



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2011-024

Canadian Tire Corporation Ltd.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, May 22, 2012*

*Corrigendum issued
Monday, June 4, 2012*

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IN THE MATTER OF an appeal heard on January 26, 2012, pursuant to section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated April 28, 2011, with respect to a request for review of an advance ruling pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

CANADIAN TIRE CORPORATION LTD.

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Serge Fréchette
Serge Fréchette
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 26, 2012

Tribunal Member: Serge Fréchette, Presiding Member

Counsel for the Tribunal: Georges Bujold
Alexandra Pietrzak

Manager, Registrar Programs and Services: Michel Parent

Registrar Officer: Marc-André Gosselin

PARTICIPANTS:**Appellant**

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Counsel/RepresentativesMichael Kaylor
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President of the Canada Border Services Agency

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Canadian Tire Corporation Ltd. (CTC) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ from a decision made on April 28, 2011, by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4).

2. The issue in this appeal is whether certain models of ratchet tie-downs (the goods in issue) are properly classified under tariff item No. 6307.90.99 as other made-up articles of other textile materials, including dress patterns, as determined by the CBSA, or should be classified under tariff item No. 8205.70.90 as other vices, clamps and the like, as claimed by CTC. In the alternative, CTC has asked the Tribunal to consider whether the goods in issue may be classified in heading No. 73.26 as other articles of iron or steel.

PROCEDURAL HISTORY

3. In accordance with subsection 60(2) of the *Act*, on December 16, 2010, CTC requested a review of an advance ruling made by the CBSA with respect to the tariff classification of the goods in issue. The goods in issue had been classified by the CBSA under tariff item No. 6307.90.99 as other made-up articles of other textile materials.²

4. On April 28, 2011, the CBSA issued a decision pursuant to subsection 60(4) of the *Act*, in which it affirmed its advance ruling and maintained that the goods in issue were properly classified under tariff item No. 6307.90.99.³

5. On July 26, 2011, CTC filed the present appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.⁴

6. On January 26, 2012, the Tribunal held a public hearing in Ottawa, Ontario.

7. Ms. Karen McBride, an instructor at Rosewood Studio, appeared as a witness on behalf of CTC. The CBSA did not call any witnesses.

GOODS IN ISSUE

8. The goods in issue are two models of ratchet tie-downs consisting of a textile strap, plastic-coated steel hooks and a ratchet handle. The goods in issue operate by attaching the plastic-coated steel hooks to an anchor point and wrapping the textile strap around the load or articles to be held or transported. The textile strap is then drawn tightly by the ratchet handle to create sufficient tension to constrict or press the load or articles to the anchor points to hold them firmly in place. The main difference between the two models is their size and resulting capacity to withstand strain. The first model, which has a larger strap, can be used to transport loads of up to 1,100 pounds. The second model, which is sold in a package of four, is smaller and can be used to transport loads of up to 300 pounds.⁵

1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].

2. Tribunal Exhibit AP-2011-024-01.

3. *Ibid.*

4. *Ibid.*

5. Tribunal Exhibit AP-2011-024-07; Tribunal Exhibit AP-2011-024-09.

9. The CBSA filed two physical exhibits—one sample of each of the goods in issue.⁶ CTC filed one physical exhibit, namely, a sample of a band clamp used in woodworking that is not in issue in this appeal.⁷

STATUTORY FRAMEWORK

10. Subsection 10(1) of the *Customs Tariff* provides as follows: “. . . the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System^[8] and the Canadian Rules^[9] set out in the schedule.” 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 developed by the World Customs Organization.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. Sections and chapters may include notes concerning their interpretation.

11. The *General Rules* comprise six rules structured in sequence so that, if the classification of the goods cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, and so on.¹¹ Classification therefore begins with Rule 1, which provides as follows: “. . . for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.”

