Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

**CANADIAN INTERNATIONAL TRADE TRIBUNAL**

# Appeals

## DECISION AND REASONS

Appeal No. AP-2017-029

Gamma Sales Inc.

v.

President of the Canada Border Services Agency

*Decision and reasons issued*
*Thursday, November 12, 2020*

Canada

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IN THE MATTER OF an appeal heard on July 14, 2020, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated June 19, 2017, with respect to a request for review of an advance ruling on tariff classification pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**GAMMA SALES INC.** **Appellant**

**AND**

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

## DECISION

The appeal is dismissed.

Georges Bujold

Georges Bujold
Presiding Member

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| Place of Hearing: | Ottawa, Ontario |
| Date of Hearing: | July 14, 2020 |
| Tribunal Member: | Georges Bujold, Presiding Member |
| Support Staff: | Sarah Perlman, Counsel<br>Zackery Shaver, Counsel |

**PARTICIPANTS:**

| **Appellant** | **Counsel/Representative** |
|---|---|
| Gamma Sales Inc. | Mr. Trent Cosgrove |
| **Respondent** | **Counsel/Representative** |
| President of the Canada Border Services Agency | Mr. Aman Owais |

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## STATEMENT OF REASONS

## BACKGROUND

[1] This appeal was filed by Gamma Sales Inc. (Gamma) with the Canadian International Trade Tribunal on September 6, 2017, pursuant to subsection 67(1) of the *Customs Act*.[1] The appeal stems from a decision made by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4), with respect to requests for revision of an advance ruling on the importation of certain helmets certified for use in snowmobiling (the goods in issue).

[2] The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 6506.10.90 of the schedule to the *Customs Tariff*[2] as "other safety headgear", as determined by the CBSA, or under tariff item No. 6506.10.10 as "other protective headgear, athletic", as claimed by Gamma.

## PROCEDURAL HISTORY

[3] On August 23, 2016, the CBSA issued an advance ruling with respect to the tariff classification of the goods in issue, classifying them under tariff item No. 6506.10.90 as "other safety headgear".[3]

[4] On September 15, 2016, Gamma requested a review of the advance ruling pursuant to subsection 60(2) of the *Act*, contending that the goods in issue should be classified under tariff item No. 6506.10.10 as "other protective headgear, athletic".[4]

[5] On June 19, 2017, in a decision made pursuant to subsection 60(4) of the *Act*, the CBSA upheld its original ruling, maintaining that the goods in issue are properly classified under tariff item No. 6506.10.90 as "other safety headgear".[5]

[6] On September 6, 2017, Gamma filed the present appeal with the Tribunal.[6]

[7] On September 26, 2017, at the request of the parties, the Tribunal combined this appeal with another appeal that had been filed by Gamma, namely, Appeal No. AP-2017-030, and placed these matters in abeyance pending the outcome of Appeal No. AP-2017-024 (*Importations Thibault Ltée.*), another appeal pertaining to the tariff classification of protective headgear that had been previously filed with the Tribunal. On December 14, 2017, the Tribunal informed the parties that the proceedings in the above-noted cases would be held in abeyance pending the outcome of yet another appeal concerning the tariff classification of similar goods, that is, *Motovan Corporation v. President of the Canada Border Services Agency*.[7]

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1 R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].
2. S.C. 1997, c. 36.
3 Exhibit No. AP-2017-029-015, Vol. 1 at 20 [Appellant's Brief].
4 *Ibid.* at 4.
5 *Ibid.* at 13.
6 *Ibid.* at 24.
7 (3 June 2019), AP-2017-028 (CITT) [*Motovan*].

[8] The Tribunal issued its decision in *Motovan* on June 3, 2019. The parties requested that the appeal continue to be held in abeyance pending their discussions on a potential settlement, which the Tribunal granted on October 2, 2019.

[9] On December 23, 2019, the parties reached an agreement with respect to Appeal No. AP-2017-030, which was subsequently discontinued, but not for this appeal. On January 6, 2020, the Tribunal advised the parties that the present appeal would proceed and scheduled the matter to be heard on July 14, 2020.

[10] On May 21, 2020, the parties requested that this appeal be heard by way of written submissions. The Tribunal granted this request on May 27, 2020. The file hearing was held, pursuant to rule 25.1 of the *Canadian International Trade Tribunal Rules*,[8] on July 14, 2020.

## DESCRIPTION OF THE GOODS IN ISSUE

[11] The goods in issue are GMAX Carbide Full Face Modular Snowmobile Helmets, Style No. GM64. In an agreed upon statement of facts, the parties stated that the goods in issue are safety headgear and are designed solely or principally for use as snowmobile helmets.[9]

[12] The helmets consist of an outer shell of thermoplastic poly alloy, an energy-absorbing layer inside the shell and a double D-ring chin strap system. They are certified to meet standards of the United States Department of Transportation. The goods in issue also feature a modular jaw piece capable of pivoting vertically, a removable and washable liner, as well as a removable sun shield.

