



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2016-019

Hydraulic Source Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Thursday, June 8, 2017*

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DECISION 12

IN THE MATTER OF an appeal heard on February 16, 2017, 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 June 2, 2016, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

HYDRAULIC SOURCE INC.

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Jean Bédard
Jean Bédard
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: February 16, 2017

Tribunal Panel: Jean Bédard, Presiding Member

Support Staff: Laura Little, Counsel

PARTICIPANTS:

Appellant	Counsel/Representative
Hydraulic Source Inc.	Sean Everden
Respondent	Counsel/Representative
President of the Canada Border Services Agency	Abigail Martinez

WITNESS:

Gord Digings
President
Hydraulic Source Inc.

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STATEMENT OF REASONS

INTRODUCTION

1. This is an appeal filed by Hydraulic Source Inc. (HSI) pursuant to subsection 67(1) of the *Customs Act*,¹ from a decision made by the President of the Canada Border Services Agency (CBSA) on June 2, 2016, pursuant to subsection 60(4).

2. The issue in this appeal is whether several models of “pullers” (the goods in issue) are properly classified under tariff item No. 8205.59.90 of the schedule to the *Customs Tariff*² as other hand tools (including glaziers’ diamonds), not elsewhere specified or included, as determined by the CBSA, or under tariff item No. 8207.90.90 as other interchangeable tools for hand tools, whether or not power-operated, as claimed by HSI.

PROCEDURAL HISTORY

3. In November 2013, the CBSA advised HSI that it was conducting a trade compliance verification of goods imported from March 2012 to February 2013, pursuant to sections 42 and 42.01 of the *Act*.

4. On November 21, 2014, the CBSA issued an interim report on the trade compliance verification. HSI provided its comments on the interim report to the CBSA on December 15, 2014.

5. On March 3, 2015, the CBSA issued its final report, in which it found that some of the imported goods had been classified incorrectly. The CBSA issued 14 decisions pursuant to subsection 59(1) of the *Act* to re-classify those goods under tariff item No. 8205.59.90 as other hand tools.³

6. On May 26, 2015, HSI filed an appeal under section 60 of the *Act* on the grounds that the goods should be classified under tariff item No. 8207.90.90 as other interchangeable tools.⁴ On June 2, 2016, the CBSA issued a decision pursuant to subsection 60(4) of the *Act*, in which it denied the appeal for the majority⁵ of the goods (i.e. they remained classified under tariff item No. 8205.59.90).⁶

7. HSI appealed the CBSA’s decision to the Canadian International Trade Tribunal (the Tribunal) pursuant to section 67 of the *Act*.

8. Upon request of the Tribunal, HSI filed on behalf of both parties a list of the specific goods in issue identifying which models were imported into Canada in an unassembled state.⁷

9. On February 16, 2017, the Tribunal held an oral hearing of this appeal. HSI presented a lay witness, Mr. G. Digings, President of HSI, and both parties made oral arguments.

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

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

3. Exhibit AP-2016-019-04A at 102, Vol. 1; Exhibit AP-2016-019-01 at 9, Vol. 1.

4. Exhibit AP-2016-019-07A at 28, Vol. 1B.

5. The CBSA allowed the appeal with respect to some of the goods; Exhibit AP-2016-019-04A at 115, Vol. 1.

6. Exhibit AP-2016-019-04A at 115, Vol. 1.

7. Exhibit AP-2016-019-11 at 2, Vol. 1B; Exhibit AP-2016-019-11 at 2-3, Vol. 1B.

DESCRIPTION OF THE GOODS IN ISSUE

10. The goods in issue consist of several different models of base metal tools that are used, typically by vehicle mechanics, to remove and install specific automotive parts from a vehicle.⁸ These tools are commonly known as “pullers” in the automotive repair industry.⁹

11. The goods in issue function using a forcing screw mechanism, whereby turning the screw actuates the puller to either remove or install the automotive part. Some of the models of the goods in issue were presented unassembled at the time of importation.¹⁰

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).¹¹ 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, subject to subsection 10(2), the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*¹² and the *Canadian Rules*¹³ 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*¹⁴ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,¹⁵ 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.¹⁶

16. The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to 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

8. Exhibit AP-2016-019-04A at paras. 10-14, Vol. 1; Exhibit AP-2016-019-07A at paras. 5-7, Vol. 1B.

9. *Transcript of Public Hearing*, 16 February 2017, at 14.