12. Section 11 of the *Customs Tariff* provides as follows: “In interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System^[12] and the Explanatory Notes to the Harmonized Commodity Description and Coding System,^[13] published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time.” Accordingly, unlike chapter and section notes, the *Explanatory Notes* are not binding on the Tribunal in its classification of imported goods. However, the Federal Court of Appeal has stated that these notes should be applied, unless there is a sound reason to do otherwise.¹⁴

13. Thus, the Tribunal will first determine whether the goods in issue can be classified according to Rule 1 of the *General Rules* as per the terms of the headings and any relevant section or chapter notes in the *Customs Tariff*, having regard to any relevant *Explanatory Notes* or *Classification Opinions*. It is only if the Tribunal is not satisfied that the goods in issue can be properly classified at the heading level through the application of Rule 1 of the *General Rules* that it becomes necessary to consider subsequent rules in order to determine in which tariff heading they should be classified.

6. Exhibits B-01 and B-02.

7. Exhibit A-01.

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

9. S.C. 1997, c. 36, schedule.

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

11. Rules 1 through 5 of the *General Rules* apply to classification at the heading level (i.e. to four digits). Pursuant to Rule 6 of the *General Rules*, Rules 1 through 5 apply to classification at the subheading level (i.e. to six digits). Similarly, the *Canadian Rules* make Rules 1 through 5 of the *General Rules* applicable to classification at the tariff item level (i.e. to eight digits).

12. World Customs Organization, 2d ed., Brussels, 2003 [*Classification Opinions*].

13. World Customs Organization, 4th ed., Brussels, 2007 [*Explanatory Notes*].

14. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17.

14. 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 determine the proper subheading and tariff item, applying Rule 6 of the *General Rules* in the case of the former and the *Canadian Rules* in the case of the latter.

15. The Tribunal notes that section 13 of the *Official Languages Act*¹⁵ provides that the English and French versions of any Act of Parliament are equally authoritative. Thus, the Tribunal may examine both the English and French versions of the schedule to the *Customs Tariff* in interpreting the tariff nomenclature.

RELEVANT CLASSIFICATION PROVISIONS AND EXPLANATORY NOTES

16. The relevant provisions of the *Customs Tariff*, which CTC claims should apply to the goods in issue, provide as follows:

Section XV

BASE METALS AND ARTICLES OF BASE METAL

...

Chapter 82

TOOLS, IMPLEMENTS, CUTLERY, SPOONS AND FORKS, OF BASE METAL; PARTS THEREOF OF BASE METAL

...

82.05 Hand tools (including glaziers' diamonds), not elsewhere specified or included; blow lamps; vices, clamps and the like, other than accessories for and parts of, machine tools; anvils; portable forges; hand or pedal-operated grinding wheels with frameworks.

...

8205.70 -Vices, clamps and the like

...

8205.70.90 ---Other

17. The relevant chapter notes to Chapter 82 provide as follows:

1. Apart from blow lamps, portable forges, grinding wheels with frameworks, manicure or pedicure sets, and goods of heading 82.09, this Chapter covers only articles with a blade, working edge, working surface or other working part of:

(a) Base metal;

...

18. The relevant *Explanatory Notes* to heading 82.05 provide as follows:

This heading covers all hand tools **not included** in other headings of this Chapter or elsewhere in the Nomenclature (see the General Explanatory Notes to this Chapter), together with certain other tools or appliances specifically mentioned in the title.

It includes a large number of hand tools (including some with simple hand-operated mechanisms such as cranks, ratchets or gearing). This group of tools includes:

...

15. R.S.C. 1985 (4th Supp.), c. 31.

- (G) **Vices, clamps and the like**, including hand vices, pin vices, bench or table vices, for joiners or carpenters, locksmiths, gunsmiths, watchmakers, etc., but **not** including vices forming accessories or parts of machine-tools or water-jet cutting machines. This group also includes cramps and bench holdfasts which, like vices, serve as holding tools (e.g. joiners' cramps, floor cramps and toolmakers' clamps).

19. Alternatively, CTC considers that the following provisions of the *Customs Tariff* may be applicable to the goods in issue:

Section XV

BASE METALS AND ARTICLES OF BASE METAL

...

