



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2018-051

B. Erickson Manufacturing Ltd.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Friday, September 13, 2019*

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IN THE MATTER OF an appeal heard on June 6, 2019, 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 November 7, 2018, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

B. ERICKSON MANUFACTURING LTD.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Serge Fréchette
Serge Fréchette
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: June 6, 2019

Tribunal Panel: Serge Fréchette, Presiding Member

Support Staff: Sarah Perlman, Counsel

PARTICIPANTS:**Appellant**

B. Erickson Manufacturing Ltd.

Counsel/Representatives

Rajesh Mamtora
Sean Everden

Respondent

President of the Canada Border Services Agency

Counsel/Representative

Sarah Chênevert-Beaudoin

WITNESSES:

Kevin Bailey
President & CEO
Design 1st

Brent Erickson
President
B. Erickson Manufacturing Ltd.

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

STATEMENT OF REASONS

INTRODUCTION

1. This is an appeal filed by B. Erickson Manufacturing Ltd. (B. Erickson) with the Canadian International Trade Tribunal pursuant to subsection 67(1) of the *Customs Act*¹ from a decision by the President of the Canada Border Services Agency (CBSA) dated November 7, 2018, made pursuant to subsection 60(4).

2. The parties agree that the goods in issue in this case are essentially the same as those in issue in *Canadian Tire*, namely “ratchet tie-downs consisting of a textile strap, plastic-coated steel hooks and a ratchet handle.”² In that case, the goods were classified under tariff item No. 8205.70.90. However, B. Erickson submitted that *Kinedyne* is the latest jurisprudence pertaining to similar goods and should therefore be applied to the current case.³ B. Erickson noted that, in *Kinedyne*, ratchet chain/load binders were classified under tariff item No. 8479.89.90, and that this tariff item was not argued in *Canadian Tire*.⁴

3. The issue in this appeal is therefore whether the goods in issue are properly classified as per *Canadian Tire* under tariff item No. 8205.70.90 of the schedule to the *Customs Tariff*⁵ as other vices, clamps and the like, as determined by the CBSA, or should be classified following *Kinedyne*, under tariff item No. 8479.89.90 as other machines and mechanical appliances having individual functions, not specified or included elsewhere in Chapter 84, as claimed by B. Erickson.

4. In the alternative, B. Erickson submits that the goods in issue may be classified under tariff item No. 8308.90.00 as other clasps, frames with clasps, buckles, buckle-clasps, hooks, eyes, eyelets and the like, of base metal, of a kind used for clothing or clothing accessories, footwear, jewellery, wrist-watches, books, awnings, leather goods, travel goods or saddlery or for other made up articles.

PROCEDURAL HISTORY

5. The goods in issue were imported by B. Erickson between 2014 and 2016 under tariff item No. 8205.70.90 through numerous separate transactions.

6. Between July 17 and November 6, 2017, B. Erickson filed for re-determination under section 74 of the *Act*, seeking the classification of the goods in issue under tariff item No. 8479.89.90. On November 9, 2017, and between March 29 and June 12, 2018, the CBSA denied B. Erickson’s requests.

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

2. *Canadian Tire Corporation Ltd. v. President of the Canada Border Services Agency* (22 May 2012), AP-2011-024 (CITT) [*Canadian Tire*] at para. 8; Exhibit AP-2018-051-03A, Vol. 1 at 6-7, 25; Exhibit AP-2018-051-05, Vol. 1 at 3, 11. The only apparent difference in this case is that some of the models in issue include a retracting mechanism which houses the strap in its casing.

3. *Kinedyne Canada Limited v. President of the Canada Border Services Agency* (17 December 2013), AP-2012-058 (CITT) [*Kinedyne*].

4. Exhibit AP-2018-051-03A, Vol. 1 at 6; *Transcript of Public Hearing* at 85. In *Kinedyne*, the goods in issue were lever chain binders (LCBs), adjustable lever binders (ALBs) and ratchet chain/load binders (RLBs). The Tribunal found that RLBs were classified in heading No. 84.79 because they met the requirements of mechanical appliances, whereas LCBs and ALBs were classified under heading No. 82.05 as they did not meet all such requirements.

5. S.C. 1997, c. 36.

7. B. Erickson subsequently requested further re-determination under section 60 of the *Act*. The CBSA denied the request on November 7, 2018.

8. On December 7, 2018, B. Erickson filed this appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

9. On June 6, 2019, the Tribunal held a public hearing in Ottawa, Ontario. B. Erickson called Mr. Kevin Bailey, president of Design 1st, as an expert witness in the field of mechanical engineering, and Mr. Brent Erickson, president of B. Erickson, as a lay witness. The CBSA called no witnesses.

