goods in issue constitute parts of skating boots or in-line skates, the Tribunal observes that there is no universal test for determining whether a product is a part, and each case must be determined on its own merits.¹⁵ In the past, the Tribunal has considered the following factors to be relevant: (1) whether the product is essential to the operation of another product; (2) whether the product is a necessary and integral component of the other product; (3) whether the product is installed in the other product; and (4) common trade usage and practice.¹⁶ In the Tribunal's view, the goods in issue are essential to and necessary and integral components of in-line skating boots. As such, the Tribunal is satisfied that the goods in issue are parts of skating boots.

Accordingly, the appeals are allowed, and the goods in issue should be classified under tariff item No. 6406.99.90 as other parts of footwear.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Presiding Member

Raynald Guay

Raynald Guay
Member

Anita Szlajak

Anita Szlajak
Member

15. *York Barbell Company Limited v. The Deputy Minister of National Revenue for Customs and Excise*, Canadian International Trade Tribunal, Appeal No. AP-90-161, August 19, 1991; and *Snydergeneral Canada Inc. v. The Deputy Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-92-091, September 19, 1994.

16. *Ibid.*