



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2008-022

Globe Electric Company Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Friday, April 16, 2010*

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DECISION5

IN THE MATTER OF an appeal heard on February 2, 2010, pursuant to 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 October 30, 2008, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

GLOBE ELECTRIC COMPANY INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Ellen Fry
Ellen Fry
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: February 2, 2010
Tribunal Member: Ellen Fry, Presiding Member
Counsel for the Tribunal: Georges Bujold
Research Director: Randolph W. Heggart
Research Officer: Gary Rourke
Manager, Registrar Office: Michel Parent
Registrar Officer: Cheryl Unitt

PARTICIPANTS:

Appellant	Counsel/Representative
Globe Electric Company Inc.	Michael Sherbo
Respondent	Counsel/Representative
President of the Canada Border Services Agency	Agnieszka Zagorska

WITNESS:

Philip Miozzo
Category Manager
Globe Electric Company Inc.

Please address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: secretary@citt-tcce.gc.ca

STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Globe Electric Company Inc. (Globe) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ from a decision made on October 30, 2008, by the President of the Canada Border Services Agency (CBSA) pursuant to subsection 60(4), affirming an advance ruling on tariff classification made pursuant to paragraph 43.1(1)(c).

2. The issue in this appeal is whether 3-in-1 security lights, Model No. 24412 (the goods in issue), are properly classified under tariff item No. 9405.40.90 of the schedule to the *Customs Tariff*² as other electric lamps and lighting fittings, as determined by the CBSA, or should be classified under tariff item No. 8513.10.10 as flashlights, as submitted by Globe.

PROCEDURAL HISTORY

3. On March 21, 2007, Globe requested an advance ruling on the tariff classification of the goods in issue. On May 18, 2007, the CBSA issued a decision that the goods in issue were classifiable under tariff item No. 9405.40.90 as other electric lamps and lighting fittings.

4. On July 20, 2007, Globe requested a review of the advance ruling³ pursuant to subsection 60(2) of the *Act*.

5. On October 30, 2008, the CBSA made a determination pursuant to subsection 60(4) of the *Act* upholding its May 18, 2007, decision.

6. On January 23, 2009, pursuant to subsection 67(1) of the *Act*, Globe appealed the CBSA's decision to the Tribunal.

7. The Tribunal held a public hearing in Ottawa, Ontario, on February 2, 2010.

8. Mr. Philip Miozzo, Category Manager for Globe, testified on behalf of Globe.

GOODS IN ISSUE

9. The goods in issue are lightweight, circular-shaped electric lights with a retractable plug, equipped with a rechargeable battery. The goods in issue have three different functions. First, they can be used as night lights, plugged into a wall outlet and automatically turned on at dusk and off at dawn. Second, they can serve as security lights, providing light for a period of time by means of the rechargeable battery when no power is sensed in the outlet. Third, they can be used as portable lights when pulled out from the wall outlet, using the power from the rechargeable battery.⁴

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

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

3. Appellant's brief, tab 7.

4. *Transcript of Public Hearing*, 2 February 2010, at 6-7.

ANALYSIS

Law

10. In appeals pursuant to section 67 of the *Act* concerning tariff classification matters, the Tribunal determines the proper tariff classification of the goods in issue in accordance with prescribed interpretative rules.

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 developed by the World Customs Organization.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. Sections and chapters may include notes concerning their interpretation. Sections 10 and 11 of the *Customs Tariff* prescribe the approach that the Tribunal must follow when interpreting the schedule in order to arrive at the proper tariff classification of goods.

12. Subsection 10(1) of the *Customs Tariff* provides as follows: “. . . 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^[6] and the Canadian Rules^[7] set out in the schedule.”

13. 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.⁸

14. Section 11 of the *Customs Tariff* provides 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^[9] and the Explanatory Notes to the Harmonized Commodity Description and Coding System,^[10] published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time.” Accordingly, unlike chapter and section notes, the *Explanatory Notes* are not binding on the Tribunal in its classification of imported goods. However, the Federal Court of Appeal has stated that these notes should be respected, unless there is a sound reason to do otherwise, as they serve as an interpretative guide to tariff classification in Canada.¹¹

15. Section 13 of the *Official Languages Act*¹² provides that the English and French versions of any act of Parliament are equally authoritative.

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. Rules 1 through 5 of the *General Rules* apply to classification at the heading level (i.e. to four digits). Under 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).

9. World Customs Organization, 2d ed., Brussels, 2003.

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

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

12. R.S.C. 1985 (4th Supp.), c. 31.

16. Classification begins with Rule 1 of the *General Rules*, which reads as follows:

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; 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.

Thus, the Tribunal must first determine in which tariff heading the goods in issue can be classified according to the terms of the headings and any relevant section or chapter notes in the *Customs Tariff*.

