

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20141117**

**Docket: A-65-13**

**Citation: 2014 FCA 266**

**CORAM: PELLETIER J.A.  
NEAR J.A.  
SCOTT J.A.**

**BETWEEN:**

**IGLOO VIKSKI INC.**

**Appellant**

**and**

**PRESIDENT OF THE CANADA BORDER  
SERVICES AGENCY**

**Respondent**

Heard at Ottawa, Ontario, on September 2, 2014.

Judgment delivered at Ottawa, Ontario, on November 17, 2014.

**REASONS FOR JUDGMENT BY:**

**SCOTT J.A.**

**CONCURRED IN BY:**

**PELLETIER J.A.  
NEAR J.A.**

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**REASONS FOR JUDGMENT**

**SCOTT J.A.**

[1] This is an appeal brought pursuant to section 68 of the *Customs Act* R.S.C. 1985, c.1 (2<sup>nd</sup> Supp.) against a decision of the Canadian International Trade Tribunal (the CITT) upholding the decision of the President of the Canada Border Services Agency (the CBSA) to classify the hockey gloves (the goods in issue) imported by Igloo Vikski Inc. (the Appellant) under tariff

item No. 62.16 and rejecting the Appellant's position that they be classified under tariff item No. 39.26 of the *Customs Tariff*, S.C. 1997, c. 36 (the Customs Tariff).

[2] It has long been established that decisions of the CITT relating to tariff classification and the construction of tariff items stand to be reviewed on a standard of reasonableness (*Jam Industries Ltd. v. Canada (Border Services Agency)*, 2007 FCA 210 at para.16, *Mon-Tex Mills Ltd. v. Canada (Commissioner of the Customs and Revenue Agency)*, 2004 FCA 346 at para. 2, *Conair Consumer Products Inc. v. Canada (Customs and Revenue Agency)*, 2004 FCA 282 at para. 3, *Star Choice Television Network Inc. v. Canada (Commissioner of Customs and Revenue)*, 2004 FCA 153 at para. 7).

[3] The Customs Tariff gives legal effect to Canada's obligations under the *International Convention on the Harmonized Commodity Description and Coding System* which harmonizes the classification of all trade commodities among signatory nations. Goods brought into Canada are classified under the Customs Tariff.

[4] Subsection 10(1) of the Customs Tariff specifies that the classification of goods must be in accordance with the *General Rules for the Interpretation of the Harmonized System (General Rules)* and the *Canadian Rules*, as set out in the Schedule.

[5] 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, unless such headings or notes do not provide otherwise, according to the other rules.

[6] For the purpose of this appeal, Rule 2(b) of the *General Rules*, as well as its *Explanatory Notes* (XI) to (XIII) are relevant, and provide as follows:

***General Rules for the Interpretation of the Harmonized System, rule 2(b)***

(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.

***Explanatory Notes to Rule 2(b)***

(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.

***Règles générales pour l'interprétation du Système harmonisé, règle 2b)***

b) Toute mention d'une matière dans une position déterminée se rapporte à cette matière soit à l'état pur, soit mélangée ou bien associée à d'autres matières. De même, toute mention d'ouvrages en une matière déterminée se rapporte aux ouvrages constitués entièrement ou partiellement de cette matière. Le classement de ces produits mélangés ou articles composites est effectué suivant les principes énoncés dans la Règle 3.

***Notes explicatives de la règle 2b)***

XI) L'effet de la Règle est d'étendre la portée des positions qui mentionnent une matière déterminée de manière à y inclure cette matière mélangée ou bien associée à d'autres matières. Cet effet est également d'étendre la portée des positions qui mentionnent des ouvrages en une matière déterminée de manière à y inclure ces ouvrages partiellement constitués de cette matière.

(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.

XII) Elle n'élargit cependant pas la portée des positions qu'elle concerne jusqu'à pouvoir y inclure des articles qui ne répondent pas, ainsi que l'exige la Règle 1, aux termes des libellés de ces positions, ce qui est le cas lorsque l'adjonction d'autres matières ou substances a pour effet d'enlever à l'article le caractère d'une marchandise reprise dans ces positions.

