



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2017-063

Rona Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Thursday, November 29, 2018*

TABLE OF CONTENTS

DECISION.....	i
STATEMENT OF REASONS	1
BACKGROUND	1
Procedural History	1
Description of the Goods in Issue.....	1
PARTIES' POSITIONS	2
Rona.....	2
CBSA	3
ANALYSIS.....	4
One-piece Goods ("Key-operated Knob or Handle").....	4
Two-piece Goods ("Entry Handlesets").....	12
Classification at the Subheading and Tariff Item Levels	13
CONCLUSION	13
ANNEX I – LEGAL FRAMEWORK.....	14
ANNEX II – RELEVANT TARIFF NOMENCLATURE AND EXPLANATORY NOTES	14

IN THE MATTER OF an appeal heard on October 11, 2018, pursuant to subsection 67(1) of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF two decisions of the President of the Canada Border Services Agency, dated December 28, 2017, and February 16, 2018, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

RONA INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed. The goods in issue are properly classified under tariff item No. 8301.40.90 of the Schedule to the *Customs Tariff*.

Georges Bujold

Georges Bujold
Presiding Member

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	October 11, 2018
Tribunal Panel:	Georges Bujold, Presiding Member
Support Staff:	Elysia Van Zeyl, Counsel Caroline Morgan, Counsel

PARTICIPANTS:**Appellant**

Rona Inc.

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STATEMENT OF REASONS

BACKGROUND

[1] This appeal was filed by Rona Inc. (Rona) on March 9, 2018, pursuant to subsection 67(1) of the *Customs Act* (the *Act*),¹ from decisions made on or about September 12, 2017, by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4) of the *Act*.

[2] The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8301.40.90 as “padlocks and locks (key, combination or electrically operated) of base metal”, as determined by the CBSA, or whether they should be classified under tariff item No. 8302.41.91 as “other base metal mountings, fittings and similar articles suitable for doors and buildings”, as claimed by Rona.

Procedural History

[3] Rona imported the goods in issue in several separate import transactions between about 2014 and 2017. It declared the goods in issue under tariff item No. 8301.40.90 as “padlocks and locks (key, combination or electrically operated) of base metal”.

[4] Between about December 2016 and August 2017, Rona requested refunds pursuant to section 74 of the *Act* on the basis of a change in tariff classification to tariff item No. 8302.41.91 suggesting that the goods in issue were “other base metal mountings, fittings and similar articles suitable for doors and buildings”. The CBSA denied Rona’s refund requests, and upheld the original tariff classifications as declared.

[5] Rona requested further re-determinations, maintaining that the goods in issue should be classified in heading No. 83.02. In decisions dated December 28, 2017, and February 16, 2018, the CBSA upheld its previous determination that the goods in issue were classified under tariff item No. 8301.40.90.

Description of the Goods in Issue

[6] The issue in this appeal is the tariff classification of two types of goods that were imported by Rona. They are described in the decisions appealed from as “various locksets and parts of locksets”. While the goods in issue all have similar attributes and the same general purpose, they differ in certain respects. In order to determine their proper tariff classification and address the different arguments raised by the parties concerning each type, it is necessary to describe them in detail.

[7] Essentially, the goods in issue fall into two broad categories: (1) the goods composed of one piece incorporating several components that can be disassembled, including door handles and knobs and an integrated locking mechanism (one-piece goods); and (2) the goods composed of two separate pieces, namely, an exterior door handle coupled with an interior knob and a separate key and/or keypad-operated deadbolt packaged together (two-piece goods). It is worth noting that certain models included in the second category also incorporate a second locking mechanism (in addition to the deadbolt) in the form of an integrated locking mechanism fitted into the handle.

1. *Customs Act*, RSC 1985 (2nd Supp.), c. 1.

[8] The majority of the goods in issue are keyed/combination entry-type locksets for doors. However, according to the evidence, certain models can also be used on doors inside a building, hence, not necessarily on an entrance door.² While some models feature an electronic locking system (combination on a keypad option to unlock), they all come with keys.³

[9] At issue are 12 models of the one-piece goods. They are listed in the CBSA's brief and physical exhibits of six such models have been filed with the Tribunal.⁴ The CBSA refers to these models as "key operated knob (or handle)". They incorporate a lock cylinder assembly fitted into the handle. At the hearing, Mr. Hostettler explained that their locking mechanism is built into the chassis between the two handles and that, by using the inside button or the key, one can lock the outside handle and thereby make the lockset a rigid lockset (i.e., the handles cannot be turned). He also stated that they include a "dead-latch" pin, which prevents the main latch from retracting when the handles are locked. It is by inserting the key into the lock cylinder that the dead-latch pin can be released and the latch retracted to open the door.

[10] Also at issue are nine models of the two-piece goods. They are also listed in the CBSA's brief and physical exhibits of six such models have been filed with the Tribunal.⁵ The CBSA refers to these models as "entry handlesets". They are also called "entrance gripsets" in the documentary evidence. They consist of two main components: (1) a key-operated deadbolt designed to be fitted on the exterior side of a door, with a turning knob designed to be fitted on the interior side of a door; and (2) a door handle or knob, in some cases, operated by a key and, in others, not operated by a key (i.e., a handle that does not lock).

[11] According to the evidence, the key-operated deadbolt provides the main and, sometimes, the only locking mechanism on these goods. It is by turning the key or the knob that one can extend the bolt into the frame of a wall and thereby lock a door. On some models, a second locking mechanism similar to the one incorporated in the goods of the first category is fitted into the handles and knob component.

[12] The parties agree that both components are presented and packaged together for retail sale. They have matching colours, styles, finishes, etc.

