



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2013-042

Canadian Tire Corporation, Limited

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Thursday, June 12, 2014*

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DECISION 8

IN THE MATTER OF an appeal heard on March 11, 2014, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated June 26, 2013, with respect to a request for review of an advance ruling on tariff classification pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

CANADIAN TIRE CORPORATION, LIMITED

Appellant

AND

**THE PRESIDENT OF THE CANADA BORDER SERVICES
AGENCY**

Respondent

DECISION

The appeal is dismissed.

Jason W. Downey
Jason W. Downey
Presiding Member

Gillian Burnett
Gillian Burnett
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: March 11, 2014
Tribunal Member: Jason W. Downey, Presiding Member
Counsel for the Tribunal: Carrie Vanderveen
Student-at-law: Kalyn Eadie
Registrar Officer: Ekaterina Pavlova

PARTICIPANTS:

Appellant	Counsel/Representative
Canadian Tire Corporation, Limited	Michael Kaylor
Respondent	Counsel/Representative
President of the Canada Border Services Agency	Dah Yoon Min

WITNESS:

Murray Abbott
Owner/Instructor
Murray's Fly Fishing School

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STATEMENT OF REASONS

INTRODUCTION

1. This is an appeal filed by Canadian Tire Corporation, Limited (Canadian Tire) on September 13, 2013, pursuant to subsection 67(1) of the *Customs Act*¹ from a decision of the President of the Canada Border Services Agency (CBSA).

2. The issue in this appeal is whether chest waders (the goods in issue) are properly classified under tariff item No. 6404.19.90 of the schedule to the *Customs Tariff*² as other footwear with outer soles of rubber or plastics, as determined by the CBSA, or should be classified under tariff item No. 9507.90.99 as other line fishing tackle, as claimed by Canadian Tire.

PROCEDURAL HISTORY

3. On September 21, 2012, the CBSA made an advance ruling that the goods in issue were properly classified under tariff item No. 6404.19.90 as other footwear with outer soles of rubber or plastics.³

4. On October 10, 2012, Canadian Tire requested that the CBSA review the advance ruling, arguing that the goods in issue should be classified under tariff item No. 9507.90.99 as other line fishing tackle.⁴

5. On June 26, 2013, the CBSA issued a decision confirming the classification of the goods in issue under tariff item No. 6404.19.90.⁵

6. On September 13, 2013, Canadian Tire appealed the CBSA's decision to the Tribunal.⁶

7. The Tribunal held a public hearing in Ottawa, Ontario, on March 11, 2014. Canadian Tire produced a single witness, Mr. Murray Abbott, Owner/Instructor, Murray's Fly Fishing School.

GOODS IN ISSUE

8. The goods in issue are waterproof chest waders consisting of a pair of polyvinyl chloride (PVC) boots with neoprene insulated uppers that extend to the chest. The goods have attached "H" style suspenders with shoulder patches and quick-release buttons, hand-warmer pockets and a mesh storage pocket. They are sold in foot sizes 9 to 13.⁷

LEGAL FRAMEWORK

9. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System)

1. R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].
2. S.C. 1997, c. 36.
3. Exhibit AP-2013-042-06A, tab 1, Vol. 1.
4. *Ibid.*
5. *Ibid.*
6. Exhibit AP-2013-042-01, Vol. 1.
7. Exhibit AP-2013-042-06A at paras. 10-13, Vol. 1.

developed by the World Customs Organization (WCO).⁸ The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

10. Subsection 10(1) of the *Customs Tariff* provides that the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*⁹ and the *Canadian Rules*¹⁰ set out in the schedule.

11. The *General Rules* comprise six rules. Classification begins with Rule 1, which provides that 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 other rules.

12. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*¹¹ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*¹² published by the WCO. While classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.¹³

13. Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to determine the proper subheading and tariff item, applying Rule 6 of the *General Rules* in the case of the former and the *Canadian Rules* in the case of the latter.

TARIFF CLASSIFICATION AT ISSUE

14. Tariff item No. 6404.19.90 provides as follows:

Chapter 64

FOOTWEAR, GAITERS AND THE LIKE; PARTS OF SUCH ARTICLES

...

64.04 **Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials.**

-Footwear with outer soles of rubber or plastics:

...

6404.19 **--Other**

...

6404.19.90 -- -Other

8. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.

