Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2010-027

Kinedyne Canada Limited

v.

President of the Canada Border Services Agency

Decision and reasons issued
Tuesday, July 5, 2011

Canada

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IN THE MATTER OF an appeal heard on March 8, 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 April 12, 2010, with respect to a request for further re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

KINEDYNE CANADA LIMITED **Appellant**

AND

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

DECISION

The appeal is dismissed.

Diane Vincent
Diane Vincent
Presiding Member

Gillian Burnett
Gillian Burnett
Acting Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	March 8, 2011
Tribunal Member:	Diane Vincent, Presiding Member
Counsel for the Tribunal:	Courtney Fitzpatrick Nick Covelli
Research Director:	Randolph W. Heggart
Research Officer:	Gary Rourke
Manager, Registrar Office:	Michel Parent
Registrar Officer:	Julie Lescom

PARTICIPANTS:

Appellant	**Counsel/Representative**
Kinedyne Canada Limited	Zave Kaufman
Respondent	**Counsel/Representative**
President of the Canada Border Services Agency	Jessica DiZazzo

WITNESSES:

Romolo Di Vito General Manager Kinedyne Canada Limited	Larry Harrison Vice-President, North American Sales Kinedyne Corporation

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Kinedyne Canada Limited (Kinedyne) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*[1] from a decision of the President of the Canada Border Services Agency (CBSA), dated April 12, 2010, made pursuant to subsection 60(4).

2. The issue in this appeal is whether six models of winch straps (the goods 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 of other textile materials, as determined by the CBSA, or should be classified under tariff item No. 8431.10.00 as parts suitable for use solely or principally with the machinery of heading No. 84.25, as claimed by Kinedyne.

PROCEDURAL HISTORY

3. On July 3, 2009, Kinedyne imported the goods in issue under tariff item No. 6307.90.99.[3]

4. On August 4, 2009, Kinedyne requested a refund of duty pursuant to paragraph 74(1)(*e*) of the *Act*, claiming that the goods in issue should be classified under tariff item No. 8431.10.00.[4] On October 9, 2009, the CBSA issued a re-determination pursuant to paragraph 59(1)(*a*), denying the request for a refund of duty.[5]

5. On October 9, 2009, Kinedyne requested a further re-determination of the tariff classification pursuant to subsection 60(1) of the *Act*.[6]

6. On April 12, 2010, the CBSA further re-determined the tariff classification of the goods in issue under tariff item No. 6307.90.99 pursuant to subsection 60(4) of the *Act*.[7]

7. On July 7, 2010, Kinedyne filed a notice of appeal with the Tribunal pursuant to section 67 of the *Act*.[8]

8. On March 8, 2011, the Tribunal held a public hearing in Ottawa, Ontario.

9. Mr. Romolo Di Vito, General Manager at Kinedyne Canada Limited and Mr. Larry Harrison, Vice–President, North American Sales, at Kinedyne Corporation, testified on behalf of Kinedyne. The CBSA did not call any witnesses.

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1. R.S.C. 1985 (2d Supp.), c.1 [*Act*].
2. S.C. 1997, c. 36.
3. Tribunal Exhibit AP-2010-027-05A at para. 8.
4. *Ibid.*, tab 3.
5. *Ibid.*, tab 3.
6. *Ibid.*, tab 3.
7. *Ibid.*, tab 1.
8. Tribunal Exhibit AP-2010-027-01.

GOODS IN ISSUE

10. The goods in issue are six models of winch straps, which can be described as webbing, available in various lengths and widths, with various types of hardware (hooks, chain anchors or rings) sewn into one end. The other end of the goods in issue is heat sealed to prevent fraying. The straps consist of a resin-coated polyester.[9]

11. The goods in issue are identified by the following model numbers: C323021, C323040, C423010, C423010STEN, C423021 and C423021STEN.

12. Kinedyne filed physical exhibits of the following three models of the goods in issue: C323021, C323040 and C423010.[10]

ANALYSIS

Statutory Framework

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

14. 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.[11] 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.

15. Subsection 10(1) of the *Customs Tariff* provides that "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[12] and the Canadian Rules[13] set out in the schedule."

16. 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.[14] Classification therefore begins with Rule 1, which provides that, "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."

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9. Tribunal Exhibit AP-2010-027-05A, tab 1; Tribunal Exhibit AP-2010-027-03A at paras. 2-3.
10. Exhibits A-02, A-03 and A-04 respectively. Kinedyne also filed Exhibit A-01, identified as a Kinedyne winch strap, Rhino Web (workload limit 5,4000 lbs. or 2,450 kg), which is not one of the goods in issue, and Exhibit A-05, a DVD video clip.
11. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.
12. S.C. 1997, c. 36, schedule [*General Rules*].
13. S.C. 1997, c. 36, schedule.
14. Rules 1 through 5 of the *General Rules* apply to classification at the heading level (i.e. to four digits). Under 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).

17. Section 11 of the *Customs Tariff* provides that, in "interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System[15] and the Explanatory Notes to the Harmonized Commodity Description and Coding System,[16] published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time." 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 applied, unless there is a sound reason to do otherwise.[17]

18. Thus, the Tribunal first determines whether the goods in issue can be classified according to Rule 1 of the *General Rules* as per the terms of the headings and any relevant section or chapter notes in the *Customs Tariff*, having regard to any relevant *Explanatory Notes* or *Classification Opinions*. 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 should be classified.