## LEGAL FRAMEWORK

[13] The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform with the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).[10] 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.

[14] 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*[11] and the *Canadian Rules*[12] set out in the schedule.

[15] 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.

[16] 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*

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8 SOR/91-499.

9 Appellant's Brief, Appendix 10.

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

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

12 *Ibid.*

*Description and Coding System*[13] and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,[14] 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.[15]

[17] 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 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.[16]

[18] Once the Tribunal has determined 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.[17] The final step is to determine the proper tariff item.[18]

[19] The tariff classification provisions at issue in this appeal are as follows:

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|---|---|
| **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** | **SECTION XII CHAUSSURES, COIFFURES, PARAPLUIES, PARASOLS, CANNES, FOUETS, CRAVACHES ET LEURS PARTIES; PLUMES APPRÊTÉES ET ARTICLES EN PLUMES; FLEURS ARTIFICIELLES; OUVRAGES EN CHEVEUX** |
| **CHAPTER 65** | **CHAPITRE 65** |
| **HEADGEAR AND PARTS THEREOF** | **COIFFURES ET PARTIES DE COIFFURES** |
| . . . | [...] |
| **65.06 Other headgear, whether or not** | **65.06 Autres chapeaux et coiffures,** |

13 World Customs Organization, 4th ed., Brussels, 2017.

14 World Customs Organization, 6th ed., Brussels, 2017.

15 See *Canada (Attorney General) v. Suzuki Canada Inc*., 2004 FCA 131 (CanLII) at paras. 13, 17, and *Canada (Attorney General) v. Best Buy Canada Ltd.*, 2019 FCA 20 (CanLII).

16 *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) [*Igloo Vikski*] at para. 21.

17 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 [Rules 1 through 5] . . ." and that "the relative Section and Chapter Notes also apply, unless the context otherwise requires".

18 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.

| | |
|---|---|
| **lined or trimmed.** | **même garnis.** |
| **6506.10 -Safety headgear** | **6506.10 -Coiffures de sécurité** |
| **6506.10.10** - - -Football helmets; For firemen; For mountaineering and climbing; Industrial safety helmets; Lead-impregnated or lead-lined, for X-ray operators; Other protective headgear, athletic | **6506.10.10** - - -Casques de football; Pour pompiers; D'escalade et d'alpinisme; De sécurité aux fins industrielles; Doublés de plomb, à l'usage des radiographes; Autres casques protecteurs, d'athlétisme |
| **6506.10.90** - - -Other | **6506.10.90** - - -Autres |

[20] The explanatory notes to heading No. 65.06, in relevant part, are as follows:

| | |
|---|---|
| This heading covers all hats and headgear not classified in the preceding headings of this Chapter or in Chapter 63, 68, or 95. It covers, in particular safety headgear (e.g., for sporting activities, military or firemen's helmets, motor-cyclists', miners' or construction workers' helmets), whether or not fitted with protective padding or, in the case of certain helmets, with microphones or earphones. | La présente position englobe tous les chapeaux et coiffures non repris soit dans les positions précédentes du présent Chapitre, soit dans les Chapitres 63, 68 ou 95. Elle couvre notamment les coiffures de sécurité (celles utilisées pour la pratique des sports, les casques pour militaires, pompiers, motocyclistes ainsi que les casques pour mineurs ou ouvriers du bâtiment, par exemple), qu'elles soient ou non munies de bourrelets protecteurs et même, pour certains casques, de microphones ou d'écouteurs téléphoniques. |

[21] There are no relevant section or chapter notes.

## PARTIES' POSITIONS

[22] The parties agree, and the Tribunal accepts, that the goods in issue are classifiable under subheading No. 6506.10, as they are conceived, designed, constructed, certified and worn on the head to protect the wearer from injury, and are therefore "safety headgear". The issue in dispute is the proper classification of the goods in issue at the tariff item level. Specifically, the parties' disagreement is on whether, pursuant to Rule 1 of the *Canadian Rules*, the goods in issue meet the terms of tariff item No. 6506.10.10.

[23] Gamma submits that the goods in issue are properly classified under tariff item No. 6506.10.10 because they are used in the "sport" of snowmobiling, with "sport" being synonymous with the term "athletic".[19] Gamma submits that the Merriam-Webster Dictionary, the Canadian Encyclopedia, and the CBSA's Memorandum D10-15-27 recognize "snowmobiling" as a sport: the Merriam-Webster Dictionary defines "snowmobiling" as "[t]he sport of driving a

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[19] In this regard, Gamma relies on *International Imports for Competitive Shooting Equipment Inc. v. the Deputy Minister of National Revenue* (26 August 1999), AP-98-076 (CITT) [*International Imports*].