10. Exhibit AP-2016-019-19 at 2-3, Vol. 1B; *Transcript of Public Hearing*, 16 February 2017, at 4.

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

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

13. S.C. 1997, c. 36, schedule [*Canadian Rules*].

14. WCO, 2d ed., Brussels, 2003 [*Classification Opinions*].

15. WCO, 5th ed., Brussels, 2012 [*Explanatory Notes*].

16. 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*.

explanatory notes. It is only where Rule 1 does not conclusively determine the classification of the goods that the other general rules become relevant to the classification process.¹⁷

17. Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to determine the proper subheading. 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.

Terms of Relative Headings and Legal and Explanatory Notes

19. The relevant tariff nomenclature concerning headings No. 82.05 and 82.07 provides as follows:

SECTION XV

BASE METALS AND ARTICLES OF BASE METAL

...

Chapter 82

TOOLS, IMPLEMENTS, CUTLERY, SPOONS AND FORKS, OF BASE METAL; PARTS THEREOF OF BASE METAL

...

82.05 Hand tools (including glaziers' diamonds), not elsewhere specified or included; blow lamps; vices, clamps and the like, other than accessories for and parts of, machine tools; anvils; portable forges; hand or pedal-operated grinding wheels with frameworks.

...

-Other hand tools (including glaziers' diamonds):

8205.51 - **-Household tools**

...

8205.59 - **-Other**

...

8205.59.10 - - -For climbing or mountaineering; Heads for use in the manufacture of other hand tools; Livestock branding irons

8205.59.20 - - -Stapling or tacking guns, and hammer tackers not operated by an independent hammer

17. *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) at para. 21.

8205.59.90 - - -Other

...

82.07 **Interchangeable tools for hand tools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools.**

...

8207.90.90 - - -Other

20. There are no section notes that are relevant to the issue in this appeal. The general explanatory notes to Chapter 82 provide, in relevant part, as follows:

This Chapter covers certain specific kinds of base metal articles, of the nature of tools, implements, cutlery, tableware, etc., which are excluded from the preceding Chapters of Section XV, and are not machinery or appliances of Section XVI (see below), nor instruments or apparatus proper to Chapter 90, nor articles of heading 96.03 or 96.04.

This Chapter includes:

(A) *Tools, which, apart from certain specified exceptions (e.g., blades for machine saws), are used in the hand (headings 82.01 to 82.05).*

...

(C) *Interchangeable tools for hand tools, for machine-tools or for power-operated hand tools (heading 82.07), knives and blades for machines or mechanical appliances (heading 82.08) and plates, sticks, tips and the like, for tools (heading 82.09).*

...

In general, this Chapter covers tools which can be used independently in the hand, whether or not they incorporate simple mechanisms such as gearing, crank-handles, plungers, screw mechanisms or levers.

[Emphasis added]

21. The explanatory notes to heading No. 82.05 provide, in relevant part, as follows:

This heading covers all hand tools **not included** in other headings of this Chapter or elsewhere in the Nomenclature (see the General Explanatory Notes to this Chapter), together with certain tools or appliances specifically mentioned in the title.

It includes a large number of hand tools (including some with simple hand-operated mechanisms such as cranks, ratchets or gearing). This group of tools includes:

...

(E) **Other hand tools (including glaziers' diamonds).**

This group includes:

- (1) A number of household articles, including cutting blades but **not including** mechanical types ...
- (2) Watchmakers' tools ...
- (3) Glaziers' diamonds ...

- (4) Smiths' tools . . .
- (5) Tools, for mining, road work, etc. . . .
- (6) Tools for masons, moulders, cement workers, plasterers, painters, etc. . . .
- (7) Miscellaneous hand tools such as farriers' paring knives, toeing knives, hoof pickers and hoof cutters, cold chisels and punches; riveters' drifts, snaps and punches; non-plier type nail lifters, case openers and pin punches; *tyre levers*; cobblers' awls (without eyes); upholsterers' or bookbinders' punches; soldering irons and branding irons; metal scrapers; . . .

...

