Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2012-026

Euro-Line Appliances

v.

President of the Canada Border Services Agency

Decision and reasons issued
Monday, August 12, 2013

Canada

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IN THE MATTER OF an appeal heard on May 7, 2013, pursuant to section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated June 8, 2012, with respect to a request for review of an advance ruling on tariff classification pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

EURO-LINE APPLIANCES **Appellant**

AND

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

DECISION

The appeal is allowed.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	May 7, 2013
Tribunal Member:	Pasquale Michaele Saroli, Presiding Member
Counsel for the Tribunal:	Georges Bujold
Manager, Registrar Programs and Services:	Michel Parent
Registrar Officer:	Haley Raynor

PARTICIPANTS:

Appellant	**Counsel/Representatives**
Euro-Line Appliances	Michael Kaylor Michael Sherbo

Respondent	**Counsel/Representative**
President of the Canada Border Services Agency	Max Binnie

WITNESS:

Doug Eglington
President
Euro-Line Appliances Inc.

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Euro-Line Appliances (Euro-Line) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*[1] from a decision dated June 8, 2012, made by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4), with respect to a request for review of an advance ruling on tariff classification.

2. The issue in this appeal is whether certain Liebherr refrigerator-freezers, model CS2060 (the goods in issue), are properly classified under tariff item No. 8418.10.90 of the schedule to the *Customs Tariff*[2] as other combined refrigerator-freezers, fitted with separate external doors, as determined by the CBSA, or should be classified under tariff item No. 8418.69.90 as other refrigerating or freezing equipment, as claimed by Euro-Line. In the alternative, should the Tribunal find that the goods in issue are not properly classified under tariff item No. 8418.10.90, the CBSA submitted that they should be classified under tariff item No. 8418.21.00 as compression-type, household-type refrigerators.

PROCEDURAL HISTORY

3. On January 26, 2012, the CBSA issued an advance ruling, pursuant to subsection 43.1(1) of the *Act*, classifying the goods in issue under tariff item No. 8418.10.90 as combined refrigerator-freezers, fitted with separate external doors.

4. On February 6, 2012, Euro-Line requested a review of the advance ruling pursuant to subsection 60(2) of the *Act*, submitting that the goods in issue should be classified under tariff item No. 8418.69.90 as other refrigerating or freezing equipment.

5. On June 8, 2012, the CBSA issued a decision, pursuant to subsection 60(4) of the *Act*, affirming its advance ruling.

6. On August 29, 2012, Euro-Line filed the present appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

7. The Tribunal held a public hearing in Ottawa, Ontario, on May 7, 2013. Mr. Doug Eglington, President of Euro-Line, appeared as a witness for Euro-Line. The CBSA did not call any witnesses.

GOODS IN ISSUE

8. The goods in issue are 36-inch wide freestanding refrigerator-freezers with one door to access the refrigerator compartment and two freezer drawers which act as the containers of the freezer compartments. As such, the freezer drawers are installed on telescopic rails and are pulled out to store and access food products. The goods in issue are described in the product literature as “bottom mount” models, given that their freezer compartments are located beneath the refrigerator compartment. According to the evidence, the

1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].
2. S.C. 1997, c. 36.

refrigerator compartment of the goods in issue has a net capacity of 13.4 cubic feet, while the freezer compartments have a net capacity of 6 cubic feet.[3]

9. The evidence also indicates that the goods in issue are fitted with two separate compressors, one for the refrigerator and the other for the freezer, and are sold for household use.[4]

10. The parties did not file any physical exhibits.

STATUTORY 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 (the Harmonized System) developed by the World Customs Organization (WCO).[5] 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*[6] and the *Canadian Rules*[7] 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*[8] and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,[9] 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.[10]

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 section or chapter notes in the *Customs Tariff*, having regard to any relevant *Classification Opinions* and *Explanatory Notes*. If the goods in issue cannot be classified at the heading level through the application of Rule 1, then the Tribunal must consider the other rules.[11]

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3. Tribunal Exhibit AP-2012-026-10B, tab 3; Tribunal Exhibit AP-2012-026-06A, tab A; *Transcript of Public Hearing*, 7 May 2013, at 7.
4. Tribunal Exhibit AP-2012-026-10B, tab 3; *Transcript of Public Hearing*, 7 May 2013, at 51-53.
5. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.
6. S.C. 1997, c. 36, schedule [*General Rules*].
7. S.C. 1997, c. 36, schedule.
8. World Customs Organization, 2d ed., Brussels, 2003 [*Classification Opinions*].
9. World Customs Organization, 5th ed., Brussels, 2012 [*Explanatory Notes*].
10. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that the *Explanatory Notes* be respected unless there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to *Classification Opinions*.
11. Rules 1 through 5 of the *General Rules* apply to classification at the heading level.

