



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

---

## DECISION AND REASONS

Appeal No. AP-2017-044

Oxygène Dolbeau Inc.

v.

President of the Canada Border  
Services Agency

*Decision issued  
Thursday, January 3, 2019*

*Reasons issued  
Wednesday, January 9, 2019*

**TABLE OF CONTENTS**

DECISION..... i

STATEMENT OF REASONS ..... 1

    INTRODUCTION ..... 1

    PROCEDURAL HISTORY ..... 1

    GOODS IN ISSUE..... 1

    STATUTORY FRAMEWORK..... 2

    POSITIONS OF THE PARTIES ..... 3

    ANALYSIS..... 3

        The Tribunal should begin its analysis with heading No. 83.05 ..... 3

        Heading No. 83.05 ..... 4

        Heading No. 73.17 ..... 7

ANNEX..... 10

IN THE MATTER OF an appeal heard on September 6, 2018, 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 September 8, 2017, with respect to a request for re-determination pursuant to subsection 60(1) of the *Customs Act*.

**BETWEEN**

**OXYGÈNE DOLBEAU INC.**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is allowed.

Jean Bédard  
\_\_\_\_\_  
Jean Bédard, Q.C.  
Presiding Member

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: September 6, 2018  
Tribunal Panel: Jean Bédard, Q.C., Presiding Member  
Support Staff: Courtney Fitzpatrick, Counsel  
Laura Colella, Counsel

**PARTICIPANTS:****Appellant**

Oxygène Dolbeau Inc.

**Counsel/Representatives**Marco Ouellet  
Michael Kaylor**Respondent**

President of the Canada Border Services Agency

**Counsel/Representative**

Mathieu Tanguay

**Intervener**

Shur-Fast Fasteners Inc.

**Counsel/Representative**

Jean-Marc Clément

**WITNESS:**Martin Perreault  
Director, Engineering Research and Development  
Oxygène Dolbeau Inc.

Please address all communications to:

The Registrar  
Secretariat to the Canadian International Trade Tribunal  
333 Laurier Avenue West  
15th Floor  
Ottawa, Ontario K1A 0G7  
Telephone: 613-993-3595  
Fax: 613-990-2439  
E-mail: [citt-tcce@tribunal.gc.ca](mailto:citt-tcce@tribunal.gc.ca)

## STATEMENT OF REASONS

### INTRODUCTION

[1] This is an appeal filed by Oxygène Dolbeau Inc. (ODI) with the Canadian International Trade Tribunal pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision by the President of the Canada Border Services Agency (CBSA), dated September 8, 2017, made pursuant to subsection 60(4).

[2] The issue in this appeal is whether certain staples imported by ODI (the goods in issue) are classified under tariff item No. 8305.20.00 of the schedule to the *Customs Tariff*<sup>2</sup> as staples in strips, of base metal, as determined by the CBSA, or under tariff item No. 7317.00.00 as staples (other than those of heading 83.05) and similar articles, of iron or steel, as claimed by ODI.

### PROCEDURAL HISTORY

[3] On June 22, 2016, ODI requested a re-determination of tariff classification of the goods in issue, challenging the CBSA's decision to classify them under tariff item No. 8305.20.00.

[4] On September 8, 2017, the CBSA rendered a decision pursuant to subsection 60(4) of the *Act*, confirming that the goods in issue were properly classified under tariff item No. 8305.20.00.

[5] On November 20, 2017, ODI filed this appeal with the Tribunal pursuant to subsection 67(1) of the *Act*. ODI filed a case brief, a list of authorities, product literature and a safety data report. ODI also filed a sample of the goods in issue.

[6] On August 16, 2018, the Tribunal granted intervener status to Shur-Fast Fasteners Inc. (Shur-Fast), limiting Shur-Fast's intervention to written submissions on the interpretation of heading Nos. 73.17 and 83.05 and to the presentation of oral argument at the hearing.

[7] The public hearing in this matter was held on September 6, 2018. ODI called one witness, Martin Perreault, who is employed by ODI as the Director of Engineering Research and Development. The CBSA did not call any witnesses.

### GOODS IN ISSUE

[8] The good in issue were described by the CBSA, and referred to by ODI, as follows:

The goods in issue are rolls of 5000 staples of base metal used in automatic stapling machines to pack up products (wood/cardboard/etc.) with a protective plastic film.