9. S.C. 1997, c. 36, schedule [*General Rules*].

10. S.C. 1997, c. 36, schedule.

11. World Customs Organization, 2d ed., Brussels, 2003 [*Classification Opinions*].

12. World Customs Organization, 5th ed., Brussels, 2012 [*Explanatory Notes*].

13. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13 and 17 where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that the *Explanatory Notes* be respected unless there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to the *Classification Opinions*.

15. The relevant notes to Chapter 64 provide as follows:

Chapter 64

FOOTWEAR, GAITERS AND THE LIKE; PARTS OF SUCH ARTICLES

Notes.

1. This Chapter does not cover:
 - (a) Disposable foot or shoe coverings of flimsy material (for example, paper, sheeting of plastics) without applied soles. These products are classified according to their constituent material;
 - (b) Footwear of textile material, without an outer sole glued, sewn or otherwise affixed or applied to the upper (Section XI);

...

16. The explanatory notes to Chapter 64 provide as follows:

GENERAL

With certain **exceptions** (see particularly those mentioned at the end of this General Note) this Chapter covers, under headings 64.01 to 64.05, various types of footwear (including overshoes) irrespective of their shape and size, the particular use for which they are designed, their method of manufacture or the materials of which they are made.

...

- (A) Footwear may range from sandals with uppers consisting simply of adjustable laces or ribbons to thigh-boots (and uppers of which cover the leg and thigh, and which may have straps, etc., for fastening the uppers to the waist for better support). The Chapter includes:

...

- (2) Ankle-boots, half-boots, knee-boots and thigh-boots.

...

- (8) Other footwear specially designed to protect against oil, grease, chemicals or cold.

...

- (B) The footwear covered by this Chapter may be of any material (rubber, leather, plastics, wood, cork, textiles including felt and nonwovens, furskin, plaiting materials, etc.) **except** asbestos, and may contain, in any proportion, the materials of Chapter 71.

...

- (D) For the purposes of the classification of footwear in this Chapter, the constituent material of the uppers must also be taken into account. The upper is the part of the shoe or boot above the sole. However, in certain footwear with plastic moulded soles or in shoes of the American Indian moccasin type, a single piece of material is used to form the sole and either the whole or part of the upper, thus making it difficult to identify the demarcation between the outer sole and the upper. In such cases, the upper shall be considered to be that portion of the shoe which covers the sides and top of the foot. The size of the uppers varies very much between different types of footwear, from those covering the foot and the whole leg, including the thigh (for example, fishermen's boots), to those which consist simply of straps or thongs (for example, sandals).

If the upper consists of two or more materials, classification is determined by the constituent material which has the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, protective or ornamental strips or edging, other ornamentation (e.g., tassels, pompoms or braid), buckles, tabs, eyelet stays, laces or slide fasteners. The constituent material of any lining has no effect on classification.

17. The explanatory notes to heading No. 64.04 provide as follows:

This heading covers footwear with uppers (see General Explanatory Note, Part (D)) made of textile materials and with outer soles (see General Explanatory Note, Part (C)) made of the same materials as the footwear of heading 64.03 (see the Explanatory Note to that heading).

18. Heading No. 95.07 provides as follows:

Chapter 95

**TOYS, GAMES AND SPORTS REQUISITES;
PARTS AND ACCESSORIES THEREOF**

...

95.07 **Fishing rods, fish-hooks and other line fishing tackle; fish landing nets, butterfly nets and similar nets; decoy "birds" (other than those of heading 92.08 or 97.05) and similar hunting or shooting requisites.**

...

9507.90 **-Other**

...

9507.90.99 - - - -Other:

19. The relevant notes to Chapter 95 provide as follows:

1. This Chapter does not cover:

...

(e) Sports clothing or fancy dress, of textiles, of Chapter 61 or 62;

...

(g) Sports footwear (other than skating boots with ice or roller skates attached) of Chapter 64, or sports headgear of Chapter 65;

...

20. The relevant explanatory notes to Chapter 95 provide as follows:

GENERAL

This Chapter covers toys of all kinds whether designed for the amusement of children or adults. It also includes equipment for indoor or outdoor games, appliances and apparatus for sports, gymnastics or athletics, certain requisites for fishing, hunting or shooting, and roundabouts and other fairground amusements.

