



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2013-061

G & G Golf Company Inc.

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Monday, December 29, 2014*

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IN THE MATTER OF an appeal heard on September 9, 2014, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF decisions of the President of the Canada Border Services Agency, dated December 23, 2013, with respect to requests for re-determination pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**G & G GOLF COMPANY INC.**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is allowed.

Jean Bédard  
Jean Bédard  
Presiding Member

Place of Hearing: Ottawa, Ontario  
Date of Hearing: September 9, 2014  
Tribunal Member: Jean Bédard, Presiding Member  
Counsel for the Tribunal: Georges Bujold  
Cassandra Baker (student-at-law)  
Registrar Officer: Alexis Chénier

**PARTICIPANTS:****Appellant**

G &amp; G Golf Company Inc.

**Counsel/Representative**

Dave Bucholtz

**Respondent**

President of the Canada Border Services Agency

**Counsel/Representative**

Aileen Jones

**WITNESS:**

Gord German  
President  
G & G Golf Company Inc.

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## STATEMENT OF REASONS

### INTRODUCTION

1. This is an appeal filed by G & G Golf Company Inc. (G&G) pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from nine decisions made by the President of the Canada Border Services Agency (CBSA) on December 23, 2013, pursuant to subsection 60(4).

2. The issue in this appeal is whether certain golf club head covers made up of textile materials (the goods in issue) are properly classified under tariff item No. 6307.90.99 of the schedule to the *Customs Tariff*<sup>2</sup> as other made up articles of other textile materials, as determined by the CBSA, or should be classified under tariff item No. 9506.39.90 as other golf equipment, as claimed by G&G.

### PROCEDURAL HISTORY

3. Between October 2010 and October 2012, G&G imported the goods in issue in nine transactions and accounted for them under tariff item No. 6307.90.99 as other made up articles of other textile materials.<sup>3</sup>

4. On June 26, 2012, and October 30, 2012, pursuant to paragraph 74(1)(e) of the *Act*, G&G requested a refund of duties paid at the time of importation of the goods in issue as a result of an error in the determination of their tariff classification. More specifically, G&G requested a change in the tariff classification of the goods in issue from tariff item No. 6307.90.99 to tariff item No. 9506.39.90. On June 27 and November 5, 2012, the CBSA confirmed that the goods in issue were properly classified under tariff item No. 6307.90.99 as originally declared by G&G and, therefore, denied G&G's requests pursuant to paragraph 59(1)(a).<sup>4</sup>

5. On October 9, 2012, and February 4, 2013, G&G submitted requests for a further re-determination of the tariff classification pursuant to subsection 60(1) of the *Act*. G&G requested that the goods be classified under tariff item No. 9506.39.90 as other golf equipment. On December 23, 2013, in nine identical decisions,<sup>5</sup> the CBSA further re-determined, pursuant to subsection 60(4), that the goods in issue were properly classified under tariff item No. 6307.90.99.<sup>6</sup>

6. On March 10, 2014, G&G filed the present appeal with the Tribunal.<sup>7</sup>

7. The Tribunal held a public hearing on September 9, 2014. G&G called one witness, Mr. Gordon German, President of G&G.

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1. R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].

2. S.C. 1997, c. 36.

3. Exhibit AP-2013-061-06A at para. 3, Vol. 1.

4. Exhibit AP-2013-061-06A at paras. 4-5, Vol. 1.

5. A separate but identical decision was issued for each import transaction.

6. Exhibit AP-2013-061-06A at paras. 6-7, Vol. 1.

7. Exhibit AP-2013-061-01, Vol. 1.

## GOODS IN ISSUE

8. The goods in issue are golf club head covers made up of a variety of textile materials and have a number of different shapes and specifications. The goods may be designed to fit specific models of putters, irons and woods but may also be of a more generic design.<sup>8</sup>

## 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) developed by the World Customs Organization (WCO).<sup>9</sup> 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*<sup>10</sup> and the *Canadian Rules*<sup>11</sup> 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*<sup>12</sup> and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,<sup>13</sup> 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.<sup>14</sup>

13. The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the *General Rules* as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. If the goods in issue cannot be classified at the heading level through the application of Rule 1, then the Tribunal must consider the other rules.<sup>15</sup>

14. 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 use a similar approach to determine the proper subheading.<sup>16</sup> The final step is to determine the proper tariff item.<sup>17</sup>

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8. Exhibit AP-2013-061-04A at para. 2, Vol. 1; Exhibit AP-2013-061-06A at para. 9 and tab 1, Vol. 1.