The pins/staples are approximately 60 mm long, 1.5 mm wide and 0.5 mm thick. The staples are in strips, which are continuously held together with a thin layer of plastic applied on the exterior surface of the strip and a 20-mm adhesive bluish band on the interior side of the strip. The strip of staples is rolled onto a wood hub and has a small black wheel of rigid plastic 3.5 cm in diameter and of 2.5 cm in width with a concave centre. The staples in issue

---

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

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

are specifically fabricated for pneumatic staplers using rolled staples in automatic stapling machines.

[Translation]

## STATUTORY FRAMEWORK

[9] 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).<sup>3</sup> 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.

[10] 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*<sup>4</sup> and the *Canadian Rules*<sup>5</sup> set out in the schedule.

[11] 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.

[12] 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*<sup>6</sup> and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,<sup>7</sup> published by the WCO. While classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.<sup>8</sup>

[13] 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 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.<sup>9</sup>

- 
3. Canada is a signatory to the International Convention on the Harmonized Commodity Description and Coding System, which governs the Harmonized System.
  4. S.C. 1997, c. 36, schedule [*General Rules*].
  5. S.C. 1997, c. 36, schedule.
  6. World Customs Organization, 4th ed., Brussels, 2017.
  7. World Customs Organization, 6th ed., Brussels, 2017.
  8. 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 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 classification opinions.
  9. *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) at para. 21. Rules 1 through 5 of the *General Rules* apply to classification at the heading level.

[14] 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.<sup>10</sup> The final step is to determine the proper tariff item.<sup>11</sup>

## POSITIONS OF THE PARTIES

[15] ODI submits that the CBSA erred in classifying the staples in heading No. 83.05 as staples in strips. It submits that the goods in issue are rolls, not strips, and that the correct tariff classification is therefore heading No. 73.17.

[16] The CBSA submits that the goods in issue are properly classified under heading No. 83.05. The CBSA argues that the goods in issue are a flexible strip of staples, which has been rolled or coiled to facilitate transportation and use.

[17] Shur-Fast points to a number of discrepancies between the English and French texts of the relevant headings and between the English and French explanatory notes, in particular the text of heading No. 73.17. It submits that the shared meaning of the English and French texts of heading No. 73.17 is that this heading covers all bevelled and corrugated staples, whether or not in strips.

[18] The parties agree that the goods in issue are staples of base metal and that they are used in packaging. The parties also agree that the goods in issue can be classified according to Rule 1. The crux of the dispute is whether the goods in issue can be characterized as staples in strips and, thus, covered by the scope of heading No. 83.05.

## ANALYSIS

### The Tribunal should begin its analysis with heading No. 83.05

[19] Goods are not *prima facie* classifiable in two headings if the goods of one heading are expressly excluded from the other.<sup>12</sup> If there is such a relevant exclusion, the Tribunal should begin its analysis with the heading excluded by the note.<sup>13</sup>

[20] The English text of heading No. 73.17 provides that staples *other than those of heading No. 83.05* are classified in heading No. 73.17. This would normally indicate that the Tribunal should first

---

10. 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 [Rules 1 through 5] . . .” and that “the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

11. 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.

12. *Sanus Systems v. President of the Canada Border Services Agency* (8 July 2010), AP-2009-007 (CITT) at para. 35; *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency* (6 April 2011), AP-2010-019 (CITT) at para. 49.

13. *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; *Cross Country Parts Distribution Ltd. v. President of the Canada Border Services Agency* (19 August 2016), AP-2012-052R (CITT) at para. 4.

look at heading No. 83.05 to determine whether the goods in issue meet the terms of that heading and can be classified there. If that is the case, the goods in issue would be excluded from heading No. 73.17 by virtue of the heading's own terms and the classification exercise would end because the goods in issue would be classified in one, and only one, heading.

[21] Regrettably, the French text of heading No. 73.17 is not identical to the English text in a number of respects. Most notable at this stage of the Tribunal's analysis is the fact that the exclusionary language in the English text of heading No. 73.17 does not appear in the French text.

