



Ottawa, Monday, June 25, 2001

Appeal Nos. AP-98-041 and AP-98-060

IN THE MATTER OF two appeals heard on October 16, 2000,
under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Deputy Minister of
National Revenue dated April 14 and 22, and June 3, 1998, with
respect to a number of requests for redetermination under
section 63 of the *Customs Act*.

BETWEEN

WEISER INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeals are allowed.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

James A. Ogilvy
James A. Ogilvy
Member

Susanne Grimes
Susanne Grimes
Acting Secretary



UNOFFICIAL SUMMARY

Appeal Nos. AP-98-041 and AP-98-060

WEISER INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

At issue in these appeals is whether the goods described as keyed door handle sets (which feature either knobs or levers) are properly classified in subheading No. 8301.40 as other locks, as submitted by the respondent, or should be classified in subheading No. 8302.41 as other mountings, fittings and similar articles suitable for buildings, as claimed by the appellant.

The appellant submitted that the *Explanatory Notes to the Harmonized Commodity Description and Coding System* (the Explanatory Notes) to heading Nos. 83.01 and 83.02 are relevant to the classification of the goods in issue. The Explanatory Notes to heading No. 83.01 state, in part, that the heading “**does not**, however, **include** simple latches or bolts, etc. (**heading 83.02**)”. In the appellant’s submission, this excludes latches or bolts from classification in heading No. 83.01 and requires that they be classified in heading No. 83.02. Further, Note (D)(2) of the Explanatory Notes to heading No. 83.02 does not preclude a door handle with a key-operated lock from classification in heading No. 83.02, but precludes a key-operated deadbolt from such classification. Note (D)(7) encompasses door handles, including those with key-operated locks, which, the appellant argued, means that the goods in issue would be classified in heading No. 83.02. The appellant argued that, in the alternative, the goods in issue could be classified pursuant to Rule 3 of the *General Rules for the Interpretation of the Harmonized System* (the General Rules). The appellant submitted that the goods in issue are composite goods, formed by a door handle and a key-operated lock, which should be classified pursuant to Rule 3 (a) of the General Rules, in that heading Nos. 83.01 and 83.02 should be regarded as equally specific because each heading refers to only part of the alleged composite goods in issue. The appellant also argued that heading No. 83.02 should be preferred to heading No. 83.01 because the former provides a more specific description of the goods in issue. Pursuant to Rule 3 (b), the alleged composite goods in issue can be classified according to the material or component that gives them their essential character. The door handle portion is essential to the operation of the door, while the lock component is an optional feature. Barring classification pursuant to Rule 3 (b), the goods in issue are to be classified, according to Rule 3 (c), in the heading that appears last in numerical order within the *Customs Tariff*.

The respondent submitted that the goods in issue may be classified in heading No. 83.01 pursuant to Rule 1 of the General Rules or, in the alternative, in heading No. 83.01 pursuant to Rule 3 (a) or Rule 3 (b). In examining the relevant headings, heading No. 83.01 refers specifically to key-operated locks. In contrast, heading No. 83.02 does not refer specifically to locks or handles, but is a more general heading. Therefore, the respondent submitted, as the goods in issue are more specifically described in heading No. 83.01, they should be classified in that heading. The essential character of the goods in issue is the keyed locking component. Moreover, in considering the functions of the goods in issue, the respondent submitted that they are designed and used to provide a key-operated locking function.

HELD: The appeals are allowed. In this case, the Tribunal relies on Rule 1 of the General Rules and determines that the goods in issue are base metal mountings, fittings and similar articles suitable for

doors and are not, as submitted by the respondent, padlocks and locks (key, combination or electrically operated) of base metal. The Tribunal finds that the wording of Note (D)(7) of the Explanatory Notes to heading No. 83.02 is clear and unambiguous and that mountings, fittings and similar articles suitable for buildings include handles and knobs for locks for doors. The Tribunal also finds that the locks mentioned in Note (D)(7) are all types of locks, unlike those mentioned in heading No. 83.01, where the locks are described as key, combination or electrically operated.

