



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2005-043

Dynamic Furniture Corp.

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Tuesday, March 31, 2009*

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IN THE MATTER OF an appeal heard on December 11, 2008, under subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the President of the Canada Border Services Agency, dated November 28, 2005, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

**BETWEEN**

**DYNAMIC FURNITURE CORP.**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is dismissed.

Pasquale Michael Saroli  
Pasquale Michael Saroli  
Presiding Member

Ellen Fry  
Ellen Fry  
Member

Serge Fréchette  
Serge Fréchette  
Member

Susanne Grimes  
Susanne Grimes  
Acting Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	December 11, 2008
Tribunal Members:	Pasquale Michael Saroli, Presiding Member Ellen Fry, Member Serge Fréchette, Member
Research Director:	Audrey Chapman
Counsel for the Tribunal:	Georges Bujold Eric Wildhaber
Research Officer:	Simon Glance
Manager, Registrar Office:	Gillian Burnett
Senior Registrar Officer:	Stéphanie Doré

**PARTICIPANTS:**

<b>Appellant</b>	<b>Counsel/Representative</b>
Dynamic Furniture Corp.	Marco Ouellet
<b>Respondent</b>	<b>Counsel/Representative</b>
President of the Canada Border Services Agency	Zoe Oxaal

**WITNESSES:**

Dr. Atef Fahim Professor of Mechanical Engineering Mechanical Engineering Department Faculty of Engineering University of Ottawa	George Rothschild Professor Cabinetmaking and Furniture Technician Program Building Trades Faculty Algonquin College
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## STATEMENT OF REASONS

### BACKGROUND

1. On February 13, 2006, Dynamic Furniture Corp. (Dynamic) filed an appeal with the Canadian International Trade Tribunal (the Tribunal), pursuant to subsection 67(1) of the *Customs Act*,<sup>1</sup> of decisions of the President of the Canada Border Services Agency (CBSA), dated November 28, 2005, made pursuant to subsection 60(4).

2. The issue in this appeal is whether the drawer slides (the goods in issue) imported by Dynamic are properly classified under tariff item No. 8302.42.00 of the schedule to the *Customs Tariff*<sup>2</sup> as other base metal mountings, fittings and similar articles suitable for furniture, as determined by the CBSA, or should be classified under tariff item No. 8482.80.90 as other ball or roller bearings, including combined ball/roller bearings, as claimed by Dynamic.

### PROCEDURAL HISTORY

3. Dynamic imported the goods in issue from the People's Republic of China under various import transactions from August 2001 to April 2005. The goods in issue were imported under tariff item No. 8302.42.00 as other base metal mountings, fittings and similar articles suitable for furniture.

4. On February 23, 2005, Dynamic requested a refund of duties pursuant to paragraph 74(1)(e) of the *Act* and a re-classification of the goods in issue under tariff item No. 8482.80.90 as linear bearings.

5. On June 4, 2005, the CBSA issued a decision pursuant to subsection 59(2) of the *Act* denying the request.

6. On July 8, 2005, Dynamic requested a re-determination under subsection 60(1) of the *Act*.

7. On November 28, 2005, the CBSA issued a decision under subsection 60(4) of the *Act* denying the request for re-determination.

8. On February 13, 2006, Dynamic appealed the CBSA's decision to the Tribunal under subsection 67(1) of the *Act*.

9. The Tribunal held a public hearing in Ottawa, Ontario, on December 11, 2008.

10. The CBSA called two expert witnesses. Dr. Atef Fahim, Professor of Mechanical Engineering, Mechanical Engineering Department, Faculty of Engineering, University of Ottawa, was qualified by the Tribunal as an expert witness in bearings, in particular, their mechanics, types, descriptions and industrial trade use outside of the furniture industry. Mr. George Rothschild, Professor, Cabinet making and Furniture Technician Program, Building Trades Faculty, Algonquin College, was qualified by the Tribunal as an expert in cabinetmaking and furniture construction, including the use of drawer slides in trade, commercial and custom cabinetmaking.

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

2. S.C. 1997, c. 36.

**GOODS IN ISSUE**

11. The goods in issue are designed to be installed in pairs on the sides of drawers. Each drawer slide is made up of two lengths of profiled steel track with mounting screw holes, each sliding into the other. The telescopic liner slide motion is achieved through a plastic rolling piece, which is fixed in place by a metal post that is incorporated into the tracks.

