



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2009-076

Rutherford Controls International
Corp.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, January 26, 2011*

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DECISION 15

IN THE MATTER OF an appeal heard on September 30, 2010, pursuant to 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 December 22, 2009, with respect to a request for review of an advance ruling on tariff classification, pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

RUTHERFORD CONTROLS INTERNATIONAL CORP.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Diane Vincent
Diane Vincent
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: September 30, 2010

Tribunal Member: Diane Vincent, Presiding Member

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Rutherford Controls International Corp.

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Rutherford Controls International Corp. (Rutherford) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ from a decision made by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4), with respect to a request for review of an advance ruling on tariff classification.

2. The issue in this appeal is whether various models of electromagnetic locks (the goods in issue) are properly classified under tariff item No. 8301.40.90 of the schedule to the *Customs Tariff*² as other electrically operated locks of base metal, as determined by the CBSA, or should be classified under tariff item No. 8505.90.00 as electromagnets, as claimed by Rutherford.

PROCEDURAL HISTORY

3. On April 9, 2009, Rutherford submitted a request for an advance ruling with respect to the tariff classification of the goods in issue. On May 1, 2009, the CBSA issued an advance ruling pursuant to paragraph 43.1(1)(c) of the *Act*, which classified the goods in issue under tariff item No. 8301.40.90 as other electrically operated locks of base metal.³

4. On July 29, 2009, Rutherford requested a review of the advance ruling pursuant to subsection 60(2) of the *Act*.⁴ On December 22, 2009, the CBSA issued its decision pursuant to subsection 60(4).⁵ The CBSA held that the goods in issue were properly classified under tariff item No. 8301.40.90 as other electrically operated locks of base metal, thereby affirming its advance ruling.

5. On February 24, 2010, Rutherford filed the present appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

6. The Tribunal held a public hearing in Ottawa, Ontario, on September 30, 2010. Mr. Robert P. Schnarr, Technical Services Manager at Rutherford, appeared as a witness for Rutherford. Mr. Schnarr was qualified by the Tribunal as an expert in the field of locks and lock control. The CBSA did not call any witnesses.

GOODS IN ISSUE

7. The goods in issue are six models of electromagnetic locks that are used to lock and unlock interior or perimeter swinging doors, as well as sliding doors for small enclosures. They are manufactured in the People's Republic of China and subsequently imported into Canada by Rutherford. At the time of importation into Canada, the goods in issue are packaged for sale and essentially consist of an aluminum housing, a printed circuit board, an electromagnet (itself consisting of an iron laminated core and a bobbin of wound copper), a steel armature plate, installation hardware (screws, washers, bolts, sleeves and hex keys) and a small tube of thread-locking compound.⁶ The housing, which holds the printed circuit board and the electromagnet, is attached to a door frame, and the armature plate is attached to the door opposite the

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

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

3. Tribunal Exhibit AP-2009-076-07, tab 1.

4. Tribunal Exhibit AP-2009-076-09A, tab 2.

5. Tribunal Exhibit AP-2009-076-07, tab 2.

6. *Ibid.* at para. 9; *Transcript of Public Hearing*, 30 September 2010, at 22, 38-39.

housing. When an electrical current is passed through the electromagnet, it causes the electromagnet to attract the armature plate, thereby holding the door shut. When the electrical current is interrupted, the armature plate is released and the door can be opened.

8. The goods in issue, which are part of Rutherford's "8 Series" line of electromagnetic locks, are as follows: model Nos. 8310, 8320, 8330, 8340, 8360 and 8365. According to Rutherford's product literature,⁷ model Nos. 8310 and 8320 are for single and double interior or perimeter doors; model Nos. 8330 and 8340 are also for single and double interior or perimeter doors but feature extended housings; and model Nos. 8360 and 8365, which are smaller, are for interior or perimeter sliding doors and small enclosures.

9. Rutherford filed three samples of its electromagnetic lock model No. 8360 (MiniMag® Mortise Electromagnetic Lock) as physical exhibits with the Tribunal.⁸ These locks were packaged in boxes with all the items described above, as well as installation instructions.

ANALYSIS

Statutory Framework

10. In appeals pursuant to section 67 of the *Act* concerning tariff classification matters, the Tribunal determines the proper tariff classification of the goods in issue in accordance with prescribed interpretative rules.

11. 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.⁹ 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 of goods.

12. 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[10] and the Canadian Rules[11] set out in the schedule."

13. 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, until classification is completed.¹²

7. Tribunal Exhibit AP-2009-076-09A, tab 4.

8. Exhibit A-01. For the purposes of comparison, Rutherford also filed, as a physical exhibit (Exhibit A-02), an electric strike similar to the one that was at issue in *Rutherford Controls Ltd. v. Deputy M.N.R.* (9 September 1996), AP-95-100 (CITT) [*Rutherford Controls*], a prior appeal that it had filed with the Tribunal.

