



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2006-041

Canadian Tire Corporation Limited

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Thursday, November 29, 2007*

**TABLE OF CONTENTS**

DECISION.....i  
STATEMENT OF REASONS .....1  
    BACKGROUND.....1  
    LAW .....1  
    ANALYSIS .....2  
        “Machine” and “Mechanical Appliance” .....4  
    DECISION .....5

IN THE MATTER OF an appeal heard on September 13, 2007, under subsection 67(1) 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 September 26, 2006, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

**BETWEEN**

**CANADIAN TIRE CORPORATION LIMITED**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is dismissed.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

Place of Hearing: Ottawa, Ontario  
Date of Hearing: September 13, 2007

Tribunal Member: Pierre Gosselin, Presiding Member

Counsel for the Tribunal: Dominique Laporte

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## STATEMENT OF REASONS

### BACKGROUND

1. This is an appeal pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision of the President of the Canada Border Services Agency (CBSA), dated September 26, 2006, under subsection 60(4) of the *Act*.

2. On or about September 30, 2005, the CBSA issued an advance ruling requested by Canadian Tire Corporation Limited (Canadian Tire) on June 23, 2005, classifying stainless steel step cans (the goods in issue) under tariff item No. 7323.93.00 of the schedule to the *Customs Tariff*<sup>2</sup> as other household articles of iron or steel.

3. On December 5, 2005, Canadian Tire requested a review of the advance ruling pursuant to subsection 60(2) of the *Act*. On September 26, 2006, the CBSA confirmed the original advance ruling.

4. On December 11, 2006, Canadian Tire filed an appeal with the Tribunal, pursuant to section 67 of the *Act*.

5. The issue in this appeal is whether the goods in issue should be classified under tariff item No. 8479.89.99 as mechanical appliances, as claimed by Canadian Tire, or are properly classified under tariff item No. 7323.93.00 as household articles of iron or steel, as determined by the CBSA.

6. Canadian Tire filed two sizes of the goods in issue as a physical exhibits. The goods are described as follows:

- They have a stainless steel exterior.
- They are equipped with mechanisms which are used to open them and allow for hands-free operation.
- They have plastic pails with handles for emptying garbage.
- According to the sales literature, they have tops that close tightly to control odours.

### LAW

7. On appeals under section 67 of the *Act* concerning tariff classification matters, the Tribunal determines the proper classification of the goods in accordance with the prescribed interpretation rules.

8. Subsection 10(1) of the *Customs Tariff* reads as follows: “Subject to subsection (2), 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 and the Canadian Rules set out in the schedule.”

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

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

9. Section 11 of the *Customs Tariff* states as follows: “In interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,<sup>[3]</sup> published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time.”

10. The *General Rules for the Interpretation of the Harmonized System*<sup>4</sup> are six rules structured in cascading form 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.

11. Rules 1 through 5 of the *General Rules* apply to the classification at the heading level. Rule 6 of the *General Rules* makes these rules also applicable for the classification at the subheading level. Similarly, the *Canadian Rules*<sup>5</sup> make Rules 1 through 5 of the *General Rules* applicable for the classification at the tariff item level.

12. Rule 1 of the *General Rules* reads as follows: “. . . for legal purposes, 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.”

## ANALYSIS

13. The competing tariff items are:

...

**73.23**            **Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel.**

...

**7323.93.00**    **-- Of stainless steel**

...

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

...

8479.89.99    --- -Other

...

14. The issue in this appeal is whether the goods in issue are machines or mechanical appliances. Note (f) to Section XV of the *Customs Tariff* (under which Chapter 73 falls) specifically excludes articles of Section XVI (machinery, mechanical appliances and electrical equipment). Accordingly, given that the classification sought by Canadian Tire (heading No. 84.79) falls under Section XVI, the Tribunal needs only to have recourse to Rule 1 of the *General Rules* to classify the goods in issue. In the event that the goods meet the definition of those terms, they would be classified in Chapter 84 of Section XVI and, thus, excluded from Chapter 73.

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3. World Customs Organization, 4th ed., Brussels, 2007 [*Explanatory Notes*].

4. *Supra* note 2, schedule [*General Rules*].

5. *Supra* note 2, schedule.

15. In addition, Supplementary Note 1 to Section XVI of the *Customs Tariff* reads as follows:

In this Section the term “mechanically operated” refers to those goods which are comprised of a more or less complex combination of moving and stationary parts *and do work* through the production, modification or transmission of force and motion.

[Emphasis added]

16. Mr. Mario Vasiliu, an engineer licensed with the Professional Engineers of Ontario, appeared on behalf of Canadian Tire and was qualified by the Tribunal as an expert in the field of mechanical engineering and, more precisely, regarding what constitutes a “machine” and a “mechanical appliance”. He testified that the goods in issue contain a mechanism consisting of three levers and a push rod which transmits the force exerted on the pedal to lift the lid of the can. According to Mr. Vasiliu, this constitutes work.

17. Mr. David Thibodeau, registered as a professional engineer in the Province of Ontario, appeared on behalf of the CBSA. He was qualified by the Tribunal as an expert in the field of machine design and analysis. He submitted that, for a mechanical device to perform “useful work”, it must act on an external body.

18. Mr. Thibodeau relied on an engineering dictionary definition of “work” to conclude that the force applied by the machine must be on an external body. Mr. Thibodeau testified that the application of force to itself does not result in work and that, therefore, the goods in issue, even though they contain a mechanism, are not machines.