PARTIES' POSITIONS

Rona

[13] Rona argues that the goods are classifiable under tariff item No. 8302.41.90. Rona relies on the explanatory notes to heading No. 83.02, which state that "mountings, fittings and similar articles suitable for buildings" includes "bolts, fasteners, latches, etc., (other than key-operated bolts of heading 83.01), for doors" and "handles and knobs for doors, including those for locks or latches". Rona submits that when wording is clear and unambiguous, such as the wording of heading No. 83.02, it is to be interpreted according to its plain meaning and the object and spirit in which the text was written.

2. *Transcript* at 31-33.

3. *Transcript* at 30.

4. Exhibit AP-2017-063-07, Vol. 1, para. 9 and Tab 4; Exhibits A-02, A-03, A-08, A-10, A-12 and A-13.

5. Exhibit AP-2017-063-07, Vol. 1, para. 11 and Tab 5; Exhibits A-01, A-04, A-05, A-07, A-09 and A-14.

[14] Rona submits that the Tribunal should conclude, relying on Rule 1 of the *General Rules* and the explanatory notes to heading No. 83.02, as it did in *Weiser Inc. v. DMNR*,⁶ that the one-piece goods are classified under heading No. 83.02.

[15] With respect to the two-piece goods, Rona argues that the Tribunal must rely on Rule 3(b) of the *General Rules* to determine the tariff classification, and argues that the handle or knob is reflective of the “essential character” of the two-piece goods, relying on evidence that the cost of the handle is significant relative to the cost of other components and that the handle is essential to the functioning of a door. In the alternative, Rona argues that the tariff classification can be resolved relying on Rule 3(c), last in numerical order, which would mean that the applicable heading is No. 83.02.

CBSA

[16] The CBSA submits that the goods in issue are properly classified under tariff item No. 8301.40.90.

[17] The CBSA argues that the one-piece goods in issue are *prima facie* classifiable in heading No. 83.01 using Rule 1 because those goods meet the three requirements to be classified under that heading: they are (1) locks (2) operated by a key or a combination and (3) made of base metal. The explanatory notes clarify that heading No. 83.01 covers “fastening devices operated by a key or controlled by a combination”. Furthermore, the CBSA submits that the one-piece goods meet the definition of “lock” in the *Canadian Oxford English Dictionary*, the definition of “lock” in *Rutherford Controls International Corp. v. President of the Canada Border Services Agency*,⁷ the terms of heading No. 83.01 and any reference to “lock” in the explanatory notes to heading No. 83.01. Finally, the CBSA submits the one-piece goods are excluded from heading No. 83.02 by explanatory note (D)(2) of that heading.

[18] At the hearing, the CBSA submitted that while the one-piece goods in issue may also be *prima facie* classifiable in heading No. 83.02, they remained properly classified in heading No. 83.01 through the application of Rule 3(b) of the *General Rules*. According to the CBSA, it is their locking component which gives them their essential character in view of their intended use.

[19] The CBSA further submits that the two-piece goods must be classified using Rule 3(b) as they are “goods put up in sets for retail sale”. The two-piece goods consist of two separate articles classified under two different headings: the key-operated deadbolt classified under heading No. 83.01 as a lock, and the door handle classified under heading No. 83.02.⁸ According to the CBSA, the deadbolt and doorknob are packaged together to accommodate customer preferences by providing a matching lock and doorknob. The CBSA submits that in applying Rule 3(b) to the sets which make up the two-piece goods, the essential character of the goods is that of a lock, as its function is to prevent unwanted access to a building or room, the sets are marketed for their safety and security features and the role of the key-operated deadbolt is essential to the set.

6. (25 June 2001), AP-98-041 and AP-98-060 (CITT) [*Weiser*].

7. (30 September 2010), AP-2009-076 (CITT) [*Rutherford*].

8. The explanatory notes for heading 83.02 specify that “handles and knobs for doors” are covered by that heading.

ANALYSIS

[20] The legislation requires the Tribunal to first consider, applying Rule 1 of the *General Rules* through consideration of the terms of each heading and any relative section or chapter notes, whether the goods in issue are classifiable in heading No. 83.01, heading No. 83.02 or in both headings. To the extent that the application of Rule 1 does not lead to the classification of the goods in issue in one and only one heading, consideration of the subsequent rules will be necessary.

[21] The dispute in this appeal arises at the heading level. The two competing headings, No. 83.01 and No. 83.02, cover various articles of base metal. The parties agree that the goods in issue are made up of base metal, meeting a condition of classification under both heading No. 83.01 and heading No. 83.02. According to note 3 of Section XV, the expression “base metals” means, *inter alia*, iron and steel, copper, nickel, aluminum, lead, zinc, tin, and titanium. There is also evidence that the goods in issue are made of a base metal or alloys of base metals (brass or bronze).⁹ Accordingly, the goods in issue can be included in either headings No. 83.01 or No. 83.02 on the basis of their constituent materials.

[22] Given that there are two categories of goods in issue and that the parties’ submissions are not the same for each category, each will be addressed in turn to determine in which heading the goods in issue should be classified.

One-piece Goods (“Key-operated Knob or Handle”)

[23] Rona submits that applying Rule 1 of the *General Rules* leads to the classification of the one-piece goods only in heading No. 83.02. Rona relies on the explanatory notes to heading No. 83.02, which state that “mountings, fittings and similar articles suitable for buildings” include “bolts, fasteners, latches, etc., (other than key-operated bolts of heading 83.01), for doors” (Note (D)(2)) and “handles and knobs for doors, including those for locks or latches” (Note (D)(7)). In Rona’s view, the one-piece goods are thus expressly mentioned in the illustrative list of goods covered by heading No. 83.02 in Note (D)(7) and excluded from heading No. 83.01 through the use of the *expressio unius est exclusio alterius* canon of interpretation.