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.[12] The final step is to determine the proper tariff item.[13]

RELEVANT CLASSIFICATION PROVISIONS

17. The relevant provisions of the *Customs Tariff* provide 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

. . .

84.18	**Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines of heading 84.15.**
8418.10	**-Combined refrigerator-freezers, fitted with separate external doors**
8418.10.10	- - -Absorption-type, combination gas and electric powered, designed for permanent installation in recreational vehicles and for use in the manufacture of such vehicles
8418.10.90	- - -Other
. . .	
	-Refrigerators, household type:
8418.21.00	**- -Compression-type**
. . .	
	-Other refrigerating or freezing equipment; heat pumps:
8418.61.00	**- -Heat pumps other than air conditioning machines of heading 84.15**
8418.69	**- -Other**
8418.69.20	- - -Commercial refrigerating installations (store type)
8418.69.90	- - -Other

12. 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."
13. 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." The *Classification Opinions* and the *Explanatory Notes* do not apply to classification at the tariff item level.

18. The relevant section and chapter notes, along with any relevant *Explanatory Notes* will be discussed in the Tribunal's analysis below, as appropriate.

TRIBUNAL'S ANALYSIS

19. The CBSA and Euro-Line agree, and the Tribunal accepts, that the goods in issue are properly classified in heading No. 84.18, which covers "[r]efrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines of heading 84.15." The difference between the parties arises at the subheading level.

20. As regards classification at the subheading level, Rule 6 of the *General Rules* provides as follows:

> For legal purposes, 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 [one through five], on the understanding that only subheadings at the same level are comparable. For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.
>
> [Underlining added for emphasis]

21. The CBSA contends that the goods in issue are properly classified in subheading No. 8418.10 as "[c]ombined refrigerator-freezers, fitted with separate external doors" through the *mutatis mutandis* application (pursuant to Rule 6) of Rule 1 of the *General Rules*. In the alternative, it submits that the goods are classifiable in subheading No. 8418.21 as "[r]efrigerators, household type: compression-type" through the *mutatis mutandis* application (pursuant to Rule 6) of Note 3 to Section XVI (which includes Chapter 84). This section note provides as follows:

> 3. *Unless the context otherwise requires*,[14] composite machines consisting of two or more machines fitted together to form a whole and other *machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.*
>
> [Emphasis added]

22. Euro-Line submits that the goods in issue should be classified in subheading No. 8418.69 as "[o]ther refrigerating or freezing equipment" through the *mutatis mutandis* application (pursuant to Rule 6) of Rule 1 of the *General Rules*.

23. The use of the word "other" to modify "refrigerating or freezing equipment" renders subheading No. 8418.69 a residual classification covering refrigerating and freezing equipment not falling within one of the subheadings that precedes it. Consequently, the goods in issue cannot, as a matter of law, be found to be *prima facie* classifiable in subheading No. 8418.10 (or subheading No. 8418.21) and subheading No. 8418.69.[15] That being the case, the goods in issue cannot be classified at the subheading level, by the *mutatis mutandis* application (pursuant to Rule 6) of Rule 3 of the *General Rules*. Indeed, Rule 3 can only

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14. As previously explained by the Tribunal, the phrase "unless the context otherwise requires" means that Note 3 to Section XVI need not be invoked when the composite machine is covered *as such* by a particular heading and, *mutatis mutandis*, by a particular subheading. See *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (19 January 2012), AP-2011-009 (CITT) [*Costco*] at paras. 38-39.
15. In *Partylite Gifts Ltd. v. The Commissioner of the Canada Customs and Revenue Agency* (16 February 2004), AP-2003-008 (CITT), the Tribunal noted that a residual tariff provision would only be used if there were no other appropriate tariff items for classification.

apply when goods are *prima facie* classifiable in two or more headings or where, as in this case, the issue under consideration is classification at the subheading level, two or more subheadings.

24. As in the past,[16] the Tribunal will, as a first step, determine whether the goods in issue are properly classified in subheading No. 8418.10 in accordance with Rules 1 and 6 of the *General Rules*. If it finds that they are not, the Tribunal will proceed to a determination of whether the goods in issue fall to be classified under another specific subheading of heading No. 84.18 or in residual subheading No. 8418.69, as submitted by Euro-Line.

Are the Goods in Issue Classifiable in Subheading No. 8418.10?

