



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2010-070

Cambridge Brass Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, December 7, 2011*

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DECISION 12

IN THE MATTER OF an appeal heard on October 6, 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 March 21, 2011, with respect to a request for review of an advance ruling pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

CAMBRIDGE BRASS INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: October 6, 2011

Tribunal Member: Pasquale Michael Saroli, Presiding Member

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Cambridge Brass Inc. (Cambridge Brass) 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), dated March 21, 2011, pursuant to subsection 60(4).

2. The issue in this appeal is whether a 525 Series compression coupling (the good in issue) is properly classified under tariff item No. 7307.99.99 of the schedule to the *Customs Tariff*² as “other tube or pipe fittings” (for example, couplings, elbows, sleeves), of iron or steel, as determined by the CBSA. The CBSA’s alternative position is that the good in issue be classified under tariff item No. 7307.19.99 as other cast fittings. Cambridge Brass claims that the good in issue should be classified under tariff item No. 7307.92.10 as sleeves, of alloy steel other than stainless steel.

PROCEDURAL HISTORY

3. On November 12, 2010, the CBSA issued an advance ruling, pursuant to section 43.1 of the *Act*, classifying the good in issue under tariff item No. 7307.19.99.

4. On December 2, 2010, Cambridge Brass requested a review of the advance ruling pursuant to subsection 60(2) of the *Act*.

5. On March 21, 2011, the CBSA re-determined the classification of the good in issue under tariff item No. 7307.99.99 pursuant to subsection 60(4) of the *Act*.

6. On March 28, 2011, Cambridge Brass filed the present appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

7. On May 24, 2011, Cambridge Brass filed its brief with the Tribunal.

8. On July 25, 2011, the CBSA filed its brief with the Tribunal.

9. On September 16, 2011, the CBSA filed expert witness reports with the Tribunal.

10. On October 6, 2011, the Tribunal held a public hearing in Ottawa, Ontario. Ms. Francine Bouchard, a senior chemist at the CBSA, testified on its behalf. She was qualified by the Tribunal as an expert in the field of metals analysis.³ Mr. André Duford, a certified licensed plumber and plumbing professor, also testified on behalf of the CBSA. He was qualified by the Tribunal as an expert in plumbing.⁴ Cambridge Brass did not call any witnesses.

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

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

3. *Transcript of Public Hearing*, 6 October 2011, at 16.

4. *Ibid.* at 34.

GOOD IN ISSUE

11. The good in issue is a Smith-Blair 525 Series compression coupling designed to join plain-end small-diameter pipe (i.e. 1/2 in. to 2 in. nominal pipe sizes) for installation in most water, wastewater and industrial applications. The good in issue consists of (i) two compression nuts of ductile iron, (ii) two retainer cups, which hold the gaskets in place and concentrate compression where it is most needed, (iii) two gaskets made of Nitrile (Buna-N) compound to resist oil, acids, alkalies, aliphatic hydrocarbon fluids, water and many chemicals, and (iv) a sleeve made of ductile iron with a galvanized finish to reduce corrosion.

12. A physical exhibit representative of the good in issue was filed with the Tribunal.

STATUTORY FRAMEWORK

13. 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^[5] and the Canadian Rules^[6] set out in the schedule.” 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 developed by the World Customs Organization.⁷ 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.

14. 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.⁸ 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 Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.”

15. Section 11 of the *Customs Tariff* provides as follows: “In interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System^[9] and the Explanatory Notes to the Harmonized Commodity Description and Coding System,^[10] 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 applied, unless there is a sound reason to do otherwise.¹¹

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

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

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

8. Rules 1 through 5 of the *General Rules* apply to classification at the heading level (i.e. to four digits). Pursuant to Rule 6 of the *General Rules*, Rules 1 through 5 apply to classification at the subheading level (i.e. to six digits). Similarly, the *Canadian Rules* make Rules 1 through 5 of the *General Rules* applicable to classification at the tariff item level (i.e. to eight digits).

