

Ottawa, Friday, November 22, 1996

Appeal No. AP-95-194

IN THE MATTER OF an appeal heard on July 30, 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 July 31 and August 4, 1995, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

ATLAS ALLOYS, A DIVISION OF RIO ALGOM LIMITED

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed in part.

Charles A. Gracey

Charles A. Gracey
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Desmond Hallissey

Desmond Hallissey
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-95-194

ATLAS ALLOYS, A DIVISION OF RIO ALGOM LIMITED

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is the proper tariff classification of mould steel products made to three different specifications. The appellant claims that the goods in issue should be classified under tariff item No. 7224.90.10 as semi-finished products of other alloy steel. The appellant also claims the benefits of Code 5933 of the *Customs Duties Reduction or Removal Order, 1988, No. 1*, which would allow for duty-free importation of the goods in issue. The respondent classified the goods in issue under tariff item No. 7228.50.00 as other bars and rods, not further worked than cold-formed or cold-finished, without the benefits of Code 5933.

HELD: The appeal is allowed in part. The majority of the Tribunal finds that the goods in issue meet the definition of semi-finished products found at Note 1(ij) to Chapter 72 of Schedule I to the *Customs Tariff*. They are products of solid section that have been roughly shaped by forging. The majority of the Tribunal is of the view that surface grinding for testing purposes does not constitute further working. There is a partial dissent on this point.

To qualify for the benefits of Code 5933, the goods in issue must be for use in the manufacture of the goods listed in that code. The Tribunal is of the view that the definition of “for use in,” found in section 4 of the *Customs Tariff*, is applicable to interpreting the meaning of Code 5933. Section 4 is interpreted to require that the goods in issue be “wrought into, attached to or incorporated into” the goods listed in Code 5933 to be considered for use in the manufacture of those goods. Although the goods in issue are used to make moulds, some of which may be used to make parts of vehicles, they are not “wrought into, attached to or incorporated into” those vehicles or parts or accessories thereof. As such, the goods in issue are not “for use in” the manufacture of those vehicles or parts or accessories thereof.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	July 30, 1996
Date of Decision:	November 22, 1996
Tribunal Members:	Charles A. Gracey, Presiding Member Arthur B. Trudeau, Member Desmond Hallissey, Member
Counsel for the Tribunal:	David M. Attwater
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Daniel J. Leduc, for the appellant Josephine A.L. Palumbo, for the respondent

Appeal No. AP-95-194

ATLAS ALLOYS, A DIVISION OF RIO ALGOM LIMITED

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
ARTHUR B. TRUDEAU, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act) from several decisions of the Deputy Minister of National Revenue made under section 63 of the Act. The issue in this appeal is the proper tariff classification of mould steel products made to three different specifications. The appellant claims that the goods in issue should be classified under tariff item No. 7224.90.10 of Schedule I to the *Customs Tariff*² as semi-finished products of other alloy steel. Furthermore, the appellant claims the benefits of Code 5933 of the *Customs Duties Reduction or Removal Order, 1988, No. 1*³ (the Order), which would allow for duty-free importation of the goods in issue. The respondent classified the goods in issue under tariff item No. 7228.50.00 as other bars and rods, not further worked than cold-formed or cold-finished, without the benefits of Code 5933.

For purposes of this appeal, the relevant tariff nomenclature of Schedule I to the *Customs Tariff* and Code 5933 read as follows:

72.24	Other alloy steel in ingots or other primary forms; semi-finished products of other alloy steel.
7224.10.00	-Ingots and other primary forms
7224.90	-Other
7224.90.10	---Blooms, billets, rounds, slabs or sheet bars
72.28	Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel.
7228.50.00	-Other bars and rods, not further worked than cold-formed or cold-finished
Code 5933	Materials, of a class or kind not made in Canada, of Section ... XV ^[4] ... <u>for use in</u> the manufacture of passenger automobiles, buses, lorries (motor trucks), ambulances, hearses or chassis therefor, or parts, accessories or parts thereof. (Emphasis added)

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1. R.S.C. 1985, c. 1 (2nd Supp.).
 2. R.S.C. 1985, c. 41 (3rd Supp.).
 3. SOR/88-73, December 31, 1987, *Canada Gazette* Part II, Vol. 122, No. 2 at 631.
 4. Section XV of Schedule I to the *Customs Tariff* includes Chapter 72, within which the two tariff items at issue are found.

