



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2004-018

Gladu Tools Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, September 7, 2005*

TABLE OF CONTENTS

DECISION OF THE TRIBUNALi

REASONS FOR DECISION1

 EVIDENCE.....2

 ARGUMENT3

 DECISION4

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 (2nd Supp.), c. 1;

AND IN THE MATTER OF decisions of the President of the Canada Border Services Agency dated June 15 and 22, 2004, with respect to requests for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

GLADU TOOLS INC.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Patricia M. Close
Patricia M. Close
Member

Richard Lafontaine
Richard Lafontaine
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	February 3 and 4, 2005
Tribunal Members:	Pierre Gosselin, Presiding Member Patricia M. Close, Member Richard Lafontaine, Member
Counsel for the Tribunal:	Philippe Cellard Eric Wildhaber
Clerks of the Tribunal:	Karine Turgeon Margaret Fisher
Appearances:	Marco Ouellet, for the appellant Yannick Landry, for the respondent

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REASONS FOR DECISION

1. This is an appeal pursuant to subsection 67(1) of the *Customs Act*¹ from decisions of the President of the Canada Border Services Agency (CBSA) dated June 15 and 22, 2004, made under subsection 60(4) of the *Act*.

2. The goods in issue were imported between 2001 and 2003. Physical exhibits that were representative of the goods in issue were filed with the Tribunal. There are two types of goods, namely, a device trade marked as SpiramaxTM (Spiramax) and plates for this device. The CBSA classified the Spiramax under tariff item No. 8207.90.10 of the schedule to the *Customs Tariff*² schedule and the plates under tariff item No. 8209.00.92. Gladu Tools Inc. (Gladu Tools) seeks to have the Spiramax classified under tariff item No. 8207.90.90 or tariff item No. 8207.70.00 or in heading No. 84.66, and the plates under tariff item No. 8208.20.00.

3. The relevant nomenclature from the *Customs Tariff* that was in effect when the goods in issue were imported reads as follows:

82.07	Interchangeable tools for hand tools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools.
8207.70.00	-Tools for milling
8207.90	-Other interchangeable tools
8207.90.10	---Ball points, bushing bits, chisels, clay spades, front spades, drivers (for pipes, pins and spikes) and star drills, for portable power tools; Cutting tools, carbide tipped, for wood working; Nozzles for vacuum cleaners
8207.90.90	---Other
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
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.

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

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

EVIDENCE³

4. Gladu Tools called as a witness Mr. Philippe Turcot, a research and development engineer with Gladu Tools, and the Tribunal qualified him as an expert witness in wood machining and woodworking tools.

5. Mr. Turcot described the Spiramax as a cutter with disposable knives that makes a straight cut. According to him, the Spiramax and its knives are used solely in the **secondary** wood-processing industry, in other words, in the manufacture of finished products, such as furniture or floorboards, made from raw materials from the **primary** wood-processing industry.

6. Mr. Turcot described the differences between a carbide-tipped tool and a tool with interchangeable or disposable knives. In his view, the Spiramax is not a carbide-tipped tool because that type of tool has brazed or cemented knives, whereas the Spiramax has screw-on knives. Mr. Turcot explained that the knives of a screw-on tool may be made of carbide, but that it is incorrect to describe such a tool as being carbide-tipped, since this expression is reserved for tools whose carbide cutting edge is brazed or welded to the shank of the knife. According to Mr. Turcot, the knives used with the Spiramax are accurately described as interchangeable disposable knives. Moreover, Mr. Turcot testified that the Spiramax is not designed to accept brazed knives and that, when fitted with knives, the Spiramax is not a “tool holder,” as it is known in the woodworking industry.

7. Mr. Turcot explained that the word “cermet”,⁴ derived from the words “ceramic” and “metal”, is not used in the wood industry, even though the knives in issue meet the technical definition of this word, since they are made of a ceramic-metal alloy. He was of the view that the expression “four-faced plate” [translation] in fact refers to a four-faced knife, that the expression “inserts” is also synonymous with disposable “plate” or “knife” and that the knives in issue are this type of product.

8. Mr. Turcot testified that cermets are so-called “hard” materials that consist of cemented carbides, ceramics, diamonds and several refractory materials, but not steel or wood. Finally, Mr. Turcot also stated that he is not aware of any North American standard which deals with wood-machining.

