Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2017-045

Costco Wholesale Canada Inc.

v.

President of the Canada Border Services Agency

Decision and reasons issued Wednesday, July 18, 2018

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IN THE MATTER OF an appeal heard on June 12, 2018, 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 September 8, 2017, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

COSTCO WHOLESALE CANADA INC. **Appellant**

AND

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

DECISION

The appeal is dismissed.

Ann Penner
Ann Penner
Presiding Member

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	June 12, 2018
Tribunal Panel:	Ann Penner, Presiding Member
Support Staff:	Dustin Kenall, Counsel

PARTICIPANTS:

Appellant	**Counsel/Representatives**
Costco Wholesale Canada Inc.	Michael Sherbo Andrew Simkins

Respondent	**Counsel/Representative**
President of the Canada Border Services Agency	Andrew Kinoshita

WITNESSES:

Giro Rizzuti Vice President / General Merchandise Manager Costco Wholesale Canada Inc.	Lana Doss Hike Instructor Hike Ontario

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STATEMENT OF REASONS

INTRODUCTION

1. This is an appeal filed by Costco Wholesale Canada Inc. (Costco) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*[1] from a decision made on September 8, 2017, by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4), with respect to a request for review of an advance ruling on tariff classification.

2. The issue in this appeal is whether "Quick Lock Trekking Poles" (the goods in issue) are properly classified under tariff item No. 6602.00.90 of the schedule to the *Customs Tariff*[2] as "walking-sticks, seat-sticks, whips, riding crops and the like", as determined by the CBSA, or should be classified under tariff item No. 9506.91.90 as "articles and equipment for general physical exercise, gymnastics or athletics", as Costco argues.

PROCEDURAL HISTORY

3. On March 7, 2016, Costco requested an advance ruling on the tariff classification for the goods in issue, under paragraph 43.1(1)(c) of the *Act*.

4. On October 24, 2016, the CBSA determined that the goods in issue were classified under tariff item No. 6602.00.90 as "walking-sticks, seat-sticks, whips, riding crops and the like".

5. On December 19, 2016, Costco requested a review of the advance ruling under subsection 60(2) of the *Act*.

6. On September 8, 2017, the CBSA affirmed its ruling under subsection 60(4) of the *Act*.

7. On December 5, 2017, Costco appealed the CBSA's decision to the Tribunal under subsection 67(1) of the *Act*.

8. On February 5, 2018, Costco filed its brief.

9. On April 6, 2018, the CBSA filed its brief.

10. On June 12, 2018, the Tribunal held a hearing, in which Costco called two witnesses: Mr. Giro Rizzuti, vice president and general merchandise manager for Costco; and Ms. Lana Doss, snowshoe coordinator and hiking trainer for the Ottawa Outdoor Club.[3]

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1. R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].
2. S.C. 1997, c. 36.
3. The CBSA objected to Ms. Doss providing opinion evidence as the appellant had not sought to have her qualified as an expert. The Tribunal allowed her testimony, while acknowledging that the Tribunal will weigh her evidence based on its limited foundation in her experience with similar goods (rather than the specific goods in issue), and not as a qualified expert. *Transcript of Public Hearing*, 12 June 2018, at 9-10, 15-16.

DESCRIPTION OF THE GOODS IN ISSUE

11. The goods in issue, imported by Costco and supplied by Cascade Mountain Tech based in Washington, USA, are called "Quick Lock Trekking Poles". They are made of carbon fibre and weigh approximately 227 grams (8 oz.) and can be adjusted in length from 58 cm (23 in.) to 132 cm (53 in.). They come with bottom baskets for use through snow and muddy terrain. They also feature tips made of tungsten carbide for easier soil penetration and protection from damage while crossing hard terrain.[4]

LEGAL FRAMEWORK[5]

Relevant Tariff Nomenclature and Notes

12. The nomenclature for tariff item No. 6602.00.90, the classification determined by the CBSA, reads as follows:

Section XII

FOOTWEAR, HEADGEAR, UMBRELLAS, SUN UMBRELLAS, WALKING-STICKS, SEAT-STICKS, WHIPS, RIDING-CROPS AND PARTS THEREOF; PREPARED FEATHERS AND ARTICLES MADE THEREWITH; ARTIFICIAL FLOWERS; ARTICLES OF HUMAN HAIR

. . .