Chapter 73

ARTICLES OF IRON OR STEEL

...

73.26 **Other articles of iron or steel.**

-Forged or stamped, but not further worked:

...

7326.90 **-Other**

...

7326.90.90 - - -Other

20. The relevant provisions of the *Customs Tariff*, which the CBSA considers applicable to the goods in issue, provide as follows:

Section XI

TEXTILES AND TEXTILE ARTICLES

...

Chapter 63

**OTHER MADE UP TEXTILE ARTICLE; SETS;
WORN CLOTHING AND WORN TEXTILE ARTICLES; RAGS**

...

I. -OTHER MADE UP TEXTILE ARTICLES

...

63.07 **Other made up articles, including dress patterns.**

...

6307.90 **-Other**

...

- - -Other:

...

6307.90.99 - - - -Of other textile materials

21. The relevant chapter notes to Chapter 63 provide as follows:
1. Sub-Chapter I applies only to made up articles, of any textile fabric.
 2. Sub-Chapter I does not cover:
 - (a) Goods of Chapters 56 to 62; or
 - (b) Worn clothing or other worn articles of heading 63.09.
22. The relevant *Explanatory Notes* to Chapter 63 provide as follows:

GENERAL

This Chapter includes:

- (1) Under headings 63.01 to 63.07 (sub-Chapter I) made up textile articles of any textile fabric (woven or knitted fabric, felt, nonwovens, etc.) which are **not** more specifically described in other Chapters of Section XI or elsewhere in the Nomenclature. . . .

This sub-Chapter includes articles of tulle or other net fabrics, lace or embroidery, whether made directly to shape or made up from the tulle or other net fabrics, lace or embroidered fabrics of heading 58.04 or 58.10.

The classification of articles in this sub-Chapter is not affected by the presence of minor trimmings or accessories of fur skin, metal (including precious metal), leather, plastics, etc.

Where, however, the presence of these other materials constitutes **more than** mere trimming or accessories, the articles are classified in accordance with the relative Section or Chapter Notes (General Interpretative Rule 1), or in accordance with the other General Interpretative Rules as the case may be.

23. The relevant *Explanatory Notes* to heading 63.07 provide as follows:

This heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.

It includes, in particular:

. . .

- (15) Belts which, although worn around the waist, do not have the character of belts of **heading 62.17**, e.g., belts for occupational use (electricians', aviators', parachutists', etc.); *webbing carrier straps and similar articles*. (Straps having the character of articles of saddlery or harness are **excluded -heading 42.01.**)

[Emphasis added]

POSITIONS OF PARTIES

CTC

24. CTC claims that the goods in issue should be classified in heading No. 82.05 as “hand tools (including glaziers’ diamonds), not elsewhere specified or included; blow lamps; vices, clamps and the like, other than accessories for and parts of, machine tools; anvils; portable forges; hand or pedal-operated grinding wheels with frameworks.” In particular, CTC argues that the goods in issue are specifically covered by the terms of heading No. 82.05, as they are “vices, clamps and the like”.

25. In response to the CBSA's submission that the goods in issue are not hand tools, CTC submits that it is not necessary for the goods in issue to be hand tools to be classified in heading No. 82.05. Rather, CTC argues that heading No. 82.05 is not limited to hand tools, but also includes "blow lamps; vices, clamps and the like". As such, CTC claims that, to the extent that the goods in issue are commercially known as "clamps" and, at the very least, are goods that are "like" clamps, it is not necessary for the goods in issue to be hand tools in order to be included in heading No. 82.05.

26. CTC notes that heading No. 82.05 includes the inclusive phrase "clamps and the like" and submits that the goods in issue have a function that is similar to that of clamps, since their purpose is to hold things in place. On that basis, and using the *ejusdem generis* rule to interpret the terms of heading No. 85.02, CTC argues that the goods in issue satisfy the requirements of this heading.