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

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

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

16. Thus, the Tribunal will first determine 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.

17. 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.¹²

RELEVANT PROVISIONS OF THE CUSTOMS TARIFF AND EXPLANATORY NOTES

18. The relevant provisions of the *Customs Tariff* provide as follows:

Section XV

BASE METALS AND ARTICLES OF BASE METAL

...

73.07 Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel.

-Cast fittings:

7307.11 --Of non-malleable cast iron

...

7307.19 --Other

...

---Other:

7307.19.91 ---Not further worked than forged or bent to shape

7307.19.99 ---Other

...

-Other, of stainless steel:

...

-Other:

...

7307.92 --Threaded elbows, bends and sleeves

7307.92.10 --Sleeves

...

12. Rule 6 of the *General Rules* stipulates the following: "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."

7307.99 --Other

...

--Other:

...

7307.99.99 ----Other

19. The relevant notes to Section XV provide as follows:

3. Throughout the Nomenclature, the expression “base metals” means: iron and steel, copper, nickel, aluminum, lead, zinc, tin, tungsten (wolfram), molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium.

...

7. Classification of composite articles:

Except where the headings otherwise require, articles of base metal (including articles of mixed materials treated as articles of base metal under the Interpretative Rules) containing two or more base metals are to be treated as articles of the base metal predominating by weight over each of the other metals. For this purpose:

(a) Iron and steel, or different kinds of iron or steel, are regarded as one and the same metal;

...

20. The relevant *Explanatory Notes* to Section XV provide as follows:

(B) ARTICLES OF BASE METALS

In accordance with Section Note 7, base metal articles containing two or more base metals are classified as articles of that metal which **predominates by weight** over each of the other metals, **except** where the headings otherwise require (e.g., copper-headed iron or steel nails are classified in heading 74.15 even if the copper is not the major constituent). The same rule applies to articles made partly of non-metals, **provided** that, under the General Interpretative Rules, the base metal gives them their essential character.

...

CHAPTER 73

...

GENERAL

This Chapter covers a certain number of specific articles in headings 73.01 to 73.24, and in headings 73.25 and 73.26 a group of articles not specified or included in Chapter 82 or 83 and not falling in other Chapters of the Nomenclature, of iron (including cast iron as defined in Note 1 to this Chapter) or steel.

For the purposes of this Chapter, the expressions “tubes and pipes” and “hollow profiles” have the following meanings hereby assigned to them:

(1) Tubes and pipes

Concentric hollow products, of uniform cross-section with only one enclosed void along their whole length, having their inner and outer surfaces of the same form. Steel tubes are mainly of circular, oval, rectangular (including square) cross-sections but in addition may include equilateral triangular and other regular convex polygonal cross-sections. Products of cross-section other than circular, with rounded corners along their whole length, and tubes with upset ends, are also to be considered as tubes. They may be polished, coated, bent (including coiled tubing), threaded and coupled or not, drilled, waisted, expanded, cone shaped or fitted with flanges, collars or rings.

...

73.07 - Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel.

...

This heading covers fittings of iron or steel, mainly used for connecting the bores of two tubes together, or for connecting a tube to some other apparatus, or for closing the tube aperture. This heading **does not** however **cover** articles used for installing pipes and tubes but which do not form an integral part of the bore (e.g., hangers, stays and similar supports which merely fix or support the tubes and pipes on walls, clamping or tightening bands or collars (hose clips) used for clamping flexible tubing or hose to rigid piping, taps, connecting pieces, etc.) (**heading 73.25 or 73.26**).

The connection is obtained:

- by screwing, when using cast iron or steel threaded fittings;
- or by welding, when using butt-welding or socket-welding steel fittings. In the case of butt-welding, the ends of the fittings and of the tubes are square cut or chamfered;
- or by contact, when using removable steel fittings.

This heading therefore includes flat flanges and flanges with forged collars, elbows and bends and return bends, reducers, tees, crosses, caps and plugs, lap joint stub-ends, fittings for tubular railings and structural elements, off sets, multi-branch pieces, couplings or sleeves, clean out traps, nipples, unions, clamps and collars.

