

Ottawa, Thursday, August 26, 1999

Appeal No. AP-98-076

IN THE MATTER OF an appeal heard on April 9, 1999, under section 67 of the *Customs Act*, R.S.C. 1985 (2nd Supp), c. 1.;

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue dated July 15 and 16, 1998, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

**INTERNATIONAL IMPORTS FOR COMPETITIVE
SHOOTING EQUIPMENT INC.**

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Patricia M. Close
Patricia M. Close
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-98-076

**INTERNATIONAL IMPORTS FOR COMPETITIVE
SHOOTING EQUIPMENT INC.**

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue. The appellant imported into Canada gloves, footwear and shooting jackets used for competitive shooting.

At issue in this appeal is whether the goods in issue are properly classified under tariff item No. 4203.21.90 as other articles of apparel and clothing accessories specially designed for uses in sports, tariff item No. 6403.19.90 as other sports footwear and tariff item No. 6101.20.00 as men's or boys' cotton overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, knitted or crocheted, as determined by the respondent, or whether they should be classified under tariff item No. 9506.91.90 as other articles and equipment for general physical exercise, gymnastics, athletics, other sports or outdoor games, as claimed by the appellant.

HELD: The appeal is dismissed. The Tribunal determined that Chapter 95 of the *Customs Tariff* specifically excludes sports clothing at Note 1(e), sports footwear at Note 1(g) and gloves at Note 1(u). The Tribunal is satisfied that, at Note 3 to Chapter 42, the expression "articles of apparel and clothing accessories" applies, *inter alia*, to sports gloves. The *Explanatory Notes to the Harmonized Commodity Description and Coding System* to heading No. 61.01 with respect to the jacket cover clothing worn over other clothing, such as men's or boy's overcoats, car-coats, anoraks (including ski-jackets), wind-jackets and similar articles, knitted or crocheted. The evidence shows that the jacket is a piece of clothing to be worn as an outer garment designed specifically for the sport of competitive target shooting. Therefore, the Tribunal is satisfied that the jacket is sports apparel and is properly classified in Chapter 61. General Note (A)(4) of the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to Chapter 64 provides for special sports footwear designed for a sporting activity. It includes such footwear as ski-boots, wrestling boots and cycling shoes to name but a few. The Tribunal is of the opinion that the footwear worn for the purpose of competitive target shooting falls within the type of footwear contemplated by this note and is properly classified in Chapter 64.

Place of Hearing: Ottawa, Ontario
Date of Hearing: April 9, 1999
Date of Decision: August 26, 1999

Tribunal: Patricia M. Close, Presiding Member

Counsel for the Tribunal: Michèle Hurteau

Clerk of the Tribunal: Anne Turcotte

Appearances: Rudy Schulze, for the appellant
Susanne Pereira, for the respondent

Appeal No. AP-98-076

**INTERNATIONAL IMPORTS FOR COMPETITIVE
SHOOTING EQUIPMENT INC.**

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ from decisions of the Deputy Minister of National Revenue made under section 63 of the *Act* on July 15 and 16, 1998, with respect to the importation of gloves, footwear and shooting jackets used for competitive target shooting.

The issue in this appeal is whether the gloves, footwear and shooting jackets imported by the appellant are properly classified under tariff item No. 4203.21.90 of the schedule to the *Customs Tariff*² as other articles of apparel and clothing accessories, of leather or of composition leather specially designed for use in sports, tariff item No. 6403.19.90 as other sports footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather, tariff item No. and 6101.20.00 as men's or boys' cotton overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, knitted or crocheted, as determined by the respondent, or whether the goods in issue should be classified under tariff item No. 9506.91.90 as other articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in Chapter 95 as sports equipment, as claimed by the appellant.

EVIDENCE

Mr. Rudy Schulze, President of International Imports for Competitive Shooting Equipment Inc., represented the appellant. Ms. Christina Ashcroft, a member of the national competitive target shooting team for 20 years and Canadian champion, gave evidence on the appellant's behalf. Ms. Ashcroft testified that the equipment is specifically designed to help competitors with their shooting positions in competitive target shooting and is not designed for any other use, such as recreational shooting or hunting. Ms. Ashcroft testified that each one of the gloves, footwear and jacket must conform to a strict set of International Shooting Sports Federation rules, although there may be differences in colour and material. For example, the gloves³ are predominantly made of leather and sometimes of a synthetic or stretchy material. They will always have some sort of padding or anti-slip covering to provide for a stable and steady hold on the rifle when standing. When a competitor is shooting in the prone position, the glove is used in conjunction with an arm sling and

1. R.S.C. 1985, c. 1 (2nd Supp.) [hereinafter *Act*].
2. R.S.C. 1985, c. 41 (3rd Supp.).
3. Exhibit A-3.

a hand stop to give the arm the stiffness needed. Ms. Ashcroft testified that the purpose of the gloves is not only to provide the right support but to prevent severe injuries to the hands when shooting a target.