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

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

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

12. 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 apply 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).

14. Rules 1 and 2 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. (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 finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as 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 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.

15. 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^[13] and the Explanatory Notes to the Harmonized Commodity Description and Coding System,^[14] published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time.” Accordingly, 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.¹⁵

16. Section 13 of the *Official Languages Act*¹⁶ provides that the English and French versions of any act of Parliament are equally authoritative.

17. Thus, the Tribunal must first determine whether the goods in issue can be classified according to Rule 1 of the *General Rules* according to the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant *Classification Opinions* and *Explanatory Notes*. It is only if the Tribunal is not satisfied that the goods in issue can be properly classified at the heading level through the application of Rule 1 of the *General Rules* that it becomes necessary to consider subsequent rules in order to determine in which tariff heading the goods in issue shall be classified.

18. Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to determine the proper subheading and tariff item, applying Rule 6 of the *General Rules* in the case of the former and the *Canadian Rules* in the case of the latter.

13. World Customs Organization, 2d ed., Brussels, 2003 [*Classification Opinions*].

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

15. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17.

16. R.S.C. 1985 (4th Supp.), c. 31.

Relevant Provisions of the Customs Tariff, General Rules and Explanatory Notes

19. The relevant provisions of the *Customs Tariff*, which Rutherford claims should apply to the goods in issue, read as follows:

Section XVI

...

Chapter 85

...

85.05 **Electro-magnets; permanent magnets and articles intended to become permanent magnets after magnetization; electro-magnetic or permanent magnet chucks, clamps and similar holding devices; electro-magnetic couplings, clutches and brakes; electro-magnetic lifting heads.**

...

8505.90.00 **-Other, including parts**

20. The relevant 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) . . . ;

...

(k) Articles of Chapter 82 or 83;

...

21. Part (A) of the *Explanatory Notes* to Chapter 85 provides as follows:

This Chapter covers:

...

(3) Certain machines and appliances which depend for their operation on the properties or effects of electricity, such as its electro-magnetic effects, heating properties, etc. (headings 85.05, 85.11 to 85.18, 85.25 to 85.31 and 85.43).

22. Further, the relevant *Explanatory Notes* to heading No. 85.05 provide as follows:

This heading covers electro-magnets, those electro-magnet operated appliances specially listed in the heading, permanent magnets and permanent magnet work holders.

(1) **Electro-magnets.**

These are of various sizes and shapes according to the use for which they are intended. They consist essentially of a coil of wire wound around a core of soft iron, this core being either in one piece or laminated. The passing of electric current in the coil confers magnetic properties on the core, which can then be used either for attraction or repulsion.

...

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the goods of this heading are also classified here.

The heading **does not cover**:

...

(b) Electro-magnets, permanent magnets or magnetic devices of this heading, when presented with machines, apparatus, toys, games, etc., of which they are designed to form part (classified with those machines, apparatus, etc.).

23. The nomenclature of the *Customs Tariff*, which the CBSA considers applicable to the goods in issue, reads as follows:

Section XV

...

Chapter 83

...

83.01 **Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys for any of the foregoing articles, of base metal.**

...

8301.40 **-Other locks**

...

8301.40.90 ---Other

24. 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 83.01

...

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

...

7. Classification of composite articles:

Except where the headings otherwise require, articles of base metal (including articles or 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.

25. The relevant *Explanatory Notes* to heading No. 83.01 provide as follows:

This heading covers fastening devices operated by a key (e.g., locks of the cylinder, lever, tumbler or Bramah types) or controlled by a combination of letters or figures (combination locks).

It also includes electrically operated locks (e.g., for street doors of blocks of flats or for lift doors). . . .

The heading therefore covers, *inter alia* :

. . .

(B) Locks for doors or gates, letter boxes, safes, boxes or caskets, furniture, pianos, trunks, suit-cases, handbags, dispatch-cases, etc., for automobiles, railway-rolling-stock, trams, etc., for lifts, shutters, sliding doors, etc.

26. In addition to the foregoing, Notes XI to XIII of the *Explanatory Notes* to Rule 2 (b) of the *General Rules* are relevant in this appeal and provide as follows:

(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.

Positions of Parties

Rutherford

27. Rutherford submitted that, on the basis of the characteristics of the goods in issue and the *Explanatory Notes* to Chapter 85, the goods in issue should be classified in heading No. 85.05 as electromagnets. It therefore submitted that they are excluded from classification in heading No. 83.01 by virtue of Note 1(f) to Section XV, which states that Section XV (which includes heading No. 83.01) does not cover articles of Section XVI (which includes heading No. 85.05).