[22] In this case, the discrepancy can be resolved with reference to the section notes. Note 2 to Section XV provides, in both English and French, that, subject to a few exceptions,<sup>14</sup> articles of Chapters 82 and 83 are excluded from Chapters 72 to 76. By application of this note, the goods in issue are not *prima facie* classifiable in both heading No. 83.05 and heading No. 73.17 and the Tribunal should begin its analysis with the heading excluded by the note, namely heading No. 83.05.

[23] This approach is logical given the nature of the two headings under consideration in this appeal. As is sometimes the case when examining the schedule to the *Customs Tariff*, the scope of heading No. 73.17 (insofar as it relates to staples) is broader than that of heading No. 83.05, with heading No. 83.05 being limited to staples in strips. This signals that unless the goods in issue fit into the narrower heading they would likely be classified in the broader heading.

[24] This approach is also supported by the explanatory notes to heading No. 73.17, which provide, in English and in French, that staples in strips (e.g. for offices, upholstery, packaging) are not included within the scope of heading No. 73.17.

[25] For these reasons, the Tribunal finds it appropriate to begin its analysis with heading No. 83.05.

### **Heading No. 83.05**

[26] As noted above, the CBSA has classified the goods in issue under tariff item No. 8305.20.00. The terms of heading No. 83.05 are as follows:

Fittings for loose-leaf binders or files, letter clips, letter corners, paper clips, indexing tags and similar office articles, of base metal; staples in strips (for example, for offices, upholstery, packaging), of base metal.

Mécanismes pour reliure de feuillets mobiles ou pour classeurs, attache-lettres, coins de lettres, trombones, onglets de signalisation et objets similaires de bureau, en métaux communs; agrafes présentées en barrettes (de bureau, pour tapissiers, emballeurs, par exemple), en métaux communs.

[27] Heading No. 83.05 covers two distinct types of goods:

- a. fittings for loose-leaf binders or files, letter clips, letter corners, paper clips, indexing tags and similar office articles, of base metal; or

---

14. Neither ODI, nor the CBSA, nor Shur-Fast argued that these exceptions were relevant to this appeal.



- b. staples in strips (for example, for offices, upholstery, packaging), of base metal.

[28] The CBSA argues that the goods in issue are staples presented in flexible strips that have been coiled or rolled to improve the loading capacity of the machine in which they are used, and to facilitate transport. ODI argues that there is a difference between staples in rolls and staples in strips and that the goods in issue are clearly rolls. In response, the CBSA argues that there is nothing in the wording of heading No. 83.05 to prevent staples in strips that have then been rolled or coiled from being classified there.

[29] Shur-Fast submits that the staples in strips covered by heading No. 83.05 are staples primarily aimed at office work for light stapling duties and that staples for more robust duties or those used in industrial applications, such as the goods in issue, are covered by heading No. 73.17. The Tribunal notes that one of the listed uses for the staples covered by heading No. 83.05 is upholstery, which is arguably not a “light stapling duty”. The same could also be said for certain packaging activities. In other words, there isn’t strong evidence for finding that heading No. 83.05 is limited to staples in strips primarily aimed at office work.

[30] The terms “staples in strips” and “agrafes présentées en barrettes” are not defined in the schedule to the *Customs Tariff* or the relevant legal and explanatory notes.

[31] The *Merriam-Webster Dictionary* defines “strip” as follows: “**1. a:** a long narrow piece of material”.<sup>15</sup> The *Concise Oxford Dictionary* defines “strip” as follows: “**1. a:** a long narrow strip of cloth, paper, etc. – steel or other metal in the form of narrow flat bars”.<sup>16</sup> These definitions suggest that the English word “strip” refers to something that is long and narrow, and that it may be either flexible or rigid.

[32] *Le Petit Robert* defines “barrette” as follows:

**1** Petite barre portée comme ornement vestimentaire. *Une barrette de diamants.* > **broche.** *La barrette de la Légion d'honneur.* > **décoration.** • **2** Pince à cheveux, souvent munie d'un système de fermeture. « cette *barrette que tu gardes dans tes cheveux comme un gage d'enfance, en ce jour de vingt ans* » **Ben Jelloun.** • **3** BRODERIE. Bride décorative. • **4** Petite portion allongée de haschich. • **5** INFORM. *Barrette (de mémoire)* : composant électronique qui permet d'augmenter la mémoire vive d'un ordinateur<sup>17</sup>.