27. Similarly, CTC rejects the CBSA's contention that the goods in issue do not have the requisite working edge, working surface or other working part of base metal to be classified in heading No. 82.05. CTC maintains that the ratchet handle portion of the goods in issue is a working part of base metal, in accordance with the relevant chapter notes of Chapter 82.

28. CTC further argues that the current appeal may be distinguished from the Tribunal's decision in *Canper Industrial Products Ltd. v. Deputy M.N.R.*,¹⁶ thereby rendering that decision inapplicable in the present case. In this regard, CTC submits that, while the goods in issue in *Canper* were similar to those of the current appeal, "[t]he Tribunal was never called upon in that case to put its mind to the application of heading 82.05 or indeed more specifically under what portion of heading 82.05 the goods might have qualified."¹⁷ Since, in *Canper*, the Tribunal was never asked to consider whether the goods in issue were vices or clamps within the meaning of heading No. 82.05, CTC argues that *Canper* is of no assistance in the current appeal.

29. CTC argues that, while the goods in issue may initially appear to be classifiable in heading No. 63.07, both the chapter notes and the *Explanatory Notes* to heading No. 63.07 state that the heading applies only to goods which are not more specifically described elsewhere in the nomenclature. CTC states that the goods in issue are more particularly described in heading No. 82.05 and, therefore, should be classified in that heading.

30. Moreover, CTC asserts that the goods in issue are not properly classified in heading No. 63.07 because the metal ratchet is an essential element of the goods in issue, which constitutes more than a mere trimming or accessory.¹⁸ CTC argues that the chapter notes to heading No. 63.07 provide that, where goods contain components of metal that constitute more than a mere trimming, they may only be classified in that heading if another section or chapter note provides that they should be included notwithstanding the metal component. CTC contends that there is no such exception provided in the chapter or section notes and thus, that the goods in issue are not properly classified in heading No. 63.07.¹⁹

31. Alternatively, CTC submits that the goods in issue are *prima facie* classifiable in heading Nos. 63.07 and 73.26 by virtue of the goods being composed of a textile strap, a metal ratchet and metal hooks. CTC maintains that neither heading No. 63.07 nor heading No. 73.26 contain any relevant notes which would exclude the goods from being classified in those headings. Moreover, CTC refers to the

16. (24 January 1995), AP-94-034 (CITT) [*Canper*].

17. *Transcript of Public Hearing*, 26 January 2012, at 34.

18. *Ibid.* at 37.

19. *Ibid.* at 40.

testimony of Ms. McBride in support of its contention that the goods in issue could not operate without the textile strap, the ratchet handle or the metal hooks.²⁰ Since it is not possible to classify the goods in accordance with only one of these components, and each component is necessary to give the goods their essential character, CTC argues that the classification must be decided by reference to Rule 3 (c) of the *General Rules*. As Rule 3 (c) requires goods to be classified according to the heading which appears last in the *Customs Tariff*, CTC submits that the goods should be classified in heading No. 73.26.

CBSA

32. The CBSA takes the position that the goods in issue are properly classified in heading No. 63.07. The CBSA argues that the goods in issue are expressly included in the *Explanatory Notes* to heading No. 63.07, which lists “webbing carrier straps and similar articles”.²¹ The CBSA referred to the Tribunal’s decision in *Rui Royal International Corp. v. President of the Canada Border Services Agency*²² for the proposition that ratchet tie-downs meet the definition of being goods similar to webbing carrier straps.²³

33. The CBSA argues that the goods in issue are not excluded from heading No. 63.07 by virtue of their metal components. According to the CBSA, where goods contain metal components which are more than mere trimmings or accessories, the *Explanatory Notes* dictate that the Tribunal must first continue with classification pursuant to Rule 1 of the *General Rules*.²⁴ Therefore, the CBSA argues that, while the goods in issue do possess metal components which are “more than mere trimmings or accessories”, they are nonetheless properly classified in heading No. 63.07 by application of Rule 1 of the *General Rules*.²⁵