12. The following physical exhibits were submitted by Dynamic:

Exhibit A-1	R73.635—Drawer right
Exhibit A-2	R73.636—Drawer left
Exhibit A-3	R73.637—Cabinet right
Exhibit A-4	R73.638—Cabinet left
Exhibit A-5	Top drawer—Drawer slides from Blum
Exhibit A-6	Middle drawer—Model 604 bottom mount drawer slides
Exhibit A-7	Bottom drawer—No slides
Exhibit A-8	Drawer right (bearing removed)
Exhibit A-9	Drawer left (bearing removed)
Exhibit A-10	Cabinet right (bearing removed)
Exhibit A-11	Cabinet left (bearing removed)

13. The CBSA submitted the following physical exhibits:

Exhibit B-1	Demonstration Cabinet
Exhibit B-2	Sample Drawer Slides—Goods in issue
Exhibit B-3	Sample Drawer Slides—Blum Tandem
Exhibit B-4	Brochure for Blum Tandem Concealed Drawer Runners
Exhibit B-5	Roller Bearing
Exhibit B-6	Linear Ball Bearing
Exhibit B-7	Ball Bearing (deep groove)
Exhibit B-8	Spherical Roller Bearing
Exhibit B-9	Needle Bearing
Exhibit B-10	Bushing (brass)
Exhibit B-11	Bushing (Teflon-lined)
Exhibit B-12	Bushing (sintered bronze)
Exhibit B-13	Shaft
Exhibit B-14	Goods in issue
Exhibit B-15	Goods in issue in <i>Groupe Cabico</i> —AP-2006-004
Exhibit B-16	Mepla-Alfit furniture fitting catalogue
Exhibit B-17	Flip chart drawings—produced and used by Dr. Fahim as explanatory aids during his testimony

## ANALYSIS

### Law

14. On appeals under section 67 of the *Act* concerning tariff classification matters, the Tribunal determines the proper tariff classification of the goods in accordance with prescribed interpretative rules.

15. 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 (the Harmonized System) developed by the World Customs Organization.<sup>3</sup> 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. Sections 10 and 11 of the *Customs Tariff* prescribe the approach that the Tribunal must follow when interpreting the schedule in order to arrive at the proper tariff classification.

16. 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<sup>[4]</sup> and the Canadian Rules<sup>[5]</sup> set out in the schedule."

17. 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.<sup>6</sup>

18. Rules 1 and 2 (b) of the *General Rules*, which are of particular relevance in this appeal, provide as follows:

1. 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.
2. (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

19. 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<sup>[7]</sup> and the Explanatory Notes to the Harmonized Commodity Description and Coding System,<sup>[8]</sup> published by the Customs Co-operation Council (also known as the

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

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

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

6. 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 are applicable 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).

7. World Customs Organization, 2d ed., Brussels, 2003.

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

World Customs Organization), as amended from time to time.” Therefore, 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 respected, unless there is a sound reason to do otherwise, as they serve as an interpretative guide to tariff classification in Canada.<sup>9</sup>

### Relevant Provisions of the Customs Tariff

20. The relevant nomenclature of the *Customs Tariff* provides as follows:

#### Section XV

#### BASE METALS AND ARTICLES OF BASE METALS

...

#### Chapter 83

#### MISCELLANEOUS ARTICLES OF BASE METAL

...

**83.02**            Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat-racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal.

...

**8302.42.00**        --Other, suitable for furniture

...

8302.42.00.90      -----Other

...

21. The relevant notes to Section XV provide as follows:

1. This Section does not cover:

...

(f) Articles of Section XVI (machinery, mechanical appliances and electrical goods);

...

2. Throughout the Nomenclature, the expression “parts of general use” means:

...

(c) Articles of headings . . . 83.02 . . . .

...

3. Throughout the Nomenclature, the expression “base metals” means: iron and steel . . . .

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9. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at para. 17.