The heading however **does not include** vacuum cup holders (suction grips) consisting of a base, a handle and a vacuum lever, of base metal, and rubber discs, intended to be attached temporarily to an object with a view to enabling the object to be moved (for example, **heading 73.25**, 73.26 or 76.16).

...

Apart from the exclusions referred to above, the following are also **excluded** from this heading:

...

- (b) Interchangeable tools designed for use in hand tools, mechanical or not, in machine-tools or in power-operated hand tools (e.g. screwdriver bits and rock drilling bits) (**heading 82.07**)

[Bold in original, emphasis added]

22. The relevant explanatory notes to heading No. 82.07 provide as follows:

Whereas (apart from a few exceptions such as machine saw blades) the preceding headings of this Chapter apply in the main to *hand tools ready for use as they stand or after affixing handles*, this heading covers an important group of **tools which are unsuitable for use independently, but are designed to be fitted**, as the case may be, **into**:

- (A) *hand tools*, whether or not power-operated (e.g., breast drills, braces and die-stocks),
- (B) machine-tools, of headings 84.57 to 84.65, or of heading 84.79 by reason of Note 7 to Chapter 84,
- (C) tools of heading 84.67,

for pressing, stamping, punching, tapping, threading, drilling, boring, reaming, broaching, milling, gear-cutting, turning, cutting, morticing or drawing, etc., metals, metal carbides, wood, stone, ebonite, certain plastics or other materials, *or for screwdriving*.

...

The tools of this heading may be either one-piece or composite articles.

...

Composite tools consist of one or more working parts of base metal . . . attached to a base metal support either permanently, by welding or inseting, or as detachable parts. In the latter case, the tool consists of a base metal body and one or more working parts (blade, plate, point) locked to the body by a device comprising, for example, a bridge plate, a clamping screw or a spring cotter-pin with, where appropriate, a chip-breaking lip.

...

The tools classified in this heading include:

...

(9) **Other interchangeable tools**, such as:

- (a) Tools for dressing, planning, grooving, lapping or trueing.
- (b) Tools for morticing, moulding, or tonguing wood, including cutting chains for morticing wood.
- (c) Tools for mixing, stirring, etc., materials such as paint, glue, mortar, mastic and coating slip.
- (d) Screwdriver bits.

[Bold in original, emphasis added]

POSITIONS OF THE PARTIES

23. The parties agreed that the goods in issue are tools used for automotive repair, which are covered under Chapter 82 of the *Customs Tariff*. They further agreed that classification in the appropriate tariff heading can be determined in accordance with Rule 1 of the *General Rules* for those goods that were assembled at the time of importation or with Rule 2(a) for those goods that were unassembled at the time of importation.¹⁸

24. The crux of the dispute between the parties is whether the goods in issue are properly classified in heading No. 82.05 as hand tools or in heading No. 82.07 as interchangeable tools for hand tools.

25. HSI submitted that the goods in issue are interchangeable tools for hand tools because they are specifically designed to be actuated by a separate hand tool, such as a wrench and ratchet, a spanner, a T-bar, an electric drill or an air (pneumatic) gun; otherwise, the goods in issue cannot function. It argued that the goods in issue are capable of being used in the place of each other with hand tools and, therefore, they are interchangeable tools for hand tools.

26. The CBSA submitted that the goods in issue are not interchangeable tools for hand tools. In its view, interchangeable tools are typically designed for use with a specific hand tool to perform relatively simple functions that enhance the function and follow the movement of the hand tool. In its view, the “unsuitable for use independently” requirement suggests that interchangeable tools generally perform a function that is co-extensive with, or complements, the function of the hand tool. The CBSA referred to drill bits as an example of interchangeable tools because they generally come in a set and serve the same purpose of enabling the hand tool (i.e. a drill) to drill holes.

27. The CBSA argued that the various models of the goods in issue are not interchangeable tools because they are not designed for use with a specific type of hand tool. While they may be actuated with the assistance of various hand tools, the goods in issue cannot be considered “for” hand tools because they do not complement or enhance the function of the hand tool itself; they perform a distinct and independent function. The CBSA further argued that the goods in issue are more complex in nature than the interchangeable tools contemplated in heading No. 82.07.