(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.

XIII) Il s'ensuit que des matières mélangées ou associées à d'autres matières, et des ouvrages constitués par deux matières ou plus sont susceptibles de relever de deux positions ou plus, et doivent dès lors être classés conformément aux dispositions de la Règle 3.

[7] Further to its analysis, the CITT concluded that the goods in issue met the terms of heading No. 62.16 and that the presence of plastic components therein did not deprive them of their character as gloves of textile fabric on the basis of the application of Rules 1 and 2(b) of the *General Rules*. It rejected the Appellant's argument that under the proper application of rules 1 and 2(b), the goods in issue were classifiable under two competing headings, 39.26 and 62.16, permitting the application of Rule 3 of the *General Rules* and leading to their classification as "other articles of plastics".

[8] In this case, the principal argument of the Appellant is that the goods in issue consist partly of plastic and partly of textile. While the goods do not meet the description in heading 39.26 under Rule 1 since the textile material is separate from the plastic material, they can be

described *prima facie* in the extended terms of heading 39.26 under Rule 2(b), contrary to the Tribunal's position.

[9] The CITT's explanation for finding against the appellant is contradictory since having concluded that the plastic material in the goods in issue was more than mere trimming, the *Explanatory Notes* to Chapter 62 precluded the goods from classification in heading 62.16 under Rule 1. Consequently, it is the application of Rule 2(b) and its *Explanatory Notes* (XI) to (XIII) that extended the terms of heading 62.16 to include the goods in issue: gloves partly of textile material and partly of plastic material.

[10] For the reasons that follow, I am satisfied that it was unreasonable for the CITT to classify the goods in issue under heading No. 62.16 on the basis of the application of Rules 1 and 2(b).

[11] I find that the CITT's interpretation of Rule 2(b) is unreasonable since it is not a prerequisite condition to the application of Rule 2(b) that the goods in issue need first to meet the description in a heading pursuant to Rule 1 as stated in paragraph 66 of its reasons. This reasoning contradicts the cascading nature of the General Rules.

[12] Since the goods in issue contain a textile material which is separate from the plastic material, they do not meet the description found in heading 39.26 under Rule 1. Contrary to the Tribunal's finding, it is for this very reason that Rule 2(b) and, more precisely, *Explanatory Note* (XI) to that Rule must then be applied. It extends the terms of heading 39.26 to encompass

articles partly of plastic material and partly of textile material. The goods in issue then fall under the description found in the extended terms of heading 39.26. It is also by the application of Rule 2(b) and *Explanatory Note* (XI) that the goods in issue could be classified in the extended terms of heading 62.16. As a consequence, the goods in issue became classifiable *prima facie* under two headings, headings 62.16 and 39.26, thereby leading to the application of Rule 3 of the *General Rules* pursuant to *Explanatory Note* (XIII) which the CITT failed to apply.

[13] Consequently, the appeal will be allowed with costs, the decision of the CITT will be set aside and the matter will be referred back for adjudication based on an analysis which takes into account the complete application of Notes (XI) to (XIII) of the *Explanatory Notes* to Rule 2(b).

"A.F. Scott"

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J.A.

"I agree  
J.D. Pelletier J.A."

"I agree  
D.G. Near J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

A-65-13

**STYLE OF CAUSE:**

IGLOO VIKSKI INC. v.  
PRESIDENT OF THE  
CANADA BORDER  
SERVICES AGENCY

**PLACE OF HEARING:**

OTTAWA,  
ONTARIO

**DATE OF HEARING:**

SEPTEMBER  
2, 2014

**REASONS FOR JUDGMENT BY:**

SCOTT J.A.

**CONCURRED IN BY:**

PELLETIER  
J.A.  
NEAR J.A.

**DATED:**

NOVEMBER  
17, 2014

**APPEARANCES:**

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