Ms. Ashcroft then testified that the footwear⁴ was also specifically designed for two positions: standing and kneeling. In the kneeling position, adjustments may be made at the back of the footwear to loosen it and to prevent the circulation from being cut off. However, the boots must be tight enough to prevent the feet from twisting in different directions and a competitor from being thrown off balance. The adjustments at the back of the boots may be laces or Velcro, depending on the manufacturer. Ms. Ashcroft also testified that the boots are removed between target changes, as it is difficult to walk around in them and in order to preserve the stiffness of the boots. The footwear provides support through to the ankles and, once it becomes a little loose, competitors need to buy new footwear.

With respect to the jacket,⁵ Ms. Ashcroft testified that there is a special cut in the armpit, where a sling can be attached to hold the rifle in the prone and kneeling positions. There is also a specific cut on the inside of the elbow which is made of a spandex or stretchy material to prevent the jacket from “bunching up” and cutting off circulation. Anti-slip padding at the elbows ensures that the elbows are anchored in the same position for long periods of time.

During cross-examination, Ms. Ashcroft agreed with counsel for the respondent that competitive shooting is an olympic sport. In answer to a question by counsel regarding the composition of the boot, Ms. Ashcroft agreed that the upper part of the boot is made of leather or suede-type leather. She also agreed that the bottom part appeared to be of rubber or some sort of non-slip texture, depending on the manufacturer. In response to counsel’s question, Ms. Ashcroft stated that the sole of the boot must be stiff so that the competitor can stand on a level platform as firmly and as stiffly as possible. She agreed that the footwear was a sports boot or sports footwear of some kind.

Ms. Ashcroft was asked by counsel for the respondent to describe the composition of the jacket. She testified that the jacket may be made of all canvas, of all leather or of a leather/canvas combination where the outer layer is made of leather and the inner layer of canvas. The canvas, which is almost always 100 percent cotton, is what provides the jacket its stiffness and gives the competitor the most support. In response to counsel as to whether the jacket is an article of sports clothing, Ms. Ashcroft agreed that it was and that it was specifically designed for the sport of competitive shooting.

When asked whether the jacket entered in exhibit was the specific jacket which had been imported, the appellant’s representative stated that the jacket was probably of the same style, as all the competitive jackets were of the same style, but he could not say if the material of the jacket before the Tribunal was the same as the material of the jackets that he imported. Ms. Ashcroft testified that the inside material is always heavy stiff canvas material, while the outside material may be either canvas or leather, depending on personal preference.

The Tribunal requested a number of points of clarification from the appellant’s representative with respect to the goods in issue.

In response as to whether the gloves presented at these proceedings were exactly the same as the ones imported by the appellant, the appellant’s representative explained that the gloves would not change in

4. Exhibit A-2.

5. Exhibit A-1.

design or shape but that the colours may differ from one year to the next depending on which manufacturer produces them and the personal preference of competitors. The representative produced a catalogue⁶ which showed the range of gloves that the appellant would import. He stated that the gloves that the appellant imported in 1997 fell within the range of those shown in the catalogue.

With respect to the footwear, the appellant's representative said that several companies made the boots and that the colours and materials may change, but not the design or purpose. He could not state with certainty that the exhibits before the Tribunal were those imported in 1997. Ms. Ashcroft, however, testified that there are several manufacturers of footwear and that they all must manufacture the goods within the governing rules of the International Shooting Sports Federation. The rules are very detailed, in that they regulate the type of materials, the design, the height, the length and the width. The rules rarely change, and any changes would take a minimum of four years, as they have to follow proceedings leading up to the Olympic Games. Any rule change will occur the year following the Olympic Games. The International Shooting Sports Federation must abide by the new rules for a minimum of four years before any new change can be made. Although manufacturers follow trends, they must follow the rules in terms of the type, the structure and the design of the footwear.

The Tribunal asked an official of the Department of National Revenue, Ms. Rosemary Copeland-Jones, to testify as to whether the cotton of the jacket before the Tribunal was knitted or woven. She did not know. She testified that it would need to be examined under a microscope where one could tell which manufacturing process was used.

ARGUMENT

The appellant's representative submitted that, some years ago, athletic equipment was introduced within the tariff system. He also sought advice from a customs broker which classified the jackets, footwear and gloves in Chapter 95 as athletic equipment. The appellant imported the goods in issue, classified in Chapter 95, for a number of years until it received notice that the goods were not properly classified. In the representative's submission, the goods in issue have no resemblance to ordinary clothing, are designed for a specific purpose in mind, competitive target shooting, and should be considered athletic equipment.

