



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2010-052

H. A. Kidd and Company Limited

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Thursday, September 1, 2011*

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IN THE MATTER OF an appeal heard on May 24, 2011, 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 October 6, 2010, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

H. A. KIDD AND COMPANY LIMITED

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Pasquale Michael Saroli
Pasquale Michael Saroli
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	May 24, 2011
Tribunal Member:	Pasquale Michael Saroli, Presiding Member
Counsel for the Tribunal:	Georges Bujold
Research Director:	Audrey Chapman
Research Officer:	Denise Bergeron
Manager, Registrar Office:	Michel Parent
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PARTICIPANTS:**Appellant**

H. A. Kidd and Company Limited

Counsel/Representative

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Respondent

President of the Canada Border Services Agency

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by H. A. Kidd and Company Limited (H. A. Kidd) 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).

2. The issue in this appeal is whether certain circular-shaped self-gripping fasteners (circular fasteners in issue) are properly classified under tariff item No. 6307.90.99 of the schedule to the *Customs Tariff*² as other made-up articles, including dress patterns, of other textile materials and whether certain rectangular-shaped self-gripping fasteners (rectangular fasteners in issue) (collectively, the goods in issue) are properly classified under tariff item No. 5906.10.90 as other adhesive tape of a width not exceeding 20 cm, of rubberized textile fabrics other than those of heading No. 59.02, as determined by the CBSA, or whether they should be classified under tariff item No. 9606.10.00 as press-fasteners, as claimed by H. A. Kidd.

PROCEDURAL HISTORY

3. On September 9, 2009, H. A. Kidd submitted a request to the CBSA for an advance ruling with respect to the tariff classification of the goods in issue. On December 10, 2009, pursuant to section 43.1 of the *Act*, the CBSA issued an advance ruling and classified the goods in issue under tariff item No. 6307.90.99 as other made-up articles of other textile materials.³

4. On January 8, 2010, H. A. Kidd requested a review of the advance ruling pursuant to subsection 60(2) of the *Act*.⁴

5. On September 14, 2010, the CBSA issued a preliminary decision, which confirmed the classification of the circular fasteners in issue under tariff item No. 6307.90.99 as other made-up articles of other textile materials. However, it re-determined the tariff classification of the rectangular fasteners in issue and ruled that they were properly classified under tariff item No. 5906.10.90 as other adhesive tape of a width not exceeding 20 cm, of rubberized textile fabrics other than those of heading No. 59.02.⁵ The CBSA ruled that, in view of the meaning of the expression “made up” for the purposes of Section XI of the

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

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

3. Tribunal Exhibit AP-2010-052-03A, tab 2. The CBSA determined that both types of fasteners met the definition of “made up” articles of textile set out in note 7 of Section XI of the schedule to the *Customs Tariff*.

4. Tribunal Exhibit AP-2010-052-03A, tab 3.

5. *Ibid.*, tab 4. The CBSA determined that the goods in issue were not the same type of goods as those covered by heading No. 96.06 and confirmed its initial ruling that the circular fasteners in issue are considered “made up” articles of textile of heading No. 63.07 in accordance with note 7(a) of Section XI of the schedule to the *Customs Tariff*, since they are “[c]ut otherwise than into squares or rectangles”. However, with respect to the rectangular fasteners in issue, the CBSA amended its advance ruling and found that they could not be considered “made up” articles of textiles because they are cut into a rectangular shape. On the basis of a laboratory analysis, which confirmed that the rectangular fasteners in issue were made of a nylon fabric coated on the non-pile side with a pressure-sensitive adhesive of synthetic rubber and weighed less than 1,500 g/m², the CBSA re-determined the classification of the rectangular fasteners in issue and ruled that they were properly classified in heading No. 59.06 as adhesive tape of a width not exceeding 20 cm, of rubberized textile fabrics other than those of heading No. 59.02.

Customs Tariff, the rectangular fasteners in issue were excluded from classification in heading No. 63.07 because of their rectangular shape.

6. On September 19, 2010, H. A. Kidd disputed the preliminary decision and provided additional submissions to support the classification of the goods in issue under tariff item No. 9606.10.00.⁶

7. On October 6, 2010, pursuant to subsection 60(4) of the *Act*, the CBSA issued its final decision and confirmed its advance ruling that classified the circular fasteners in issue under tariff item No. 6307.90.99. The CBSA also confirmed that it was revising the advance ruling with respect to the tariff classification of the rectangular fasteners in issue on the basis of its conclusion that they were properly classified under tariff item No. 5906.10.90.⁷

8. On December 9, 2010, H. A. Kidd filed the present appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.⁸

9. On May 24, 2011, the Tribunal held a public hearing in Ottawa, Ontario. Mr. Jacques Hardy, chemist, Science and Engineering Directorate, CBSA, testified on behalf of the CBSA. Mr. Hardy was qualified by the Tribunal as an expert in the area of textile product analysis.⁹ H. A. Kidd did not call any witnesses.

GOODS IN ISSUE

10. There are two types of similar goods in issue in this appeal. The main difference between them is their shape. As noted above, the goods in issue are certain circular- and rectangular-shaped self-gripping fasteners used to fasten apparel and clothing accessories.

11. The parties agree that the goods in issue, as analyzed by the CBSA's laboratory,¹⁰ consist of two parts similar to Velcro® fasteners. The goods in issue are coated with pressure adhesive synthetic rubber, which in turn is covered with a paper backing. They are packaged for retail sale with matching hook and loop fastener parts.

12. The hook and loop parts of the goods in issue are made of woven ground fabric of black man-made filament yarns (nylon) with a woven-in pile of black man-made textile monofilaments (nylon).¹¹ Each of the pile loops has been cut part way up on one side of the loop, resulting in the formation of rows of hooks.

