



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2004-057

Canadian Tire Corporation Limited

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, August 2, 2006*

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IN THE MATTER OF an appeal heard on July 25, 2005, under subsection 67(1) 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 November 23, 2004, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

CANADIAN TIRE CORPORATION LIMITED

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Ellen Fry
Ellen Fry
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: July 25, 2005

Tribunal Members: Pierre Gosselin, Presiding Member
James A. Ogilvy, Member
Ellen Fry, Member

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REASONS FOR DECISION

1. Canadian Tire Corporation Limited (Canadian Tire) is appealing, under subsection 67(1) of the *Customs Act*,¹ a decision made on November 23, 2004, by the President of the Canada Border Services Agency (CBSA), under subsection 60(4) of the *Act*.

2. The issue in this appeal is whether the Wolcraft triple roller support stand² should be classified under tariff item No. 8466.20.00 of the schedule to the *Customs Tariff*,³ as claimed by Canadian Tire, or is properly classified under tariff item No. 7326.90.90, as determined by the CBSA.

3. The support stand in issue was imported on January 25, 2001.

4. The relevant *Customs Tariff* nomenclature in effect when the support stand in issue was imported reads as follows:

...	
73.26	Other articles of iron or steel.
...	
7326.90	-Other
...	
7326.90.90	---Other
...	
84.66	Parts and accessories suitable for use solely or principally with the machines of headings 84.56 to 84.65, including work or tool holders, self-opening dieheads, dividing heads and other special attachments for machine-tools; tool holders for any type of tool for working in the hand.
...	
84.66.20.00	-Work holders
...	

5. The relevant excerpt from the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁴ to heading No. 84.66 is as follows:

...

With the **exception** of the tools of **Chapter 82** and **subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), this heading covers:

- (A) **Parts** of the machine-tools of the ten preceding headings, **84.56 to 84.65**.
- (B) **Accessories** for these machine-tools, that is, subsidiary devices used in connection with machine-tools, such as interchangeable devices which modify the machine-tool so that it can perform a wider range of operations; devices to increase precision; devices which perform a particular service relative to the main function of the machine.

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

2. The support stand consists of an "A-frame" leg base and a top that has three rollers on a rectangular frame. The stand is constructed from heavy gauge steel. The height of the stand is adjustable.

3. S.C. 1997, c. 36.

4. Customs Co-operation Council, 2d ed., Brussels, 1996 [*Explanatory Notes*].

- (C) **Tool holders** for any type of tool for working in the hand.

The very wide range of parts and accessories classified here includes:

...

- (2) **Work holders** designed to hold and sometimes manipulate (as required for a particular operation) the part being worked by the machine. These include:

Lathe centres; mechanical or pneumatic lathe chucks of all kinds and their clamping jaws; work holding plates and tables (whether or not with a micrometer adjusting or setting device); clamps and angle plates; chocks and wedges; fixed, revolving or adjustable machine vices; steady rests (ring-shaped devices designed to support long parts during turning, in order to prevent buckling and overcome vibrations set up by the pressure of the tool).

...

- (7) **Other special auxiliary attachments**, designed to increase the precision of the machine without actually entering into its operation. They include centring or levelling attachments; dividing heads; indexing tables; micrometer carriage stops; carriage spacing attachments, etc. Such attachments remain in the heading even if incorporating an optical device to assist in reading the scale or in carrying out adjustments (e.g., “optical” dividing heads). However the heading **excludes** apparatus which are in themselves essentially optical apparatus, e.g., centring microscopes (**heading 90.11**), alignment or levelling telescopes and image projecting test apparatus (**heading 90.31**), etc.

EVIDENCE

6. Canadian Tire did not call any witnesses.

7. The CBSA called Mr. George Rothschild to testify on its behalf. He is the Coordinator of the cabinet-making department at Algonquin College in Ottawa, Ontario, where he also teaches.⁵ The Tribunal qualified him as an expert in planers, joiners, table saws, mitre saws, band saws, chop saws, steady rests, and other machinery or tools with which Mr. Rothschild has experience, given his career.