[24] In this regard, Rona submits that, given that Note (D)(2) of the explanatory notes to heading No. 83.02 specifically exclude key-operated bolts of heading No. 83.01 from being covered by heading No. 83.02, had the drafters of the explanatory notes intended for certain handles and knobs for locks or latches to be excluded from the ambit of heading No. 83.02, they would have made a similar distinction in Note (D)(7).

[25] In support of its position, Rona relies heavily on the Tribunal’s decision in *Weiser*, in which the Tribunal relied on this reasoning to find that certain handles and knobs for locks for doors were plainly and exclusively classified in heading No. 83.02 pursuant to Rule 1 of the *General Rules*. Rona submits that the Tribunal should simply follow *Weiser* in this appeal.

[26] The CBSA submits that the one-piece goods are composite goods since they are made up of different components and should therefore be classified on the basis of Rule 3(b) of the *General Rules*. The CBSA’s position implies that, in its view, the goods are *prima facie* classifiable in both

9. Exhibit AP-2017-063-07, Vol. 1, Tabs 4 and 5.

competing headings. Indeed, the chapeau of Rule 3 states that it is when “for any . . . reason”, goods are *prima facie* classifiable under two or more headings that classification shall be effected according to Rule 3. In the CBSA’s submissions, it is the lock component of the one-piece goods that gives them their essential character and they should therefore be classified as if they consisted only of “locks for door”, which are clearly classifiable in heading No. 83.01.

[27] The CBSA also urges the Tribunal to refrain from following *Weiser* in its analysis for a variety of reasons. According to the CBSA, the reasons in *Weiser* do not contain a clear description of the goods that were in issue in that case, making it impossible to determine if the Tribunal dealt with goods identical or similar to the ones in issue in this appeal. The CBSA further submits that certain findings made by the Tribunal in *Weiser* are inconsistent with findings made in a more recent decision, namely, *Rutherford*. The CBSA also argues that, at any rate, the Tribunal is not bound to follow its previous decisions.

[28] In view of the CBSA’s concession that the one-piece goods in issue are, at least *prima facie*, classifiable in heading No. 83.02,¹⁰ the starting point of the analysis should be whether they are excluded from heading No. 83.01 by virtue of the wording of the explanatory notes and the Tribunal’s reasoning in *Weiser*, as argued by Rona. After all, it is only in the event that they are *not* excluded from coverage in heading No. 83.01 following Rule 1 of the *General Rules*, that is, based on the terms of heading No. 83.02, taking into account the guidance provided by the explanatory notes, that consideration should be given to Rule 3.

[29] On this issue, the Tribunal is unable to accept Rona’s argument that it should follow *Weiser* and conclude that the application of Rule 1 leads to the classification of the one-piece goods in issue exclusively in heading No. 83.02. With respect, the Tribunal finds that the earlier analysis of the meaning of the relevant explanatory notes set out in *Weiser* is incomplete and, therefore, unreliable. In the Tribunal’s opinion, the following considerations provide a sufficient explanation to justify a departure from its previous decision.

[30] Notes (D)(2) and (D)(7) of the explanatory notes to heading No. 83.02 state the following:

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

This group *includes*:

...

(2) Catches (including ball spring catches), *bolts*, fasteners, latches, etc., (**other than** key-operated *bolts* of **heading 83.01**), for doors.

...

(7) Hasps and staples for doors; *handles and knobs for doors*, including those for locks or latches.

10. In this regard, the Tribunal notes that the locking mechanism of the one-piece goods in issue is not provided by a “bolt” and Mr. Hostettler explained at the hearing that a lock is not necessarily a bolt (*Transcript* at 64-65). As such, they do not constitute “key-operated bolts” and cannot therefore be excluded from the scope of heading No. 83.02 on the basis of Note (D)(2) of the explanatory notes to heading No. 83.02.

[Italics added]

[31] In *Weiser*, the Tribunal found that the wording of Note (D)(7) is clear and unambiguous and that mountings, fittings and similar articles suitable for buildings include “handles and knobs for locks for doors”. The Tribunal further found that the locks mentioned in Note (D)(7) are all types of locks, unlike those mentioned in heading No. 83.01, where the locks are described as key-, combination- or electrically operated. The Tribunal also stated as follows:

The Tribunal also reviewed Note (D)(2) of the Explanatory Notes to heading No. 83.02, which specifically excludes key-operated bolts of heading No. 83.01 from classification in heading No. 83.02. The Tribunal is of the opinion that, should there be any distinction intended between key-operated locks and locks in Note (D)(7), it would have been made in the same manner as it has been made in Note (D)(2) between key-operated bolts and bolts for doors. Therefore, the Tribunal is not convinced that the locks mentioned in Note (D)(7) are the key, combination or electronically operated locks mentioned in heading No. 83.01.¹¹

[32] While it is true that the explanatory notes to heading No. 83.02 make it clear that certain “handles and knobs for doors” are *prima facie* included in heading No. 83.02, the fact that Note (D)(7) does not make a distinction between key-operated locks and other locks in the same manner as Note (D)(2) distinguishes between key-operated bolts and other bolts does not provide a valid legal basis to conclude that all handles and knobs for locks for doors are excluded from heading No. 83.01. This is manifest when the relevant explanatory notes are examined in their full context.

[33] Note (D)(2) provides guidance on the classification of bolts, an item that is also expressly referred to as being covered by heading No. 83.01 in the explanatory notes to that heading, which provide that base metal parts of articles included in heading No. 83.01, such as bolts, are covered by that heading. The explanatory notes to heading No. 83.01 also provide that this heading does not include “simple latches or bolts, etc. (heading 83.02)”. Given this situation, Note (D)(2) to heading No. 83.02 was warranted to clarify which type of bolts are simple bolts covered by heading No. 83.02, i.e., those that are not key-operated, and which ones remained covered by heading No. 83.01. Simply stated, Note (D)(2) serves to provide guidance to classify goods (bolts) that, on the face of the text of the explanatory notes, could be classified in either heading.