19. Mr. Vasiliu did not accept the requirement for the force to be applied on an external body and relied essentially on the definition in Supplementary Note 1 to Section XVI of the *Customs Tariff*, which is cited above.<sup>6</sup>

20. According to Mr. Vasiliu, the goods in issue contain a mechanism that converts the force applied to the pedal to lift the lid of the can.

21. In addition, Mr. Vasiliu provided the following definitions of “lever”:<sup>7</sup>

1. Rigid bar used for leverage: a rigid bar that pivots about a point (fulcrum) and is used to move or lift a load at one end by applying force to the other end
2. Device or machine: a mechanical device or machine that operates using leverage

22. According to Mr. Vasiliu, these definitions demonstrate that the simplest of machines, the lever, acts on an external body.

23. Mr. Vasiliu also stated that the goods in issue were mechanical appliances. There was no dispute among the experts that the goods in issue *contained* a mechanical device. Canadian Tire gave the following definitions of “appliance”: “an instrument or device for a particular use or function” and “a piece of equipment for adapting a tool or machine to a special purpose”.<sup>8</sup>

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6. *Transcript of Public Hearing*, 13 September 2007, at 15.

7. Encarta Encyclopedia 1993-2004, Microsoft Corporation, s.v. “lever”.

8. Merriam-Webster OnLine, s.v. “appliance”.

### “Machine” and “Mechanical Appliance”

24. The CBSA addressed the issue of “machine”, but did not address the issue of whether the goods in issue were mechanical appliances, although it noted that the case law interprets “machine” and “mechanical appliance” as analogous.

25. Canadian Tire provided the following definitions of “mechanical appliance”: “a piece of equipment for adapting a tool or machine for a special purpose” and “an instrument or device designed for a particular use or function.” To determine whether the goods in issue are mechanical appliances, the Tribunal also took into account Supplementary Note 1 to Section XVI of the *Customs Tariff*. The Tribunal also noted that this wording is similar to that of the definition of “machine”, which has been adopted by the Federal Court of Appeal.<sup>9</sup>

26. For purposes of its analysis, the Tribunal will therefore consider the terms “machine” and “mechanical appliance” to be interchangeable. The Tribunal is of the opinion that, in order to determine the proper classification of the goods in issue, it must look at the goods in their entirety. The question to be resolved by the Tribunal is whether the step can perform work and not whether some part of the step can act on some other part of the step can to do work. In the Tribunal’s view, this is supported by the wording of heading No. 84.79, which reads: “Machines and mechanical appliances **having individual functions . . .**”, the French version being “*Machines et appareils mécaniques ayant une fonction propre . . .*” [bold added for emphasis]. The phrase “having individual functions” and its French equivalent clearly indicate that it is the goods in their entirety that must perform a function on their own, as opposed to part of them.

27. Accordingly, the Tribunal has to determine if the goods in issue produce, modify or transmit force to an external body (i.e. the trash) and not only to the lid.

28. Mr. Thibodeau explained the concept of “useful work” and used the goods in issue as an example by stating that, if the goods in issue are defined as machines, there is no useful work because they are not acting upon the trash. If the foot pedal is defined as the machine, then it is clearly displacing the lid. Therefore, the foot pedal is a machine, but the goods in issue are the step cans as a whole.<sup>10</sup>

29. The goods in issue are designed to contain waste. Both parties agreed that the lid-lifting mechanism has no effect on the trash. No force is applied to the trash, and the trash is not displaced.<sup>11</sup>

30. Canadian Tire cited *Canadian Tire Corporation Ltd. v. Deputy M.N.R.*<sup>12</sup> to support its argument that simple devices can be classified in Chapter 84 as machines and mechanical appliances. In that case, the goods were plastic hose reel carts. The Tribunal noted that a simple device, the manually operated hose reel, acted on an external body, the garden hose.

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9. See, for example, *Ingersoll-Rand Door Hardware Canada Inc. v. Deputy M.N.R.C.E.*, 15 C.E.R. 47 at 51 (F.C.A.).

10. *Transcript of Public Hearing*, 13 September 2007, at 35.

11. *Ibid.* at 35-36.

12. (12 October 1995), AP-94-157 (CITT).



31. In another case relied on by Canadian Tire, *Jascor Home Products Inc. v. Deputy M.N.R.*,<sup>13</sup> the goods were cream whippers. Again, the issue was whether the goods were mechanical appliances. The Tribunal in that case pointed out that the force applied to the valve to release a gas from the attached cylinder acted on an external body, the cream, and resulted in whipped cream.

32. Canadian Tire also cited, in support of its contention that the goods in issue fitted with a mechanical device were machines under Chapter 84, Note I) of the *Explanatory Notes* to heading No. 84.70, which reads as follows: “This group includes, for example: (1) Vats or other receptacles . . . fitted with mechanical devices (agitators, etc.) . . .” The Tribunal noted however that, in the example given, it is a receptacle fitted with an agitator, a device that acts on an external body.

## DECISION

33. For the foregoing reasons, the Tribunal concludes that the goods in issue are not machines or mechanical appliances. Accordingly, the Tribunal finds that the goods in issue are properly classified under tariff item No. 7323.93.00.

34. Consequently, the appeal is dismissed.

Pierre Gosselin  
\_\_\_\_\_  
Pierre Gosselin  
Presiding Member

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13. (3 December 1996), AP-95-277 (CITT).