22. The relevant nomenclature of the *Customs Tariff* also provides as follows:

**Section XVI**

**MACHINERY AND MECHANICAL APPLIANCES;  
ELECTRICAL EQUIPMENT; PARTS THEREOF;  
SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE  
AND SOUND RECORDERS AND REPRODUCERS, AND PARTS  
AND ACCESSORIES OF SUCH ARTICLES**

...

**Chapter 84**

**NUCLEAR REACTORS, BOILERS, MACHINERY  
AND MECHANICAL APPLIANCES; PARTS THEREOF**

...

**84.82**            **Ball or roller bearings.**

...

**8482.80**        **-Other, including combined ball/roller bearings**

...

8482.80.90     -- -Other

...

-----*Linear:*

...

29 -----*Other*

...

23. The notes to Section XVI provide as follows:

1. This Section does not cover:

...

(g) Parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV) . . .

...

**Relevant Provisions of the Explanatory Notes**

24. Notes X to XIII of the *Explanatory Notes* to Rule 2 (b) of the *General Rules* provide as follows:

**RULE 2 (b)**

**(Mixtures and combinations of materials or substances)**

- (X) Rule 2 (b) concerns mixtures and combinations of materials or substances, and goods consisting of two or more materials or substances. The headings to which it refers are headings in which there is a reference to a material or substance (e.g., heading 05.07 -ivory), and headings in which there is a reference to goods of a given material or substance (e.g., heading 45.03 -articles of natural cork). It will be noted that the Rule applies only if the headings or the Section or Chapter Notes do not otherwise require (e.g., heading 15.03 -lard oil, **not ... mixed**).

Mixtures being preparations described as such in a Section or Chapter Note or in a heading text are to be classified under the provisions of Rule 1.

- (XI) The effect of the Rule is to extend any heading referring to a material or substance to include mixtures or combinations of that material or substance with other materials or substances. The effect of the Rule is also to extend any heading referring to goods of a given material or substance to include goods consisting partly of that material or substance.
- (XII) It does not, however, widen the heading so as to cover goods which cannot be regarded, as required under Rule 1, as answering the description in the heading; this occurs where the addition of another material or substance deprives the goods of the character of goods of the kind mentioned in the heading.
- (XIII) As a consequence of this Rule, mixtures and combinations of materials or substances, and goods consisting of more than one material or substance, if *prima facie* classifiable under two or more headings, must therefore be classified according to the principles of Rule 3.

25. Note 7 of the *Explanatory Notes* to Section XV provides as follows:

7.- Classification of composite articles:

Except where the headings otherwise require, articles of base metal (including articles of mixed materials treated as articles of base metal under the Interpretative Rules) containing two or more base metals are to be treated as articles of the base metal predominating by weight over each of the other metals.

...

26. Part B) of the *Explanatory Notes* to Section XV provides as follows:

#### B) ARTICLES OF BASE METALS

In accordance with Section Note 7, base metal articles containing two or more base metals are classified as articles of that metal which **predominates by weight** over each other of the metals . . . . The same rule applies to articles made partly of non-metals, **provided** that, under the General Interpretative Rules, the base metal gives them their essential character.

...

27. The *Explanatory Notes* to heading No. 83.02 provide as follows:

...

This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles). The heading **does not**, however, **extend** to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.

The heading covers:

...

#### (D) Mountings, fittings and similar articles suitable for buildings

This group includes:

- (1) Door guards fitted with chains, bars, etc.; espagnolette or casement bolts and fittings; casement fasteners and stays; fanlight or skylight openers, stays and fittings; cabin hooks and eyes; hooks and fittings for double windows; hooks, fasteners, stops, brackets and roller ends for shutters or blinds; letter-box plates; door knockers, spy holes, etc. (**other than** those fitted with optical elements).

- (2) Catches (including ball spring catches), bolts, fasteners, latches, etc., (**other than** key-operated bolts of **heading 83.01**), for doors.
- (3) Fittings for sliding doors or windows of shops, garages, sheds, hangars, etc. (e.g., grooves and tracks, runners and rollers).

...