28. In making the above arguments, the CBSA relied on a customs classification decision by the Administrative Appeal Tribunal of Australia (hereinafter, the Australian Tribunal) that also dealt with

18. Exhibit AP-2016-019-11 at 2, Vol. 1B; *Transcript of Public Hearing*, 16 February 2017, at 4.

pullers for automotive repair.¹⁹ In *Re Brown & Watson International Pty Limited and Collector of Customs (Victoria)*, which was decided in 1984, the Australian Tribunal found that the phrase “interchangeable tools for hand tools” implied a “substantial degree of mutuality in origin and design and a co-extensiveness of function between the interchangeable tools and the hand tools for which they are used.”²⁰ It concluded that the pullers in question were not interchangeable tools specifically designed for hand tools because they were not imported as a set. Moreover, they were more complex than the goods contemplated by the heading and one puller did not fit into the same hand tool as another puller.²¹

29. The CBSA acknowledged that the decision of the Australian Tribunal in *Re Brown & Watson* is non-binding in the present appeal. Nevertheless, in the CBSA’s submission, that decision is helpful in that it provides compelling guidance for the classification of goods under heading No. 82.07, especially given the similarity of the pullers in that case to the goods in issue.²²

30. The CBSA’s position is that since the goods in issue are not classifiable in heading No. 82.07, they should be classified as hand tools of heading No. 82.05.²³ It argued that the goods in issue qualify as hand tools on the basis that they are installed or affixed by hand on the automotive part that is to be pulled.

31. According to the CBSA, the fact that the pullers require the assistance of a separate hand tool, such as a wrench, to actuate the hex screw does not preclude the pullers from being classified as hand tools of heading No. 82.05. In this respect, it compared the goods in issue to other pullers imported by HSI that were classified under heading No. 82.05 as hand tools in the same section 60 decision but are not subject to this appeal. Those pullers are smaller and comprise a built-in handle that is permanently attached to the forcing screw; unlike the goods in issue, they do not require the use of other tools to operate them.²⁴ In the CBSA’s submission, the use of a wrench to actuate the goods in issue is no different than the function performed by turning the built-in handle to actuate the smaller pullers; the wrench performs essentially the same function and is, therefore, akin to affixing a handle to the goods in issue, which are then ready to use.²⁵

32. HSI responded that the goods in issue cannot be classified as hand tools because they do not meet the requirement of being used independently in the hand. It also argued that the tools needed to actuate the goods in issue, such as a wrench or T-bar, should not be considered “handles”²⁶ for pullers since they are not parts of pullers but rather separate hand tools in their own right.

TRIBUNAL ANALYSIS

33. As stated above, heading No. 82.05 covers all hand tools as long as they are not more specifically described or included elsewhere. Furthermore, the explanatory notes to that heading specifically exclude “interchangeable tools designed for use in hand tools, mechanical or not, in machine-tools or in power-operated hand tools (e.g. screwdriver bits and rock drilling bits) (**heading 82.07**).”

19. Exhibit AP-2016-019-07A at paras. 48-52, Vol. 1B; *Re Brown & Watson International Pty Limited and Collector of Customs (Victoria)*, [1984] AATA 467 (26 October 1984) [*Re Brown & Watson*].

20. *Re Brown & Watson* at paras. 21, 24.

21. *Ibid.* at para. 14.

22. *Transcript of Public Hearing*, 16 February 2017, at 45.

23. *Ibid.* at 54-55.

24. Exhibit AP-2016-019-04A at 7, Vol. 1; *Ibid.* at 73.

25. *Transcript of Public Hearing*, 16 February 2017, at 39-41.

26. HSI relied on the ordinary meaning of the word “handle”, which the *Canadian Oxford Dictionary*, 2nd ed., defines as “1. The part by which a thing is held, carried or controlled.” Exhibit AP-2016-019-04A at 166, Vol. 1.

34. Based on the foregoing, it is not possible for the goods in issue to be *prima facie* classifiable in both headings No. 82.05 and 82.07. It is well-established that when there is a single relevant exclusionary note that precludes the *prima facie* classification of goods in both of the headings at issue in an appeal, the classification exercise should begin with the heading to which the exclusionary note does not apply.²⁷ The parties agreed with this approach.²⁸

35. Accordingly, in this case, the Tribunal will begin its analysis by determining whether the goods in issue are *prima facie* classifiable in heading No. 82.07 as interchangeable tools for hand tools. If the Tribunal finds that the goods in issue are *prima facie* classifiable in that heading, then the exclusionary note will apply and it need not consider the application of the broader category of goods covered by heading No. 82.05.