6. Tribunal Exhibit AP-2010-052-03A, tab 5.

7. *Ibid.*, tab 6.

8. Tribunal Exhibit AP-2010-052-01.

9. *Transcript of Public Hearing*, 24 May 2011, at 14.

10. Laboratory report dated August 8, 2010; Tribunal Exhibit AP-2010-052-05A, tab 3.

11. In this regard, the CBSA laboratory analysis confirms that the goods in issue are woven ground nylon fabric with a woven-in pile. H. A. Kidd agrees with this analysis. Regarding the apparent contradiction between the claim at paragraphs 40 to 42 and 51 of the appellant's brief (Tribunal Exhibit AP-2010-052-03A) that the goods in issue are not of woven fabric and the acknowledgement at paragraph 7 of the same brief that the products "... are an assembly of two individual pieces of woven pile fabric ...", H. A. Kidd acknowledged, at the hearing, that the goods in issue are in fact of woven pile fabric and explained that the discrepancy in its brief was the result of an attempt to reflect its subsequent change in sourcing and the importation of goods other than the goods in issue manufactured in a different way. *Transcript of Public Hearing*, 24 May 2011, at 37.

13. The circular fasteners in issue are described as medium- and light-duty fasteners with self-basting adhesive. They consist of four pairs of black circles (i.e. eight circles), with one model having a diameter of 2.2 cm and the other model having a diameter of 1.4 cm.

14. The rectangular fasteners in issue are described as all-purpose self-gripping fasteners with self-basting adhesive. They are 1.6 cm wide and 25 cm long, weigh less than 1,500g/m² and have two false selvages on each side of the fabric.¹²

15. The CBSA filed the following physical exhibits:¹³

- B-01 All-purpose rectangular self-gripping fasteners, one pair, 1.6 cm wide and 25 cm long
- B-02 Self-gripping fasteners, four pairs, circular, medium-duty, 2.2 cm in diameter
- B-03 Self-gripping fasteners, four pairs, circular, light-duty, 1.4 cm in diameter

ANALYSIS

Statutory Framework

16. In appeals under 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.

17. 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.¹⁴ 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.

18. 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*¹⁵ and the *Canadian Rules*¹⁶ set out in the schedule."

19. 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.¹⁷ Classification therefore begins with Rule 1, which provides as follows: "... for legal purposes, classification shall be determined according to the terms of the headings and any relative

12. Tribunal Exhibit AP-2009-052-03A; Tribunal Exhibit AP-2009-052-05A; Tribunal Exhibit AP-2010-052-09.

13. Tribunal Exhibit AP-2010-052-09.

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

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

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

17. 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).

Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.”

20. 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^[18] and the Explanatory Notes to the Harmonized Commodity Description and Coding System,^[19] 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.²⁰

21. Thus, the Tribunal must first determine in which tariff heading the goods in issue can be classified according to the terms of the headings and any relevant section or chapter notes in the *Customs Tariff*.

22. 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.²¹

Relevant Provisions of the Customs Tariff, Section and Chapter Notes, and Explanatory Notes

23. The provisions of the *Customs Tariff* that H. A. Kidd claims are applicable to the goods in issue are as follows:

Section XX

MISCELLANEOUS MANUFACTURED ARTICLES

Chapter 96

MISCELLANEOUS MANUFACTURED ARTICLES

...

96.06 Buttons, press-fasteners, snap-fasteners and press-studs, button moulds and other parts of these articles; button blanks.

9606.10.00 -Press-fasteners, snap-fasteners and press-studs and parts therefor

24. The relevant *Explanatory Notes* to Chapter 96 and heading No. 96.06 are as follows:

CHAPTER 96

MISCELLANEOUS MANUFACTURED ARTICLES

Notes.

...

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

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

20. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLIL), paras. 13, 17.

21. Rule 6 of the *General Rules* stipulate that, “[f]or legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

GENERAL

This Chapter covers . . . various other articles **not more specifically covered** by other headings in the Nomenclature.

...

96.06 . . .

...

This heading covers buttons, studs, and *similar articles used for fastening or decorating articles of apparel*, household linen, etc. *These articles may be made of various materials* . . .

The principal materials used for making buttons, studs, etc., are base metals, wood, corozo, dom, bone, horn, *plastics*, ceramics, glass, ebonite, compressed paperboard, leather, composition leather, ivory, tortoise-shell or mother-of-pearl. They may also consist of combinations of these materials and may be textile covered.

This heading includes:

...

- (B) **Press-fasteners, snap-fasteners and press-studs.** *These consist of two or more parts, and operate by means of a snap mechanism.* Such fasteners and studs may be designed for sewing on garments, etc., or they may be attached by “riveting” (e.g., press-studs for gloves).

Press-fasteners and the like remain classified in this heading when the separate parts are supplied already mounted on strips of narrow tape.

[Italics added for emphasis]

25. The provisions of the *Customs Tariff* that the CBSA considers applicable to the circular fasteners in issue are as follows:

Section XI

TEXTILES AND TEXTILE ARTICLES

...

Chapter 63

OTHER MADE UP TEXTILE ARTICLES; SETS;
WORN CLOTHING AND WORN TEXTILE ARTICLES; RAGS

...

I. -OTHER MADE UP TEXTILE ARTICLES

...

63.07 Other made up articles, including dress patterns.

...

6307.90 -Other

...

--Other:

...

6307.90.99 - - -Of other textile materials [other than cotton or other vegetable textile fibres, except solely of jute]

26. The relevant section notes to Section XI are as follows:

Section XI

TEXTILES AND TEXTILE ARTICLES

Notes.

1. This Section does not cover:

...

