



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2012-043

Global Hydraulic Solutions Inc.

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Friday, June 14, 2013*

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IN THE MATTER OF an appeal heard on June 11, 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 August 22, 2012, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**GLOBAL HYDRAULIC SOLUTIONS INC.**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is dismissed.

Daniel Petit  
Daniel Petit  
Presiding Member

Dominique Laporte  
Dominique Laporte  
Secretary

Place of Hearing: Ottawa, Ontario  
Date of Hearing: June 11, 2013

Tribunal Member: Daniel Petit, Presiding Member

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Registrar Officer: Rosemary Hong

**PARTICIPANTS:****Appellant**

Global Hydraulic Solutions Inc.

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## STATEMENT OF REASONS

### BACKGROUND

1. This is an appeal filed by Global Hydraulic Solutions Inc. (Global) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision, made on August 22, 2012, by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4).

2. The issue in this appeal is whether duty-free treatment under tariff item No. 9953.00.00 of the schedule to the *Customs Tariff*<sup>2</sup> should be applied to the hydraulic fittings and hoses imported by Global and whether the Tribunal's interpretation of tariff item No. 9953.00.00 in *Wolseley Engineered Pipe Group v. President of the Canada Border Services Agency*<sup>3</sup> should be applied in this case.

### PROCEDURAL HISTORY

3. The hydraulic hoses were imported by Global between August and November 2008 under tariff item No. 4009.21.00, while the hydraulic fittings were imported under tariff item No. 7307.99.99 (collectively, the goods in issue). At the time of importation, Global paid duties on the goods at issue.

4. On March 16 and 24, 2011, Global applied for a refund of the duties paid on the goods in issue, pursuant to section 74 of the *Act*, on the grounds that the goods in issue were eligible for duty-free treatment under tariff item No. 9953.00.00.

5. Pursuant to section 59 of the *Act*, between August 22, 2011, and March 13, 2012, the CBSA denied Global's request. The CBSA based this denial on the Federal Court of Appeal's decision in *Wolseley Engineered Pipe Group v. Canada Border Services Agency*,<sup>4</sup> in which the Federal Court of Appeal overturned the Tribunal's previous decision in *Wolseley*. Specifically, the Federal Court of Appeal held that tariff item No. 9953.00.00 was only applicable to goods that were "... for use in the manufacture of road graders or road scrapers."

6. On November 18, 2011, and May 10, 2012, Global filed requests for further re-determinations pursuant to subsection 60(1) of the *Act*, on the grounds that tariff item No. 9953.00.00 should apply to the goods in issue.

7. On August 22, 2012, pursuant to subsection 60(4) of the *Act*, the CBSA affirmed its previous decision that the goods in issue were not eligible for duty-free treatment under tariff item No. 9953.00.00 and reiterated that the goods in issue do not meet the requirements of that tariff item, as set out in the Federal Court of Appeal's decision in the *Wolseley appeal*.

8. Pursuant to section 67 of the *Act*, Global filed the present appeal on November 12, 2012.

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

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

3. (11 March 2010), AP-2009-10 (CITT) [*Wolseley*].

4. 2011 FCA 138 (CanLII) [*Wolseley appeal*].

## ANALYSIS

### Relevant Legislative Provisions

9. The relevant provision of the *Customs Tariff*, which Global claims should apply to the goods in issue, provides as follows:

**Section XXI**  
**WORKS OF ART, COLLECTORS' PIECES AND ANTIQUES**  
**CHAPTER 99**  
**SPECIAL CLASSIFICATION PROVISIONS - COMMERCIAL**

...

**9953.00.00**      **Hydraulic equipment and articles for use therein;**  
**Articles for use in compression-ignition internal combustion piston engines**  
**(diesel or semi-diesel engines);**  
**All the foregoing for use in the manufacture of road graders or road**  
**scrapers.**

### Positions of the Parties

#### Global

10. Global argues that the goods in issue meet the same definition as the goods which were the subject of the Tribunal's decision in *Wolseley*.<sup>5</sup> As the Tribunal applied tariff item No. 9953.00.00 to the goods in *Wolseley*, Global submits that the duty-free provisions of tariff item No. 9953.00.00 should also be applied to the goods in issue.

11. Global acknowledges that the Tribunal's findings with regard to the application of tariff item No. 9953.00.00 in *Wolseley* were subsequently overturned by the Federal Court of Appeal. However, Global asserts that the Federal Court of Appeal was wrong to overturn the Tribunal's tariff interpretation in *Wolseley*. Global therefore contends that the Tribunal should affirm its original interpretation of tariff item No. 9953.00.00 and apply the duty-free treatment to the goods in issue.

#### CBSA

12. The CBSA states that it properly followed the Federal Court of Appeal's interpretation of the application of tariff item No. 9953.00.00. Furthermore, the CBSA argues that the Tribunal is bound by the decision of the Federal Court of Appeal in this matter.<sup>6</sup> Thus, the CBSA maintains that it was correct in concluding that the goods in issue were not eligible for duty-free treatment by way of tariff item No. 9953.00.00.

### Decision of the Federal Court of Appeal

13. The issue of how to interpret the application of tariff item No. 9953.00.00 was decided by the Federal Court of Appeal in the *Wolseley appeal*. In particular, the Federal Court of Appeal concluded that

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5. Tribunal Exhibit AP-2012-043-05A at para. 7.

6. Tribunal Exhibit AP-2012-043-07A at para. 34.

tariff item No. 9953.00.00 was only applicable to hydraulic equipment that is “. . . for use in the manufacture of road graders or road scrapers.”<sup>7</sup>

14. Global has acknowledged that the goods in issue meet the definition of the goods that were subject to the *Wolseley appeal*. Furthermore, Global has conceded that the goods in issue are not “. . . for use in the manufacture of road graders or road scrapers.”<sup>8</sup> As such, the goods in issue do not meet the criteria set out by the Federal Court of Appeal in the *Wolseley appeal* to qualify for the application of duty-free treatment under tariff item No. 9953.00.00.

15. Having regard to the decision of the Federal Court of Appeal in the *Wolseley appeal*, the Tribunal concludes that the duty-free treatment under tariff item No. 9953.00.00 does not apply to the goods in issue.

## DECISION

16. The appeal is dismissed.

Daniel Petit  
Daniel Petit  
Presiding Member

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7. *Wolseley appeal* at para. 18.

8. Tribunal Exhibit AP-2012-043-09A at para. 4.