28. Rutherford submitted that, because the primary function of the goods in issue is dependent on the electromagnetic effects created by a constant influx of electricity, the goods in issue are more appropriately classified in Chapter 85. In this regard, it submitted that Note (A)(3) of the *Explanatory Notes* to Chapter 85, which states that “[c]ertain machines and appliances which depend for their operation on the properties or effects of electricity, such as its electro-magnetic effects . . . (headings 85.05 . . .)” are covered under this chapter, explicitly corroborates its interpretation.

29. Rutherford further submitted that the CBSA’s reliance on Note (b) of the *Explanatory Notes* to heading No. 85.05, which excludes from that heading “[e]lectro-magnets . . . when presented with machines, apparatus, toys, games, etc., of which they are designed to form part (classified with those machines, apparatus, etc.)”, is improper given that the electromagnet is not merely a part of the goods in issue. It submitted that, since everything that composes the goods in issue is incidental to the electromagnet,

the goods in issue should be classified as electromagnets. In its view, there is no reason to extend classification of the goods in issue past their primary and arguably only material, which is the electromagnet.¹⁷

30. In support of its position, Rutherford referred to the Tribunal's decision in *Norsk Fitness Products Inc. v. President of the Canada Border Services Agency*,¹⁸ where the Tribunal, having already found that it was the presence of the magnets which gave the magnetic support articles in issue their essential character, disregarded Note (b) of the *Explanatory Notes* to heading No. 85.05 on the basis that a magnet could not give a product its essential character and, at the same time, be one of its contributing parts.

31. Rutherford also referred to an advance ruling published by the CBSA that classified a "magnetic sweeper" in heading No. 85.05. It submitted that, while the details of the product are limited, it would seem likely that the product is fitted with brackets, handles and, possibly, wheels and hitches, making it more than just a magnet. It therefore submitted that the CBSA appears to agree that the magnet in this product does not lose its essential character by virtue of being incorporated with housings, brackets, etc. In its view, the CBSA should apply the same reasoning in its classification of the goods in issue.

32. In addition to the above, Rutherford submitted that the goods in issue cannot be classified in heading No. 83.01, as they are not specifically mentioned in the terms of the heading, the *Explanatory Notes* to the heading or the Tribunal's decision in *Rutherford Controls*. It submitted that heading No. 83.01 covers locks that rely upon a bolt, protrusion or mechanical interface to effect the desired locking action. In this regard, it submitted that, when read in context, it is clear that the reference to key, combination or electrically operated locks in heading No. 83.01 is in respect of the mechanism which engages the mechanical interface which effectively forms the lock. It therefore submitted that, since the goods in issue have no such mechanical interface and instead rely solely on the effects of electricity (i.e. its electromagnetic effects) to perform their function, they cannot be classified in heading No. 83.01.

33. Rutherford also submitted that, contrary to key, combination or electrically operated locks of heading No. 83.01, which remain locked once actuated with a key, combination or electrical operation, the goods in issue require a constant influx of electricity to remain active and perform their locking action. It submitted that this particular characteristic explains why the National Building Code of Canada (NBC) draws a distinct line between electromagnetic locks and every other kind of lock and why the goods in issue are different from the goods that were in issue in *Rutherford Controls*.

34. In support of its position, Rutherford relied upon Mr. Schnarr's expert report and testimony. At the hearing, Mr. Schnarr explained that key, combination or electrically operated locks work along with a latch, protrusion or some other mechanical means of performing the locking function and that, once actuated, they remain locked. By way of comparison, Mr. Schnarr explained that the goods in issue do not have such a mechanical interface and that, due to their dependence on a continuous electrical current to remain locked, they are often used as an additional security device rather than as a primary one. Mr. Schnarr also explained that, because the goods in issue control both the entering and exiting of an area, they are dealt with separately by the NBC, which requires free egress in case of fire. Concerning the Tribunal's decision in *Rutherford Controls*, Mr. Schnarr stated that, while the electric strikes at issue in that appeal were determined to be locks of heading No. 83.01, they allowed for free egress and incorporated a latching mechanism (i.e. a protrusion), which also allowed them to remain locked in the absence of an electrical current.

17. Mr. Schnarr testified that the weight and value of the goods in issue are predominantly those of the electromagnet. *Transcript of Public Hearing*, 30 September 2010, at 28-29, 46.

18. (6 April 2006), AP-2003-045 (CITT) [*Norsk Fitness*].

CBSA

35. The CBSA submitted that the goods in issue are properly classified in heading No. 83.01 as electrically operated locks, given that they are clearly locks which are operated by electricity. It therefore submitted that they are excluded from classification in heading No. 85.05 by virtue of Note 1(g) of Section XVI, which excludes “[p]arts of general use . . .” from its scope of coverage (Note 2(c) of Section XV provides that articles of heading No. 83.01 are “parts of general use”).¹⁹

36. The CBSA submitted that the only purpose of the goods in issue is to lock various kinds of doors, including some of those listed in the *Explanatory Notes* to heading No. 83.01. In this respect, it noted that Rutherford itself refers to the goods in issue as locks (i.e. electromagnetic locks) and also markets them as such.