The Tribunal also reviewed Note (D)(2) of the Explanatory Notes to heading No. 83.02, which specifically excludes key-operated bolts of heading No. 83.01 from classification in heading No. 83.02. The Tribunal is of the opinion that, should there be any distinction intended between key-operated locks and locks in Note (D)(7), it would have been made in the same manner as it has been made in Note (D)(2) between key-operated bolts and bolts for doors. Therefore, the Tribunal is not convinced that the locks mentioned in Note (D)(7) are the key, combination or electronically operated locks mentioned in heading No. 83.01.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	October 16, 2000
Date of Decision:	June 25, 2001
Tribunal Members:	Richard Lafontaine, Presiding Member Peter F. Thalheimer, Member James A. Ogilvy, Member
Counsel for the Tribunal:	Michèle Hurteau
Clerk of the Tribunal:	Margaret Fisher
Appearances:	Kimberly L.D. Cook, for the appellant Michael Roach, for the respondent



Appeal Nos. AP-98-041 and AP-98-060

WEISER INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: RICHARD LAFONTAINE, Presiding Member
PETER F. THALHEIMER, Member
JAMES A. OGILVY, Member

REASONS FOR DECISION

These are appeals under section 67 of the *Customs Act*¹ from decisions dated April 14 and 22, and June 3, 1998, of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency) made under section 63 of the Act. At issue in these appeals is whether the goods described as keyed door handle sets (which feature either knobs or levers) are properly classified in subheading No. 8301.40 of Schedule I to the *Customs Tariff*² as other locks, as submitted by the respondent, or should be classified in subheading No. 8302.41 as other mountings, fittings and similar articles suitable for buildings, as claimed by the appellant.

The relevant tariff nomenclature provisions read as follows:

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.
8301.40	-Other locks
8301.40.90	---Other
83.02	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat-racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal.
8302.30.00	-Other mountings, fittings and similar articles suitable for motor vehicles -Other mountings, fittings and similar articles:
8302.41	--Suitable for buildings
8302.41.90	---Other

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].
2. R.S.C. 1985 (3d Supp.), c. 41.

EVIDENCE

The appellant submitted a series of physical exhibits, price lists and various product literature, all supported by a sworn affidavit by a corporate officer of the appellant. Neither party called witnesses at the hearing.

ARGUMENT

The appellant submitted that the *Explanatory Notes to the Harmonized Commodity Description and Coding System*³ to heading Nos. 83.01 and 83.02 are relevant to the classification of the goods in issue. The Explanatory Notes to heading No. 83.01 state, in part, that the heading “**does not, however, include** simple latches or bolts, etc. (**heading 83.02**)”. In the appellant’s submission, this excludes latches or bolts from classification in heading No. 83.01 and requires that they be classified in heading No. 83.02. The appellant relied on Note (D)(2) of the Explanatory Notes to heading No. 83.02, which covers “**Mountings, fittings and similar articles suitable for buildings**” and includes “bolts . . . (**other than** key-operated bolts of **heading 83.01**), for doors.” The appellant disagreed with the respondent’s position that Note (D)(2) requires that a door handle with a key-operated lock be classified in heading No. 83.01. In the appellant’s view, Note (D)(2) does not preclude a door handle with a key-operated lock from classification in heading No. 83.02, but precludes a key-operated deadbolt from such classification. According to the appellant, the Explanatory Notes serve to provide guidance to classify goods that, on the face of it, could be classified in either heading. In this case, submitted the appellant, the Explanatory Notes assist in classifying the deadbolt that has a keyed portion⁴ in heading No. 83.01 and a simple bolt that does not have a keyed portion⁵ in heading No. 83.02.

The appellant submitted that, pursuant to Rule 1 of the *General Rules for the Interpretation of the Harmonized System*,⁶ the goods in issue should be classified in subheading No. 8302.41 as other mountings, fittings and similar articles suitable for buildings. In support of this contention, the appellant argued that Note D(7) of the Explanatory Notes to heading No. 83.02 directs classification of the goods in issue in this heading.⁷ In the appellant’s submission, had the intent of Note (D)(7) been to exclude key-operated door handles from classification in heading No. 83.02, the note would have used exclusionary wording such as “handles and knobs for doors except those with locks (83.01)”.⁸ Instead, Note (D)(7) encompasses door handles, including those with key-operated locks, which, the appellant argued, means that the goods in issue would be classified in heading No. 83.02.

In the alternative, should the goods not be classified according to Rule 1 of the General Rules, the appellant submitted that classification of the goods in issue should be governed by Rule 3, unless the terms of the Section or Chapter Notes otherwise require. The appellant submitted that Rule 3 (a) provides that the heading that provides the most specific description shall be preferred to the heading providing a more general description. Where part of a composite good can be classified in two or more headings, then each of those headings must be regarded as equally specific. Pursuant to Rule 3 (a), the appellant submitted, the goods in issue are composite goods, formed by a door handle and a key-operated lock, and heading Nos. 83.01 and 83.02 should, therefore, be regarded as equally specific because each heading refers to only

3. Customs Co-operation Council, 2d ed., Brussels, 1996 [hereinafter Explanatory Notes].

4. Exhibit A-8.

5. Exhibit A-7.

6. *Supra* note 2, Schedule I [hereinafter General Rules].