snowmobile";[20] the Canadian Encyclopedia's entry for "snowmobiling" states "[a]fter an initial growth in the sport of snowmobiling . . ." and the entry for "winter" notes that "[p]eople take part in winter sports such as . . . snowmobiling";[21] and Memorandum D10-15-27 states that "[c]onsequently, safety headgear designed for *motor sport* activities involving the operation of, or riding of a motorized vehicle (e.g. race car driving, motocross riding, snowmobiling, etc.) are classified under tariff item 6506.10.90" [emphasis added].[22]

[24] Gamma notes that in *Motovan* the Tribunal found that there is "no reason to disqualify a motorized activity as an 'athletic' activity" since, among others, "the dictionary definitions on the record, which relate to a high level of physical ability, do not preclude the use of motorized equipment".[23]

[25] The CBSA submits that the goods in issue are properly classified under tariff item No. 6506.10.90 because they are not used in an athletic activity. The CBSA submits that the contention that all snowmobile activities are athletic is not supported by the evidence on the record and inconsistent with the Tribunal's decision in *Motovan*. Applying this precedent, the CBSA differentiates casual snowmobile riding from snowmobile racing and submits that the goods in issue are intended for casual snowmobile riding, which is not an athletic activity.

[26] The CBSA further submits that Gamma's generalization of snowmobiling as a sport is over-simplistic and disregards that snowmobiles can have multiple uses, not all of which are athletic. According to the CBSA, "snowmobiling" is more commonly defined as a mode of transportation. It also referred to other dictionary definitions of the term "snowmobiling" than those submitted by Gamma in support of its arguments on this issue.

## ANALYSIS

[27] The parties agree that tariff item No. 6506.10.90 is a residual item in the nomenclature which is less specific than the tariff classification proposed by Gamma. As in *Motovan*, the Tribunal should therefore begin its analysis by determining whether the goods in issue may be classified under tariff item No. 6506.10.10 as "other protective headgear, athletic".[24]

[28] As was also the case in *Motovan*, the only contentious issue in this case is whether the goods in issue can be characterized as "athletic" protective headgear. In this regard, Gamma submits that the terms "athletic" and "sport" are synonymous and that since snowmobiling is a sport according to certain dictionary and encyclopedia definitions, it follows that helmets designed solely or principally for use as snowmobile helmets, such as the goods in issue, are "athletic" protective headgear.

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20 Exhibit AP-2017-029-15, Vol. 1 at 87.

21 *Ibid.* at 110, 111 and 116. The Canadian Encyclopedia also states that "[i]n Canada and the US (which together make up 90% of the world market for snowmobiling) there are an estimated 400 000 km of specially groomed and designated trails" and that "[m]ost snowmobilers today appreciate this 'touring' aspect of the sport".

22 *Ibid.* at 121. The Tribunal notes that Memorandum D10-15-27 reflects CBSA policies and is not determinative in this matter. Moreover, while this memorandum has not been updated since the Tribunal's decision in *Motovan*, it specifically excludes headgear designed for motor sport activities from tariff item No. 6506.10.10, contrary to Gamma's position. In these proceedings, the CBSA suggested that, as drafted, Memorandum D10-15-27 does not imply that snowmobiling is necessarily a sport activity, as riding a snowmobile could also have non-sport-related applications.

23 *Motovan* at para. 36.

24 *Motovan* at para. 31.

[29] For its part, the CBSA relies on the Tribunal's decision in *Motovan*, which it claims supports the view that there is a distinction between casual or recreational snowmobile riding and racing and that only snowmobile racing qualifies as an athletic activity for the purposes of tariff item No. 6506.10.10. According to the CBSA, given that the evidence demonstrates that the goods in issue are intended to be used for casual snowmobile riding rather than racing, they are not "athletic" protective headgear and are, therefore, properly classified in the residual tariff item of subheading No. 6506.10, that is, under tariff item No. 6506.10.90.

[30] For the reasons discussed below, the Tribunal agrees with the CBSA. When applying the reasoning set out in *Motovan* to the facts of this case, the Tribunal finds that only snowmobile racing may potentially constitute an athletic activity. As the evidence indicates that the goods in issue are designed for recreational snowmobiling, rather than snowmobile racing, the Tribunal is unable to accept Gamma's argument that they are for use in an athletic activity. Accordingly, they cannot be classified as "other protective headgear, athletic".

[31] Before elaborating on the legal rationale and evidence underpinning this conclusion, the Tribunal will provide reasons in support of its conclusion that, in any event and contrary to Gamma's submissions, the term "athletic" in tariff item No. 6506.10.10 is not synonymous with the term "sport". In the Tribunal's view, correctly interpreted, tariff item No. 6506.10.10 does not cover protective headgear used in *all* sports. In particular, when this provision is examined in the context of other provisions of the nomenclature and taking into account the French version of the schedule to the *Customs Tariff*, it becomes apparent that the terms "other protective headgear, athletic" in tariff item No. 6506.10.10 should not be interpreted as comprising snowmobile helmets. In other words, there are two alternative sets of reasons which may be relied upon to dismiss the appeal. Each will be discussed in turn.