34. In response to CTC’s submission that the goods in issue should be classified in heading No. 82.05, the CBSA argues that the goods in issue do not fall within the definition of “vices, clamps and the like”. In particular, the CBSA alleges that the goods in issue do not meet the ordinary definition of a clamp and are in fact marketed by CTC not as clamps but as ratchet tie-downs.²⁶ Moreover, the CBSA states that the goods in issue do not meet the requirements of either the chapter notes or the *Explanatory Notes*, as they do not have a “working edge, working surface or other working part” of base metal, nor are they “tools which can be used independently in the hand”.²⁷ As a result, the CBSA concludes that the goods in issue cannot be classified in heading No. 82.05 and, thus, contrary to CTC’s contention, are not more specifically included or described in that heading.

35. In the alternative, the CBSA submits that, if the goods in issue are *prima facie* classifiable in both heading Nos. 63.07 and 82.05, they must be classified in heading No. 63.07 pursuant to Rule 2 (b) of the *General Rules*. The CBSA argues that it is the stitched textile straps which give the goods in issue their essential character as ratchet tie-downs.²⁸ While the ratchet buckle assists in tightening and maintaining tension on the load, the CBSA maintains that the buckle does not give the goods in issue their essential character, as described by heading No. 63.07.²⁹ Thus, the CBSA maintains that the goods in issue are properly classified in heading No. 63.07 as made-up textile articles akin to webbing carrier straps.

20. *Ibid.* at 42.

21. Tribunal Exhibit AP-2011-024-09 at para. 24.

22. AP-2010-003 (30 March 2011) (CITT) [*Rui Royal*].

23. Tribunal Exhibit AP-2011-024-09 at para. 24.

24. *Ibid.* at para. 19.

25. *Ibid.*

26. *Ibid.* at para. 35.

27. *Ibid.* at paras. 38-39, 41.

28. *Ibid.* at para. 54.

29. Tribunal Exhibit AP-2011-024-09.

ANALYSIS

Tariff Classification of the Goods in Issue

36. The issue in this appeal is whether the goods in issue are properly classified in heading No. 63.07 as other made-up articles of other textile materials, including dress patterns, as determined by the CBSA, or if the goods in issue should be classified in heading No. 82.05 as vices, clamps and the like, as submitted by CTC. In the alternative, CTC has asked the Tribunal to consider whether the goods in issue may be classified in heading No. 73.26 as articles of iron or steel. Thus, the dispute between the parties arises at the heading level.

37. The parties appear to agree that the goods in issue are generally described as ratchet tie-downs consisting of a textile strap, plastic-coated steel hooks and a ratchet handle, which function to constrict or hold items in place. As such, the key question in this appeal is limited to whether the general description and actual performance of the goods in issue correspond to the descriptions provided in the competing headings in this case. According to Rule 1 of the *General Rules*, the Tribunal must first determine whether the goods in issue are classifiable in one, and only one, heading, taking into account the terms of the heading and any relevant section or chapter notes and having regard to any relevant *Explanatory Notes*.³⁰

38. As set out in the *Explanatory Notes* to Chapter 63, Chapter 63 applies only to goods that are not more specifically described elsewhere in the *Customs Tariff*. Thus, if the goods in issue are more specifically covered in heading No. 82.05, as argued by CTC, they will be excluded from heading No. 63.07, even if they could *prima facie* meet the terms of that heading. Indeed, CTC does not dispute that, *prima facie*, the goods in issue would be classifiable in heading No. 63.07.³¹ However, its primary argument is that, in light of the guidance provided by the *Explanatory Notes*, to the extent that the goods in issue are included more specifically elsewhere in the nomenclature (i.e. in heading No. 82.05), they cannot be classified in heading No. 63.07. CTC therefore relies on Rule 1 of the *General Rules*, having regard to the relevant *Explanatory Notes*, to conclude that the goods in issue should be classified in heading No. 82.05.