DESCRIPTION OF THE GOODS IN ISSUE

10. The goods in issue are various models of ratchet tie-down straps and retractable ratchet tie-down straps which are made of a textile strap, vinyl-coated metal hook and a ratchet handle. The retractable models have an additional spring mechanism with push button that retracts the strap and stores any unused portion in the handle's center housing.

LEGAL FRAMEWORK

11. 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 (Harmonized System) developed by the World Customs Organization (WCO).⁶ The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

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

13. 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.

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

15. 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

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

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

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

9. WCO, 4th ed., Brussels, 2017.

10. WCO, 6th ed., Brussels, 2017.

11. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 at paras. 13, 17 and *Canada (Attorney General) v. Best Buy Canada Inc.*, 2019 FCA 20 at para. 4.

section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. As the Supreme Court of Canada indicated in *Igloo Vikski*, it is “only where Rule 1 does not conclusively determine the classification of the good that the other General Rules become relevant to the classification process.”¹²

16. 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.¹³ The final step is to determine the proper tariff item.¹⁴

17. The nomenclature for tariff item No. 8205.70.90, the classification determined by the CBSA, reads as follows:

SECTION XV

**BASE METALS
AND ARTICLES OF BASE METAL**

...

Chapter 82

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

...

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

...

8205.70 **-Vices, clamps and the like**

...

8205.70.90 **--Other**

18. Note 1(f) to Section XV provides as follows:

1. This Section does not cover:

...

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

13. 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.”

14. 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.

- (f) Articles of Section XVI (machinery, mechanical appliances and electrical goods); . . .

19. Note 1(a) to Chapter 82 reads as follows, in relevant parts:

1. . . . this Chapter covers only articles with a blade, working edge, working surface or other working part of:

- (a) Base metal; . . .

20. The explanatory notes to Chapter 82 provide as follows, in relevant parts:

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

This Chapter includes:

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

. . .

In general, the Chapter covers tools which can be used independently in the hand, whether or not they incorporate simple mechanisms such as gearing, crank handles, plungers, screw mechanisms or levers. Appliances are, however, generally classified in Chapter 84 if they are designed for fixing to a bench, a wall, etc., or if, by reason of their weight or size or the degree of force required for their use, they are fitted with base plates, stands, supporting frames, etc., for standing on the floor, bench, etc.

21. The explanatory notes to heading No. 82.05 read as follows, in relevant parts:

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

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

. . .

- H) Vices, clamps and the like, including hand vices, pin vices, bench or table vices, for joiners or carpenters, locksmiths, gunsmiths, watchmakers, etc., but not including vices forming accessories or parts of machine-tools or water-jet cutting machines. This group also includes cramps and bench holdfasts which, like vices, serve as holding tools (e.g. joiners' cramps, floor cramps and toolmakers' clamps).

22. The nomenclature for tariff item No. 8479.89.90, the classification supported by B. Erickson, reads as follows:

SECTION XVI

MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT; PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES

Chapter 84

**NUCLEAR REACTORS, BOILERS, MACHINERY
AND MECHANICAL APPLIANCES; PARTS THEREOF**

...

84.79 **Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter.**

...

-Other machines and mechanical appliances

...

8479.89 **--Other**

...

8479.89.90 **---Other**

23. Note 1(k) to Section XVI provides as follows:

1. This Section does not cover: . . .
- (k) Articles of Chapter 82 or 83; . . .

24. The explanatory notes to heading No. 84.79 read as follows, in relevant parts:

This heading is restricted to machinery having individual functions, which:
(a) Is not excluded from this Chapter by the operation of any Section or Chapter Note.
and (b) Is not covered more specifically by a heading in any other Chapter of the Nomenclature. . . .

25. The nomenclature for tariff item No. 8308.90.00, the alternative tariff item supported by B. Erickson, reads as follows:

SECTION XV

BASE METALS

AND ARTICLES OF BASE METAL

...

Chapter 83

MISCELLANEOUS ARTICLES OF BASE METAL

...

83.08 **Clasps, frames with clasps, buckles, buckle-clasps, hooks, eyes, eyelets and the like, of base metal, of a kind used for clothing or clothing accessories, footwear, jewellery, wrist-watches, books, awnings, leather goods, travel goods or saddlery or for other made up articles; tubular or bifurcated rivets, of base metal; beads and spangles, of base metal.**

...

