



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2020-012

Entreprise Robert Thibert Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, October 20, 2021*

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IN THE MATTER OF an appeal heard on June 22, 2021, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated June 25, 2020, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

ENTREPRISE ROBERT THIBERT INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Cheryl Beckett

Cheryl Beckett
Presiding Member

Place of Hearing:	Ottawa (Ontario)
Date of Hearing:	June 22, 2021
Tribunal Panel:	Cheryl Beckett, Presiding Member
Tribunal Secretariat Staff:	Isaac Turner, Counsel Stephanie Blondeau, Registrar Officer

PARTICIPANTS:**Appellant**

Entreprise Robert Thibert Inc.

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STATEMENT OF REASONS

OVERVIEW

[1] This is an appeal by Entreprise Robert Thibert Inc. (Robert Thibert) pursuant to subsection 67(1) of the *Customs Act*¹ from a re-determination by the President of the Canada Border Services Agency (CBSA) dated June 25, 2020.

[2] The issue is whether certain torque wrenches (the goods in issue) are classified under tariff item No. 8204.11.00, as “hand-operated spanners and wrenches – non-adjustable”² as determined by the CBSA, or under tariff item No. 8207.90.90, as “interchangeable tools for hand tools” as requested by Robert Thibert. Alternatively, Robert Thibert requested that the goods in issue be classified under tariff item No. 8466.10.00, as “tool holders”.

[3] For the reasons that follow, the Tribunal finds that the goods in issue are hand-operated spanners and wrenches – non-adjustable of tariff item No. 8204.11.00.

GOODS IN ISSUE

[4] The goods in issue are two models of torque wrenches: Rodac RDTW150F and Rodac RDTW600F.

[5] Torque wrenches are hand tools used to tighten nuts and bolts to a predetermined torque value selected by the user. Torque wrenches can also be used to loosen nuts and bolts. The goods in issue are equipped with a calibrated clutch mechanism and an adjusting handle that allows for the selection of a predetermined torque value.

[6] For tightening or loosening to occur, a socket (not included) fitting the desired nut or bolt is attached to the ratchet end of the wrench handle. Users can then tighten or loosen a nut or bolt in small increments without a full revolution of the tool. The user will be warned that the predetermined torque value has been attained by a “click” sound coming from the torque wrench.

PROCEDURAL HISTORY

[7] In November 2015, Robert Thibert imported the goods in issue as “Hand-operated spanners and wrenches—non-adjustable” under tariff item No. 8204.11.00.

[8] On June 27, 2019, Robert Thibert requested that the tariff classification of the goods be re-determined as “Interchangeable tools for hands tools” under tariff item No. 8207.90.90.

[9] On December 20, 2019, the CBSA denied Robert Thibert’s request, but re-determined the goods under section 59 of the *Customs Act* as “Hand-operated spanners and wrenches—adjustable” under tariff item No. 8204.12.00.

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

² The Tribunal notes that the word “spanner” is the same term for “wrench”. Spanner is the word commonly used in the United Kingdom, Australia, Ireland, and New Zealand, whereas wrench is the more commonly used term in Canada and the United States.

[10] On January 2, 2020, Robert Thibert filed a request for further re-determination pursuant to section 60(1) of the *Act*, claiming once more that the goods should be classified under tariff item No. 8207.90.90.

[11] On June 25, 2020, the President of the CBSA further re-determined the tariff classification of the torque wrenches, classifying them as declared at the time of importation: “Hand-operated spanners and wrenches—non-adjustable” under tariff item No. 8204.11.00.

[12] On August 25, 2020, Robert Thibert filed the present appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

[13] On June 22, 2021, the Tribunal held a hearing by way of written submissions, in accordance with rules 25 and 25.1 of the *Canadian International Trade Tribunal Rules*.³

LEGAL FRAMEWORK

[14] The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*,⁴ which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO). 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.

[15] Subsection 10(1) of the *Customs Tariff* provides that, subject to subsection 10(2), the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*⁵ and the *Canadian Rules*⁶ set out in the schedule.