[33] The *Larousse en ligne* defines “barrette” as follows :

- Broche longue et étroite.
- Épingle à fermoir pour retenir les cheveux.
- Ruban de décoration monté sur un support rectangulaire et se fixant sur l'uniforme.
- **Broderie**

---

15. Exhibit AP-2017-044-08 at tab 21.

16. Exhibit AP-2017-044-08 at tab 22.

17. Exhibit AP-2017-044-08 at tab 23.

Sorte de bride reliant entre eux deux motifs dans un espace vide.

**- Habillement**

Petite tige rigide utilisée pour fixer les pointes d'un col de chemise, percées d'un œillet (col à barrette).

**- Textiles**

Pièce métallique plate, garnie d'aiguilles, équipant les machines de préparation, en filature de lin, de jute et de laine.<sup>18</sup>

[34] Although these definitions refer to “barrette” in a different context, when taken together, the Tribunal is satisfied that these definitions of the French “barrette” generally refer to a small object, often in the shape of a bar, and that they suggest something straight, narrow, and rigid. Indeed, the very make-up of the word “barrette” connotes a bar (“barre”) that is small (“-ette”).

[35] The meaning of the words “strip” and “barrette” are not identical. Having regard to the above-cited definitions, the English “strip” is potentially broader than the French “barrette” as it covers items that are flexible or rigid, whereas a “barrette” is best understood as referring to something rigid. Applying the shared meaning rule to these two words, the Tribunal finds that the terms “strip” and “barrette” in heading No. 83.05 include the concept of something small, narrow and rigid.

[36] ODI filed images of staples which, in its submission, would meet the terms of heading No. 83.05, because they are small, rigid strips of staples.<sup>19</sup> Mr. Perreault of ODI also described the types of staples that, in his view, are classified in heading No. 83.05, namely a small, rigid bar with between 200 and 500 staples that is often used in office staplers.<sup>20</sup> The Tribunal does not need to speculate about the classification of these items in order to resolve the present appeal. Suffice it to say that the Tribunal is satisfied that rigid strips of staples exist.

[37] The CBSA argues that a “strip” is a “bande” in French and explains that there is a common definition to “bande” and to “barrette”. However, the word “bande” does not appear in the French text of heading No. 83.05. The Tribunal finds that in arguing that a strip is a “bande” and that a “bande” is the same as a “barrette”, the CBSA is essentially expanding the meaning of the French text to match the English. In fact, the use of the word “barrette” is clear in that it includes the concept of something rigid, and is in essence a “little bar”. “Bande”, on the other hand, does not have the same implication. *Le Petit Robert*<sup>21</sup> defines “bande” as a “morceau d'étoffe, de cuir, de papier, de métal, etc., plus long que large, qui sert à lier, maintenir, recouvrir, border ou orner qqch.” It lists similar objects such as “lien, ligature; courroie, lanière, ruban; rouleau; pellicule”. The *Larousse en ligne*<sup>22</sup> defines a “bande” as a “long et étroit morceau d'une matière mince et souple (tissu, papier, plastique, etc.) que l'on met sur ou autour de quelque chose pour le consolider le protéger, l'orne, etc.” or a “chose de forme étroite et allongée”, citing a plot of land (“une bande de terre”).

---

18. <https://www.larousse.fr/dictionnaires/francais/barrette/8123?q=barrette#86297>.

19. Exhibit AP-2017-044-20 at tab 3.

20. *Transcript of Public Hearing* at 12.

21. Exhibit AP-2017-044-08 at tab 25.

22. <https://www.larousse.fr/dictionnaires/francais/bande/7808?q=bande#7769>.

[38] Having found that the terms “strip” and “barrette” refer to items that are long, narrow and rigid, the Tribunal will consider whether the goods in issue can be properly characterized as staples in strips. In doing so, the Tribunal recalls that it is the condition of the goods in issue at the time of importation which is determinative.<sup>23</sup>

[39] In examining the goods in issue, the Tribunal notes that the individual staples are held together with a thin plastic film that has been applied to one side. Mr. Perreault confirmed this at the hearing.<sup>24</sup> The flexible nature of the plastic film allows the staples to be rolled or coiled. The Tribunal also heard from Mr. Perreault that this allows a larger number of staples to be inserted into ODI’s packaging machines; the machines can then package up to 500 wooden boxes before the staples need to be refilled.<sup>25</sup> The goods in issue can be unrolled into a long flexible strip.