8308.90.00 **-Other, including parts**

EXPERT WITNESS QUALIFICATION

26. The CBSA objected to Mr. Bailey's qualification as an expert witness in the field of mechanical engineering, claiming that Mr. Bailey did not have the qualification to provide expert evidence on the goods in issue, and that "mechanical engineering" as a field of expertise was too broad.

27. The Tribunal was satisfied that Mr. Bailey is an expert in mechanical engineering and that this expertise is sufficiently related to the subject matter of the appeal. Indeed, Mr. Bailey testified that he had both education and experience in the field of mechanical engineering, that the goods in issue are mechanical in nature, and that there is no other engineering training which would be more specifically concerned with the goods in issue other than mechanical engineering.¹⁵

28. In addition, the Tribunal notes that it has previously accepted "mechanical engineering" as a field of expertise for expert witnesses in other cases.¹⁶ The Tribunal finds no reason here to further circumscribe Mr. Bailey's expertise.

29. Accordingly, the Tribunal qualified Mr. Bailey as an expert in the field of mechanical engineering.

ANALYSIS

30. In accordance with subsection 152(3) of the *Act*, the appellant bears the burden of establishing that the classification applied by the CBSA was incorrect. The parties agree.

31. The parties also agree that heading Nos. 82.05 and 84.79 are mutually exclusive by the operation of note 1(f) to Section XV and note 1(k) to Section XVI.¹⁷ The parties disagree, however, as to which of the two headings must be examined first for the purpose of the Tribunal's analysis.

32. The CBSA argued that the Tribunal should begin its analysis with heading No. 82.05 for two reasons. First, the CBSA noted that, whereas note 1(f) to Section XV excludes all goods of Section XVI, note 1(k) to Section XVI specifically excludes goods of Chapter 82. Therefore, the CBSA submitted that the Tribunal must decide whether the goods in issue are properly classified in Chapter 82 before they can be classified under Section XVI. Second, the CBSA submitted that "goods cannot be *prima facie* classifiable in a residual item unless the Tribunal has first satisfied itself that the goods cannot be classified in a more specific item."¹⁸ According to the CBSA, the Tribunal should begin its analysis with heading No. 82.05 because it is a more specific, naming provision, whereas heading No. 84.79 is of a residual nature.¹⁹

33. For its part, B. Erickson submitted that the Tribunal should first determine whether the goods in issue are machinery or appliances of Section XVI, as they are expressly excluded by the explanatory notes to Chapter 82. B. Erickson also submitted that the wording of heading No. 84.79 states that it is residual for

15. *Transcript of Public Hearing* at 6-8, 15-18.

16. *Canadian Tire Corporation Ltd. v. The Deputy Minister of National Revenue* (12 October 1995), AP-94-157 (CITT); *Grinnell Corp. of Canada Ltd. dba Grinnell Fire Protection v. The Deputy Minister of National Revenue* (14 February 1997), AP-95-254 (CITT); *Canadian Tire Corporation, Limited v. The Deputy Minister of National Revenue* (29 September 1998), AP-97-122 (CITT); *Canmade Furniture Products Inc. v. Commissioner of the Canada Customs and Revenue Agency* (2 June 2004), AP-2003-025 (CITT); *Kinedyne*.

17. Exhibit AP-2018-051-03A, Vol. 1 at 11-12; Exhibit AP-2018-051-05, Vol. 1 at 7-8.

18. *Ibid.* at 9, citing *Danby Products Limited v. President of the Canada Border Services Agency* (16 February 2018), AP-2017-009 (CITT) at para. 35.

19. Exhibit AP-2018-051-05, Vol. 1 at 8-10; *Transcript of Public Hearing* at 98-100.

the purpose of Chapter 84 only, and not with regard to the whole tariff nomenclature. In addition, B. Erickson noted that in *Kinedyne*, the Tribunal first considered heading No. 84.79 prior to heading No. 82.05.²⁰

34. The Tribunal agrees with the CBSA that its analysis should begin with heading No. 82.05. The explanatory notes to heading No. 84.79 state that the heading is restricted to machinery having individual functions that is not “covered more specifically by a heading in any other Chapter of the Nomenclature”. Due to this residual nature, heading No. 84.79 “directs the Tribunal to consider whether another, more specific heading could apply to the goods in issue before they can be classified here.”²¹

35. As stated in *Canadian Tire*, “heading No. 82.05 is a naming provision, in that it specifically lists and describes certain goods, including ‘vices, clamps and the like’”.²² Therefore, the Tribunal considers that heading No. 82.05 is more specific than heading No. 84.79 and will first consider whether the goods in issue are properly classified under heading No. 82.05. Only if it determines that the goods in issue should not be classified in that heading will it then analyze whether they are properly classified in heading No. 84.79.²³

The goods in issue are classifiable under heading No. 82.05

36. The CBSA argued that the goods in issue are properly classified under heading No. 82.05 as “clamps and the like”.²⁴ Essentially, the Tribunal agrees with the CBSA for the reasons that follow.