[34] In contrast, handles and knobs for doors are not *per se* identified in the explanatory notes as articles included in heading No. 83.01.¹² There was therefore no reason for the drafters of the explanatory notes to provide additional assistance in classifying handles and knobs as between headings No. 83.01 and 83.02. Thus, one cannot infer from the absence of distinction between key-operated locks and other types of locks in Note (D)(7) of the explanatory notes to heading No. 83.02 that “handles and knobs for doors, including those for locks or latches” cannot also be *prima facie* classifiable in heading No. 83.01 as locks for doors, as the Tribunal apparently did in *Weiser*. In this regard, it should be noted that it appears that the respondent in that case specifically argued that the coverage of heading No. 83.02 was limited to handles and knobs for locks that are not key-operated, an argument which might explain how the Tribunal addressed the issue.

11. *Weiser* at 5.

12. As discussed below, this fact does not, in itself, mean that handles and knobs which feature locks cannot be covered by the terms of heading No. 83.01.

[35] Be that as it may, canons of interpretation, such as the implied exclusion rule, should be only one element of a full textual, contextual and purposive analysis, with the goal of ascertaining legislative intent, something that the Tribunal failed to conduct in *Weiser*. Moreover, the weight of an *expressio unius est exclusio alterius* argument depends on multiple contextual factors and competing considerations¹³ and, in this case, after having considered all the relevant explanatory notes, the Tribunal finds that the wording of Note (D)(2) and Note (D)(7) cannot reasonably be interpreted to exclude from the scope of heading No. 83.01 handles and knobs that incorporate locks. In particular, Note (D)(7) simply provides an illustrative list of articles that are *prima facie* included in heading No. 83.02. In other words, the fact that it does not contain exclusionary wording cannot be read to preclude their classification, at least *prima facie*, in any other heading, including No. 83.01.

[36] While the one-piece goods in issue may be classified as handles and knobs, a type of base metal mountings or fittings suitable for doors, covered by heading No. 83.02, they are not merely handles and knobs. They are made up of multiple components. In the Tribunal's opinion, explicit directions in the terms of heading No. 83.02, any section or chapter note or in the explanatory notes, indicating that such composite goods shall be classified in heading No. 83.02 and not elsewhere would have been required to exclude them from being also *prima facie* classifiable in another heading. Accepting Rona's argument would thus lead to the incorrect addition of an exclusion that is not there in the text of the explanatory notes.

[37] For these reasons, in *Weiser*, the Tribunal should have continued its analysis and considered whether the goods that were in issue were also *prima facie* classifiable in heading No. 83.01 on the basis of the terms of that heading, pursuant to Rule 1 of the *General Rules*. Again, the explanatory notes are only one of the many elements that the Tribunal should take into account in a tariff classification exercise. The fact that, in *Weiser*, the Tribunal limited its analysis to an incomplete interpretation of the explanatory notes in itself cast doubt on the validity of this precedent.

[38] The Tribunal also notes that, in *Weiser*, the Tribunal did not closely examine the meaning of the phrase "handles and knobs for doors, including those for locks or latches" in Note (D)(7). The Tribunal appears to have concluded, without much analysis, that this phrase was clear and unambiguous and meant that all handles and knobs for locks, including those that come with a lock built into their chassis, are covered by heading No. 83.02. However, looking at this wording again in the context of the evidence tabled and arguments presented in this case, the Tribunal finds that determining which types of handles and knobs actually constitute handles and knobs for locks is not that straightforward.

[39] In this appeal, the CBSA argued on the basis of dictionary definitions of "for" and "with" that the use of the preposition "for" in Note (D)(7) of the explanatory notes to heading No. 83.02 suggests that the intention was to cover handles and knobs without locks, but intended to be used together with locks. There is also evidence that such goods exist. At the hearing, Mr. Bélanger stated that all the components of the one-piece goods can be ordered separately and that all the parts, including the inside or outside handle or knob, have their own price.¹⁴ Mr. Hostettler added that these goods can be disassembled and that it is possible to import door handles (presumably without the

13. R. Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis Canada Inc., 2008) at 249-252.

14. *Transcript* at 28-30.

locking mechanism or cylinder fitted in between) and just sell the door handle component when there is a broken part.¹⁵

[40] Clearly, it is thus possible to distinguish between handles and knobs used for locks and handles and knobs that come already equipped with a lock. In fairness, the Tribunal most likely did not have to address this argument and consider evidence of this nature in *Weiser*. Nevertheless, this issue provides additional reasons to reconsider the meaning of Note (D)(7) of the explanatory notes to heading No. 83.02 in this appeal and not simply follow the previous interpretation set out in *Weiser*.

[41] In this regard, there is some support for the CBSA's argument in how the Tribunal has treated the meaning of the term "for" in previous cases. Generally, "for" seems to have been understood to denote the intended purpose of a good.¹⁶ It is sometimes used to designate how, where or with what the goods are to be used. The meaning given to the word "for" in those cases is consistent with the definition given for the word in the *Merriam-Webster Dictionary* relied upon by the CBSA, and there is little support for the interpretation of "for" as synonymous with "with" as argued by Rona and implicitly found by the Tribunal in *Weiser*.