37. The CBSA further submitted that, while the goods in issue rely upon the use of an electromagnet and require a constant influx of electricity to remain locked, this does not change the fact that they are “locks”. It submitted that, in fact, heading No. 83.01 specifically mentions locks which are electrically operated and that electromagnetic locks are the most basic type of electric lock. As for Rutherford’s contention that heading No. 83.01 includes only locks that are “actuated” electronically and not those that require a constant influx of electricity, it noted that the word used in the heading is “operated” and not “actuated”. In this regard, it submitted that a review of dictionary definitions of the word “operation” reveals that it need not connote a finite action, such as turning a key or typing in a code on a keypad. Therefore, in its view, heading No. 83.01 cannot be interpreted not to include locks which require a constant flow of electricity (i.e. a continuous action).

38. The CBSA also made reference to the Tribunal’s decision in *Rutherford Controls*, where it was stated that the wording of heading No. 83.01 is extremely broad. It therefore submitted that, to the extent that the goods in issue are found not to be specifically mentioned in heading No. 83.01, they would nonetheless be accounted for by the broad inclusionary language of the heading.

39. In addition to the above, the CBSA submitted that the goods in issue cannot be classified in heading No. 85.05 as electromagnets because, while they include an electromagnet, they are not, in and of themselves, electromagnets. It submitted that, contrary to Rutherford’s assertion, the use of the word “certain” in Note (A)(3) of the *Explanatory Notes* to Chapter 85 indicates that not all machines which depend for their operation on the properties or effects of electricity are covered in this chapter. It therefore submitted that this note is not determinative because “certain” tends to connote particularized items and, in this case, it refers to the machines and appliances specifically identified in heading Nos. 85.05 to 85.18, 85.25 to 85.31 and 85.43.

40. The CBSA further submitted that the goods in issue are excluded from classification in heading No. 85.05 by virtue of Note (b) of the *Explanatory Notes* to that heading. In its view, the use of the word “etc.” in this note indicates that the list of things with which the electromagnet may be presented in order to fall under the exclusion is open-ended. It submitted that, according to Rutherford’s own description of the goods in issue, it is clear that the electromagnet is not presented on its own, but rather with apparatus or other materials that disqualify it from inclusion in heading No. 85.05. Relying on criteria previously

19. The Tribunal notes that Note 1(k) to Section XVI, which states that Section XVI does not cover articles of Chapter 82 or 83, would also exclude goods of heading No. 83.01 from classification in heading No. 85.05.

identified by the Tribunal in order to aid in determining whether one product is a “part” of another,²⁰ it submitted that the electromagnets contained within the goods in issue are “parts” of those goods (i.e. parts of locks).

41. With respect to Rutherford’s reliance on *Norsk Fitness* to support its position that Note (b) of the *Explanatory Notes* to heading No. 85.05 should not apply, the CBSA submitted that, since the Tribunal’s analysis in that case was done under Rule 3 (b) of the *General Rules*, it is not relevant in the present case, which can easily be resolved in accordance with Rule 1.

42. Finally, the CBSA submitted that the advance ruling pertaining to a “magnetic sweeper” cited by Rutherford is irrelevant to the current appeal. In this respect, it referred to *Norsk Fitness* where the Tribunal stated that decisions must be based on a personal examination of the actual goods under appeal. It submitted that, in any event, the goods in issue are significantly different from those in the above-mentioned advance ruling. It also added that, without knowing whether there was a competing heading in which the “magnetic sweeper” could have been classified, the fact that it was classified in heading No. 85.05 is irrelevant.

Tariff Classification of the Goods in Issue

43. As indicated above, the Tribunal must determine whether the goods in issue are properly classified under tariff item No. 8301.40.90 as other electrically operated locks of base metal, as determined by the CBSA, or should be classified under tariff item No. 8505.90.00 as electromagnets, as claimed by Rutherford. Consequently, the dispute between the parties arises at the heading level.

44. As a preliminary matter, the Tribunal notes that Note 1(f) of Section XV states that Section XV (which includes Chapter 83 and, therefore, heading No. 83.01) does not cover articles of Section XVI (which includes Chapter 85 and, therefore, heading No. 85.05). On the other hand, Note 1(k) of Section XVI states that Section XVI does not cover articles of Chapter 83. Similarly Note 1(g) of Section XVI states that Section XVI does not cover “[p]arts of general use . . .” (Note 2(c) of Section XV provides that articles of heading No. 83.01 are “parts of general use”). By virtue of these notes, it is clear that goods of heading No. 83.01 are excluded from classification in heading No. 85.05 and vice versa. Therefore, the goods in issue are not *prima facie* classifiable in both headings.²¹ In these circumstances, unlike in situations where there is only one exclusionary note, the Tribunal need not begin its consideration of the competing headings in any particular order.

