



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2015-028

First Jewelry Ltd.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Friday, November 25, 2016*

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IN THE MATTER OF an appeal heard on August 11, 2016, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated December 4, 2015, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

FIRST JEWELRY LTD.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Peter Burn
Peter Burn
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: August 11, 2016
Tribunal Member: Peter Burn, Presiding Member
Counsel for the Tribunal: Anja Grabundzija
Student-at-law: Amélie Cournoyer
Registrar Officer: Bianca Zamor
Registrar Support Officer: Carly Haynes

PARTICIPANTS:

Appellant	Counsel/Representative
First Jewelry Ltd.	Zave Kaufman
Respondent	Counsel/Representative
President of the Canada Border Services Agency	Sarah Jiwan

WITNESSES:

Ben Janowski President Janos Consultants	Neil Travis CEO First Jewelry Ltd.
Andrea Wenckebach Instructor/Goldsmith Georgian College	

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STATEMENT OF REASONS

INTRODUCTION

1. This appeal is filed by First Jewelry Ltd. (First Jewelry) pursuant to subsection 67(1) of the *Customs Act*¹ from a further re-determination of tariff classification by the President of the Canada Border Services Agency (CBSA) dated December 4, 2015, pursuant to subsection 60(4).

2. The issue in this appeal is whether certain beads, referred to by the parties as the silver beads and the glass beads (collectively, the goods in issue) are properly classified under tariff item No. 7113.11.90 of the schedule to the *Customs Tariff*² as other articles of jewellery and parts thereof and under tariff item No. 7117.90.00 as other imitation jewellery, as determined by the CBSA, or should be classified under tariff item No. 7113.11.10 as findings, not plated or clad, or under tariff item No. 7018.10.00 as glass beads, as claimed by First Jewelry.

PROCEDURAL HISTORY

3. Between September and November 2012, First Jewelry imported the goods under tariff item No. 7113.11.10 as findings, not plated or clad.

4. In December 2013, the CBSA notified First Jewelry that a trade compliance verification relating to the importations was being conducted pursuant to section 42 of the *Act*.

5. On February 13, 2015, the CBSA issued decisions pursuant to subsection 59(1) of the *Act*. It classified the silver beads under tariff item No. 7113.11.90 as other articles of jewellery and parts thereof and classified the glass beads under tariff item No. 7117.90.00 as other imitation jewellery.

6. On April 9, 2015, pursuant to subsection 60(1) of the *Act*, First Jewelry submitted requests for re-determination. On December 4, 2015, the CBSA denied the requests and upheld its previous decisions pursuant to subsection 60(4).

7. On February 12, 2016, First Jewelry filed this appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

8. On August 11, 2016, the Tribunal held a public hearing in Ottawa, Ontario.

9. Three witnesses testified at the hearing. First Jewelry called Mr. Neil Travis, CEO of First Jewelry, as a lay witness. First Jewelry also called Mr. Ben Janowski, a consultant specializing in the jewellery business, and requested that he be qualified as an expert witness in the jewellery industry and, specifically, in the area of sourcing parts and findings of jewellery. The Tribunal accepted this qualification. The CBSA called one witness, Ms. Andrea Wenckebach, and sought to have her qualified as an expert witness. The Tribunal accepted Ms. Wenckebach as an expert in the field of goldsmithing.³

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

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

3. The Tribunal notes that the parties raised objections to the proposed qualifications of each other's witnesses. The Tribunal has taken these concerns into consideration when assigning the witnesses' evidence the weight that it deserves.

GOODS IN ISSUE

10. The appeal concerns the importation of two categories of beads that the parties describe as the silver beads and the glass beads respectively. The goods in issue are part of the Persona[®] jewelry collection, which is described as a “. . . collection of stylish and unique jewellery comprised of interchangeable beads and charms that can be worn on bracelets, earrings and necklaces.”⁴ The goods in issue are most commonly worn on bracelets, earrings and necklaces of the Persona[®] jewelry collection and those of other brands of a similar type. First Jewelry provided the Tribunal with physical exhibits.

11. The silver beads are made of silver in significant part. The glass beads are composed primarily of glass but include small silver caps.⁵

LEGAL FRAMEWORK

12. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).⁶ 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.

13. Subsection 10(1) of the *Customs Tariff* provides that the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*⁷ and the *Canadian Rules*⁸ set out in the schedule.