[40] Ultimately, the Tribunal finds that, at the time of importation, the goods in issue are presented in the form of a roll. As such, the goods in issue are not staples in strips. The fact that the goods in issue may be unrolled is irrelevant. The staples were imported as a roll and, as such, cannot be classified as anything other than a roll. However, even if the Tribunal were to consider the goods in issue in their unrolled state, they still cannot be classified in heading No. 83.05 because the resulting strip is flexible, not rigid, and does not fall within the shared meaning of the terms “staples in strips” and “agrafes présentées en barrettes” considered above.

[41] For these reasons, the Tribunal finds that the goods in issue cannot be classified in heading No. 83.05.

### **Heading No. 73.17**

[42] The terms of heading No. 73.17 are as follows:

Nails, tacks, drawing pins, corrugated nails, *staples (other than those of heading 83.05)* and similar articles, of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper.

Pointes, clous, punaises, crampons appointés, *agrafes ondulées ou biseautées et articles similaires*, en fonte, fer ou acier, même avec tête en autre matière, à l’exclusion de ceux avec tête en cuivre.

[Emphasis added]

[43] In the briefs and at the hearing, the CBSA and Shur-Fast argued at length about the differences between the English and French texts of heading No. 73.17. In particular, Shur-Fast submitted that the shared meaning of the English and French texts is that goods that are bevelled or corrugated are excluded from classification in heading No. 83.05 and can only be classified in heading No. 73.17.

[44] It is not disputed that there are discrepancies between the English and French texts of this heading. The Tribunal has carefully considered these arguments. However, the Tribunal finds that

---

23. *Abbott Laboratories Ltd. v. Deputy M.N.R.C.E* [1986] 70 N.R. 222.

24. *Transcript of Public Hearing* at 28-29.

25. *Transcript of Public Hearing* at 14.

while unfortunate, the differences between the English and the French texts of heading No. 73.17 have little bearing on the issue at hand.

[45] A contextual interpretation of heading No. 73.17 suggests that it is a general heading for staples. This heading, and the accompanying explanatory notes, list a wide range of fastening products and include a reference to *similar articles*, which indicates that the heading covers goods beyond those which are explicitly named. The English and French texts of the explanatory notes to heading No. 73.17 also provide a non-exhaustive list of the many types of goods that fall within the scope of this heading, including “staples (insulated or not) pointed at both ends, for electric wiring, picture frames, fencing, etc. and other staples not presented in strips”.<sup>26</sup> While it is possible that some of the listed items may refer to individual staples, as argued by the CBSA, the Tribunal is not convinced that heading No. 73.17 is limited in this way. There is nothing explicit in the wording of heading No. 73.17 that limits this heading to individual staples. Indeed, if that were the case, there would be no need to expressly exclude staples in strips of heading No. 83.05 from its scope. Rather, the Tribunal finds that the broad wording of the heading, and the broad list of items listed in the explanatory notes, in particular the references to “similar articles” and “other staples not presented in strips”, supports the Tribunal’s view that heading No. 73.17 is a general heading, with heading No. 83.05 being a limited carve-out from this general heading for staples in strips.

[46] Given that the goods in issue cannot be classified under heading No. 83.05 because they are not staples in strips, it follows that they can be classified under heading No. 73.17 as staples or similar articles.

[47] There was some debate at the hearing about whether the goods in issue were bevelled. Mr. Perreault testified that the ends of the staples are bevelled to allow the staples to penetrate the wooden packaging.<sup>27</sup> The Tribunal has had an opportunity to examine the staples and has confirmed from this visual inspection that the goods in issue are, in fact, bevelled. In that regard, the Tribunal recalls Shur-Fast’s argument that the shared meaning of heading No. 73.17 is that bevelled and corrugated staples are to be classified in that heading and cannot be classified in heading No. 83.05. Having found, for other reasons, that the goods in issue are not classifiable in heading No. 83.05, the Tribunal finds it unnecessary to conclusively resolve this question in order to dispose of this appeal.

[48] On the basis of the foregoing, the Tribunal finds that at the time of importation the goods in issue were presented in rolls and, as such, they cannot be classified in heading No. 83.05. It follows that they are properly classified under heading No. 73.17 pursuant to Rule 1 of the *General Rules*.