8. Mr. Rothschild testified that he was familiar with support stands, but that he had not personally used the one in issue.⁶ He indicated that support stands do not attach to any machine or tool and that, by their nature, they are stand-alone objects. He acknowledged that the support stand in issue was “. . . designed to support and handle panels, boards, etc. . . .”, as described in the owner’s manual,⁷ but stated that it was most likely used as a secondary support when working with long pieces of stock.⁸

9. According to Mr. Rothschild, support stands are not necessary for the proper functioning of any of the machines or tools with which they are designed to be used. Mr. Rothschild stated that the support stand in issue does not increase the accuracy of the machine or tool with which it is being used; rather, the machine itself is responsible for its cutting accuracy. He testified that the support stand in issue helps eliminate the tilting and the dropping of long, heavy or wide work pieces.

5. Mr. Rothschild testified that he has a Bachelor’s degree in industrial design; he is a qualified cabinetmaker who worked for a number of years building custom furniture.

6. Two physical exhibits were presented: Exhibit A-01—Wolfcraft Triple Roller Support Stand; and Exhibit A-02—Workmover Bearing Roller Stand (a stand that is similar to the support stand in issue).

7. See Appellant’s Brief, Tab 1.

8. The term “stock” refers to a raw material out of which something is made.

10. Mr. Rothschild stated that the support stand in issue could be used with a variety of power tools to support the handling of stock. He did not believe that the support stand in issue was “. . . [i]deal for use with joiners, planers, table saws, band saws, chop saws and mitre saws . . .”, as stated on Canadian Tire’s Web site. He provided the Tribunal with physical descriptions and general uses for several machines or tools, including a handsaw, a router, a grinder, a drill and a chisel, as well as pneumatic tools. For each, he indicated that primary support is usually provided by the power tool itself, because most power tools are designed to handle both short and long stock. He explained that, if a tool is not able to handle long stock, the manufacturer often supplies an attachment. In his view, the support stand in issue can provide a secondary means of support.

11. Mr. Rothschild indicated that the support stand in issue has limited functionality with respect to certain stationary machines, specifically thickness planers, table saws and lathes. In this regard, he indicated that the support stand in issue is typically not stable enough to support extremely long pieces of stock for planing without having the stock knock the stand over.

ARGUMENT

Canadian Tire

12. Canadian Tire argued that the support stand in issue falls within the terms of heading No. 84.66 as “. . . [p]arts and accessories suitable for use solely or principally with the machines of headings 84.56 to 84.65 . . .” Canadian Tire argued that two conditions had to be met in this regard: (1) the support stand must be a part or accessory; and (2) it must be used solely or principally with the machines of heading Nos. 84.56 to 84.65. Canadian Tire submitted that the support stand in issue meets both conditions.

13. With respect to the first condition, Canadian Tire noted that the *Explanatory Notes* define an accessory of heading No. 84.66 as “. . . any subsidiary devices used in connection with the machines of tariff heading nos. 84.56 to 84.65 . . .”⁹ In this regard, it argued that the support stand in issue is a subsidiary device for use with these machines, because it performs a number of functions relative to the main function of the machine: the roller stand is designed to support and handle panels, board, etc., and make stationary machines safer and easier to use. In addition, it indicated that the definition of “accessories”¹⁰ in the *Explanatory Notes* is consistent with Tribunal jurisprudence.

14. With respect to the second condition, Canadian Tire noted that its Web site states that the support stand in issue is “. . . [i]deal for use with joiners, planers, table saws, band saws and mitre saws . . .” All these goods are properly classifiable in one of the heading Nos. 84.56 to 84.65. According to Canadian Tire, the support stand in issue is therefore “. . . for use principally with the machines . . .” of those headings. Canadian Tire argued that the term “principally” ought to be interpreted to mean “50 percent plus one” and that, based on the descriptive literature, that threshold had been met.

9. Appellant’s Brief, para. 25.

10. Accessory is defined as “. . . an article which performs a secondary or subordinate role, not essential to the function, which could improve the effectiveness of the host machine, equipment, apparatus or appliance.” See, for example, *Sony of Canada Ltd. v. Commissioner of the Canada Customs and Revenue Agency* (3 February 2004), AP-2001-097 (CITT).