Chapter 66

UMBRELLAS, SUN UMBRELLAS, WALKING-STICKS, SEAT-STICKS, WHIPS, RIDING-CROPS AND PARTS THEREOF

. . .

6602.00 **Walking-sticks, seat-sticks, whips, riding-crops and the like.**

6602.00.10 - - -Canes for use of a public hospital

6602.00.90 - - -Other

13. There are no section notes.

14. Legal note 1(c) to Chapter 66 reads as follows:

1. This Chapter does not cover:

. . .

(c) Goods of Chapter 95 (for example, toy umbrellas, toy sun umbrellas).

15. The explanatory notes to heading No. 66.02 read in relevant part as follows:

With the **exception** of the goods mentioned in the exclusions below, this heading covers walking-sticks, canes, whips (including whip-leads), riding-crops and similar articles irrespective of the materials of which they are made.

(A) **Walking-sticks, seat-sticks and similar articles.**

4. Exhibit AP-2017-045-04A at 13, Vol. 1.
5. The legal framework for tariff classification is set out in Appendix A.

> In addition to ordinary walking-sticks, this group also includes seat-sticks (with handles designed to open out to form a seat), walking-sticks specially designed for disabled persons and senior citizens, boy scouts' poles, shepherds' crooks.

. . .

This heading **excludes** :

. . .

(d) Articles of **Chapter 95** (e.g., golf clubs, hockey sticks, ski sticks, alpine ice-axes).

16. There are no relevant classification opinions.

17. The nomenclature for tariff item No. 9506.91.90, the classification supported by Costco, reads as follows:

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.

-Snow-skis and other snow-ski equipment:

. . .

-Water-skis, surf-boards, sailboards and other water-sport equipment:

. . .

-Golf clubs and other golf equipment:

. . .

-Articles and equipment for table-tennis:

. . .

-Tennis, badminton or similar rackets, whether or not strung:

. . .

-Balls, other than golf balls and table-tennis balls:

. . .

9506.70 -Ice skates and roller skates, including skating boots with skates attached:

. . .

-Other:

. . .

9506.91 - -Articles and equipment for general physical exercise, gymnastics or athletics

. . .

9506.91.90 - - -Other

. . .

9506.99 - -Other

9506.99.10 - - -Badminton birds (shuttle cocks); Baseball bats of aluminium; Face masks and shoulder pads for football; For climbing or mountaineering

18. There are no section notes.

19. Legal note 1(h) to Chapter 95 reads as follows:

1. This Chapter does not cover:

. . .

(h) Walking-sticks, whips, riding-crops or the like (heading 66.02), or parts thereof (heading 66.03);

20. The general explanatory notes to Chapter 95 provide, in relevant part, the following:

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 explanatory notes to heading No. 95.06 reiterate, in relevant part, the following:

The heading **excludes** :

. . .

(h) Walking-sticks, whips, riding-crops and the like (**heading 66.02**), and parts thereof (**heading 66.03**).

22. The explanatory notes to heading No. 95.06 also provide examples of the type of goods classified under subheading No. 9506.91 (“Articles and equipment for general physical exercise, gymnastics or athletics”):

This heading covers :

(A) Articles and equipment for general physical exercise, gymnastics or athletics, e.g. :

Trapeze bars and rings; horizontal and parallel bars; balance beams, vaulting horses; pommel horses; spring boards; climbing ropes and ladders; wall bars; Indian clubs; dumb bells and bar bells; medicine balls; jump balls with one or more handles designed for physical exercises; rowing, cycling and other exercising apparatus; chest expanders; hand grips; starting blocks; hurdles; jumping stands and standards; vaulting poles; landing pit pads; javelins, discuses, throwing hammers and putting shots; punch balls (speed bags) and punch bags (punching bags); boxing or wrestling rings; assault course climbing walls.