19. 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.[18]

20. The Tribunal notes that section 13 of the *Official Languages Act*[19] provides that the English and French versions of any Act of Parliament are equally authoritative. Thus, the Tribunal may examine both the English and the French versions of the schedule to the *Customs Tariff* in interpreting the tariff nomenclature.

Tariff Classifications at Issue

21. The nomenclature of the *Customs Tariff*, which Kinedyne claims should apply to the goods in issue, provides as follows:

Section XVI

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

. . .

Chapter 84

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

. . .

84.31	**Parts suitable for use solely or principally with the machinery of headings 84.25 to 84.30.**
8431.10.00	**-Of machinery of heading 84.25**

15. World Customs Organization, 2d ed., Brussels, 2003 [*Classification Opinions*].
16. World Customs Organization, 4th ed., Brussels, 2007 [*Explanatory Notes*].
17. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17 [*Suzuki*].
18. Rule 6 of the *General Rules* stipulate that "For 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."
19. R.S.C. 1985 (4th Supp.), c. 31.

22. The relevant section notes to Section XVI provide as follows:

> 2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules:
>
> . . .
>
> (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 84.79 or 85.43) are to be classified with the machines of that kind or in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate. . . .

23. The relevant *Explanatory Notes* to Section XVI provide as follows:

> The Section **does not**, however, **cover**:
>
> . . .
>
> (c) Textile articles, e.g., transmission or conveyor belts (**heading 59.10**), felt pads and polishing discs (**heading 59.11**).

24. The relevant *Explanatory Notes* to heading No. 84.25 provide as follows:

> The heading covers:
>
> . . .
>
> (II) **WINCHES AND CAPSTANS**
>
> **Winches** consist of hand-operated or power-driven horizontal ratchet drums around which the cable is wound. **Capstans** are similar, but the drum is vertical.
>
> . . .
>
> **PARTS**
>
> **Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), *parts of the equipment of this heading are classified in* ***heading 84.31***.
>
> [Italics added for emphasis]

25. The relevant *Explanatory Notes* to heading No. 84.31 provide as follows:

> **Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), this heading covers parts for use **solely or principally** with the machinery of headings 84.25 to 84.30.

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

> **Section XI**
>
> **TEXTILES AND TEXTILE ARTICLES**
>
> . . .
>
> **Chapter 63**
>
> **OTHER MADE UP TEXTILE ARTICLES; SETS;**
> **WORN CLOTHING AND WORN TEXTILE ARTICLES; RAGS**
>
> . . .
>
> **63.07 Other made up articles, including dress patterns.**
>
> . . .

6307.90 -Other

. . .

---Other

. . .

6307.90.99 - - - -Of other textile materials

27. The relevant section notes to Section XI provide as follows:

> 7. For the purposes of this Section, the expression "made up" means:
>
> (a) Cut otherwise than into squares or rectangles;
>
> . . .
>
> (e) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded);
>
> . . .

28. The relevant *Explanatory Notes* to Chapter 63 provide as follows:

> The classification of articles in this sub-Chapter is not affected by the presence of minor trimmings or accessories of . . . metal . . . .
>
> Where, however, the presence of these other materials constitutes **more than** mere trimmings or accessories, the articles are classified in accordance with the relative Section or Chapter Notes (General Interpretative Rule 1), or in accordance with the other General Interpretative Rules as the case may be.

29. The relevant *Explanatory Notes* to heading No. 63.07 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.
>
> It includes, in particular:
>
> . . .
>
> (16) Belts which, although worn around the waist, do not have the character of belts of **heading 62.17**, e.g., belts for occupational use (electricians', aviators', parachutists', etc.); webbing carrier straps and similar articles. (Straps having the character of articles of saddlery or harness are **excluded** – heading 42.01.)

Positions of Parties

Kinedyne

30. Kinedyne argued that, pursuant to Rule 1 of the *General Rules*, the goods in issue should be classified in heading No. 84.31 as parts suitable for use principally with the machines of heading No. 84.25 (webbing winches) because they are used exclusively with winches and have no other application. It submitted that the goods in issue have been conceived, manufactured and marketed for use with a winch and that, at the time of use, they are both physically attached and functionally joined to a winch, forming a complete unit. It further contended that, without the goods in issue, a winch could not perform its intended function of securing cargo on a vehicle deck or flatbed trailer.

31. In support of this position, Kinedyne referred to Note 2(b) to Section XVI which provides as follows: "Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading . . . are to be classified with the machines of that kind or in heading . . . 84.31 . . . as appropriate." It submitted that it is appropriate for the goods in issue to be classified in heading No. 84.31 in this case, as they are parts suitable for use principally with winches and, therefore, meet the terms of that heading.

32. Kinedyne also referred to the *Explanatory Notes* to heading No. 84.25, which provide as follows: ". . . parts of the equipment of this heading are classified in **heading 84.31**." It submitted that winches and capstans are machines of heading No. 84.25, as they are specifically named in the *Explanatory Notes*, and that the goods in issue are parts thereof, which should be classified in heading No. 84.31.

33. Additionally, Kinedyne referred to the *Explanatory Notes* to heading No. 84.31, which provide as follows: ". . . this heading covers parts for use **solely or principally** with the machinery of headings 84.25 to 84.30." Kinedyne argued that, as the goods in issue are parts for use solely or principally with webbing winches, a machine classified in heading No. 84.25,[20] they are properly classified in heading No. 84.31.