[16] 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.

[17] 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*⁷ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,⁸ 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.⁹

[18] 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

³ SOR/91-499.

⁴ S.C. 1997, c. 36.

⁵ *Ibid.*, schedule [*General Rules*].

⁶ *Ibid.*, schedule.

⁷ World Customs Organization, 4th ed., Brussels, 2017.

⁸ World Customs Organization, 6th ed., Brussels, 2017.

⁹ See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, and *Canada (Attorney General) v. Best Buy Canada Inc.*, 2019 FCA 20 (CanLII) at para. 4.

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.¹⁰

[19] 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.¹¹ The final step is to determine the proper tariff item.¹²

[20] The relevant provisions of the *Customs Tariff* are as follows:

Section XV: Base Metals and Articles of Base Metal

Section XV :Métaux communs et ouvrages en ces métaux

...

...

Chapter 82

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

Chapitre 82

OUTILS ET OUTILAGE, ARTICLES DE COUTELLERIE ET COUVERTS DE TABLE, EN MÉTAUX COMMUNS; PARTIES DE CES ARTICLES, EN MÉTAUX COMMUNS

...

...

82.04 Hand-operated spanners and wrenches (including torque meter wrenches but not including tap wrenches); interchangeable spanner sockets, with or without handles.

82.04 Clés de serrage à main (y compris les clés dynamométriques); douilles de serrage interchangeables, même avec manches.

-Hand-operated spanners and wrenches

- Clés de serrage à main

8204.11.00 - -Non-adjustable

8204.11.00 - -À ouverture fixe

...

...

82.07 Interchangeable tools for hand tools, whether or not power-operated, or

82.07 Outils interchangeables pour outillage à main, mécanique ou

¹⁰ *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38, [2016] 2 RCS 80 [*Igloo Vikski*] at para. 21.

¹¹ Rules 1 through 5 of the *General Rules* apply to classification at the heading level. Rule 6 of the *General Rules* provides that "... the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, mutatis mutandis, to the above Rules [i.e. Rules 1 through 5] ..." and that "... the relative Section and Chapter Notes also apply, unless the context otherwise requires".

¹² 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.

for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools.

non, ou pour machines-outils (à emboutir, à estamper, à poinçonner, à tarauder, à fileter, à percer, à aléser, à brocher, à fraiser, à tourner, à visser, par exemple), y compris les filières pour l'étirage ou le filage (extrusion) des métaux, ainsi que les outils de forage ou de sondage.

...

...

8207.90-Other interchangeable tools

8207.90-Autres outils interchangeables

...

...

8207.90.90 - - -Other

8207.90.90 - - -Autres

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

Section XVI :Machines et appareils, matériel électrique et leurs parties; Appareils d'enregistrement ou de reproduction du son, appareils d'enregistrement ou de reproduction des images et du son en télévision, et parties et accessoires de ces appareils

...

...

Chapter 84

Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof

Chapter 84

Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof

...

...

84.66 Parts and accessories suitable for use solely or principally with the machines of headings 84.56 to 84.65, including work or tool holders, self-opening dieheads, dividing heads and other special attachments for the machines; tool holders for any type of tool for working in the hand

84.66 Parties et accessoires reconnaissables comme étant exclusivement ou principalement destinés aux machines des nos 84.56 à 84.65, y compris les porte-pièces et porte-outils, les filières à déclenchement automatique, les dispositifs diviseurs et autres dispositifs spéciaux se montant sur ces machines; porte-outils pour outils ou outillage à main, de tous types

...

...

8466.10.00 - Tool holders and self-opening

8466.10.00 - Porte-outils et filières à

dieheads**déclenchement automatique**

[21] There are also several relevant legal and explanatory notes.

