[2015] UKFTT 368 (TC)

TC04551

Appeal number: TC/2012/08270

CUSTOMS DUTY – classification – 'mini-tennis rackets' whether classifiable as 'lawn-tennis rackets' under code 9506.5100 or 'other tennis rackets' under code 9506.5900 – held on the evidence that mini-tennis was a game in its own right and not a miniature version of lawn-tennis and that the objective characteristics and properties of the mini-tennis rackets in issue were not those of lawn-tennis rackets – application of GRI 3(a) indicated that the correct classification was 9506.5900 – appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

ZSIG SPORTS LIMITED **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE JOHN WALTERS QC
DEREK ROBERTSON

Sitting in public at Manchester on 11 and 12 February 2015

Nigel Gibbon for the Appellant

Jenny Newstead-Taylor, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal brought by Zsig Sports Limited ("Zsig") against a Post-Clearance Demand Note C18 issued by the Respondents ("HMRC") on 25 April 2012 in the amount of £26,524.67 representing £22,424.35 customs duty and £4,100.32 VAT. The customs duty (or virtually all of it) is sought to be charged in respect of some 30 importations of rackets. The point of contention raised by the appeal for our decision is whether the rackets are correctly classified under commodity code 9506.5900.00 (with a duty rate of 2.7%) as Zsig submits, or under commodity code 9506.5100.00 (with a duty rate of 4.7%) as HMRC contend.

2. Both classifications, it will be observed, are under Chapter 95 of the UK Tariff: "Toys games and sports requisites; parts and accessories thereof", and under heading 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".

3. Within that heading the two relevant (rival) subheadings are: 9506.5100 – "Tennis, badminton or similar rackets, whether or not strung: - Lawn-tennis rackets, whether or not strung" – and 9506.5900 – "Tennis, badminton or similar rackets, whether or not strung: - Other".

4. Thus, it is common ground that the rackets in issue come within the words "Tennis, badminton or similar rackets, whether or not strung". The issue for our decision is whether they come within the sub-heading "Lawn-tennis rackets" (as HMRC argue) or "Other [tennis, badminton or similar rackets]" (as Zsig contends).

5. We asked to be told the reason for singling out lawn-tennis rackets for a higher level of duty. Counsel for HMRC (on instruction) suggested that there was a 'protectionist background' to the different rates and that the higher rate was a defence against far eastern imports. It seemed to us that in that context, lawn-tennis rackets may have been singled out for different treatment because of the popularity and ubiquity of lawn-tennis as opposed to other tennis-type games.

6. We heard evidence from Mr Jeffrey Bromley Williams, a director and company secretary of Zsig, and also a 50% shareholder in Zsig. (The other 50% shareholder is his wife, Beverley Edwards.) Mr Williams made 4 Witness Statements and also gave oral evidence and was cross-examined by Ms Newstead-Taylor.

7. We also heard evidence from Paul Regan, Managing Director of the Paul Regan Organisation, a tennis business agency, who has previously held the positions of Head of Education at the Tennis Foundation/Lawn Tennis Association and Team Manager for the GB Wheelchair Tennis Team for the London 2012 Paralympic Games. Mr Regan made a Witness Statement and also gave oral evidence and was cross-examined by Ms Newstead-Taylor.

8. We also heard evidence from Officer Lesley Jane Holiday, a HMRC officer (Higher Grade) currently employed at HMRC's tariff classification service.

9. We were also shown DVDs of various different types of tennis-related games being played and were shown examples of rackets used in various different types of tennis-related games. We were shown examples of the rackets in issue as imported by Zsig. We also had before us two bundles of documentation.

The evidence

10. We set out the relevant evidence, which we accept except where the contrary appears in this Decision.

11. The rackets in issue are mini-tennis rackets. They are strung rackets in a range of lengths – 17 inches, 19 inches and 21 inches. The 17 inch racket weighs 170 grams, the 19 inch racket weighs 190 grams and the 21 inch racket weighs 200 grams.