34. While acknowledging that there is no universal test to determine whether goods are parts of other goods, Kinedyne referred to previous Tribunal jurisprudence, which outlined the following four criteria that have been considered by the Tribunal in making such determinations: "(1) whether the product in issue is essential to the operation of the other product; (2) whether the product in issue is a necessary and integral part of the other product; (3) whether the product in issue is installed in the other product; and (4) common trade usage and practice."[21] Kinedyne argued that the goods in issue meet three of the four criteria established by Tribunal case law for determining whether goods are parts of other goods and noted that not all the criteria must be met in each case. It submitted that the goods in issue are essential to the operation of the winch, necessary and integral to the use of the winch and, by common trade usage and practice, combine to form a functional unit with the winch and winch bars.[22]

35. As for the classification of the goods in heading No. 63.07, Kinedyne argued that the goods in issue cannot be "made up" articles of textile materials because they are of rectangular shape and, therefore, do not meet the definition of "made up" as per Note 7(a) to Section XV, which indicates that the expression "made up" means as follows: "(a) Cut otherwise than into squares or rectangles".

36. Kinedyne further argued that heading No. 63.07 is less specific than heading No. 84.31. It noted that heading No. 63.07 describes the goods in issue in generic terms, as other textile goods, whereas heading No. 84.31 provides a more specific description, namely, parts suitable for use solely or principally with winches. It also submitted that the hardware which is attached to one end of the goods in issue is essential to the functioning of the winch straps and affects the essential character of the goods in issue as textiles.

37. Finally, in response to the CBSA's argument that the goods in issue are similar to "webbing carrier straps", Kinedyne argued that the goods in issue are not similar to webbing carrier straps, as the latter are used to carry goods, whereas winch straps are used to secure goods to a vehicle.

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20. Tribunal Exhibit AP-2010-027-03A at para. 6 and tab C.
21. *GL&V/Black Clawson-Kennedy v. Deputy M.N.R.* (27 September 2000), AP-99-063 (CITT) at 9. See also *Philips Electronics Ltd. v. Deputy M.N.R.C.E.* (15 June 1992), AP-90-211 (CITT); *Snydergeneral Canada Inc. v. Deputy M.N.R.* (19 September 1994), AP-92-091 (CITT); *Nokia Products Limited v. Deputy M.N.R.* (26 July 2000), AP-99-082 (CITT); *Black & Decker Canada Inc. v. Commissioner of the Canada Customs and Revenue Agency* (3 November 2004), AP-2002-116 (CITT).
22. *Transcript of Public Hearing*, 8 March 2011, at 52.

CBSA

38. The CBSA argued that, pursuant to Rule 1 of the *General Rules*, the goods in issue are properly classified in heading No. 63.07, as they are "made up" articles of textile materials.

39. In support of this position, the CBSA submitted that the goods in issue meet the definition of "made up", as they meet the terms of Note 7(e) to Section XI, which states that "made up" means the following: "(e) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded)".

40. The CBSA argued that the goods in issue are similar to "webbing carrier straps" and are therefore properly classified in heading No. 63.07. It referred to the *Explanatory Notes* to heading No. 63.07, which provide that heading No. 63.07 includes the following:

> (16) Belts which, although worn around the waist, do not have the character of belts of **heading 62.17**, e.g., belts for occupational use (electricians', aviators', parachutists', etc.); webbing carrier straps and similar articles. (Straps having the character of articles of saddlery or harness are **excluded** – **heading 42.01**.).

41. The CBSA referred to the *Dictionary of Fiber & Textile Technology* which defines "webbing" as follows: "[s]trong, narrow fabric, closely woven in a variety of weaves and principally used for belts and straps that have to withstand strain, e.g., automobile seat belts, cargo slings and tiedowns, and reinforcement of upholstery."[23] It also referred to the following definition of "strap" found in *The Canadian Oxford Dictionary*: "**1** a strip of cloth, leather, or other flexible material, often with a buckle or other fastening, used for keeping something in place or for fastening, carrying, or holding onto something."[24] The CBSA argued that the goods in issue are similar to webbing carrier straps in that they both consist of strong webbing in order to perform their function of securing loads and to prevent shifting during transportation. Additionally, the CBSA argued that they were similar because both had metal hooks or loops implicit in their designs.

42. The CBSA also referred to the Tribunal's decision in *Canper Industrial Products Ltd. v. Deputy M.N.R.*[25] to support its position that the goods in issue were similar to "webbing carrier straps". In *Canper*, the Tribunal determined that ratchet tie-downs were properly classified in heading No. 63.07 because it found that the ratchet tie-downs were articles similar to webbing carrier straps. The CBSA submitted that the ratchet tie-downs in *Canper*, namely, textile straps of polyethylene with a simple fastening system, are very similar to the goods in issue in the present appeal, as both are used to secure goods to a vehicle for transportation and both goods are constructed primarily of textile materials. In addition, both the goods in issue and the ratchet tie downs in *Canper* include a piece of non-textile hardware; however, the CBSA noted that, in *Canper*, this component did not affect the classification of the ratchet tie downs in heading No. 63.07.

43. To further support its position that the goods in issue are similar to "webbing carrier straps", the CBSA referred to several United States Customs Service rulings in which tow ropes, tow straps, sport straps and cambuckle tie downs (goods which, according to the CBSA, are similar to the goods in issue) were classified by that jurisdiction in heading No. 63.07.[26]

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23. Tribunal Exhibit AP-2010-027-05A at para. 37 and tab 7.
24. *Ibid.* at para. 36 and tab 7.
25. (24 January 1995), AP-94-034 (CITT) [*Canper*].
26. Tribunal Exhibit AP-2010-027-05A, tabs 22, 23, 24.