39. The Tribunal agrees that the *Explanatory Notes* to Chapter 63 and heading No. 63.07 provide useful guidance to determine the proper tariff classification of the goods in issue and finds that there is no reason not to apply them in this appeal. The Tribunal will therefore determine first whether the goods in issue can be *prima facie* classified in heading No. 82.05 and, if so, whether they are more specifically described in that heading than in heading No. 63.07. In that event, they could not be classified in both headings, as heading No. 82.05 would take precedence over heading No. 63.07 on the basis of Rule 1 of the *General Rules*, having regard to the relevant *Explanatory Notes*.

40. Heading No. 82.05 provides as follows:

Hand tools (including glaziers' diamonds), not elsewhere specified or included; blow lamps; vices, clamps and the like, other than accessories for and parts of, machine tools; anvils; portable forges; hand or pedal-operated grinding wheels with frameworks.

41. The Tribunal has previously held that the use of a semi-colon in the text of a heading is used to denote separate goods, groups of goods or classes of goods within the same description.³² One such group of goods in heading No. 82.05 is described as “. . . vices, clamps and the like, other than accessories for and

30. There are no relevant *Classification Opinions* to take into consideration.

31. *Transcript of Public Hearing*, 26 January 2012, at 25.

32. *Bauer Nike Hockey Inc. v. President of the Canada Border Services Agency* (18 May 2006), AP-2005-019 (CITT) at para. 23. See also *Boss Lubricants v. Deputy M.N.R.* (3 September 1997), AP-95-276 and AP-95-307 (CITT).

parts of, machine tools . . .” CTC alleges that, within that descriptive group, the words “clamps and the like” describe the goods at issue and justify their classification in heading No. 82.05. The CBSA does not contest that the words “clamps and the like” are the appropriate words to be considered when examining the applicability of heading No. 82.05 to the goods in issue.

42. As the term “clamp” is not defined in the *Customs Tariff*, the Tribunal may have recourse to the ordinary meaning of the term. As noted by CTC, *Webster’s Third New International Dictionary of the English Language* defines “clamp” as follows:

a: a device . . . designed to bind or constrict or to press two or more parts together so as to hold them firmly in their relative position b: any of various instruments or appliances . . . for holding or compressing something.³³

43. The Tribunal notes that this definition is quite similar to the following definition of the word “clamp” in the *Shorter Oxford English Dictionary*, as submitted by the CBSA:

1 A brace, clasp or band, usu. of rigid material, used for strengthening or fastening things together.

. . .

3 An appliance or tool with parts which may be brought together by a screw etc. for holding or compressing.³⁴

In fact, except for the statement in the definition submitted by the CBSA that a clamp *may* consist of a “rigid band”, the Tribunal sees no practical difference between the two definitions. Both definitions make reference to the same general use, namely, “to bind or constrict or to press two or more parts together so as to hold them firmly in their relative position”, for “strengthening or fastening things together”, or for “holding or compressing”. As these definitions make clear, the ordinary meaning of the word “clamp” is primarily determined by describing its function or its end use, the root of which is as a device that holds or maintains items together.

44. Moreover, heading No. 82.05 is not limited to clamps, but may also include clamps “and the like”. The Tribunal agrees with CTC’s contention that these additional words are intended to identify goods that should also be classified in heading No. 82.05 as a result of their close association with or resemblance to clamps. The use of the word “and” in the phrase “clamps and the like” denotes a further descriptor. In other words, “and” is used to indicate that the heading is meant to include not only clamps but also goods which are “like” clamps. The test to determine whether goods are “like” or similar is not strict, and the goods need not be identical. Rather, the test will be met if such goods share important characteristics and have common features.³⁵ The goods in issue may therefore be classified in heading No. 85.02 if they are determined to be “like” clamps.

45. The Tribunal considers that the goods in issue are in fact used “to bind or constrict or to press two or more parts together so as to hold them firmly in their relative position”, for “strengthening or fastening things together”, or for “holding or compressing”. This accords with the underlying end use suggested by both definitions of “clamp” presented by the parties, namely, that a clamp holds or maintains items together. As such, the goods in issue meet the description of “clamps or the like” as required by heading No. 82.05.