12. Zsig also imports and sells 23 inch rackets (weighing 220 grams) and 25 inch rackets (weighing 240 grams). Originally Zsig argued that the 23 inch and 25 inch rackets were dutiable at the lower rate (9506.5900) as tennis rackets "other", but before the hearing of the appeal Zsig conceded that these sizes of racket were correctly dutiable at the higher rate (9606.5100) as lawn-tennis rackets. Since these sizes of rackets were included in the appeal, Mr Gibbon, for Zsig, formally applied to withdraw the appeal in relation to them – we consented to this. These sizes of rackets constituted a relatively small percentage of Zsig's total imports – about 8%. The paradigm lawn-tennis racket (which we refer to hereafter, without prejudice to the decision we have to make, as "a lawn-tennis racket"), is 27 inches in length and, if constructed in aluminium, weights upwards of 300 grams.

13. In appearance, a mini-tennis racket, such as those in issue in the appeal, looks similar to, but smaller than, a lawn-tennis racket. The hitting areas of all the mini-tennis rackets in issue are smaller than the hitting area of a lawn-tennis racket and the shafts (handles) are shorter than the shafts of a lawn-tennis racket. Obviously, the smaller mini-tennis rackets in issue are smaller, both in terms of the hitting area and the shaft length, than the bigger mini-tennis rackets in issue. Stylistically, however, they are similar both to each other and also to a lawn-tennis racket.

14. The game of mini-tennis emerged in the early 1980s. In about 1983 it came to be known as 'short tennis'. In the mid-1990s, the name of the game reverted to 'mini-tennis'. The Lawn Tennis Association has at all relevant times administered the game of mini-tennis in the UK. Originally mini-tennis was played on badminton courts (about one-third of the size of a standard lawn-tennis court) with a smaller net than the net used for lawn-tennis. The rackets used were unstrung and plastic. There was no game bridging the gap between mini-tennis and lawn-tennis.

15. This was significant as mini-tennis was regarded as a method of getting children and young people involved in tennis activity at a level to which they were physically equal, with the hope that they would graduate to lawn-tennis. However the "gap" between mini-tennis and lawn-tennis was so great that the 'drop-off rate' of

participation after the mini-tennis stage was large and players of mini-tennis either could not, or found it excessively difficult to, carry the skills they had learned in mini-tennis into the full size game of lawn-tennis.

16. To address this difficulty a 'transitional stage' was introduced. The largest rackets used in playing mini-tennis were 21 inches in length and a new racket, 23 inches in length was introduced for the transitional stage.

17. Besides the court for mini-tennis being much smaller than a lawn-tennis court, the balls used were also different. Originally, the balls used for mini-tennis were made of sponge and had a diameter of 8 centimetres, weighing about 20 grams. This compares with a lawn-tennis ball which has a diameter of 6.5 centimetres, weighs 57 grams and is made of rubber with a cloth covering. Once the transitional court came into being, a transitional stage ball was developed. It was constructed in a similar way to the lawn-tennis ball, but was significantly lighter in weight, with less bounce and bound. It weighed around 40 grams.

18. In the early 2000s, the Lawn Tennis Association introduced a "traffic light" system. This was three stages of a increasing difficulty, "red", "orange" and "green".

19. The "red" stage is designed to be suitable for children aged under 8. It is the same game as the original mini-tennis.

20. The "orange" stage is generally designed to be played by children aged 8 to 10. It represents the original 'transitional stage'. It is played on a court which is about two thirds of the size of a standard lawn-tennis court and modified lawn-tennis balls are used. The ideal racket size for use in the "orange" stage is 23 inches in length.

21. The "green" stage is generally designed to be played by children aged 10 or above. It is played on a full-size lawn-tennis court, generally with rackets which are 25 inches in length. The balls used are the same size as those used in lawn-tennis, but are lighter than lawn-tennis balls, and are designed to give a slightly slower pace and bounce than lawn-tennis balls.

22. This appeal is concerned with rackets used at the "red" stage of the Lawn Tennis Association's game and otherwise in the game of mini-tennis. The game of mini-tennis is played outside the ambit of the "red" stage, in schools and other places where there are no tennis courts. Besides being played by children, mini-tennis is also played by people of all ages, including people with disabilities, some of whom use wheelchairs. It can be played in gardens which are too small for a lawn-tennis court.

23. Since 2012, the International Tennis Federation has regulated and administered min-tennis worldwide. The International Tennis Federation also regulates and administers the game of beach tennis.

24. Beach tennis was one of a number of different games which were described to us. The beach tennis racket is quite different in appearance to a mini-tennis racket or a lawn-tennis racket. It is not strung and is described in the International Tennis Federation literature we have seen as a '(paddle) bat'. It is made of carbon or

carbon/fibreglass. Both parties agreed that beach tennis was a different game from lawn-tennis, merging features from a number of games – badminton and volleyball as well as lawn-tennis.