44. The CBSA argued that, should the Tribunal be unable to determine the classification of the goods in issue through the application of Rule 1 of the *General Rules*, the goods in issue should be classified pursuant to Rule 3 (b). In that regard, the CBSA argued that the textile component of the strap provides the goods in issue with their essential character, that is, without the straps, the ". . . winch would not be able to secure the load."[27] Therefore, the CBSA submitted that, even if the Tribunal has recourse to Rule 3 (b) of the *General Rules*, the goods in issue are properly classified in heading No. 63.07.

45. In response to Kinedyne's argument that the goods in issue are parts of winches, the CBSA submitted that the goods in issue do not meet the criteria to be classified as parts. With reference to the criteria for parts found in its published policy, Memorandum D10-0-1,[28] as well as previous Tribunal jurisprudence, the CBSA contended that the goods in issue do not form a complete unit with the winches, are marketed and shipped separately from winches and have a primary function of securing cargo, a function that is different from the primary function of a winch, which is to tighten or coil a rope, cable or chain.

46. Finally, the CBSA argued that the goods in issue are precluded from classification in heading No. 84.31 by virtue of Note I B (c) of the *Explanatory Notes* to Section XVI, which excludes textile articles from classification in this section. As the goods in issue are textile articles, the CBSA argued the goods in issue are excluded from classification in heading No. 84.31, which is a heading of Section XVI.

Preliminary Matter

47. The precise scope of the goods in issue was raised by the Tribunal as a preliminary matter at the hearing. The CBSA argued that the goods in issue consist only of the six models identified on the commercial invoice associated with the decision under appeal, while Kinedyne argued that the six models were representative of a whole range of winch straps that it imported and that the goods in issue should not be limited to those six models identified by the CBSA.

48. The Tribunal notes that its jurisdiction is limited by the scope of the CBSA's classification decision pursuant to subsection 60(4) of the *Act*, which, in this instance, relates to one import transaction. Therefore, the goods that were the subject of this transaction are the goods in issue, and the Tribunal's jurisdiction is limited to the classification of those goods. The Tribunal further notes that, at the hearing, Kinedyne indicated its willingness to concede, if necessary for the proper exercise of the Tribunal's jurisdiction, that the appeal relates only to the six models identified on the commercial invoice. Upon request from the Tribunal, on March 16, 2011, the CBSA submitted a non-redacted copy of the commercial invoice associated with the import transaction. The Tribunal notes that the winch straps in the invoice are the six models noted above and that, therefore, these six models constitute the scope of the goods in issue.

Tariff Classification of the Goods in Issue

49. As indicated above, the Tribunal must determine whether the goods in issue are properly classified under tariff item No. 6307.90.99 as other made up articles of other textile materials, as determined by the CBSA, or should be classified under tariff item No. 8431.10.00 as parts suitable for use solely or principally with the machinery of heading No. 84.25, as claimed by Kinedyne.

27. *Ibid.* at para. 65.
28. "Classification of Parts and Accessories in the Customs Tariff" (24 January 1994).

50. Pursuant to Rule 1 of the *General Rules*, classification is to be determined according to the terms of the headings and any relative section or chapter notes. In addition, the Tribunal is guided by section 11 of the *Customs Tariff* which provides that, in "interpreting the headings and subheadings, regard shall be had to the . . . Explanatory Notes to the Harmonized Commodity Description and Coding System . . . ." Although the *Explanatory Notes* are not binding on the Tribunal, the Federal Court of Appeal has stated that these notes should be applied, unless there is a sound reason to do otherwise. In that regard, the Tribunal observes that Note I B (c) of the *Explanatory Notes* to Section XVI, which includes heading No. 84.31, excludes textile articles from classification in that section.

51. Accordingly, the Tribunal will first determine whether the goods in issue are classifiable in heading No. 63.07 as textile articles, as claimed by the CBSA. In the event that the Tribunal determines that the goods in issue are textile articles classifiable in heading No. 63.07, pursuant to Note I B (c) of the *Explanatory Notes* to Section XVI, the Tribunal would have to conclude that the goods in issue are not covered by Section XVI, and by implication, not classifiable in heading No. 84.31.

Are the Goods in Issue Other Made Up Articles of Heading No. 63.07?

52. Note 1 to Chapter 63 states that sub-Chapter I, which includes heading No. 63.07, covers made up articles of any textile fabric.

53. Moreover, the *Explanatory Notes* to heading No. 63.07 provide that the 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 *Explanatory Notes* include a list of articles that are included in heading No. 63.07. This list specifically names "webbing carrier straps and similar articles" as made up articles of heading No. 63.07.

54. Therefore, in order to be classifiable in heading No. 63.07, the goods in issue must be (1) "made up" articles, (2) of any textile fabric, (3) webbing carrier straps or similar articles and (4) not included more specifically elsewhere in the nomenclature.

– "Made up" Articles

55. The Tribunal will first examine whether the goods in issue are "articles". While the term "article" is not defined for the purposes of Chapter 63 or heading No. 63.07, the Tribunal notes that it has previously accepted that this term generally means ". . . any finished or semi-finished product, which is not considered to be a material."[29] Moreover, the *Canadian Oxford Dictionary* defines the noun "article" as follows: "**1** a particular or separate thing, esp. one of a set . . . .",[30] a definition which was been accepted by the Tribunal in *P.L. Light Systems Canada Inc. v. President of the Canada Border Services Agency*[31] and *Danson Décor Inc. v. President of the Canada Border Services Agency.*[32] The Tribunal is satisfied that the ordinary meaning of the word "article" is sufficiently broad to encompass the goods in issue. The Tribunal also notes that it was not disputed by either party to this appeal that the goods in issue are considered to be articles within the meaning of Chapter 63.