[22] Legal note 1 to Chapter 82 provides in relevant part as follows:

Apart from blow lamps, portable forges, grinding wheels with frameworks, manicure or pedicure sets, and goods of heading 82.09, this Chapter covers only articles with a blade, working edge, working surface or other working part of:

(a) Base metal;

[23] Legal note 2 to Chapter 82 provides in relevant part as follows:

Parts of base metal of the articles of this Chapter are to be classified with the articles of which they are parts, except parts separately specified as such and tool-holders for hand tools (heading 84.66). However, parts of general use as defined in Note 2 to Section XV are in all cases excluded from this Chapter.

[24] Legal note 1 to Section XV provides in relevant part as follows:

This Section does not cover:

...

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

[25] Legal note 1 to Section XVI provides in relevant part as follows:

This Section does not cover:

...

(k) Articles of Chapter 82 or 83;

...

(o) Interchangeable tools of heading 82.07 or brushes of a kind used as parts of machines (heading 96.03); similar Interchangeable tools are to be classified according to the constituent material of their working part (for example, in Chapter 40, 42, 43, 45 or 59 or heading 68.04 or 69.09);

[26] The explanatory notes to Chapter 82 provide in relevant part as follows:

This Chapter includes:

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

...

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

[27] The explanatory notes to heading No. 82.04 provide in relevant part as follows:

This heading covers the following hand tools:

(1) **Hand-operated spanners and wrenches** (e.g., with fixed or adjustable jaws; socket, box or ratchet spanners; crank handle spanners); wrenches or spanners for bicycles or cars, for coach screws, hydrants or piping (including chain type pipe wrenches); torque meter wrenches.

[28] The explanatory notes to heading No. 82.07 provide in relevant part as follows:

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

(A) hand tools, whether or not power-operated (e.g., breast drills, braces and die-stocks),

[29] The explanatory notes to heading No. 84.66 provide in relevant part as follows:

(1) **Tool holders** which hold, guide or operate the working tool and which **permit the interchange of such tool-pieces**. They are of very varied types, e.g.:

Chucks; tap and drill collets; lathe tool posts; self-opening dieheads; grinding wheel holders; honing bodies for use in honing machines; boring bars; turrets for turret lathes, etc.

This heading also includes tool holders for any type of tool designed for operation in the hand. Such holders are usually designed for the tools **of heading 82.05 or 84.67**, but this heading also includes tool holders for flexible shaft outfits. (See also the provisions of the Explanatory Notes to **headings 84.67 and 85.01**).

POSITIONS OF THE PARTIES

Robert Thibert

[30] Robert Thibert submitted that the goods in issue are not properly classified under tariff item No. 8204.11.00 as “hand-operated spanners and wrenches – non-adjustable”, as determined by the CBSA. Robert Thibert submitted that the goods in issue are properly classified as “interchangeable tools for hand tools” under tariff item No. 8207.90.90. Alternatively, Robert Thibert submitted that the goods in issue are properly classified as “tool holders” under tariff item No. 8466.10.00.

[31] Robert Thibert submitted that the torque wrenches are not classifiable under heading No. 82.04 because the “working part” of the tool (i.e. the socket), is not included at time of import

and, as a result, the torque wrenches do not meet the terms of legal note 1 to Chapter 82.¹³ Robert Thibert argued that the torque wrenches described in heading No. 82.04 are not the same as the goods subject to this appeal because torque wrenches without sockets are not complete torque wrenches. Robert Thibert further submitted that in *Canadian Tire 2012* the Tribunal concluded that both working parts were essential to the function of the goods and therefore, the ratchet portion of the whole was in fact a working part of base metal.¹⁴ Robert Thibert submitted that if this argument is applied to the present case, it is only the strap portion or ratchet portion that is being imported and that having only one or the other would make the ratchet portion useless.