25. The issue of whether the goods in issue are properly classified in subheading No. 8418.10 turns on the factual question of whether they are "fitted with separate external doors". More specifically, and considering that the goods in issue, in addition to having one door that provides access to the refrigerator compartment, are fitted with two drawers that act as the containers of the freezer compartments, the appeal turns on the issue of whether the word "doors", in the context of its usage in subheading No. 8418.10, can be interpreted to include drawers.

26. The modern approach to statutory interpretation, as expressed in *Rizzo*[17] (per Iacobucci J.) and reiterated in *Canada Trustco Mortgage Co. v. Canada*[18] (per McLachlin C.J. and Major J.) provides as follows:

> [T]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament . . . . The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. *When the words of a provision are precise and unequivocal, the ordinary meaning of the words plays a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role*. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.[19]
>
> [Emphasis added]

27. In this regard, Euro-Line contends that the ordinary meaning of the phrase "separate external doors" cannot be ignored[20] and does not include drawers.[21] In this respect, Euro-Line submits the following:

> A door and a drawer are fundamentally different articles . . . . They are different in appearance, design, movement, and function. A door is merely a barrier. A drawer, on the other hand, is a box-like container. Because **part** (i.e. one outside edge) of a drawer acts as the barrier itself, it precludes the need for a door.[22]

16. See, for example, *Canadian Tire Corporation Ltd. v. President of the Canada Border Services Agency* (23 November 2011), AP-2010-069 (CITT) at para. 39.
17. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21.
18. [2005] 2 S.C.R. 601 [*Trustco*].
19. *Trustco* at para. 10.
20. Tribunal Exhibit AP-2012-026-04A at para. 21.
21. *Ibid.* at para. 24.
22. *Ibid.* at para. 18.

28. In support of its assertion that the intent of Parliament must be discerned by application of an objective standard, Euro-Line referred to the following explanation, which was cited with approval by the Federal Court of Appeal in *Canada (Attorney General) v. Friends of the Canadian Wheat Board*:[23]

> [39] The concept of legislative intent was explained as follows by this Court in *Felipa v. Canada (Citizenship and Immigration)*, 2011 FCA 272 (CanLII), 2011 FCA 272, [2012] 1 F.C.R 3 at para. 31, citing approvingly for this purpose Lord Nicholls in *Regina v . Secretary of State for the Environment, Transport and the Regions, Ex parte Spath Holme Ltd*., [2001] 2 A.C. 349 (H.L.) at page 396:
>
> > . . . **the 'intention of Parliament' is an objective concept, not subjective**. . . . Thus, when courts say that such-and-such a meaning "cannot be what Parliament intended", they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning. As Lord Reid said in *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffmburg A G* [1975] AC 591, 613: "We often say that we are looking for the intention of Parliament, but that is not quite accurate. **We are seeking the meaning of the words which Parliament used**.
>
> [Bold added for emphasis]

29. In connection with its related submission that Parliament is presumed to say what it means and to mean what it says,[24] Euro-Line submitted that Parliament must be taken to know the meaning of the terms that it employs in its enactments. In this regard, Euro-Line referred to *Barrie Public Utilities v. Canadian Cable Television Assn.*,[25] wherein the Supreme Court of Canada stated the following: "[26] . . . Parliament should be taken to know the distinction between transmission and distribution lines." In the same vein, Euro-Line submitted that Parliament must be taken to have known the difference between "doors" on the one hand and "drawers" on the other.

30. In support of its position that subheading No. 8418.10 is not intended to cover all refrigerator-freezer configurations, Euro-Line argued that, "[i]f it did, the nomenclature would simply read 'combined refrigerator-freezers'"[26] or combined refrigerator-freezers fitted with ". . . external doors and/or drawers . . .";[27] it having been open to Parliament to use more direct and unambiguous language if its intention was to give a broad scope to subheading No. 8418.10.[28]

31. Finally, with respect to the modern approach's call for a contextual and purposive analysis of the meaning of words and phrases used in a statute, Euro-Line referred to *Exida*, where the Federal Court of Appeal stated as follows:

> [32] *While a contextual and purposive analysis is useful* in identifying, amongst the meanings which a word (or phrase) can have the one that best reflects Parliamentary intent, *it cannot be used to give the legislative language a meaning which it cannot bear* . . . .
>
> [Emphasis added]

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23. 2012 FCA 183 (CanLII).
24. *Transcript of Public Hearing*, 7 May 2013, at 69.
25. [2003] 1 S.C.R. 476.
26. Tribunal Exhibit AP-2012-026-04A at para. 21.
27. *Transcript of Public Hearing*, 7 May 2013, at 72.
28. In support of this argument, Euro-Line relied, by analogy, on the decision of the Federal Court of Appeal in *Exida.Com Limited Liability Company v. Canada*, 2010 FCA 159 (CanLII) [*Exida*], in which the Federal Court of Appeal held, at paragraphs 34 and 35, that "clearer language" would have been required in order to give a broad scope to a penalty provision of the *Income Tax Act*.