- (u) Articles of Chapter 96 (for example, brushes, travel sets for sewing, slide fasteners and typewriter ribbons); or

...

7. For the purpose of this Section, the expression “made up” means:

- (a) Cut otherwise than into squares or rectangles;

...

8. For the purposes of Chapters 50 to 60:

- (a) Chapters 50 to 55 and 60 and, except where the context otherwise requires, Chapters 56 to 59 do not apply to goods made up within the meaning of Note 7 above; and

...

11. For the purpose of this Section, the expression “impregnated” includes “dipped”.

...

Subheading Notes.

...

2. (A) Products of Chapters 56 to 63 containing two or more textile materials are to be regarded as

...

- (b) in the case of textile products consisting of a ground fabric and a pile or looped surface no account shall be taken of the ground fabric;

...

27. The relevant chapter notes to Chapter 63 are as follows:

Chapter 63

**OTHER MADE UP TEXTILE ARTICLES; SETS;
WORN CLOTHING AND WORN TEXTILE ARTICLES; RAGS**

Notes.

1. Sub-Chapter I applies only to made up articles, of any textile fabric.

28. The relevant *Explanatory Notes* to Section XI, Chapter 63 and heading No. 63.07 are as follows:

SECTION XI

TEXTILES AND TEXTILE ARTICLES

...

GENERAL

In general, Section XI covers raw materials of the textile industry (silk, wool, cotton, man-made fibres, etc.), semi-manufactured products (such as yarns and woven fabrics) and the made up articles made from those products. . . .

...

Section XI is divided into fourteen Chapters which may be considered in two parts, the first (Chapters 50 to 55) being divided according to the nature of the textile material, and the second (Chapters 56 to 63), with the exception of headings 58.09 and 59.02, covering products without distinction, at heading level, as to the nature of the textile.

...

(II) CHAPTERS 56 TO 63

Chapters 56 to 63 cover certain kinds of textile fabrics and other textile articles **not** covered by Chapters 50 to 55 They also include (subject to **exclusions** regarding certain articles classified elsewhere than in Section XI) made up textile articles.

Made up articles.

Under Note 7 to this Section, the expression “made up” in Chapters 56 to 63 means:

- (1) **Merely cut, otherwise than into squares or rectangles**, for example, dress patterns of textile material; articles with their edges pinked (e.g., certain dusters) are also regarded as made up.

...

Chapter 63

OTHER MADE UP TEXTILE ARTICLES; SETS; WORN CLOTHING AND WORN TEXTILE ARTICLES; RAGS

...

GENERAL

This Chapter includes:

- (1) Under headings 63.01 to 63.07 (sub-Chapter I) made up textile articles of any textile fabric (woven or knitted fabric, felt, nonwovens, etc.) which are **not** more specifically described in other Chapters of Section XI or elsewhere in the Nomenclature. (The expression “made up textile articles” means articles made up in the sense defined in Note 7 to Section XI)

...

SUB-CHAPTER I

OTHER MADE UP TEXTILE ARTICLES

...

63.07 - Other made up articles, including dress patterns.

...

This heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.

...

The heading **excludes** textile articles classified in more specific headings of this Chapter or of Chapters 56 to 62.

29. The provisions of the *Customs Tariff* that the CBSA considers applicable to the rectangular fasteners in issue are as follows:

Section XI

TEXTILES AND TEXTILE ARTICLES

...

Chapter 59

**IMPREGNATED, COATED, COVERED OR LAMINATED TEXTILE
FABRICS; TEXTILE ARTICLES OF A KIND
SUITABLE FOR INDUSTRIAL USE**

...

59.06 Rubberized textile fabrics, other than those of heading 59.02.

5906.10 -Adhesive tape of a width not exceeding 20 cm

...

5906.10.90 - - Other [than adhesive tape of the specified width for use in the manufacture of thermionic, cold cathode or photo-cathode valves and tubes, which is covered by tariff item No. 5906.10.10]

30. The relevant section notes to Section XI mentioned above also apply to Chapter 59, since that chapter, like Chapter 63, is included in Section XI.

31. The relevant chapter notes to Chapter 59 are as follows:

Chapter 59

**IMPREGNATED, COATED, COVERED OR LAMINATED TEXTILE
FABRICS; TEXTILE ARTICLES OF A KIND
SUITABLE FOR INDUSTRIAL USE**

Notes.

1. Except where the context otherwise requires, for the purpose of this Chapter the expression “textile fabrics” applies only to the woven fabrics of Chapters 50 to 55 and headings 58.03 and 58.06, the braids and ornamental trimmings in the piece of heading 58.08 and the knitted or crocheted fabrics of headings 60.02 to 60.06.

...

4. For the purpose of heading 59.06, the expression “rubberised textile fabrics” means:
 - (a) Textile fabrics impregnated, coated, covered or laminated with rubber,
 - (i) Weighing not more than 1,500 g/m²; or

...

32. In addition to the *Explanatory Notes* to Section XI noted above that remain pertinent in the context of Chapter 59, the relevant *Explanatory Notes* to heading No. 59.06 are as follows:

CHAPTER 59

**IMPREGNATED, COATED, COVERED OR LAMINATED
TEXTILE FABRICS; TEXTILE ARTICLES OF A KIND
SUITABLE FOR INDUSTRIAL USE**

...

59.06 - Rubberised textile fabrics, other than those of heading 59.02.

...

This heading covers:

- (A) Textile fabrics impregnated, coated, covered or laminated with rubber, including dipped fabrics (**other than** those of **heading 59.02**), of a weight:

(1) not exceeding 1,500 g/m², irrespective of the proportions of textile and rubber; or

...

- (D) Adhesive tape, including electrical insulating tape, in which the backing is of textile fabric, whether or not previously rubberised, and the adhesive of rubber.