CBSA

15. The CBSA argued that the support stand in issue is not an accessory because it can be used with a wide range of tools and machines other than those of heading Nos. 84.56 to 84.65. It submitted that the support stand in issue is properly classified under tariff item No. 7326.90.90 as other articles of iron or steel. In addition, it submitted that the support stand in issue was not excluded from consideration in heading No. 73.26 by virtue of any section or chapter of the *Customs Tariff* or the *Explanatory Notes*.

16. The CBSA argued that an accessory enhances the operation of a machine or tool. In this case, the support stand in issue does not modify the machine or increase its precision, nor does it perform a particular service to its main function. In addition, the CBSA stated that Canadian Tire's Web site advertises the support stand in issue under the "worktables" section as opposed to the "accessories" section, which included router bits for routers, wire wheels for grinders and blades for saws. The items found in this "accessories" section, unlike the support stand in issue, are designed to be attached to, and used with, a machine or tool in order to enhance its proper functioning.

17. Further, the CBSA submitted that the support stand in issue is not a "work holder", as it cannot grasp materials or otherwise keep them fast as they are processed. Rather, according to the CBSA, the support stand in issue functions independently from the machine or tool, does not attach to it and is not necessary for its proper functioning.

18. The CBSA also argued that there is no reference in either the product literature or Canadian Tire's brief that demonstrates that the support stand in issue is designed to be used "solely or principally" with the machines of heading Nos. 84.56 to 84.65. In this regard, it indicated that Mr. Rothschild testified that the roller stand could also be used with the machine-tools of heading Nos. 82.02, 82.05, 82.07 and 84.67.

DECISION

19. Section 10 of the *Customs Tariff* provides that the classification of imported goods under a tariff item shall be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*¹¹ and the *Canadian Rules*.¹² Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in the schedule, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*¹³ and to the *Explanatory Notes*. In this case, the competing headings Nos. are 73.26 ("Other articles of iron or steel") and 84.66 ("Parts and accessories suitable for use solely or principally with the machines of headings 84.56 to 84.65, including work or tool holders, self-opening dieheads, dividing heads and other special attachments for machine-tools; tool holders for any type of tool for working in the hand").

11. *Supra* note 3, schedule [*General Rules*].

12. *Supra* note 3, schedule.

13. Customs Co-operation Council, 1st ed., Brussels, 1987.

20. In dealing with the *General Rules*, the Tribunal must seek to apply Rule 1 first, only moving on to the following rule, and so on, if the preceding rule does not enable the support stand in issue to be classified. Rule 1 requires that classification be determined according to the terms of the headings and any relative Section or Chapter Notes. Rule 1 is as follows:

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; 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.

21. The Tribunal accepts Canadian Tire's argument that, in order for the support stand in issue to be classified in heading No. 84.66, it must satisfy the following two criteria: (1) it must be a part or an accessory; and (2) it must be suitable for use solely or principally with the machines of heading Nos. 84.56 to 84.65, including work or tool holders, self-opening dieheads, dividing heads and other special attachments for machine-tools; tool holders for any type of tool for working in the hand.

22. With regard to the first criterion, neither party argued that the support stand in issue was a part. Canadian Tire's view was that it is an accessory. The CBSA disagreed.

23. On this issue, the Tribunal had regard to the *Explanatory Note* to heading No. 84.66, which read as follows:

Accessories for these machine-tools, that is, subsidiary devices used in connection with machine-tools, such as interchangeable devices which modify the machine-tool so that it can perform a wider range of operations; devices to increase precision; devices which perform a particular service relative to the main function of the machine. [Emphasis added]

24. The Tribunal finds that the support stand in issue is an accessory, as described in these *Explanatory Notes*. The Tribunal accepts the evidence presented by Canadian Tire that the support stand in issue holds long stock and/or provides support to stock as it is being processed by the machine-tools of heading Nos. 84.56 to 84.65. In doing so, the support stand in issue clearly performs a service that modifies the breadth and extends the range of operations of these machine-tools. It therefore performs a very particular service relative to the main function of the machines that it accessorizes.¹⁴