37. As per note 1 to Chapter 82, the goods in issue (i) must be articles with a blade, working edge, working surface or other working part, and (ii) the working part must be made of base metal. The parties agree that, as in *Canadian Tire*, the goods in issue are articles comprised of a ratchet mechanism, which is a “working part”. In addition, the parties do not dispute that the goods in issue are made of base metal.²⁵ As such, the Tribunal finds that the goods in issue meet the conditions of note 1 to Chapter 82.

38. With regard to classification under heading No. 82.05, as indicated in *Canadian Tire*, “[t]he test to determine whether goods are ‘like’ or similar is not strict, and the goods need not be identical. Rather, the test will be met if such goods share important characteristics and have common features.”²⁶ Furthermore, in *Kinedyne* the Tribunal found that “an article derives its essential character as a clamp primarily on the basis of its functional purpose or end use, with the term capturing various articles designed to seize, bind, hold,

20. Exhibit AP-2018-051-03A, Vol. 1 at 12; *Transcript of Public Hearing* at 87, 113-115; *Kinedyne* at paras. 46-62.

21. *Canac Marquis Grenier Ltée v. President of the Canada Border Services Agency* (11 September 2017), AP-2016-026 (CITT) at para. 40; see also *Rona Inc. v. President of the Canada Border Services Agency* (5 June 2018), AP-2017-026 (CITT) [*Rona*] at para. 19; *Schlumberger Canada Limited v. President of the Canada Border Services Agency* (21 June 2017), AP-2015-022 (CITT) at para. 47.

22. *Canadian Tire* at para. 56.

23. Although the Tribunal began its analysis with heading No. 84.79 in *Kinedyne*, the Tribunal notes that, in that case, the order of analysis was not in issue.

24. Exhibit AP-2018-051-05, Vol. 1 at 3. Heading No. 82.05 also provides that such vices, clamps and the like which are accessories for and parts of machine-tools or water-jet cutting machines, are excluded from classification in that heading. Neither party argued that the goods in issue are such accessories or parts, and the Tribunal notes that there is no evidence before it that would suggest that they could be categorized as such. Accordingly, the Tribunal does not believe that it must concern itself with this issue.

25. Exhibit AP-2018-051-03A, Vol. 1 at 14, 24; Exhibit AP-2018-051-05, Vol. 1 at 13; *Canadian Tire* at paras. 50-52.

26. *Canadian Tire* at para. 44; see also *Rui Royal International Corp. v. President of the Canada Border Services Agency* (30 March 2011), AP-2010-003 (CITT) [*Rui Royal*] at para. 82.

constrict, compress or pinch objects together so as to hold them firmly in their relative position.”²⁷ The Tribunal remains of the opinion that the end use or function of a good is the principal element by which the essential characteristics of a good can be determined.

39. Here, the CBSA argued that the goods in issue hold, compress or maintain items together. Accordingly, the CBSA submitted that the goods in issue are *like* clamps, since they share their functional purpose or end use, in addition to having the required physical characteristics of the goods of heading No. 82.05. The CBSA submitted that the fact that some models have a retractable feature does not affect the essential character of the goods in issue, and is secondary to their function.²⁸

40. On the contrary, B. Erickson submitted that the goods in issue are *not like* clamps. B. Erickson suggested that clamps are small in size, have jaws, locking pliers, screw or spring action. B. Erickson submitted that the general, physical or functional characteristics of the goods in issue are nothing like clamps.²⁹

41. Although B. Erickson agreed that “vices, clamps and the like” are separated by a semicolon from “hand tools” in heading No. 82.05 and are thus not hand tools,³⁰ it argued that they should nevertheless be tools used to hold an item to work upon it. Indeed, B. Erickson submitted that clamps are known in the industry as tools that temporarily hold or position work securely in place, and are used in applications such as carpentry, woodworking, furniture making, welding, construction and metal working. Here, B. Erickson submitted that the goods in issue are not used to hold work, but only to fasten other items. Furthermore, Mr. Bailey submitted that the goods in issue are not like clamps in that (i) mechanical engineers do not use the term “clamp” to refer to tie-down straps, (ii) tie-down straps are not used so that a secondary process may take place, (iii) tie-down straps are not used for compressive applications, (iv) tie-down straps are not a good solution as a strap clamp, and (v) clamps and tie-down straps are different categories.³¹

42. The Tribunal finds that the goods in issue are like clamps and therefore classifiable under heading No. 82.05. B. Erickson’s witnesses described the end use and function of the goods in issue to be essentially that of holding or compressing an item. Mr. Bailey stated that ratchet tie-down straps deliver compressive force under certain strap configurations and hold loads. Mr. Bailey also cited a Wikipedia article on the classification of machines, which states that ratchet tie-down straps are used to hold down cargo or equipment. In addition, Mr. Erickson testified that the goods in issue press one object to another, such as a trailer, in order to secure it and keep it from moving around.³²

27. *Kinedyne* at para. 72; see also *Canadian Tire* at para. 43.