ANALYSIS

21. It is uncontested, and the Tribunal accepts, on the basis of the laboratory analysis,¹³ the product literature¹⁴ and its own inspection of the physical exhibit,¹⁵ that the good in issue consists of (i) a threaded centre piece,¹⁶ (ii) two nuts, (iii) two gaskets¹⁷ and (iv) two retainer cups.¹⁸

22. Both parties agree, and the Tribunal accepts, that the good in issue falls within heading No. 73.07, i.e. “tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel”, by application of Rule 1 of the *General Rules*. This view is consistent with the *Explanatory Notes* to heading No. 73.07, which provide the following: “This heading covers fittings of iron or steel, mainly used for connecting the bores of two tubes together, or for connecting a tube to some other apparatus, or for closing the tube aperture. . . . *This heading therefore includes . . . couplings or sleeves . . .*” [emphasis added].

23. The parties disagree however as to the subheading in which the good in issue falls by application of Rule 6 of the *General Rules*. In this regard, the competing subheadings are as follows:

- **7307.19** (“Tube or pipe fittings of iron or steel”, “-Cast fittings”, “- -Other”)
- **7307.92** (“Tube or pipe fittings of iron or steel”, “-Other”, “- -Threaded elbows, bends and sleeves”)
- **7307.99** (“Tube or pipe fittings of iron or steel”, “-Other”, “- -Other”)

13. Tribunal Exhibit AP-2010-070-08A, tab B at 2.

14. Tribunal Exhibit AP-2010-070-03A, tab 2 at 15.

15. Exhibit A-01.

16. While referred to as a “sleeve” by Cambridge Brass and in the product literature, this component, according to M. Dufford, was not actually a “sleeve”, but rather a “coupling”. *Transcript of Public Hearing*, 6 October 2011, at 41.

17. M. Dufford testified that these components were more properly referred to as “ferrules”. *Transcript of Public Hearing*, 6 October 2011, at 61-62.

18. M. Dufford testified that these components were more properly referred to as “slip rings”. *Transcript of Public Hearing*, 6 October 2011, at 65.

24. Rule 6 of the *General Rules* provides as follows:

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.

[Emphasis added]

25. As the competing subheadings are all at the two-dash level, the Tribunal will begin its analysis by examining the competing subheadings at the one-dash level.

One-dash Level Analysis

26. Heading No. 73.07 is divided into three one-dash subheading levels as follows:

73.07 Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel.

-Cast fittings:

...

-Other, of stainless steel:

...

-Other:

...

27. It is uncontested, and the Tribunal accepts, that the good in issue is not of stainless steel. Therefore, the one-dash subheading level, “**Other, of stainless steel**”, is not relevant to these proceedings. Accordingly, the Tribunal will confine itself, at this stage of its analysis, to determining whether or not the good in issue is a cast fitting.

28. In this regard, the following conclusion, reached by Ms. Bouchard from the laboratory analysis she conducted, indicates that the sleeve and nuts, which account for about 95 percent of the total weight of the good in issue, are made of ductile cast iron:

This pipe fitting consists of a threaded sleeve, two nuts, two gaskets and two retainer cups.

*The sleeve and nuts account for about 95% of the total weight and consist of ductile cast iron (about 3% silicon, 3% carbon and less than 1% manganese with the balance being iron). Ductile cast iron is malleable. The sleeve and nuts have been galvanized (coated with zinc).*¹⁹

[Emphasis added]

29. Ms. Bouchard provided expert testimony that cast iron is defined as iron containing at least 2 percent of carbon and that the good in issue, because its carbon content was determined to be 3 percent, is of cast iron.²⁰

19. Tribunal Exhibit AP-2010-070-08A, tab B at 2.

20. *Transcript of Public Hearing*, 6 October 2011, at 20.