9. Mr. Yves Lemay testified on behalf of Gladu Tools, where he is an employee. He explained the manufacturing process for certain tools used in metal and wood machining. He also explained that the Spiramax is used in the wood industry, whereas the cermets filed in evidence (Exhibit A-3) are used in the metal-machining industry and that the tools used in one industry cannot be used in the other. In his view, the expression “carbide-tipped tool” is reserved for brazed tools and is not used to refer to tools with screw-on knives like the Spiramax. He also testified that the word “cermet” is not used to describe the knives used with this device. Finally, according to Mr. Lemay, wood is not a hard material.

10. The CBSA called as a witness Mr. George Rothschild, Coordinator of the Furniture Technician Program at Algonquin College in Ottawa. He was qualified as an expert witness in cabinet-making and wood machining. Mr. Rothschild was of the view that workers in the secondary wood-processing industry do not make the distinction that Mr. Turcot makes between carbide-tipped tools and tools with disposable knives; according to him, the expression “carbide-tipped tool” is used in all cases where a tool has a disposable cutting edge or knife tip made of carbide. In other words, Mr. Rothschild did not feel that the

3. This section is a summary of the testimony by the parties at the hearing. In addition to the testimony, the evidence filed by the parties consists of all exhibits, documents, expert reports and other items in the Tribunal’s record.

4. Plates and the like in heading No. 82.09 are made of cermets.

expression “carbide-tipped tool” was reserved solely for tools with a brazed cutting edge, but instead that this expression also includes tools with screw-on carbide knives. In short, he was of the view that these tools are simply referred to based on their “carbide” component. According to Mr. Rothschild, this expression, which is currently in common use in the industry, does not appear in textbooks because it is over 20 years old.

11. Finally, unlike the other witnesses, Mr. Rothschild was of the view that wood is a hard material.

ARGUMENT⁵

12. According to Gladu Tools, the Spiramax cannot be classified under tariff item No. 8207.90.10 because it is not a “carbide-tipped” tool, since its knives are not brazed. Gladu Tools argued that the Tribunal must accept the nomenclature used in the wood industry where the Spiramax is known as a cutter with disposable or interchangeable knives.

13. If the Tribunal is not satisfied that the Spiramax should be classified under tariff item No. 8207.90.90 as other interchangeable tools (specifically under classification No. 8207.90.90.83 as “[c]utterheads for woodworking, with interchangeable tools”), Gladu Tools has suggested two other possible classifications: namely, in heading No. 84.66, as a tool holder, or tariff item No. 8207.70.00, as a tool for milling.

14. Moreover, Gladu Tools argued that tariff item No. 8209.00.92 does not accommodate the classification of the knives for several reasons. First, the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁶ to heading No. 82.09 state that articles classified therein are used for working metal and other hard materials.⁷ Gladu Tools argued that the Tribunal must accept the testimony indicating that wood is not a hard material. It also argued that the Tribunal must accept the testimony indicating that knives are known in the wood industry as “disposable carbide knives,” “carbide plates,” “carbide saw teeth” or “carbide blades,” but not “cermets,” since this term is reserved for metal-ceramic knives used in other industries. Gladu Tools also pointed out other physical differences between knives and cermets, which emerged from the testimony, and relied on the definitions in European standards.⁸

15. In support of its claim that the knives should be classified in heading No. 82.08, Gladu Tools relied on the related *Explanatory Notes*, which state in part the following:

This heading applies to **unmounted** knives and cutting blades, rectangular, circular or of other shapes, for machines or for mechanical appliances. It **does not**, however, **cover** cutting blades or knives for the hand tools of **headings 82.01 to 82.05** (e.g., plane irons).

This heading includes knives or cutting blades:

(2) **For wood working:**

- (a) Blades and irons for planing or similar woodworking machines.

5. This section is an overview of the parties’ arguments. It is not a comprehensive statement of the arguments submitted by the parties in their briefs or at the hearing.

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

7. *Ibid.* at 1363.

8. *Transcript of Public Argument*, 4 February 2004, at 43-45.

16. The CBSA argued that the Spiramax is a tool for cutting wood, is carbon-tipped and is therefore classified under tariff item No. 8207.90.10 because this tariff item provides a more specific description of the goods in issue than residual tariff item No. 8207.90.90.

17. The CBSA argued that Gladu Tools' submission contained the admission that the Spiramax is indeed a "carbide-tipped" tool,⁹ which, in its view, confirmed Mr. Rothschild's testimony that this designation is true, regardless of whether the knives are brazed or screwed on.

18. The CBSA argued that Rule 2 (a) of the *General Rules for the Interpretation of the Harmonized System*¹⁰ makes the Spiramax a cutting tool even though it is imported in a state that requires some assembly, in this case, attaching the knives to the shank of the tool with screws.