[49] Heading No. 73.17 has only one subheading and one tariff item. As such, and in accordance with Rule 6 of the *General Rules* and the *Canadian Rules*, the Tribunal finds that the goods in issue are classified under subheading No. 7317.00 and tariff item No. 7317.00.00.

## [50] DECISION

---

26. The relevant text of the French version provides as follows: “agrafes en fil recourbé en forme d’étrier et appointé aux deux extrémités, pour encadreurs, clôtures, installations électriques (dans ce dernier cas, les articles peuvent être isolés), etc.; les autres agrafes non présentées en barrettes; . . .”

27. *Transcript of Public Hearing* at 9. The CBSA argued that ODI did not indicate that the goods in issue were bevelled in any of its earlier correspondence with the CBSA. However, appeals before the Tribunal proceed *de novo* and, as such, each party may put forward arguments not raised in instances below.

[51] The appeal is allowed.

Jean Bédard  
\_\_\_\_\_  
Jean Bédard, Q.C.  
Presiding Member

## ANNEX

Heading No. 83.05 provides as follows:

Fittings for loose-leaf binders or files, letter clips, letter corners, paper clips, indexing tags and similar office articles, of base metal; staples in strips (for example, for offices, upholstery, packaging), of base metal.

Mécanismes pour reliure de feuillets mobiles ou pour classeurs, attache-lettres, coins de lettres, trombones, onglets de signalisation et objets similaires de bureau, en métaux communs; agrafes présentées en barrettes (de bureau, pour tapissiers, emballeurs, par exemple), en métaux communs.

The relevant explanatory notes to heading No. 83.05 provide as follows, first in English, followed by the French version:

This heading covers base metal fittings of the clip, cord, spring lever, ring, screw, etc., types, for loose-leaf binders or box files. It further includes protecting rings, bands and corners for ledgers or other stationery books; also office stationery in metal of the type used in fastening together or index-marking papers (e.g., letter clips, paper clips, paper fasteners, letter corners, card indexing tags, file tags, spike files); staples in strips of the kind used in stapling machines, in offices, for upholstery, for packaging, etc.

La présente position couvre les mécanismes (à pince, à tirette, à levier, à ressort, à anneaux, à vis, par exemple) pour reliure de feuillets mobile ou pour classeurs, les garnitures et ferrures pour registres, telles que coins et anneaux de renforcement, ainsi que tous les petits articles utilisés dans les bureaux pour assembler, piquer ou marquer les papiers. On peut citer parmi ces derniers les pinces à dessin, les pince-notes, les attache-lettres, les coins de lettres, les *trombones*, les onglets et cavaliers de signalisation pour fiches, les crochets à papier, les pique-notes, et agrafes présentées en barrettes des types utilisés dans les appareils ou pinces àagrafer de bureau, pour tapissiers, emballeurs, par exemple.

Heading No. 73.17 provides as follows:

Nails, tacks, drawing pins, corrugated nails, staples (other than those of heading 83.05) and similar articles, of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper.

Pointes, clous, punaises, crampons appointés, agrafes ondulées ou biseautées et articles similaires, en fonte, fer ou acier, même avec tête en autre matière, à l'exclusion de ceux avec tête en cuivre.

The relevant explanatory notes to heading No. 73.17 provide as follows, first in English, followed by the French version:

The heading covers:

**(A) Nails, tacks, staples (other than those of heading 83.05) and similar articles**, usually manufactured by the following methods:

- (1) Cold pressing from wire of the required thickness. Such wire nails usually have flat or rounded heads, though some are headless and pointed at one of both ends. Tapered shank nails and tacks are made in the same way except that they are sheared obliquely.
- (2) Forging (by hand or machine) from an iron shank of the required thickness which is hammered to appoint, after which the head is stamped out by a nail-making machined.
- (3) Cutting from sheet or strip followed, if necessary, by finishing either mechanically or by hand.
- (4) Hot-rolling bars in nail mills which shape the head and shank simultaneously.
- (5) Die stamping of the head from a small disk of metal, the previously prepared shank being fixed at the same time. This process is normally used for nails with rounded heads such as upholstery nails.
- (6) Casting.