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

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

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

12. World Customs Organization, 2d ed., Brussels, 2003.

13. World Customs Organization, 5th ed., Brussels, 2012.

14. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) [*Suzuki*] at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that 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 classification opinions.

15. Rules 1 through 5 of the *General Rules* apply to classification at the heading level.

16. Rule 6 of the *General Rules* provides that “. . . the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*,

**RELEVANT CLASSIFICATION PROVISIONS**

15. The relevant provisions of the *Customs Tariff* are as follows<sup>18</sup>:

**Section XI****TEXTILES AND TEXTILE ARTICLES**

...

**Chapter 63****OTHER MADE UP TEXTILE ARTICLES; SETS;  
WORN CLOTHING AND WORN TEXTILE ARTICLES; RAGS**

...

**63.07** Other made up articles, including dress patterns.

...

**6307.90** Other

...

6307.90.99 - - -Of other textile materials

...

**Section XX****MISCELLANEOUS MANUFACTURED ARTICLES**

...

**Chapter 95****TOYS, GAMES AND SPORTS REQUISITES;  
PARTS AND ACCESSORIES THEREOF**

...

**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.

...

**-Golf clubs and other golf equipment:**

...

**9506.39** - -Other

...

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to the above Rules [i.e. Rules 1 through 5] . . .” and that “. . . the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

17. Rule 1 of the *Canadian Rules* provides that “. . . the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the [*General Rules*] . . .” and that “. . . the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires.” Classification opinions and explanatory notes do not apply to classification at the tariff item level.
18. While the goods were imported between 2010 and 2012, the Tribunal notes that the relevant tariff provisions from the 2010 version of the schedule to the *Customs Tariff* were not amended during this period.

9506.39.90 -- -Other

16. The applicable section and chapter notes, along with any relevant explanatory notes, will be discussed in the Tribunal's analysis below, as appropriate.

## PRELIMINARY MATTERS

17. G&G filed a second brief<sup>19</sup> on August 21, 2014. The CBSA objected<sup>20</sup> to the filing of this brief on the grounds that it contained new arguments. The second brief also included other documents and authorities on which G&G intended to rely at the hearing. G&G was within the required time limit for the filing of those documents and authorities.<sup>21</sup> The documents, however, included letters from various individuals, going back to 2012, supporting G&G's position. In a letter<sup>22</sup> dated September 4, 2014, the Tribunal informed the parties that it would not consider G&G's reply brief but that this would not impair G&G's ability to make oral arguments at the hearing regarding the issues addressed in the reply brief, where appropriate. Furthermore, the Tribunal informed G&G that it would not give much weight to the letters<sup>23</sup> from several individuals not qualified as experts, since these documents could have been filed by G&G with its initial brief and that their late filing prevented the CBSA from filing rebuttal evidence or expert evidence in response. In such circumstances, due process and procedural fairness considerations dictated that such untested documentary evidence be given little weight, if any, in the Tribunal's deliberations.

18. Before the beginning of the hearing, the CBSA filed, on consent,<sup>24</sup> an additional exhibit consisting essentially of pages from a dictionary.

19. At the beginning of the hearing, counsel for G&G sought to clarify the role that Mr. German would play during the hearing.<sup>25</sup> On consent, it was determined that Mr. German would testify as a witness and support counsel for G&G at the argument stage.<sup>26</sup>

## POSITIONS OF PARTIES

### G&G

20. G&G submitted that the goods in issue should be classified in heading No. 95.06, more specifically under tariff item No. 9506.39.90 as other golf equipment pursuant to Rule 1 of the *General Rules*. It argued that the goods in issue are necessary or required in order to play the game of golf with any degree of success and, therefore, should be classified along with the other articles that constitute golf equipment, namely, golf balls and golf tees, which are explicitly listed as examples of "other golf equipment" in the explanatory notes to heading No. 95.06.<sup>27</sup>

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19. Exhibit AP-2013-061-09A, Vol. 1A.