30. Note 7 to Section XV, on the classification of composite articles, provides the following: “Except where the headings otherwise require, articles of base metal . . . containing two or more base metals are to be treated as articles of the base metal predominating by weight over each of the other metals.”²¹ On the basis of the predominance by weight of cast iron over the other base metals (i.e. manganese, zinc and copper)²² that form part of the good in issue, and despite the presence of small amounts of other non-metals (i.e. silicon and carbon),²³ the Tribunal finds that the good in issue is properly described as being of cast iron.

31. However, as noted by Cambridge Brass²⁴ and acknowledged by the CBSA,²⁵ a distinction must be drawn between fittings of cast iron and fittings that are cast, with the former relating to metallurgical content and the latter relating to the specific process by which the fittings are manufactured.²⁶

32. In support of its contention that the good in issue falls under the one-dash subheading level, « -Other », rather than the one-dash subheading level, “-Cast fittings”,²⁷ Cambridge Brass submitted that, while the good in issue is “. . . initially formed in a casting process . . . [it is] then further worked or finished, and made of [an] assembly of parts . . . [and, as a result it is] not just [a] ‘Cast fittin[g]’.”²⁸ In this regard, Cambridge Brass drew upon certain U.S. rulings to the effect that:

“ . . . the casting process is considered complete when, after the casting solidifies and cools, surface imperfections are removed by blast cleaning, chipping, burning or combinations of these processes. **Certain independent and additional processes not merely incidental to the general foundry work are considered to advance an article beyond casting**”²⁹

and more specifically, that:

“ . . . **applying a coating of zinc after the casting process is complete sufficiently advances these articles to the point where they can no longer be considered cast articles . . .**”³⁰

21. As to the meaning of “base metals”, Note 3 to Section XV provides as follows: “Throughout the Nomenclature, the expression ‘base metals’ means: iron and steel, copper, nickel, aluminum, lead, zinc, tin, tungsten (wolfram), molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium.”

22. The evidence indicates that “[a] continuous brass helix [is] molded into the leading edge of the gasket . . .” Tribunal Exhibit AP-2010-070-05B, tab 15. Brass is itself an alloy of copper and zinc. In this regard, note 5(a) to Section XV indicates the following: “An alloy of base metals is to be classified as an alloy of the metal which predominates by weight over each of the other metals”.

23. In this regard the *Explanatory Notes* to Section XV provide as follows: “In accordance with Section Note 7, base metal articles containing two or more base metals are classified as articles of that metal which **predominates by weight** over each of the other metals, **except** where the headings otherwise require (e.g., copper-headed iron or steel nails are classified in heading 74.15 even if the copper is not the major constituent). *The same rule applies to articles made partly of non-metals, provided that, under the General Interpretative Rules, the base metal gives them their essential character*” [emphasis added].

24. *Transcript of Public Hearing*, 6 October 2011, at 74, 87.

25. *Ibid.* at 102-103.

26. The evidence indicates the following: “Casting is a manufacturing process where . . . simple or complex shapes can be made from *any metal that can be melted*” [emphasis added]. Tribunal Exhibit AP-2010-070-10A, tab 2.

27. Tribunal Exhibit AP-2010-070-03A at para. 13. The CBSA’s primary position was also that the good in issue was not a cast fitting. Tribunal Exhibit AP-2010-070-05A at para. 28.

28. Tribunal Exhibit AP-2010-070-05B, tab 18.

29. *Ibid.*

30. *Ibid.*

33. In considering the proper classification of the good in issue at the one-dash subheading level, the Tribunal noted the following:

Casting has marked advantages in the production of complex shapes, parts having hollow sections or internal cavities, parts containing irregular curved surfaces . . . very large parts and parts made from metals that are difficult to machine.³¹

34. In this regard, a physical inspection of the good in issue indicated that it possesses several of these characteristics, including a complex shape with a hollow section and irregular curved surfaces that taper off from the middle towards the ends of the centre component. A physical inspection also revealed that there is a seam on either side that runs the length of the centre component of the good in issue, which, Ms. Bouchard testified, was indicative of manufacture by the casting process:

Mr. GIBBS: Why does that indicate that the product has been cast?