25. Other games described to us were racquet ball, padel tennis, squash, touch tennis, soft tennis, real tennis, racquets, paddle tennis and platform tennis.

26. We were shown a racquet ball racket. It was stylistically different to a mini-tennis racket and a lawn-tennis racket. Although it was strung it had a differently shaped hitting area and what appeared to be a relatively shorter handle. In the literature we were shown it was said that a racquet ball racket is "no longer than 22 inches". HMRC accept that racquet ball rackets are not classified as 'lawn-tennis rackets', but are classified under the 'other' category, 9506.9500.

27. A padel tennis racket appears to be similar to a beach tennis racket. It is not strung and is a solid racket, which may be perforated and appears to be constructed in a different way, with a core of shock absorbing rubber covered by a surface of fibreglass, carbon fibre or graphite.

28. A squash racket is a strung racket but appears to be of a different shape to the mini-tennis rackets in issue and a lawn-tennis racket. HMRC accept that squash rackets are not classified as 'lawn-tennis rackets', but are classified under the 'other' category, 9506.9500.

29. A touch tennis racket, on the other hand, is very similar (if not identical) to a mini-tennis racket, so far as its shape and design are concerned. Zsig sells touch tennis rackets and Mr Williams's evidence was that a 21 inch touch tennis racket was identical to a 21 inch mini-tennis racket, except that the trim of the touch tennis racket was blue, whereas the trim of the mini-tennis racket was red. Touch tennis rackets must be no shorter than 20.8 inches and no longer than 21.5 inches. Touch tennis is a game with different rules and scoring system from lawn-tennis. Smaller courts and different balls, as compared with lawn-tennis, are used and Mr Williams describes it as a 'fast-moving adult game'. The ball used for touch tennis is a higher performance ball than that used for mini-tennis. He said that touch tennis was in the process of being brought 'under the umbrella of the Lawn Tennis Association'.

30. Soft tennis is a game played with soft rubber balls. That is the main difference between soft tennis and lawn-tennis. Soft tennis rackets are lighter and more flexible than lawn-tennis rackets, with lower string compression appropriate to the soft balls. They appear to be the same length (27 inches) as lawn-tennis rackets and visually are similar to lawn-tennis rackets.

31. Real tennis rackets are 27 inches long but are made of wood and use very tight strings to cope with the heavy balls in use in the game. The racket head is bent slightly to make it easier to strike balls close to the floor or in corners of the court. The hitting area is of a different shape to and appears to be much smaller than that of a lawn-tennis racket.

32. The racquets racket is longer than a lawn-tennis racket (about 30.5 inches) and, although it is strung, it is made of wood. Again, the hitting area is of a different shape to and appears to be much smaller than that of a lawn-tennis racket.

33. The paddle tennis racket is solid (not strung) made of wood or a composite of a rubberized core covered with graphite. Its dimensions are limited to 18 inches in length and 9.5 inches in width.

34. The platform tennis racket is also a paddle made of a composite material with aerodynamic holes drilled in the head. It is also approximately 18 inches long.

35. Mr Williams told us that a racket ball racket could be used to pay mini-tennis. It was suitable as a matter of size and weight for that purpose and was compatible with the balls and playing area used for mini-tennis.

36. Mr Regan told us that there have been multiple versions of mini-tennis developed over the years before the adoption by the Lawn Tennis Association of a modified version of the game as the three-stage ('red', 'orange', 'green') progression designed to encourage players to develop to the full game of lawn-tennis.

37. He emphasised that in his extensive experience there are as many adults playing mini-tennis as children, and that adult players often do not expect to progress to lawn-tennis, by reason of their age or ability. He emphasised that the 21 inch mini-tennis racket could not be used to play lawn-tennis. Mini-tennis (or the "red" version of it) is, in his view, a game in its own right, and not a miniature version of lawn-tennis. He regarded the fact that the "red" version of mini-tennis is played on a much smaller court than lawn-tennis, and with softer balls, as highly indicative of its status as a game in its own right. He referred to an academic paper "The transfer of skill from short tennis to lawn tennis' by A. Coldwells and M.E. Hare of Liverpool John Moores University, in which the authors stated in their introduction that:

> 'short tennis is a mini-sport or modified version of a game which attempts to retain all the major elements of the adult sport. The modified game is set at a mental and physical level appropriate to children so that skills can be learnt more easily and enjoyment enhanced'.