14. The *General Rules* comprise six rules. Classification begins with Rule 1, which provides that 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 other rules.

15. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*⁹ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,¹⁰ published by the WCO. While the classification opinions and the explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.¹¹

16. The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level in accordance with Rule 1 of the *General Rules* as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. As the Supreme Court of Canada indicated in *Canada (Attorney General) v. Igloo*

4. Exhibit AP-2015-028-13B at 38, Vol. 1A.

5. Exhibit AP-2015-028-06A at para. 15, Vol. 1.

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

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

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

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

10. World Customs Organization, 5th ed., Brussels, 2012 [*Explanatory Notes*].

11. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that the *Explanatory Notes* be respected unless there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to the *Classification Opinions*.

Vikski Inc., it is “. . . only where Rule 1 does not conclusively determine the classification of the good that the other General Rules become relevant to the classification process”¹²

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 use a similar approach to determine the proper subheading. Rule 6 of the *General Rules* provides that “. . . 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 [i.e. Rules 1 through 5] . . .” and that “. . . the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

18. Finally, the Tribunal must determine the proper tariff item classification. Rule 1 of the *Canadian Rules* provides that “. . . the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the [*General Rules*] . . .” and that “. . . the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires.” Classification opinions and explanatory notes do not apply to classification at the tariff item level.

RELEVANT LEGISLATIVE PROVISIONS

Tariff Item Nos. 7113.11.10, 7113.11.90 and 7117.90.00

19. First Jewelry argued that the goods in issue should be classified under tariff item No. 7113.11.10. The CBSA determined that the silver beads should be classified under tariff item No. 7113.11.90 and the glass beads, under tariff item No. 7117.90.00.

20. The relevant tariff provisions provide as follows:

Chapter 71

**NATURAL OR CULTURED PEARLS, PRECIOUS
OR SEMI-PRECIOUS STONES, PRECIOUS METALS,
METALS CLAD WITH PRECIOUS METAL,
AND ARTICLES THEREOF;
IMITATION JEWELLERY; COIN**

...

**III. JEWELLERY, GOLDSMITHS' AND SILVERSMITHS' WARES AND
OTHER ARTICLES**

71.13	Articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal.
	-Of precious metal whether or not plated or clad with precious metal:
7113.11	--Of silver, whether or not plated or clad with other precious metal
7113.11.10	--Findings, not plated or clad
7113.11.90	---Other
...	
71.17	Imitation jewellery.
...	
7117.90.00	-Other

12. 2016 SCC 38 (CanLII) at para. 21.

21. The relevant notes to Chapter 71 provide as follows:

1. Subject to Note 1 (a) to Section VI and except as provided below, all articles consisting wholly or partly:
 - (a) Of natural or cultured pearls or of precious or semi-precious stones (natural, synthetic or reconstructed), or
 - (b) Of precious metal or of metal clad with precious metal, are to be classified in this Chapter.
2. (A) Headings 71.13, 71.14 and 71.15 do not cover articles in which precious metal or metal clad with precious metal is present as minor constituents only, such as minor fittings or minor ornamentation (for example, monograms, ferrules and rims), and paragraph (b) of the foregoing Note does not apply to such articles.

...

4. (A) The expression “precious metal” means silver, gold and platinum.

...

5. For the purpose of this Chapter, any alloy (including a sintered mixture and an inter-metallic compound) containing precious metal is to be treated as an alloy of precious metal if any one precious metal constitutes as much as 2%, by weight, of the alloy. Alloys of precious metal are to be classified according to the following rules:

...

(c) Other alloys containing 2% or more, by weight, of silver are to be treated as alloys of silver.

6. Except where the context otherwise requires, any reference in the Nomenclature to precious metal or to any particular precious metal includes a reference to alloys treated as alloys of precious metal or of the particular metal in accordance with the rules in Note 5 above

...

9. For the purposes of heading 71.13, the expression “articles of jewellery” means:

- (a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, ear-rings, watch-chains, fobs, pendants, tie-pins, cuff-links, dress-studs, religious or other medals and insignia); and
- (b) Articles of personal use of a kind normally carried in the pocket, in the handbag or on the person (for example, cigar or cigarette cases, snuff boxes, cachou or pill boxes, powder boxes, chain purses or prayer beads).