29. *Wolseley Canada Inc. v. President of the Canada Border Services Agency* (18 January 2011), AP-2009-004 (CITT) at para. 25.
30. Second ed., *s.v.* "article".
31. (16 September 2009), AP-2008-012 (CITT) at para. 28.
32. (27 May 2011), AP-2009-066 (CITT) at para. 42.

56. However, the parties do not agree on whether the goods in issue meet the definition of "made up" articles provided for in the notes to Section XI, which provide as follows:

> 7. For the purposes of this Section, the expression "made up" means:
>
> (a) Cut otherwise than into squares or rectangles;
>
> . . .
>
> (e) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded);
>
> . . .

57. Relying on Note 7(e) to Section XI, the CBSA argued that the goods in issue are "made up" articles because they have been assembled by sewing, whereas Kinedyne, relying on Note 7(a) to Section XI, argued that they are not "made up" because they have been cut into rectangles.

58. The Tribunal notes that the definition of "made up" articles found in Note 7 to Section XI lists six different methods of producing a textile product. The Tribunal has found, in previous appeals, that a textile article is "made up" if it meets *one or more* of the conditions listed under the note.[33] In that regard, the Tribunal finds the following statement, from its decision in *Sher-Wood Hockey*, relevant for the purposes of this appeal:

> The Tribunal notes that note 7 to Section XI defines the expression "made-up" to mean six different methods of production or processes of fabrication of textile products. The Tribunal considers that the only logical and reasonable interpretation of this legal note is that an article will be considered a "made-up" article to the extent that it is made through the use of one such method or process.[34]

59. The Tribunal finds that the goods in issue may be considered "made up" articles if they have been made using any one of the production processes listed in Note 7 to Section XI. In other words, the goods in issue may meet the conditions of Note 7(e) to Section XI in that they are "assembled by sewing, gumming or otherwise" and satisfy the definition of "made up" articles regardless of whether they are cut into rectangles.

60. Mr. Harrison testified that the goods in issue have been manufactured from a ". . . yarn material that is woven . . . dyed with a colour and baked in an oven and then coated with an abrasive-resistant material",[35] which has been sealed at both ends in order to increase the lifespan of the goods by avoiding any fraying of the material. Additionally, Mr. Harrison testified that the goods in issue include a piece of metal hardware that has been attached to only one end. When asked by the Tribunal how the goods in issue are assembled, Mr. Harrison indicated that the strap ". . . is fed through the hardware component and then a sewing machine sews an automatic pattern to secure that part to the webbing."[36]

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33. *Trudel Medical Marketing Limited v. Deputy M.N.R.* (24 July 1997), AP-96-016 (CITT); *BMC Coaters Inc. v. President of the Canada Border Services Agency* (6 December 2010), AP-2009-071 (CITT); *Sher-Wood Hockey Inc. v. President of the Canada Border Services Agency* (10 February 2011), AP-2009-045 (CITT) [*Sher-Wood Hockey*]; *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency*, (6 April 2011), AP-2010-005 (CITT).
34. *Sher-Wood Hockey* at note 37.
35. *Transcript of Public Hearing*, 8 March 2011, at 15.
36. *Ibid.* at 37.

61. On the basis of Mr. Harrison's testimony, the Tribunal agrees with the CBSA that the goods in issue meet the definition of "made up" provided for in Note 7(e) to Section XI, as the goods have been assembled by sewing. The Tribunal also agrees with the CBSA that the sealing of the strap at both ends and the presence of a resin coating do not affect the conclusion that the goods in issue meet the definition of "made up" as stipulated in Note 7(e) to Section XI.

62. Therefore, the Tribunal determines that the goods in issue are "made up" articles in accordance with the definition provided in Note 7(e) to Section XI.

– Of Any Textile

63. The Tribunal will now examine if the goods in issue are "of any textile", which is the second condition for classification in heading No. 63.07. Both parties agree, and Mr. Harrison confirmed, that the goods in issue consist of a fabric component, which is a polyester textile strap that has been coated with a resin and heat sealed at the ends.[37] On the basis of this evidence and the general agreement between the parties, the Tribunal is satisfied that the goods in issue are made from textile fabric.

64. The Tribunal will next consider the argument advanced by Kinedyne that the goods in issue are not classifiable in heading No. 63.07 due to the presence of the metal hardware component, which is attached to the polyesters strap. In response to Kinedyne's argument, the CBSA submitted that the goods in issue are classifiable as textile articles of heading No. 63.07 regardless of the metal hardware component.

65. Although neither party made specific reference to the *Explanatory Notes* to Chapter 63 to support their respective positions, the Tribunal is of the opinion that they are relevant to its determination of whether the goods in issue are excluded from classification in heading No. 63.07.

66. In that regard, the Tribunal notes the *Explanatory Notes* to Chapter 63, which provide as follows:

> The classification of articles in this sub-Chapter is not affected by the presence of minor trimmings or accessories of . . . metal . . . .
>
> Where, however, the presence of these other materials constitutes **more than** mere trimmings or accessories, the articles are classified in accordance with the relative Section or Chapter Notes (General Interpretative Rule 1), or in accordance with the other General Interpretative Rules as the case may be.