45. The Tribunal will first consider whether the goods in issue are electrically operated locks of base metal of heading No. 83.01.

20. The CBSA referenced the Tribunal’s decision in *GL&V/Black Clawson-Kennedy v. Deputy M.N.R.* (27 September 2000), AP-99-063 (CITT) [*GL&V/Black*], in which the following criteria were identified: “. . . (1) whether the product in issue is essential to the operation of another product; (2) whether the product is a necessary and integral part of another product; (3) whether the product is installed in the other product; and (4) common trade usage and practice.”

21. See *Helly Hansen Leisure Canada Inc. v. President of the Canada Border Services Agency* (2 June 2008), AP-2006-054 (CITT) at para. 24 and *Dynamic Furniture Corp. v. President of the Canada Border Services Agency* (31 March 2009), AP-2005-043 (CITT) at para. 31. In these cases, the Tribunal determined the proper tariff classification of the goods in accordance with Rule 1 of the *General Rules*, while also having regard to the relevant *Explanatory Notes*.

Are the Goods in Issue Electrically Operated Locks of Base Metal of Heading No. 83.01?

46. The Tribunal notes that heading No. 83.01 covers “. . . locks (key, combination or electrically operated), of base metal” Therefore, in order to be classified in this heading, the goods in issue must meet three requirements: they must be (1) locks; (2) electrically operated; and (3) made of base metal. On the basis of the evidence on the record, the Tribunal is satisfied that the goods in issue meet these requirements. The Tribunal will address each requirement in turn.

47. Although the terms of heading No. 83.01 do not provide any guidance regarding the meaning that should be attributed to the word “lock”, the Tribunal observes that the *Explanatory Notes* to heading No. 83.01 do stipulate that the heading covers “. . . fastening devices . . .”, including “. . . [l]ocks for doors . . . sliding doors” Moreover, in *Rutherford Controls*, the Tribunal provided the following definition of “lock”:²²

In the most general sense, a lock is a device or mechanism for fastening or securing a door, window, lid, etc. A lock provides persons with the means of operating the lock, whether by key, card or other, through the entry of a manual or electronic combination in order both to lock and to unlock the door, window, etc., on which it is installed. A lock provides a means of controlling access to a defined area or space.

48. In the Tribunal’s opinion, the evidence on the record, including Mr. Schnarr’s testimony, has made it quite clear that the goods in issue are “locks” within the terms of the *Explanatory Notes* to heading No. 83.01 and in accordance with the Tribunal’s definition of “lock” as expressed in *Rutherford Controls*. Although Mr. Schnarr testified that the goods in issue are used in areas where there is a desire to control egress rather than ingress and, as such, are considered more of a security device than a lock,²³ he did agree that Rutherford calls them locks and markets them as locks and that their function is to secure a door, which necessarily involves locking.²⁴ In this regard, the Tribunal notes that the term “lock” is used extensively throughout the record in relation to the goods in issue. Rutherford’s brief, product literature²⁵ and physical exhibit,²⁶ as well as Mr. Schnarr’s expert report and the NBC,²⁷ to name a few, all make reference to “electromagnetic locks”. This supports the Tribunal’s conclusion that the goods in issue are “locks” and clearly designed to be used as such.

49. Rutherford argued that heading No. 83.01 only covers locks that rely upon a bolt, protrusion or other mechanical means to perform their locking function. However, neither the terms of the heading nor the *Explanatory Notes* to the heading limit coverage to such locks. As the Tribunal stated in *Rutherford Controls*, the wording of heading No. 83.01 is extremely broad and the *Explanatory Notes* to the heading further indicate that an extremely wide variety of locks are covered.²⁸ In this instance, the Tribunal is of the view that, while the goods in issue may lack any mechanical means to accomplish their locking function, the evidence indicates that they are nonetheless used to fasten or secure doors in order to control access to a defined area or space and are therefore considered “locks”.²⁹

22. *Rutherford Controls* at 3.

23. *Transcript of Public Hearing*, 30 September 2010, at 28, 30.

24. *Ibid.* at 34-36, 41-42.

25. Tribunal Exhibit AP-2009-076-09A, tab 4.

26. Exhibit A-01, electromagnetic lock model No. 8360.

27. Tribunal Exhibit AP-2009-076-14.

28. *Rutherford Controls* at 3.

29. *Transcript of Public Hearing*, 30 September 2010, at 35-36.