Ms BOUCHARD: Because often this is made in a mould . . . [consisting of] two pieces . . . and when the molten metal is poured into the mould, the seams where those pieces join . . . [make] lines on either side . . .³²

35. On the basis of these considerations, the Tribunal is of the view that it is the initial casting process that imparts to the good in issue its essential character as a pipe fitting and that the subsequent addition of a galvanized (i.e. zinc-coated) finish, further working³³ (i.e. threading and the addition of wrench flats) and inclusion of other components with minor non-cast content did not advance the good in issue beyond a cast fitting.

36. The Tribunal therefore finds that the good in issue is properly classified at the one-dash subheading level, “-Cast fittings”.

Two-dash Level Analysis

37. The one-dash subheading level, “-Cast fittings”, comprises two two-dash subheading levels as follows:

7307 Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel.

-Cast fittings:

7307.11 --Of non-malleable cast iron

...

7307.19 --Other

38. On the basis of the uncontested laboratory analysis, which established that the good in issue was predominantly composed of malleable ductile cast iron, the Tribunal determines that the good in issue falls within subheading No. 7307.19 as other cast fittings.

31. Tribunal Exhibit AP-2010-070-10A, tab 2 at 3.

32. *Transcript of Public Hearing*, 6 October 2011, at 22.

33. Indeed, that the further working of a pipe fitting does not preclude it from being described as “cast” is clear from the fact that tariff item No. 7307.19.99, read in light of tariff item No. 7307.19.91, captures cast fittings that have been further worked beyond being forged or bent to shape.

Three-dash Level Analysis

39. At the two-dash subheading level, “- -**Other**”, there are two three-dash levels:
- 7307.19.10 - - -To be employed in pneumatically breaking down the working face of a mine in mining, quarrying or developing mineral deposits
- - -Other:

40. The good in issue does not pertain to the very specific use provision described, at the three-dash level, under tariff item No. 7307.19.10. Indeed, the good in issue is specifically designed to join plain and small diameter pipe on new installations and pipe modifications in a variety of settings.³⁴ The Tribunal therefore determines that the good in issue falls within the three-dash level, “- -Other”.

Four-dash Level Analysis

41. At the three-dash subheading level, “- - Other”, there are the following two four-dash tariff item numbers:

7307.19.91 - - - -Not further worked than forged or bent to shape

7307.19.99 - - - -Other

42. As already noted, the good in issue has indeed been further worked. For example, the product specifications for the good in issue indicate that it is given a galvanized (i.e. zinc-coated) finish and that wrench flats are added to hold the components in place during tightening.³⁵

43. Accordingly, the Tribunal finds that the good in issue falls within the four-dash level, “- - - -Other”, that is, tariff item No. 7307.19.99.

Further Remarks

44. In arriving at this conclusion, the Tribunal carefully considered Cambridge Brass’s position, which was based on the view that the good in issue fell within the one-dash subheading level, “-**Other**”, which was itself broken down into the following two-dash levels:

7307.91 - -Flanges
...
7307.92 - -Threaded elbows, bends and sleeves
...
7307.93 - -Butt welding fittings
...
7307.99 - -Other

45. Even if, *arguendo*, this view had been correct, the good in issue would not have been classifiable as “sleeves” in subheading No. 7307.92, as argued by Cambridge Brass.

34. Tribunal Exhibit AP-2010-070-03A, tab 2 at 13.

35. *Ibid.* at 15-16.

46. In this regard, it is uncontested that the singular function of the good in issue is to join the plain ends of small (1/2 in. to 2 in.) diameter pipes by creating a tight compression seal that prevents fluid leakage from the pipe joint.³⁶ On this point, it was the expert testimony of Mr. Duford that all the components comprising the good in issue jointly contribute to, and are necessary for, the fulfilment of this function.³⁷ Accordingly, the good in issue constitutes a single entity,³⁸ classifiable as such.³⁹

47. That the good in issue cannot be described as a flange of subheading No. 7307.91, a threaded elbow or bend of subheading No. 7307.92 or a butt welding fitting of subheading No. 7307.93 is not in dispute and is accepted by the Tribunal. The sole issue before the Tribunal in its analysis at the two-dash level would therefore have been whether the good in issue was properly described as a sleeve of subheading No. 7307.92 or, instead, fell within the remaining two-dash level, “- **Other**”, that is, subheading No. 7307.99.