His evidence was, however, that the mini-tennis game had changed since the short tennis era, and the game described by Coldwells and Hare was a game played with plastic bats. He accepted that 'mini-tennis green' was lawn-tennis, and that rackets of 23 inch length used to play 'mini tennis green' were lawn-tennis rackets, and that all the mini-tennis rackets in issue have 'stylistic similarities' to lawn-tennis rackets.

38. Mr Regan said that there was no rule restricting the rackets used to play the 'red' version of mini-tennis to a length of 21 inches. 23 inch rackets could be used. The size of racket used in any individual case would be appropriate to the player's mental and physical capabilities.

39. We were also referred to information published by the Lawn Tennis Association describing 'mini tennis red'. That states that 'mini tennis red' is for players aged 8 and under, that it is played on small courts with short rackets and soft balls, and that it is

'just like the real game and gives players opportunities to have long rallies and play different types of shots'.

40. Mr Williams's evidence was that the size of the court and the unique scoring system is important in defining lawn-tennis, and differentiating it from the different game of mini-tennis.

41. We were referred to an advertisement put out by Zsig at the time (in the 1990s) that they introduced strung rackets for short tennis. It contained the following text:

> 'At last, the tennis training equipment professionals have been waiting for. Real strung rackets, specially designed for short tennis.
>
> Short tennis (tennis payed on a reduced court or badminton court with scaled-down equipment) was developed in Sweden in the 1970s, and is now recognised by the Lawn Tennis Association as the ideal introduction to tennis for all age groups, and as a serious training aid for tennis players.
>
> As a low-cost, fun game in its own right, too, short tennis has wide application in schools, sports clubs, leisure centres, hotels, holiday resorts and family gardens.
>
> But Britain, unlike, for example, the U.S.A. and Japan, plays short tennis with plastic rackets – heavy, small-headed and out-of-date. Children find them unwieldy, unresponsive and unappealing. Adults usually opt for alternative "real" racket sports such as badminton or squash.
>
> As a result, the full potential of short tennis in Britain has remained largely unexploited.
>
> Now Zsig Sports has brought short tennis into the 1990s.
>
> Zsig short tennis rackets are ultra-light, carefully balanced and fully responsive.
>
> Light enough to prevent equipment-induced technical faults and injuries. Responsive enough to permit the full range of tennis strokes. And, crucially, specifically developed as the perfect partner for our superior quality, extremely durable sponge balls.
>
> Don't however, be misled by our bright, eye-catching colours.
>
> Zsig short tennis equipment is designed, tested and approved by leading tennis professionals, and put through its paces in the demanding environment of a 300 pupil-strong Tennis Academy. Like its users, it's tough.
>
> We think you'll be surprised what a difference a real racket makes. We're sure you'll be surprised how little one costs. Real short tennis, from Zsig Sports.
>
> REAL FEEL. MAXIMUM APPEAL.'

42. Material put out by ITF Coaching, apparently in 2007, was included in the documentary evidence. Part of that material described 'the Mini-tennis concept' as follows:

- 'Tennis played on a small court, approx. the size of a badminton court
- A court can be made on any flat surface

- A small wooden paddle, plastic wood or aluminium rackets: light and thin grip can be used'

43. Officer Holiday's evidence was that mini-tennis rackets, like other goods, had to be classified at the point of importation into the European Union by the port officer. In so doing, the port officer took the objective characteristics of the goods concerned into account. Normally the use for which goods are intended was not considered.

44. Officer Holiday's evidence was that touch tennis rackets were similar enough to lawn-tennis rackets to be classified as lawn-tennis rackets. On the other hand, beach tennis and padel tennis rackets were sufficiently dissimilar from lawn-tennis rackets, so as not to be classified as 'lawn-tennis rackets'. They would be classified as 'other' rackets.

The submissions

45. Mr Gibbon's case 'in a nut-shell', according to his Skeleton Argument, is that mini-tennis is a game in its own right and cannot be described as 'lawn-tennis' and that consequently, rackets for mini-tennis cannot be described as 'lawn-tennis rackets'.

46. He submitted that mini-tennis rackets are not suitable for playing lawn-tennis, and cannot be used safely for that purpose.