These articles may be combined or set, for example, with natural or cultured pearls, precious or semi-precious stones, synthetic or reconstructed precious or semi-precious stones, tortoise shell, mother-of-pearl, ivory, natural or reconstituted amber, jet or coral.

...

11. For the purpose of heading 71.17, the expression “imitation jewellery” means articles of jewellery within the meaning of paragraph (a) of Note 9 above (but not including buttons or other articles of heading 96.06, or dress-combs, hair-slides or the like, or hairpins, of heading 96.15), not incorporating natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

22. The explanatory notes to Chapter 71 contain the following relevant passages:

This Chapter includes:

...

- (3) In general, articles made wholly or partly of natural or cultured pearls, diamonds or other precious or semi-precious stones (natural, synthetic or reconstructed), precious metals or metal clad with precious metal (headings 71.13 to 71.16). In particular, this group includes jewellery and goldsmiths' or silversmiths' wares (see Explanatory Notes to headings 71.13 and 71.14), but it **does not include**:

...

- (b) Other articles in which the parts of precious metals or metal clad with precious metal are merely minor constituents, such as minor fittings (for example, monograms, ferrules, rims), **provided** the goods do not contain natural or cultured pearls, diamonds or other precious stones or semi-precious stones (natural, synthetic or reconstructed).

...

- (4) Imitation jewellery (heading 71.17) as defined in Note 11 to this Chapter (see corresponding Explanatory Note), **other than** the articles specified in Note 3 to this Chapter.

23. In addition, the explanatory notes to heading No. 71.13 provide as follows:

This heading covers articles of jewellery as defined in Note 9 to this Chapter, wholly or partly of [f] precious metal or metal clad with precious metal, that is:

- (A) **Small objects of personal adornment** (gem-set or not) such as rings, bracelets, necklaces, brooches, ear-rings, neck chains, watch-chains and other ornamental chains; fobs, pendants, tie-pins and clips, cuff-links, dress-studs, buttons, etc.; religious or other crosses; medals and insignia; hat ornaments (pins, buckles, rings, etc.); ornaments for handbags; buckles and slides for belts, shoes, etc.; hair-slides, tiaras, dress combs and similar hair ornaments.
- (B) **Articles of personal use normally carried in the pocket, in the handbag or on the person** such as cigar or cigarette cases, snuff boxes, spectacle cases, powder boxes, lipstick holders, pocket combs, cachou boxes, chain purses, rosaries, key rings.

To fall in this heading these articles **must** contain precious metal or metal clad with precious metal (including base metal inlaid with precious metal) to an extent **exceeding minor constituents**; (thus a cigarette case of base metal with a simple monogram of gold or silver remains classified as an article of base metal). **Subject** to this condition the goods may also contain pearls (natural, cultured or imitation), precious or semi-precious stones (natural, synthetic or reconstructed), imitation stones, or parts of tortoise-shell, mother of pearl, ivory, amber (natural or agglomerated), jet or coral.

The heading also covers unfinished or incomplete articles of jewellery and identifiable parts of jewellery, **provided** they contain precious metal or metal clad with precious metal to an extent **exceeding minor constituents**, for example, motifs for incorporation in rings, brooches, etc.

The heading **excludes**:

...

- (d) Imitation jewellery of **heading 71.17**.

24. The relevant explanatory notes to heading No. 71.17 provide as follows:

For the purposes of this heading, the expression **imitation jewellery**, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 71.13, e.g., rings, bracelets (other than wrist-watch bracelets), necklaces, ear-rings, cuff-links, etc., **but not including** buttons and other articles of **heading 96.06**, or dress combs, hair-slides or the like, and hair-pins of **heading 96.15**, **provided** they do not incorporate precious metal or metal clad with precious metal (except as plating or as minor constituents as defined in Note 2 (A) to this Chapter, e.g., monograms, ferrules and rims) nor natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed).

The heading also covers unfinished or incomplete articles of imitation jewellery (ear-rings, bracelets, necklaces, etc.), such as:

- (a) Semi-finished split rings, consisting of anodised aluminium wire, usually twisted or surface worked, whether or not fitted with a crude clasp, sometimes used as ear-rings without further working;
- (b) Ornamental motifs of base metal, whether or not polished, assembled by small links into strips of indefinite length.

