



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2004-018R

Gladu Tools Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, February 12, 2008*

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STATEMENT OF REASONS1

IN THE MATTER OF an appeal heard on February 3 and 4, 2005, under subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a judgment of the Federal Court of Appeal dated May 31, 2007, which set aside, in part, the decision of the Canadian International Trade Tribunal in Appeal No. AP-2004-018 made on September 7, 2005, and remitted the matter to the Canadian International Trade Tribunal.

BETWEEN

GLADU TOOLS INC.

Appellant

AND

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

Respondent

DECISION

The appeal is allowed in part.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Hélène Nadeau
Hélène Nadeau
Secretary

Tribunal Member: Pierre Gosselin, Presiding Member

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STATEMENT OF REASONS

1. This remand is further to a judgment¹ of the Federal Court of Appeal (the Court) dated May 31, 2007, concerning the decision² of the Canadian International Trade Tribunal (the Tribunal) in *Gladu Tools v. President of the Canada Border Services Agency*. In its decision, the Tribunal allowed the appeal involving the classification of two types of goods imported by Gladu Tools Inc. (Gladu Tools), namely, a device known as SpiramaxTM (Spiramax) and plates for use with the Spiramax device. The Canada Border Services Agency (CBSA) originally appealed the Tribunal's decision with regard to the classification of both the device and the plates before the Court. However, it later discontinued the portion of its appeal relating to the Spiramax device. Thus, the goods in issue in the Court's judgment and this remand consist only of the plates for use with the Spiramax device.

2. The issue in this remand is whether the goods in issue are properly classified under tariff item No. 8209.00.92 of the schedule to the *Customs Tariff*,³ as determined by the CBSA, or should be classified in heading No. 82.08, as claimed by Gladu Tools.

3. The Court's judgment was as follows:

The appeal is allowed and the matter is referred back to the CITT so that it may determine the proper classification on the basis that both heading 82.08 and subheading 8209.00 are *prima facie* applicable to the goods in issue.

4. The Tribunal's task in this remand proceeding was therefore to determine the classification of the goods in issue pursuant to Rule 3 of the *General Rules for the Interpretation of the Harmonized System*,⁴ which 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.
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to Rule 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
- (c) When goods cannot be classified by reference to Rule 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

[Bold added]

1. *Canada (Border Services) v. Outils Gladu inc.*, 2007 FCA 213.
2. (7 September 2005), AP-2004-018 (CITT).
3. S.C. 1997, c. 36.
4. S.C. 1997, c. 36, schedule [*General Rules*].

5. In light of the Court's judgment, the Tribunal requested that the parties make additional written submissions setting out their arguments and referencing the evidence on file, and allowed the parties the opportunity to reply to each other's submissions. The Tribunal considered that there was sufficient evidence on file to make a decision without holding an oral hearing.

6. The Tribunal must therefore have regard to heading No. 82.08 and subheading No. 8209.00. The competing nomenclature reads as follows:

...	
82.08	Knives and cutting blades, for machines or for mechanical appliances.
...	
8208.20.00	-For wood working
...	
8209.00	Plates, sticks, tips and the like for tools, unmounted, of cermets.
8209.00.10	--Tungsten carbide inserts for rock or coal drilling bits
	--Other:
8209.00.91	---The following, in metric sizes, for sawmills: Carbide tipped saw segments; Carbide tips coated with flux and silver solder
8209.00.92	---Other carbide inserts and bits
8209.00.99	---Other

7. Gladu Tools claimed that the goods in issue should be classified in heading No. 82.08 on the basis that they are referred to as "knives" or "indexable knives" for the woodworking industry.⁵ Gladu Tools provided the Tribunal with literature from DeWalt, a maker of woodworking machines, in which the goods in issue are referred to as "knives" for the "cutter head" or "indexable carbide inserts".⁶ The Tribunal notes however that other literature provided by Gladu Tools also equates planer knives with "indexable inserts".⁷ Gladu Tools also referenced invoices from its French supplier, Guillen, where the goods in issue are described as "*couteaux jetables*" (disposable knives).⁸ Gladu Tools also argued that, if the composition of the goods in issue does not direct classification, classification should then be determined according to their function.

8. The CBSA claimed that the goods in issue were properly classified in subheading No. 8209.00, relying essentially on the words of the subheading, i.e. "plates . . . for tools, unmounted, of cermets."

5. Tribunal Exhibit AP-2004-018R-4, at paras. 25-26.

6. Tribunal Exhibit AP-2004-018-18.1, Tab 8.

7. *Ibid.*, Tab 9 *ad passim*, Tab 12 where the catalogue states as follows: ". . . but the company diversified into other hard materials *such as cermets* and technical ceramics. Today the CERAMETAL GROUP is one of the world's top ten producers of hard materials. The company's world-wide reputation is based on high volume production of a wide range of [hard metal] products such as . . . *indexible metal cutting inserts* for turning and milling . . ." [emphasis added], and where catalogue excerpts describe the goods in issue as "indexable knives".

8. Tribunal Exhibit AP-2004-018-18.1, Tab 2.

9. The Tribunal notes that the knives are manufactured from “carbide plates”, which are ground to form a sharp edge on all four sides.⁹ In the Tribunal’s view, this implies that the knives are made from plates (blanks) that have been ground to form four sharp edges. The Tribunal is also of the view that there is no doubt that the goods in issue are composed of the hard material called “cermet”.¹⁰

10. The Tribunal therefore finds that, in accordance with the first sentence of Rule 3 (a) of the *General Rules*, subheading No. 8209.00 is to be preferred over heading No. 82.08 because the terms contained in the former provide the most specific description of the goods in issue, whereas those in the latter offer only a more general description. Thus, in accordance with the terms of subheading No. 8209.00, the Tribunal finds that the evidence supports the description of the goods in issue as “plates”, that they are certainly “for tools” (i.e. for the Spiramax device), that they are “unmounted” and that they are made of “cermets”.

11. The only remaining possible ambiguity comes from Guillen’s invoices, which reference “*plaquette carbure*” (carbide plate) as opposed to “*plaquettes constitués par des cermets*” (plates of cermets), but the Tribunal notes that the witness for Gladu Tools stated that the goods in issue were “cermets”.¹¹

12. For the foregoing reasons, the Tribunal determines that the goods in issue are properly classified in subheading No. 8209.00 and, more specifically, under tariff item No. 8209.00.92.¹² Thus, as it relates to the goods in issue, the appeal is dismissed.

13. Accordingly, given that the Court’s judgment did not affect the portion of the Tribunal’s decision concerning the Spiramax device itself, the appeal is allowed in part.

Pierre Gosselin

Pierre Gosselin
Presiding Member

9. Tribunal Exhibit AP-2004-018R-4, at para. 2.

10. *Transcript of Public Hearing*, 3 February 2005 at 38, 64.

11. *Ibid.*

12. For greater certainty, it is worth pointing out that the Court’s proceedings did not concern the Spiramax device and that, therefore, the Tribunal’s decision in respect of that device, which was also the subject of Appeal No. AP-2004-018, is not varied. Equally, the following portion of the Tribunal’s decision in Appeal No. AP-2004-018 remains unaffected by the Court’s decision: “39.. . . A sufficient number of knives required for the Spiramax [device] when completely assembled follow the classification of the Spiramax [device] when they are imported with it”