[42] The Tribunal further notes that Note (D)(7) of the explanatory notes to heading No. 83.02 governs the classification of "handles and knobs for doors", a class of articles which includes handles and knobs for locks or latches. By its plain terms, it does not purport to govern the classification of "doors" or "locks" or "latches", which are goods in their own right. It is thus incorrect to claim, as Rona does, that both main components (the handle and the lock) of the one-piece goods in issue are covered by heading No. 83.02 by virtue of the wording of Note (D)(7).¹⁷ To the extent that the Tribunal's decision in *Weiser* supports this argument which conflates the classification of handles and knobs and that of locks, it should not be followed. Correctly interpreted, Note (D)(7) of the explanatory notes does not mean that both components of the composite goods in issue are classified in heading No. 83.02 and that heading No. 83.01, the terms of which chiefly govern the classification of locks, becomes irrelevant or no longer potentially applies.

[43] In any event, accepting the CBSA's argument on the meaning of the phrase "handles and knobs . . . for locks" would mean that, contrary to the Tribunal's finding in *Weiser*, the only handles and knobs for locks for doors unambiguously covered by heading No. 83.02 would be those that are imported without locks, but are intended to be used with locks. Under this interpretation of Note (D)(7), the one-piece goods in issue would not constitute the kind of "other base metal mountings, fittings and similar articles suitable for doors and buildings" included in heading No. 83.02 since, at the time of importation, they already incorporated a lock. Evidently, this interpretation would also lead to the rejection of Rona's position, and preclude an eventual finding that the goods in issue are classifiable in heading No. 83.02 pursuant to Rule 1 the *General Rules*.

15. *Transcript* at 42-43.

16. For example, see *Eastern Division Henry Schein Ash v. President of the Canada Border Services Agency* (19 February 2019), AP-2013-026 (CITT); *Canadian Tire Corporation Limited v. President of the Canada Border Services Agency* (12 April 2012), AP-2011-020 (CITT); *Costco Wholesale Canada Ltd v. President of the Canada Border Services Agency* (29 July 2013), AP-2012-041 and AP-2012-042 (CITT); *Wal-Mart Canada Corporation v. President of the Canada Border Services Agency* (13 June 2011), AP-2010-035 (CITT).

17. *Transcript* at 68-70. In the Tribunal's opinion, Rona's argument erroneously presupposes that the terms of heading No. 83.02 and the explanatory notes specifically describe the one-piece goods in issue which, as discussed below, are composite goods.

[44] However, in the absence of language that would clearly limit its scope, it is reasonable to conclude that the phrase “handles and knobs for doors, including those for locks or latches” should be given a broad meaning. In this respect, common sense dictates that handles and knobs that incorporate a lock are intended to be used for the purpose of locking a door. In that sense, it is plausible that such goods are included in the broad category of handles and knobs “for” locks “for” doors. Therefore, the Tribunal is not convinced that Note (D)(7) should be construed narrowly to refer only to handles and knobs without locks but intended to be used for locks, as submitted by the CBSA. All things considered, the Tribunal finds that Note (D)(7) to the explanatory notes to heading No. 83.02 can be interpreted to include handles and knobs that come with a lock. However, as discussed above, it does not follow from this interpretation that such goods are in this manner excluded from heading No. 83.01.

[45] In summary, the Tribunal finds that, read together, the explanatory notes simply indicate that handles and knobs for doors that incorporate a locking mechanism such as the one-piece goods in issue can be classified in heading No. 83.02 on the basis of Rule 1 of the *General Rules*. Contrary to Rona’s submissions and the Tribunal’s apparent conclusion in *Weiser*, this does not necessarily mean that such goods, which are not merely “handles and knobs for doors” because they include a lock, are not also *prima facie* classifiable in heading No. 83.01.

[46] As the one-piece goods in issue are neither expressly nor implicitly excluded from the ambit of heading No. 83.01 by virtue of the explanatory notes to heading No. 83.02, the next step in the analysis, which the Tribunal failed to undertake in *Weiser* in view of its conclusion, is to determine if they meet the terms of heading No. 83.01, applying Rule 1 of the *General Rules*. Understandably, in view of its position that the explanatory notes to heading No. 83.02 eliminate this possibility, Rona did not make submissions on that issue.

[47] The terms of heading No. 83.01 indicate that this heading covers “key, combination or electrically operated” locks. According to the evidence, the one-piece goods in issue are fitted with a lock which is key-operated.¹⁸

[48] The explanatory notes to heading No. 83.01 indicate that it notably covers “fastening devices operated by a key (e.g., key locks of the cylinder, lever tumbler or Bramah types) or controlled by a combination of letters or figures (combination locks)”. Explanatory note (B) for heading 83.01 further specifies that the heading covers “locks for doors”. It is beyond dispute that the one-piece goods in issue are designed to be installed on, and fasten or secure, doors.

[49] In *Rutherford Controls Ltd. v. Canada (National Revenue)*,¹⁹ the Tribunal concluded that heading No. 83.01 contemplates a broad variety of locks and that, in its most general sense, “a lock is a device or mechanism for fastening or securing a door, window, lid, etc. A lock provides persons with the means of operating the lock, whether by key, card or other, through the entry of a manual or electronic combination in order both to lock and to unlock the door, window, etc., on which it is installed. A lock provides a means of controlling access to a defined area or space.”

18. *Transcript* at 30. At the hearing, Rona suggested that, given that certain models of the goods in issue can be locked or unlocked using a button located on the inside handle, they are not key-operated. However, the Tribunal finds that this is an artificial and irrelevant distinction. The fact remains that these models operate with a key to unlock them from the outside.

19. (9 September 1996), AP-95-100 (CITT).

[50] The Tribunal finds that the one-piece goods in issue are devices that fall under this broad definition of the term lock, as the evidence indicates that they are used to fasten or secure doors in order to control access to a defined area or space. The Tribunal also agrees with the CBSA that by their design and functions, they can be described as locksets for doors.