**The scope and meaning of tariff item No. 6506.10.10**

[32] Gamma's position rests on the premise that the terms "athletic" and "sport" are synonymous, such that tariff item No. 6506.10.10 covers protective headgear used in sport of any kind, which includes, in Gamma's view, the "sport of snowmobiling".[25] It refers to the Tribunal's jurisprudence in support of this argument. For example, Gamma relies on *International Imports*, in which the Tribunal held that "the term 'athletic(s)' is subsumed under the term 'sport(s)' and that, to all intents and purposes, there is no distinction between the terms".[26] Regarding the meaning of the term "athletic", Gamma also cited the following statement of the Tribunal in *Motovan*:

> Based on the evidence, the Tribunal sees no reason to disqualify a motorized activity as an "athletic" activity. The Tribunal finds that the dictionary definitions on the record, which relate to a high level of physical ability, do not preclude the use of motorized equipment.[27]

[33] However, in this case, the Tribunal is unable to adopt the above interpretation. There is an important distinction between the terms "athletic" and "sport", both in terms of their ordinary meaning and, above all, for tariff classification purposes. In short, "athletic(s)" is a subset of the broader category of "sport". Put another way, while an "athletic" activity is subsumed in the term

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25 Appellant's Brief at paras. 23-38.
26 *International Imports* at 5.
27 *Motovan* at para. 36.

"sport", the inverse is not true. A "sport" is not necessarily "athletic(s)", especially in the context of the tariff nomenclature.[28]

[34] This distinction is borne out by the schedule to the *Customs Tariff*. For example, heading No. 95.06 provides as follows:

> **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.
>
> [Emphasis added]

[35] In turn, subheading No. 9506.91 covers "articles and equipment for general physical exercise, gymnastics or athletics", whereas other subheadings under heading No. 95.06 cover all sorts of articles and equipment for "other sports". It also warrants noting that heading No. 95.06 features a residual subheading, namely, subheading No. 9506.99 ("Other"), which captures articles and equipment for sports not explicitly covered by the other subheadings, including subheading No. 9506.91, which specifically encompasses articles and equipment for "athletics".

[36] These provisions clearly differentiate articles and equipment for "general physical exercise, gymnastics or athletics", on the one hand, and articles and equipment for "other sports" on the other. Thus, for tariff classification purposes, there must be a difference in meaning between the terms "athletics" and "sport". Otherwise, the terms "other sports" in heading No. 95.06 would be redundant. If, as argued by Gamma and regrettably stated by the Tribunal in *International Imports*, the terms "athletic" and "sport" should be interpreted to mean the same thing, there would be no need for separate subheadings to cover articles used in specific sports under heading No. 95.06. Indeed, the terms "articles and equipment for general physical exercise, gymnastics or *athletics*" [emphasis added] in subheading No. 9506.91 would suffice to cover articles and equipment for all sports.[29]

[37] However, Parliament expressly distinguished between certain goods, for tariff classification purposes, on the basis of whether they are for "athletics" or "other sports". This contextual guidance indicates that had Parliament's intent been for provisions of the schedule of the *Customs Tariff* to include goods for all sports, including, for instance, tariff item No. 6506.10.10, it could and would have done so expressly by using the term "sport". In fact, note 1(g) to Chapter 95 provides support for this interpretation. This chapter note reads as follows:

> 1. This Chapter does not cover:
>
> . . .
>
> (g) Sports footwear (other than skating boots with ice or roller skates attached) of Chapter 64, or sports headgear of Chapter 65;

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28 The Tribunal therefore considers that the finding in *International Imports* that there is no distinction between these terms is erroneous and should not be followed.

29 At the very least, interpreting subheading No. 9506.91 so broadly would mean that its terms would suffice to cover all sports not expressly mentioned in other subheadings of heading No. 95.06. Such an interpretation would render the residual subheading of heading No. 95.06 (i.e. subheading No. 9506.99) inutile and therefore unsustainable.

[38] This note confirms that Chapter 65 (which includes heading No. 65.06 and the two competing tariff items in this appeal) covers certain "sports headgear" and excludes them from the ambit of Chapter 95. It also confirms that the universe of sports headgear is broader than those included in tariff item No. 6506.10.10, as reference is made to Chapter 65 as a whole, which signals that multiple provisions of Chapter 65 cover sports headgear of various types.

[39] Moreover, and this is the key point, tariff item No. 6506.10.10 does not refer to "other protective headgear, sport". Rather, this provision singles out helmets for football and safety headgear for mountaineering and climbing, two sporting activities, as well as "other protective headgear, athletic", which, logically, must also refer to a specific sporting activity. In view of the language used in Chapter 95, which indicates that the legislator either segregates different sporting activities by identifying them by name or, where appropriate, lumps some or all sports together (e.g. subheading No. 9506.99 and note 1[g] to Chapter 95). Had Parliament intended that all protective headgear for sports be covered by tariff item No. 6506.10.10, it would have similarly used the generic word "sport" in that provision.