32. The CBSA, on the other hand, drawing upon the decision of the Federal Court of Appeal in *British Columbia Telephone Co. v. Her Majesty the Queen*,[29] advocated "[a]n open-textured interpretation . . . according to which 'the law shall be considered as always speaking' . . ." and pursuant to which words are construed ". . . so as to include that which, in the march of progress, falls properly within the ordinary meaning".[30]

33. In support of its position, the CBSA referred to section 12 of the *Interpretation Act*,[31] pursuant to which, every enactment is to be given ". . . such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."

34. In further support of its stance, the CBSA noted the statement in Note (I) of the *Explanatory Notes* to Rule 1 of the *General Rules*, which states the following: "In many cases . . . the variety and number of goods classified in a Section or Chapter are such that it is impossible to cover them all or to cite them specifically in the titles." While acknowledging Euro-Line's point that these titles are provided for ease of reference only and have no legal bearing on classification, the CBSA contended that, insofar as the same practical problem arises in the context of subheading descriptions, an open-textured approach to interpretation is appropriate.

35. The CBSA further urged the Tribunal to consider the following statement of the United States Court of International Trade (per Wallach J.) in *BASF Corp. v. The United States*:[32]

> When an article is in character or function something other than as described by a specific provision in the tariff schedule, either more limited or more diversified, and the difference is significant, it cannot be classified within that provision . . . *If the difference is merely an improvement or amplification, and the essential character of the merchandise is preserved or only incidentally altered, the rule is that an eo nomine designation will include all forms of the article, absent contrary legislative intent or commercial designation.*[33]
>
> [Emphasis added]

36. In this regard, the CBSA characterized the introduction of freezer drawers as an innovative improvement to combined refrigerator-freezers, described *eo nomine* in subheading No. 8418.10, which did not alter either their character or functioning as such.

37. In *65302 British Columbia Ltd. v. Canada*,[34] the Supreme Court of Canada, while reaffirming the modern contextual approach to statutory interpretation, noted the following: ". . . this Court has also often been cautious in utilizing tools of statutory interpretation in order to stray from clear and unambiguous statutory language."[35]

38. As a general principle, the particular legislative context in which a word or phrase is used informs the breadth of interpretation to be ascribed to that word or phrase. In the present circumstances, the evolving

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29. *British Columbia Telephone Co. v. Her Majesty the Queen*, [1992] 1 C.T.C. 26 (Tribunal Exhibit AP-2012-026-06A, tab Q).
30. *Ibid.* at para. 16.
31. R.S.C. 1985, c. I-21.
32. Court File No. 01-00118 (13 June 2005), Slip. Op. 05-68.
33. See Tribunal Exhibit AP-2012-026-14A at para. 3.
34. [1999] 3 S.C.R. 804.
35. *Ibid.* at para. 51.

variety of refrigerator-freezer innovations and configurations in the marketplace,[36] and the need for comparatively static Harmonized System-based descriptions in the *Customs Tariff* to keep pace with the "march of progress", supports, in the Tribunal's view, an open-textured interpretation of the word "door" in subheading No. 8418.10. That being said, the open-textured approach is not a licence to adopt interpretations that words or phrases cannot reasonably bear. An open-textured approach must still yield an interpretation that falls properly within the ordinary meaning, or range of meanings, that can reasonably be ascribed to the word or phrase in question. In this regard, "[i]f any words are to have a special or secondary meaning [the drafter] must take pains to make that meaning clear".[37]

39. The definition of "door" in the *Shorter Oxford English Dictionary*[38] includes the following:

> 1. *A hinged or sliding barrier* of wood, metal, etc., *serving to open or close the entrance to* a building, room, cupboard, vehicle or *other enclosure* . . . 3. *Something resembling a door in its movement or function*: a lid, a valve, a cover, an opening.
>
> [Emphasis added]

40. Looking first at the issue of movement, the Tribunal finds particularly useful the following movement-based definition of the term "door" in *Webster's Third New International Dictionary*,[39] specifically as it pertains to refrigeration units:

> 1 a: . . . a structure supported usu. along one side and *swinging on pivots or hinges, sliding along a groove, rolling up and down, revolving as one of four leaves*, or *folding like an accordion* by means of which an opening may be closed or kept open for passage into or out of a building, room or other covered enclosure or a car, airplane elevator, or other vehicle . . . b: *a similar part by which access is prevented or allowed to the contents of a . . . refrigeration . . .* chamber.
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> [Emphasis added]