21. The relevant explanatory notes to heading No. 95.07 provide as follows:

This heading covers:

- (1) **Fish-hooks** of all kinds (e.g., with single or multiple barbs) and sizes. These are usually made of steel but they may be bronzed, tinned, silvered or gilded.
- (2) **Fish landing nets, butterfly nets and similar nets.** These usually consist of pocket-like nets of textile yarn or cord, mounted on a wire support and fixed to a handle.
- (3) **Line fishing rods and tackle.** Fishing rods may be of various sizes, and may be made of various materials (bamboo, wood, metal, glass fibre, plastics, etc.). They may consist of a single piece or be jointed. *Fishing tackle comprises such items as reels and reel mountings; artificial bait (e.g., imitation fish, flies, insects or worms) and hooks mounted with such bait; spinning bait; mounted lines and casts; fishing floats (cork, glass, quill, etc.) including luminous floats; line winding frames; automatic striking devices; mounted fishing rings (other than mounted rings of precious or semi-precious stone); sinkers, and fishing rod bells when mounted or attached to external clamps, clips or other devices.*
- (4) **Certain hunting or shooting requisites** such as decoy “birds” (but **not including** decoy calls of all kinds (**heading 92.08**) or stuffed birds of **heading 97.05**) and lark mirrors.

[Emphasis added]

TRIBUNAL ANALYSIS

22. The parties disagree as to whether the goods in issue are properly classified under tariff item No. 6404.19.90 as other footwear with outer soles of rubber or plastics or should be classified under tariff item No. 9507.90.99 as other line fishing tackle.

23. It is well established that, although appeals before the Tribunal proceed *de novo*, the appellant bears the burden of demonstrating that the classification of imported goods was incorrect in accordance with subsection 152(3) of the *Act*.¹⁴ Thus, since Canadian Tire bears the burden of proving that the goods in issue are classifiable in heading No. 95.07 as other line fishing tackle, the Tribunal will begin its analysis with that heading.

Are the Goods in Issue Classifiable as Other Line Fishing Tackle?

24. Canadian Tire argued that the goods in issue should be classified under tariff item No. 9507.90.99. In Canadian Tire’s view, the phrase “other line fishing tackle” is broad enough to encompass the goods in issue, as it covers all line fishing gear other than those items specifically excluded or provided for elsewhere, such as hip waders.¹⁵ To support this argument, Canadian Tire provided definitions of “tackle”, “fishing”, “fishing tackle” and “equipment”. Moreover, it argued that the phrase “[f]ishing tackle comprises *such items as*” [emphasis added] in the explanatory notes to heading No. 95.07 indicates that the items listed therein are illustrative and do not exclude the goods in issue.¹⁶

14. *Canada (Border Services Agency) v. Miner*, 2012 FCA 81 (CanLII) at paras. 7, 21.

15. Exhibit AP-2013-042-04A at para. 33, Vol. 1.

16. *Ibid.* at paras. 39-41.

25. Canadian Tire further argued that any gear that is needed or useful for the sport of line fishing, which includes fly fishing, is classifiable in heading No. 95.07 and pointed to witness testimony indicating that the goods in issue are nearly as important as fishing rods and flies for successful fly fishing.¹⁷

26. With regard to Canadian Tire's position, the CBSA submitted that all the references to "line fishing tackle" in the explanatory notes to heading No. 95.07 are to articles that are designed to be directly attached to a fishing rod or a fishing line or both when employed to lure and catch a fish. It argued that the phrase "[f]ishing tackle comprises such items as" limits the scope of fishing tackle to items that are designed to be directly attached to a fishing rod and/or line.¹⁸ Since the goods in issue are designed solely for walking in water, the CBSA submitted that they cannot be considered "line fishing tackle".

27. The phrase "other line fishing tackle" and the individual terms "fishing" and "tackle" are not defined in the *Customs Tariff* or in any legal or explanatory notes. The Tribunal must therefore interpret this phrase in accordance with its ordinary meaning and the context in which it is found.

28. The word "tackle" is defined as "[e]quipment for a task or sport (*fishing tackle*)"¹⁹ [emphasis added] and as "... [a]pparatus; equipment; gear [*fishing tackle*]"²⁰ "Fishing tackle" is defined as "... the equipment, as hooks, lines, rods, reels, etc., used in fishing".²¹ "Equipment", a word used in each of these definitions, is defined as "... tools, articles, clothing, etc. used or required for a particular purpose."²² These definitions indicate a relatively broad scope for the phrase "fishing tackle".