[51] The Tribunal further finds that there is no section or chapter notes that would prevent locks that are part of or mounted on a handle or a handle set from being, at least *prima facie*, classifiable in heading No. 83.01. Similarly, nothing in the explanatory notes to heading No. 83.01 indicates that such goods cannot be classified in that heading. The Tribunal has already determined that the explanatory notes to heading No. 83.02 do not exclude composite goods made up of a handle component and a locking mechanism from classification in heading No. 83.01.

[52] In fact, considered as a whole, the explanatory notes to headings No. 83.01 and 83.02 suggest that heading No. 83.01 covers all locks other than “simple latches or bolts”. Mr. Hostettler explained the difference between the goods in issue, which are considered “Grade 3” hardware for use in the home improvement or residential market segments and simple fastening mechanism, such as catches, clasps and non-keyed surface bolts.²⁰ On the basis of his undisputed evidence, the Tribunal finds that the one-piece goods in issue are not simple latches or bolts that are excluded from heading No. 83.01 by the explanatory notes to that heading. On the contrary, they are fairly sophisticated devices that include a “deadlatch”, which is to be contrasted with a simple latch or spring latch which is used only to keep a door closed. Moreover, accepting the testimony of Mr. Hostettler,²¹ the Tribunal finds that the locking mechanism incorporated in the one-piece goods in issue cannot be described as simple.

[53] Accordingly, the Tribunal finds that the one-piece goods in issue are *prima facie* classifiable in heading No. 83.01. Having determined that they are *prima facie* classifiable in both competing headings, the Tribunal must turn to the next applicable general rule to determine in which heading they should be classified. Rule 2 does not apply as the goods are neither incomplete or unfinished goods, to which Rule 2(a) applies, nor mixtures or combinations of materials or substances, to which Rule 2(b) applies. Therefore, the Tribunal must attempt to classify the one-piece goods on the basis of Rule 3.

[54] Given that the one-piece goods in issue are composite goods made up of different components, an issue that arises is whether they can be classified on the basis of Rule 3(a), which provides that the heading with the most specific description shall be preferred to headings providing a more general description. The parties have not made submissions on this issue. A review of Rule 3 indicates that there are two types of composite goods: those that consist of different materials mixed together and those that are made up of different components. Rule 3(a) cannot be applied where two or more headings each refer to part only of the materials or substances contained in mixed or composite goods. However, it appears possible to effect the classification of goods applying Rule 3(a) when the composite goods are made up of different components, such as the one-piece goods in issue. Under this rule, the question to be addressed is which heading provides the most specific description of the goods in issue.

[55] Heading No. 83.01 covers “padlocks and locks (key, combination or electrically operated), of base metal” while heading No. 83.02 applies to “base metal mountings, fittings and similar articles

20. *Transcript* at 49-51 and 63-64.

21. *Transcript* at 41-45.

suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like”. It is clear that a key-, combination- or electronically operated lock is a more specific description of the one-piece goods than “mountings, fittings and similar articles suitable for . . . doors”. Indeed, the explanatory notes to heading No. 83.02 provides that this heading covers “*general purpose* classes of base metal accessory fittings and mountings” [emphasis added]. Accordingly, applying Rule 3(a), the one piece-goods in issue would fall to be classified in heading No. 83.01.

[56] For greater certainty, and given that the CBSA has requested that the one-piece goods in issue be classified on the basis of Rule 3(b),²² the Tribunal has decided to proceed with this exercise. It will thus determine whether it is the handle component or the locking mechanism of the one piece-goods in issue which gives them their essential character.

[57] For the purposes of Rule 3(b), the term “essential character” is not defined in the *General Rules*. However, note VIII of the explanatory notes to Rule 3(b) indicates the following:

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

[58] The Tribunal has previously held that the decisive factor in determining the “essential character” of goods is the relative importance of their various components considering their use and value in relation to the whole.²³ In this appeal, while the evidence indicates that it is the handle component which has the most value,²⁴ there is no cogent evidence on factors such as bulk, quantity or weight of each component. In any event, the Tribunal finds that such factors are not decisive given the nature of the one-piece goods in issue.

[59] The Tribunal is of the view that the preponderant evidence indicates that the main function of the one-piece goods in issue is to secure a space from unwanted access, that is, their locking function. In fact, in view of the availability of door handles and knobs that do not incorporate a locking mechanism or that are not key-operated,²⁵ it can be inferred that customers who only require an article to close or open a door would purchase a handle and lock without a locking mechanism rather than the one-piece goods in issue. This is a reasonable inference that can be drawn from the evidence, especially given that door handles and knobs that come without a key-operated locking mechanism are less expensive.²⁶

[60] What is more, the documentary evidence pertaining to the one-piece goods in issue refers to the fact that they are designed to be used as “entrance” door handles or locks.²⁷ This supports a finding that the essential character of the goods in issue stems from the fact that they incorporate a

22. Rona chose not to make any submissions with respect to Rule 3(b) and the component which gives to the one-piece goods in issue their essential character. It simply stated that Rule 3 does not apply. *Transcript* at 76.

23. See, for example, *Le Groupe Bugatti Inc. v. President of the Canada Border Services Agency* (13 June 2018), AP-2017-020 (CITT) at paras. 57-58.

24. *Transcript* at 16.

25. *Transcript* at 53-54 and 58.

26. *Transcript* at 65.

27. Exhibit AP-2017-063-07, Vol. 1, Tab 4.

lock as it would be unusual for a rational customer to install a mere door handle, which would not provide a means to control access to a house or residence, on its entrance door.

[61] Finally, Mr. Hostettler, whose expert evidence indicates that he is familiar with customer trends and preferences, stated that the one-piece goods in issue provides security, albeit to a lesser degree than the two-piece goods in issue, since they do not include a deadbolt.²⁸ Nonetheless, his evidence is consistent with the view that the fundamental characteristic of the one-piece goods in issue is to secure a door and thereby control the access to a defined area or space.