(E) **Mountings, fittings and similar articles suitable for furniture**

This group includes:

- (1) Protective studs (with one or more points) for legs of furniture, etc.; metal decorative fittings; shelf adjusters for book-cases, etc.; fittings for cupboards, bedsteads, etc.; keyhole plates.
- (2) Corner braces, reinforcing plates, angles, etc.
- (3) Catches (including ball spring catches), bolts, fasteners, latches, etc. (**other than** key-operated bolts of **heading 83.01**).
- (4) Hasps and staples for chests, etc.
- (5) Handles and knobs, including those for locks or latches.

...

28. The *Explanatory Notes* to Chapter 84 are also relevant and provide as follows:

**(B) GENERAL ARRANGEMENT OF THE CHAPTER**

...

- (6) Headings 84.41 to 84.84 cover certain general-purpose goods suitable for use as machinery parts or as parts of goods of other Chapters.

...

- B) **Roller bearings**, with single or double rows of rollers of any shape (cylindrical, conical, barrel-shaped, etc.).

...

29. Further, the *Explanatory Notes* to heading No. 84.82 provide as follows:

This heading covers all ball, roller or needle roller type bearings. They are used in place of smooth metal bearings and enable friction to be considerably reduced. They are generally fitted between the bearing housing and the shaft or axle, and may be designed to give radial support (radial bearings) or to resist thrust (thrust bearings). Certain bearings may be designed for both radial and thrust support.

Normally, bearings consist of two concentric rings (races) enclosing the balls or rollers, and a cage which keeps them in place and ensures that their spacing remains constant.

The bearings classified in this heading include:

- (A) **Ball bearings**, with single or double rows of balls. This group also includes **slide mechanisms with bearing balls**, for example:

- (1) Those consisting of a steel outer ring rigidly locked with a brass inner ring which has six slots arranged lengthwise and in the shape of elongated ellipses enclosing small steel balls.

- (2) The restricted-travel type, of steel, comprising a grooved cylinder, a ball cage and a housing.
- (3) The free-travelling type, of steel, comprising a segment, a casing enclosing the bearing balls, and a guide rail with a groove of triangular section.
- (B) **Roller bearings**, with single or double rows of rollers of any shape (cylindrical, conical, barrel-shaped, etc.).
- (C) **Needle roller bearings**. These differ from ordinary roller bearings in that they are bearings with cylindrical rollers of a uniform diameter not exceeding 5 mm and having a length which is at least three times the diameter. The ends of the rollers may be rounded (see Subheading Note 2 to the Chapter). These rollers are fitted between the two rings of the bearing and in most cases no cage is used.

Owing to the high pressure to which they are exposed, bearings are normally of steel (especially chromium steel), though some for particular uses are of bronze, copper or plastics.

### Classification of the Goods in Issue

30. Both parties agreed that the goods in issue are used in furniture and that they facilitate the in-and-out movement of the drawer. They also agreed that the goods in issue are made of two steel tracks, one which slides into the other, and that two circular plastic pieces are incorporated in the tracks. However, the parties disagreed as to whether the goods in issue should be classified in heading No. 83.02 or heading No 84.82.

31. Accordingly, the Tribunal must determine in which heading the goods in issue should be classified. It is important to note that, by virtue of the relevant Section Notes, the goods in issue are not *prima facie* classifiable in both headings. In this regard, Note 2 to Section XV provides that articles of heading No. 83.02 are “parts of general use”. In turn, Note 1(g) to Section XVI (which includes Chapter 84 and, therefore, heading No. 84.82) excludes such “parts of general use” from its scope of coverage. In other words, base metal fittings or mountings of heading No. 83.02, as “parts of general use”, are not covered by Section XVI. This interpretation is confirmed by Note 1(f) to Section XV, which states that Section XV (which includes heading No. 83.02) does not cover articles of Section XVI (which covers machinery and mechanical appliances and parts thereof, including goods of heading No. 84.82).

32. The Tribunal will first consider whether the goods in issue can be classified in heading No. 84.82.

#### Are the Goods in Issue Ball or Roller Bearings of Heading No. 84.82?

33. Dynamic submitted that the goods in issue are classifiable as “ball or roller bearings” of heading No. 84.82. In support of this contention, Dynamic relied on its understanding of the goods that were examined by the Tribunal in its decision in *Groupe Cabico Inc. v. President of the Canada Border Services Agency*.<sup>10</sup>

34. Dynamic argued that the Tribunal’s determination relative to the goods in *Groupe Cabico* stood for the proposition that the essential nature of a bearing is to reduce friction under load. According to Dynamic, the plastic roller component of the goods in issue accomplishes precisely that function. Dynamic submitted that it therefore follows that the “essential character” of the goods in issue is that of a bearing. It therefore argued that the goods in issue should be classified in heading No. 84.82.