7. Note (D)(7) reads as follows: “Hasps and staples for doors; handles and knobs for doors, including those for locks or latches.”

8. *Transcript of Public Argument*, 16 October 2000, at 32.

part of the alleged composite goods in issue. In the alternative, the appellant argued, heading No. 83.02 should be preferred to heading No. 83.01 because the former provides a more specific description of the goods in issue.

Pursuant to Rule 3 (b) of the General Rules, the appellant further submitted, the alleged composite goods in issue can be classified according to the material or component that gives them their essential character. The appellant examined a series of factors relating to the role of the components, and their respective physical characteristics, value and price that, in the appellant's view, all indicated that the essential character of the goods in issue is imparted by the door handle. The appellant submitted that, for example, the door handle is a stand-alone item that clearly functions without locking components. The door handle portion is essential to the operation of the door, while the lock component is an optional feature. The lock cylinder or keyed component is specifically designed for a door handle and would not function without the handle portion, while the handle functions without the keyed portion. The appellant also discussed the various styles and finishes of the door handles as opposed to the lock cylinder assembly, which is identical across the product line. Further, the door handle component dominates by weight and volume, and this also provides the essential character of the goods in issue. Finally, in comparing the costs of the door handles and the locks, the appellant argued that the cost of the door handles is three to four times the cost of the lock component. Therefore, in the appellant's submission, as the door handle component is substantially more expensive than the lock component, the door handle component affects the essential character of the goods in issue. The appellant submitted that Rule 3 (b) thereby dictates that the goods in issue be classified in heading No. 83.02.

In the further alternative, the appellant submitted, barring classification pursuant to Rule 3 (b) of the General Rules, the goods in issue are to be classified, according to Rule 3 (c), in the heading that appears last in numerical order within the *Customs Tariff*. This also would point to the classification of the goods in issue in heading No. 83.02. The appellant concluded by stating that the goods in issue should be classified under tariff item No. 8302.41.90.

The respondent submitted that the goods in issue may be classified in heading No. 83.01 pursuant to Rule 1 of the General Rules or, in the alternative, in heading No. 83.01 pursuant to Rule 3 (a) or Rule 3 (b). If the classification of goods cannot be determined according to the terms of the headings pursuant to Rule 1, then one would resort to the other rules.

In examining the relevant headings, heading No. 83.01 refers specifically to key-operated locks. In contrast, heading No. 83.02 does not refer specifically to locks or handles, but is a more general heading. Therefore, the respondent submitted, as the goods in issue are more specifically described in heading No. 83.01, they should be classified in that heading.

The respondent submitted that the Explanatory Notes to heading No. 83.01 essentially emphasize that the heading deals with key-operated fastening devices or key-operated locks. Further, Note (B) of the Explanatory Notes to heading No. 83.01 specifically mentions locks for doors or gates. The respondent argued that, in contrast, the Explanatory Notes to heading No. 83.02 are more general. The respondent also submitted that Note D(2) of the Explanatory Notes to heading No. 83.02 excludes the goods in issue from classification in that heading, as they consist of a key-operated bolt. In conclusion, the respondent argued that non-key-operated locks are classified in heading No. 83.02, while key-operated locks are classified in heading No. 83.01.

If Rule 1 of the General Rules is not applicable, then the Tribunal must consider Rule 3 (a). Under this rule, the respondent submitted, the goods in issue must be classified as locks in heading No. 83.01, as that heading more specifically describes the goods in issue than does heading No. 83.02, which uses the terms “base metal mountings”. If the Tribunal finds that the goods in issue are composite goods, the Tribunal is required to find that the headings are equally specific and must move on to classify the goods pursuant to Rule 3 (b). The respondent argued that the essential character of the goods in issue is the keyed locking component. Moreover, in considering the functions of the goods in issue, the respondent submitted that they are designed and used to provide a key-operated locking function. The keyed locking component is not optional, as it comes with the product and the consumer is purchasing a key-operated locking product.