23. There are no relevant classification opinions.

POSITIONS OF THE PARTIES

Costco

24. Costco submitted that the goods in issue are equipment designed for hiking, mountaineering and trekking. It argued that these activities are active sports. Costco relied on the Tribunal's decision in File No. AP-91-188(R)[6] in which it considered, on remand from the Federal Court of Appeal, whether walking shoes were designed for a sporting activity (fitness walking). Costco argued that the same principle applies to this case, and it urged the Tribunal to distinguish the goods in issue from ordinary (non-athletic) walking-sticks.

25. Costco also relied on the fact that heading No. 95.06 includes ski poles and snowshoes. Costco argued that the goods in issue are similar to ski poles because both have bottom baskets for use in snow and muddy terrain. Costco also argued that the goods in issue are similar to snowshoes because trekking poles can also be used for snowshoeing.[7]

26. Costco denied that the goods in issue could be classified as walking-sticks under heading No. 66.02. It submitted that walking is defined as moving with one's legs "at a speed that is slower than running", even though it cited a dictionary definition that does not mention speed or running.[8] It also relied on the fact that the explanatory notes to heading No. 66.02 refer to "*ordinary* walking-sticks" [emphasis added], as opposed to walking-sticks for sports such as hiking, trekking, snowshoeing, etc. Finally, it argued that if the Tribunal were to find that walking-sticks are similar to ski-poles, then the former must be excluded from this heading as an article of Chapter 95.

CBSA

27. The CBSA submitted that the goods in issue are properly classified under heading No. 66.02.

28. Given that there is no definition of "walking-stick" in the *Customs Tariff*, the CBSA urged the Tribunal to consider the ordinary meaning of the words at issue. It pointed to dictionary definitions for terms it considered relevant including:[9]

- "Walking-stick": "a stick carried when walking, used esp. to provide extra support"
- "Walking": "the activity or an instance of taking a walk, esp. for recreation or exercise"
- "Hike": "a long walk, esp. in the country, taken for pleasure or exercise"
- "Trek (trekking)": "a. travel or make one's way on foot, esp. arduously. b. hike, esp. in difficult country"

29. Based on these definitions, the CBSA maintained that walking is involved in both hiking and trekking and can be undertaken as either a recreational activity or exercise.

30. The CBSA further argued that the terms "walking-sticks", "trekking poles" and "hiking poles" are interchangeable. It pointed to the fact that all are marketed the same way according to the websites of

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6. *JV Marketing Inc. v. Deputy Minister of National Revenue* (8 September 1995), AP-91-188(R) (CITT) [*JV Marketing*].
7. Exhibit AP-2017-045-04A at 43, Vol. 1.
8. *Ibid.* at para. 31.
9. Exhibit AP-2017-045-06A, Appendix 2 at 23, Vol. 1.

Costco, Wal-Mart, and Amazon.ca; each of those websites feature "walking-sticks", "walking poles", "trekking poles", "touring sticks", and all of those goods share the same essential characteristics and intended use. For the CBSA, similar marketing is indicative of proper tariff classification.[10]

31. In the alternative, the CBSA argued that even if the goods in issue are not walking-sticks, they are classifiable in heading No. 66.02 as "the like", noting that the Tribunal has stated that for goods to be "like" other goods they "need not be identical" but "share important physical and functional characteristics".[11] For the CBSA, the goods in issue share a similar physical shape, construction and use as explicitly identified goods in the explanatory notes to heading No. 66.02 (i.e. boy scouts' poles, shepherds' crooks). All of those goods are sticks that provide support when walking.

32. The CBSA disputed that the goods in issue could be classified under Chapter 95 as "trekking poles". Further, it argued that not all sports-related equipment is classified in Chapter 95; for example, bicycles are classified under tariff item No. 8712.00.00; rowing boats under heading No. 89.03; protective athletic headgear under tariff item No. 6506.10.40, etc.