When asked by the Tribunal whether, in his view, there was a difference between athletic equipment and sports equipment, the appellant's representative responded that athletic equipment, such as the goods in issue, must follow the set of international rules and regulations of a governing body, such as the International Shooting Sports Federation. In order to participate at international events, a nation must comply with the rules with respect to the equipment, clothing and all other items. This, the representative submitted, is different from riding a bicycle or playing hockey or baseball, which are sports.

Counsel for the respondent submitted that, pursuant to Rule 1 of the *General Rules for the Interpretation of the Harmonized System*⁷, the classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes. She then drew the Tribunal's attention to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁸ to Chapter 95. Specifically, counsel submitted that Chapter 95 does not cover sports clothing at Note 1(e), sports footwear at Note 1(g) and gloves at Note 1(u). Furthermore, the *Explanatory Notes* to heading No. 95.06, "Articles

6. Exhibit A-5.

7. *Supra* note 2 [hereinafter *General Rules*].

8. Customs Co-operation Council, 2nd ed., Brussels, 1996 [hereinafter *Explanatory Notes*].

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”, specifically exclude at Note (C)(c) sports gloves, at Note (C)(e) sports clothing of textile materials and at (C)(g) sports footwear. Counsel argued that the goods in issue fall squarely within these exclusions.

Counsel for the respondent then proceeded to make submissions for each of the goods in issue.

With respect to the gloves, counsel for the respondent argued that the gloves are properly classified in heading No. 42.03 as articles of apparel and clothing accessories of leather or of composition leather. She referred the Tribunal to the *Explanatory Notes* to heading No. 42.03 where, under exclusion (g), it is stated that “[a]rticles of **Chapter 95** (for example, sports requisites such as shin-guards for cricket, hockey, etc., or protective equipment for sports, e.g. fencing masks and breast plates)” are excluded. However, exclusion (g) specifically states that leather sports clothing and sports gloves are to be classified in heading No. 42.03. Furthermore, counsel argued that Note 3 to Chapter 42 states that “[f]or the purpose of heading No. 42.03, the expression ‘articles of apparel and clothing accessories’ applies, *inter alia*, to gloves (including sports gloves)”. Finally, counsel noted that, according to Ms. Ashcroft, the gloves are made of leather and are designed and worn specifically for the sport of competitive shooting. Counsel concluded that the gloves are properly classified in heading No. 42.03.

Turning to the jacket, counsel for the respondent reiterated her position that the jacket was explicitly excluded from Chapter 95, as it is sports clothing. She referred the Tribunal to the *Explanatory Notes* to heading No. 61.01, which covers “[m]en’s or boys’ overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, knitted or crocheted, other than those of heading No. 61.03”. Counsel conceded that the jacket was designed specifically for the sport of competitive shooting and argued that there are other examples of jackets which are specifically designed for sports. For example, ski-jackets classified in heading No. 61.01 may have special design features, such as extra insulation or reinforced padding at the elbows. Counsel also noted that Ms. Ashcroft testified that the jacket is an outer garment worn over other clothing when participating in the sport of competitive target shooting. Counsel concluded that the jacket is properly classified in heading No. 61.03.

In the case of the footwear, counsel for the respondent referred the Tribunal to General Note (A)(4) of the *Explanatory Notes* to Chapter 64, which covers special sports footwear. This note states: “Special sports footwear which is designed for a sporting activity and has, or has provision for, the attachment of spikes, sprigs, stops, clips, bars or the like and skating boots, ski-boots and cross-country ski footwear, snowboard boots, wrestling boots, boxing boots and cycling shoes (see Subheading Note 1 to the Chapter)”. Counsel noted that Ms. Ashcroft testified that the boots are specifically designed for competitive shooting purposes. Therefore, counsel argued that they cannot be classified in Chapter 95, as contended by the appellant’s representative.

Counsel for the respondent concluded by stating that, according to the appellant, the goods should be considered sports equipment only because they have a specific purpose related to the sport of competitive shooting. The appellant did not consider that the goods are covered under another category, namely, that of sports clothing.

DECISION

The Tribunal first notes that, while the gloves, footwear and shooting jackets introduced into evidence were not identical to those imported and, hence, were not the goods in issue, there are sufficient

similarities between the goods introduced into evidence and those imported to allow for a classification decision. The Tribunal makes this determination based on the evidence provided by Ms. Ashcroft regarding the strict rules applied by the International Shooting Sports Federation with respect to the manufacture of the goods in issue and the fact that it would take a minimum of four years to institute a rule change and that the Federation must abide by the new rules for a minimum of four years before any change can be made. The Tribunal notes that the respondent did not object to the goods being offered as exhibits, even though they were not the identical goods in issue.