41. With respect to similarity of movement, that the freezer drawers of the goods in issue do not swing, roll up/down, revolve or fold is not in dispute. While the evidence indicates that the drawers move on slides,[40] it is the Tribunal's view that the movement of drawers differs in significant respects from that of sliding doors, both in terms of mechanics and direction of motion. With respect to mechanics, the Tribunal accepts that, whereas, in the case of a sliding door, it is the door panel that slides, when it comes to drawers, it is not just the exterior panel of the drawer, but rather, the entire drawer box that slides.[41] With respect to

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36. The evidence indicates that there are numerous configurations of combined refrigerator-freezers sold in Canada, including refrigerator-freezers with one door and an interior freezer compartment with its own internal door, side-by-side types that have on side as the refrigerator compartment and the other as the freezer (each compartment accessed by separate doors), top-freezer types where the freezer compartment is on the top (and accessed by a door) and the refrigerator compartment is on the bottom (and accessed by another door), bottom-freezer types where the freezer compartment is on the bottom and can be accessed by either a door or drawers. Tribunal Exhibit AP-2012-026-06A at para. 26; Tribunal Exhibit AP-2012-026-10B, tabs 1-32; *Transcript of Public Hearing*, 7 May 2013, at 8-38.
37. Elmer A. Driedger, *The Composition of Legislation [2nd Edition, Revised]*, Ottawa: The Department of Justice (1976) at 105.
38. Fifth ed., *s.v.* "door".
39. *S.v.* "door".
40. *Transcript of Public Hearing*, 7 May 2013, at 18, 41, 130.
41. *Ibid.* at 56.

direction of motion, the Tribunal accepts that, whereas sliding doors move laterally,[42] drawers slide telescopically, such that they are "opened by pulling out and closed by pushing in".[43]

42. With regard to similarity of function, it is the Tribunal's view that, unlike the refrigerator door, whose primary purpose is to serve as a panel barrier to access to the refrigeration compartment of the goods in issue, the drawers are primarily "boxlike storage compartment[s]" for the gelation and preservation of particular foods,[44] although the exterior panel of the drawer incidentally serves as a barrier to access the freezer compartment. In this way, its function of a drawer is fundamentally different from that of a door or of similar barriers, such as lids, valves or covers, which all merely serve to open or close an enclosure.

43. Therefore, the Tribunal sees some merit in Euro-Line's arguments that there is a distinction between a door and a drawer, that the ordinary meaning of the word door is clear and unambiguous and does not include a drawer, and that there is an insufficient basis upon which to conclude that the word "door" must be given a broader meaning in the context of its usage in subheading No. 8418.10.[45]

44. In the Tribunal's view, the difference between a *door* and a *drawer* is more than one of semantics, as was suggested by the CBSA.[46] As previously noted, it is a well-established principle of legal drafting that, "[i]f any words are to have a special or secondary meaning [the drafter] must take pains to make that meaning clear".[47] In this case, the Tribunal finds that the relevant provisions of the *Customs Tariff* do not include language suggesting that the word "door" should be given a special or secondary meaning encompassing drawers. The Tribunal further finds that to conclude that the word "door" includes "drawer", as suggested by the CBSA, would inappropriately stray from clear and unambiguous statutory language and result in an interpretation that the word "door" cannot reasonably bear.

45. In this respect, the Tribunal also sees some merit in Euro-Line's following assertion:

> If Parliament had truly intended all of those variations to fall in subheading 8418.10, it would have been a very simple matter to do so. Parliament would have simply said, 'combined refrigerator-freezers', full stop, or 'combined refrigerator-freezers fitted with separate external doors and/or drawers'.[48]

46. With respect to the CBSA's assertions that, regardless of whether they are fitted with separate doors or with doors and drawers, combined refrigerator-freezers all perform the same functions or serve the same purpose and that this fact supports the classification of the goods in issue in subheading No. 8418.10 as refrigerator-freezers, the Tribunal finds that this argument overlooks that only refrigerator-freezers of a specific configuration are described by the terms of this subheading. Given the precise terms of subheading No. 8418.10, one cannot assume that all combined refrigerator-freezers should be classified in that subheading on the basis of their function or purpose.