[32] Robert Thibert submitted that the goods in issue, although commonly referred to as torque wrenches, are a ratchet drive (handle). Robert Thibert submitted that the goods in issue are not hand-operated, as described in the explanatory notes to heading No. 82.04, because they cannot operate without the use of a “spanner socket”. Robert Thibert submitted that the goods in issue are therefore an “interchangeable tool” that is classifiable under heading No. 82.07. Robert Thibert further submitted that the CBSA’s Administrative Policy Memorandum D10-14-36 classifies ratchet drives in heading No. 82.07 and argued that the goods in issue should therefore be classified in heading No. 82.07 pursuant to the CBSA’s policy.

[33] Alternatively, Robert Thibert submitted that the explanatory notes to heading No. 84.66 include tool holders for “any type” of tool designed for operation in the hand and that the goods in issue are included within the meaning. Robert Thibert argued that although such holders are “usually” designed for the tools of headings Nos. 82.05 or 84.67, the term “usually” means “in the way that most often happens” and therefore heading No. 84.66 includes tool holders for heading No. 82.04. Robert Thibert submitted that in *Canadian Tire 2002*, the Tribunal ruled on the issue of multi-driver with screwdriver bit sets that the screwdriver holder was classifiable under heading No. 84.66 as a “tool holder”.¹⁵ Robert Thibert argued that the goods in issue are likewise handles imported separately from the sockets. Robert Thibert further submitted that there is no mention in the *Customs Tariff* or explanatory notes that says that a tool-holder function is only to hold a tool; some tool-holders are more complex.

CBSA

[34] The CBSA submitted that the goods in issue are properly classified as “Hand-operated spanners and wrenches – non-adjustable” under tariff item No. 8204.11.00. The CBSA submitted that “torque meter wrenches” or “clés dynamométriques” are specifically described by heading No. 82.04. The CBSA further submitted that the Tribunal can look to the ordinary meaning of the terms as found in conventional dictionaries because the relevant notes do not provide any guidance on the interpretation of “torque meter wrenches” or “clés dynamométriques”.

[35] The CBSA submitted that although the term “torque meter wrench” is not defined in the Merriam-Webster online dictionary, taken together, the definitions of “torque wrench” and

¹³ Robert Thibert also submitted that there is a distinction between the French and English versions of the *Customs Tariff* which indicates that the goods in issue are not classifiable under heading No 82.04. However, as noted by the CBSA, this argument is focused on subheading Nos. 8204.11 and 8204.12 and is therefore not relevant for classification at the heading level.

¹⁴ *Canadian Tire v. President of the Canada Border Services Agency* (22 May 2012), AP-2011-024 (CITT) [*Canadian Tire 2012*].

¹⁵ *Canadian Tire Corporation Ltd v. The Commissioner of the Canada Customs and Revenue Agency* (19 February 2002), AP-2000-056 (CITT) [*Canadian Tire 2002*].

“torquemeter” can provide some context as to the meaning of “torque meter wrench” for the purposes of tariff classification. They submitted that a common characteristic of these two definitions is measuring, indicating, or recording torque value when tightening nuts or bolts. The CBSA submitted that the definition of the French term “clés dynamométriques” is more instructive. They submitted that the *Dictionnaire Français Larousse* defines “clé dynamométrique” as “clé munie d’une réglette graduée sur laquelle est fixé un curseur réglable qui provoque un déclic prévenant l’utilisateur lorsque le couple de serrage correspondant est atteint” (wrench equipped with a graduated ruler on which is fixed an adjustable slider which causes a click warning the user when the corresponding tightening torque is achieved). The CBSA submitted that the characteristics of the goods in issue correspond with those described in the *Dictionnaire Français Larousse* definition.

[36] The CBSA submitted that the torque wrenches meet the terms of legal note 1 to Chapter 82 because the ratchet mechanism constitutes a “working part” of base metal. The CBSA submitted that Robert Thibert’s submission that the torque wrenches are not classified in Chapter 82 because they require the attachment of a socket to accomplish their function is without merit and that the Tribunal expressly rejected this type of argument in *Canadian Tire 2012*.¹⁶

[37] The CBSA also submitted, in response to Robert Thibert’s argument that the torque wrenches are not complete, that the torque wrenches are not merely one component of “torque wrenches”. The CBSA argued that the torque wrenches are marketed and sold as complete torque wrenches and that this is not only consistent with the ordinary meaning of “torque wrenches”, but also with how the tools are commonly described. The CBSA further argued that the claim that torque wrenches without sockets are not torque wrenches is inconsistent with the terms of heading No. 82.04, which expressly provides for the classification of spanner sockets with handles.