Heading No. 82.07

36. The *Explanatory Notes* play an important role in the classification analysis of the goods in issue in the present appeal. As mentioned, the *Explanatory Notes* are published by the WCO and provide a universal aid to the interpretation of the *Customs Tariff*. In Canada, these notes necessarily form part of the classification exercise and can only be set aside in exceptional circumstances.²⁹

37. In the decision relied on by the CBSA, *Re Brown & Watson*, the Australian Tribunal found it unnecessary to consult the *Explanatory Notes* as part of its classification analysis.³⁰ Had it done so, the Tribunal may have been more willing to consider the approach taken in that decision as it would have been made pursuant to a similar analytical framework. This is not the case. In addition, it is unclear whether *Re Brown & Watson* is representative of how other jurisdictions presently classify pullers similar to the goods in issue. At the hearing, counsel for the CBSA was unable to confirm whether there were any other (more recent) classification decisions from Australia or other jurisdictions dealing with pullers. For these reasons, the Tribunal does not consider the *Re Brown & Watson* decision to be particularly helpful to the classification analysis concerning the goods in issue. In particular, a plain reading of the heading terms and relevant notes does not include a requirement for interchangeable tools for hand tools to be presented as a set whereby each tool in the set fits a specific “host” hand tool and serves to enhance its function, as alleged by the CBSA.

38. The terms of heading No. 82.07 refer to “interchangeable tools for hand tools, whether or not power-operated”. The heading also includes a non-exhaustive list of functions of such tools, including “for example, pressing, stamping, punching, tapping, threading, drilling . . . or screw driving”.

39. The *Explanatory Notes* to heading No. 82.07 add the following requirements: “tools which are *unsuitable for use independently*, but are *designed to be fitted*, as the case may be, *into*: . . . (A) *hand tools*, whether or not power-operated” [emphasis added]. The French version of the *Explanatory Notes*, which is equally authoritative, indicates that interchangeable tools are tools that would be “practically impossible” to use to effectuate any work on their own: “outils interchangeables avec lesquels il serait *pratiquement*

27. *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; *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency* (6 April 2011), AP-2010-005 (CITT) at paras. 41-74; *Sanus Systems v. President of the Canada Border Services Agency* (8 July 2010), AP-2009-007 (CITT) at para. 35; *Korhani Canada Inc. v. President of the Canada Border Services Agency* (18 November 2008), AP-2007-008 (CITT) at paras. 27-28.

28. *Transcript of Public Hearing*, 16 February 2017, at 54.

29. See footnote 15.

30. *Re Brown & Watson* at paras. 26-27.

impossible d'effectuer, en l'état, un travail quelconque et qui sont destinés à être adaptés, selon le cas : . . . (A) à de l'outillage à main, mécanique ou non" [emphasis added].

40. For the reasons that follow, the Tribunal finds that the goods in issue fit the description of interchangeable tools for hand tools which are unsuitable, or practically impossible, for use independently.

41. The word "interchangeable" is not defined in the *Customs Tariff*. Looking to the ordinary meaning of that word, *The Oxford English Dictionary* provides the following definition: "[c]apable of being put or used in the place of each other".³¹ The Tribunal referred to the same dictionary definition in *Princess Auto Ltd.*,³² which dealt with heading No. 82.04 ("interchangeable spanner sockets, with or without handles"), commenting as follows:³³

In the Tribunal's view, "interchangeable" simply means that sockets can be *put or used in the place of each other on the same tool*, i.e. different sizes of impact sockets can be used on the same impact tool and different sizes of hand sockets can be used on the same hand tool.