33. Tribunal Exhibit AP-2011-024-07 at para. 13.

34. Tribunal Exhibit AP-2011-024-09, tab 20.

35. *Rui Royal* at para. 82.

46. On this point, the Tribunal was persuaded by the evidence given by Ms. McBride. In her testimony, Ms. McBride described how she would use the goods in issue to hold or clamp objects together.³⁶ In particular, Ms. McBride explained how she would use the goods in issue to hold objects in place while she did carpentry work or steam bending.³⁷ The Tribunal finds that Ms. McBride's evidence was uncontroverted on this issue.

47. While heading No. 82.05 also states that goods which could be considered "accessories for and parts of machine tools" are excluded from classification in that heading, the Tribunal notes that the goods in issue do not appear to be accessories for or parts of machine tools, and there is no evidence before it that would suggest that they are such accessories or parts. Moreover, as neither party addressed whether the goods in issue could be described as such, and the parties apparently agreed on the general description of the goods in issue, the Tribunal does not believe that it must concern itself with this issue.

48. In accordance with Rule 1 of the *General Rules*, the Tribunal's interpretation must also be guided by the content of any applicable section or chapter notes. Note 1 to Chapter 82 provides as follows:

1. Apart from blow lamps, portable forges, grinding wheels with frameworks, manicure or pedicure sets, and goods of heading 82.09, this Chapter covers only articles with a blade, working edge, *working surface or other working part of:*

- (a) Base metal;

...

[Emphasis added]

49. The Tribunal agrees with CTC's submission that, in order to satisfy the above-referenced chapter note, the goods in issue must meet the following two basic requirements: they must (i) be articles with a working surface or working part and (ii) be of base metal. These requirements are in fact physical characteristics that necessarily have to be met for goods to be classified in heading No. 82.05, which is obviously a heading of Chapter 82. In that sense, it must be assumed that they are physical characteristics that must be met by goods that are "clamps and the like".

50. With regard to the first requirement of note 1 to Chapter 82, it is not contested that the goods in issue are "articles". In addition, a simple physical examination of the physical exhibits was sufficient to convince the Tribunal that the ratchet component constitutes a "working part". This conclusion was confirmed by the uncontroverted evidence of Ms. McBride, in which she described the ratchet portion of the goods in issue as an essential component which functions to tighten the straps of the goods in issue in order to exert the necessary force to hold or bind objects together and as a release to loosen the straps as needed.³⁸

51. The Tribunal disagrees with the CBSA's contention that the goods in issue do not meet the requirements of note 1 to Chapter 82 because "[t]he ratchet buckle cannot fasten and hold cargo in place without the incorporation of the working part, the straps."³⁹ The CBSA argues that the working part is, in fact, the textile strap. However, that the straps may be essential to the ultimate use or purpose of the goods in issue does not negate the fact that the ratchet itself is a working part. The goods in issue meet the first requirement of note 1 simply by virtue of the fact that the ratchet constitutes a working part of base metal of the goods in issue, without which they could not "work", that is, be used for their intended purpose.

36. *Transcript of Public Hearing*, 26 January 2012, at 9.

37. *Ibid.* at 23.

38. *Ibid.* at 6-8, 10.

39. Tribunal Exhibit AP-2011-024-09 at para. 39.

52. With respect to the second requirement of note 1 to Chapter 82, the CBSA does not contest that the ratcheting mechanism is composed of a “base metal”. Thus, as the ratchet component constitutes a working part of base metal, the Tribunal concludes that the goods in issue satisfy the requirements of note 1.

53. The Tribunal need not determine whether the goods in issue are “hand tools” as listed in heading No. 82.05. As noted above, the use of semicolons in the *Customs Tariff* denotes a listing of separate goods, groups of goods or classes of goods within the same description.⁴⁰ It is therefore clear that heading No. 82.05 includes not only hand tools but also “vices, clamps and the like”, amongst other goods. Since the Tribunal has established that the goods in issue are clamps or are, at the very least, goods that are “like” clamps, it is not necessary that they also be classifiable as “hand tools”.