50. Mr. Schnarr testified that, in order for the goods in issue to function as a lock, they would need, as a bare minimum, a filtered and regulated power supply and a switching device to turn the power on and off (to lock and unlock doors).³⁰ Although this point was not argued by the parties, the goods in issue might be considered as incomplete locks. In these circumstances, Rule 2 (a) of the *General Rules* would be considered. In the Tribunal's view, to the extent that the goods in issue, by their inability to perform their locking function without these additional parts, are considered to be incomplete, they would still be considered as having the "essential character" of a complete lock because they are clearly recognizable or identifiable as a complete lock.³¹ Therefore, pursuant to Rule 2 (a), the goods in issue would still be considered locks.

51. Turning to the requirement that the goods in issue be electrically operated, the Tribunal notes that the uncontested evidence on the record indicates that the goods in issue require an electrical current to perform their locking function. Rutherford's product literature, as well as the installation instructions provided with its physical exhibit, makes it clear that the goods in issue must be connected to an electrical source to operate.³² In addition, at the hearing, Mr. Schnarr testified to the fact that the goods in issue rely on electricity to secure doors and that, without electricity, they would not function.³³

52. However, Rutherford argued that, unlike other locks ordinarily covered by heading No. 83.01, which remain locked once actuated, the goods in issue require a constant influx of electricity to remain active and perform their locking action and, thus, cannot be classified in heading No. 83.01. In response, the CBSA argued that heading No. 83.01 covers electrically *operated* locks and not electrically *actuated* locks.

53. The terms of heading No. 83.01 provide as follows:

<p>83.01 Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys for any of the foregoing articles, of base metal.</p>	<p>83.01 Cadenas, serrures et verrous (à clef, à secret ou électriques), en métaux communs; fermoirs et montures-fermoirs comportant une serrure, en métaux communs; clefs pour ces articles, en métaux communs.</p>
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54. The *Explanatory Notes* to heading No. 83.01 provide as follows:

<p>[This heading] also includes electrically operated locks (e.g., for street doors of blocks of flats or for lift doors). . . .</p>	<p>[La présente position comprend] également les serrures à déclenchement ou à blocage électriques (pour portes extérieures d'immeubles, pour ascenseurs, notamment). [...]</p>
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30. *Ibid.* at 41, 43-44. See also the installation instructions included with Exhibit A-01, which confirm this to be the case.

31. In *Renelle Furniture Inc. v. President of the Canada Border Services Agency* (23 March 2007), AP-2005-028 (CITT), the Tribunal stated the following: "... Rule 2 (a) of the *General Rules* manifestly includes an article that may lack some components and that is therefore likely not fully operational" and that "... in order for an incomplete or unfinished article to be classified in the heading for the complete or finished article, it must be recognizable or identifiable as the complete or finished product."

32. Tribunal Exhibit AP-2009-076-09A, tab 4; Exhibit A-01.

33. *Transcript of Public Hearing*, 30 September 2010, at 19, 24, 36-37.

55. The Tribunal will consider the ordinary meaning of the word “operated”. The *Shorter Oxford English Dictionary* defines the word “operate” as follows: “. . . 5 Cause or direct the functioning of; control the working of (a machine etc.). . . .”³⁴ In the Tribunal’s view, the fact that the goods in issue require a constant influx of electricity to remain locked and that, conversely, an interruption of electricity is required to unlock them can only lead to the conclusion that their working or functioning is directed or controlled by electricity.

56. The Tribunal notes that the French version of heading No. 83.01 omits the use of the word “operated” and simply refers to “[...] serrures [...] électriques [...]” (electric locks). The French version of the *Explanatory Notes* to heading No. 83.01 transposes the term “electrically operated locks” as “serrures à déclenchement ou à blocage électriques” (locks with electric release or lock), which, in the Tribunal’s view, does not exclude locks requiring a constant influx of electricity to remain active, as argued by Rutherford. The Tribunal interprets the French version of the heading and the *Explanatory Notes* as simply requiring that the locks be operated by electricity in order to function as a lock. According to the evidence, the goods in issue are operated by electricity. Moreover, the Tribunal can find nothing in the terms of the heading or the *Explanatory Notes* that would exclude the goods in issue from classification therein. This is consistent with the ordinary meaning of the term “electrically operated” used in the English version of the heading and *Explanatory Notes*.

57. Therefore, in the Tribunal’s view, the terms of the heading, when read in English and French, both suggest that they are broader than what was argued by Rutherford. The Tribunal concludes that the terms of the heading and the *Explanatory Notes* cover the functioning of the goods in issue. Therefore, the Tribunal considers that the goods in issue are “electrically operated” locks.