29. However, the phrase "other line fishing tackle" must also be interpreted in light of its context. In this respect, the rest of the explanatory notes to heading No. 95.07 provide useful guidance regarding the scope of the items that Parliament intended to be captured by the phrase "other line fishing tackle".

30. The Tribunal agrees with Canadian Tire that the use of the expression "such items as" in the explanatory notes to Chapter 95 indicates that the items that follow are meant to be an illustrative list and are not meant to restrict the scope of "other line fishing tackle" to only those items in the list. The fact that the goods in issue are not explicitly named in these notes therefore does not preclude them from being "other line fishing tackle".

31. However, the items listed in the explanatory notes to Chapter 95, i.e. reels and reel mountings, artificial bait, spinning bait, mounted lines and casts, fishing floats, line winding frames, automatic striking devices, mounted fishing rings, sinkers and fishing rod bells, share a common characteristic. As Mr. Abbott testified, the art of fishing is the art of using an imitation of what a fish normally eats in order to attract and catch it.²³ All the items listed as "fishing tackle" in the explanatory notes to heading No. 95.07 are devices and goods directly involved in baiting and retrieving fish, either through the use of a line or other similar device.

17. *Transcript of Public Hearing*, 11 March 2014, at 63-65.

18. Exhibit AP-2013-042-06A at paras. 49-51, Vol. 1.

19. Exhibit AP-2013-042-04A at para. 25, Vol. 1.

20. *Ibid.* at para. 26.

21. *Ibid.*

22. *Canadian Oxford Dictionary*, 2nd ed., s.v. "equipment".

23. *Transcript of Public Hearing*, 11 March 2014, at 6-7.

32. In contrast, the goods in issue have little to do with a rod, reel, line, bait, floats or hooks. They are also not directly involved in baiting and retrieving fish. A contextual reading of the explanatory notes to heading No. 95.07 does not support Canadian Tire's argument that the goods in issue fall within the scope of the phrase "other line fishing tackle", as they are not goods of the same class or kind as those listed.

33. Much of Canadian Tire's argument focussed on establishing that the goods in issue were useful to fly fishermen and that this should be the only requirement necessary to place them within the scope of the phrase "other line fishing tackle". In support of this point, Canadian Tire referred to jurisprudence in an attempt to convince the Tribunal that the principles of statutory interpretation would allow it to include the goods in issue in the common understanding of "other line fishing tackle".²⁴

34. The fact that the goods in issue are useful for fishing does not permit the Tribunal to overlook the ordinary and contextual meaning of the phrase "other line fishing tackle" as set out above. To stretch the meaning of this phrase in such a manner could lead to the absurd result where other items useful for fishing, such as clothing, hats or sunglasses, could also fall within the ambit of this phrase.

35. In sum, the Tribunal finds that Canadian Tire has not discharged its burden²⁵ and that the goods in issue cannot be classified in heading No. 95.07. The Tribunal must next address the question of whether the goods in issue are other footwear with outer soles of rubber or plastics of heading No. 64.04.

Are the Goods in Issue Classifiable as Other Footwear With Outer Soles of Rubber or Plastics?

36. The CBSA argued that the goods in issue are properly classified, in accordance with Rules 1 and 6 of the *General Rules* and Rule 1 of the *Canadian Rules*, under tariff item No. 6404.19.90 as other footwear with outer soles of rubber or plastics.²⁶ The CBSA submitted that the explanatory notes to Chapter 64, which state that the chapter covers various types of footwear, irrespective of their shape and size, use, method of manufacture or material composition, are broad enough to cover thigh boots.²⁷ Moreover, the CBSA argued that the primary purposes of chest waders—to keep the wearer's feet and legs warm and dry and to provide traction—are the same as those of hip waders, which Canadian Tire conceded would be classified in heading No. 64.04.²⁸

37. Although Canadian Tire recognized that hip waders, which only extend to the thigh, are footwear of Chapter 64, it argued that the goods in issue are excluded from this chapter by virtue of the explanatory notes to that chapter because they extend beyond the thigh to the chest.²⁹ It reasoned that, although it would appear strange to classify hip waders and chest waders in different chapters, the Tribunal should respect the distinction made by Parliament between these two goods.³⁰ It also argued that the fact that the goods in issue are sold by foot size does not bring them within the ambit of tariff item No. 6404.19.90, as there are many other goods sold by foot size that are not classified in this chapter.³¹