19. Moreover, the CBSA stressed that the definitions in ordinary French and English dictionaries cannot be used to categorize the Spiramax as a tool for milling or a milling cutter under tariff item No. 8207.70.00, since these terms are reserved for tools for metal working.

20. The CBSA also submitted arguments against classification in heading No. 84.66, as suggested by Gladu Tools, arguing that the Spiramax is not a tool holder for tariff classification purposes simply because it is imported unassembled (i.e. the knives are not screwed on), because it still has the essential character of the assembled article.

21. As to the knives, the CBSA submitted that they are plates for unassembled tools and are made of cermets as provided for in tariff item No. 8209.00.92. It argued that, even Gladu Tools' witnesses acknowledged that the knives meet the theoretical definition of "cermet" because they are made of cobalt tungsten carbide. It asked the Tribunal not to accept the distinction between cermets for metal working and cermets for woodworking as asserted by Gladu Tools, claiming that this distinction is not provided for in the tariff nomenclature.

DECISION

22. 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* and the *Canadian Rules*.¹¹ 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*¹² and the *Explanatory Notes*. In dealing with the *General Rules*, the Tribunal must seek to apply Rule 1 first, only moving on to the following rule if the preceding rule does not enable the goods 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.

23. According to Mr. Turcot's expert testimony and the information in the record, the Tribunal notes that the Spiramax is a device that uses disposable knives attached to it with screws. These knives have more

9. Appellant's brief, para. 77.

10. *Supra* note 2, schedule [*General Rules*]. Rule 2 (a) reads as follows: "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 finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled."

11. *Ibid.*

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

than one cutting blade so that, when one becomes dull through use, the knife can be turned on itself to quickly access another blade of the same knife.

24. The Tribunal also notes that the knives screwed onto the Spiramax are made of carbide and that this device is used solely for woodworking. However, the key question in this dispute is whether the Spiramax is indeed a “carbide-tipped” tool because, even though the parties agree that the Spiramax is an “other interchangeable tool” in subheading No. 8207.90, there is disagreement over the tariff item under which it should be classified. If the Tribunal were to find that the Spiramax is a carbide-tipped tool for woodworking, the Spiramax would be classified under tariff item No. 8207.90.10; otherwise, it would be classified as an “other interchangeable tool” under tariff item No. 8207.90.90.

25. The Tribunal notes the testimony given, particularly Mr. Turcot’s expert testimony, whereby the Spiramax is different from the tools known to the wood industry, notably the secondary wood-processing industry, as “carbide-tipped tools”.

26. In this case, the Tribunal accepts the testimony indicating that carbide-tipped tools have a carbide tip that is permanently brazed directly onto the shank of the tool. This is confirmed by the European standard that was brought to the Tribunal’s attention.¹³ Moreover, the Tribunal does not accept Mr. Rothschild’s testimony to the contrary because, in the Tribunal’s view, he was unable to satisfactorily support his statements regarding the goods in issue.¹⁴

27. In addition, as stated above, the Tribunal was given to note that the Spiramax with its screw-on knives and tools with brazed carbide tips are physically and technically different from each other.

28. As a result, according to Rule 1 of the *General Rules*, the Tribunal is of the view that the Spiramax is not a carbide-tipped tool, as it is commonly known to the wood industry, and is not physically or technically akin to such tools. Rather, the Tribunal is of the view that the Spiramax is a cutting tool with disposable carbide knives for woodworking, which is classified under tariff item No. 8207.90.90.

29. Moreover, the Tribunal notes that the Spiramax can be presented unassembled when imported. Rule 2 of the *General Rules* applies to articles that are incomplete, unfinished, unassembled or disassembled, or a mixture. If the Spiramax is presented in this state, the Tribunal notes that tariff item No. 8207.90.90 still applies, even under Rule 2. In fact, according to Rule 2 (a), “[a]ny reference in a heading to an article shall be taken to include a reference to that article . . . complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.” Note VII of the *Explanatory Notes* to Rule 2 (a) reads in part as follows: “For the purposes of this Rule, ‘articles presented unassembled or disassembled’ means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, **provided** only assembly operations are involved. . . . Unassembled components of an article which are in excess of the number required for that article when complete are to be classified separately.”

30. Therefore, the unassembled Spiramax and a sufficient number of knives and knife-fixing screws required for operating this device, when imported together, are classified under tariff item No. 8207.90.90. However, all knives and screws in excess of the number required for the Spiramax when complete are

13. EN 847-1: 1997. The Tribunal notes that, according to the evidence on the record, the main manufacturers of tools similar to the goods in issue are European. The Tribunal also notes that, according to the evidence, there are no North American standards on tool safety in wood machining or that deal with definitions relating to this industry.