33. The CBSA also submitted that Costco's reliance on *J.V. Marketing* is misplaced as that case considered whether a specific brand of walking shoe was subject to anti-dumping duties under the *Special Import Measures Act* (*SIMA*). The process for determining whether goods are of the same description as an order or finding under *SIMA* involves comparing the goods in question to the product definition included in an injury finding. In contrast, the process for determining tariff classification involves review of competing tariff headings and subheadings according to the *General Rules for the Interpretation of the Harmonized System*,[12] the *Explanatory Notes to the Harmonized Commodity Description and Coding System*[13] and related authorities.

34. Finally, the CBSA disputed that the goods in issue are similar to ski poles simply because they both have bottom baskets. In that regard, it suggested that the fact that ski poles can be used for snowshoeing is irrelevant, especially as there are no end-use requirements under heading No. 66.02. Finally, it maintained that the use of the adjective "ordinary" to describe walking-sticks in the *Explanatory Notes* was simply intended by the drafters to distinguish general-purpose walking-sticks (for use in walking, hiking, trekking, etc.) from more specialized types of walking-sticks such as boy scouts' poles, shepherd's crooks and seat-sticks.

ANALYSIS

Sequence of Review and Burden of Proof

35. In tariff classification cases such as this, the Tribunal has consistently held that:

- Goods cannot be *prima facie* classifiable in two headings that are mutually exclusive by virtue of relevant legal notes.[14] Under Rule 1 to the *General Rules*, the Tribunal must consider both

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10. *Partylite Gifts Ltd. v. The Commissioner of the Canada Customs and Revenue Agency* (16 February 2004), AP-2003-008 (CITT) at 5.
11. *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (23 May 2014), AP-2011-033 (CITT) at para. 42.
12. S.C. 1997, c. 36, schedule [*General Rules*].
13. World Customs Organization, 6th ed., Brussels, 2017 [*Explanatory Notes*].
14. *Canac Marquis Grenier Ltée v. President of the Canada Border Services Agency* (11 September 2017), AP-2016-026 (CITT) [*Canac Marquis*] at para. 30 and n. 13.

headings and determine which one provides the best fit for the goods.[15] Unlike situations where there is only one exclusionary note, the Tribunal need not begin its consideration of the competing headings in any particular order;[16]

- In considering mutually exclusive headings, the Tribunal typically prefers a more specific heading to a general one;[17] and
- The appellant bears the burden of proof.[18]

36. In this case, parties agree that there is no specific sequence the Tribunal must follow in considering the alternative headings. They also agree that the Tribunal cannot rest its analysis without considering both headings.[19]

37. Accordingly, the Tribunal will begin its analysis by considering the applicability of heading No. 66.02 to the goods in issue. The appellant bears the onus to establish that the CBSA erred in determining that the goods in issue are properly classified as "walking-sticks . . . and the like". Moreover, heading No. 66.02 provides a more specific description of the type of potential goods it covers than does heading No. 95.06. The Tribunal will then consider the applicability of heading No. 95.06.

Heading No. 66.02: "Walking-sticks . . . and the like"

38. As the tariff does not define "walking-stick", the Tribunal will consider how the definition cited by the CBSA (and noted above) applies to the characteristics of the goods in issue at the time of importation.[20]

39. Mr. Giro Rizzuti referred to the goods in issue as trekking poles, and testified that they were purchased by Costco's sporting goods buyer and merchandized in its sporting goods aisle next to other products geared towards physical activity. He noted that some of Costco's customers provided feedback that they use the goods for snowshoeing and hiking outdoors, such as on mountains.[21]

