

Ottawa, Monday, September 9, 1996

Appeal No. AP-95-100

IN THE MATTER OF an appeal heard on January 26, 1996,  
under section 67 of the *Customs Act*, R.S.C. 1985, c. 1  
(2nd Supp.);

AND IN THE MATTER OF decisions of the Deputy Minister of  
National Revenue dated June 21, 1995, with respect to requests  
for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**RUTHERFORD CONTROLS LTD.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Desmond Hallissey

Desmond Hallissey  
Member

Susanne Grimes

Susanne Grimes  
Acting Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-95-100**

**RUTHERFORD CONTROLS LTD.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

This is an appeal under section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue. The issue in this appeal is whether certain electric strikes are properly classified under tariff item No. 8301.60.00 as parts of electrically operated padlocks and locks, as determined by the respondent, or should be classified under tariff item No. 8543.80.40 as other mechanically operated electrical machines having individual functions, as claimed by the appellant.

**HELD:** The appeal is dismissed. In the Tribunal's view, the goods in issue are locks within the meaning of heading No. 83.01. The Tribunal is of the view that heading No. 83.01 contemplates a broad variety of locks. In reaching this view, the Tribunal was guided by the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to heading No. 83.01, which indicate that the heading covers, *inter alia*, "electrically operated locks ... [which] may be operated, e.g., by insertion of a magnetic card, by entering the combination data on an electronic keyboard." The Tribunal concludes that the goods in issue, which are used to lock or secure entryways, operate in all respects as locks and, accordingly, should be classified in heading No. 83.01.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	January 26, 1996
Date of Decision:	September 9, 1996
Tribunal Members:	Robert C. Coates, Q.C., Presiding Member Raynald Guay, Member Desmond Hallissey, Member
Counsel for the Tribunal:	John L. Syme
Clerk of the Tribunal:	Margaret Fisher
Appearances:	Douglas J. Bowering, for the appellant Brian Tittlemore, for the respondent

**Appeal No. AP-95-100**

**RUTHERFORD CONTROLS LTD.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
RAYNALD GUAY, Member  
DESMOND HALLISSEY, Member

**REASONS FOR DECISION**

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> from decisions of the Deputy Minister of National Revenue dated June 21, 1995. The issue in this appeal is whether certain electric strikes are properly classified under tariff item No. 8301.60.00 of Schedule I to the *Customs Tariff*<sup>2</sup> as parts of electrically operated padlocks and locks, as determined by the respondent, or should be classified under tariff item No. 8543.80.40 as other mechanically operated electrical machines having individual functions, as claimed by the appellant.

The following is the relevant tariff nomenclature:

83.01	Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys for any of the foregoing articles, of base metal.
8301.60.00	-Parts
85.43	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this Chapter.
8543.80	-Other machines and apparatus
8543.80.40	---Other electrical machines, mechanically operated

Mr. Yvan Roberge, President of Norcan-Spec, the appellant's agent in the province of Quebec, appeared as a witness on behalf of the appellant. He explained that the goods in issue are typically installed at commercial or industrial sites, where access through the doors is controlled. A strike is installed in the side of a door frame, in alignment with the lock in the door. When the door is locked, the bolt or latch which protrudes from within the door into the strike rests against a small metal plate or "lip." It is this metal plate, together with the bolt, which prevents the door from swinging freely. When the strike is electronically activated (e.g. by entering a code on a numeric pad), the small metal plate, against which the bolt rests, swivels and allows the bolt to pass horizontally through the strike. At that point, the door is unlocked and can swing freely.

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1. R.S.C. 1985, c. 1 (2nd Supp.).
  2. R.S.C. 1985, c. 41 (3rd Supp.).

Mr. Roberge testified that the goods in issue do not operate the locks with which they are used nor vice versa. He also indicated that the goods in issue are not sold with or as part of lock sets. Finally, Mr. Roberge was asked by the appellant's representative to compare the goods in issue with strikes that would come as part of locking and non-locking handle sets. He testified that the latter strikes are not essential to the sets and that the sets could be installed and could operate without the strikes.

In argument, the appellant's representative relied on Rule 1 of the *General Rules for the Interpretation of the Harmonized System*,<sup>3</sup> which provides, in part, that classification is to be determined according to the terms of the headings of Schedule I and any relative Section or Chapter Notes.

The appellant's representative argued that the goods in issue are neither door locks nor parts of door locks, but rather door unlocking devices which bypass the locking mechanism in doors. In the representative's submission, the goods in issue operate independently of the locks with which they may be installed. As the goods in issue are unlocking rather than locking devices, the representative submitted that they could not be classified as locks in heading No. 83.01.