Tariff Item No. 7018.10.00

25. First Jewelry argued that, in the event that the Tribunal finds that the glass beads should not be classified under tariff item No. 7113.11.10, they should be classified under tariff item No. 7018.10.00. The relevant tariff provisions provide as follows:

Chapter 70

GLASS AND GLASSWARE

...

70.18 **Glass beads, imitation pearls, imitation precious or semi-precious stones and similar glass smallwares, and articles thereof other than imitation jewellery; glass eyes other than prosthetic articles; statuettes and other ornaments of lamp-worked glass, other than imitation jewellery; glass microspheres not exceeding 1 mm in diameter.**

7018.10.00 **-Glass beads, imitation pearls, imitation precious or semi-precious stones and similar glass smallwares**

26. The relevant notes to Chapter 70 provide as follows:

1. This Chapter does not cover:

...

(b) Articles of Chapter 71 (for example, imitation jewellery)

27. The relevant explanatory notes to heading No. 70.18 provide as follows:

This heading covers a range of widely diversified glass articles, most of which are used, directly or after further processing, for ornamental and decorative purposes.

These include:

- (A) **Glass beads** (e.g., as used for necklaces, rosaries, imitation flowers, ornaments for graves, etc.; for decorating textile articles (trimmings, embroidery, etc.), handbags or the like; or for use as electrical insulators). These beads, whether or not [coloured], are in the form of small

pierced balls, more or less round in shape; they are obtained from tubes which are cut into sections of approximately equal length and diameter. The resulting small cylinders are then introduced, together with a mixture of powdery materials (charcoal, graphite, plaster, etc.), into a metal drum revolving over a furnace. Heat softens the glass cylinders and friction gives them a more or less spherical shape, while the powdery material prevents them from adhering to one another.

...

The heading also excludes:

...

- (g) Imitation pearls or imitation precious or semi-precious stones mounted or set in precious metal or metal clad with precious metal (**heading 71.13** or **71.14**) or imitation jewellery within the meaning of **heading 71.17** (see corresponding Explanatory Note).

POSITIONS OF PARTIES

First Jewelry

28. First Jewelry submitted that the goods in issue are “findings” and should thus be classified under tariff item No. 7113.11.10 as findings, not plated or clad.

29. In its brief, First Jewelry argued that the word “finding” is interchangeably used with the term “part” in the jewellery sector. First Jewelry argued that the corresponding expression for “findings” used in the French version of the *Customs Tariff*, “*fournitures de confection*” (“supplies of preparation”),¹³ supports its position because all jewellery parts can be “supplies of preparation”.

30. However, at the hearing, First Jewelry took the position that the terms “parts” and “findings” are *not* equivalent.¹⁴ It submitted that “findings” is used interchangeably with “parts” by lay people but not by industry experts. It submitted that findings can ultimately be transformed into parts but that not all parts can be transformed into findings. Finally, it took the position that there is not a single definition of “findings” in industry usage and that, therefore, if there is ambiguity, the benefit of the doubt should be granted to the taxpayer (or importer).¹⁵ It submitted that the goods in issue are findings.

31. Regarding the classification of the glass beads, First Jewelry submitted that the classification suggested by the CBSA as “imitation jewellery” is incorrect in light of Note 11 to Chapter 71 which, by reference to Note 9, indicates that “imitation jewellery” means “[a]ny small objects of personal adornment”.¹⁶ First Jewelry argued that, to be considered as imitation jewellery, goods must be capable of adorning a person, which it equates with being attached directly to the person. It submitted that the goods in issue do not meet this requirement. Moreover, First Jewelry submitted that the silver component in the glass beads is not a minor constituent and that, therefore, as per Note 2(A) to Chapter 71, the glass beads cannot be classified in heading No. 71.17.

32. First Jewelry argued in the alternative that, should the Tribunal find that the silver component of the glass beads is only a minor constituent, the glass beads should be classified under tariff item No. 7018.10.00 as glass beads.

13. Exhibit AP-2015-028-06A at para. 30, Vol. 1.

14. *Transcript of Public Hearing*, 11 August 2016, at 132.

15. *Ibid.* at 132-33.