Tariff Classification Issues

17. Heading No. 85.13 reads as follows:

Portable electric lamps designed to function by their own source of energy (for example, dry batteries, accumulators, magnetos), other than lighting equipment of heading 85.12.

18. The *Explanatory Notes* to heading No. 85.13 provide as follows:

The term “portable lamps” refers **only** to those lamps . . . which are designed for use when carried in the hand or on the person . . . They usually have a handle or a fastening device and may be recognised by their particular shapes and their light weight. The term therefore **excludes** . . . lamps which are connected to a fixed installation (**heading 94.05**).

19. Heading No. 94.05 reads as follows:

Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included

20. The *Explanatory Notes* to heading No. 94.05 provide as follows:

This heading covers in particular:

- (1) **Lamps . . . normally used for the illumination of rooms**, e.g.: hanging lamps; bowl lamps; ceiling lamps; chandeliers; wall lamps; standard lamps; table lamps; bedside lamps; desk lamps; *night lamps*; water-tight lamps.

[Emphasis added]

21. Globe submitted that the goods in issue fall within the scope of heading No. 85.13 because they are portable electric lamps, designed to function using their own source of energy. In its view, the goods in issue, because they are equipped with a rechargeable internal battery, composed of lightweight material, and shaped to be comfortable when carried in the hand, also meet the conditions set out in the *Explanatory Notes* to heading No. 85.13. Globe further submitted that the fact that the goods in issue have features that allow them to be used as security lights or night lights does not change the fact that they conform to the requirements of tariff item No. 8513.10.10.

22. The CBSA submitted that the goods in issue are night lamps, fitted with a two-prong plug to be connected to an electrical outlet. Because an electrical outlet is a fixed installation, the CBSA submitted that the goods in issue are excluded from classification in heading No. 85.13 by the *Explanatory Notes* to that heading.

23. As indicated above, the goods in issue perform three functions. A card placed inside the product packaging by Globe lists the three functions in the following order: night light, security light and flashlight.¹³ Mr. Miozzo described the goods in issue as “. . . a night light, a power failure light and a flashlight, all in one.”¹⁴ However, Globe’s Web site shows the goods in issue under the category of “night lights”. It does not show the goods in issue either under the category of “portables” or the category of “security lighting”.¹⁵ When asked about the categorization on Globe’s Web site, Mr. Miozzo confirmed that this product “. . . falls under the category of night lights at Globe Electric”¹⁶

24. When the goods in issue are functioning as night lights, they are plugged into a wall outlet and automatically turn on when it is dark and turn off when it is light. According to Globe’s product literature, the goods in issue are capable of performing for 100,000 hours in this function.¹⁷

25. When the goods in issue are functioning as security lights, they use power from the battery to operate when the power goes out. According to Globe’s product literature, the goods in issue are capable of functioning for up to 60 minutes when the battery is fully charged.¹⁸

26. When the goods in issue are functioning as flashlights, they are carried rather than plugged into a wall outlet and use the power from the rechargeable battery. According to Mr. Miozzo’s testimony, the goods in issue are capable of functioning as flashlights for one to two hours. The light is round and lightweight, but, in terms of its shape and the fact that it has a folding plug, does not have the type of physical design that is normally associated with a flashlight.

27. In summary, the evidence indicates that, although the goods in issue technically have three functions, Globe views the goods in issue as night lights and markets them as such.¹⁹ This approach is consistent with the fact that the performance capability of the goods in issue as flashlights or security lights is very minor in comparison to their capability as night lights.

Conclusion

28. Accordingly, the Tribunal concludes that the goods in issue are night lights, not flashlights or security lights.

29. It is clear from the *Explanatory Notes* to heading No. 94.05 that this heading is intended to cover night lights. Therefore, the Tribunal considers that the goods in issue are properly classified under tariff item No. 9405.40.90 as other electric lamps.

13. *Transcript of Public Hearing*, 2 February 2010, at 9; respondent’s book of authorities, tab 2.

14. *Transcript of Public Hearing*, 2 February 2010, at 6.

15. Respondent’s book of authorities, Volume II, tab 3, at 9-11.

16. *Transcript of Public Hearing*, 2 February 2010, at 15.

17. Appellant’s brief, tab 1.

18. *Ibid.*; *Transcript of Public Hearing*, 2 February 2010, at 7. While Mr. Miozzo testified that the goods in issue would function for at least two hours during a power failure, the Tribunal finds the difference between the functioning time indicated in the product literature and the testimony of the witness to be negligible.

19. <http://www.globe-electric.com/pr/en/ni.html>.

DECISION

30. The appeal is therefore dismissed.

Ellen Fry
Ellen Fry
Presiding Member