40. The Tribunal finds, however, that Mr. Rizzuti's testimony does not preclude the goods in issue from being walking-sticks as defined above. Indeed, Mr. Rizzuti acknowledged[22] that Costco markets and sells similar goods as "Rockwater Designs Clip-lock *Walking Stick* 2-pack" [emphasis added] on its website under the "Sports & Fitness" and "Camping Accessories" categories. These walking-sticks share many of the same characteristics as the goods in issue, including wrist straps, adjustable length, carbide tips, removable snow baskets and trail tips, etc. The evidence filed by the CBSA shows that Costco sells both of these types of sticks at similar price points as well ($43.99 versus $49.99), irrespective of whether the term "walking" or "trekking" is included in the product name.[23]

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15. *VGI Village Green Imports v. Canada Border Services Agency* (13 January 2012), AP-2010-046 (CITT) [*VGI*] at paras. 61-62.
16. *Canac Marquis* at para. 31.
17. See, for example, *Produits Laitiers Advidia Inc. v. Commissioner of the Canada Customs and Revenue Agency* (8 March 2005), AP-2003-040 (CITT) at para. 40 citing General Rule 3(a); and *VGI* at para. 94 (preferring the heading the terms of which "squarely describe the goods in issue").
18. *Canada (Border Services Agency) v. Miner*, 2012 FCA 82 (CanLII) at paras. 7, 21.
19. *Transcript of Public Hearing*, 12 June 2018, at 41-42 and 45.
20. The appellant did not provide any alternative definition of a walking-stick.
21. *Transcript of Public Hearing*, 12 June 2018, at 4-5.
22. *Ibid*. at 8.
23. Exhibit AP-2017-045-06A, Appendix 3 at 23, Vol. 1. Exhibit AP-2017-045-04A, Appendix 2 at 12, Vol. 1

41. Ms. Lana Doss testified about trekking poles (including the goods in issue) on the basis of her role as a snowshoe coordinator and hiking trainer for the Ottawa Outdoor Club, and sales experience at an outdoor gear store. She noted that trekking poles can be used over long or short distances. By providing two additional points of contact with the ground, they distribute users' weight more broadly, taking pressure off of their knees and joints. They also provide stability when navigating uneven terrain (roots, rocks, etc.). Finally, they can provide pacing or rhythm.[24]

42. She noted that trekking poles including the goods in issue can be adjustable in length depending on the terrain.[25] Furthermore, she explained that baskets keep the poles from sinking and are used for traversal in snow and mud;[26] that carbide tips are for hiking in woods, soil and rocky terrain, while rubber tips are for pavement and concrete;[27] and that wrist straps keep poles attached to the user when they stumble or trip, and also absorb vibration.[28]

43. Ms. Doss testified that she uses trekking poles for snowshoeing as well as hiking, the main difference being that she might lengthen the poles more for snowshoeing to compensate for a part of the pole sinking into snow.[29]

44. On cross-examination, Ms. Doss confirmed that she does not know how many people purchase trekking poles with snowshoes. She described snowshoeing as traversing over snow with snowshoes at a gait different than a normal walk but, nonetheless, a walk involving "putting one foot in front of the other and moving forward".[30] She also agreed that trekking poles can be used for leisurely walking down the sidewalk; in that capacity they provide users stability, balance and efficient energy use.[31]

45. The Tribunal finds that Ms. Doss's evidence is also consistent with the conclusion that trekking poles are in fact a type of walking-stick. Trekking poles are used for the same purpose as walking-sticks—they enhance stability, reduce pressure and provide rhythm during walking-type activities such as hiking, trekking and snow shoeing. While different walking-sticks might have different features for different terrain and/or weather conditions, their essential characteristics are the same and this is what matters for the purposes of tariff classification.

46. The tariff does not limit what qualifies as a walking-stick in terms of material, end-use, design, etc. To the contrary, it expressly includes a catch-all category of walking-sticks by virtue of the words "and the like". This category is not interpreted strictly and does not require that the goods be identical. Rather, the goods will be considered "the like" if they share important characteristics and have common features.[32] Viewing the marketing evidence alongside the witnesses' testimony, not only does the Tribunal find that the goods in issue and walking-sticks share important characteristics and features, but it finds no meaningful difference whether goods are marketed and sold as a trekking pole versus a walking-stick. These types of goods are all firm poles with grips sold in pairs for traversing, by foot, a variety of terrain. They are all used to improve a walker's balance, support, rhythm and stability.