47. He contended that recognition by the Lawn Tennis Association of the game of mini-tennis is irrelevant to the classification of mini-tennis rackets, arguing that this is shown by the fact that touch tennis is not (yet) recognised by the Lawn Tennis Association, but its rackets are similar to mini-tennis rackets and are considered to be lawn-tennis rackets for classification purposes by HMRC. He also supported this part of his argument by referring to the evidence that beach tennis rackets are clearly not to be classified as lawn-tennis rackets, even though beach tennis is administered by the International Tennis Federation and promoted by the Lawn Tennis Association.

48. He stressed that the evidence showed that mini-tennis rackets are smaller and lighter than lawn-tennis rackets.

49. He submitted that the mere fact that a game enables players to obtain or develop skills which are transferable to the game of lawn-tennis is not a basis for classifying the rackets used in the game as lawn-tennis rackets.

50. He also referred to and relied on the evidence that many players of mini-tennis are individuals with no expectation of progressing from mini-tennis to lawn-tennis, by reason of age, disability or individual choice.

51. He submitted that the fact that mini-tennis rackets shared stylistic similarities with lawn-tennis rackets was also not determinative of the issue, because other rackets, such as racquetball rackets and squash rackets also shared such similarities with lawn-tennis rackets and yet were not, as accepted by HMRC, to be classified as lawn-tennis rackets.

52. Ms Newstead-Taylor, for HMRC, submitted that the withdrawal by Zsig of its appeal in relation to the 23 inch and 25 inch mini-tennis rackets showed that Zsig acknowledged that a fundamental reason for classifying the smaller mini-tennis rackets still in issue was that they were significantly smaller than a racket suitable for playing lawn-tennis.

53. She submitted that commodity code 9506.5100 was apt for lawn-tennis rackets, whether or not strung, and commodity code 9505.5900 was apt for rackets for playing other sports, such as badminton or squash. In this connection, she contended that mini-tennis is a form of lawn-tennis – played on a small scale. She relies on what she submits in the recognition by the Lawn Tennis Association, which administers mini-tennis, that mini-tennis is a genuine form of the sport of tennis – citing a message from the Lawn Tennis Association website in the following terms:

> 'What is LTA Mini tennis?
>
> Children between 3 and 10 years old can now get struck into the world of tennis with an exciting programme from the LTA sponsored by Highland Spring.
>
> With smaller courts, nets and rackets and lower bouncing balls, LTA Mini Tennis offers the perfect introduction to the sport with all the fun and energy of the real thing.
>
> There are four stages of LTA Mini Tennis: Tots, Red, Orange and Green …'

54. She points to an inconsistency in Mr Williams's evidence in that initially he accepted that mini-tennis had 3 stages, but, following the concession that the larger mini-tennis rackets are correctly classified as lawn-tennis rackets, now concentrates only on the "red" stage of the game as constituting mini-tennis.

Discussion and Decision

55. The approach to be adopted in customs classification cases has been laid down by the Court of Justice in *Kamino International Logistics BV v Staatsecretaris van Financien* (Case C-367/07) at paragraph 31 as follows:

> ' … in accordance with settled case-law, in the interests of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties as defined in the wording of the relevant heading of the CN and in the section or chapter notes … '

56. *Olicom A/S v Skatteministeriet* (Case C-142/06) at paragraph 16 is cited by the Court of Justice in *Kamino International*, to the same effect.

57. The objective characteristics and properties of the goods to be classified and ease of verification are therefore of fundamental importance in the classification process, and it is easy to see why: a decision must normally be taken on the correct classification at the point of entry into the European Union.

58. The general rules for the interpretation of the Combine Nomenclature ("GRIs") provide that headings and relative section or chapter notes are determinative in matters of classification (GRI 1). In this case the correct Chapter (95) and heading

(95 06) are agreed between the parties. The issue is to decide between two sub-headings. GRI 6 provides that classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-headings and any related sub-heading notes and *mutatis mutandis* to the rules in GIR 1 to GIR 5 inclusive.

59. GRI 3(a) is relevant. It provides that when goods are *prima facie* classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. We have therefore to decide, first, whether the mini-tennis rackets in issue are indeed *prima facie* classifiable under both of the contested sub-headings, and, if they are, which of the two sub-headings is the more specific.

60. If the application of those rules does not lead to the correct classification, then the sub-heading which occurs last in numerical order among those which equally merit consideration will provide the classification (GIR 3(c)).