The expression “for use in,” as used in Code 5933, is defined in section 4 of the *Customs Tariff*, which states:

4. The expression “for use in”, wherever it occurs in a tariff item in Schedule I or a code in Schedule II in relation to goods, means, unless the context otherwise requires, that the goods must be wrought into, attached to or incorporated into other goods as provided for in that tariff item or code.

The appellant’s first witness was Mr. Nicholas Cerwin, Chief Metallurgist and Director of Quality Assurance for A. Finkl & Sons Co. (Finkl), the manufacturer of the goods in issue. Mr. Cerwin explained that, for purposes of making mould steel, an electric arc furnace is used to melt scrap steel. Various ingredients are added to the liquid steel to produce a composition according to specification. The mixture is transferred to a ladle and subjected to “vacuum degassing,” which produces a finer-quality steel. Next, the mixture is bottom poured into ingots and allowed to solidify. The ingots are then transferred to a reheating furnace to equalize the internal temperature to approximately 2,300°F. The hot ingot is then press forged into crude shape and subjected to a heat treatment to improve the hardness and strength of the steel.

Following that, a number of inspections are conducted on the product to assure its quality. Two such tests include an ultrasonic inspection that detects flaws in the interior of the steel and a hardness test. To conduct these tests, the outer layer of oxidized steel must be removed. To this end, at least four surfaces of the forged product are surface machined. Approximately 1/2 in. of material is removed from each surface, and normally the machining is to within 1/8 to 3/8 in. per surface over a customer’s specification. Mr. Cerwin added that Finkl does not “cold finish” the steel, which suggests a precision finish. Similarly, it does not polish nor weld the steel.

Mr. Cerwin told the Tribunal that he believed that the goods in issue were all over 12 in. thick, typically 36 to 48 in. wide and 8 to 10 ft. long. He compared these dimensions to the ASTM standards for steel bars.⁵ He noted that standard A 29 extends to 10 in. in thickness and standard A 681 extends to 8 in. in thickness for hot-rolled bars and 12 in. for hot-rolled flat bars. Furthermore, the permissible variations in dimensions under the ASTM standards are considerably smaller than those provided by Finkl. As to the range of bars addressed by the ASTM standards, Mr. Cerwin opined that probably 90 percent of all bar products in the world, and the full extent of bar products manufactured in the United States, are made in sizes smaller than 10 in.

Mr. Cerwin explained that, subsequent to forging, the product would be called a “cog” if made for no specific application. He acknowledged that the goods in issue sold to the appellant could be called bars. However, this was qualified by noting that the goods in issue are not bars according to ASTM standards. Furthermore, when a customer orders a bar, there is an expectation of certain specifications, including only minor variances in dimension. He added that the dimension of a bar could form part of the dimension of the final product made from that bar. In contrast, Finkl’s mould steel is not sold to precise dimensions, and those dimensions are completely altered when a mould is made.

The appellant’s second witness was Mr. Dan Coll, National Product Manager, Mould Steel, and District Manager in Windsor, Ontario, for Atlas Alloys, A Division of Rio Algom Limited. Mr. Coll told the Tribunal that the goods in issue ranged from about 5 to 30 in. in thickness and about 25 to 48 in. in width and came in random lengths. Part of the service provided by the appellant is to cut the goods in issue to dimensions required by its customers for making moulds. He agreed with Mr. Cerwin that the term “bar”

5. ASTM designation A 29/A 29M - 90 and A 681 - 89.

implies a product made with a fine finish and to relatively close tolerances. He added that the appellant does not require Finkl to provide a certain finish to the mould steel nor does it require the dimensional tolerances specified in the ASTM standards for steel bars. Mr. Coll said that he refers to the goods in issue as “stringers” and that the appellant’s customers, some of which make moulds for the manufacture of automobile parts, order “blocks.”

On questions from the Tribunal, Mr. Coll said that, in steel parlance, a mould steel product would be called a semi-finished product. He explained that a steel product would be considered a finished product if its dimensions were carried forward to the final article made therefrom.

