CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, February 14, 2001

Appeal No. AP-99-092

IN THE MATTER OF an appeal heard on May 18, 2000, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue dated September 21, 1999, with respect to a request for redetermination under section 63 of the *Customs Act*.

BETWEEN

BAUER NIKE HOCKEY INC. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-99-092

BAUER NIKE HOCKEY INC. **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 (now the Commissioner of the Canada Customs and Revenue Agency) dated September 21, 1999. The goods in issue are in-line skating boots. The issue in this appeal is whether the goods in issue are properly classified 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 appellant.

HELD: The appeal is dismissed. The Tribunal is of the view that the goods in issue must be classified according to Rule 2 (a) of the *General Rules for the Interpretation of the Harmonized System*. The Tribunal is of the view that, 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 to be as operational as a finished product. The Tribunal is persuaded that the goods in issue have the essential character of skating boots. The Tribunal, therefore, finds that the goods in issue are properly classified under tariff item No. 6402.19.90 as other sports footwear.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	May 18, 2000
Date of Decision:	February 14, 2001
Tribunal Member:	Pierre Gosselin, Presiding Member
Counsel for the Tribunal:	Marie-France Dagenais
Clerk of the Tribunal:	Anne Turcotte
Appearances:	Arthur L. Brunette, for the appellant Michael Roach, for the respondent

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-99-092

BAUER NIKE HOCKEY INC. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: PIERRE GOSSELIN, Presiding Member

REASONS FOR DECISION

INTRODUCTION

This is an appeal pursuant to section 67 of the *Customs Act*[1] from decisions of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency) dated September 21, 1999, made under subsection 63(3) of the Act. The goods in issue are in-line skating boots. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 6402.19.90 of the schedule to the *Customs Tariff*[2] 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 appellant.

The tariff nomenclature relevant to the issue in this appeal is as follows:

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.
6406.99	--Of other materials
6406.99.90	---Other

EVIDENCE

No witnesses were heard in the present appeal. The appellant filed one sample of the goods in issue as a physical exhibit. The parties agreed that, with the exception of the insoles, the goods in issue are boots made up of the following parts: uppers, linings, buckles or straps, hulls and outsoles. The insoles are placed in the skating boots once the goods are imported into Canada and after the keels and wheel chassis are fastened to the outsoles. Thus, they proceeded to argument.

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].
2. R.S.C. 1985 (3d Supp.), c. 41.

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ARGUMENT

The appellant submitted that the goods in issue should be classified under tariff item No. 6406.99.90 as other parts of footwear. It argued that the boots are unfinished footwear having no insole and being handicapped with three large holes in its outsole. It further submitted that, since the boots are unusable, they should not be considered finished footwear. The appellant argued that all the components of the in-line skating boots, including the boots in issue, fall in heading No. 64.06 as parts of footwear and that it is when all those components are assembled that the finished product can be considered sports footwear.

In support of its argument, the appellant made reference to the Tribunal's decision in *Atomic Ski Canada* v. *DMNR*[3] where the Tribunal held that plastic shells for in-line skates without linings or buckles were parts of footwear, as the shell was a component of a boot that would be used to form a complete in-line skate. The appellant also submitted that, in *Atomic Ski*, the Tribunal held that there is no universal test for determining whether a product is a part and that the Tribunal has in the past considered factors such as: (1) whether the product is essential to the operation of the other 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. On the issue of whether a product should be considered a part, the appellant also made reference to the Tribunal's decision in *Fleetguard International* v. *DMNRCE*.[4] It argued that the soft boot is an essential part of the finished product and, as such, should be classified as part of a skating boot.

The appellant argued that the goods in issue, which must be considered unfinished skating boots, should be classified in accordance with Rule 1 of the *General Rules for the Interpretation of the Harmonized System*,[5] as parts of footwear. The appellant submitted that, since the imported soft boot is completely useless without the undercarriage, it must be considered a part of an article. The appellant referred to the Tribunal's decision in *Nowsco Well Service* v. *DMNR*[6] where the Tribunal held that an article must be considered a part of another thing when it may be, without modification, simply inserted, attached or incorporated into that thing.

The appellant argued that the goods in issue should not be classified pursuant to Rule 2 (a) of the General Rules because, if unfinished skating boots have the essential character of skates, they would have to be classified in subheading No. 9506.70 as ice skates or roller skates. The appellant added that the *Explanatory Notes to the Harmonized Commodity Description and Coding System*[7] to heading No. 95.06 specifically exclude skating boots without the skates attached.

Finally, the appellant made reference to rulings issued by the Department of National Revenue (now the Canada Customs and Revenue Agency) and the U.S. Customs Service relating to goods that, it suggested, can be compared to the goods in issue. The appellant submitted that the conclusions arrived at by the Department of National Revenue and the U.S. Customs Service in these specific cases should be applied to the goods in issue and, thus, that in-line skating boots should be classified under tariff item No. 6406.99.90 as other parts of footwear.

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3. (8 June 1998), AP-97-030 and AP-97-031 (CITT) [hereinafter *Atomic Ski*].
4. (25 August 1992), AP-90-121 (CITT).
5. *Supra* note 2, schedule [hereinafter General Rules].
6. (18 May 1999), AP-95-128 (CITT).
7. Customs Co-operation Council, 2d ed., Brussels, 1996 [hereinafter Explanatory Notes].