58. With respect to the requirement that the goods in issue be made of base metal, the Tribunal notes that this issue is not in dispute between the parties. According to Note 3 of Section XV, the expression “base metals” means, *inter alia*, iron and steel, copper and aluminum. The evidence on the record indicates that the goods in issue consist primarily of base metal parts, such as an aluminum housing, a steel armature plate and an electromagnet made with an iron laminated core and a bobbin of wound copper, but that they also include some non-base metal parts.³⁵ The Tribunal notes that it was uncontested that the goods in issue are predominantly made of base metal.³⁶

59. As the goods in issue are not entirely made of base metals, and in accordance with Note 7 of Section XV, Rule 2 (b) of the *General Rules* and Notes XI to XIII of the *Explanatory Notes* to Rule 2 (b) must be considered. In the Tribunal’s view, the addition of non-base metal parts to the goods in issue does not “. . . depriv[e] the goods of the character . . .”³⁷ of those of the kind mentioned in heading No. 83.01 and also does not suggest that the goods in issue are *prima facie* classifiable in another heading. Therefore, in accordance with Rule 2 (b) of the *General Rules*, the goods in issue are considered to be made of base metal.

60. On the basis of the foregoing, the Tribunal concludes that the goods in issue are electrically operated locks of base metal of heading No. 83.01.

34. Fifth ed., s.v. “operate”.

35. Tribunal Exhibit AP-2009-076-07 at para. 9; *Transcript of Public Hearing*, 30 September 2010, at 22, 28, 38-39. Non-base metal parts include a printed circuit board, an epoxy laminate used to seal the electromagnet and certain installation hardware made of rubber.

36. See *Transcript of Public Hearing*, 30 September 2010, at 28, 46.

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

61. The Tribunal will now consider whether the goods in issue are electromagnets of heading No. 85.05.

Are the Goods in Issue Electromagnets of Heading No. 85.05?

62. According to Note (A)(3) of the *Explanatory Notes* to Chapter 85, this chapter covers “. . . [c]ertain machines and appliances which depend for their operation on the properties or effects of electricity, such as its electro-magnetic effects . . . (headings 85.05 . . .)” [emphasis added]. As noted above, the evidence on the record makes it clear that the goods in issue require an electrical current to operate and that, without such an electrical current, they would not perform their function of locking doors. Therefore, the Tribunal agrees with Rutherford that the goods in issue “. . . depend for their operation on the properties or effects of electricity, such as its electro-magnetic effects . . .” However, the Tribunal is of the view that Note (A)(3) is not determinative in this instance because it only provides that *certain* machines and appliances which depend for their operation on the effects of electricity are covered under Chapter 85 and in headings such as No. 85.05. Note (A)(3) does not indicate that *all* machines and appliances which depend for their operation on the effects of electricity are covered under Chapter 85. Therefore, in the Tribunal’s view, it is not sufficient for the goods in issue to depend for their operation on the effects of electricity in order to be classified in Chapter 85; they must also fall within the terms of one of the listed headings, which, for the purposes of this appeal, is heading No. 85.05.

63. The Tribunal notes that heading No. 85.05 covers a range of goods, including electromagnets and goods which incorporate electromagnets. The heading does not however cover all goods which incorporate electromagnets. In this respect, the *Explanatory Notes* to heading No. 85.05 provide that “[the] heading covers electro-magnets, those electro-magnet operated appliances specially listed in the heading . . .” The *Explanatory Notes* to heading No. 85.05 define an electromagnet as “. . . a coil of wire wound around a core of soft iron, this core being either in one piece or laminated. . . .”

64. Rutherford claims that the goods in issue should be classified as electromagnets. The Tribunal disagrees for the following reasons. The Tribunal is of the opinion that, in order to determine the proper classification of the goods in issue, it must look at the goods in their entirety.³⁸ While the goods in issue indisputably contain an electromagnet, they are not themselves electromagnets. The evidence on the record provides a description of the goods in issue, which indicates that they are more than electromagnets.

65. Rutherford submitted that, at the time of importation into Canada, the goods in issue are packaged for sale and essentially consist of an aluminum housing, a printed circuit board, an electromagnet, a steel armature plate and installation hardware (screws, washers, bolts, sleeves, hex keys and a small tube of thread-locking compound).³⁹ The Tribunal notes that the pre-installation and installation instructions included with Rutherford’s electromagnetic lock model No. 8360 (MiniMag® Mortise Electromagnetic Lock), which was filed as a physical exhibit, confirm that all the constituent parts of the goods in issue, including the electromagnet, are intended to be used together in order to lock doors. When questioned on the issue, Mr. Schnarr concurred that, at the time of their importation, the goods in issue are intended to be used as locks.⁴⁰ Therefore, the Tribunal is of the view that, taken in their entirety, the goods in issue are not electromagnets and, thus, cannot be classified as such.

38. See *Canadian Tire Corporation Limited v. President of the Canada Border Services Agency* (29 November 2007), AP-2006-041 (CITT) at para. 41.

39. Tribunal Exhibit AP-2009-076-07 at para. 9.

40. *Transcript of Public Hearing*, 30 September 2010, at 41-42.