[38] The CBSA submitted that the torque wrenches are not interchangeable tools for hand tools of heading No. 82.07 because they are hand tools in and of themselves. The CBSA further submitted that torque wrenches are not similar to the examples of goods included within the scope of heading No. 82.07 as provided by the explanatory notes to that heading.

[39] Regarding Robert Thibert’s alternative submission, the CBSA submitted that while the explanatory notes to heading No. 84.66 recognize that tool holders can be of varied types, the torque wrenches are not analogous to the examples of tool holders provided. The CBSA further noted that unlike the screwdriver handle in *Canadian Tire 2002*,¹⁷ the torque wrenches perform independent functions and are hand tools, not merely tool holders.

ANALYSIS

[40] The issue in dispute is whether the goods in issue are “torque meter wrenches” as described in heading No. 82.04, “interchangeable tools for hand tools” as described in heading No. 82.07, or “tool holders” as described in heading No. 84.66.

¹⁶ *Canadian Tire 2012*.

¹⁷ *Canadian Tire 2002*.

Sequence of review and burden of proof

[41] As a preliminary matter, the parties submitted that the classification of the goods in issue should begin with an analysis of the headings of Chapter 82. The CBSA submitted that this is because legal note 1(k) to Section XVI expressly excludes goods of Chapter 82 from its scope.¹⁸

[42] The Tribunal agrees that this is the correct approach where there is a single relevant exclusionary note. However, legal note 1(f) to Section XV is also applicable. This legal note states that Section XV (which covers heading No. 84.66) does not cover Articles of Section XVI (which covers heading Nos. 82.04 and 82.07). It is well-established that goods cannot be determined to be *prima facie* classifiable in competing headings that are mutually exclusive by operation of the legal notes.¹⁹ Therefore, the *prima facie* classification of the goods in issue under either of the headings of Chapter 82 would preclude their *prima facie* classification under heading No. 84.66 and vice versa.

[43] In these circumstances, unlike in situations where there is only one exclusionary note, the Tribunal has previously held that it need not begin its consideration of the competing headings in any particular order.²⁰ Accordingly, the Tribunal will determine, on the basis of the evidence before it, whether the goods in issue meet the terms of heading Nos. 82.04, 82.07, or 84.66. As Robert Thibert bears the burden of demonstrating that the classification of imported goods was incorrect in accordance with subsection 152(3) of the *Act*,²¹ the Tribunal will first determine whether Robert Thibert has demonstrated that the goods in issue should be classified in either heading No. 82.07 or heading No. 84.66.

The goods are not classified in heading Nos. 82.07 or 84.66

[44] The Tribunal finds that the goods in issue do not meet the terms of heading Nos. 82.07 or 84.66.

[45] The Tribunal agrees with the CBSA's position that the goods in issue are not interchangeable tools for hand tools of heading No. 82.07 or tool holders of heading No. 84.66. The goods in issue perform independent functions, namely, tightening nuts and bolts to a pre-determined torque pressure.²² They are hand tools in and of themselves. In addition, as submitted by the CBSA, the goods in issue are not similar to the examples of goods included within the scopes of heading Nos. 82.07²³ or 84.66²⁴ as provided by the explanatory notes for those headings.

¹⁸ The Tribunal notes that legal note 1(o) to Section XVI also provides that Section XVI does not cover interchangeable tools of heading 82.07.

¹⁹ See, for example, *Atlas Trailer Coach Products Ltd. v. President of the Canada Border Services Agency* (25 October 2018), AP-2017-061 (CITT) at para. 48 [*Atlas Trailer Couch Products*]; *Canac Marquis Grenier Ltée v. The President of the Canada Border Services Agency* (11 September 2017), AP-2016-026 (CITT) at para. 30 [*Canac Marquis Grenier*].