16. Exhibit AP-2015-028-06A at para. 43, Vol. 1.

CBSA

33. The CBSA submitted that the *silver beads* are properly classified under tariff item No. 7113.11.90 as other articles of jewellery and parts thereof, of silver.¹⁷ While the classification of the silver beads at the heading and subheading levels is not contested by First Jewelry, there is disagreement about classification at the tariff item level. According to the CBSA, the goods in issue are not “findings” and, thus, cannot be classified under tariff item No. 7113.11.10, as suggested by First Jewelry.

34. The CBSA argued that a jewellery finding must have a functional use and that the French version of the *Customs Tariff* confirms this interpretation. The CBSA submitted that the silver beads are finished, ready-to-wear articles of jewellery that consumers simply add to a bracelet or necklace that is already wearable without the beads and that the silver beads are marketed and distributed as such. Therefore, the CBSA argued that the silver beads are not “findings”.

35. With regard to the classification of the *glass beads*, the CBSA submitted that they are properly classified in heading No. 71.17 as imitation jewellery since the silver caps incorporated into the beads are minor constituents, as per Note 2(A) to Chapter 71. Thus, the CBSA argued that the glass beads cannot be classified in heading No. 71.13, as they do not incorporate precious metals other than as minor constituents. The CBSA argued that the glass beads fall under the residual category of tariff item No. 7117.90.00 as other imitation jewellery.

ANALYSIS

36. The Tribunal will consider each category of beads in turn.

Silver Beads

37. The parties agreed that the silver beads are properly classified in heading No. 71.13 and in subheading No. 7113.11 as articles of jewellery and parts thereof, of silver, whether or not plated or clad. It is not contested that the silver beads contain silver and that the silver component in those beads is more than a minor constituent within the meaning of the relevant notes. On the basis of the evidence and of the corresponding legal and explanatory notes, the Tribunal is also of the view that the silver beads are properly classified in heading No. 71.13 and subheading No. 7113.11.

38. The parties disagreed as to whether the silver beads are properly classified under tariff item No. 7113.11.10 as findings of silver not plated or clad or should be classified under tariff No. 7113.11.90 as other articles of jewellery and parts thereof, of silver.

39. Applying Rule 1 of the *Canadian Rules*, the Tribunal must determine if the silver beads meet the terms of tariff item No. 7113.11.10. If so, they must be classified under this tariff item as opposed to the residual tariff item proposed by the CBSA.¹⁸

40. The term “findings” is not defined in the *Customs Tariff* or in any legal or explanatory notes. The Tribunal agrees with the parties that the term “findings” has a different meaning from the word “part” in the

17. *Ibid.* at 7-16.

18. A residual tariff item and a more specific tariff item are usually mutually exclusive. *Rimowa North America Inc. v. President of the Canada Border Services Agency* (6 January 2016), AP-2015-004 (CITT) at paras. 25-27; *J. Walter Company Ltd. v. President of the Canada Border Services Agency* (30 May 2008), AP-2006-029 (CITT) at para. 21.

context of tariff item No. 7113.11.10.¹⁹ Heading No. 71.13 uses the expression “parts thereof”, but tariff item No. 7113.11.10 uses the word “findings”. It is unlikely that Parliament would have used two different expressions in close proximity to express the same idea; instead, the use of different terminology suggests that the two expressions have distinct meanings.

41. The parties provided submissions and definitions of “findings” to support or refute the idea that the silver beads are findings.²⁰ The Tribunal notes that the common thread in most of the definitions referred to by both parties is that they describe findings as components of jewellery that serve a functional purpose, save for a single Web site referred to by First Jewelry, which describes a category termed “Decorative Jewelry Findings”.²¹

42. At the hearing, Mr. Travis testified that the word “findings” is incorrectly used in a lot of ways, particularly by lay people and people without vast experience in the jewellery business.²² However, he further testified that experts in jewellery manufacture use the word “findings” to designate a “. . . component of jewellery that can be adapted to many different designs without manipulating it.”²³ According to him, industry experts now consider that there are functional findings and decorative findings, the latter being mostly beads. He further testified that the definition of the term has evolved over the past 25 years and that “[f]indings originally were probably mostly functional.”²⁴

43. Mr. Janowski testified that, in his view, industry insiders understand findings to be components of jewellery with the following two main characteristics: they are universal pieces that can be used in many ways (i.e. not intended for a specific jewellery piece); and they cannot be worn as they have to be “put on something, added to something to make [the findings] wearable.”²⁵ Mr. Janowski also mentioned that there is no industry entity or industry standard that could provide a definitive meaning of the word,²⁶ but, in his view, as far as industry usage is concerned, it is clear.²⁷ Finally, he explained that the advent of volume retailers, starting in the 1970s, brought pressure to convert from labour-intensive manufacturing methods to mechanical production in high volumes and in ways that ensure that different pieces can be used universally and that this radically expanded the definition of “findings”.²⁸