14. *Transcript of Public Hearing*, 3 February 2005, at 191-92, 204-205.

classified separately. The Tribunal heard no arguments relating to the screws; therefore, it will concern itself only with the arguments submitted by the parties regarding the classification of the knives.

31. The Tribunal must therefore determine how to classify the knives that are imported separately or are in excess of the number required for assembling the Spiramax.

32. The Tribunal notes that Note 4 to Section XV provides as follows:

Throughout the Nomenclature, the term “cermets” means products containing a microscopic heterogeneous combination of a metallic component and a ceramic component. The term “cermets” includes sintered metal carbides (metal carbides sintered with a metal).

33. The Tribunal notes that the knives are made of tungsten carbide sintered with cobalt and therefore meet the generic definition of “cermet.” Mr. Turcot acknowledged that this was true from a technical point of view, but he was of the view that the knives used in the wood industry are never referred to as such. According to him, cermets are used only in the metal machining industry. The Tribunal is of the view that this view is supported by the *Explanatory Notes* to heading No. 82.09, which read in part as follows: “The products of this heading . . . are characterised by great hardness, even when hot, and great rigidity. In view of their special properties these plates, tips, etc., are welded, brazed or clamped on to lathe tools, milling tools, drills, dies, or other high-speed cutting tools used *for working metals and other hard materials*”¹⁵ [emphasis added]. In this regard, the Tribunal is of the view that the approximation of “metals” and “hard materials” by means of the words “and other” prevents wood from being included as a hard material.

34. In this regard, the CBSA’s witness was of the view that wood is a hard material, but this statement did not satisfy the Tribunal, which preferred the more considered opinions of Gladu Tools’ witnesses; these witnesses were of the view that wood is not recognized as a hard material since, in engineering, this term is reserved for ceramics, refractory metals, diamonds and cemented carbides. In particular, the Tribunal accepts Mr. Lemay’s testimony that the Spiramax could not be used for machining metal because its knives are too fragile and the tool’s shank itself would not withstand such an operation.¹⁶

35. That said, under Rule 1 of the *General Rules*, the Tribunal is of the view that the knives in issue should be classified in heading No. 82.08. The Tribunal is of the view that the evidence indicates that the knives are mounted onto the Spiramax, which itself is a tool installed on a woodworking machine.¹⁷ The Tribunal does not accept the CBSA’s claim that, to be classified in heading No. 82.08, the knives must be intended for mounting directly onto the machine.¹⁸ In this regard, the Tribunal notes that Note 1 of the *Explanatory Notes* to heading No. 82.08 provides that knives and blades that are not mounted directly onto machines but fitted into tools used with these machines are knives and blades within the meaning of heading No. 82.08. Because they are “[f]or wood working,” the Tribunal is of the view that the knives should be classified under tariff item No. 8208.20.00.

36. Finally, the Tribunal considered the other possible classifications suggested by Gladu Tools, but rejected them.

37. First, the Tribunal was not satisfied that the Spiramax is a tool holder in heading No. 84.66. Gladu Tools’ witnesses argued that, when assembled and the knives attached, the Spiramax was a tool. They also

15. *Explanatory Notes* at 1362-63.

16. *Transcript of Public Hearing*, 4 February 2005, at 235-36.

17. *Transcript of Public Hearing*, 3 February 2005, at 102-103.

18. *Transcript of Public Argument*, 4 February 2005, at 89.

testified that, without the knives, the Spiramax would be a tool holder and the knives would not be tools.¹⁹ Therefore, the Tribunal cannot conceive how the Spiramax can be both a tool holder and a tool.

38. Moreover, the Tribunal rejected the suggestion for classifying the Spiramax under tariff item No. 8207.70.00 since it was not satisfied that this article is a tool for milling because the Tribunal notes that, according to both parties' testimony, the word "milling" means operations performed in the primary wood-processing industry, not in the secondary wood-processing industry, which is Gladu Tools' specialty.²⁰

39. In summary, the appeal is allowed. The Spiramax (assembled or unassembled) is classified under tariff item No. 8207.90.90. A sufficient number of knives required for the Spiramax when completely assembled follow the classification of the Spiramax when they are imported with it. In the latter event, knives in excess of the number required for assembling the Spiramax are classified under tariff item No. 8208.20.00. The same is true for knives imported separately.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Patricia M. Close
Patricia M. Close
Member

Richard Lafontaine
Richard Lafontaine
Member

19. *Transcript of Public Hearing*, 3 February 2005, at 104-105.

20. *Ibid.* at 200; *Transcript of Public Hearing*, 4 February 2005, at 256-57.