66. Furthermore, Note (b) of the *Explanatory Notes* to heading No. 85.05 excludes from that heading “[e]lectro-magnets . . . when presented with machines, apparatus, toys, games, etc., of which they are designed to form part (classified with those machines, apparatus, etc.)” In the Tribunal’s view, the electromagnets are presented with locks (i.e. the goods in issue) of which they are designed to form part and are thus excluded from classification in heading No. 85.05 by virtue of Note (b) of the *Explanatory Notes* to heading No. 85.05. While the notion that the goods in issue can be defined as machines, apparatus or some other similar term was not contested,⁴¹ Rutherford did argue that the electromagnets were a key component and not merely a part of the goods in issue. The Tribunal agrees that the electromagnets play a significant role and are an important or the key part of the goods in issue. However, the Tribunal considers that they are still parts. In the Tribunal’s view, and in accordance with the criteria for “parts” set out in *GL&V/Black*, the electro-magnets “are designed to form part” of the goods in issue because they are essential to the operation of the goods in issue, are a necessary and integral part of the goods in issue and are assembled with the other constituent parts of the goods in issue in order to allow the goods in issue to perform their locking function. It is clear that, without the electromagnets, the goods in issue would not function as locks.⁴² Therefore, in accordance with Note (b) of the *Explanatory Notes* to heading No. 85.05, the goods in issue cannot be classified in heading No. 85.05.

67. Rutherford referred to the Tribunal’s decision in *Norsk Fitness*, where it determined that a magnet could not give a product its essential character and, at the same time, be one of its contributing parts. However, the Tribunal does not consider this decision as relevant in the context of the present case. In *Norsk Fitness*, the Tribunal found that the magnetic support articles in issue were composite goods containing both a textile component and a magnetic component and were *prima facie* classifiable in two headings. This led the Tribunal to Rule 3 (b) of the *General Rules* under which it considered what material or component gave the goods their essential character. As a matter of law, classification can only be effected through the application of Rule 3 when goods cannot be properly classified through the application of Rules 1 and 2. In the present case, the Tribunal has determined, through the application of Rules 1 and 2, that the goods in issue are properly classified in heading No. 83.01. Therefore, the issue of whether the electromagnets give the goods in issue their essential character under Rule 3 (b) is not a relevant consideration in the present case.

68. As for the CBSA’s advance ruling referenced by Rutherford that classified a “magnetic sweeper” in heading No. 85.05, the Tribunal is of the view that it is not useful because it involves different goods and lacks any information regarding whether there was a competing heading in which the goods could have been classified. In any event, the Tribunal notes that it is not bound by such decisions or rulings.⁴³

69. In light of the above, the Tribunal concludes that the goods in issue are not classifiable in heading No. 85.05 and that, pursuant to Rule 1 of the *General Rules*, the goods in issue are properly classified in heading No. 83.01.

41. The goods in issue were referred to as an “apparatus”, “device” and “mechanism” during the hearing (see, for example, *Transcript of Public Hearing*, 30 September 2010, at 24-25, 30, 35-36). The *Explanatory Notes* to heading No. 83.01 also refer to the articles covered by that heading as “fastening devices”.

42. *Transcript of Public Hearing*, 30 September 2010, at 46.

43. In *Helly Hansen Leisure Canada Inc. v. Canada (Border Services Agency)*, 2009 FCA 345 (CanLII), the Federal Court of Appeal stated as follows: “The determination by the Tribunal of whether the CBSA erred in any particular decision cannot be dependent upon prior decisions of the CBSA. In this case, the Tribunal was required to base its decision upon its assessment of the applicable law, and was not bound by prior CBSA decisions.”

Classification at the Subheading and Tariff Item Levels

70. Having determined that the goods in issue are properly classified in heading No. 83.01, the Tribunal must next determine the proper classification at the subheading and tariff item levels. Heading No. 83.01 has seven subheadings, of which only three specifically pertain to locks. As two of these three subheadings pertain to locks of a kind used for motor vehicles and locks of a kind used for furniture, the goods in issue must be classified in the only remaining subheading as “other locks”. Therefore, pursuant to Rule 6 of the *General Rules*, the goods in issue are properly classified in subheading No. 8301.40.

71. Subheading No. 8301.40 has three tariff items. As two of these three tariff items are clearly inapplicable to the goods in issue, the goods in issue must be classified under the only remaining tariff item as “other”. Therefore, pursuant to Rule 1 of the *Canadian Rules*, the goods in issue are properly classified under tariff item No. 8301.40.90.

DECISION

72. For the foregoing reasons, the Tribunal concludes that the goods in issue are properly classified under tariff item No. 8301.40.90 as other electrically operated locks of base metal, as determined by the CBSA.

73. The appeal is therefore dismissed.

Diane Vincent
Diane Vincent
Presiding Member