61. The two rival sub-headings are: 'lawn-tennis rackets, whether or not strung' (9506.5100) and 'tennis, badminton or similar rackets, whether or not strung – other [than lawn-tennis rackets]' (9506.5900).

62. This is the context in which we have to decide whether the mini-tennis rackets in issue are 'lawn-tennis rackets'. The sub-headings indicate that lawn-tennis rackets are a sub-set of tennis rackets. That is, the sub-headings indicate that there can be tennis rackets, whether or not strung, which are *not* lawn-tennis rackets, and that such tennis rackets should be classified as 'other' under heading 9506.5900.

63. We consider, therefore, that we must decide whether the mini-tennis rackets in issue are lawn-tennis rackets or some other kind of tennis rackets. In deciding this, we must have regard to the objective characteristics and properties of the mini-tennis rackets in issue, and whether they correspond to the objective characteristics and properties of those tennis rackets which are lawn-tennis rackets.

64. We find on the basis of the evidence that in all respects, except for size and the robustness that goes with size, the objectives and characteristics and properties of the mini-tennis rackets in issue do correspond with the objective characteristics and properties of lawn-tennis rackets. They are stylistically similar.

65. As for ease of verification, while we accept that the mini-tennis rackets in issue are stylistically similar to lawn-tennis rackets, they are smaller, both in hitting area and in length of shaft or handle, and that difference ought to be easy enough to verify – if indeed it is significant, which we go on to consider.

66. We accept the evidence of Mr Regan that the 21 inch mini-tennis racket cannot be used to play the full-size version of lawn-tennis.

67. It seems to us that the determinative question is indeed whether mini-tennis, or the "red" version of it, is indeed a game in its own right and not a miniature version of lawn-tennis. That was Mr Regan's view: Miss Newstead-Taylor made submissions to the contrary effect.

68. The basis of HMRC's case seemed to us to be that the Lawn Tennis Association had established the three stages of mini-tennis as 'an introduction to the sport [of lawn-tennis] with all the fun and energy of the real thing [i.e. lawn-tennis]'. (Actually, there appear to be (or to have been) four stages, 'tots' besides the "red", "orange" and "green" stages.)

69. However, the introduction by the Lawn Tennis Association of this "traffic light" system took pace, on the evidence, in the early 2000s. Before that, in the 1990s, Zsig had introduced '[r]eal strung rackets, specially designed for short tennis'. We take it that these strung rackets are effectively the predecessors of the mini-tennis rackets in issue in the appeal.

70. We accept that mini-tennis at the "red" stage, formerly short tennis, is a modified version of lawn-tennis, which attempts to retain all the major elements of the adult sport (of lawn-tennis) – as per Messrs. Coldwells and Hare's introduction quoted above. (This is also borne out by the general tenor of the advertisement put out by Zsig in the 1990s to which we have made reference above.) But we consider that the differences in the game from that of lawn-tennis – in particular the characteristics of the balls used, the size of the court, the fact that the game can be played on a surface which is not a court at all, and the size of the net – do mark it out as a game in its own right and not a miniature version of lawn-tennis. In our judgment, another factor supporting this decision is the evidence, which we accept, that besides children and young people who may go on to play lawn-tennis, players of mini-tennis at the "red" stage do include categories of individuals, particularly disabled and older people, who do not play mini-tennis as a preparation or training for playing lawn-tennis, but as a game in its own right.

71. We are not dissuaded from this conclusion by Zsig's concession that the 23 inch and 25 inch rackets are properly classifiable as lawn-tennis rackets. The version of mini-tennis played with these larger rackets is, we accept, a miniature version of lawn-tennis. But we do not consider that this is the position with the 17 inch, 19 inch and 21 inch rackets which are used to play mini-tennis at the "red" stage.

72. For these reasons, we hold that the mini-tennis rackets in issue are not *prima facie* classifiable under sub-heading 9506.5100 as lawn-tennis rackets, but are classifiable under heading 9506.5900 as 'other' tennis rackets – i.e. tennis rackets other than lawn-tennis rackets. It is not necessary for us to consider GRI 3(c). We allow the appeal on this basis. If we are wrong and the mini-tennis rackets in issue are *prima facie* classifiable under both sub-headings, then, in accordance with GRI 3(c), the correct classification is 9506.5900 anyway.

73. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JOHN WALTERS QC
TRIBUNAL JUDGE

RELEASE DATE: 27 JULY 2015