[62] Accordingly, the Tribunal finds that it is the lock component which gives to the one-piece goods in issue their essential character. Pursuant to Rule 3(b) of the *General Rules*, they are therefore properly classified as locks for doors of heading No. 83.01.

Two-piece Goods (“Entry Handlesets”)

[63] Determining the proper tariff classification of the two-piece goods in issue is an easier task given that it is common ground between the parties that those goods are put up in sets for retail sale that should be classified on the basis of Rule 3(b) of the *General Rules*. The Tribunal agrees with the parties on this issue as the evidence clearly establishes that these goods are comprised of two items, a handle component and a deadbolt-type lock component put up in sets for retail sales.

[64] Therefore, it is necessary to determine which component gives them their essential character. Rona submitted that heading No. 83.02 should prevail given that the cost of the handle is considerably more than the cost of the deadbolt and that, in terms of the function, the provision of security by the deadbolt and the opening and closing function provided by the handle are of equal importance, considering that the door cannot be operated without the handle.

[65] The Tribunal is not persuaded by this argument. First, the value of the handle is not decisive in view of the nature of those goods. Second, while this is not the common way of operating a door, Mr. Hostettler stated that one could open or close a door without the handle component.²⁹ However, one could not secure the door or access to an area without the locking mechanism provided by the deadbolt and, in certain cases, the additional locking mechanism incorporated into the handle. So, the Tribunal is of the view that the two functions are not equal in importance.

[66] Moreover, Mr. Hostettler’s evidence in regard to the two-piece goods in issue was unequivocal and undisputed: people purchase these sets to install them on the exterior door of a building and are looking for added security to fulfill a security requirement.³⁰ The documentary evidence corroborates Mr. Hostettler’s statement. The goods are marketed in a manner that emphasizes their safety and security features.³¹

[67] The Tribunal’s rationale and the evidence supporting the classification of the one-piece goods in issue as locks of heading No. 83.01 pursuant to Rule 3(b) applies equally and is even more supportive of a finding that it is the main (and, in most cases, the only locking mechanism), that is, the deadbolt component, which gives to the two-piece goods in issue their essential character. On the

28. *Transcript* at 53.

29. *Transcript* at 59-60.

30. *Transcript* at 52-53

31. Exhibit AP-2017-063-07, Vol. 1, Tabs 5 and 18.

basis of the evidence before it, the Tribunal fails to see why a customer would buy these sets if they were not looking for the safety and security features provided by the deadbolt. For this reason, the main function of the two-piece goods in issue is visibly to prevent unwanted access to a residence or other building.

[68] Accordingly, the Tribunal finds that the fundamental characteristic of the two-piece goods in issue, that is, their essential character, is provided by the key-operated deadbolt and that, applying Rule 3(b) of the *General Rules*, they are also properly classified as locks for doors of heading No. 83.01.

Classification at the Subheading and Tariff Item Levels

[69] Having determined in which heading the goods in issue are properly classified, the Tribunal must now determine the appropriate subheading. In this regard, 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]” Rule 1 of the *Canadian Rules* extends the principles of Rule 6 to the classification at the tariff item level.

[70] A review of the terms of the nomenclature indicates that there is only one relevant subheading under heading No. 83.01 that is applicable to “other locks” (i.e., subheading No. 8301.40). Further, there is only one relevant tariff item under this subheading that is applicable to “other locks” (i.e., tariff item No. 8301.40.90). The Tribunal therefore finds that it is that subheading and that specific tariff item that cover the goods in issue.

[71] Accordingly, pursuant to Rule 6 of the *General Rules* and Rule 1 of the *Canadian Rules*, the goods in issue are classified under tariff item No. 8301.40.90 as “other locks”.

CONCLUSION

[72] The appeal is dismissed. The goods in issue are properly classified under tariff item No. 8301.40.90 of the Schedule to the *Customs Tariff*.

Georges Bujold
Georges Bujold
Presiding Member

ANNEX I – LEGAL FRAMEWORK

The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*,¹ which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).² 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.

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*³ and the *Canadian Rules*⁴ set out in the schedule.

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.

In this case, Rule 3 also has relevance, as the goods in issue can be classified under more than one heading. Rule 3(a) provides that the heading containing the more specific description will be preferred over the heading containing the more general description, but when those headings each refer to only part of the goods, they are to be regarded as equally specific. Rule 3(b) specifies that composite goods and goods put up in sets for retail sale, and which cannot be classified according to Rule 3(a), are to be classified according to their essential character. Rule 3(c) provides that goods which cannot be classified according to either Rule 3(a) or Rule 3(b) must be classified under the heading which occurs last in numerical order among those equally meriting consideration.

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*⁵ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,⁶ 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.⁷

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1. S.C. 1997, c. 36.
 2. Canada is a signatory to the International Convention on the Harmonized Commodity Description and Coding System, which governs the Harmonized System.
 3. S.C. 1997, c. 36, schedule [*General Rules*].
 4. S.C. 1997, c. 36, schedule.
 5. World Customs Organization, 2nd ed., Brussels, 2003.
 6. World Customs Organization, 5th ed., Brussels, 2012.
 7. 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.

ANNEX II – RELEVANT TARIFF NOMENCLATURE AND EXPLANATORY NOTES**Heading No. 83.01**

83.01 Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys for any of the foregoing articles, of base metal.