With respect to the classification of the goods in issue, the Tribunal is guided by section 10 of the *Customs Tariff* which provides that the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the *General Rules* and the *Canadian Rules*, as set out in the schedule to the *Customs Tariff*. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in the schedule, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*⁹ and to the *Explanatory Notes*. The *General Rules* state, at Rule 1, that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes.

The appellant's position is that the goods in issue should be classified in Chapter 95 and, more particularly, in heading No. 95.06 as sports or athletic equipment. The Tribunal examined the evidence and the arguments of the appellant's representative as to the difference between the terms "athletic(s)" and "sport(s)", namely, that sports referred to general activities, whereas athletics were more formalized and were governed by international rules and regulations.

After having consulted a number of dictionaries,¹⁰ the Tribunal finds that the term "athletic(s)" is subsumed under the term "sport(s)" and that, to all intents and purposes, there is no distinction between the terms. For instance, the *Gage Canadian Dictionary* defines the terms as follows:¹¹

"athletics": exercises of strength, speed, and skill; active games and sports: *Athletics include baseball and basketball*

"sport": a game, contest, or other pastime requiring some skill and a certain amount of physical exertion. Baseball and fishing are outdoor sports; bowling and basketball are indoor sports. . . . amusement or recreation: . . . of or suitable for sports.

The Tribunal furthermore agrees with the respondent's position that Note 1 to Chapter 95, which applies to the goods in issue, specifically excludes sports clothing of Chapter 61 or 62 at paragraph (e), sports footwear (other than skating boots with ice or roller skates attached) of Chapter 64 at paragraph (g) and gloves (classified according to their constituent material) at paragraph (u). Therefore, it follows that, if the goods in issue are not classified pursuant to Chapter 95, they must be classified elsewhere.

The Tribunal has examined Chapters 42, 61 and 64 with respect to their application to the goods in issue.

9. Customs Co-operation Council, 1st ed., Brussels, 1987.

10. See *The New Encyclopaedia Britannica*, 15th ed.; *The Oxford Reference Dictionary*, 1986; *The Oxford English Dictionary*, 2nd ed.; the *Canadian Oxford Dictionary*, 1998; the *Gage Canadian Dictionary*, 1997; *Webster's Third New International Dictionary*, 1986; and *Roget's International Thesaurus*, 4th ed.

11. *Ibid.* *Gage*, s.v. "athletics" and s.v. "sport".

In the Tribunal's view, Note 3 to Chapter 42 defines the expression "articles of apparel and clothing accessories" as applying, *inter alia*, to gloves (including sports gloves). Furthermore, the Tribunal is satisfied that exclusion (g) of the *Explanatory Notes* to heading No. 42.03, which excludes certain types of sports equipment of Chapter 95, specifically includes leather sports clothing and sports gloves. The evidence shows that the gloves are made of leather and that they are specifically used and designed for the sport of competitive target shooting. Therefore, the Tribunal is satisfied that the gloves are properly classified under tariff item No. 4203.21.90.

The Tribunal also examined the *Explanatory Notes* to heading No. 61.01 with respect to the jacket. This heading covers clothing worn over other clothing, such as men's or boys' overcoats, car-coats, anoraks (including ski-jackets), wind-jackets and similar articles, knitted or crocheted. The evidence shows that the jacket is a piece of clothing to be worn as an outer garment designed specifically for the sport of competitive target shooting. Although Ms. Copeland-Jones was unable to indicate whether the jacket was knitted or crocheted, the Tribunal is satisfied that the jacket is sports apparel and is properly classified in Chapter 61, more specifically under tariff item No. 6101.20.00. The Tribunal has no reason to believe that Chapter 62 does not apply in this case.

Turning to the footwear, General Note (A)(4) of the *Explanatory Notes* to Chapter 64 provides for special sports footwear designed for a sporting activity. It includes such footwear as ski-boots, wrestling boots and cycling shoes to name but a few. The Tribunal is of the opinion that the footwear worn for the purpose of competitive target shooting falls within the type of footwear contemplated by this note. Furthermore, the Tribunal also examined General Notes (B) and (C) of the *Explanatory Notes* to Chapter 64. Note (B) states that the footwear covered by Chapter 64 may be of any material, including leather. It further states that, within the limits of this chapter, "it is the constituent material of the outer sole and of the upper which determines classification in headings 64.01 to 64.05". Note (C) explains the term "outer sole" as "that part of the footwear (other than an attached heel) which, when in use, is in contact with the ground". The evidence clearly shows that the upper part of the boot is made either of leather or suede and that the "outer sole" is made of rubber or a similar non-slip material. The Tribunal is satisfied that the footwear is properly classified under tariff No. 6403.19.90.

For all these reasons, the appeal is dismissed.

Patricia M. Close
Patricia M. Close
Presiding Member