44. In her expert report, Ms. Wenckebach provided various definitions of the term “findings” from textbooks and glossaries. The Tribunal notes that Mr. Janowski acknowledged that these definitions were not wrong, but he took the view that they were not exclusive.²⁹ Ms. Wenckebach testified that the common characteristic among these definitions is that findings are functional or, in other words, that they make the jewellery wearable.³⁰ She defined findings as “. . . functional components in jewellery that make it

19. As noted above, while First Jewelry submitted in its brief that the word “findings” is used interchangeably with the word “parts”, at the hearing, First Jewelry took the position that the two terms must be given different meanings.

20. Exhibit AP-2015-028-13B, tabs 20-27, Vol. 1A; Exhibit AP-2015-028-06A, tabs 8, 10, Vol. 1.

21. Exhibit AP-2015-028-06A, tab 10, Vol. 1; Exhibit AP-2015-028-18A, Vol. 1B.

22. *Transcript of Public Hearing*, 11 August 2016, at 15, 38-39.

23. *Ibid.* at 40.

24. *Ibid.* at 46.

25. *Ibid.* at 61.

26. *Ibid.* at 62.

27. *Ibid.* at 78.

28. *Ibid.* at 63.

29. *Ibid.* at 82.

30. *Ibid.* at 96.

wearable.”³¹ This is also the definition of findings that she teaches her students and which, according to her, corresponds to the industry-wide definition of the term. She further noted that some beads can meet this definition but that, in her view, the goods in issue do not meet this definition since they are finished, ready-to-wear pieces of jewellery that are no different from a pendant.

45. Having considered the evidence and submissions, the Tribunal finds that the preponderance of the evidence supports the view that findings are components of jewellery with a functional use in the construction of jewellery. The definitions provided by Ms. Wenckebach from different industry materials, while they differ in their formulation, consistently describe findings as functional components of jewellery. The Tribunal agrees with Mr. Janowski that these definitions are not exclusive in that they list certain examples of findings while not precluding that there may be others. However, the listed examples share the common feature of being functional components of jewellery.³² The Tribunal is not convinced that these definitions are so open-ended as to include goods that do not share the same characteristics.

46. Furthermore, the expanded definitions suggested by Mr. Janowski and Mr. Travis are ultimately based on the method of production of jewellery components, which has evolved over the past several years towards producing an increasing number of jewellery components mechanically, on a mass scale, and in such a way as to give them wide distribution for use in a wide variety of products in order to rationalize costs.³³ The Tribunal is not convinced that this is how the word “findings” was intended to be understood within the context of the schedule to the *Customs Tariff*, which, unless otherwise specified, concerns itself first and foremost with the classification of goods based on observable physical characteristics, not on their method of production.

47. Indeed, as highlighted by both parties, the equally authoritative French version of the *Customs Tariff* uses the terms “*fournitures de confection*” as the equivalent to the term “findings”. The word “*fournitures*” is defined in French as “[p]ièces, outils nécessaires à l’exercice d’un métier manuel . . . [a]ccessoires (fil, boutons, galon, clous, etc.) nécessaires à la confection d’une commande, et qui sont fournis par l’artisan (tailleur, couturière, tapissier)”³⁴ (parts, tools necessary for manual trade . . . accessories (yarn, buttons, braid, nails, etc.) necessary in the preparation of an order and provided by the artisan (tailor, seamstress, upholsterer). The French word “*confection*” is defined as “[a]ction de faire, de réaliser, de confectionner, quelque chose”³⁵ (action of making, achieving, preparing something). Within the context of tariff item No. 7113.11.10, the interpretation of the word “findings” as functional components of articles of jewellery (such as would be used by an artisan in the making of jewellery) is consistent with the meaning conveyed by the French version of the tariff item.