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10. (21 November 2007), AP-2006-004 (CITT) [*Groupe Cabico*].

35. The CBSA, on the other hand, submitted that the goods in issue are bearings only insofar as they “bear” a load. It also submitted that not all “bearings” are covered by heading No. 84.82. Rather, the CBSA submitted that only bearings that can be specifically described as “ball or roller bearings” are covered by that heading.

36. The CBSA submitted that the goods in issue do not meet the definition set out in the *Explanatory Notes* to heading No. 84.82, which state that, “[n]ormally, bearings consist of two concentric rings (races) enclosing the balls or rollers, and a cage which keeps them in place and ensures that their spacing remains constant.” The CBSA submitted that the goods in issue are not recognizable as “ball or roller bearings” by the industry or the mechanical engineering profession at large because the plastic circular pieces are neither ball nor roller bearings.

37. The CBSA submitted that Dynamic’s reliance on the Tribunal’s decision in *Groupe Cabico* is incorrect because, unlike the goods in issue, the plastic components in the drawer slides in *Groupe Cabico* were of a roller bearing design.

38. In the Tribunal’s view, the expert evidence of Dr. Fahim supports the CBSA’s position on this issue and is compelling. Dr. Fahim testified that the terminology used in the *Explanatory Notes* to Chapter 84 and to heading No. 84.82 is consistent with the terminology used in the industry and in the engineering profession.<sup>11</sup> He testified that, although the goods in issue function as “bearings” insofar as they carry a load and facilitate movement,<sup>12</sup> “bearing” is a general term.

39. The Tribunal considers that, in a “general” sense, the goods in issue meet the definition of “bearing” in the *McGraw-Hill Dictionary of Scientific and Technical Terms*,<sup>13</sup> which defines “bearing” as follows:

... [MECH ENG] A machine part that supports another part which rotates, slides, or oscillates in or on it ...

40. The Tribunal considers that the categorization of the various types of bearings by Dr. Fahim is consistent with the dictionary definition of “bearing” and the descriptions of bearing types submitted by Dynamic.<sup>14</sup> Furthermore, the Tribunal accepts Dr. Fahim’s testimony that the nomenclature of heading No. 84.82 is consistent with the terminology used in the industry and the engineering profession.<sup>15</sup>

41. The Tribunal agrees with Dynamic and the CBSA that the goods in issue function as “bearings” insofar as they carry a load and facilitate movement. However, it is clear that there are different types of bearings. Of particular interest in this case are the distinct categories of “ball” and “roller” bearings.

42. In this regard, Dr. Fahim testified that the goods in issue are not referred to in the industry as “ball” or “roller” bearings, which are specific types of bearings within the general category of bearings.<sup>16</sup> He explained that roller bearings consist of an outer race, rolling cylinders, a spacer to separate the cylinders and may also have an inner race.<sup>17</sup> The rolling action of the balls or cylinders replaces the sliding action of two surfaces moving against each other,<sup>18</sup> thus transforming an action with a high coefficient of friction into an action with a lower coefficient of friction.<sup>19</sup>

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11. *Transcript of Public Hearing*, 11 December 2008, at 62.

12. *Transcript of Public Hearing*, 11 December 2008, at 27, 31.

13. Fourth ed., s.v. “bearing”.

14. Appellant’s brief, tab 7; appellant’s supplemental brief, tabs 7, 8.

15. *Transcript of Public Hearing*, 11 December 2008, at 59-65.

16. *Transcript of Public Hearing*, 11 December 2008, at 28, 31.

17. *Transcript of Public Hearing*, 11 December 2008, at 39.

18. *Transcript of Public Hearing*, 11 December 2008, at 45-46.

19. *Transcript of Public Hearing*, 11 December 2008, at 46.