There are many types of these goods including:

Wire nails of uniform cross-section as used by carpenters, etc.; moulders' nails; glazing nails; cobblers' nails; staples (insulated or not) pointed at both ends, for electric wiring, picture frames, fencing, etc. and other staples not presented in strips; pointed screw-nails with twisted shanks and unslotted heads; tacks and sprigs for cobblers, upholsters, etc.; hobnails for heavy duty footwear; nails for pictures, mirrors, fencing, etc.; unthreaded nails for shoeing animals; unthreaded frost studs for animals; small triangles, etc. (usually of tin-plate) used for fixing window-panes; decorative studs for upholsters; studs for marking railway sleepers.

...

The heading **does not include**:

- (a) Screw hooks, screw rings, pointed drive screws with slotted heads and unpointed drive screws (**heading 73.18**).
- (b) Shoe-protectors, with or without affixing points; picture hooks with fixing nails; belt fasteners (**heading 73.26**).
- (c) Nails, tacks, etc., with heads of copper or copper alloys (**heading 74.15**).
- (d) Staples in strips (e.g., for offices, upholstery, packaging) (**heading 83.05**).
- (e) Piano pegs (**heading 92.09**).

La présente position couvre :

**A) Les pointes, clous et articles similaires de tout genre**, obtenus principalement d'après les méthodes suivantes :

- 1) Par pressage à froid, en partant d'un fil de fer ou d'acier d'épaisseur voulue. Les articles obtenus par ce procédé (pointes dites *de tréfilerie*) ont une tête plate ou bombée; toutefois, on fait aussi des pointes sans tête, appointées à un ou aux deux bouts. On peut également obtenir des clous dits *à tige réduite* par cisailage oblique de la tige.
- 2) Par forgeage à la main ou à la machine. Dans cette méthode, une tige de fer d'épaisseur voulue est chauffée, appointée par martelage, puis la tête est formée par un étampage dans une cloutière.
- 3) Par découpage de la tôle. On part, en général, d'ébauches débitées préalablement par poinçonnage ou cisailage dans des feuillards et achevées ensuite, s'il y a lieu, mécaniquement ou à la main.
- 4) Par laminage à chaud d'une barre entre des cylindres à empreintes formant à la fois la tête et la pointe (laminoir à clous).
- 5) Par emboutissage de la tête à partir d'un petit disque de métal avec fixation simultanée de la pointe préalablement obtenue. Ce procédé est habituellement utilisé pour l'obtention des clous à tête hémisphérique du type clous de tapissiers.

Par moulage, selon les procédés habituels de fonderie.

Il existe une variété infinie de ces articles, parmi lesquels on peut citer :

Les pointes dites de Paris, pour menuisiers, charpentiers, etc., les pointes de mouleurs, les pointes de vitriers; les chevilles pour cordonniers; les crampillons (cavaliers) et agrafes en fil recourbé en forme d'étrier et appointé aux deux extrémités, pour encadreurs, clôtures, installations électriques (dans ce dernier cas, les articles peuvent être isolés), etc.; les autres agrafes non présentées en barrettes; les clous-vis, à tige généralement quadrangulaire tordue et pointue, sans tête fendue; les semences pour cordonniers, tapissiers, etc.; les clous ou crampons à ferrer les chaussures; les clous et happes pour tableaux, glaces clôtures, espaliers, etc.; les clous à ferrer les animaux et clous ou crampons à glace pour animaux, sans pas de vis; les petits triangles et objets similaires, généralement en fer blanc, pour fixer les vitres; les clous de décoration pour tapissiers; les clous à marquer les traverses de chemin de fer, etc.

[...]

Sont **exclus** de cette position:

- a) Les pitons et crochets à pas de vis, ainsi que les fausses vis non appointées et les fausses vis à tige pointue et à tête fendue (**n° 73.18**).
- b) Les protecteurs pour semelles de chaussures, avec ou sans pointes, les crochets à tableaux en métal découpé se fixant au mur par des aiguilles, ainsi que les agrafes en fils pour courroies de transmission et de transport (**n° 73.26**).



- c) Les pointes, clous, etc., avec tige de fer ou en acier et tête en cuivre (**n° 74.15**).
- d) Les agrafes présentées en barrettes (de bureau, pour tapissiers, emballeurs, par exemple) (**n° 83.05**).
- e) Les chevilles pour pianos (**n° 92.09**).