47. Based on the above, the Tribunal finds that the goods in issue are in fact walking-sticks or the like and, accordingly, are properly classified in heading No. 66.02.

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24. *Transcript of Public Hearing*, 12 June 2018, at 10-11.
25 . *Ibid.* at 12.
26 . *Ibid.* at 13.
27 . *Ibid.* at 14-15.
28. *Ibid.* at 17.
29. *Ibid.* at 17.
30. *Ibid.* at 25.
31. *Ibid.* at 22-23.
32. *Canadian Tire Corporation Ltd. v Canada Border Services Agency* (22 May 2012), AP-2011-024 (CITT) at para. 44.

Heading No. 95.06: "Articles and equipment for general physical exercise, gymnastics or athletics"

48. The appellant submitted that the goods in issue fall under heading No. 95.06 as "articles and equipment for general physical exercise, gymnastics or athletics". As noted above, it maintained that trekking poles are not "ordinary" walking-sticks because they are used for outdoors activities of such a level of strenuousness as to constitute a form of exercise or athletics, specifically, hiking, mountaineering, trekking and snowshoeing.

49. The appellant relied on the reference in the *Explanatory Notes* to "ordinary" walking-sticks, arguing that this is an express indication that heading No. 66.02 excludes athletic walking-sticks. The Tribunal disagrees. The appellant's interpretation ignores the rest of the text of the notes, which clarifies that the heading includes "[i]n addition to ordinary walking-sticks . . . seat-sticks . . . walking-sticks specially designed for disabled persons and senior citizens, boy scouts' poles, [and] shepherds' crooks". Thus, the Tribunal finds that the notes themselves recognize that the category is broader than merely walking-sticks for the disabled and senior citizens. Indeed, "ordinary walking-sticks" must be read along with "and the like" and the opening phrase "includes in addition to", which "typically denotes that a non-exhaustive list is to follow".[33] Had an exhaustive interpretation been intended, the drafters could have used alternative phrasing such as "is limited to" or "means", or could have preceded the examples with restrictive criteria.[34]

50. The appellant also relied on *JV Marketing* to make its case. The Tribunal finds that this case does not apply to the issues at hand. As the respondent rightly noted, *JV Marketing* involved a subjectivity issue under the *SIMA* (i.e. whether certain goods were subject to an injury finding). The Tribunal has been consistent that *SIMA* case law is not relevant in determining the proper tariff classification of goods because *SIMA* proceedings do not involve an analysis of tariff nomenclature in accordance with the *Act* and the *General Rules*.[35]

51. Regardless, even the reference in *JV Marketing* to "sports footwear" weighs against the appellant's case. The fact that the tariff nomenclature expressly distinguishes between "sports footwear" and other footwear but does not likewise expressly distinguish between sports walking-sticks and other walking-sticks suggests that the drafters did not intend for parties to draw a similar distinction between the two. This view is supported by the fact that the drafters did carve out one type of pole specifically for inclusion in heading No. 95.06: ski poles.

52. The appellant observed that there is a reference to goods "[f]or climbing or mountaineering" in tariff item No. 9506.99.10 and, therefore, argued that it is appropriate to classify trekking poles in heading No. 95.06. This argument depends on a blurring of lines between trekking or hiking, on the one hand, and climbing or mountaineering on the other.[36] When considering goods with multiple uses, the Tribunal has held that "the appearance, design, best use, marketing and distribution of goods were individual factors that may be useful to consider in classifying goods".[37] The Federal Court of Appeal has held that the fact that