20. Exhibit AP-2013-061-10, Vol. 1A.

21. They were provided not less than 10 days before the date of the hearing in accordance with paragraph 34(3)(a) of the *Canadian International Trade Tribunal Rules*, S.O.R./91-499.

22. Exhibit AP-2013-061-13, Vol. 1A.

23. Exhibit AP-2013-061-09A, Schedules H, J, Vol. 1A.

24. *Transcript of Public Hearing*, 9 September 2014, at 4-5.

25. *Transcript of Public Hearing*, 9 September 2014, at 3.

26. *Transcript of Public Hearing*, 9 September 2014, at 3, 7.

27. *Transcript of Public Hearing*, 9 September 2014, at 31-32.



21. G&G additionally relied on the *Rules of Golf* approved by the Royal Canadian Golf Association.<sup>28</sup> The rules define equipment as “. . . anything used, worn or carried by the player or anything carried for the player by his *partner* or either of their *caddies*, except any ball he has played at the hole being played and any small object, such as a coin or a tee, when used to mark the position of a ball or the extent of an area in which a ball is to be dropped”<sup>29</sup> [emphasis in original]. The *Rules of Golf* further provide that that equipment “. . . includes a golf cart, whether or not motorized.” The *Rules of Golf* also provide that a ball is equipment when it is not in play. G&G pointed out that, unlike a tennis racquet cover, which is removed at the beginning of the game, golf club head covers are used throughout the game.<sup>30</sup>

22. Alternatively, G&G submitted that, if the goods in issue are not golf equipment, then they should be considered accessories to golf clubs, which are evidently articles of golf equipment classifiable in heading No. 95.06.<sup>31</sup> Note 3 to Chapter 95 provides that the parts and accessories of the articles classified in a heading of Chapter 95 that are “. . . suitable for use solely or principally . . .” with those articles are to be classified with those articles in Chapter 95. G&G submitted that the sole and principal use of a golf club head cover is that for which it has been designed, that is, to protect a golf club during a round of play. According to G&G, there is no other use under normal circumstances for which a golf club head cover would be required.<sup>32</sup> G&G further submitted the goods in issue clearly have a secondary or subordinate relationship to a golf club by protecting it and improving its effectiveness during a round of golf. As such, G&G argued that the goods in issue add to the effectiveness or convenience of a golf club.

23. Finally, G&G filed documentary evidence indicating that, in other countries, goods similar to the goods in issue are classified under tariff item No. 9506.39.90.<sup>33</sup>

## CBSA

24. The CBSA argued that the goods in issue lack a direct connection to the primary function of a golf club and, therefore, cannot be classified as either golf equipment or accessories to golf equipment.<sup>34</sup>

25. The CBSA submitted that the use of the word “requisite” in the explanatory notes to heading No. 95.06 means that the goods in issue must be *essential* to the game of golf in order to be considered equipment. The CBSA argued that G&G’s own submissions on the accessories portion of its argument demonstrated that the goods in issue were not “required” or essential for the game of golf. In submitting that the goods in issue are accessories, G&G stated that they have a subordinate relationship to the golf clubs with which they are used; the CBSA argued that this acknowledgment of the subordinate relationship defeats any argument that the goods in issue are equipment—the inference being that equipment cannot have a subordinate relationship to another main piece of equipment (the golf club).<sup>35</sup>

26. In response to G&G’s arguments that the goods in issue are accessories to golf clubs, the CBSA submitted that Tribunal jurisprudence on the meaning of the term “accessories” establishes that goods must be used at the same time as the host goods and improve or enhance their function *while they are used* in order to be classified as accessories. According to the CBSA, while the goods in issue serve a protective function, they do not perform any role while a golf club is used and, thus, cannot be said to improve or

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28. Exhibit AP-2013-061-09A at 44, Vol. 1A.

29. Exhibit AP-2013-061-09A at 51, Vol. 1A.

30. *Transcript of Public Hearing*, 9 September 2014, at 15.

31. Golf clubs are expressly included in heading No. 95.06, more specifically, under tariff item No. 9506.31.00.

32. Exhibit AP-2013-061-04A at para. 8, Vol. 1.

33. Exhibit AP-2013-061-04A, Schedules E, F, Vol. 1; Exhibit AP-2013-061-09A at 18, Vol. 1A.

34. *Transcript of Public Hearing*, 9 September 2014, at 21.