48. The silver beads are not “findings” as used in the context of tariff item No. 7113.11.10. Mr. Travis testified that the consumers of the goods are the general public, as opposed to artisans or jewellery makers, and that the goods in issue are sold in jewellery stores and online.³⁶ They are not sold in hobby stores. He further testified that the goods in issue are sold individually and are marketed for and most commonly used on charm bracelets or chains as parts of the Persona[®] collection or other leading brands of a similar type.³⁷ From the evidence presented at the hearing, it is clear that consumers simply add the goods in issue to a

31. *Ibid.* at 95.

32. Exhibit AP-2015-028-23A, tabs 1-6, Vol. 1C.

33. *Transcript of Public Hearing*, 11 August 2016, at 61-63, 70-71, 85.

34. Online: <http://www.larousse.fr/dictionnaires/francais/fournitures/34868>.

35. Online: <http://www.larousse.fr/dictionnaires/francais/confection/18056>.

36. *Transcript of Public Hearing*, 11 August 2016, at 25, 34, 35, 42.

37. *Ibid.* at 36-38.

bracelet or necklace that is already wearable without the beads. Thus added, the goods in issue play a decorative role. The goods in issue do not have a functional use in the construction of jewellery.

49. The Tribunal finds that the silver beads are not findings and that, therefore, the silver beads are properly classified under tariff item No. 7113.11.90.

Glass Beads

50. First Jewellery argues that the glass beads should be classified under tariff item No. 7113.11.10 as silver findings or, in the alternative, under tariff item No. 7018.10.00 as glass beads. The CBSA's position is that the glass beads are properly classified under tariff item No. 7117.90.00 as other imitation jewellery.

51. Goods are not *prima facie* classifiable in two headings if the terms of one heading are expressly excluded from the other by virtue of a relevant section or chapter note. Where such an exclusionary note exists, the analysis begins with the heading to which the exclusionary note does not apply.³⁸

52. In this case, Note 1(b) to Chapter 70, which includes tariff item No. 7018.10.00, excludes “[a]rticles of Chapter 71 (for example, imitation jewellery)”. Therefore, the Tribunal will begin its analysis by considering whether the glass beads are *prima facie* classifiable under tariff item No. 7113.11.10, as argued by First Jewelry, or under tariff item No. 7117.90.00, as determined by the CBSA. If the glass beads are classifiable in either of these tariff items and are, thus, articles of Chapter 71, the Tribunal need not consider First Jewelry's alternative argument that the glass beads should be classified under tariff item No. 7018.10.00.

53. Contrary to First Jewelry's claims, the glass beads cannot be classified in heading No. 71.13. Note 2(A) to Chapter 71 provides that « [h]eatings 71.13, 71.14 and 71.15 do not cover articles in which precious metal or metal clad with precious metal is present as minor constituents only, such as minor fittings or minor ornamentation (for example, monograms, ferrules and rims)” The explanatory notes to heading No. 71.13 are to the same effect.

54. The silver caps included in the glass beads are “minor constituents” within the meaning of Note 2(A) to Chapter 71. While it is agreed that the metal component of the glass beads is silver, which is a precious metal pursuant to Note 4(A) to Chapter 71, the parties disagreed as to whether the silver caps represent more than “minor constituents”. First Jewelry argued that the silver caps are more than minor constituents because of the relative value of the silver component compared to the value of the other materials. On the other hand, the CBSA submitted that the silver component incorporated into the glass beads is a “ferrule” and that ferrules are considered minor constituents according to Note 2(A) to Chapter 71.

55. The *Merriam-Webster's Collegiate Dictionary* defines “ferrule” as “. . . a ring or cap usu. of metal put around a slender shaft (as a cane or a tool handle) to strengthen it or prevent splitting”³⁹ Similarly, the *Canadian Oxford Dictionary* defines “ferrule” as a “. . . metal ring or cap strengthening the end of a stick or tube, used esp. to prevent splitting or wearing”⁴⁰ When asked to comment on the meaning of the

38. *Cross Country Parts Distribution Ltd. v. Canada (Border Services Agency)*, 2015 FCA 187 (CanLII) at paras. 2-3, confirming the framework at para. 41 of the impugned decision; *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (29 July 2013), AP-2012-041 and AP-2012-042 (CITT) at para. 46.

