Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2015-004

Rimowa North America Inc.

v.

President of the Canada Border Services Agency

Decision and reasons issued Wednesday, January 6, 2016

Canada

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IN THE MATTER OF an appeal heard on December 3, 2015, pursuant to subsection 67(1) 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 March 19, 2015, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

RIMOWA NORTH AMERICA INC. **Appellant**

AND

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

DECISION

The appeal is allowed.

Daniel Petit
Daniel Petit
Presiding Member

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	December 3, 2015
Tribunal Member:	Daniel Petit, Presiding Member
Counsel for the Tribunal:	Peter Jarosz
Senior Registrar Officer:	Julie Lescom

PARTICIPANTS:

Appellant	**Counsel/Representative**
Rimowa North America Inc.	Sean Everden

Respondent	**Counsel/Representative**
President of the Canada Border Services Agency	Mary Roberts

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STATEMENT OF REASONS

INTRODUCTION

1. This is an appeal by Rimowa North America Inc. (Rimowa) filed with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*[1] from a decision of the President of the Canada Border Services Agency (CBSA) dated March 19, 2015, pursuant to subsection 60(4).

2. The goods in issue are various models of zipper chains which are composed of two textile strips mounted with interlocking plastic teeth. The goods in issue do not include a pull or slider when they are imported. The goods in issue are used in the manufacture of suitcases.

3. The goods in issue were classified as other parts of slide fasteners under tariff item No. 9607.20.90 of the schedule to the *Customs Tariff*.[2] Following a trade compliance verification, the CBSA reclassified the goods in issue under tariff item No. 9607.20.10 as parts of slide fasteners of textile materials.

PROCEDURAL HISTORY

4. The following submissions were filed by the parties: (1) appellant's brief; and (2) respondent's brief.

5. On October 6, 2015, after the filing of the parties' respective briefs, the CBSA requested a hearing through written submissions; Rimowa consented to the request.

6. As is the Tribunal's practice when hearings are resolved through the exchange of written submissions, Rimowa was permitted to file additional submissions and did so on November 6, 2015.

7. On November 20, 2015, the CBSA filed a letter requesting leave to make additional submissions in response to what it alleged to be new arguments contained in Rimowa's additional submissions. These submissions were filed as part of the letter requesting leave to file them. Rimowa objected to the request. Even though the Tribunal did not agree that Rimowa had made new arguments in its additional submissions, as alleged by CBSA,[3] it nonetheless allowed the submissions in the interest of fully exploring the issues in this appeal. Rimowa was granted the opportunity to file submissions in response, which it did on November 27, 2015.

8. The Tribunal held a file hearing on December 3, 2015.

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).[4] The schedule is divided into sections and chapters,

1. R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].
2. S.C. 1997, c. 36.
3. These arguments by Rimowa specifically referenced the respondent's brief, i.e. they were a reply argument. It must be noted that the opportunity for an appellant to make reply arguments is specifically contemplated by the Tribunal's procedures in file hearings. The Tribunal also cautioned the CBSA that it was not proper to file the submissions for which leave is requested at the same time and in the same document as the request to file them. The Tribunal explained that the request should be made first and the submissions only filed if leave is obtained.
4. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.

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*[5] and the *Canadian Rules*[6] 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*[7] and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,[8] 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.[9]

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.[10] This analysis is then repeated to determine the subheading[11] and tariff item.[12]

14. The *General Rules* provide as follows:

> 1. 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.

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5. S.C. 1997, c. 36, schedule [*General Rules*].
6. S.C. 1997, c. 36, schedule.
7. World Customs Organization, 2d ed., Brussels, 2003.
8. World Customs Organization, 5th ed., Brussels, 2012.
9. 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.
10. Rules 1 through 5 of the *General Rules* apply to classification at the heading level. The Federal Court of Appeal in *Canada (Customs and Revenue Agency) v. Agri Pack*, 2005 FCA 414 (CanLII), at para. 14 stated that "[t]he General Rules are structured in cascading form: if and only if General Rule 1 does not resolve the classification, then regard must be had to General Rule 2, and so on as necessary."
11. 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*, 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."
12. 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.