²⁰ *Atlas Trailer Couch Products* at para. 49; *Canac Marquis Grenier* at para. 31.

²¹ *Atlas Trailer Couch Products* at para. 50; *Canac Marquis Grenier* at para. 31.

²² Exhibit AP-2020-012-03 at 19-20.

²³ *Ibid.* at 158-159; Exhibit AP-2020-012-05 at 84-85, 87-88.

²⁴ Exhibit AP-2020-012-09 at 125-126, 134-135; Exhibit AP-2020-012-10 at 23-24, 26-27.

[46] With respect to Robert Thibert's submission that the goods in issue should be classified in heading No. 82.07 pursuant to Memorandum D10-14-36,²⁵ the Tribunal notes that it is well-established that such documents are not legally binding on the Tribunal, which must independently interpret the law according to the relevant legislation and regulations.²⁶ The Tribunal has similarly stated that government administrative policies and interpretations, such as D memoranda, are entitled to weight, but are not determinative for the purpose of tariff classification.²⁷ In this case, the Tribunal finds that the evidence on the record does not support the classification of the goods in issue in heading No. 82.07, regardless of the contents of Memorandum D10-14-36.

The goods are classified in heading No. 82.04

The goods have a working part

[47] The parties agreed, and the Tribunal finds, that to be classified in Chapter 82, and, by extension, heading No. 82.04, the goods must be articles with a working part of base metal. The parties did not seem to dispute that the goods are articles and that they are composed of base metal. The only question is therefore whether the goods have a "working part".

[48] Having considered the parties' submissions, the Tribunal finds that the goods in issue have a working part as provided for in the terms of legal note 1 to Chapter 82. The Tribunal finds that for the purpose of defining the good in issue, the key working part is the calibrated clutch mechanism contained in the handle that allows for the selection of a predetermined torque value²⁸ and that the goods in issue therefore have a working part.

[49] The Tribunal agrees with the CBSA's submission that Robert Thibert's submission that the goods in issue are not classified in Chapter 82 because they require the attachment of a socket to accomplish their function is without merit and that the Tribunal expressly rejected this type of argument in *Canadian Tire 2012*.²⁹

[50] The explanatory note to heading No. 82.04 clearly states that the heading is to include socket wrenches, box wrenches, and ratchet wrenches, wrenches used for bicycles or cars, and torque meter wrenches. Both socket wrenches and torque meter wrenches use sockets yet there is no requirement that these commonly known hand tools must include one or more sockets to retain the characteristic of a socket or torque meter wrench.

²⁵ Exhibit AP-2020-012-03 at 184-189. The Tribunal notes that Memorandum D10-14-36 was amended after this appeal was filed to indicate that separately imported ratchet drives are classified under heading No. 82.04.

²⁶ See, for example, *Tenneco Automotive Operating Company Inc. v. President of the Canada Border Services Agency* (12 March 2020), AP-2019-019 (CITT) at para. 23; *R.S. Abrams v. President of the Canada Border Services Agency* (21 December 2016), AP-2016-004 (CITT) at para. 25.

²⁷ *Synnex Canada v. The President of the Canada Border Services Agency* (11 August 2014), AP-2014-034 (CITT) at para. 55.

²⁸ Exhibit AP-2020-012-03 at 19-20.

²⁹ *Canadian Tire 2012* at para. 51. In this case, the CBSA argued that the working part of the goods in issue, ratchet tie-downs, was the textile strap and not the ratchet buckle. The Tribunal found that the fact that "the straps may be essential to the ultimate use or purpose of the goods in issue does not negate the fact that the ratchet itself is a working part". The Tribunal held that the goods in issue "[met] the first requirement of note 1 simply by virtue of the fact that the ratchet constitutes a working part of base metal of the goods in issue, without which they could not "work", that is, be used for their intended purpose".

