



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal Nos. AP-2011-010 and
AP-2011-019

Commonwealth Wholesale Corp.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Monday, February 13, 2012*

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IN THE MATTER OF appeals heard on November 17, 2011, pursuant to subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF 59 decisions of the President of the Canada Border Services Agency, dated March 28, April 26, May 16 and May 24, 2011, with respect to requests for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

COMMONWEALTH WHOLESALE CORP.

Appellant

AND

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

Respondent

DECISION

The appeals are allowed.

Serge Fréchette
Serge Fréchette
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 17, 2011

Tribunal Member: Serge Fréchette, Presiding Member

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STATEMENT OF REASONS

BACKGROUND

1. These are appeals filed by Commonwealth Wholesale Corp. (Commonwealth Wholesale) with the Canadian International Trade Tribunal (the Tribunal) on May 19 and June 21, 2011, pursuant to subsection 67(1) of the *Customs Act*¹ from 59 decisions of the President of the Canada Border Services Agency (CBSA), dated March 28, April 26, May 16 and May 24, 2011, made pursuant to subsection 60(4).

2. The issue in these appeals is whether certain razor blade cartridges (the goods in issue) are properly classified under tariff item No. 8212.20.00 of the schedule to the *Customs Tariff*² as safety razor blades, including razor blade blanks in strips, as determined by the CBSA, or should be classified under tariff item No. 8212.90.00 as other parts of razors, as claimed by Commonwealth Wholesale.

PROCEDURAL HISTORY

3. Between March 28 and May 24, 2011, the CBSA issued 59 decisions pursuant to subsection 60(4) of the *Act* in which it classified the goods in issue under tariff item No. 8212.20.00.

4. Appeal No. AP-2011-010 was filed on May 19, 2011. Appeal No. AP-2011-019 was filed on June 21, 2011. On July 13, 2011, pursuant to rule 6.1 of the *Canadian International Trade Tribunal Rules*,³ the Tribunal decided to combine both proceedings.

5. On November 17, 2011, the Tribunal held a public hearing in Ottawa, Ontario.

6. Commonwealth Wholesale called as a witness Mr. Brad Young, Executive Vice-President, Secretary and Treasurer, Commonwealth Wholesale. No witnesses were called by the CBSA.

GOODS IN ISSUE

7. The goods in issue are packages of five Gillette[®] Mach3[®] razor blade cartridges for retail sale, designed to be used with Gillette[®] Mach3[®] razor handles. The goods in issue were imported without razor handles.

8. Commonwealth Wholesale filed the following nine physical exhibits:

- A-01—GEM[®] by Personna[®] package of 10 single edge super stainless steel blades with used blade vault
- A-02—Walgreens package of 10 Comfort* Coated[®] stainless steel double edge blades with blade holder or dispenser (old-fashioned double-edged blades)
- A-03—Gillette[®] SensorExcel[®] razor and 3 cartridges packaged together
- A-04—Gillette[®] Mach3[®] package of 3 disposable razors
- A-05—Gillette[®] Mach3[®] package of 5 cartridges only (goods in issue)
- A-06—Schick[®] Hydro 3 package of 4 cartridges only
- A-07—BIC[®] package of 12 Sensitive shavers
- A-08—Hoffritz NY steel razor with safety razor blade (original safety razor)
- A-09—Gillette[®] Fusion[®] ProGlide[™] package with razor handle, cartridge and battery

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

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

3. S.O.R./91-499.

STATUTORY FRAMEWORK

9. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization.⁴ The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

10. Subsection 10(1) of the *Customs Tariff* provides that “. . . the classification of imported goods under a tariff item 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.”

11. The *General Rules* comprise six rules structured in sequence so that, if the classification of the goods cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, and so on, until classification is completed.⁷

12. Rule 1 of the *General Rules* provides as follows:

1. . . . 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 following provisions.

13. Section 11 of the *Customs Tariff* provides that, in interpreting headings and subheadings, regard shall be had to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*.⁸ While the *Explanatory Notes* are not binding on the Tribunal in its classification of imported goods, the Tribunal will apply them, unless there is a sound reason to do otherwise.⁹

14. Once this approach has been used to determine the heading in which the goods in issue should be classified, the next step is to determine the proper subheading by applying Rule 6 of the *General Rules*.¹⁰ The final step is to determine the tariff item by applying Rule 1 of the *Canadian Rules*.¹¹

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

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

6. S.C. 1997, c. 36, schedule.

7. Rules 1 through 5 of the *General Rules* apply to classification at the heading level (i.e. to four digits). Pursuant to Rule 6 of the *General Rules*, Rules 1 through 5 apply to classification at the subheading level (i.e. to six digits). Similarly, the *Canadian Rules* make Rules 1 through 5 of the *General Rules* applicable to classification at the tariff item level (i.e. to eight digits).

8. World Customs Organization, 4th ed., Brussels, 2007 [*Explanatory Notes*]. Section 11 of the *Customs Tariff* also specifies that regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*, World Customs Organization, 2d ed., Brussels, 2003.

9. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17.

10. 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, 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.”

11. Rule 1 of the *Canadian Rules* provides that the tariff item shall be identified according to the terms of the tariff item and any related supplementary notes and, *mutatis mutandis*, to the *General Rules*, for example, by reading the word “heading” in Rule 1 of the *General Rules* as “tariff item”.

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

...

82.12	Razors and razor blades (including razor blade blanks in strips).
8212.10.00	-Razors
8212.20.00	-Safety razor blades, including razor blade blanks in strips
8212.90.00	-Other parts

16. The relevant *Explanatory Notes* to Section XV provide as follows:

Section XV

BASE METALS AND ARTICLES OF BASE METAL

...

(C) **PARTS OF ARTICLES**

In general, identifiable parts of articles are classified as such parts in their appropriate headings in the Nomenclature.

17. The relevant *Explanatory Notes* to heading No. 82.12 provide as follows:

This heading covers:

- (1) **Open blade razors**, including separately presented **blades** (finished or not), and separately presented base metal **handles**.
- (2) **Safety razors, and their base metal parts and blades**, finished or not.
- (3) **Plastic safety razors** presented with their blades.

The heading also covers **non-electric dry shavers** and blades, cutting plates and heads for non-electric razors.

Blanks of safety razor blades are also included in the heading when in the form of lengths of strip steel, tempered or not, **provided** they have been perforated ready for the manufacture of safety razor blades, or the outline of the blade has been incised allowing separation by slight pressure.

The heading **excludes**:

- (a) Plastic safety razors presented without their blades (**heading 39.24**).
- (b) Electric razors and heads, blades and cutting plates of such razors (**heading 85.10**).

ANALYSIS

18. The sole issue in this appeal is whether the goods in issue are properly classified as safety razor blades within the meaning of that term as found in tariff item No. 8212.20.00, as argued by the CBSA, or if they should be classified under tariff item No. 8212.90.00 as other parts of razors, as argued by Commonwealth Wholesale. The parties submitted, and the Tribunal agrees, that only Rule 1 of the *General Rules* and Rule 1 of the *Canadian Rules* are applicable to this matter.

19. According to Commonwealth Wholesale, the term “safety razor blades”, as used in tariff item No. 8212.20.00, designates exclusively the old-fashioned double-edged blades, such as those identified as exhibit A-02.¹² According to Commonwealth Wholesale, such old-fashioned double-edged blades are for use in an original safety razor, such as the one identified as exhibit A-08.¹³ Accordingly, Commonwealth Wholesale argued that the goods in issue are different from the safety razor blades described in tariff item No. 8212.20.00.¹⁴ Indeed, Commonwealth Wholesale submitted that the goods in issue are an evolution of the cartridge-type product that began entering the marketplace in the early 1970s.¹⁵

20. For its part, the CBSA submitted that the goods in issue are sold as replacement razor blades for the Gillette® Mach3® and are referred to in the industry as “safety razor blade units” or generally known as “safety razor blades”.¹⁶ The CBSA relied on dictionary definitions of the terms “safety razor” and “blade”.¹⁷ The CBSA pointed to patent applications filed by the Gillette Company where it used the term “safety razor blade units” to describe the goods in issue.¹⁸

21. The Tribunal heard various representations as to what constitutes a “safety razor” but notes that that term is not used on its own in the schedule to the *Customs Tariff*, only with the word “blades”. Accordingly, it is noteworthy that the schedule to the *Customs Tariff* does not provide for the classification of safety razors. In fact it only provides for the classification of “razors”, on the one hand, and of “[s]afety razor blades” [emphasis added] on the other, and finally of “[o]ther parts”. Indeed, tariff item No. 8212.10.00 makes no distinction between razors; accordingly, all razors, including so-called safety razors, would be classified under that tariff item.

22. The Tribunal is of the view that the submissions made by the CBSA with respect to various patent applications are not determinative of what the goods in issue are, for the purposes of tariff classification. At best, the Tribunal understands from those documents that the term “safety razor blade units” refers to blade units for safety razors. Nowhere in those documents is it stated that the goods in issue would be units made up of safety razor blades. Rather, the term “safety razor blade” used on its own (i.e. without the words “units” or “cartridges”) seems never to appear in those documents. Instead, those documents, on occasion, refer simply to “blade units” (i.e. without the term “safety razor” preceding them). The foregoing supports the view that the goods in issue are blade units that are distinct goods from those that are known as “safety razor blades”.

12. *Transcript of Public Hearing*, 17 November 2011, at 11, 12.

13. *Transcript of Public Hearing*, 17 November 2011, at 11-13.

14. Tribunal Exhibit AP-2011-010-04A at para. 7. See also Tribunal Exhibit AP-2011-010-09A, tabs 16, 17.

15. *Transcript of Public Hearing*, 17 November 2011, at 15.