2. . . .

(b) *Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.*

3. *When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows*:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, *when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods*.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, *which cannot be classified by reference to Rule 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable*.

(c) When goods cannot be classified by reference to Rule 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

[Emphasis added]

15. The explanatory notes to Rule 2 (b) provide as follows:

(X) Rule 2 (b) concerns mixtures and combinations of materials or substances, and goods consisting of two or more materials or substances. The headings to which it refers are headings in which there is a reference to a material or substance (e.g., heading 05.07 - ivory), and headings in which there is a reference to goods of a given material or substance (e.g., heading 45.03 -articles of natural cork). It will be noted that the Rule applies only if the headings or the Section or Chapter Notes do not otherwise require (e.g., heading 15.03 - lard oil, **not ... mixed**).

Mixtures being preparations described as such in a Section or Chapter Note or in a heading text are to be classified under the provisions of Rule 1.

(XI) The effect of the Rule is to extend any heading referring to a material or substance to include mixtures or combinations of that material or substance with other materials or substances. The effect of the Rule is also to extend any heading referring to goods of a given material or substance to include goods consisting partly of that material or substance.

(XII) *It does not, however, widen the heading so as to cover goods which cannot be regarded, as required under Rule 1, as answering the description in the heading; this occurs where the addition of another material or substance deprives the goods of the character of goods of the kind mentioned in the heading.*

(XIII) As a consequence of this Rule, mixtures and combinations of materials or substances, and goods consisting of more than one material or substance, if prima facie classifiable under two or more headings, must therefore be classified according to the principles of Rule 3.

[Emphasis added]

RELEVANT CLASSIFICATION PROVISIONS

16. The relevant portions of the *Customs Tariff* Schedule state:

96.07	**Slide fasteners and parts thereof**.
. . .	
9607.20	**-Parts**
9607.20.10	- - -Of textile materials
. . .	
9607.20.90	- - -Other

17. There are no applicable section or chapter notes. The explanatory notes do not apply to tariff items, as they apply only at the common international classification level, i.e. up to the subheading level. Therefore, classification must be performed according to the *General Rules* and the *Canadian Rules* which make the *General Rules* applicable by reference at the tariff item level.

POSITIONS OF PARTIES

Rimowa

18. Rimowa submitted that the goods in issue should be classified pursuant to Rules 2 (b) and 3 (b) of the *General Rules* under residual tariff item No. 9607.20.90, as it is the plastic teeth that impart the essential character to the goods.

CBSA

19. The CBSA submitted that the goods in issue are properly classified pursuant to Rule 1 of the *General Rules* under tariff item No. 9607.20.10 as being of textile materials. The CBSA argued that to apply Rule 3 (b) would strip the tariff item from any meaning.

20. In the alternative, the CBSA submitted that, pursuant to Rule 3 (b) of the *General Rules*, the goods in issue are properly classified as being made of textile materials, as the essential character of the goods is imparted by their textile strips.

TRIBUNAL'S ANALYSIS

21. The dispute is at the tariff item level. As set out above, the parties do not agree whether classification has to be performed according to Rule 1 of the *General Rules*, as submitted by CBSA, or Rules 2 and 3 (b) or (c), as submitted by Rimowa.

22. The Tribunal's analysis will begin by determining which of the *General Rules* is applicable.

23. The Tribunal agrees with the CBSA that Rule 1 of the *General Rules* applies.[13] However, the outcome of the classification analysis pursuant to Rule 1 is that the goods in issue should be classified under tariff item No. 9607.20.90, as submitted by Rimowa. The details which lead the Tribunal to reach the above are as follows.

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13. Exhibit AP-2015-004-07A at para. 13, Vol. 1A.

Rule 1 of the *General Rules* Applies to the Classification of the Goods in Issue

24. After examining the tariff provisions in this appeal, the Tribunal finds that Rule 1 of the *General Rules* applies. In a Rule 1 analysis, it is the terms of the tariff nomenclature (here, the terms of the tariff items at issue) which should be used to determine the classification.