39. Exhibit AP-2015-028-13B, tab 19, Vol. 1A.

40. *Ibid.*

word, Mr. Janowski provided a similar understanding of the term, although he indicated that it is not widely used in the industry.⁴¹

56. The evidence on the record shows that the silver components inside the glass beads, referred to by the witnesses as “silver caps”, are metal caps used to strengthen the bead. Indeed, Mr. Travis testified that “[t]he purpose of the caps and the core itself, whether it [is] made of silver or made of any other material, is to protect the glass bead from breaking”⁴²

57. As a result, the silver component is akin to a ferrule. Given that ferrules are specifically identified as examples of minor constituents in Note 2(A) to Chapter 71, the Tribunal finds that the silver component of the glass beads is a minor constituent. In this regard, while Mr. Travis testified that the silver caps inside the glass beads are worth more than the glass itself,⁴³ in light of the applicable notes, Mr. Travis’s evidence as to the relative monetary value of the silver caps is not determinative for tariff classification purposes.

58. Accordingly, the glass beads cannot be classified in heading No. 71.13 as argued by First Jewelry.

59. The Tribunal finds that the glass beads are properly classified in heading No. 71.17, as determined by the CBSA. In accordance with Note 11 to Chapter 71, in order for a good to be imitation jewellery of heading No. 71.17, the following two conditions have to be met: (1) it must meet the definition of “articles of jewellery” as described in Note 9(a) to Chapter 71; and (2) it must not incorporate natural or cultured pearls, precious or semi-precious stones nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

60. As discussed above, the second condition is met, given that the silver caps are “minor constituents” of the glass beads within the meaning of the applicable notes. There is no evidence on the record that the glass beads incorporate natural or cultured pearls or precious or semi-precious stones.

61. This leaves the first condition, that is, whether the glass beads are “articles of jewellery” as defined in Note 9(a) to Chapter 71. Note 9(a) to Chapter 71 defines “articles of jewellery” as “[a]ny small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, ear-rings, watch-chains, fobs, pendants, tie-pins, cuff-links, dress-studs, religious or other medals and insignia)”

62. The Tribunal finds that the goods in issue meet this definition since they are similar to examples of objects of personal adornment mentioned in the notes and, more particularly, to pendants and fobs. The Tribunal also considered the dictionary definitions of the words “adornment” and “adorn” to which counsel referred and finds that the common element running through the definitions is the notion of adding beauty.⁴⁴ As previously mentioned, the goods in issue are individually sold to members of the general public, in jewellery stores or online, to be added to a bracelet or necklace in order to embellish it. The goods in issue are used essentially in the same manner and for the same purpose as pendants or fobs.

63. In this regard, the Tribunal does not agree with First Jewelry’s assertion that goods have to be capable of being affixed to a person in order to be “objects of personal adornment” and, therefore, to be articles of jewellery. Indeed, the definition of “articles of jewellery” in Note 9(a) to Chapter 71 does not provide for such a criterion and not all the examples of articles of jewellery in the same note present that characteristic.

41. *Transcript of Public Hearing*, 11 August 2016, at 78-79.

42. *Ibid.* at 22.

43. *Ibid.* at 21.

44. Exhibit AP-2015-028-13B at 177, Vol. 1A.

64. As such, the glass beads meet all conditions of the definition of “imitation jewellery” as provided in Note 11 to Chapter 71. They are therefore properly classified in heading No. 71.17.

65. Heading No. 71.17 comprises two one-dash subheading levels as follows:

71.17	Imitation jewellery.
	-Of base metal, whether or not plated with precious metal;
	...
7117.90.00	-Other

66. There is no evidence on the record that the glass beads are made of base metal.⁴⁵ Therefore, the Tribunal finds that the glass beads are properly classified in subheading No. 7117.90 and under tariff item No. 7117.90.00 as other imitation jewellery.

67. Consequently, and by operation of Note 1(b) to Chapter 70, the glass beads cannot be *prima facie* also classified in a provision of that chapter. Therefore, the Tribunal will not consider whether the glass beads are also classifiable in heading No. 70.18, as alternatively suggested by First Jewellery.

CONCLUSION

68. The goods in issue are properly classified in tariff item No. 7113.11.90 as other articles of jewellery and parts thereof, of silver, in the case of the silver beads, and under tariff item No. 7117.90.00 as other imitation jewellery in the case of the glass beads.

DECISION

69. The appeal is dismissed.

Peter Burn
Peter Burn
Presiding Member

45. Note 3 to Section XV “BASE METALS AND ARTICLES OF BASE METAL” provides 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.”