Positions of PartiesH. A. Kidd

33. H. A. Kidd submitted that the goods in issue belong to the same product line for apparel and clothing accessories. They are marketed on H. A. Kidd's Web site as "Garment Making and Repair Consumables".²²

34. H. A. Kidd submitted that the goods in issue are properly classified in heading No. 96.06 and, more specifically, under tariff item No. 9606.10.00 as "[p]ress-fasteners, snap-fasteners and press-studs and parts therefor".

35. In support of its position, H. A. Kidd submitted that the exclusionary notes to Chapter 96 do not exclude items made of textile materials from the ambit of that chapter and that, therefore, as they are made of textile materials, the goods in issue may be covered by a heading of Chapter 96, namely, heading No. 96.06, to the extent that they meet the terms of that tariff heading. It further submitted that the CBSA, in its classification exercise, ignored note 1(u) to Section XI, which excludes articles of Chapter 96 from classification in a chapter and heading of Section XI. Therefore, since the goods in issue are articles of Chapter 96, as they meet the terms of heading No. 96.06, they cannot, according to H. A. Kidd, be classified in either heading No. 63.07 or heading No. 59.06, which are both headings included in Section XI, by virtue of this relevant section note.

36. Referring to heading No. 96.06, which explicitly covers "press-fasteners", and to the relevant *Explanatory Notes*, which make clear that heading No. 96.06 "... covers buttons, studs and similar articles used for fastening or decorating articles of apparel ...", H. A. Kidd submitted that the goods in issue are properly described as "press-fasteners", as indicated, *inter alia*, by the following facts: (a) they require the application of pressure for locking and unlocking operations; (b) they fall within the group of articles that are similar to those explicitly identified in the illustrative list contained in the *Explanatory Notes* (as evidenced by the fact that they are substitutes for buttons, studs or zippers); and (c) they are marketed as "Garment Making and Repair Consumables" on its Web site.

22. Tribunal Exhibit AP-2010-052-03A at paras. 5, 10, 31.

37. H. A. Kidd further submitted that the goods in issue, as press-fasteners, meet all the conditions of the *Explanatory Notes* to heading No. 96.06 and outlined this submission as follows:²³

EXPLANATORY NOTES

- “This heading covers . . . similar articles used for fastening . . .”
- “These articles may be made of various materials The principal materials used for making buttons, studs, etc., are . . . plastics . . .”
- “Such fasteners . . . may be designed for sewing on garments, etc. . . .”
- “Press-fasteners and the like remain classified in this heading when the separate parts are supplied already mounted on strips of narrow tape.”
- “Press-fasteners *and the like* . . .”

H. A. KIDD’S SUBMISSION

- The goods in issue consist of sets of two strips having the primary function of fastening.
- Nylon, a man-made fibre, can be considered one of these materials, especially as it is derived from plastic, which is specifically identified.
- The goods in issue are designed for sewing on garments or similar items.
- This suggests an inclusion of all fasteners on strips of narrow tape. The goods in issue consist of male (hook) and female (loop) parts in pile form in different shapes, including tape shape.
- The goods in issue perform the same function as press-fasteners, buttons and studs and can be used interchangeably.

[Emphasis added]

38. Recognizing that “press-fastener” is not a term that is defined in the tariff nomenclature, H. A. Kidd submitted that the goods in issue meet the following common and ordinary definitions of the terms “press” and “fasten” taken from *The New Oxford Dictionary of English*:

Press – “Move or cause to move into a position of contact with something by exerting continuous physical force . . .”

Fasten – “verb [with obj.] close or do up securely . . . Fastener – Noun.”²⁴

39. With respect to the phrase “...operate by means of a snap mechanism” found in the *Explanatory Notes* to heading No. 96.06, which suggests that goods of heading No. 96.06 should operate through this specific mechanism, H. A. Kidd argued that the *Explanatory Notes* do not state that the goods listed in the heading have to “snap shut” but, rather, that they operate by means of a “snap mechanism”.

40. Given that the phrase “snap mechanism” is not defined in the *Explanatory Notes*, H. A. Kidd submitted the following dictionary definitions in order to ascribe meaning to this expression: “**2. to click, as a mechanism or the jaws or teeth coming together**” and “**24. a catch or fastener that closes by pressure and clicks together.**”²⁵ H. A. Kidd also referred to the following definition of the word “snap”: “to close *or* fit in place with an abrupt movement *or* sharp sound”²⁶ [emphasis added]. In H. A. Kidd’s view, the evidence indicates that the goods in issue fit in place by interlocking, when pressed together, with an abrupt movement and, therefore, operate as a snap mechanism.

23. *Ibid.* at 8-9.

24. *Ibid.* at 9-10.

25. *Ibid.*, tab 5 at 29, 30.

26. Tribunal Exhibit AP-2010-052-05A, tab 7 at 85; *Transcript of Public Hearing*, 24 May 2011, at 33-35.

41. H. A. Kidd submitted that the goods in issue fit *prima facie* within the language of heading No. 96.06, applying Rule 1 of the *General Rules*, and that there is nothing in the relevant section or chapter notes that precludes classification of the goods in issue in that heading. H. A. Kidd further submitted that these notes and the relevant *Explanatory Notes* support its position that the goods in issue meet the terms of heading No. 96.06. In further support of its position, H. A. Kidd cited the Tribunal's decision in *Standard Products Inc. v. President of the Canada Border Services Agency*,²⁷ where the Tribunal stated the following:

19. In other words, the above legislation requires the Tribunal to follow several steps when applying Rule 1 of the *General Rules*, in order to properly determine the heading that correctly describes the goods: first, to examine the schedule to see if the goods fit *prima facie within the language of a particular tariff heading*; second, to see if there is anything in the Section or Chapter notes that supports, or precludes, classification of the goods in the heading; and, third, to examine the *Classification Opinions* and *Explanatory Notes* for the same purpose.