25. The terms of the tariff nomenclature in dispute permit a disposition of this appeal without engaging the operation of any subsequent rules. In the present case, since one of the two tariff items being examined is an "other" (a residual, "catch-all" classification) tariff item, recourse to any other rules (other than Rule 1 of the *General Rules*) should be unnecessary. Specifically, Rule 3 cannot be applicable, either as a result of *prima facie* classification of the goods in two or more tariff items or as a result of the application of Rule 2 (b).

26. This is the case because a residual tariff item and a more specific tariff item are usually *mutually exclusive*.[14] These two kinds of tariff provisions are the types of tariff items that are to be considered in the present appeal.

27. The Tribunal finds that the goods in issue cannot be *prima facie* classified both in the specific tariff item, i.e. as "textile materials", *and* in the competing, residual tariff item, as "other" materials. One or the other of these two tariff items must be selected as the proper classification under Rule 1 of the *General Rules*.

28. The Tribunal finds that Rimowa's position regarding the application and role of Rules 2 (b) and 3 of the *General Rules* in this case is not tenable. Since the *General Rules* are "cascading" provisions, one would not conduct an analysis under Rules 2 (b) and 3 if an analysis of the terms of the schedule to the *Customs Tariff*, i.e. an analysis conducted under Rule 1, has already decided the issue.

29. In any event, Rule 2 (b) of the *General Rules* cannot be applied in this case because of Note XII of the explanatory notes to Rule 2 (b) provides that it ". . . does not, however, widen the heading [here, the tariff item] so as to cover goods which cannot be regarded, as required under Rule 1, as answering the description in the heading; this occurs where the addition of another material or substance deprives the goods of the character of goods of the kind mentioned in the heading."

30. Here, in the presence of the plastic materials which deprive the goods of the character of merely textile goods, Rule 2 (b) of the *General Rules* cannot apply. This is so due to both the quantity and function of the plastic materials—they are significant in quantity and they perform a significant function, being the fasteners in the zipper.

31. Therefore, the Tribunal cannot apply Rule 3 of the *General Rules*, either through an application of Rule 2 (b) or for other reasons.

The Goods in Issue are Made of Textile and Plastic Materials and are Other Than Merely Textiles

32. The goods in issue are not simply parts made of textile materials. The written materials submitted by the parties were consistent in describing the goods as made of (1) fabric strips and (2) interlocking plastic teeth.[15] Accordingly, the Tribunal finds that the goods are made of textiles and plastic.

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14. *Bio Agri Mix Ltd. v. Commissioner of the Canada Customs and Revenue Agency* (28 November 2000), AP-99-085 (CITT) at 9; *J. Walter Company Ltd. v. President of the Canada Border Services Agency* (30 May 2008), AP-2006-029 (CITT) at para. 21.
15. Exhibit AP-2015-004-07A at para. 23, Vol. 1A, citing the appellant's brief, Exhibit AP-2015-004-05A at paras. 10-11, Vol. 1; Exhibit AP-2015-004-05A, tab 14, Vol. 1.

33. Therefore, as the goods in issue are made of not only textiles but also other materials, they cannot be described as being of "textile materials". To do so would entail an impermissible reading of the phrase "and plastic" (or "and other materials") which does not exist in the wording of tariff item No. 9607.20.10. The goods in issue must therefore be described by tariff item No. 9607.20.90 as being made of "other" materials, which is a broader category encompassing goods made of various materials.

34. Finally, the Tribunal is not persuaded by the CBSA's argument that to classify the goods in issue in the residual heading would render tariff item No. 9607.20.10 meaningless. There was no evidence nor any persuasive interpretations of the *Customs Tariff* submitted to support this speculation. This argument was addressed by Rimowa which, while noting its hypothetical nature, provided the example of a zipper pull made of textile materials as one part which would be classified under tariff item No. 9607.20.10.[16]

SUMMARY

35. Pursuant to Rule 1 of the *General Rules*, the goods in issue should be classified under tariff item No. 9607.20.90.

DECISION

36. The appeal is allowed.

Daniel Petit
Daniel Petit
Presiding Member

16. Exhibit AP-2015-004-19 at 1-2, Vol. 1A.