67. In *Rui Royal International Corp. v. President of the Canada Border Services Agency*,[38] the Tribunal expressed the opinion that the *Explanatory Notes* to Chapter 63 do not provide that goods are excluded from classification in Chapter 63 (and thus in heading No. 63.07) where the presence of non-textile materials constitutes more than minor trimmings or accessories. Rather, the *Explanatory Notes* to Chapter 63 provide that, in such situations, the classification of goods is to be determined ". . . in accordance with the relative Section or Chapter Notes (General Interpretative Rule 1), or in accordance with the other General Interpretative Rules . . . ." The Tribunal has taken a similar approach in previous cases.[39]

37. *Ibid.* at 9, 15, 29-30; Tribunal Exhibit AP-2010-027-03A, tab E.
38. (30 March 2011), AP-2010-003 (CITT) [*Rui Royal International*].
39. See, for example, *Canadian Tire Corporation Limited v. President of the Canada Border Services Agency* (6 August 2010), AP-2009-019 (CITT) [*Canadian Tire*]; *Sher-Wood Hockey*.

68. The Tribunal has reviewed the notes to Section XI and Chapter 63 and does not consider that there are any notes to heading No. 63.07 which preclude a textile article with a metal component from being classified in heading No. 63.07.

69. The Tribunal has also reviewed the terms of heading No. 63.07, which provides for the classification of "[o]ther made up articles, including dress patterns." The Tribunal notes that the *Explanatory Notes* to heading No. 63.07 expressly include, within this heading, *inter alia*, ". . . webbing carrier straps and similar articles . . . ." The Tribunal finds that it must determine whether the goods in issue are webbing carrier straps or similar articles, as these goods have been specifically provided for in the *Explanatory Notes* to that heading. Therefore, if the goods in issue are found to be webbing carrier straps or similar articles, they may be classified in heading No. 63.07, under Rule 1 of the *General Rules*, regardless of the metal components.[40]

– Webbing Carrier Straps and Similar Articles

70. The Tribunal will now consider whether the goods in issue are "webbing carrier straps or similar articles". As stated above, the *Explanatory Notes* to heading No. 63.07 state that the heading covers made up articles of any textile material and that the heading includes, in particular, ". . . webbing carrier straps and similar articles . . . ."

71. The Tribunal notes that a precise definition of "webbing carrier strap" is not provided for in the *Customs Tariff* and that Mr. Harrison was unfamiliar with the term.[41] The Tribunal will therefore examine the ordinary meaning of each of the words "webbing", "carrier" and "strap" in order to determine whether the goods in issue are "webbing carrier straps or similar articles".

72. The CBSA submitted the following definition of "webbing" found in the *Dictionary of Fiber & Textile Technology*: "[s]trong, narrow fabric, closely woven in a variety of weaves and principally used for belts and straps that have to withstand strain, e.g., . . . cargo slings and tie downs . . . ."[42] The CBSA argued that the goods in issue are similar to webbing tie downs, as their purpose is to keep a load from shifting during transportation.

73. The Tribunal notes that the term "webbing" was commonly referred to throughout the testimony of Mr. Di Vito and Mr. Harrison. For example, while providing commentary on the video which demonstrated the use of the goods in issue, Mr. Di Vito stated the following: "There is also a working load limit that is stencilled right on the *webbing* as well" [emphasis added]. In addition, Mr. Di Vito remarked that "[h]e [the man in the video] is . . . taking out all the slack from the *webbing*"[43] [emphasis added]. Mr. Harrison, when describing the goods in issue, stated that Kinedyne ". . . actually put markings on the *webbing* as well, a stated working load limited, along with the name of the manufacturer"[44] [emphasis added]. When describing the fabrication of the goods in issue to the Tribunal, Mr. Harrison stated the following: ". . . once the *webbing* has been . . . cut and sealed at both ends, the *webbing* is then fed through whatever the

40. As noted by the Tribunal in *Rui Royal International* at note 55, "[t]he Tribunal notes that, in *Sher-Wood Hockey*, the goods in issue were not specifically listed in the heading or the *Explanatory Notes* to the heading under consideration. Thus, the Tribunal had to consider whether Rule 2 (b) of the *General Rules* was applicable. In the present appeal [*Rui Royal International*], as in *Canadian Tire*, there are *Explanatory Notes* which clarify that heading No. 63.07 specifically includes . . . webbing carrier straps and similar articles. As a result, the Tribunal finds that it is not necessary to have recourse to Rule 2 (b) [of the *General Rules*] in this instance, as classification can be resolved under Rule 1."
41. *Transcript of Public Hearing*, 8 March 2011, at 38. Mr. Harrison stated the following: "I am unfamiliar with that term, 'webbing carrier strap'. I am unfamiliar with that terminology."
42. Tribunal Exhibit AP-2010-027-05A, tab 7.
43. *Transcript of Public Hearing*, 8 March 2011, at 9.
44. *Ibid.* at 31.

attachment point is . . . ."[45] [emphasis added]. In response to a question from the CBSA about the manufacture of a winch strap similar to the goods in issue, Mr. Harrison stated that the winch strap had ". . . a different coating on the *webbing* so that it's more abrasion resistant"[46] [emphasis added].