[Emphasis added]

42. In response to the reasons underlying the CBSA's decision to classify the circular fasteners in issue in heading No. 63.07, H. A. Kidd noted that the *Explanatory Notes* to Chapter 63 regarding "other made up articles" provide as follows:

This Chapter includes:

- (1) Under headings 63.01 to 63.07 (sub-Chapter I) made up textile articles of any textile fabric . . . which are **not** more specifically described in other Chapters of Section XI or elsewhere in the Nomenclature. (The expression "made up textile articles" means articles made up in the sense defined in Note 7 to Section XI . . .)

43. H. A. Kidd further noted that the *Explanatory Notes* to heading No. 63.07 for "other made up articles" specifically provide as follows:

This heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.

44. H. A. Kidd claimed that, because the circular fasteners in issue are more specifically described in heading No. 96.06, they cannot be classified in heading No. 63.07, as determined by the CBSA.

45. H. A. Kidd further argued, in regard to the rectangular fasteners in issue, that note 1 to Chapter 59 limits the application of the expression "textile fabrics" to woven fabrics:²⁸

1. Except where the context otherwise requires, for the purpose of this Chapter the expression "textile fabrics" *applies only to the woven fabrics* of Chapters 50 to 55 and headings 58.03 and 58.06, the braids and ornamental trimmings in the piece of heading 58.08 and the knitted or crocheted fabrics of headings 60.02 to 60.06.

[Emphasis added]

46. In its brief, H. A. Kidd submitted that the goods in issue are the product of a needle punching machine (loom) and that there is no weaving involved and appeared to argue that they were not, therefore, classifiable in Chapter 59. However, at the hearing, H. A. Kidd explained that it currently imports self-gripping fasteners made by a needle punching machine and that there is no weaving involved.

27. (28 October 2008), AP-2007-011 (CITT).

28. Tribunal Exhibit AP-2010-052-03A at 11.

However, it acknowledged that these needle-punched fasteners are not the goods in issue and, in doing so, appeared to have abandoned its claim that the rectangular fasteners in issue are not woven fabrics.

47. Finally, H. A. Kidd claimed that the rectangular fasteners in issue are not classifiable under tariff item No. 5906.10.90 as other adhesive tapes, as re-determined by the CBSA.²⁹ In H. A. Kidd's view, they are not properly considered to be adhesive tapes because they do not derive their essential character from the adhesive quality (with the textile fabric being present for its reinforcing purposes only). H. A. Kidd submitted that the adhesive is applied to the goods in issue only to temporarily hold the fasteners in place until they are permanently sewn to an apparel item or fabric.

CBSA

– Classification of the Circular Fasteners in Issue

48. The CBSA submitted that the circular fasteners in issue are properly classified as other made-up textile articles of heading No. 63.07 and, in particular, under tariff item No. 6307.90.99, which covers other articles of other textile materials.

49. The CBSA laboratory report indicates that the circular fasteners in issue are made of woven ground fabric of nylon filament yarns with woven-in pile of nylon textile monofilaments. As previously mentioned, this fact was acknowledged by H. A. Kidd.

50. The CBSA argued that the circular fasteners in issue meet the following definition of "made up" articles set out in note 7(a) to Section XI³⁰ and are therefore properly classified in heading No. 63.07:

7. For the purpose of this Section, the expression "made up" means:

(a) Cut otherwise than into squares or rectangles;

...

51. In short, the CBSA's position is that the circular fasteners in issue, being made of nylon, a man-made fibre (a textile article), and being cut otherwise than into squares or rectangles (a fact which renders them "made up" articles), are properly classified in heading No. 63.07, which provides for "[o]ther made up articles, including dress patterns", and, in particular, under tariff item No. 6307.90.99, which covers other made-up articles of textile materials other than cotton or other vegetable textile fibres, except solely of jute.

– Classification of the Rectangular Fasteners in Issue

52. The CBSA submitted that the rectangular fasteners in issue are properly classified in heading No. 59.06 as rubberized textile fabrics, other than those of heading 59.02.

53. The CBSA laboratory analysis confirmed that the rectangular fasteners in issue are made of woven ground nylon fabric with a woven-in pile.³¹ However, the CBSA argued that the rectangular fasteners in issue are excluded from classification in heading No. 63.07 by virtue of the fact that Chapter 63 only covers "made up" textile articles. In this regard, the CBSA argued that the rectangular fasteners in issue do not

29. *Ibid.* at 11-12; *Transcript of Public Hearing*, 24 May 2011, at 36-37.

30. Tribunal Exhibit AP-2010-052-05A at para. 22, tab 4 at 51.

31. *Ibid.*, tab 3.

meet the definition of “made up” because note 7(a) to Section XI excludes textile articles cut into squares or rectangles from the definition of the expression “made up”.³²

54. The CBSA therefore submitted that the classification of the rectangular fasteners in issue begins with consideration of heading No. 58.01, which provides for “[w]oven pile fabrics and chenille fabrics, *other than fabrics of heading 58.02 or 58.06*” [emphasis added]. The CBSA noted that, because the rectangular fasteners in issue are cut less than 30 cm wide, they meet the definition of note 5(a) to Chapter 58 and constitute “narrow woven fabrics” of heading No. 58.06 and, thus, are excluded from heading No. 58.01.³³

55. Furthermore, the CBSA referred to note 1 to Chapter 58, which provides as follows:

1. This Chapter does not apply to textile fabrics referred to in Note 1 to Chapter 59, impregnated, coated, covered or laminated, *or to other goods of Chapter 59.*

[Emphasis added]

56. Because the goods in issue have been coated on the non-pile side with pressure-sensitive adhesive of synthetic rubber, the CBSA considered a tariff heading of Chapter 59 and, specifically, heading No. 59.06, which covers “[r]ubberized textile fabrics, other than those of heading 59.02” [emphasis added], to be relevant.