43. Dr. Fahim further testified that the component of the drawer slide that Dynamic described as a bearing was, in fact, a “wheel”, that is to say, a round body with an axle through it.<sup>20</sup> According to Dr. Fahim, the rivet or steel shaft, which secures the wheel to the metal angle, is an axle and the hole in the wheel, through which the axle fits and slides over, is a bushing.<sup>21</sup> Dr. Fahim explained that a “bushing” is another category of bearing, which is different from “ball” or “roller” bearings.<sup>22</sup>

44. Dr. Fahim was presented with what Dynamic submitted to be an example of the goods in *Groupe Cabico* (Exhibit B-15).<sup>23</sup> According to Dr. Fahim, Exhibit B-15 differed from the goods in issue, in that Exhibit B-15 was comprised of roller bearings that sit in a cage similar to the spacers found in ball bearings. In this regard, Dr. Fahim testified that the rollers in Exhibit B-15 move along a surface using rolling action, without the sliding friction found in the goods in issue.<sup>24</sup> By contrast, Dr. Fahim testified that, in the case of the goods in issue, the wheels do not roll along a surface, but slide around an axle.<sup>25</sup>

45. The Tribunal agrees with the CBSA that heading No. 84.02 does not cover all types of bearings, with the wording of the heading being very specific and clearly including only ball or roller bearings.

46. In this case, it was uncontested that the goods in issue are not “ball” bearings. The Tribunal agrees with this conclusion, based on Dr. Fahim’s testimony.

47. In the Tribunal’s view, the fact that the load-bearing wheels in the goods in issue roll along the tracks is not sufficient to make them “roller” bearings. In this regard, the Tribunal accepts the expert testimony of Dr. Fahim that, given its role in the reduction of friction, the nature of a bearing cannot be determined in isolation of its kinetic frictional effects. Insofar as the goods in issue produce both rolling and sliding friction, they cannot be properly described as roller bearings, which only produce rolling friction. Accordingly, the goods in issue are not properly classifiable in heading No. 84.82 because they are neither “ball” nor “roller” bearings.

Are the Goods in Issue Other Base Metal Mountings or Fittings Suitable for Furniture of Heading No. 83.02?

48. The CBSA submitted that the goods in issue are properly classified under tariff item No. 8302.42.00 as other base metal mountings, fittings and similar articles suitable for furniture.

49. The CBSA submitted that the goods in issue meet all three criteria for classification under tariff item No. 8302.42.00, in that: (1) they are made almost entirely of steel, a base metal; (2) they are “mountings or fittings”; and (3) they are “suitable for furniture”.

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20. *Transcript of Public Hearing*, 11 December 2008, at 48-49.

21. *Transcript of Public Hearing*, 11 December 2008, at 50-53.

22. *Transcript of Public Hearing*, 11 December 2008, at 28, 53-54.

23. It was alleged that Exhibit B-15 was a sample of the goods in the *Groupe Cabico* case. In *Groupe Cabico*, the goods were described as drawer slides, with tracks, rails or runners (rails) made of base metal, and internal mechanisms—rollers and roller housings—made of plastic. The Tribunal found that the goods in that case were properly classified under tariff item No. 8482.80.90 as other ball or roller bearings.

24. *Transcript of Public Hearing*, 11 December 2008, at 68-69.

25. *Transcript of Public Hearing*, 11 December 2008, at 69.

50. The CBSA submitted that the goods in issue conform to common dictionary definitions of “mountings” or “fittings”,<sup>26</sup> in that they are fitted, or mounted, to the outer part of drawers to provide support.

51. As stated above, Dynamic submitted that the essential character of the goods in issue is derived from the plastic roller component because of its capacity to reduce friction under load. Dynamic argued that the “essential character” of the goods in issue was relevant because of Note (B) of the *Explanatory Notes* to Section XV, which states that goods are classifiable in Section XV if the base metal gives the goods their essential character. In this regard, Dynamic submitted that the essential character of the goods in issue is derived from the plastic roller component, which would preclude the goods in issue from being classified in heading No. 83.02.