35. *Transcript of Public Hearing*, 9 September 2014, at 24-25.

extend the performance of a golf club. In this regard, the CBSA also submitted that the goods in issue are not used when a golf club exercises its primary function, which is to strike a golf ball, and therefore are not to be classified as accessories to golf clubs in heading No. 95.06.<sup>36</sup>

27. In the CBSA's view, since the goods in issue are neither golf equipment nor accessories to golf equipment, they cannot be classified in heading No. 95.06 and must be classified in heading No. 63.07, more specifically, under tariff item No. 6307.90.99, as they are protective covers made of textile materials.

### TRIBUNAL'S ANALYSIS

28. This matter is to be resolved under Rule 1 of the *General Rules*. Note 1(t) to Section XI, which the Tribunal must consider under Rule 1, excludes articles of Chapter 95 from classification in that section, which includes Chapter 63.<sup>37</sup> This section note clearly precludes the *prima facie* classification of the goods in issue in both headings at issue in this appeal. Accordingly, if the goods in issue meet the terms of heading No. 95.06, as argued by G&G, they would constitute "articles of Chapter 95" (which includes heading No. 95.06) and be excluded from the ambit of Section XI (which includes Chapter 63 and heading No. 63.07). Therefore, the analysis must begin with the examination of whether the goods in issue are classifiable in heading No. 95.06.

29. If the goods in issue are classifiable in heading No. 95.06, following the legally binding direction found in Note 1(t) to Section XI, the goods in issue could not also be classifiable in heading No. 63.07. Indeed, the parties agree that there would be no need to consider whether the goods in issue should be classified in Chapter 63 (and heading No. 63.07) if they are classifiable in heading No. 95.06.

30. Therefore, the Tribunal will first consider whether the goods in issue are *prima facie* classifiable in heading No. 95.06, pursuant to Rule 1 of the *General Rules* as per the terms of the headings and legal notes, and having regard to the relevant explanatory notes. To be classifiable in heading No. 95.06, the goods in issue must be either golf equipment or accessories to golf equipment. It warrants noting that G&G submitted that the goods in issue are articles of golf equipment and made the subsidiary argument that they could also be classified as "accessories" to golf equipment if they cannot be properly classified as golf equipment *per se*.

31. The Tribunal will begin by examining whether the goods in issue are articles of golf equipment, which fall squarely within the ambit of heading No. 95.06. If necessary, the Tribunal will then examine whether the goods in issue constitute accessories to golf equipment, which would also bring them within the ambit of heading No. 95.06 in view of Note 3 to Chapter 95 which provides that "... parts and accessories which are suitable for use solely or principally with articles of this Chapter are to be classified with those articles", subject to a list of exclusions that do not apply in this appeal.

32. Before examining whether the goods in issue meet the appropriate legal tests or meet the applicable conditions to be classifiable as either "equipment" or, alternatively, "accessories" covered by heading No. 95.06, it is necessary to review the evidence and make findings of facts concerning the role and function of the goods in issue and their relationship with the sport of golf.

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36. *Transcript of Public Hearing*, 9 September 2014, at 25-27.

37. Chapter 63 falls within Section XI ("Textiles and Textile Articles"). Note 1(t) to that section specifically excludes "[a]rticles of Chapter 95 (for example, toys, games, sports requisites and nets)" from its ambit.

## Review of Evidence and Findings of Fact: Relationship Between the Goods in Issue and the Sport of Golf

33. While Mr. German cannot be considered an independent witness due to his position with G&G, the Tribunal has found him to be a competent, truthful and credible witness. Furthermore, counsel for the CBSA had the opportunity to cross-examine Mr. German on his testimony and on the contents of the letter that he filed as evidence in support of G&G's position.