[51] The Tribunal acknowledges that a separate socket is required to operate the goods in issue and that no such socket is included at time of import. A user of the goods in issue is required to obtain a separate socket that fits the size of nut or bolt that is to be tightened. However, even though the goods in issue only include the ratchet handle with specialized torque mechanism at the end, the Tribunal does not agree that the goods in issue no longer can be categorized as a torque meter wrench for the sole reason that the user has yet to add the specific size of socket which is necessary for the specific use of the hand tool. Although the socket is the article that fits over the nut or bolt to be tightened and is a necessary component, the Tribunal does not find that the socket is the only possible “working part” that is contemplated under heading No. 82.04. A socket is only an additional component that is necessary for the hand tool to be used for its intended purpose.

The goods meet the terms of heading No. 82.04

[52] The Tribunal finds that the goods in issue meet the terms of heading No. 82.04.

[53] The terms of heading No. 82.04 expressly include “torque meter wrenches” or “*clés dynamométriques*” and, as submitted by the CBSA, the characteristics of the goods in issue directly correspond with the definition of *clés dynamométriques* in the *Dictionnaire Français Larousse*.³⁰ The goods in issue are used to tighten nuts and bolts to a predetermined torque pressure and emit an audible “click” sound to indicate that the desired torque has been achieved.³¹

[54] There is also evidence that the goods in issue are marketed and sold as “torque wrenches” or “*clés dynamométriques*” by Robert Thibert itself, as well as by other retailers.³² The Tribunal finds that this evidence further supports the conclusion that the goods in issue are torque wrenches as described in heading No. 82.04.

[55] Finally, the Tribunal notes that, as discussed in *Igloo Vikski*, “[a]ppplied conjunctively, Rules 1 and 2 [of the General Rules] determine the heading(s) under which an unfinished . . . good is *prima facie* classifiable”.³³ Accordingly, the Tribunal finds that even if the torque wrenches are considered incomplete without the sockets, as submitted by Robert Thibert, they are still *prima facie* classifiable under heading No. 82.04.

Tariff item classification

[56] Having determined that the goods in issue are properly classified in heading No. 82.04, the Tribunal must next determine the proper classification at the subheading and tariff levels.

[57] Heading No. 82.04 contains two subheadings at the one-dash level which regard (i) hand-operated spanners and wrenches and (ii) interchangeable spanner sockets, with or without handles. The first subheading includes a hand-operated wrench which is sold on its own or in sets, whereas the second subheading includes wrench sockets which are sold in sets with or without separate handles. As the goods in issue include a single handle with no sockets included, the Tribunal finds that the goods must be classified in the first one-dash subheading of heading No. 82.04 as “hand operated spanners and wrenches”.

³⁰ Exhibit AP-2020-012-05 at 125.

³¹ Exhibit AP-2020-012-03 at 19-20.

³² *Ibid.* at 18; Exhibit AP-2020-012-05 at 95-100, 133-137, 139-141, 143-146, 148, 150-154.

³³ *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLii), [2016] 2 SCR 80 at para. 27.

[58] This category is further divided at the two-dash level into (i) non-adjustable and (ii) adjustable. For a wrench to be adjustable under this category, the wrench itself must have a mechanism that adjusts the size of the wrench to fit a variety of nuts or bolts. The goods in issue do not adjust in this way. The size and dimension of the goods in issue do not change and cannot change or be adjusted by the user. A user of the torque wrench may add the appropriate size socket for the application that is needed – with each socket fitting one size nut or bolt. As the goods in issue do not “adjust”, the Tribunal finds that they must be classified in subheading No. 8204.11.00 as “non-adjustable”.

Conclusion

[59] For the foregoing reasons, the Tribunal finds that the goods in issue are classified under tariff item No. 8204.11.00.

DECISION

[60] The appeal is dismissed.

Cheryl Beckett

Cheryl Beckett
Presiding Member