[40] However, Parliament chose to use the term "athletic", which suggests that the intent was to restrict the scope of tariff item No. 6506.10.10 to particular types of protective headgear used only for certain sporting activities. The Tribunal also notes that the *Explanatory Notes* to heading No. 65.06 indicate that safety headgear for sporting activities is covered in "this heading". Such headgear can therefore be covered by different subheadings or tariff items of heading No. 65.06, not necessarily tariff item No. 6506.10.10. Again, the fact that tariff item No.6506.10.10 does not refer to sporting activities in general but instead lists specific types of activities implies that certain safety headgear for sport may be properly classified elsewhere in heading No. 65.06, notably in the residual tariff item No. 6506.10.90.

[41] In other words, in the *Customs Tariff*, the term "athletic(s)" refers to a specific type of activity, not to all sports. While heading No. 95.06 is not at issue in this appeal, according to a general principle of statutory interpretation, a word must maintain the same meaning throughout the statute or regulation in which it is used, unless a contrary intention appears.[30] There is no indication that Parliament intended to broaden the scope of the term "athletic" to generally refer to all sports, as this term appears in tariff item No. 6506.10.10.

[42] The fact that, in the latter provision, the term could be said to be used as an adjective, as opposed to appearing in the noun form "athletics", does not have the effect of broadening its scope to include protective headgear used for any sport. This is confirmed by a review of the French version of heading No. 95.06, subheading No. 9506.91 and tariff item No. 6506.10.10. In all instances, the term "athletics" or "athletic" (in the case of tariff item No. 6506.10.10) is translated by the French word *athlétisme*, which clearly refers to a specific type of activities, not to sport in general.

[43] The *Larousse* dictionary defines "athlétisme" (*athletics*) as "l'ensemble des exercices physiques se présentant sous forme de jeux" (*all physical exercises in the form of games*).[31] *Le Robert dico en ligne* defines "athlétisme" (*athletics*) as "ensemble d'exercices physiques, de sports individuels : course, gymnastique, lancer (du disque, du poids, du javelot), saut" (*set of physical*

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30 *Diversco Supply Inc. v. President of the Canada Border Services Agency* (12 August 2005), AP-2004-013 (CITT) at para. 12.

31 "Athlétisme", *Larousse*, accessed : 21 September 2020.

*exercises, individual sports: running, gymnastics, throwing [discus, shot put, javelin], jumping*).[32] Other examples of disciplines covered by the definition of "athlétisme" include decathlon, heptathlon, pentathlon, triathlon and marathon. There is no indication in these definitions that the ordinary meaning of *athlétisme* incorporates motor sports. Indeed, these definitions make it clear that the sport of *athlétisme* is performed by individuals with their physical abilities alone.

[44] Furthermore, the word *athlétisme* used by Parliament in the French version is translated as the word "athletics" in English. Similarly, "athletics" refers to specific sporting disciplines which do not include motor sports. In the Webster's Unabridged Dictionary, the word "athletics" is defined as follows:

> 1. *(usually used with a plural v.)* athletic sports, as running, rowing, or boxing. 2. *Brit.* track-and-field events. 3. *(usually used with a singular v.*) the practice of athletic exercises; the principles of athletic training.[33]

[45] In *International Imports*, the Tribunal noted that the term "athletics" could be defined as follows:

> "athletics": exercises of strength, speed, and skill; active games and sports: Athletics include baseball and basketball.[34]

[46] As for the adjective "athletic", in the previously cited dictionary, it is defined as follows:

> *adj*. 1. physically active and strong; good at athletics or sports: *an athletic child.* 2. of, like, or befitting an athlete. 3. of or pertaining to athletes; involving the use of physical skills or capabilities, as strength, agility, or stamina: *athletic sports, athletic training.* 4. for athletics: *an athletic field.* 5. *Psychol.* (of a physical type) having a sturdy build or well-proportioned body structure.

[47] From these definitions, the Tribunal finds that while, broadly interpreted, the words *athlétisme* or "athletic" might encompass sporting activities that go beyond the traditional track-and-field events (e.g. boxing, baseball, basketball, etc.), they cannot reasonably be construed to include motor sports. In fact, the examples of sports provided in the various definitions of the terms that are included in the category of "athletics" are completely different than auto racing, motorcycling and, of course, snowmobiling.[35] None of the sporting activities mentioned involve the use of a motor vehicle.

[48] On the basis of the foregoing analysis and with respect, the Tribunal disagrees with the statement in *Motovan* according to which there is no reason to disqualify a motorized activity as an "athletic" activity. This finding in *Motovan* is inconsistent with the common sense of the word, as can be seen from the above definitions. In *Motovan*, the Tribunal appears to have improperly focused on what the definitions purportedly do not preclude and not on the actual meaning of the word

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32 "Athétisme", *Le Robert dico en ligne*, accessed : 21 September 2020.