Finally, the respondent submitted that the appellant incorrectly interpreted the last part of Note D(7) of the Explanatory Notes to heading No. 83.02; in the respondent’s view, this note refers to doors and knobs with non-key-operated locks. The respondent also objected to the appellant’s contention that the manufacturing costs associated with each component of the goods in issue could be determinative of the essential character of the whole, given the marginal cost differences between them. The respondent submitted that little weight should be attributed to the costing evidence produced by the appellant because the supporting affidavit does not provide complete information and there was no opportunity to cross-examine. In support of the respondent’s claims, the respondent cited a Tribunal decision that had examined the classification of certain locks.⁹

DECISION

The Tribunal will first address an objection raised by the respondent. At the hearing, as a preliminary matter, the respondent raised an objection relative to the appellant’s filing of an aid to argument to which were appended an affidavit and various legal authorities. The respondent had no objections to the filing of the affidavit or legal authorities, but argued that the appellant did not follow the rules regarding the filing of briefs and that the aid to argument amounted to a supplementary brief that responded to the respondent’s arguments and presented new arguments not addressed in the appeal brief. Therefore, the aid to argument should be struck from the record because proper procedures for the acceptance of supplementary briefs were not followed by the appellant. In turn, the Tribunal heard representations from the appellant, which submitted that the arguments presented in the aid to argument are the same basic arguments presented in the appeal brief, albeit fleshed out and expanded upon. Further, the respondent received the aid to argument some two weeks prior to the hearing and, had additional time to prepare been required, a request could have been made to the Tribunal. While the Tribunal noted that the aid to argument was served on it and the respondent approximately two weeks prior to the hearing, it nevertheless offered the respondent additional time to prepare a response to the aid to argument. The respondent was prepared to proceed forthwith and declined to take advantage of this opportunity. Accordingly, the Tribunal proceeded with the hearing.

On the merits of these appeals, the Tribunal is directed by section 10 of the *Customs Tariff*, which provides that the classification of imported goods under a tariff item shall be determined in accordance with the General Rules and the *Canadian Rules*.¹⁰ Section 11 of the *Customs Tariff* provides that, in interpreting

9. *Rutherford Controls v. DMNR* (9 September 1996), AP-95-100. The appellant submitted that this case could be clearly distinguished from the case at bar, as it did not deal with a composite product.

10. *Supra* note 2, Schedule I.

the headings and subheadings in Schedule I, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*¹¹ and the Explanatory Notes.

The application of the General Rules follows their cascading structure. If the classification of goods cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, etc.

The Explanatory Notes to heading No. 83.01 and Notes (D)(2) and (D)(7) of the Explanatory Notes to heading No. 83.02 are of importance in this case.

The Explanatory Notes to heading No. 83.01 state, in part, as follows:

The heading **does not**, however, **include** simple latches, or bolts, etc. (**heading 83.02**), nor fasteners and clasps (not key or combination operated) for handbags, brief-cases, executive-cases, etc. (**heading 83.08**).

Notes (D)(2) and (D)(7) of the Explanatory Notes to heading No. 83.02 state the following:

(D) Mountings, fittings and similar articles suitable for buildings

This group includes:

- (2) Catches (including ball spring catches), bolts, fasteners, latches, etc., (**other than** key-operated bolts of **heading 83.01**), for doors.
- ...
- (7) Hasps and staples for doors; handles and knobs for doors, including those for locks or latches.

In this case, the Tribunal relies on Rule 1 of the General Rules and determines that the goods in issue are base metal mountings, fittings and similar articles suitable for doors and are not, as submitted by the respondent, padlocks and locks (key, combination or electrically operated) of base metal. The Tribunal finds that the wording of Note (D)(7) of the Explanatory Notes to heading No. 83.02 is clear and unambiguous and that mountings, fittings and similar articles suitable for buildings include handles and knobs for locks for doors. The Tribunal also finds that the locks mentioned in Note (D)(7) are all types of locks, unlike those mentioned in heading No. 83.01, where the locks are described as key, combination or electrically operated.

The Tribunal also reviewed Note (D)(2) of the Explanatory Notes to heading No. 83.02, which specifically excludes key-operated bolts of heading No. 83.01 from classification in heading No. 83.02. The Tribunal is of the opinion that, should there be any distinction intended between key-operated locks and locks in Note (D)(7), it would have been made in the same manner as it has been made in Note (D)(2) between key-operated bolts and bolts for doors. Therefore, the Tribunal is not convinced that the locks mentioned in Note (D)(7) are the key, combination or electronically operated locks mentioned in heading No. 83.01.

Consequently, the Tribunal finds that the goods in issue are other mountings, fittings and similar articles suitable for buildings and should be classified under tariff item No. 8302.41.90.

11. Customs Co-operation Council, 1st ed., Brussels, 1987.

Accordingly, the appeals are allowed.

Richard Lafontaine

Richard Lafontaine
Presiding Member

Peter F. Thalheimer

Peter F. Thalheimer
Member

James A. Ogilvy

James A. Ogilvy
Member