57. In regard to heading No. 59.06, note 4(a)(i) to Chapter 59 provides as follows:

4. For the purpose of heading 59.06, the expression “rubberised textile fabrics” means:
 - (a) Textile fabrics impregnated, coated, covered or laminated with rubber,
 - (i) Weighing not more than 1,500 g/m²; or

...

58. The CBSA argued that, (1) because the rectangular fasteners in issue are coated on the non-pile side with pressure-sensitive adhesive of synthetic rubber and (2) weigh less than 1,500 g/m², they are rubberized textile fabrics classifiable as such in heading No. 59.06.³⁴

59. The CBSA also argued that, because the rectangular fasteners in issue are “adhesive tapes” of only 1.6 cm in width, they qualify under subheading No. 5906.10 as “[a]dhesive tape of a width not exceeding 20 cm”.

60. The CBSA further noted that H. A. Kidd did not dispute the fact that the rectangular fasteners in issue have a rubber adhesive that allows them to be fixed to apparel or fabric. Therefore, due to the presence of an adhesive on the non-pile side, the rectangular fasteners in issue are properly classified as other adhesive tape of a width not exceeding 20 cm under tariff item No. 5906.10.90.³⁵

32. Note 1 to Chapter 63 also provides as follows: “Sub-Chapter I [which includes heading No. 63.07] applies only to made up articles, of any textile fabric.”

33. Note 5(a) to Chapter 58 defines “narrow woven fabrics” as follows: “Woven fabrics of a width not exceeding 30 cm, whether woven as such or cut from wider pieces, provided with selvages (woven, gummed or otherwise made) on both edges”.

34. Tribunal Exhibit AP-2010-052-05A, tab 3 at 24.

35. *Ibid.* at para. 25.

61. Finally, the CBSA acknowledged that heading No. 96.06 refers to "...press-fasteners, snap-fasteners and press-studs . . .", but contended that the goods in issue are not the type of press-fasteners provided for in the heading, as contemplated by the *Explanatory Notes* to heading No. 96.06.

62. The CBSA submitted that, according to the *Explanatory Notes*, in order for fasteners to be classified in heading No. 96.06, they must consist of two pieces and operate by means of a snap mechanism. According to the CBSA, this means that one piece must fit *into* the other and *snap* shut. The CBSA argued that, although the goods in issue perform a function similar to the goods listed in the *Explanatory Notes* to heading No. 96.06, they do not operate by means of a snap mechanism and, for this reason, cannot be described as "press-fasteners", taking into account the guidance provided by the *Explanatory Notes* regarding the meaning of these terms.

63. The CBSA noted that *The Concise Oxford Dictionary* defines "snap" as follows: "7. Close etc. with snapping sound (*snap the clasp*, one's *teeth together*, *the door snapped to*); move smartly (*snapped to attention*)", and that the *Merriam-Webster Dictionary* defines "snap" as follows: "5: to close or fit in place with an abrupt movement or sharp sound".³⁶

64. The CBSA further submitted that *The Concise Oxford Dictionary* defines the word "mechanism" as follows: "Structure, adaptation of parts, of machine (lit. or fig.); system of mutually adapted parts working together (as) in machine . . .".³⁷

65. Accordingly, the CBSA argued that a "press-fastener", as contemplated by the *Customs Tariff*, is a fastener with mutually adapted parts which close with a snapping sound or fit in place with an abrupt movement or sharp sound. In this regard, it contended that such fasteners do not include the goods in issue, which have a Velcro[®]-like system for fastening, a system that is different from a snap mechanism and does not possess its features. In the CBSA's view, heading No. 96.06 does not extend to all goods capable of fastening and designed to be sewn on garments.³⁸

Tariff Classification of the Goods in Issue

66. Pursuant to Rule 1 of the *General Rules*, classification shall be determined according to the terms of the headings and any relevant section or chapter notes. In this regard, the Tribunal observes that note 1(u) to Section XI, which includes both Chapters 59 and 63, specifically excludes "[a]rticles of Chapter 96 (for example, brushes, travel sets for sewing, slide fasteners and typewriter ribbons)" from classification in Section XI. On the other hand, it is not disputed and the Tribunal finds that the exclusionary notes to Chapter 96 do not exclude textile articles from the ambit of that chapter.

67. That being the case, the Tribunal considers it appropriate to take, as its analytical point of departure, a consideration of whether the goods in issue are classifiable in heading No. 96.06, as submitted by H. A. Kidd. If the Tribunal finds that the goods in issue are not classifiable in that heading, it will then proceed to a determination of whether the goods in issue are properly classified in heading Nos. 59.06 and 63.07, as submitted by the CBSA, or elsewhere in the nomenclature.

Are the Goods in Issue Press-fasteners of Heading No. 96.06?

68. Heading No. 96.06 covers "[b]uttons, press-fasteners, snap-fasteners and press-studs, button moulds and other parts of these articles; button blanks". The Tribunal notes that, because the items are listed

36. *Ibid.*, tab 7.

37. *Ibid.*

38. *Transcript of Public Hearing*, 24 May 2011, at 45-46.

separately, the terms “buttons”, “press-fasteners”, “snap fasteners” and “press-studs” must be taken to describe different articles. The parties’ submissions centre on the issue of whether the goods in issue constitute “press-fasteners”. With the other articles listed in heading No. 96.06 not appearing to be relevant in this appeal, the Tribunal will focus on the issue of whether the goods in issue constitute “press-fasteners”.