25. The Tribunal notes that a "holder" need not clamp or secure the stock in place, as claimed by the CBSA. Dictionary definitions of "hold"¹⁵ are sufficiently broad to include "support".¹⁶ In addition to the documentary evidence presented by Canadian Tire, the Tribunal remarks that Mr. Rothschild testified that the support stand in issue allows for the safer and easier handling of long stock on stationary machines. According to the evidence presented, the support stand in issue prevents the tilting of long stock while it is being processed, thereby increasing the accuracy of the machine. The Tribunal finds that the foregoing is credible evidence that the support stand in issue performs a particular service relative to the main function of the machine. Specifically, in accordance with the *Explanatory Notes*, the Tribunal finds that the support

14. *Bureau de Relations D'Affaires Internationales Inc. (Busrel Inc.) v. Deputy M.N.R.* (24 August 1999), AP-97-139 and AP-98-042 (CITT).

15. The *Canadian Oxford Dictionary* includes the following in its definitions of the term "hold": "... **a** keep fast; grasp (esp. in the hands or arms). **b** (also *reflexive*) keep or sustain (a thing, oneself, one's head, etc.) in a particular position (*hold it to the light; held himself up*). **c** grasp so as to control (*hold the reins*) . . ."

16. The *Canadian Oxford Dictionary* includes the following in its definitions of the term "support": "... **1** carry all or part of the weight of . . ."

stand in issue is designed to support and handle the part being worked by the machine, i.e. the support stand in issue holds long stock fed into machines classified in heading Nos. 84.56 to 84.65 and, accordingly, that the support stand is a work holder as contemplated by the tariff item.

26. With respect to the second criterion and the meaning of the term “principally”, the Tribunal refers to the dictionary definition of this term.¹⁷

27. The Tribunal accepts the product information published by the manufacturer of the support stand in issue, as well as the relevant information contained in Canadian Tire’s Web site, as evidence that it is an accessory for use solely or principally with machines of heading Nos. 84.56 to 84.65. The product information specifically states that the support stand in issue is “. . . [i]deal for use with joiners, planers, table saws, band saws, chop saws and mitre saws . . .” All the aforementioned machines fall within heading Nos. 84.56 to 84.65. The Tribunal notes that, while Mr. Rothschild was of the opinion that the support stand in issue could be used with a variety of hand tools, it was not persuaded by his testimony because he was unable to provide support for his claim when pressed and, moreover, because he specifically denied having any experience whatsoever with the support stand in issue.

28. The Tribunal concludes that the support stand in issue is principally suited for use with machines of heading Nos. 84.56 to 84.65 and therefore fulfills the second criterion.

29. The Tribunal finds that the support stand in issue is *prima facie* classifiable in both headings argued by Canadian Tire and the CBSA. For this reason, Rule 1 of the *General Rules* is inapplicable, as the support stand in issue is both an article of iron or steel and a work holder. Rule 2 does not apply, as there is no argument with respect to the constitution of the support stand in issue. Having found Rules 1 and 2¹⁸ inapplicable, the Tribunal is of the view that Rule 3¹⁹ must determine the appropriate classification for the support stand in issue. In accordance with Rule 3 (a), a heading which provides the most specific description shall be preferred to headings of a more general description. Heading No. 84.66 is more specific than heading No. 73.26. Therefore, heading No. 84.66 is to be preferred.

17. The *Canadian Oxford Dictionary* includes the following in its definitions of the term “principal”：“. . . first in rank or importance; chief. 2 main, leading (*a principal cause of my success*) . . .”

18. Rule 2 of the *General Rules* reads as follows:

- (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified complete or finished by virtue of this Rule), presented unassembled or disassembled.
- (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations 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.

19. Rule 3 of the *General Rules* reads as follows:

When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods . . .

30. For the foregoing reasons, the appeal is allowed. The support stand in issue should be classified in heading No. 84.66 and more precisely under tariff item No. 8466.20.00 as a work holder.

Pierre Gosselin
Pierre Gosselin
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Ellen Fry
Ellen Fry
Member