8301.10.00 -Padlocks

8301.20.00 -Locks of a kind used for motor vehicles

8301.30.00 -Locks of a kind used for furniture

8301.40 -Other locks

8301.40.10 - - -For use in the manufacture of portfolios, luggage or tackle boxes

8301.40.20 - - -Key-operated security locks for use in the manufacture of casement or awning windows

8301.40.90 - - -Other

8301.50.00 -Clasps and frames with clasps, incorporating locks

8301.60.00 -Parts

8301.70 -Keys presented separately

8301.70.10 - - -To be employed as original equipment in the manufacture of passenger automobiles, trucks or buses

8301.70.90 - - -Other

Explanatory Notes for Heading No. 83.01

This heading covers fastening devices operated by a key (e.g., locks of the cylinder, lever, tumbler or Bramah types) or controlled by a combination of letters or figures (combination locks).

It also includes electrically operated locks (e.g., for street doors of blocks of flats or for lift doors). These locks may be operated, e.g., by insertion of a magnetic card, by entering the combination data on an electronic keyboard, or by radio wave signal.

The heading therefore covers, *inter alia*:

(A) Padlocks of all types for doors, trunks, chests, bags, cycles, etc., including key-operated locking hasps.

(B) Locks for doors or gates, letter boxes, safes, boxes or caskets, furniture, pianos, trunks, suit-cases, handbags, dispatch-cases, etc., for automobiles, railway-rolling-stock, tramcars, etc., for lifts, shutters, sliding doors, etc.

(C) Clasps and frames with clasps, incorporating locks.

The heading also covers:

(1) Base metal parts of the articles mentioned above clearly recognisable as such (e.g., cases, bolts, striking plates and sockets, thread escutcheons, face-plates, wards, mechanisms and cylinder barrels).

(2) Base metal keys for the articles mentioned above, finished or not (including roughly cast, forged or stamped blanks).

The heading also includes special railway coach compartment keys, skeleton keys, etc.

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

Heading No. 83.02

83.02 Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat-racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal.

8302.10 -Hinges

8302.20.00 -Castors

8302.30 -Other mountings, fittings and similar articles suitable for motor vehicles

8302.30.10 - - -Brackets or clamps of steel for use in the manufacture of hose assemblies for brake and steering systems for motorcycles or all-terrain vehicles;

For use in the manufacture of fire fighting vehicles.

8302.30.90 - - -Other

-Other mountings, fittings and similar articles:

8302.41 - -Suitable for buildings

8302.41.10 - - -Bar or rod type door exit devices, for commercial, institutional or industrial applications;

For use in the manufacture or repair of rotary gear window operators;

Rotary gear window operators;

Snub-guides, lever-lock operators, torsion bars and centre hooks for lever-lock or rotary gear window operators, sash locks (excluding peg locks) and keepers for key-operated security locks or sash locks (excluding peg-locks), for use in the manufacture of casement or awning windows

8302.41.90 - - -Other

8302.42.00 - -Other, suitable for furniture

8302.49.00 - -Other

8302.50.00 -Hat-racks, hat-pegs, brackets and similar fixtures

8302.60 -Automatic door closers

8302.60.10 - - -Hydraulic;

Other, for use in the manufacture of railway or tramway passenger coaches

8302.60.90 - - -Other

Explanatory Notes for Heading No. 83.02

This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles). The heading **does not**, however, **extend** to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.

The heading covers:

(A) **Hinges** of all types (e.g., butt hinges, lift-off hinges, angle hinges, strap hinges and garnets).

(B) **Castors**, as defined in Chapter Note 2.

To fall in this heading, castors must have mountings of base metal, but the wheels may be of any material (except precious metal).

In the case of castors having pneumatic tyres, the diameter of the castor must be measured with the tyre inflated to a normal pressure.

The presence of spokes does not affect the classification of castors in this heading.

Castors not complying with the provisions of the heading text or of Chapter Note 2, are **excluded** (e.g., **Chapter 87**).

(C) **Mountings, fittings and similar articles suitable for motor vehicles** (e.g., motor cars, lorries or motor coaches), **not being** parts or accessories of **Section XVII**. For example: made up ornamental beading strips; foot rests; grip bars, rails and handles; fittings for blinds (rods, brackets, fastening fittings, spring mechanisms, etc.); interior luggage racks; window opening mechanisms; specialised ash trays; tail-board fastening fittings.

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

This group includes:

(1) Door guards fitted with chains, bars, etc.; espagnolette or casement bolts and fittings; casement fasteners and stays; fanlight or skylight openers, stays and fittings; cabin hooks and eyes; hooks and fittings for

double windows; hooks, fasteners, stops, brackets and roller ends for shutters or blinds; letter-box plates; door knockers, spy holes, etc. (**other than** those fitted with optical elements).

(2) Catches (including ball spring catches), bolts, fasteners, latches, etc., (**other than** key-operated bolts of heading 83.01), for doors.

(3) Fittings for sliding doors or windows of shops, garages, sheds, hangars, etc. (e.g., grooves and tracks, runners and rollers).

(4) Keyhole plates and finger-plates for doors of buildings.

(5) Curtain, blind or portière fittings (e.g., rods, tubes, rosettes, brackets, bands, tassel hooks, clips, sliding or runner rings, stops); cleat hooks, guides and knot holders for blind cords, etc.; staircase fittings, such as protectors for staircase treads; stair carpet clips, stair rods, banister knobs.

Rods, tubes and bars, suitable for use as curtain or stair rods, etc., merely cut to length and drilled, remain classified according to the constituent metal.

(6) Corner braces, reinforcing plates, angles, etc., for doors, windows or shutters.

(7) Hasps and staples for doors; handles and knobs for doors, including those for locks or latches.

(8) Door stops and door closers (**other than** those of (H) below).

(E) Mountings, fittings and similar articles suitable for furniture

This group includes:

(1) Protective studs (with one or more points) for legs of furniture, etc.; metal decorative fittings; shelf adjusters for book-cases, etc.; fittings for cupboards, bedsteads, etc.; keyhole plates.

(2) Corner braces, reinforcing plates, angles, etc.