The respondent’s witness was Dr. Hoang LeHuy, Chief Engineer and Manager of Research and Development for Sorel Forge Inc. Dr. LeHuy was qualified, by the Tribunal, as an expert witness with respect to metallurgy. It was also established that Sorel Forge Inc. is a competitor of the appellant.

Using overhead slides and a brief video presentation, Dr. LeHuy explained the manufacture of mould steel and the importance of exacting standards in respect of composition, heat treatment and physical forming. He indicated that the mould steel that is shipped to the customer is a finished product. In using the term “finished,” Dr. LeHuy indicated that the steelmaking process was complete because the characteristics of the steel had been set. He described semi-finished products as those in which the characteristics of the steel would be further changed by such processes as forging or thermal treatment, processes that would fundamentally change the characteristics of the steel itself.

In argument, counsel for the appellant submitted that the goods in issue do not meet the ASTM standards for bars. As such, they should not be classified as bars or rods. In support of the proposition that bars require more exact tolerances than do semi-finished products, counsel referred to *British Steel Canada Inc. v. The Deputy Minister of National Revenue for Customs and Excise*.⁶ In further support of the proposition that semi-finished products are simply shaped, while finished products are more specifically shaped into the final product, counsel referred to *Importation/Exportation Y&Y v. The Deputy Minister of National Revenue for Customs and Excise*.⁷

Counsel for the appellant submitted that the goods in issue meet the definition of semi-finished products found at Note 1(ij) to Chapter 72 of Schedule I to the *Customs Tariff*.⁸ As such, they should be classified as semi-finished products. Furthermore, production of the goods in issue by Finkl is properly

6. (1984), 9 T.B.R. 240.

7. Canadian International Trade Tribunal, Appeal No. AP-90-081, September 12, 1991.

8. Note 1(ij) states as follows:

1. In this Chapter ... the following expressions have the meanings hereby assigned to them:

...

(ij) Semi-finished products

Continuous cast products of solid section, whether or not subjected to primary hot-rolling;
and

Other products of solid section, which have not been further worked than subjected to primary hot-rolling or roughly shaped by forging, including blanks for angles, shapes or sections.

These products are not presented in coils.

described in the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁹ (the Explanatory Notes) as the production of semi-finished products.¹⁰

Referring to the Explanatory Notes to heading No. 72.07,¹¹ counsel for the appellant submitted that the goods in issue are described under the heading “Pieces roughly shaped by forging,” which states:

These are semi-finished products of rough appearance and large dimensional tolerances, produced from blocks or ingots by the action of power hammers or forging presses.... the heading covers **only** those pieces which require considerable further shaping in the forge, press, lathe, etc.

On the latter point, counsel noted that a mould steel product requires considerable working to produce a mould.

With regard to the meaning of Code 5933, counsel for the appellant submitted that the definition of “for use in,” found at section 4 of the *Customs Tariff*, does not apply. By its terms, this provision applies only to Schedules I and II of the *Customs Tariff*. Rather, Code 5933 is contained in the Order.

In support of the proposition that the goods in issue qualify for the benefits of Code 5933 as being for use in the production of automobiles, counsel for the appellant referred to *Boeing of Canada Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*.¹² In that case, the Tariff Board found that certain tooling used to produce aircraft parts were goods for the manufacture of aircraft.

Counsel for the respondent noted that Note 1(ij) to Chapter 72 defines “semi-finished products” as products “which have not been further worked than subjected to primary hot-rolling or roughly shaped by forging.” It was argued that the goods in issue have been further worked, as they are subjected to machining. The machining does more than merely remove the oxidation scale and crust from the steel; it also removes surface imperfections for ultrasonic testing and to meet the high tolerances of customer specifications.

Furthermore, the goods in issue have been subjected to heat treatments to improve the properties of the steel. Referring to the Explanatory Notes to Chapter 72, counsel for the respondent submitted that heat treatment is considered a subsequent manufacture and finishing operation. Therefore, the goods in issue cannot be classified as semi-finished products.

As to classification in heading No. 72.28, the Explanatory Notes to several subheadings under heading No. 72.15¹³ indicate, in part:

In addition to cold-forming or cold-finishing, the products of these subheadings may have been subjected to the following working or surface treatments:

(4) Operations intended exclusively to detect flaws in the metal.

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

10. “Production of ingots or other primary forms and of semi-finished products,” General Note (III) of the Explanatory Notes to Chapter 72.