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33. *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38, at para. 50.
34. *Ibid.* at paras. 48-50.
35. *Artcraft Company Inc. v. President of the Canada Border Services Agency* (8 March 2018), AP-2017-016 (CITT) at para. 58.
36. There are also technical impediments to interpreting the tariff this way. The provision is found in a different subheading than that proposed by Costco. It is also in a residual "other" category at the same (and, thus, competing) two-dash level of subheading No. 9506.91 for "articles and equipment for general physical exercise, gymnastics or athletics".
37. *Wal-Mart Canada Corporation v. President of the Canada Border Services Agency* (13 June 2011), AP-2010-035 (CITT) at para. 74.

goods in issue "could be put to more than one use" does not preclude a finding by the Tribunal that they are nonetheless properly classified under one such use based on the evidence.[38] Here, there is no evidence that trekking poles are used in the sport of climbing and mountaineering as opposed to trekking, which is simply a form of walking. Therefore, this argument is unsubstantiated.

53. Finally, heading No. 95.06 is a less specific heading than heading No. 66.02. Rule 3 of the *General Rules* instructs that "[w]hen by application of Rule 2(b) *or for any other reason*, goods are, *prima facie*, classifiable under two or more headings, . . . [t]he heading which provides the most specific description shall be preferred to headings providing a more general description" [emphasis added]. Here, because of the mutual exclusions, the goods in issue cannot be *prima facie* classifiable under two headings; however, in determining which heading best fits, it is reasonable to consider which is more specific. A walking-stick is a specific good whereas "articles and equipment for general physical exercise, gymnastics or athletics" is a category encompassing a wide class of athletic goods. Indeed, the mutual exclusions exist because the drafters anticipated that walking-sticks might be otherwise included as one type of athletic goods. The explanatory notes to heading No. 95.06 provide examples of the type of goods classified under subheading No. 9506.91. Notably, no equipment related to hiking, trekking or walking appears therein, even though "vaulting poles" (but not hiking or trekking poles) are specifically mentioned. This is in stark contrast to the explanatory notes to heading No. 66.02 which specifically mention two types of hiking poles (boy scouts' poles and shepherds' crooks). Heading No. 66.02 is therefore preferable to heading No. 95.06 for the goods in issue because it more specifically describes them.

54. Based on the above, the Tribunal finds that the goods in issue are not classifiable in heading No. 95.06.

Heading, Subheading and Tariff Item Number

55. In accordance with Rule 6 of the *General Rules*, the classification of goods in the subheading of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, according to Rules 1 to 5. Only subheadings at the same level are to be compared.

56. Heading No. 66.02 includes only subheading No. 6602.00, which reads identically to it.

57. At the tariff item level, there are only two categories (both at the three-dash level): "Canes for use of a public hospital" (tariff item No. 6602.00.10) and "Other" (tariff item No. 6602.00.90). As the goods in issue do not meet the description of the former, they must fall in the residual other category.

DECISION

58. For the reasons provided above, the appeal is dismissed.

Ann Penner
Ann Penner
Presiding Member

38. *Partylite Gifts Ltd. v. Canada (Customs & Revenue Agency)*, 2005 FCA 157 at para. 3.

APPENDIX A

Tariff Classification Steps

1. 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).[39] 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.

2. Subsection 10(1) of the *Customs Tariff* provides that, subject to subsection 10(2), the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules* and the *Canadian Rules*[40] set out in the schedule.

3. 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.

4. 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*[41] and the *Explanatory Notes*, published by the WCO. While the classification opinions and the explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.[42]

5. 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. It is only where Rule 1 does not conclusively determine the classification of the goods that the other general rules become relevant to the classification process.[43]

6. 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.[44] The final step is to determine the proper tariff item.[45]

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39. Canada is a signatory to the International Convention on the Harmonized Commodity Description and Coding System, which governs the Harmonized System.
40. S.C. 1997, c. 36, schedule [*Canadian Rules*].
41. World Customs Organization, 4th ed., Brussels, 2017.
42. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131, at paras. 13, 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.
43. *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) at para. 21.
44. Rules 1 through 5 of the *General Rules* apply to classification at the heading level. 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."
45. 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.