[Emphasis added]

42. HSI submitted that there are different types of pullers that are designed for specific jobs. For example, "a u-joint puller would be used to remove a sealed u-joint cup in a driveline, whereas a hub-joint puller would be used to remove a hub from an axle shaft."³⁴ HSI further submitted that different vehicle models may require different sizes or types of pullers for the same kind of job, such that "it would not be uncommon for an auto mechanic to have several different pullers to use, interchangeably, with the same hand tools from job to job."³⁵

43. According to HSI, the head of the forcing screw, which actuates the puller, is designed to be fitted into various common hand tools such as socket wrenches and ratchets, electric drills and air (pneumatic) drills. Specifically, the forcing screws on the goods in issue are hexagonal heads, of various sizes, which are designed to the same SAE standards as the sockets on the aforementioned hand tools.³⁶ The size of the forcing screw increases with the size of the puller, which corresponds to the amount of force needed to do the job. In turn, the hand tool is needed to actuate the puller; otherwise, the puller cannot function.

44. Mr. Digings' testimony confirmed the above description of the goods in issue. The Tribunal found Mr. Digings' testimony to be persuasive as he had first-hand knowledge of the goods in issue. Although he was not put forward as an expert witness, Mr. Digings proved to be a competent and credible lay witness. In particular, he explained that the goods in issue are first "installed" or "affixed" to the automotive part that is to be pulled. Once installed, they must be activated by way of an independent air gun, a wrench and ratchet, or other hand tool; these pullers cannot be used independently.³⁷

31. Exhibit AP-2016-019-04A at 170, Vol. 1.

32. *Princess Auto Ltd.* (19 December 1995), AP-92-291 and AP-93-041 (CITT) [*Princess Auto*].

33. *Princess Auto* at 5.

34. Exhibit AP-2016-019-04A at para. 10, Vol. 1.

35. *Ibid.*

36. *Transcript of Public Hearing*, 16 February 2017, at 34.

37. *Ibid.* at 9-13, 21-23.

45. Furthermore, Mr. Digings stated that the hand is only used to immobilize (or stabilize) the goods in issue, not to operate them. The smaller pullers imported by HSI (which are not part of this appeal) are different in that they can be operated independently, since they comprise a built-in handle.³⁸

46. By way of contrast, the CBSA did not present any witness to testify to those factual matters and the documentary evidence upon which it relied to support its arguments consisted of dictionary definitions of the words “for” and “handle” and the product information filed by HSI. In the Tribunal’s view, the documentary evidence relied on by the CBSA was insufficient to rebut Mr. Digings’ testimony, which the Tribunal found to be credible and persuasive.

47. In the Tribunal’s view, the reference in the explanatory notes to heading No. 82.07 to “tools . . . designed to be fitted . . . into: (A) hand tools, whether or not power-operated” informs the meaning of the phrase “for hand tools” in the terms of that heading. The Tribunal finds that the goods in issue are designed to be fitted into hand tools, such as hand wrenches, ratchets, spanners or air guns and, therefore, they are designed “for” hand tools. The CBSA did not dispute that such actuating tools are hand tools. Indeed, there are several references to interchangeable tools for drills in the notes to heading No. 82.07, which specify that the hand tools may be power-operated or not. As for wrenches and spanners, they would most likely be classified in heading No. 82.04 as “hand-operated spanners and wrenches”.³⁹

48. The Tribunal considers that the goods in issue are interchangeable tools for hand tools because pullers of the same size (i.e. that perform different jobs) can be used with a particular hand tool where the socket size and shape meets the same SAE standard as the hexagonal head of the forcing screw on the puller. There is no need for HSI to establish that the various models of the goods in issue are part of a set, whereby each puller can be used with the same host good. For the purposes of establishing interchangeability, the Tribunal is satisfied, on the basis of Mr. Digings’ testimony, that the goods in issue come in various sizes that correspond to the amount of force needed for the puller to perform a particular job, and that different pullers of the same sizes can be used in place of each other on the same hand tool—whether it be a wrench, socket or air gun—that corresponds in size. The CBSA did not provide any evidence to rebut Mr. Digings’ testimony in this regard.

49. The Tribunal finds that the goods in issue are unsuitable for use independently on the basis of the undisputed evidence that they require another tool to turn the forcing screw and, thus, actuate the puller. Without the assistance of a hand tool to activate that mechanism it would be practically impossible to use the goods in issue.

50. As stated above, the terms of heading No. 82.07 include a list of functions of the tools (“for example, pressing, stamping, punching, tapping, threading, drilling . . . or screw driving”). The Tribunal finds that this non-exhaustive list provides useful guidance as to the type of functions performed by tools covered by this heading.

