



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2006-004

Groupe Cabico Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, November 21, 2007*

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IN THE MATTER OF an appeal heard on December 5, 2006, 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 January 30, 2006, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

GROUPE CABICO INC.

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Ellen Fry
Ellen Fry
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	December 5, 2006
Tribunal Members:	Ellen Fry, Presiding Member James A. Ogilvy, Member Meriel V. M. Bradford, Member
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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal under subsection 67(1) of the *Customs Act*¹ from decisions made on January 30, 2006, 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 undermount roller glides (the goods in issue) should be classified under tariff item No. 8482.80.90 of the schedule to the *Customs Tariff*,² as claimed by Groupe Cabico Inc. (Cabico), or are properly classified under tariff item No. 8302.42.00, as determined by the CBSA.

3. Physical exhibits representative of the goods in issue were filed with the Tribunal.

4. The goods in issue are drawer slides. As described by the parties and as shown in the physical exhibits, the tracks, rails or runners (rails) are made of base metal, whereas the internal mechanisms—rollers and roller housings—are made of plastic. Each slide is designed so that its rails can move parallel to each other. The plastic rollers are held in place by plastic roller housings, which separate the rails, maintain a constant distance between them, bear weight and facilitate the movement of the rails relative to each other.

5. The goods in issue were imported in September 2003 and September 2004.

6. The relevant nomenclature of the *Customs Tariff* reads as follows:

...

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.**

...

-Other mountings, fittings and similar articles:

...

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

...

84.82 **Ball or roller bearings.**

...

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

...

7. Mr. Marco Robert, Vice-President of Business Development, Cuisine Cabico, Division of Groupe Cabico Inc., demonstrated, with the help of a three-drawer wood cabinet built especially for the hearing,³ the functioning of the goods in issue and their main purpose, which, in his view, is to facilitate the back and forth motion of the drawers. He testified that the term “fittings” is not used within the industry to describe the goods in issue but to refer to items used to assemble furniture. Mr. George Rothschild, Coordinator, Cabinet Making Department, Algonquin College, testified on behalf of the CBSA. The Tribunal qualified

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

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

3. *Transcript of Public Hearing*, 5 December 2006, at 32.

him as an expert in cabinet design. He testified that the goods in issue are referred to in the industry as slides, glides or runners within the broader category of “fittings” and are used to reduce friction and to carry the drawers in and out of a cabinet box, for example. He further testified that the term “ball-bearing slide” is usually used to describe the actual mechanism within the slide itself, but not the goods in issue.

ANALYSIS

8. For the purposes of this appeal, the Tribunal must follow section 10 of the *Customs Tariff*, which provides that the classification of imported goods shall be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*⁴ and the *Canadian Rules*.⁵ Rule 1 of the *Canadian Rules* provides that “. . . the classification of goods in the tariff items of a subheading or of a heading shall be determined according . . . to the General Rules . . .” The *General Rules* comprise six rules structured in cascading form. If the classification of goods cannot be determined in accordance with Rule 1 of the *General Rules*, then regard must be had to Rule 2 of the *General Rules* and so on, until classification is completed.

9. In addition, the Tribunal is directed by section 11 of the *Customs Tariff*, which 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*⁶ and to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*.⁷

10. In reaching its decision, the Tribunal must first determine whether the Section or Chapter Notes referred to in Rule 1 of the *General Rules* require that the goods in issue be classified in a particular heading.

11. The CBSA argued that the goods in issue are accurately described as fittings suitable for furniture and, as such, are properly classified in heading No. 83.02 pursuant to Rule 1 of the *General Rules*. Cabico argued that, while it is true that the goods in issue contain base metal, they are not fittings, mountings or similar articles. Cabico further argued that, since the component that gives the goods in issue their essential character is the roller bearing, they should be classified in heading No. 84.82 as bearings.

12. Heading No. 83.02 deals with mountings, fittings and similar articles that are made of base metal. The relevant part of Note (B) of the *Explanatory Notes* to Section XV entitled “Articles of Base Metals”, which provides guidance in the classification of articles of base metal that are made partly of non-metals, reads as follows:

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 of the other 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.