34. Mr. German has 27 years of experience in the golf business. In his testimony, Mr. German said that golf club covers were designed in the late 1800s, at a time when golf club heads were made of very soft wood, while the irons were made of very sharp metal. They were developed to give a golfer an edge in regard to the equipment that was used.<sup>38</sup>

35. Mr. German also indicated that, as the equipment has evolved over the years, golf clubs that used to be made of light soft wood are now made with larger heads and, in an effort to keep the weight of the clubs similar to what it used to be, they are made of metal, which is very thin.<sup>39</sup> Mr. German explained that these newer clubs give a "trampoline effect" and allow the golf ball to go up to 350 yards, while the older models would allow the ball to go approximately 200 yards.<sup>40</sup>

36. Mr. German added that the purpose of the sport of golf is to shoot the lowest possible score possible under the rules of golf. He further indicated that, to achieve that goal, a golfer needs to make use of every advantage, such as a very good golf ball, good golf equipment and protection for the golf equipment. He also expressed the view that, for golfers, head covers are as much golf equipment as the golf clubs, balls and tees.<sup>41</sup>

37. Mr. German further stated that, since golf clubs have very precise angles, are additionally larger than they used to be and are made of very thin material, they can be susceptible to damage and dents which would adversely affect the golfer's score. His evidence is that any type of small dent or scratch on the club would cause the golf ball to go in a different direction and cause the player to shoot a higher score. For this reason, serious golfers use covers whenever the clubs are not in use so as to ensure that they do not become damaged at any time.<sup>42</sup>

38. In a letter filed with G&G's brief, Mr. German indicated that the goods in issue are "... exclusive to the golf club and are used with it during play, they would not be used for anything else."<sup>43</sup> This part of Mr. German's letter was not the subject matter of any question during his cross-examination. In response to a question in cross-examination, he also indicated that golf club head covers come with various features, such as zippers or magnets.<sup>44</sup> The goods in issue are specifically designed for use over golf clubs and often include various features, such as zippers and magnets, to facilitate slipping them on and off the golf clubs.

39. Mr. German also indicated that, unlike a tennis racquet cover, which is removed at the beginning of the game, golf club head covers are used throughout the game. Additionally, Mr. German noted that, while golf tees are specifically classified as "other golf equipment" under the tariff nomenclature, a player could

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38. *Transcript of Public Hearing*, 9 September 2014, at 8.

39. *Transcript of Public Hearing*, 9 September 2014, at 9.

40. *Transcript of Public Hearing*, 9 September 2014, at 9.

41. *Transcript of Public Hearing*, 9 September 2014, at 9.

42. *Transcript of Public Hearing*, 9 September 2014, at 10.

43. Exhibit AP-2013-061-04A at Schedule F, Vol. 1.

44. *Transcript of Public Hearing*, 9 September 2014, at 13.

potentially play a game of golf without using a tee. He further said that there were no golf tees in the early days of the game of golf. He said that, in the early days, people would hit the ball off the ground, that, over time, people started building little clumps of dirt to gain an advantage and that, eventually, the golf tee was invented for that same purpose. Finally, Mr. German clarified that, under the rules of golf, golf equipment is considered anything that is carried, worn or used by a player or the caddy during a round of golf.<sup>45</sup>

40. During his cross-examination, Mr. German confirmed that the three physical exhibits that were brought to the hearing by the CBSA were made of textile material. He also confirmed the statement made in his letter to the effect that an average golfer would pull a golf club head cover off and put it on up to 50 times during a golf game.

41. Finally, Mr. German conceded that one could play a round of golf without the use of golf club head covers. He added however that there is a good chance that such a player would get a higher score.<sup>46</sup>

42. In view of this evidence, the Tribunal makes the following findings of fact:

- While the technology and the material used have changed over the years, golf clubs have very precise angles and damages or dents would negatively impact on their efficiency.
- The head of a modern golf club is larger than it used to be and is made of very thin material. Accordingly, the golf clubs could be damaged if carried on a golf course without protection, and their efficiency would be decreased as a result.
- The goal of the sport of golf is to obtain the lowest score possible. Having the right equipment performing to its best capacity is an important factor contributing to achieving that goal.
- The goods in issue are used and perform their protective function throughout the round of golf.
- Golf club head covers are specifically designed for their use over golf clubs and can have various features, such as zippers or magnets.
- Golf tees have appeared as part of the standard golf equipment over a period of time. It would be possible to play a round of golf without using golf tees but it would likely result in a higher score for the player. Golf tees are used for the purpose of giving an edge to the player and assisting the player in achieving the lowest score possible.
- It would be possible to play a round of golf without using golf club head covers but it would possibly result in damages being inflicted to the unprotected golf clubs, potentially leading to a higher score. Like golf tees, golf club head covers, such as the goods in issue, are used for the purpose of giving an edge to the player and assisting the player in achieving the lowest score possible.