51. The explanatory notes to heading No. 82.07 set out a similar list, with the addition of the following italicized text: “for pressing, stamping, punching, tapping, threading, drilling, . . . , *etc., metals, . . . , certain plastics or other materials, or for screwdriving*” [emphasis added].

38. *Ibid.* at 15-16, 20.

39. The explanatory notes to heading No. 82.04 specifically state that “[t]his heading covers the following *hand tools*: . . . (1) Hand-operated spanners and wrenches (e.g., with fixed or adjustable jaws; socket, box or ratchet spanners; crank handle spanners; . . . *wrenches or spanners for bicycles or cars* . . . ” [emphasis added].

52. Both parties described the function of the goods in issue with the following verbs: pulling, pushing, removing, installing, grasping and gripping.⁴⁰ They did not dispute that the function of the pullers is to grip or grasp automotive components and, through the application of a pulling or pushing force that is activated via the screw mechanism, either remove or install those components from an automobile. Such automotive components are presumably made of metals, plastics, etc. The Tribunal therefore finds that the function of the goods in issue is akin to the functions listed in the explanatory notes to heading No. 82.07, even if it is not expressly included.

53. Finally, the CBSA submitted that the hand tools used to actuate the goods in issue are “ultimately performing the same task as a handle”⁴¹ and that goods that are ready for use after affixing handles are incompatible with heading No. 82.07, as per the explanatory notes to that heading, which leaves them to be classified in heading No. 82.05.

54. The relevant portion of the explanatory notes to heading No. 82.07 states that “[w]hereas . . . the preceding headings of this Chapter apply in the main to hand tools ready for use as they stand or after affixing handles, this heading covers an important group of tools which are unsuitable for use independently”

55. Both parties submitted the dictionary definition of the term “handle” as “[t]he part by which a thing is held, carried, or controlled”.⁴² The hand tools used to actuate the goods in issue—such as wrenches, spanners and drills—are not “parts” of the goods in issue and, therefore, they do not constitute handles. Although the CBSA argued that “it is not necessary for a handle to be a part” it did not go on to explain how a hand tool can also constitute a handle.⁴³ In the Tribunal’s view, the term “handle” is not synonymous with the term “hand tools”, and the latter provides an accurate, and undisputed, description of the tools used to actuate the goods in issue.⁴⁴

56. In light of the above, the Tribunal finds that the goods in issue are *prima facie* classifiable in heading No. 82.07 as interchangeable tools for hand tools pursuant to Rule 1 of the *General Rules* or, in the case of those goods in issue that are unassembled at the time of importation, pursuant to Rules 1 and 2(a).⁴⁵

57. Accordingly, the goods in issue are precluded from classification under heading No. 82.05 by virtue of the exclusion for interchangeable tools for hand tools in the explanatory notes to that heading.

Subheading and Tariff Item Classification

58. Having determined that the goods in issue are properly classified in heading No. 82.07, the Tribunal accepts that they are classifiable under subheading No. 8207.90 (“Other interchangeable tools”) and tariff item No. 8207.90.90 (“Other”), as claimed by HSI. The other subheadings of 82.07 refer to specific tools

40. Exhibit AP-2016-019-04A at paras. 10-12, Vol. 1; Exhibit AP-2016-019-07A at para. 57, Vol. 1B.

41. *Ibid.*

42. Exhibit AP-2016-019-04A at para. 30 and tab 16, Vol. 1; Exhibit AP-2016-019-07A at para. 57 and tab 11, Vol. 1B.

43. *Ibid.* at paras. 57-58.

44. The Tribunal notes that the fact that the goods in issue can only be operated by use of another tool would preclude their classification in heading No. 82.05 as hand tools, since the general notes to Chapter 82 specify that hand tools must be “used independently in the hand”.

45. In accordance with Rule 2(a), the reference in heading No. 82.07 to interchangeable tools for hand tools is taken to include a reference to such tools presented unassembled for importation.

that do not describe the goods in issue. The CBSA did not comment on the subheading or tariff item classification under heading No. 82.07.

59. Therefore, the Tribunal finds that the goods in issue are classified under tariff item No. 8207.90.90 as other interchangeable tools for hand tools, whether or not power-operated.

DECISION

60. The appeal is allowed.

Jean Bédard

Jean Bédard

Presiding Member