48. The Federal Court of Appeal has indicated that, if a term used in the *Customs Tariff* has a particular meaning in a trade, it should be interpreted in that sense.⁴⁰ Given, therefore, that the terms in this case relate specifically to the plumbing trade and related lexicon, in the absence of any indication to the contrary, the Tribunal would be compelled to ascribe to them their technical meaning.

49. The parties agree, and the Tribunal accepts, that the good in issue is a coupling and, more specifically, a compression coupling.⁴¹ In this respect, the Tribunal accepts Mr. Duford’s uncontested descriptions of a “coupling” as “. . . a fitting to couple two ends of pipes”⁴² and of a “compression coupling”, specifically, as “. . . a fitting used to extend a run of pipe . . . where numerous parts are used to compress the joint.”⁴³ Given its function as apparatus designed to couple pipes, the Tribunal is satisfied that the good in issue is properly described as a fitting.⁴⁴

50. This raises the following two related issues: (i) whether a “sleeve” is a “fitting” and, if so, (ii) whether it constitutes a “coupling”.

36. Tribunal Exhibit AP-2010-070-10A, tab 3.

37. *Transcript of Public Hearing*, 6 October 2011, at 66.

38. The parties agree on this point. See Tribunal Exhibit AP-2010-070-03A at para 34; Tribunal Exhibit AP-2010-070-05A at para. 53.

39. In *Deputy M.N.R.C.E. v. Kallestad Canada Inc.*, [1987] F.C.J. No. 266, the Federal Court found that “[w]here . . . the goods [are found] to be a single entity all of whose components contribute to a single defined function, they must be classified under whatever tariff item is appropriate to that entity.” With the good in issue being considered a single entity, classifiable as such by application of Rule 1 of the *General Rules*, there is neither a need nor legal basis to resort to the “essential character” criterion described in Rule 3 (b) for the classification of certain composite goods made up of different components.

40. *Olympia Floor and Wall Tile Co. v. Deputy M.N.R.*, 5 C.E.R. 562 at 565.

41. Tribunal Exhibit AP-2010-070-03A at para. 7; Tribunal Exhibit AP-2010-070-05A at para. 1.

42. *Transcript of Public Hearing*, 6 October 2011, at 68. More specifically, he defined a coupling as “. . . a fitting used for joining and then extending the length of a main or a riser.” Tribunal Exhibit AP-2010-070-08B.

43. Tribunal Exhibit AP-2010-070-08B.

44. The definition of “fitting” includes, for example, “[s]omething fitted; a piece of apparatus . . .”, *Shorter Oxford English Dictionary*, 5th ed., s.v. “fitting”. That the good in issue is a fitting is also consistent with the product specifications, which indicate that “[a] continuous brass helix molded into the leading edge of the gasket provides metal to metal contact between the pipe and coupling sleeve”, Tribunal Exhibit AP-2010-070-03A, tab 2 at 13.

51. With respect to this first issue, it is again uncontested, and accepted by the Tribunal, that a sleeve is designed to fit around a pipe, with its own diameter bearing a direct relationship to that of the pipe that it is intended to accommodate, factoring in code requirements relating to the addition of fire-proofing and water-proofing material. In this regard, Mr. Duford explained as follows:

*... the sleeve must be a proper diameter because we have different code requirements for protection of fire, so much thickness of such material, so the sleeve has [what we call] an annular bar ... between the pipe and the material ... [with] the annular opening there to insert the protection material against fire and water.*⁴⁵

[Emphasis added]

52. Given that the size of the sleeve is fitted to that of the pipe (with allowances for fire-proofing and water-proofing), a sleeve could be considered a fitting, in the broader sense of that term. This view is supported by heading No. 73.07 itself, which explicitly identifies “sleeves” as among those items falling within the category “tube or pipe fittings”.