16. Tribunal Exhibit AP-2011-010-06A at para 2.

17. The *Merriam-Webster's Collegiate Dictionary*, 11th ed., defines “safety razor” as “. . . a razor provided with a guard for the blade to prevent deep cuts in the skin”. The *Oxford English Dictionary*, 2d ed., defines “safety razor” as “a razor in which the blade is prevented by a guard from cutting the skin during shaving . . .”. The term “blade” is defined in the *Merriam-Webster's Collegiate Dictionary* as “. . . the cutting part of an implement . . .”. The *Oxford English Dictionary* defines “blade” as “[t]he thin cutting part of an edged tool or weapon, as distinguished from the handle.” Tribunal Exhibit AP-2011-010-06A at paras. 11-15.

18. Tribunal Exhibit AP-2011-010-06A at paras. 17, 18, tabs 6, 7, 8, 9, 10.

23. The Tribunal is of the view that too great a focus on the word “safety” in classifying the goods in issue can be unnecessarily confusing. To begin with, it is undeniable that there is a safety element built into the goods in issue. It is also true that the Gillette[®] Mach3[®] shaver (which is composed of (i) the goods in issue and (ii) a handle) may very well form a safety razor when examined as a whole. However, the Tribunal cannot simply infer that the cartridge component is a safety razor blade simply because it contributes (with the handle) to forming a safety razor, nor for that matter that all blades used with safety razors are necessarily safe.

24. In fact, the Tribunal notes that the old-fashioned double-edged blades (exhibit A-02), which are uncontestedly known in the industry as “safety razor blades”, have no inherent safety properties. Rather, they are bare pieces of metal with two sharp edges that, if manipulated or used incorrectly, are actually dangerous and arguably much more threatening than the goods in issue. As such, the term “safety razor blade” is a misnomer. However, neither party challenged the fact that such goods are undeniably safety razor blades. In fact, the Tribunal gathers that the only reason why the old-fashioned double-edged blades, such as those of exhibit A-02, are known as such is because they are used with a handle that comprises a screw mechanism that allows for the loading of an otherwise unsafe blade in such a manner that the razor, as a whole, can become as safe as possible and still remain functional, such as exhibit A-08.

25. The Tribunal is of the view that the focus must remain squarely on the goods in issue, which are not mere exposed razor blades, such as is the case with the safety razor blades of exhibit A-02, but rather blade units, cartridge units or shaving cartridges¹⁹ composed of various parts, such as a casing of plastic with strips of metal that each have a single sharp-blade edge.²⁰ The Tribunal notes as well that there are no safety razor blades in the goods in issue, but, again, only a number of single-edged sharp blades. As such, the Tribunal finds that the goods in issue are more than just blades and do not resemble the old-fashioned double-edged blades, such as those of exhibit A-02.

26. The Tribunal is of the view that tariff item No. 8212.20.00 is limited to (1) the old-fashioned double-edged blades, such as those of exhibit A-02, which are the (potentially dangerous) razor blades of the type to be used in the original safety razor typified by exhibit A-08, and (2) razor blade blanks in strips. The *Explanatory Notes* to heading No. 82.12 provide that “razor blade blanks in strips” are nothing more than sheets of old-fashioned double-edged blades, such as those of exhibit A-02, that have yet to be separated from one another; in other words, their outline is there, and they may be broken off from the strip. In essence, they have yet to undergo final transformation, but they are already identifiable as double-edged safety razor blades.

27. The Tribunal notes that under tariff item No. 8212.20.00, Parliament has identified the very precise type of razor blade known as the “safety razor blade”, and refers only to the very precise upstream products to the safety razor blade known as “razor blade blanks in strips”. The Tribunal is of the view that had Parliament intended to include the goods in issue under that tariff item it would have included much more general and clear language to that effect. Ultimately, the schedule to the *Customs Tariff* does not provide a tariff item for safety razor “cartridges” or “blade units”, only for “safety razor blades”. Accordingly, the Tribunal finds that the terms of tariff item No. 8212.20.00 are not broad enough to comprise the same type of blade units or cartridge units as the goods in issue because they are goods altogether different from the simple safety razor blade.

19. *Transcript of Public Hearing*, 17 November 2011, at 21; Tribunal Exhibit AP-2011-010-06A, tab 6 at 35.

20. The goods in issue are composed of (i) blades, (ii) end caps, (iii) plastic devices to hold the blade in place, (iv) a plastic frame, (v) a plastic device which allows the head to pivot, (vi) a lubricating strip, etc. See Tribunal Exhibit AP-2011-06A at para. 21, tab A. *Transcript of Public Hearing*, 17 November 2011, at 51.

28. The evidence on file indicates that the goods in issue are especially committed for use with Gillette® Mach3® shavers and are essential to their function. As such, the Tribunal finds that the goods in issue should be classified under tariff item No. 8212.90.00 as other parts of razors.

DECISION

29. The appeals are allowed.

Serge Fréchette
Serge Fréchette
Presiding Member