52. The Tribunal considered the industry usage of the terms “fittings” and “mountings”.<sup>27</sup> Based on the expert testimony of Mr. Rothschild on the furniture industry’s lexicon, the Tribunal is satisfied that drawer slides are generally referred to as “fittings” or “mountings”.<sup>28</sup>

53. Dictionary definitions are consistent with the industry’s usage of these terms. *The Oxford English Dictionary* defines “mounting” as “[s]omething that serves as a mount, support, or setting for anything”.<sup>29</sup> In this regard, the Tribunal notes Dynamic’s submission that the goods in issue provide support to drawers. Based on the testimony of Mr. Rothschild and an examination of the physical exhibits of the goods in issue, the Tribunal finds that the goods in issue are mounted, attached to the drawers and facilitate the inward and outward movement of the drawers.<sup>30</sup>

54. The goods in issue also satisfy the dictionary definition of “fitting”. The *Merriam Webster Collegiate Dictionary* defines fitting as “... something used in fitting up; accessory; a small often standardized part . . . .”<sup>31</sup>

55. The Tribunal notes that the *Explanatory Notes* to heading No. 83.02 provide examples of items that are to be classified in this heading. These examples include items such as hinges, automotive window opening mechanisms, fittings for doors or windows of shops, garages, etc. The *Explanatory Notes* to heading No. 83.02 state that the “[g]oods . . . remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles).” The *Explanatory Notes* to heading No. 83.02 also indicate that the heading does not extend to fittings or mountings “... forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.”

56. In this regard, the Tribunal does not consider that the goods in issue are “an essential part of the structure” of a drawer or cabinet containing drawers. In this regard, the Tribunal accepts the evidence of Mr. Rothschild who testified that cabinets with drawers can function without the goods in issue<sup>32</sup> and that, indeed, this had historically been the traditional method of construction.

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26. Respondent’s brief, tabs 8, 9, 10, 11.

27. See, for example, *Canmade Furniture Products Inc. v. Commissioner of the Canada Customs and Revenue Agency* (2 June 2004), AP-2003-025 (CITT) [*Canmade Furniture*] at para. 34.

28. *Transcript of Public Hearing*, 11 December 2008, at 136.

29. *Canmade Furniture* at para. 32.

30. Appellant’s supplemental brief, tab 1; *Transcript of Public Hearing*, 11 December 2008, at 186.

31. Appellant’s supplemental brief, tab 4; respondent’s brief at 7, tabs 8, 9, 10.

32. *Transcript of Public Hearing*, 11 December 2008, at 115-17.

57. Accordingly, the Tribunal is of the opinion that the goods in issue are base metal mountings or fittings that perform functions that are similar to those performed by the items cited as examples in the *Explanatory Notes* to heading No. 83.02.

58. Finally, the Tribunal notes that the goods in issue are comprised of both base metal and some plastic. Accordingly, Rule 2 (b) of the *General Rules* and Notes X to XIII of the *Explanatory Notes* to Rule 2 (b) of the *General Rules* must also be considered. In this regard, it was uncontested that the goods in issue are predominantly made from a base metal. Indeed, by weight, the base metal components of the goods in issue overwhelmingly predominate over the plastic components. In addition, while the goods in issue have a particular use in supporting and facilitating the inward and outward movement of a drawer, this does not remove them from the general class of base metal accessory fittings and mountings in heading No. 83.02. The Tribunal is also of the view that the addition of the plastic roller component to the goods in issue does not “depriv[e] the goods of the character”<sup>33</sup> of those of the kind mentioned in heading No. 83.02. Therefore, according to Note XII of the *Explanatory Notes* to Rule 2 (b) of the *General Rules*, the goods in issue remain goods of heading No. 83.02.

59. Since the Tribunal has found that the goods in issue are not *prima facie* classifiable under two or more headings, Rule 3 of the *General Rules* is not applicable. Accordingly, contrary to Dynamic’s submissions, Note (B) of the *Explanatory Notes* to Section XV does not apply.

60. Based on the foregoing, the Tribunal considers that the goods in issue are properly classified under tariff item No. 8302.42.00 as other base metal mountings or fittings suitable for furniture.

## DECISION

61. The appeal is dismissed.

Pasquale Michael Saroli  
Pasquale Michael Saroli  
Presiding Member

Ellen Fry  
Ellen Fry  
Member

Serge Fréchette  
Serge Fréchette  
Member

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33. See Note XII of the *Explanatory Notes* to Rule 2 (b) of the *General Rules*.