74. In addition, the Tribunal has reviewed the meaning of the term "carrier", which is defined in *Webster's Third New International Dictionary* as follows: "**4:** a device for holding something while it is carried".[47] The *Webster's New World Dictionary* defines the verb "carry" as follows: "**2** to take from one place to another, transport, as in vehicle".[48]

75. Finally, the Tribunal reviewed the meaning of "strap", which is defined in *The Canadian Oxford Dictionary* as "a strip of cloth, leather, or other flexible material, often with a buckle or other fastening, used for keeping something in place or for fastening, carrying, or holding onto something."[49] The Tribunal notes that Kinedyne itself referred the goods in issue as straps in its description of them.[50] In his testimony, Mr. Harrison referred to the goods in issue as winch "straps".[51]

76. In order to determine whether the goods in issue are similar to webbing carrier straps, the Tribunal finds it appropriate to use a similar approach to the one used in *Rui Royal International.*

77. In *Rui Royal International*, the goods subject to appeal were described as emergency tow straps. In determining whether or not the goods were similar to webbing carrier straps, the Tribunal based its decision on the evidence presented and on the following analysis.

> . . . the Tribunal finds that the test for determining a "similar article" is not a strict one. In the Tribunal's decision *Ivan Hoza v. President of the Canada Border Services Agency*, the Tribunal was of the opinion that similar goods had to share important characteristics and have common features but that "similar" did not mean "identical". In *Nailor Industries Inc. v. Deputy M.N.R.*, the Tribunal was of the opinion that similar appliances would have to possess the same general attributes."[52]
>
> [Footnotes omitted]

78. In reaching its conclusion, the Tribunal stated as follows:

> . . . the Tribunal finds that the goods in issue share sufficient characteristics with webbing carrier straps in both make and functionality to allow them to be classified under heading No. 63.07. The goods in issue closely resemble a webbing carrier straps in that both products are made of strong, narrow woven fabric and both straps are capable of withstanding strain. In addition, the goods in issue and webbing carrier straps perform similar functions, as mentioned above.[53]
>
> [Footnote omitted]

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45. *Ibid.* at 36.
46. *Ibid.* at 40. Mr. Harrison was referring to Exhibit A-01 in his testimony.
47. *Webster's Third New International Dictionary*, *s.v.* "carrier".
48. Third College Edition, *s.v.* "carry".
49. Tribunal Exhibit AP-2010-027-05A, tab 7.
50. Tribunal Exhibit AP-2010-027-03A at para. 3: "The flat end (of the *strap*) is heat sealed to prevent fraying . . . . By virtue of an 'up and down' movement of this bar, the (*strap*) slack is taken in as the strap tightens around the winch mandrel. The fitted *strap* end is attached on the opposite perimeter of the trailer/vehicle flatbed or deck . . . ." [Emphasis added]
51. *Transcript of Public Hearing*, 8 March 2011, at 41.
52. *Rui Royal International* at para. 82.
53. *Ibid.* at para. 83.

79. Additionally, in *Canper*, the function of the ratchet tie-downs was to "hold down" cargo, or to "secure" objects. These goods were found to be ". . . well akin to some of the goods listed in the Explanatory Notes to heading No. 63.07, more particularly to the goods cited in paragraph 16."[54] In the present appeal, Mr. Harrison stated that the goods in issue are for the unique application of "tying down",[55] which the Tribunal views as a function similar to holding down cargo or to securing objects.

80. On the basis of the evidence presented at the hearing and the test noted above, the Tribunal concludes that the goods in issue closely resemble, and are similar to, webbing carrier straps, as provided for in Note 16 of the *Explanatory Notes* to heading No. 63.07. Similar to the Tribunal's finding in *Rui Royal International*, the goods in issue and webbing carrier straps are both products made of strong, narrow woven fabric and both straps are capable of withstanding strain. Moreover, the Tribunal is of the view that the goods in issue and webbing carrier straps are both capable of being used in tie-down applications, a finding that is consistent with the Tribunal's decision in *Canper*.

81. In reaching this conclusion, the Tribunal sees no reason to ignore the clear wording of the *Explanatory Notes* to heading No. 63.07. As noted above, section 11 of the *Customs Tariff* provides that, "[i]n interpreting the headings and subheadings, regard shall be had to . . . the Explanatory Notes to the Harmonized Commodity Description and Coding System . . . ." Furthermore, the Federal Court of Appeal's decision in *Suzuki* emphasized that the *Explanatory Notes* should be respected unless there is a sound reason to do otherwise.[56]

82. The Tribunal is not convinced by Kinedyne's argument at the hearing that the goods in issue are not similar to webbing carrier straps, ratchet tie downs, or tow straps because the goods in issue are not functional without the winch and the winch bar and have been designed to work with a particular type of machine. The Tribunal finds that there is nothing in the wording of heading No. 63.07 or the relevant section and chapter notes and *Explanatory Notes* which precludes articles used in conjunction with other articles from being classified in that heading.

83. The Tribunal also disagrees with Kinedyne's argument that a sound reason exists for the Tribunal to depart from the *Explanatory Notes* in this case because the inclusion of winch straps in heading No. 63.07 would unduly limit the intent of Parliament to eliminate duties on all machinery and their parts not available from Canadian manufacturers. The Tribunal finds that the language of the *Customs Tariff*, including the *Explanatory Notes*, provides a clear basis for its determination that the goods in issue are articles similar to "webbing carrier straps". As noted in *Suzuki*, the *Explanatory Notes* should be respected unless there is a sound reason to do otherwise, such as, in some circumstances, expert testimony.[57] The Tribunal has not been persuaded that a sound reason to depart from the *Explanatory Notes* exists in this case, as Kinedyne has not provided the Tribunal with any evidence in support of its assertion that Parliament intended for winch straps imported into Canada to be entitled to duty relief.