38. A review of the explanatory notes to Chapter 64 indicates that the type of footwear covered by the chapter is broad. The explanatory notes indicate that the chapter covers "... various types of footwear . . . irrespective of their shape and size, the particular use for which they are designed, their method

24. Exhibit AP-2013-042-04A at paras. 24, 29, 38, Vol. 1.

25. The Tribunal notes that the evidence adduced by Canadian Tire, both through the witness and through the submission of unsubstantiated documentation such as sources from Wikipedia, was of limited use in discharging Canadian Tire's burden, as the Tribunal was able to assign it little probative value.

26. Exhibit AP-2013-042-06A at paras. 30, 43, Vol. 1; *Transcript of Public Hearing*, 11 March 2014, at 66.

27. *Transcript of Public Hearing*, 11 March 2014, at 67.

28. *Ibid.* at 72-73; Exhibit AP-2013-042-06A at para. 14, Vol. 1; Exhibit AP-2013-042-04A at para. 19, Vol. 1.

29. Exhibit AP-2013-042-04A at paras. 18-19, Vol. 1; *Transcript of Public Hearing*, 11 March 2014, at 52.

30. *Transcript of Public Hearing*, 11 March 2014, at 61.

31. *Ibid.* at 53.

of manufacture or the materials of which they are made”. Furthermore, the explanatory notes state that “[f]ootwear may range from sandals . . . to thigh-boots (the uppers of which cover the leg and thigh, and which may have straps, etc., for fastening the uppers to the waist for better support).” The explanatory notes, in a discussion regarding the materials of the upper portion of the boot, make a reference to “fishermen’s boots” as an example of a boot covering the foot and the whole leg, including the thigh.

39. Although the explanatory notes to Chapter 64 do not specifically mention footwear that covers not only the legs and thighs but also the chest, this type of footwear is also not specifically excluded. Moreover, the explanatory notes contemplate the inclusion of footwear that has straps or other methods of securing the footwear to the waist for support. The Tribunal thus finds that these explanatory notes are not meant to be limitative in any way, but rather descriptive. In no way do they stipulate that the uppers cannot extend beyond the thigh; in fact, they do not impose any upper limit on where the goods must end on the body in order to be considered footwear.

40. At the hearing, the Tribunal carefully examined the goods in issue.³² They are essentially rubber boots onto which neoprene extensions that cover the legs and body up to the mid-chest have been grafted and sealed. At the hearing, Mr. Abbott testified that the primary purpose of the goods in issue was to keep the legs and feet dry and warm.³³ This is confirmed by the description on the box of the goods in issue, which concentrates on their construction and waterproof nature. The goods in issue thus share with boots the essential characteristic of being designed primarily to protect the feet from water and cold.

41. Further, the goods in issue are described in the French version of Canadian Tire’s online catalog as “*Bottes-pantalons en PVC doublées de néoprene*” and in the English version as “PVC boot[s] with neoprene insulation” [emphasis added].³⁴ This shows that the goods in issue are considered a type of boot by Canadian Tire itself. Since boots are inarguably footwear, the Tribunal therefore considers that the goods in issue are footwear.

42. Both parties agree that the goods in issue have PVC (a type of plastic) outer soles and boots.³⁵ Further, as noted above, the goods in issue are described by Canadian Tire as “PVC boot[s] with neoprene insulation” [emphasis added].³⁶ For these reasons, the Tribunal considers that the goods in issue have outer soles of plastics.

43. Using Rule 1 of the *General Rules*, the Tribunal therefore finds that the goods in issue are classifiable as footwear with outer soles of rubber or plastics of heading No. 64.04.

DECISION

44. For the foregoing reasons, the appeal is dismissed.

Jason W. Downey
Jason W. Downey
Presiding Member

32. Exhibit AP-2013-042-A-02.

33. *Transcript of Public Hearing*, 11 March 2014, at 37.

34. Exhibit AP-2013-042-06A, tab 2, Vol. 1.

35. Exhibit AP-2013-042-04A at para. 2, Vol. 1; Exhibit AP-2013-042-06A at paras. 11, 43, Vol. 1.

36. Exhibit AP-2013-042-06A, tab 2, Vol. 1.