#### **Definition of “Equipment” in Heading No. 95.06**

43. Having established the role and function of the goods in issue and their use while playing the sport of golf, the Tribunal will now consider whether they meet the requirements to be considered “golf equipment” covered by heading No. 95.06.

44. The parties’ positions were grounded in their respective analyses of the context in which the goods in issue are used. The CBSA focused on the fact that the goods in issue are not used when a golf club

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45. *Transcript of Public Hearing*, 9 September 2014, at 15-16.

46. *Transcript of Public Hearing*, 9 September 2014, at 13.

exercises its primary function, which is to strike a golf ball. For its part, G&G focused on the fact that the goods in issue are used throughout the round of golf and play their role from the beginning to the end of the round. The Tribunal must therefore first determine which temporal requirement is more appropriate in the circumstances.

45. The Tribunal is of the view that the CBSA's description of the temporal requirement is overly minimalist and restrictive. Reducing the game of golf to the actual moment when the club hits the ball would be like reducing the game of hockey to the shots on goal. It is a matter of common knowledge that a round of golf begins with the first shot and ends when the ball sinks in the last hole of the golf course. It is also a matter of common knowledge that a game of hockey lasts 60 minutes and is not limited solely to the shots on goal. Accordingly, the Tribunal finds that the appropriate temporal requirement to be used in determining if the goods in issue fall in heading No. 95.06 is to look at the whole round of golf.

46. This interpretation is supported by Note (B)(3) of the explanatory notes to heading No. 95.06, which explains that the heading includes the following:

(B) **Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03), e.g.:**

...

(3) Golf clubs and other golf equipment, *such as golf balls, golf tees.*

[Bold in original, emphasis added]

47. The Tribunal notes that golf tees are expressly listed as an example of golf equipment despite the fact that, as discussed above, it would be possible to play a round of golf without using golf tees. Moreover, it is a matter of common knowledge that golf tees are not used every time a golfer hits the ball or for every shot. This does not prevent golf tees from being classified as articles of golf equipment under the nomenclature and treated as "requisites" for the sport of golf in the explanatory notes.

48. Thus, articles that are not *essential* to play a round of golf but that are used for the purpose of giving an edge to the player and assisting the player in achieving the lowest score possible can nevertheless constitute golf equipment. While it would likewise be possible to play a round of golf without using golf club head covers, the evidence establishes that this might result in damages being inflicted to the unprotected golf clubs, potentially leading to a higher score. Like golf tees, the goods in issue are used for the purpose of giving an edge to the player and assisting the player in achieving the lowest score possible.

49. The Tribunal finds that the goods in issue are an important component of playing a successful round of golf. While not absolutely necessary for amateur players, and certainly not used at the key moment of hitting the ball with the club, the goods in issue are useful throughout a given round of golf for anyone aiming for a good score. As such, even if the goods in issue are not used when a golfer strikes the ball and accepting that it is possible to play a round of golf without them, this fact alone does not prevent them from being classified, like golf tees, as articles of golf equipment.

50. The Tribunal further notes that Note (B)(3) of the explanatory notes to heading No. 95.06 is not all inclusive and, by the use of the words "such as" and the presence of a comma between the words "golf balls" and "golf tees", there is a clear indication that the list of articles of golf equipment is indicative and not exhaustive. Accordingly, the Tribunal is of the view that the phrase "other golf equipment" cannot be interpreted to simply mean golf balls and golf tees. Following the guidance provided by these explanatory

notes, “other golf equipment” covered by heading No. 95.06 can therefore include other articles, such as the goods in issue.

51. In this regard, when asked by the Tribunal at the hearing what else would come under the list in the explanatory notes, counsel for the CBSA said that, not being a golfer herself, she could not think of any other equipment that would come under that heading, except for tees that are specifically mentioned in the notes. In his final response, counsel for G&G pointed out that there were effectively other items, such as ball markers and repair tools, which could constitute other golf equipment. The Tribunal notes that this would be consistent with the illustrative nature of the explanatory notes. In sum, in principle, the relevant explanatory notes do not preclude the goods in issue from being classified in heading No. 95.06 as other examples of articles of golf equipment.