11. The Explanatory Notes to heading No. 72.24 indicate that “[t]he provisions of the Explanatory Note to headings 72.06 and 72.07 apply, *mutatis mutandis*, to the products of this heading.”

12. Tariff Board, Appeal No. 2636, July 28, 1988.

13. The Explanatory Notes to heading No. 72.28 indicate that “[t]he provisions of the Explanatory Notes to headings 72.14 to 72.16 apply, *mutatis mutandis*, to the products of this heading.”

Counsel for the respondent argued that the goods in issue, being surface-machined, are cold-finished as described in tariff item No. 7228.50.00. It was noted, in the Explanatory Notes to heading No. 72.15, that “cold-finishing” refers to goods that have “been subjected either ... to a grinding or turning process (grinded or sized bars).” Furthermore, the machining done to detect flaws in the metal is a surface operation contemplated in heading No. 72.28. However, such machining is not provided for in the heading for semi-finished products, as claimed by the appellant.

With regard to Code 5933, counsel for the respondent argued that, for the goods in issue to qualify for the benefits of the code, they must be “for use in” the manufacture of various vehicles or parts or accessories thereof. Counsel argued that, as both the French and English versions of the definition of “for use in” are authoritative, and because the French version is more precise, it must be adopted. The implication of this is that the definition must be qualified such that the goods in issue must “enter into the composition” (from the French version) of the various vehicles by being “wrought into, attached to or incorporated into” those vehicles.

By reference to a dictionary definition of “composition,” counsel for the respondent argued that goods qualify for the benefits of Code 5933 if they become an integral component in the formation or construction of one of the vehicles indicated in the code or a part or accessory thereof. As the goods in issue are further manufactured into injection moulds for making plastic products, they are not “wrought into, attached to or incorporated into” a vehicle or part or accessory thereof.

After review of the evidence and arguments presented by the parties, the majority of the Tribunal finds that the goods in issue meet the definition of semi-finished products found at Note 1(ij) to Chapter 72. They are products of solid cross-section that have been roughly shaped by forging. According to the evidence of Mr. Cerwin, they are manufactured with large dimensional tolerances that do not meet the ASTM standards for bars. As to Dr. LeHuy’s testimony, the majority of the Tribunal finds no support in the Explanatory Notes for the proposition that a semi-finished product will be subjected to further processes that will change the characteristics of the steel.

Just as the products of heading No. 72.28 may be subjected to certain surface treatments without effect to their classification, the majority of the Tribunal is of the view that semi-finished products of heading No. 72.24 may also undergo such treatments with similar results. The majority of the Tribunal is of the view that surface grinding for testing purposes does not constitute further working.

As semi-finished products are specifically excluded from the definition of “[o]ther bars and rods,” as used in heading No. 72.28,¹⁴ the majority of the Tribunal finds that the goods in issue are not properly classified in this heading. Furthermore, the evidence is clear that the goods in issue do not meet the ASTM standards for bars. This lends support to the conclusion that they are not properly classified as other bars and rods. The majority of the Tribunal accords little weight to Mr. Cerwin’s statement that the goods in issue can be called bars. As “sheet bars” are classified under tariff item No. 7224.90.10, it is clear that semi-finished products do not exclude bar products.

It was not questioned that the goods in issue are made of alloy steel. Therefore, the majority of the Tribunal finds that the goods in issue, as semi-finished products of alloy steel, should be classified under tariff item No. 7224.90.10.

14. Note 1(m) to Chapter 72 defines “[o]ther bars and rods” to mean “[p]roducts which do not conform to any of the definitions [of semi-finished products].”

As to Code 5933, the Tribunal finds that the goods in issue do not qualify for the benefits of that code. Counsel for the appellant argued that the definition of “for use in,” found in section 4 of the *Customs Tariff* was not applicable to interpreting the meaning of Code 5933, which is found in the Order. The Tribunal notes that the Order is made pursuant to paragraph 68(1)(a) of the *Customs Tariff*. Like Schedule II to the *Customs Tariff*, the Order provides for the reduction or removal of the customs duties set out in Schedule I to the *Customs Tariff*. Schedule II and the Order form part of an integrated system of concessionary provisions for the reduction or removal of customs duties. As Schedule II and the Order are closely related enactments pertaining to the same subject matter, the Tribunal is of the view that the meaning of the expression “for use in,” as used in Code 5933, should be interpreted according to the definition provided in section 4 of the *Customs Tariff*.