33 "Athletics", Philip Babcock Gove, *Webster's Third New International Dictionary Unabridged*, 3rd ed. (Merriam-Webster, Springfield, 1993).

34 *International Imports* at 5.

35 In the Tribunal's view, at the most, an expansive interpretation of these terms could include games and sports of the same kind (following the *ejusdem generis* interpretation rule) as those provided as examples in the dictionary definitions.

"athletic". In the Tribunal's view, the legally correct approach to give meaning to the term "athletic" is to consider the activities that this term actually includes according to dictionary definitions, as opposed to drawing conclusions on the basis of what it arguably does not exclude. Simply put, in *Motovan,* the Tribunal did not cite any authority which positively defines "athletic" as *including* motorized activities. Gamma did not provide any in this appeal and the absence of such authorities provides a sufficient reason to disqualify a motorized activity as an "athletic" activity.

[49] The Tribunal also notes that in *Motovan,* the Tribunal does not appear to have examined the French version of tariff item No. 6506.10.10. In this regard, it is undeniable that motor sports, including snowmobiling, do not fall squarely within the meaning of *athlétisme*. In ordinary parlance, snowmobile helmets would not be referred to as "casques protecteurs d'athlétisme" in French. To the extent that there is a difference in meaning between the word "athletic" used as an adjective in the English version of tariff item No. 6506.10.10 and the French noun *athlétisme,* it is appropriate, in order to reconcile the differences between the English and French versions of a statute, to seek their shared meaning, which in this case is the narrower French version.

[50] Thus, contrary to Gamma's submissions, the test for determining whether the goods in issue are classifiable under tariff item No. 6506.10.10 is not whether they are used in the sport of snowmobiling. That snowmobiling may be defined as a sport is not decisive in this case. What matters is whether snowmobiling constitutes "athletic(s)" or *athlétisme* as these terms should be interpreted in the context of the tariff nomenclature. On this issue, the Tribunal finds that there is no evidence or authority before it that would suggest that snowmobiling is an activity that can be labelled as "athletic" within the meaning that must be given to this term in the schedule to the *Customs Tariff*.

[51] The appeal can be dismissed on that basis alone. Accordingly, it cannot be said that the goods in issue are "other protective headgear, athletic". Consequently, as determined by the CBSA, the goods in issue are properly classified in the residual tariff item of subheading No. 6506.10, namely, tariff item No. 6506.10.90, which covers "other" safety headgear. It bears emphasizing that on the basis of the above analysis, this residual tariff item includes protective headgear for sports other than "athletics".

**At any rate, following the reasoning in *Motovan*, the goods in issue are not intended for use in an athletic activity**

[52] Even if the above analysis did not settle the matter and a motorized activity such as snowmobiling is not *prima facie* disqualified as an "athletic" activity within the meaning of tariff item No. 6506.10.10, the Tribunal would nonetheless find that the goods in issue are properly classified under tariff item No. 6506.10.90. The reason is that, as was correctly argued by the CBSA and demonstrated by the evidence on the record, not all activities involving the use of a snowmobile are sporting activities, even accepting a large and liberal interpretation of the term "athletic", and the goods in issue are not intended for use in a motor sport. In other words, the Tribunal's analysis in *Motovan* supports the CBSA's position in this appeal.

[53] In this regard, Gamma argues that there is only one type of activity at play, namely "snowmobiling", which it submits is a sport. The CBSA relies on *Motovan*, however, in distinguishing casual snowmobile riding (which is a mode of transportation and a recreational activity that is not "athletic" in its view) from snowmobile racing (which is a motor sport, with

several different sanctioning bodies), and in claiming that the goods in issue are intended to be used for casual snowmobile riding rather than racing.

[54] In *Motovan*, the parties agreed that street motorcycle riding and motorbike racing were distinct activities. The Tribunal found that only motorbike racing constituted an athletic activity for the purposes of tariff item No 6506.10.10. To reach this conclusion, the Tribunal relied on evidence regarding the environment, equipment and regulation of motorbike racing. Based on the evidence filed in this appeal, the Tribunal finds that a similar distinction exists between casual snowmobile riding and racing and, even if it were to interpret the term "athletic" so broadly as to include activities that involve motor vehicles, only snowmobile racing would qualify as an athletic activity for the purposes of tariff item 6506.10.10.

[55] In particular, applying the reasoning set out in *Motovan* to the present case, the Tribunal agrees with the CBSA that, unlike snowmobile riding, snowmobile racing is performed on a closed course where riders compete for the fastest time.[36]

[56] Regarding the equipment used, the CBSA also correctly notes that snowmobile racing has different classes, and that each class determines the type of snowmobile along with the extent to which they can be modified.[37] According to the evidence, some of these modifications may render the snowmobile illegal for use on public roads or trails.[38] The equipment used for snowmobile racing would therefore differ from the equipment used to snowmobile on public roads and trails.