47. In this regard, this case is distinguishable from the issue in *Bauer Hockey Corporation v. President of the Canada Border Services Agency*,[49] where the Tribunal held that the addition of a protective Kevlar

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42. *Ibid.* at 58.
43. *Webster's Third New International Dictionary*, *s.v.* "drawer".
44. *Transcript of Public Hearing*, 7 May 2013, at 7-10, 38-42.
45. *Ibid.* at 68-69.
46. *Ibid.* at 108.
47. Elmer A. Driedger, *The Composition of Legislation [2nd Edition, Revised]*, Ottawa: The Department of Justice (1976) at 105.
48. *Transcript of Public Hearing*, 7 May 2013, at 87-88.
49. (26 April 2012), AP-2011-011 (CITT).

collar was an innovation that did not change the essence of the goods in that case as base-layer hockey apparel classifiable in heading Nos. 61.10 and 61.14. In this case, the issue is not whether the use of freezer drawers instead of a freezer door changed the essence of the goods in issue as refrigerator-freezers. Euro-Line's position, which the Tribunal's accepts, is that the use of drawers instead of doors has placed the goods in issue outside the specific configuration of refrigerator-freezers described in subheading No. 8418.10.

48. At the hearing, the CBSA also relied on the *Explanatory Notes* to Chapter 84 in support of its position that the goods in issue are properly classified in subheading No. 8418.10 on the basis of their function.[50] The Tribunal notes however that Note (B)(2) of the *Explanatory Notes* to Chapter 84 merely provides that "[h]eadings 84.02 to 84.24 cover . . . machines and apparatus which are classified mainly by reference to their function, and regardless of the field of industry in which they are used." In the Tribunal's view, while these notes suggest that machines or apparatus that perform the function of refrigerating or freezing are to be classified in heading No. 84.18 and not in other headings of Chapter 84, which cover goods that perform other functions (something that is not in dispute in this appeal), they do *not* indicate that the subheadings of heading No. 84.18 are similarly and necessarily organized by reference to the function of the machines or apparatus that they are intended to cover.

49. In fact, a review of the subheadings of heading No. 84.18 reveals that, beyond their function, goods are to be classified in a particular subheading on the basis of specific mechanical or physical characteristics (e.g. subheading No. 8418.21 covers refrigerators that are compression-based and subheading No. 8418.40 covers freezers of the upright type not exceeding 800 litres capacity) or end uses (e.g. subheading No. 8418.21 only covers refrigerators that are intended for household use). Therefore, contrary to the CBSA's argument, goods are not classified in the various subheadings of heading No. 84.18 merely by reference to their function.

50. On the basis of the foregoing analysis, the Tribunal finds that the goods in issue are not fitted with separate external doors, but are fitted with an external door and separate drawers. As such, they do not fall within subheading No. 8418.10.

Are the Goods in Issue Classifiable in Subheading No. 8418.21?

51. By way of alternative argument, the CBSA submitted that the goods in issue are classifiable in subheading No. 8418.21, as "[r]efrigerators, household type: compression-type" through the *mutatis mutandis* application (pursuant to Rule 6 of the *General Rules*) of Note 3 to Section XVI.

52. The witness for Euro-Line confirmed that the goods in issue are intended for household use.[51] He further confirmed that they are compressor-based units.[52]

53. Note 3 to Section XVI provides as follows:

> Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

50. *Transcript of Public Hearing*, 7 May 2013, at 112-13.
51. *Ibid.* at 51.
52. *Ibid.* at 52.

54. It not being in dispute that the goods in issue are for household use and compression-type units, the CBSA submitted that, if the goods in issue are not covered as such by subheading No. 8418.10, they should be classified in subheading No. 8418.21, pursuant to Note 3 to Section XVI, by virtue of the fact that they are multi-function machines in which the refrigerator performs the principal function. According to the CBSA, that the refrigerator performs the principal function of the combined refrigerator-freezer units is indicated by such factors as relative capacity (the refrigerator compartment having a much larger capacity) and marketing (there is evidence that the goods in issue are primarily marketed as refrigerators).[53]

55. In rebuttal, Euro-Line submitted that the goods in issue could not, as a matter of law, be classified as refrigerators because they are combined refrigerator-freezers and that the coverage of subheading No. 8418.21, by its own terms, is restricted to refrigerators. Euro-Line also submitted that the refrigerator component cannot be said to perform the principal function of the goods in issue because both functions are equally important for the users, with some food products requiring refrigerator storage and other products demanding freezer storage. Euro-Line further submitted that Note 3 to Section XVI is directed at the classification of machines that are performing separate but complementary functions in contrast to the goods in issue, which perform separate functions that are not complementary, but rather, entirely distinct.[54]

56. Leaving aside the issue of whether the goods in issue are multi-function machines and the parties' disagreement on the issue of which component of the goods in issue (if any) performs their principal function, the Tribunal must first determine whether Note 3 to Section XVI is applicable to the classification exercise at issue. In this respect, the phrase "[u]nless the context otherwise requires" makes it clear that composite machines and other machines designed for the purpose of performing two or more complementary or alternative functions are not classified according to the machine or component which performs the principal function in all cases.