69. In this regard, the Tribunal examined dictionary definitions of the terms “press” and “fastener”. “Press” is defined as follows: “apply steady force to (a thing in contact) . . .”³⁹ and “**1** Cause to move in some direction or into some position by pressure . . .”⁴⁰ “Fastener” is defined as follows: “. . . a device for fastening”,⁴¹ and the verb “fasten” as follows: “**3** . . . fix or hold securely in position . . .”⁴² and “**1 b** : to make fast and secure”.⁴³

70. The Tribunal notes that the goods in issue are made of two parts, a loop and a hook, and that, insofar as they operate through the application of force/pressure to cause the hooks of one part to move into position by catching the loops of the other part, so as to securely fasten, the Tribunal comes to the *prima facie* conclusion that the goods in issue can generally be described as “press-fasteners”. The Tribunal notes, in this regard, the CBSA’s following statement: “There’s certainly no disagreement that there are two or more parts here, that they are intended . . . to fasten and that the goods come together, adhere, by means of pressure.”⁴⁴

71. In discerning the specific meaning to be ascribed to the term “press-fasteners” for the purposes of heading No. 96.06, the Tribunal finds that the following *Explanatory Notes* to the heading, while not legally binding, offer useful guidance:

This heading covers buttons, studs, and *similar articles used for fastening or decorating articles of apparel*, household linen, etc. *These articles may be made of various materials* and they may contain natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed), precious metal or metal clad with precious metal **provided** these latter materials are present as **minor components only**. Otherwise they fall in **Chapter 71**.

The principal materials used for making buttons, studs, etc., are base metals, wood, corozo, dom, bone, horn, *plastics*, ceramics, glass, ebonite, compressed paperboard, leather, composition leather, ivory, tortoise-shell or mother-of-pearl. They may also consist of combinations of these materials and may be textile covered.

The heading includes:

...

(B) **Press-fasteners, snap-fasteners and press-studs.** *These consist of two or more parts, and operate by means of a snap mechanism. Such fasteners and studs may be designed for sewing on garments, etc., or they may be attached by “riveting” (e.g., press-studs for gloves).*

Press-fasteners and the like remain classified in this heading when the separate parts are supplied already mounted on strips of narrow tape.

[Emphasis added]

39. *The Concise Oxford Dictionary*, 9th ed., s.v. “press”.

40. *Shorter Oxford English Dictionary*, 5th ed., s.v. “press”.

41. *Ibid.*, s.v. “fastener”.

42. *Ibid.*, s.v. “fasten”.

43. *Merriam-Webster’s Collegiate Dictionary*, 11th ed., s.v. “fasten”.

44. *Transcript of Public Hearing*, 24 May 2011, at 43-44.

72. In its assessment of the goods in issue, as they were presented at the time of importation, against the requirements of heading No. 96.06, as elaborated in the *Explanatory Notes*, the Tribunal finds:

- that the goods in issue are used for “fastening articles of apparel” and, in this regard, are designed for “sewing on garments”, which is a purpose specifically identified in the *Explanatory Notes*;
- that, by virtue of the fact that the goods in issue fulfill the same purpose as, and can be used interchangeably with, buttons and studs for many applications, they constitute “similar articles” within the meaning of that phrase in the *Explanatory Notes*;
- that nylon (which is the man-made plastic fibre⁴⁵ of which the goods in issue are made) falls within the ambit of the phrase “various materials”, which, according to the accompanying illustrative list, includes “plastics”;
- that, consistent with the requirement in the *Explanatory Notes*, the goods in issue “consist of two or more parts”, in particular, mutually adapted textile pieces, with one having a hook side and the other a loop side, which are locked together by pressing the former into the latter; and
- that, in accordance with the *Explanatory Notes*, the rectangular fasteners in issue, though mounted on an adhesive tape, would remain classified in heading No. 96.06 if they otherwise fell within the ambit of the phrase “press-fasteners and the like”.

73. There remains however the issue of whether the goods in issue operate by way of “a snap mechanism”, as set out in the *Explanatory Notes*.

74. The word “snap” can operate as a verb, noun or adjective, with its precise meaning depending on the specific context of its usage in each particular case. The Tribunal notes that, in the context of heading No. 96.06 and the *Explanatory Notes* thereto, the word “snap” operates as an adjective that modifies the nouns “fastener” and “mechanism” respectively. However, insofar as the reference in the *Explanatory Notes* to an operation “. . . by means of a snap mechanism” is purportedly in respect of both snap-fasteners and press-fasteners, it is the Tribunal’s view that, to ascribe the same meaning to the word “snap” in both contexts would effectively subsume “press-fasteners” under the definition of “snap-fasteners”, thereby depriving the former of independent meaning and purpose in heading No. 96.06.

75. Accordingly, it is the Tribunal’s view that the term “snap mechanism”, in the context of its usage in the *Explanatory Notes*, must be taken to have a broader meaning than that which describes the particular type of snap mechanism by which snap-fasteners function, as to suggest otherwise would effectively deprive the separate reference to press-fasteners in heading No. 96.06 of independent meaning and purpose. In this regard, the Tribunal rejects the CBSA’s contention that the term “snap mechanism” should be ascribed a narrow interpretation⁴⁶ and accepts H. A. Kidd’s submission that a “. . . [s]nap mechanism [must cover] all types of mechanism[s] . . . involved in [the] operating functions of all the three items including press-fasteners [A] denial based on a limited meaning of the word ‘snap’ deserves . . . second thoughts”.⁴⁷

45. *Ibid.* at 23. Mr. Hardy confirmed that the goods in issue were made of nylon, a polyamide, which is a plastic material.