[57] The CBSA also notes that subsection 18(3) of the *Motorized Snow Vehicles Act* of Ontario acknowledges that snowmobile racing and its equipment are distinct from snowmobile riding: "Subsections (1) and (2) do not apply to a motorized snow vehicle while it is driven in a racing area sanctioned as such by the council of the municipality within which the racing area is located."

[58] Finally, with regard to regulations, the CBSA notes that various types of snowmobile racing fall under national and regional sanctioning bodies that organize races and determine the rules, such as the Canadian Snowcross Racing Association (CSRA), the Straightline Snowmobile Racing Association, the Canadian Power Toboggan Championships, and International Snowmobile Racing, Inc. (ISR). In stark contrast, casual snowmobile riding is not a rules-governed event.

[59] On balance, the evidence demonstrates that casual snowmobile riding and snowmobile racing are distinct activities, and that only the latter may be considered to be a sport. To the extent that this sport amounts to an athletic activity within the meaning of tariff item No. 6506.10.10,[39] the next issue to consider is whether the goods in issue are intended for snowmobile racing. If so, following the arguments presented by the CBSA in this case, they should be classified as athletic safety headgear. However, if the goods in issue are for use in casual riding, they would remain properly classified in tariff item No. 6506.10.90.

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36 Exhibit AP-2017-029-17, Vol. 1 at 183-187.

37 See e.g. Exhibit AP-2017-029-17, Vol. 1 at 59-64.

38 See *Motorized Snow Vehicles Act*, R.S.O. 1990, c. M.44, s. 18(2), which provide that "[n]o person shall drive or permit to be driven any motorized snow vehicle upon which any component or device, which was required under the provisions of the Motor Vehicle Safety Act (Canada) at the time that the motorized snow vehicle was manufactured or imported into Canada, has been removed, modified or rendered inoperative".

39 Again, the Tribunal has already found that motor sports are not athletic activities for the purposes of tariff item No. 6506.10.10. This section discusses an alternative rationale which also leads to the conclusion that this appeal should be dismissed.

[60] On this issue, the evidence, as presented, persuades the Tribunal that the goods in issue are designed for and intended to be used by casual snowmobile riders, not in snowmobile racing competition.

[61] As noted in *Motovan*, "[w]hen considering goods with multiple uses, the Tribunal has held that physical product and market characteristics – i.e. appearance, design, best use, marketing and distribution of goods – are individual factors that may be helpful to consider in classifying goods. No one factor is decisive and the importance of each varies according to the product in issue."[40]

[62] In analyzing these factors, the CBSA submits that snowmobile helmets are similar to motorcycle helmets in that they are certified to the same safety standards,[41] share the same basic construction and materials, are marketed as being interchangeable,[42] and should therefore be treated in the same way as motorcycle helmets. As such, the CBSA has relied on many of the characteristics of motorcycle helmets identified in *Motovan* in making its arguments regarding snowmobile helmets.

[63] Gamma disagrees with this equivalence, stating that while a snowmobile helmet model may be available in the same style or look for motorcycles, there are unique features for snowmobile helmets (i.e. double lens/shield, breath guard purposefully designed for snowmobiling) that are associated with the complete part number. Gamma notes that, although the same model number may be listed in both the "Snow Helmets" and "Street Helmets" sections of its website, complete part numbers would differ based on the specific characteristics of the helmet and would only be found in either Gamma's Snow catalogue or in its Motorcycle catalogue.[43]

[64] After having weighed the evidence, the Tribunal finds that the following characteristics of the goods in issue indicate that they have been designed for recreational snowmobiling, rather than snowmobile racing.

Certifications

[65] Firstly, the CBSA correctly notes that the goods in issue do not meet the required certifications for snowmobile racing. The CBSA provided evidence indicating that there are three bodies that certify motor vehicle helmets for use in North America: the Department of Transportation (DOT), the Economic Commission for Europe (ECE), and the Snell Memorial Foundation (Snell). In *Motovan*, motorcycle racing helmets were found to be required to meet the ECE or Snell standard, in addition to the DOT standard. The Tribunal considered that the fact that one of the models of motorcycle helmets only met the DOT standard suggested that it was for use in street riding, and found that it was classifiable under tariff item No. 6506.10.90.[44]

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40 *Motovan* at para. 47; *Wal-Mart Canada Corporation v. President of the Canada Border Services Agency* (13 June 2011), AP-2010-035 (CITT) at para. 74; *Partylite Gifts Ltd. v. The Commissioner of the Canada Customs and Revenue Agency* (16 February 2004), AP-2003-008 (CITT).

41 See *Motorized Snow Vehicles Act*, R.R.O. 1990, Reg. 804, s. 20, which refers to the helmet regulations applicable to motorcycle helmets under the *Highway Traffic Act*, R.R.O. 1990, Reg. 610, s. 2.