13. Thus, the Tribunal is of the view that, for the base metal component to determine the classification of an article, it must fulfill two conditions: it must give the goods their essential character and it must predominate by weight.

4. *Supra* note 2, schedule [*General Rules*].

5. *Supra* note 2, schedule.

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

7. World Customs Organization, 3d ed., Brussels, 2002 [*Explanatory Notes*].

14. The Tribunal notes that, from the most rudimentary examination of the dismantled physical exhibit, it is clear that the rails, which are the base metal component of the goods in issue, predominate by weight. With respect to which part of the goods in issue gives them their essential character, Cabico argued that the roller bearings give them their essential character, which is to allow the linear back and forth movement of drawers bearing weight. As Cabico demonstrated by means of a physical exhibit in which the goods in issue were mounted on a drawer that was slid in and out while empty and then while containing weight, the Tribunal is of the view that the principal advantage of the goods in issue is that they reduce friction to ease the movement of the drawer as it slides in and out. Accordingly, the Tribunal concludes that the essential character of the goods arises from their capacity to reduce friction under load. The evidence indicates that it is the plastic rollers, held in place by the plastic housing, that make possible that reduction of friction. In the Tribunal's view, it is therefore the plastic rollers and their plastic housing, not the base metal, which give the goods their essential character, even though the base metal predominates by weight.

15. Taking into account the foregoing, the Tribunal concludes that the goods in issue are not classifiable in heading No. 83.02.

16. The Tribunal must now examine whether the goods in issue are classifiable in heading No. 84.82.

17. Cabico argued that the goods in issue should be classified under tariff item No. 8482.80.90 as other ball or roller bearings. Cabico also referred to them as linear (roller) bearings, which the Tribunal understands refers to the goods as a whole, with the rollers in their housing bearing the load and reducing friction and the rails serving as the bearing races. The CBSA argued that the goods in issue are expressly excluded from classification in Section XVI, which includes Chapter 84, by virtue of Note 1(g) to Section XVI, since they are "parts of general use" as defined in Note 2(c) to Section XV because they are "articles" of heading No. 83.02.

18. The Tribunal notes that, since it has determined that the goods in issue are not classifiable in heading No. 83.02, they are not "parts of general use" as defined in Note 2(c) to Section XV and, therefore, the goods in issue may be classified in Chapter 84.

19. The *Explanatory Notes* to heading No. 84.82 provide that the heading covers the following:

... all ball, *roller* or needle roller type bearings. They are used in place of smooth metal bearings and enable friction to be considerably reduced. ...

The bearings classified in this heading include: ...

(B) **Roller bearings**, with single or double rows of rollers of any shape ...

[Emphasis added]

20. There is no specific definition of the term "bearing" in the tariff nomenclature. There are no chapter notes or explanatory notes that deal specifically with this term. As in previous decisions, the Tribunal therefore looked to the ordinary meaning of the term, as found in conventional dictionaries. Although the various dictionary and textbook definitions of the term "bearing" submitted by Cabico differ slightly from one another, the notions of relative motion, load bearing and reduction of friction are common in all the definitions. The Tribunal notes that the CBSA did not provide evidence to challenge the definitions submitted by Cabico.

21. The Tribunal is of the view that the goods in issue fall within the wide range of meanings in the dictionary definitions of the term “bearing”, because the goods in issue do allow for the easier linear back and forth movement of drawers, relative to the cabinet in which they are set, by reducing friction while bearing load.

22. Given the nature and various applications of the goods in issue as demonstrated by the evidence, the Tribunal accepts that they act as bearings. Moreover, because of their construction and the direction of movement of their rails relative to each other, the Tribunal is of the view that the goods in issue are better described as linear roller bearings.

DECISION

23. In light of the foregoing reasons, and in accordance with Rule 1 of the *General Rules*, the Tribunal finds that the goods in issue should be classified under tariff item No. 8482.80.90 as other ball or roller bearings.

24. Consequently, the appeal is allowed.

Ellen Fry
Ellen Fry
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member