53. Turning to the second issue, the Tribunal agrees with the CBSA’s assertion that, while all couplings are fittings, and while all sleeves are arguably also fittings, not all fittings are couplings.⁴⁶

54. In this regard, and contrary to Cambridge Brass’s suggestion that a sleeve is simply a type of coupling known by a different name,⁴⁷ the following expert testimony of Mr. Duford draws a clear distinction between a “coupling”, on the one hand, and a “sleeve”, on the other:

MR. GIBBS: ... what is the difference between a sleeve and a coupling in your opinion in plumbing.

MR. DUFORD: In the piping industry, whenever we use the word “coupling”, we mean coupling of pipes. We will unite, we will join piping. A sleeve is a shield that will protect the remains of the pipe against the elements that could affect the piping system.⁴⁸

55. The Tribunal notes that the distinction drawn by Mr. Duford between a sleeve and a coupling is consistent with general dictionary definitions of these terms. In this regard, the definition of a “coupling” in the *Canadian Oxford Dictionary* includes the following: “**2** a thing that couples or links things together”,⁴⁹ while a “sleeve” is defined to include the following: “**3** any tubular piece of plastic or metal etc. resembling a sleeve, used esp. to cover or protect a rod or shaft etc. of a similar shape and size.”⁵⁰ In the same vein, the *Merriam-Webster’s Collegiate Dictionary* defines a “coupling” to include the following: “**2** : a device that serves to connect the ends of adjacent parts or objects”,⁵¹ while the definition of a “sleeve” includes the following: “**2 a** : a tubular part ... designed to fit over another part”.⁵²

45. *Transcript of Public Hearing*, 6 October 2011, at 42.

46. *Ibid.* at 108.

47. *Ibid.* at 122.

48. *Ibid.* at 43.

49. Second ed., s.v. “coupling”.

50. *Ibid.*, s.v. “sleeve”.

51. Eleventh ed., s.v. “coupling”.

52. *Ibid.*, s.v. “sleeve”.

56. More importantly, this distinction is consistent with the tariff heading itself, which explicitly distinguishes “couplings” from “sleeves” by listing them as separate and distinct examples of tube or pipe fittings, as follows:

73.07 Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel.

[Emphasis added]

57. Finally, the distinction drawn by Mr. Duford that, unlike a coupling, a sleeve does not connect the bore of the two tubes, close the tube aperture or form an integral part of the inside of the pipe⁵³ is compelling. As such, while both are types of tube or pipe fittings, “sleeves” and “couplings” would have to be considered separate and distinct articles in heading No. 73.07. That being the case, and with the good in issue being specifically a compression coupling, the Tribunal could not have accepted either (i) Cambridge Brass’s contention that the reference to “sleeves” in subheading No. 7307.92 represents a generic description of the good in issue⁵⁴ or (ii) its fallback claim that a sleeve component imparted an essential character to the good in issue.⁵⁵

DECISION

58. For the foregoing reasons, the Tribunal finds that the good in issue should be classified under tariff item No. 7307.19.99.

59. The appeal is therefore dismissed.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

53. *Transcript of Public Hearing*, 6 October 2011, at 57.

54. *Ibid.* at 83.

55. *Ibid.* at 81. Even if one were to assume, *arguendo*, that the centre piece component was a “sleeve”, classification on the basis of that one component alone would be incompatible with the fact that the good in issue, albeit consisting of several components, constituting a single entity (i.e. a compression coupling), classifiable as such under Rule 1 of the *General Rules*. In this regard, the Tribunal finds the CBSA’s argument on this point compelling: “But even if we accept that it is a sleeve, without the nuts and without the ferrules and without the rings, it would perform no function Therefore, it’s something different from a sleeve. If it’s a straight sleeve on its own, it has the extra parts added and it performs a function, which is to seal gas, prevent liquid from transferring in or out, secure the area, prevent contamination, et cetera, et cetera. It must [therefore] be something more than just a straight sleeve.” *Transcript of Public Hearing*, 6 October 2011, at 105-106.