28. Exhibit AP-2018-051-05, Vol. 1 at 11-12.

29. Exhibit AP-2018-051-03A, Vol. 1 at 33.

30. See *Kinedyne* at paras 80-81. Considering that heading No. 82.05 separates “hand tools” from “vices, clamps and the like” by a semicolon, the Tribunal interpreted “vices, clamps and the like” not to require that they be “hand tools”.

31. Exhibit AP-2018-051-03A, Vol. 1 at 27-28, 567; Exhibit AP-2018-051-08A, Vol. 1 at 12-14; *Transcript of Public Hearing* at 70, 92. Mr. Erickson also testified that it considers “clamps” as “hose clamps” or “c-clamps”, not as tie-downs.

32. Exhibit AP-2018-051-03A, Vol. 1 at 597; Exhibit AP-2018-051-08A, Vol. 1 at 8, 10-11; *Transcript of Public Hearing* at 33, 41-45, 76-77, 80.

43. In that sense, the Tribunal finds that the goods in issue are *like* clamps in that they hold or compress objects together, as stated in *Kinedyne*. The Tribunal agrees with the CBSA that the retractable feature on some of the goods in issue does not affect the end use and function of the goods in issue. The Tribunal notes that the fact that those who use the goods in issue do not consider or identify them as “clamps” changes nothing to what they are essentially in character: they are *like* clamps. Furthermore, in *Kinedyne*, the Tribunal specifically rejected B. Erickson’s argument that the term “clamps” in heading No. 82.05 is intended to include only the type of clamps used by tradesmen to hold work pieces.³³

44. As B. Erickson has not discharged its burden of proving that the goods in issue cannot be classified under heading No. 82.05, it is not necessary to consider whether the goods in issue meet the terms of heading No. 84.79.

The goods in issue are not classifiable under heading No. 83.08

45. In the alternative, B. Erickson argued that the goods in issue are composite goods made up of a ratchet handle classifiable under heading No. 83.08 and textile straps classifiable under heading No. 63.07.³⁴ According to B. Erickson, the goods in issue cannot operate without either of these two parts, which are necessary to provide the goods their essential character. As such, B. Erickson submitted that the goods in issue should be classified in accordance with Rule 3(c) in the heading that appears last in the customs tariff, namely heading No. 83.08.³⁵

46. As indicated above, it is only where goods cannot be conclusively classified in accordance with Rule 1 that the other Rules become relevant for the classification of the goods in issue. Since the Tribunal has found that the goods in issue can be classified under heading No. 82.05 as per Rule 1 of the *General Rules*, the Tribunal need not consider whether the goods in issue are classifiable under heading No. 83.08 as per Rule 3(c).

CONCLUSION

47. On the basis of the foregoing, the Tribunal finds that the goods in issue are properly classified under heading No. 82.05.

48. As the goods in issue can be more specifically characterized as “vices, clamps and the like”, the Tribunal finds that they should be classified under subheading No. 8205.70.

49. Finally, the goods in issue are not for use with surgical, dental veterinary or diagnostic instruments, sterilizers, cobalt therapy units, or anaesthesia, surgical suction or oxygen administering apparatus. In addition, they are not precision clamps and vices for toolmakers, machinists or metal workers. Therefore, the Tribunal finds that the goods in issue are properly classified in tariff item No. 8205.70.90 as other vices, clamps and the like.

33. *Kinedyne* at para. 83.

34. B. Erickson relied on an advanced ruling by the CBSA in a different case to classify the ratchet handle as buckles, made of base metal, of a kind used for other made up articles under tariff item No. 8308.90.00, and on *Rui Royal* to classify the textile strap as made up articles under tariff item No. 6307.90.99.

35. Exhibit AP-2018-051-03A, Vol. 1 at 24. Rule 3(c) provides as follows: “When goods cannot be classified by reference to Rule 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.”

DECISION

50. The appeal is dismissed.

Serge Fréchette
Serge Fréchette
Presiding Member