To qualify for the benefits of Code 5933, the goods in issue must be for use in the manufacture of the goods listed in that code. The Tribunal interprets section 4 of the *Customs Tariff* to require that the goods in issue be “wrought into, attached to or incorporated into” the goods listed in Code 5933 to be considered for use in the manufacture of those goods. Although the goods in issue are used to make moulds, some of which may be used to make parts of vehicles, they are not “wrought into, attached to or incorporated into” those vehicles or parts or accessories thereof. As such, the goods in issue are not “for use in” the manufacture of those vehicles or parts or accessories thereof.

Accordingly, the appeal is allowed in part.

Arthur B. Trudeau

Arthur B. Trudeau
Member

Desmond Hallissey

Desmond Hallissey
Member

DISSENTING OPINION OF PRESIDING MEMBER GRACEY

I respectfully dissent from the determination of the majority of the Tribunal with respect to the classification of the goods in issue for the following reasons. One can well understand the quite honest and straightforward perception of the appellant that the goods in issue, being essentially forged blanks for the subsequent manufacture of moulds, are semi-finished products. However, the Tribunal is compelled to have regard to the Explanatory Notes, and I am of the view that the terms “primary,” “semi-finished” and “finished,” as used in the Explanatory Notes, refer to products of the steel manufacturing process and not to the final product that may be made from the finished steel product.

The definition of a semi-finished product, as it relates to products that are not continuous cast products, is “[o]ther products of solid section, which have not been further worked than subjected to primary hot-rolling or roughly shaped by forging, including blanks for angles, shapes or sections.” The evidence is unrefuted that the goods in issue are shaped by forging, heat treated and then worked by surface grinding on at least four surfaces to permit ultrasonic testing. I concur with the majority of the Tribunal that this surface preparation is exclusively, or at least primarily, for preparing the product for testing. However, I cannot disregard the definition of semi-finished products, specifically, that the products “have not been further worked than ... roughly shaped by forging,” simply on the grounds that the further working was merely for testing purposes.

I am aware that the Explanatory Notes to Chapter 72, under the heading “Subsequent manufacture and finishing,” state, in part:

The finished products may be subjected to further finishing treatments or converted into other articles by a series of operations such as:

- (1) Mechanical working
- (2) Surface treatments ... Except as otherwise provided in the text of certain headings, such treatments do not affect the heading in which the goods are classified.

I do not believe that this provision can be applied to semi-finished products, as the majority of the Tribunal has found. To do so, the reference to “finished products” must be read to include semi-finished products. However, such a reading cannot be justified, as the Explanatory Notes have dealt with semi-finished products separately.

I also find that the goods in issue do not conform to the definition of “Pieces roughly shaped by forging” as found in the Explanatory Notes to heading No. 72.07. The definition refers to “semi-finished products of rough appearance and large dimensional tolerances.” The evidence is that the goods in issue are not of large dimensional tolerances, even before they are surface ground, and do not require “considerable further shaping in the forge, press, lathe, etc.” Indeed, the evidence is that the goods in issue are not subjected to another forging operation. Therefore, the goods in issue cannot be considered to be goods that are roughly shaped by forging.

Inasmuch as the goods in issue cannot be considered semi-finished products, they cannot, in my opinion, be classified as the appellant claimed and are properly classified as finished products as the respondent determined.

With regard to the dimensional criteria set out in the ASTM standards, I cannot conclude that only those goods that conform to ASTM dimensions may be referred to, for classification purposes, as bars. Indeed, to do so would give more weight to the ASTM standards than to the Explanatory Notes to which the Tribunal must have regard in interpreting the headings and subheadings of Schedule I to the *Customs Tariff*.¹⁵ Further, and more importantly, there is a definition of “other bars and rods” in the *Customs Tariff* that makes no reference to dimensional limits. Finally, I am not troubled by referring to the goods in issue as bars, inasmuch as Mr. Cerwin admitted that, in everyday usage, the goods in issue are referred to as bars or cogs.

Charles A. Gracey

Charles A. Gracey

Presiding Member

15. *Supra* note 2, s. 11.