The respondent submitted that, at the time of importation, the skating boots are assembled and complete with the exception of the insoles. He argued that the boots, themselves, receive no further work once they are imported into Canada, since the insertion of the insole into the boot is not part of the boot assembly process, but rather the next stage of the in-line skate assembly process.

The respondent submitted that 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 the incomplete or unfinished article, as presented, has the essential character of the complete or finished article. He made reference to the Tribunal's decision in *Zellers* v. *DMNR*[8] where the Tribunal held that the effect of Rule 2 (a) is to broaden the application of any relevant heading to cover a particular article, not only in its complete form but also when presented as an incomplete or unfinished article, as long as the article presented has the essential character of the finished article.

The respondent argued that the goods in issue should be classified under tariff item No. 6402.19.90, since they have the essential character of skating boots. The respondent made reference to the Tribunal's decision in *Atomic Ski*. However, the respondent argued that, contrary to the appellant' argument, the plastic shells in that case cannot be compared to the goods in issue, as they do not have liners or buckles. The respondent submitted that, unlike the plastic shells, the goods in issue do have the essential character of sport footwear for different reasons, namely, that they have uppers and buckles and could be worn as a covering for the foot and part of the leg.

The respondent further argued that, to determine whether the goods in issue have the essential character of skating boots, there is no requirement that they be functional. Given this, the respondent argued that it is not necessary that the goods in issue be effectively worn as boots in order to find that they have the essential character of skating boots. In support of his argument, he referred to the Tribunal's decisions in *Viessmann Manufacturing* v. *DMNR*[9] and *Innovation Specialties* v. *DMNR*[10]where the Tribunal found that goods can have the essential character of a complete article even when pieces are missing or further processing is necessary.

The respondent made reference to Subheading Note 1 to Chapter 64, which states that the expression "sports footwear" specifically applies to skating boots. He also referred to Note (A)(4) of the Explanatory Notes to Chapter 64, which partly provides that Chapter 64 includes special sports footwear that 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. Finally, the respondent submitted that the shipping documents clearly indicate that the appellant imports the goods in issue as skating boots and not as parts of skating boots.

DECISION

Section 10 of the *Customs Tariff* provides that the classification of imported goods under a tariff item shall be determined in accordance with the General Rules and the *Canadian Rules*.[11] Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in the schedule, regard shall be

8. (8 February 1999), AP-97-062 (CITT).
9. (14 November 1997), AP-96-196 to AP-96-198 (CITT) [hereinafter Viessmann].
10. (6 December 1996), AP-95-265 (CITT).
11. *Supra* note 2, schedule.

had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*[12] and the Explanatory Notes.

The General Rules are structured in a cascading form. If the classification of an article cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, etc. Rule 1 provides the following:

> The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall 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 following provisions.

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 the parties agree that, with the exception of the insoles, the goods in issue are boots made up of the following parts: uppers, linings, buckles or straps, hulls and outsoles. The insoles are placed in the soft boots once the goods are imported into Canada and after the keels and wheel chassis are fastened to the outsoles. It is clear from the evidence that the goods in issue, at the time of importation, are fully assembled skating boots with the exception of the insoles. While it is after the goods are imported that the insoles are added, after the keels and chassis are affixed to the boots, there is no further manufacturing of the products after importation.

The Tribunal also notes that the parties agree that, since the goods in issue are imported without the keels and wheel assemblies, they must be classified in Chapter 64 rather than in Chapter 95. The Tribunal agrees with the parties in this respect. The issue in this appeal is, therefore, whether the soft boots are parts of footwear or sports footwear.

The Tribunal observes that the Notes to Chapter 64 and, more particularly, Subheading Note 1 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 of other sports footwear.

The Tribunal finds that the goods in issue must be classified pursuant to 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 is, therefore, likely not to be as operational as a finished product. This is consistent with the Tribunal's decision in *Viessmann*. Applying Rule 2 (a) to the facts of this appeal,

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

the Tribunal is persuaded that the goods in issue have the essential character of skating boots. The evidence before the Tribunal is that the insoles can only be inserted in the goods in issue once the keels and chassis are affixed to the boots, as the attaching bolts are underneath the insoles. Laces are also added at the factory. The evidence is clear that the goods in issue are not complete skating boots at the time of importation. However, the Tribunal is of the view that the goods in issue do possess the essential features of skating boots, as they have uppers and buckles and can be worn as a covering for the foot and part of the leg. In the Tribunal's view, there can be no doubt that the goods in issue have the essential character of skating boots when all that remains to be done to the boots is to add insoles. Furthermore, the Tribunal does not find that it is necessary for the soft boots to be functional as skating boots in order for them to be considered sports footwear. The Tribunal is also of the view that the addition of the keels and wheel assemblies transforms the goods in issue from skating boots to in-line skates and that it is when the undercarriage is added that the goods in issue are classifiable in subheading No. 9506.70. Thus, the Tribunal finds that the goods in issue, at the time of importation, are more than components of in-line skating boots and must be considered skating boots.

Finally, with respect to the rulings of the Department of National Revenue and the U.S. Customs Service filed by the appellant, the Tribunal notes that it is not bound by such rulings.

Given the above, the Tribunal is of the view that the in-line skating boots in issue must be classified as skating boots, since they have the essential character of such sports footwear.

In conclusion, the Tribunal finds that the goods in issue are properly classified, on the basis of Rule 2 (a) of the General Rules, under tariff item No. 6402.19.90.

Pierre Gosselin
Pierre Gosselin
Presiding Member