42 The CBSA notes that Gamma identifies various snowmobile helmets as motorcycle helmets in other parts of Gamma's website: see e.g. the MD04 Reserve Modular, GM11 Vertical Dual Sport, FF49 Full Face, OF17 Open Face and GM2 Open Face helmets which are listed both under "Snow Helmets" and "Street Helmets"; Exhibit AP-2017-029-17, Vol. 1 at 96-103. These do not include the goods in issue.

43 Exhibit AP-2017-029-22, Vol. 1, tabs AR4 to AR11 [Appellant's Reply Brief].

44 *Motovan* at paras. 49, 54 and 55.

[66] As per section 20 of the *Motorized Snow Vehicles Act* and the applicable regulations,[45] a person driving a motorized snow vehicle must wear a helmet that meets at least one of the following standards, among others: the Snell standard, the DOT standard or the ECE standard. However, according to the ISR and the CSRA rulebooks, only helmets certified to ECE or Snell standards may be used in snowmobile racing.[46] In the present case, the goods in issue are only certified to comply with the DOT standard.[47]

Design and Marketing

[67] Secondly, the CBSA submits that the goods in issue are not designed for or marketed to be used in racing, noting that marketing materials do not refer to performance or competition. The CBSA relied on the physical characteristics required of motorcycle racing helmets in *Motovan*,[48] noting that there is no evidence that the goods in issue promote "aero stability" or that they are produced in a wide variety of shell sizes to reduce weight and improve fit.

[68] With regard to the physical requirements of snowmobile racing helmets, the ISR and CSRA rules require that 75 percent of the helmet be bright blaze orange in colour.[49] The goods in issue are patterned red and black, which would not conform to this requirement.[50] The CBSA also provided credible indications that the goods in issue are marketed for comfort and would therefore cater to casual snowmobilers.[51] After having reviewed the product literature filed by the parties, the Tribunal is unable to find that the goods in issue are designed for the rigors of snowmobile racing or marketed to be sold to participants in racing competitions.

Pricing

[69] Thirdly, the CBSA submits that the goods in issue are priced well below the price range for racing helmets, relying on the pricing of motorcycle racing helmets in *Motovan*. In that case, Motovan (the appellant) submitted that racing helmets were generally priced between $500 and $1,500, while helmets for street riding were priced between $100 and $150. The Tribunal found that two motorcycle helmet models priced between $200 and $350 were reasonably below the price range for racing helmets, which suggested that these models were intended for use in street riding.[52]

[70] According to the evidence filed in this case, snowmobile helmets may also contain additional functionalities, like heated visors, additional padding or breathing channels that could conceivably increase the base price of a helmet compared to motorcycle helmets. In the present appeal, the evidence indicates that the goods in issue are priced at around $250, a price which, with an optional electrically heated shield, may increase to approximately $330.[53] This would fall within a similar

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45 *Motorized Snow Vehicles Act*, R.R.O. 1990, Reg. 804, s. 20; *Highway Traffic Act*, R.R.O. 1990, Reg. 610, s. 2.

46 Exhibit AP-2017-029-17, Vol. 1 at 59 and 111.

47 Gamma does appear to sell other models of snowmobile helmets which meet both the DOT and ECE standards; see Appellant's Reply Brief at tab AR6.

48 *Motovan* at para. 50.

49 Exhibit AP-2017-029-17, Vol. 1 at 59, 111.

50 *Ibid.* at 88 (model No. 496-4213D, TC-1 Red).

51 The marketing materials refer to "Perimeter-Frame-Design" of the goods in issue, which provides wind and cold protection, their design being for warmth, comfort and ease of use, in order "to meet the demand of the avid and weekend snowmobiler"; Exhibit AP-2017-029-15, Vol. 1 at 18; Exhibit AP-2017-029-17, Vol. 1 at 88-89.

52 *Motovan* at para. 54.

53 Exhibit AP-2017-029-15, Vol. 1 at 18; Exhibit AP-2017-029-17, Vol. 1 at 88.

range to recreational motorcycle helmets. While there is no cogent evidence on the price of snowmobile racing helmets, it is reasonable to infer that these helmets would be sold at higher price points given the enhanced features required to make them suitable for racing competitions. As such, the evidence on pricing of the goods in issue tends to support the view that they are intended for casual riding. In any event, it is not sufficient to convince the Tribunal that the goods in issue may be used for snowmobile racing.

[71] Accordingly, based on the evidence before it, the Tribunal concludes that the goods in issue are intended for recreational use and for transportation, rather than for the performance of an athletic activity, even assuming, for the sake of argument, that an athletic activity may be interpreted to include the use of motorized equipment such as a snowmobile.

## CONCLUSION

[72] The goods in issue are properly classified under tariff item No. 6506.10.90 as "other safety headgear", as determined by the CBSA.

## DECISION

[73] The appeal is dismissed.

Georges Bujold

Georges Bujold
Presiding Member