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54. *Canper* at 5.
55. *Transcript of Public Hearing*, 8 March 2011, at 34.
56. *Suzuki* at para. 13: "In the New Shorter Oxford English Dictionary (Oxford: Clarendon Press, 1993) 'regard' means 'to consider, heed, take into account, pay attention to, or take notice of'. Essentially, then, the Explanatory Notes are intended by Parliament to be an interpretive guide to tariff classification in Canada and must be considered within that context. To satisfy their interpretive purpose, and to ensure harmony within the international community, the Explanatory Notes should be respected unless there is a sound reason to do otherwise."
57. *Suzuki* at para. 17.

84. On the basis of the foregoing, the Tribunal finds that the goods in issue are textile articles similar to webbing carrier straps, as they are specifically included in the list of articles found in the *Explanatory Notes* to heading No. 63.07, which describe the goods that are classifiable in that heading.

85. With respect to the CBSA's argument that similar goods have been classified in heading No. 63.07 by the United States Customs Service, the Tribunal considers that these are administrative rulings by government officials and not decisions by an independent quasi-judicial body. As the Tribunal wrote in its decision in *Korhani Canada Inc. v. President of the Canada Border Services Agency:*

> Further, even if [the rulings] were such decisions, since they are drawn from another jurisdiction, they would not constitute valid jurisprudence in the Canadian context.[58]

– Not Included More Specifically Elsewhere

86. As the Tribunal has determined that the goods in issue are articles of textile, similar to "webbing carrier straps", it is of the view that they are classifiable in heading No. 63.07 unless the goods in issue are found to be included more specifically elsewhere in the nomenclature.

87. The competing heading in this appeal is heading No. 84.31, which covers parts of winches. Therefore, the Tribunal will now consider whether the goods in issue are classifiable in heading No. 84.31 as parts of winches and, if so, which of the two headings more specifically describes the goods in issue.

Are the Goods in Issue Parts Suitable For Use Solely or Principally With The Machinery of Heading 84.25 and, therefore, classifiable in Heading No. 84.31?

88. Heading No. 84.31 covers "[p]arts suitable for use solely or principally with the machinery of headings 84.25 to 84.30."

89. The *Explanatory Notes* to heading No. 84.31 provide as follows:

> **Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), this heading covers **parts** for use **solely or principally** with the machinery of headings 84.25 to 84.30.

90. The Tribunal also notes that the *Explanatory Notes* to Section XVI contain an exclusion relating to textile articles. Note I (B) (c) of the *Explanatory Notes* to Section XVI excludes textile articles from classification in this section (which includes heading No. 84.31).

91. The Tribunal finds that, as the goods in issue are articles of textile materials, the *Explanatory Notes* preclude the goods in issue from classification in Section XVI. The Tribunal also finds that the goods in issue cannot be more specifically included in a heading from which they are explicitly excluded.

92. In light of the above, the Tribunal concludes that the goods in issue are classifiable in heading No. 63.07 and that, by virtue of Note I (B) (c) of the *Explanatory Notes* to Section XVI, the goods in issue are precluded from classification in heading No. 84.31. Therefore, pursuant to Rule 1 of the *General Rules*, the goods in issue are properly classified in heading No. 63.07.

58. (18 November 2008), AP-2007-008 (CITT) at para. 42.

93. In reaching this conclusion, the Tribunal is aware of the argument raised by Kinedyne at the hearing that the Tribunal has previously classified articles with a textile component in Chapter 84 despite the presence of Note I (B) (c) of the *Explanatory Notes* to Section XVI. In particular, Kinedyne referred to the Tribunal's decisions in *Black & Decker Canada Inc. v. Commissioner of the Canada Customs and Revenue Agency*[59] and *Procedair Industries Inc. v. Deputy M.N.R.C.E.*[60]

94. The Tribunal finds that its decisions in *Black & Decker* and *Procedair Industries* are not relevant to the present appeal. In *Black & Decker*, the Tribunal dealt with a substantially different product (a grass catcher) and found that it was not a textile article classifiable in heading No. 59.11. In *Procedair Industries*, the Tribunal also dealt with substantially different goods (filter units) and found that the textile filter component was not classifiable as a textile article in heading No. 59.11, as it could not be classified in isolation from the other parts of the filter units with which they were imported.

Classification at the Subheading and Tariff Item Levels

95. Having determined that the goods in issue are properly classified in heading No. 63.07, the Tribunal must determine in which subheading the goods in issue should be classified. Heading No. 63.07 has three first-level subheadings, which are as follows: subheading No. 6307.10 (floor cloths, dishcloths, dusters and similar cleaning cloths); subheading No. 6307.20 (life jackets and life belts); and subheading No. 6307.90. (other). As the goods in issue are not described by the terms of the first two subheadings, the goods in issue must be classified in the remaining subheading as "other". Therefore, pursuant to rule 6 of the *General Rules*, the goods in issue are properly classified in subheading No. 6307.90.

96. Subheading No. 6307.90 has eight tariff items. As the first seven of these eight tariff items are clearly inapplicable to the goods in issue, the goods in issue must be classified under the remaining tariff item as "other made up articles of other textile materials". Therefore, pursuant to Rule 1 of the *Canadian Rules*, the goods in issue are properly classified under tariff item No. 6307.90.99.

DECISION

97. For the foregoing reasons, the Tribunal concludes that the goods in issue are properly classified under tariff item No. 6307.90.99 as other made up articles of other textile materials, as determined by the CBSA.

98. The appeal is therefore dismissed.

Diane Vincent
Diane Vincent
Presiding Member

59. (12 February 2004), AP-2003-007 (CITT) [*Black & Decker*].
60. (22 July 1993), AP-92-152 [*Procedair Industries*].