57. In this regard, the Tribunal stated the following in *Costco*:

> 38. The phrase "[u]nless the context otherwise requires . . . ." makes it clear that, while "composite machines" and non-composite ". . . machines designed for the purpose of performing two or more complementary . . . functions . . . ." (i.e. multi-function machines) will generally be classified according to the machine or component which performs the principal function, there are exceptions to this rule. In other words, the mere fact that a good is a machine of the type described in Note 3 to Section XVI is not sufficient to render the note applicable. One must determine whether other provisions of the *Customs Tariff*, which form the relevant context, preclude the application of Note 3.
>
> 39. In this regard, the Tribunal finds that Note 3 to Section XVI is not applicable when composite machines or multi-function machines are described *as such* in a specific tariff heading of the *Customs Tariff*. Indeed, to suggest otherwise would result in the anomalous situation of a good being classified as if consisting only of one of its components notwithstanding the presence of a heading which covers the complete product.
>
> 40. In the Tribunal's view, the phrase "*sauf dispositions contraires* . . . ." (except as otherwise provided) in the French version of Note 3 to Section XVI, by suggesting that the note does not apply to goods otherwise fitting the description of the machines referred to in that note if they are covered *as such* under a specific tariff heading, is informative as to the meaning of the corresponding phrase "unless the context otherwise requires . . . ." in the English version of same.
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> 41. In this regard, it is the Tribunal's view that classification of a composite or multi-function machine in a tariff heading that covers it, *as such*, constitutes a *disposition contraire* (provision to the

53. Tribunal Exhibit AP-2012-026-06A at paras. 59-70, tab I.
54. *Transcript of Public Hearing*, 7 May 2013, at 82-85.

> contrary) under Note 3 to Section XVI, which would preclude classification of the complete machine as if it consisted only of the component, or as being the machine, that performs its principal function.[55]

58. Therefore, before classifying the goods as if consisting of only one of its component, as was argued in the alternative by the CBSA, the Tribunal must first examine whether the goods in issue are covered by another subheading of heading No. 84.18. In that case, Note 3 to Section XVI, which directs, as a general rule, the classification of composite or multi-function machines according to the component which performs the principal function, would not be applicable.

59. Given that combined refrigerator-freezers not fitted with separate external doors, such as the goods in issue, are clearly not covered, as such, by subheading Nos. 8418.21 and 8418.29 (which cover various kinds of refrigerators of a household type), subheading Nos. 8418.30 and 8418.40 (which cover various types of freezers), subheading No. 8418.50 (which covers furniture for storage and display, such as display counters, showcases and the like) or subheading No. 8418.61 (which covers certain heat pumps), the issue to be considered is whether they are covered, as such, by the only remaining subheading of heading No. 84.18, namely, subheading No. 8418.69, which covers other refrigerating or freezing equipment. In that event, on the basis of the foregoing analysis, the goods in issue are not classifiable in subheading No. 8418.21 through the *mutatis mutandis* application (pursuant to Rule 6 of the *General Rules*) of Note 3 to Section XVI.

Are the Good in Issue Classifiable in Subheading No. 8418.69?

60. The terms of subheading No. 8418.69 indicate that it covers "[o]ther" refrigerating or freezing equipment. As noted above, this makes it clear that it is intended to cover refrigerating or freezing equipment not falling within one of the subheadings that precedes it.

61. The evidence indicates that the goods in issue are appliances for household use which perform the functions of refrigerating and freezing food products. Therefore, they are "equipment"[56] that serves the purposes of refrigerating and freezing food products. With the Tribunal having already found that the goods in issue do not fall, as such, within the ambit of any of the subheadings that precede subheading No. 8418.69, the goods in issue would appear to meet the requirements of subheading No. 8418.69 as other refrigerating or freezing equipment.

62. The only remaining issue is whether subheading No. 8418.69 can cover goods that perform both a refrigerating and a freezing function. This issue arises because the terms of subheading No. 8418.69 read "[o]ther refrigerating *or* freezing equipment", rather than "[o]ther refrigerating *and* freezing equipment". In this regard, the Tribunal finds that the word "or", in the context of its usage in subheading No. 8418.69, is properly interpreted as a conjunctive that allows combined refrigerator-freezer equipment to be captured.

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55. In *Costco*, the Tribunal also noted that this view was confirmed by Part (VI) of the *Explanatory Notes* to Section XVI which provides as follows: "Note 3 to Section XVI **need not be invoked** when the composite machine is covered as such by a particular heading . . . ."