The appellant's representative also submitted that the goods in issue are not "clasps," as contemplated in heading No. 83.01. First, the goods in issue are electrically operated, whereas, in the representative's submission, the clasps described in heading No. 83.01 are not electrically operated. More importantly, the goods in issue are not, in fact, clasps, as clasps are devices for fastening together two or more things or parts of the same thing. In the representative's submission, the goods in issue do not perform that function.

The appellant's representative argued that the goods in issue should be classified as mechanically operated electrical machines having individual functions. The representative submitted that it is beyond dispute that the goods in issue are electrically operated machines. In terms of individual function, the representative submitted that the goods in issue had the specific function of unlocking a door, a function which is distinct from the locking function performed by a conventional lock.

Counsel for the respondent relied on several arguments in support of the respondent's position. First, counsel submitted that heading No. 83.01 contemplates a broad variety of locks (i.e. key, combination or electrically operated). In counsel's submission, the essential or defining element of a lock is that it releases a door when it is unlocked and holds the door secure when it is locked. In counsel's submission, the goods in issue perform precisely these two functions.

Counsel for the respondent submitted that the respondent's position was consistent with the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>4</sup> (the Explanatory Notes) to heading No. 83.01.

Counsel for the respondent made two arguments in opposition to the appellant's suggested classification. First, Chapter 85 is located in Section XVI of Schedule I to the *Customs Tariff*. Counsel argued that the goods in issue could not be classified under tariff item No. 8543.80.40, as Note 1(k) to Section XVI expressly excludes articles of Chapter 82 or 83.

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3. *Supra* note 2, Schedule I.

4. Customs Co-operation Council, 1st ed., Brussels, 1986.

Second, counsel for the respondent submitted that the goods in issue are not electrical apparatus having “individual functions.”<sup>5</sup> The Explanatory Notes to heading No. 84.79 provide that:

Mechanical devices which cannot perform their function unless they are mounted on another machine or appliance, or are incorporated in a more complex entity, [may be regarded as having individual functions], provided that this function:

- (i) is distinct from that which is performed by the machine or appliance whereon they are to be mounted, or by the entity wherein they are to be incorporated, and
- (ii) does not play an integral and inseparable part in the operation of such machine, appliance or entity.

In the submission of counsel for the respondent, the function of the goods in issue is not independent of the function of the locks with which they are typically installed. Rather, the two components operate together as an integral whole.

The Tribunal is of the view that heading No. 83.01 contemplates a broad variety of locks. First, the wording of the heading itself is extremely broad, “Padlocks and locks (key, combination or electrically operated), of base metal.” Moreover, the Explanatory Notes to heading No. 83.01 indicate that the heading covers an extremely wide variety of locks. Specifically, the Tribunal considered the following Explanatory Notes to heading No. 83.01:

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

It also includes electrically operated locks (e.g., for street doors of blocks of flats or for lift doors). These locks may be operated, e.g., by insertion of a magnetic card, by entering the combination data on an electric keyboard, or by radio wave signal.

The heading therefore covers, *inter alia*:

- (A) Padlocks of all types for doors, trunks, chests, bags, cycles, etc., including key-operated locking hasps.
- (B) Locks for doors or gates, letter boxes, safes, boxes or caskets, furniture, pianos, trunks, suitcases, handbags, dispatch-cases, etc.; for automobiles, railway rolling-stock, tramcars, etc.; for lifts, shutters, sliding doors, etc.

In the Tribunal’s view, neither of the classifications suggested by the parties to this appeal is correct. The goods in issue should be classified in heading No. 83.01. The Tribunal has reached this decision on the basis of its view that the goods in issue are not parts of locks, but rather locks, in and of themselves.

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

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5. In determining whether a machine has an individual function, the Explanatory Notes to heading No. 85.43 provide that the introductory provisions of the Explanatory Notes to heading No. 84.79, which set out the criteria for determining “individual functions,” apply, *mutatis mutandis*, to heading No. 85.43.

The appellant's representative argued that the goods in issue unlock doors, but that they do not lock them. The Tribunal is not prepared to accept that distinction. Where they are installed, the goods in issue serve both to lock and to unlock doors. They unlock when they are activated, by allowing a bolt or latch protruding from the door to pass horizontally through them, thus permitting the door to swing freely. They lock the door, when not activated, by holding the bolt or latch securely in place and preventing the door from swinging open. The Tribunal has concluded that the goods in issue are locks, in and of themselves, rather than parts of locks, because they could be used on doors independent of any other form of locking mechanism. In other words, the goods in issue need not be used in conjunction with a locking handle set or other form of lock in order to perform a locking function. Only a bolt or some other form of protrusion from a door, which protrusion does not have to be part of a lock, is required to permit the goods in issue to perform their locking function.

For the foregoing reasons, the appeal is dismissed.

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Presiding Member

Raynald Guay  
Raynald Guay  
Member

Desmond Hallissey  
Desmond Hallissey  
Member