54. On the basis of the above, the Tribunal concludes that the goods in issue are *prima facie* “clamps”, or goods that are “like” clamps, and can therefore be classified in heading No. 82.05.

55. The CBSA suggests that the goods in issue may also be *prima facie* classifiable in heading No. 63.07. However, as indicated above, the *Explanatory Notes* to Chapter 63 indicate that Chapter 63 (which includes heading No. 63.07) only covers goods that are not more specifically described elsewhere in the nomenclature. Therefore, even assuming that the goods in issue may also be *prima facie* classified in heading No. 63.07, the *Explanatory Notes* indicate that they are precluded from being classified in that heading should they be included more specifically in heading No. 82.05.

56. On this issue, the Tribunal agrees with CTC’s submission that the goods in issue are more specifically described as “vices, clamps and the like” in heading No. 82.05, rather than as “other made up articles, including dress patterns” in heading No. 63.07.⁴¹ The Tribunal notes that heading No. 82.05 is a naming provision, in that it specifically lists and describes certain goods, including “vices, clamps and the like”, whereas heading No. 63.07 is a residual heading which covers “other” made-up articles of textiles. In the Tribunal’s opinion, it is clear that a naming provision, such as heading No. 82.05, provides the most specific description of the goods in issue. Indeed, one can hardly dispute that the terms of heading No. 82.05 are much narrower and more specific than the terms of heading No. 63.07, which are broad and potentially cover a range of undefined articles. Simply put, the terms of heading No. 82.05 describe goods with a greater degree of accuracy and certainty. In accordance with the *Explanatory Notes* to Chapter 63, therefore, the goods in issue are not properly classified in heading No. 63.07, as they are more specifically described in heading No. 82.05.

57. Finally, the Tribunal is mindful that, in a previous case, it has classified goods that appear similar to the goods in issue in heading No. 63.07. However, as argued by CTC, the Tribunal notes that it was not asked to consider, and did not address, the issue of the potential relevance of heading No. 82.05 in that case, which is a sufficient basis to distinguish it from the present appeal. More generally, the Tribunal is of the view that its decisions in previous cases, since they concerned goods other than those that are in issue in this appeal, do not preclude it from finding that the goods in issue should be classified in heading No. 82.05. In this regard, the Tribunal accepts CTC’s submissions that, in any event, the Tribunal is not bound by its own precedents.⁴²

40. *Bauer Nike Hockey Inc. v. President of the Canada Border Services Agency* (18 May 2006), AP-2005-019 (CITT) at para. 23. See also *Boss Lubricants v. Deputy Minister of National Revenue* (3 September 1997), AP-95-276 and AP-95-307 (CITT).

41. Tribunal Exhibit AP-2011-024-07 at paras. 32-35.

42. *Transcript of Public Hearing*, 26 January 2012, at 34-36.

58. In conclusion, the Tribunal finds that the goods in issue should be classified in heading No. 82.05 as vices, clamps and the like. In light of the foregoing conclusion, the Tribunal need not deal with CTC's alternative submission that the goods in issue may be classified in heading No. 73.26.

Classification at the Subheading and Tariff Item Levels

59. The CBSA did not contest that, should the goods in issue be classified in heading No. 82.05, they should ultimately be classified under tariff item No. 8205.70.90. The Tribunal agrees and concludes that the goods in issue should be classified under tariff item No. 8205.70.90 as other vices clamps and the like, applying Rule 6 of the *General Rules* and Rule 1 of the *Canadian Rules*.

DECISION

60. The appeal is allowed.

Serge Fréchette
Serge Fréchette
Presiding Member

IN THE MATTER OF an appeal heard on January 26, 2012, pursuant to section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated April 28, 2011, with respect to a request for review of an advance ruling pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

CANADIAN TIRE CORPORATION LTD.

Appellant

AND

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

Respondent

CORRIGENDUM

In the last sentences of paragraphs 26 and 44, the heading number should have read “82.05”.

By order of the Tribunal,

Gillian Burnett
Acting Secretary