52. Regarding the CBSA’s argument that the goods in issue are not “requisites” for the game of golf, the Tribunal considered the dictionary definitions of the word provided by the CBSA. The definition of “requisite” from Random House Webster’s unabridged dictionary includes being “. . . *required or necessary for a particular purpose . . .*”<sup>47</sup> [emphasis added]. The *Canadian Oxford Dictionary* defines “requisite” as “. . . *required by circumstances; necessary to success . . . a thing needed (for some purpose)*”<sup>48</sup> [emphasis added]. Overall, the Tribunal does not consider that these definitions support the view that “requisites for other sports” are limited to items that are essential or indispensable for participating in a sport.

53. Applying these definitions to the findings of facts made by the Tribunal and the appropriate temporal requirement set out above, the Tribunal finds that the goods in issue are required or necessary for the purpose of protecting the clubs, avoiding damage to the clubs and assisting the player in achieving a lower score. Contrary to the CBSA’s argument, read in context, the term “requisites” in the relevant explanatory notes does not mean essential for the purpose of playing the sport of golf. Indeed, as long as an article is required, necessary or needed to successfully achieve a given related purpose (i.e. improving a player’s performance), it can constitute a requisite and, therefore, a piece of equipment for a sport under the explanatory notes.

54. The evidence is clear that the role and purpose of the goods in issue are not to protect the clubs from gathering dust while they are being stored. They play their role while a golf bag is being carried around the golf course. Given the nature of a golf course, it is common knowledge, and the CBSA did not provide any evidence to the contrary, that the golf clubs will be particularly exposed to damage by knocking each other while they are in a golf bag being carried around the course in an electric cart, a hand cart or on the back of the golfer. Consequently, it can be said that the goods in issue are also *required by the circumstances*, as they assist a golfer in achieving the goal of achieving the lowest possible score.

55. On the basis of the evidence, the Tribunal concludes that the goods in issue are actually in use and serve their stated purpose for most of the duration of a round of golf. Golf tees, explicitly mentioned as an example of other golf equipment in the explanatory notes to heading No. 95.06, are similarly used for the purpose of improving the golfer’s performance and are not in actual use for as long as the goods in issue during a round of golf. The Tribunal finds that the goods in issue should be similarly classified as other golf equipment since, as discussed above, reasonably interpreted, the explanatory notes do not preclude their inclusion in heading No. 95.06 as other articles of golf equipment.

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47. Exhibit AP-2013-061-14, Vol. 1A

48. Exhibit AP-2013-061-14, Vol. 1A.

56. Finally, the Tribunal notes that the goods in issue are covered by the definition of “equipment” in the *Rules of Golf*. While not binding on the Tribunal, these rules are, according to their foreword, effective worldwide.<sup>49</sup> They provide the Tribunal with a useful background from an authoritative source.

57. For all those reasons, the Tribunal finds that the goods in issue constitute articles of golf equipment for the purpose of the Note (B)(3) of the explanatory notes to heading No. 95.06 and are therefore covered by the terms of that heading. Consequently, it is not necessary to consider G&G’s alternative argument that the goods in issue are accessories to golf clubs.

58. Given that Note 1(t) to Section XI excludes “articles of Chapter 95” from the coverage of that chapter, it is also not necessary to address whether the goods in issue are classifiable in heading No. 63.07.

### **Classification at the Subheading and Tariff Item Levels**

59. Having determined that the goods in issue should be classified in heading No. 95.06, the Tribunal must next determine the proper classification at the subheading and tariff item levels.

60. Pursuant to Rule 6 of the *General Rules* and Rule 1 of the *Canadian Rules*, on the basis of its review of the terms of the subheadings and tariff items included in heading No. 95.06, the Tribunal finds that the goods in issue should be classified in subheading No. 9506.39 and, following from that, under tariff item No. 9506.39.90 as other golf equipment.

### **DECISION**

61. For the foregoing reasons, the Tribunal concludes that the goods in issue are other articles of other golf equipment and should be classified under tariff item No. 9506.39.90.

62. The appeal is allowed.

Jean Bédard  
Jean Bédard  
Presiding Member

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49. Exhibit AP-2013-061-09A at 48, Vol. 1A.