46. *Transcript of Public Hearing*, 24 May 2011, at 49.

47. Appellant’s brief, Tribunal Exhibit AP-2010-052-03A, tab 5 at 32; *Transcript of Public Hearing*, 24 May 2011, at 38-39.

76. Indeed, the conspicuous absence of a snap mechanism requirement in the French version of the *Explanatory Notes* lends further support to the view that classification in heading No. 96.06 should not turn on a narrow interpretation of that requirement in the English version.⁴⁸ In this regard, it is worth noting that the French version of the *Explanatory Notes* puts emphasis on the fact that press-fasteners are closed or interlocked by applying pressure (i.e. “... formés de deux ou plusieurs parties et *fermés par pression*” [emphasis added]), as opposed to an operation by way of a snap mechanism. As noted above, it is beyond dispute that the goods in issue fasten or come together by applying pressure. In this way, the French version of the *Explanatory Notes* suggests that the expression “snap mechanism” may be broadly interpreted to include fasteners that interlock through a pressure mechanism.

77. The Tribunal is also of the view that the fact that the word “snap”, in the context of the *Explanatory Notes* to heading No. 96.06, modifies the word “mechanism” suggests that it relates primarily to the mechanics of the fastener rather than to the sound that the fastener might emit when being engaged, a point with which the CBSA agreed during the hearing:

Presiding Member: Would it not be that . . . when we look at “snap mechanism,” the word “snap” is actually a modifier which relates primarily to the mechanical functionality aspect rather than to a sound that is emitted by the fastener when it’s engaged?

[Respondent’s Counsel]: I would agree with that. I don’t believe that the suggestion was intended to be that there needed to be an audible sound, quite simply that they abruptly clicked together. And I don’t mean “clicked” as in the sound “click”; I mean as in the two sides [having] an abrupt adhesion . . . but it is the mechanism. It’s that abruptness of the mechanism.⁴⁹

78. The Tribunal notes that among the dictionary definitions of “snap” are the following: “**5** : to close or fit in place with an abrupt movement or sharp sound . . .”;⁵⁰ and “**6** *verb intrans.* Snatch or catch quickly at a thing”;⁵¹ and “**5. d.** To secure . . . quickly or readily.”⁵²

79. In the Tribunal’s view, these definitions essentially describe the manner in which the goods in issue function. In particular, pressing the two parts of the goods in issue together results in the hooks on the hook side of one part abruptly or quickly moving to fit into place by catching at the loops on the loop side of the other part, to readily secure the article being fastened. In short, each nylon hook snap can reasonably be viewed as snapping into a nylon loop.⁵³

48. The French version of heading No. 96.06 provides as follows: “*Boutons et boutons-pression; formes pour boutons et autres parties de boutons ou de boutons-pression; ébauches de boutons.*”

The French version of note (B) of the *Explanatory Notes* to heading No. 96.06 provides as follows: “*Les boutons-pression, formés de deux ou plusieurs parties et fermés par pression. On distingue ceux qui, munis de trous, sont cousus et ceux conçus pour être rivés (boutons-pression pour gants, par exemple). Les boutons-pressions présentés fixés de place en place sur ruban textile restent classés ici.*”

49. *Transcript of Public Hearing*, 24 May 2011, at 50-51.

50. *Merriam-Webster’s Collegiate Dictionary*, 11th ed., s.v. “snap”.

51. *Shorter Oxford Dictionary*, 5th ed., s.v. “snap”.

52. *The Oxford English Dictionary*, 2d ed., s.v. “snap”.

53. The Tribunal notes that the goods in issue have been described (in *Textile Terms and Definitions*, 11th ed., Tribunal Exhibit AP-2010-052-08A at 10) as “touch and close fasteners”, i.e. “[f]asteners consisting of two opposed tapes which repeatedly can be closed by the application of pressure and pulled apart manually. The fastening mechanism may be formed by minute hooks on the surface of one tape which interlock with minute loops on the face of the second tape . . .”

80. Viewed in relation to this functionality-based dimension to the definition of the word “snap” and to the meaning ascribed by the French version of the *Explanatory Notes* to heading No. 96.06, which describes a pressure mechanism without allusion to a snapping sound, the Tribunal finds that the goods in issue can properly be described as operating by means of a snap mechanism, this notwithstanding the absence of a discernible sharp snapping sound when the subject fasteners are engaged.

81. In light of the above, the Tribunal is of the view that the goods in issue satisfy all the requirements for classification in heading No. 96.06 and are properly classified under tariff item No. 9606.10.00. The Tribunal notes that, since there are no other tariff items in this heading, its conclusion that the goods in issue are classifiable in heading No. 96.06 necessarily means that tariff item No. 9606.10.00 is the applicable tariff item in this appeal.

82. Having so found and having regard to exclusionary note 1(u) to Section XI, the Tribunal does not feel compelled to consider whether the goods in issue are also classifiable in heading Nos. 63.07 and 59.06, as submitted by the CBSA. Indeed, by virtue of this legally binding section note, which provides that Section XI does not cover articles of Chapter 96, the Tribunal’s finding that the goods in issue are classifiable in heading No. 96.06 and are thus goods of Chapter 96 precludes them from being classified in heading No. 63.07 or 59.06, two headings that form part of Section XI.

83. Therefore, the Tribunal determines that, in accordance with Rules 1 and 6 of the *General Rules* and Rule 1 of the *Canadian Rules*, the goods in issue are properly classified under tariff item No. 9606.10.00 as press-fasteners.

DECISION

84. For the foregoing reasons, the appeal is allowed.

Pasquale Michael Saroli
Pasquale Michael Saroli
Presiding Member