56. In *Rona Corporation Inc. v. President of the Canada Border Services Agency* (15 February 2011), AP-2009-072 (CITT) at para. 35, the Tribunal noted that the term "appliance" is defined as an ". . . electrical or gas-powered device or *piece of equipment* used for a specific task, esp. for domestic tasks such as washing dishes . . . ." [emphasis added]. As they are appliances used for domestic tasks, the goods in issue are therefore "equipment".

63. Indeed, using "or" in an inclusive sense, like using "and" in a joint and several sense, is grammatically correct and accords with both popular and legal usage.[57] Moreover, a broad and open-textured interpretation of subheading No. 8418.69 is permissible, since, by its own terms, it is a residual subheading which is intended to capture all refrigerating or freezing equipment not properly included in the other subheadings of heading No. 84.18. On that basis, and in the absence of an express indication to the contrary (for example, in the *Explanatory Notes*), the Tribunal sees no reason to interpret the terms "[o]ther refrigerating or freezing equipment" as limiting the scope of subheading No. 8418.69 to equipment that exclusively performs either a refrigerating function or a freezing function.

64. The French version of subheading No. 8418.69 also supports the conclusion that it covers multi-function machines that perform both functions. In French, subheading No. 8418.69 covers the following: "*Autres matériel, machines et appareils* ***pour la production du froid*** [bold added for emphasis] (other equipment, machines and apparatus for the production of cold). Thus, subheading No. 8418.69 is intended to cover equipment (other than equipment falling within one of the subheadings that precedes it) *for the production of cold*. By definition, cold is produced to a range of degrees by equipment that performs both refrigerating and freezing functions.[58] Accordingly, the Tribunal finds that subheading No. 8418.69 includes combined refrigerator-freezers whose configurations differ from those described in subheading No. 8418.10.

65. Therefore, the Tribunal finds that the goods in issue are covered as such by subheading No. 8418.69, which is a "*disposition contraire*" (provision to the contrary) under Note 3 to Section XVI, which provides for their classification as complete machines and precludes their classification as if they consisted only of the component that performs their principal function.[59]

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57. Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed., Markham: Lexis Nexis (2008), at 82. Professor Sullivan also notes that, in legislation, "or" tends to be used inclusively.

58. In this regard, section 13 of the *Official Languages Act*, R.S.C. 1985 (4th Supp.), c. 31, reaffirms that the French and English versions of any Act of Parliament are equally authoritative, thus allowing the Tribunal to examine both the English and French versions of the schedule to the *Customs Tariff*, in interpreting the tariff nomenclature. Indeed, the Tribunal has, on several previous occasions, consulted the French version of an enactment to clarify the interpretation of the English version of same, and with a view to confirming the scope of the enactment. See, for example, *BMC Coaters Inc. v. President of the Canada Border Services Agency* (6 December 2010), AP-2009-071 (CITT) at para. 51; *H. A. Kidd and Company Limited v. President of the Canada Border Services Agency* (1 September 2011), AP-2010-052 (CITT) at para. 76; *Canadian Tire Corporation Ltd. v. President of the Canada Border Services Agency* (23 November 2011), AP-2010-069 (CITT) at paras. 48, 53.

59. In any event, the Tribunal is not persuaded by the CBSA's argument that it is the refrigerator component which performs the principal function of the goods in issue. While the Tribunal accepts that the refrigerator component has a greater capacity and while combined refrigerator-freezer units are often simply described, for marketing purposes, as "refrigerators", this is not dispositive in the circumstances. As a matter of fact, the evidence indicates that "[a] fridge is designed to run at around about 5 degrees centigrade [while] . . . [a] freezer runs at an average of minus 18 . . .", *Transcript of Public Hearing*, 7 May 2013, at 48. Thus, the goods in issue respond to the storage temperature requirements of different foods. On that basis, the Tribunal finds that the refrigerator and freezer perform different functions, with neither being subordinate to the other in terms of its importance. In the Tribunal's view, Mr. Eglington's acknowledgement that it is difficult to find simple refrigerators on the market and the fact that, while they need an appliance that perform both functions, consumers typically do not have enough space in their residence to install both a refrigerator and a freezer support this conclusion. *Transcript of Public Hearing*, 7 May 2013, at 47-48, 62-63.

DECISION

66. For the foregoing reasons, the Tribunal concludes that the goods in issue should be classified in subheading No. 8418.69 and, more specifically, pursuant to Rule 1 of the *Canadian Rules*, under tariff item No. 8418.69.90 as other refrigerating or freezing equipment.

67. The appeal is therefore allowed.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member