



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2008-012R

P.L. Light Systems Canada Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Friday, November 4, 2011*

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IN THE MATTER OF an appeal heard on June 16, 2009, pursuant to subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a judgment of the Federal Court of Appeal, dated September 9, 2010, which set aside the decision of the Canadian International Trade Tribunal in Appeal No. AP-2008-012, dated September 16, 2009, and remitted the matter to the Canadian International Trade Tribunal.

BETWEEN

P.L. LIGHT SYSTEMS CANADA INC.

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Serge Fréchette
Serge Fréchette
Presiding Member

Diane Vincent
Diane Vincent
Member

Jason W. Downey
Jason W. Downey
Member

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STATEMENT OF REASONS

1. The Canadian International Trade Tribunal (the Tribunal), further to a judgment of the Federal Court of Appeal (the Court) dated September 9, 2010, which remanded the Tribunal's decision in *P.L. Light Systems Canada Inc. v. President of the Canada Border Services Agency*,¹ has re-determined this appeal in conformity with following directions of the Court:

... on the evidential record already before it, the [Tribunal] must base its decision on its answers to the following questions:

1. Are integrated climate and environmental control systems for greenhouses "agricultural or horticultural machines of heading 84.36"?
2. If integrated greenhouse systems are "agricultural or horticultural machines of heading 84.36", are the aluminum reflectors (the goods in issue in this case) "articles for use in" or "articles that enter into the cost of manufacture of" integrated systems for the purpose of heading 9903.00.00, on the ground that they are attached to lighting fixtures which are used in integrated systems?

BACKGROUND

2. The issue in the original appeal was whether aluminum reflectors attached to lighting fixtures used to provide supplementary lighting for integrated greenhouse systems (the reflectors), in addition to being classified under tariff item No. 9405.99.00 of the schedule to the *Customs Tariff*² as parts of lighting fixtures, should be classified under tariff item No. 9903.00.00 as articles that enter into the cost of manufacture or repair of, or articles for use in, agricultural or horticultural machines of heading No. 84.36 and thereby benefit from duty-free treatment, as claimed by P.L. Light Systems Canada Ltd. (P.L. Light Systems).

3. The Tribunal found that the reflectors were articles for use in agricultural or horticultural machines of heading 84.36 and allowed the appeal.

4. The President of the Canada Border Services Agency (CBSA) appealed the Tribunal's decision to the Court. The CBSA argued that the Tribunal erred in law when it implicitly classified the lighting fixtures in heading No. 94.05 by classifying the reflectors under tariff item No. 9405.99.90 as parts of lighting fixtures. It went on to hold that the lighting fixtures, rather than the integrated greenhouse systems, were "[a]gricultural or horticultural machines of heading 84.36" for the purpose of tariff item No. 9903.00.00.

5. P.L. Light Systems invited the Court to allow the appeal and remit the matter to the Tribunal with a direction that the Tribunal address P.L. Light System's argument that the reflectors are entitled to the benefit of duty-free treatment under tariff item No. 9903.00.00 because they are affixed to lighting fixtures that are for use in integrated systems which, pursuant to the Tribunal's decision in *Prins Greenhouses Ltd. v. Deputy M.N.R.*,³ are classified as agricultural machines of heading No. 84.36.

6. On September 9, 2010, the Court allowed the appeal, set aside the Tribunal's decision and remitted the matter back to the Tribunal with the direction that it be re-determined on the basis advanced before the Court by P.L. Light Systems.

1. (16 September 2009), AP-2008-012 (CITT).

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

3. (9 April 2001), AP-99-045 (CITT) [*Prins Greenhouses*].

7. On October 22, 2010, upon the Tribunal's invitation, each party filed written argument with the Tribunal.

ANALYSIS

Legal Framework

8. 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 Chapters 1 to 98 containing a list of goods categorized in a number of headings and subheadings and under tariff items.⁵ Chapter 99, which includes tariff item No. 903.00.00, is divided into tariff items only.

9. When interpreting Chapter 99, the Tribunal must follow the approach prescribed in section 10 of the *Customs Tariff*.⁶ Specifically, 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 *Canadian Rules*⁷ and the *General Rules for the Interpretation of the Harmonized System*⁸.

10. Rule 1 of the *Canadian Rules* provides that the classification of goods under tariff items shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the *General Rules*.

11. The *General Rules* comprise six rules, which are structured in sequence so that, if the classification of the goods can be determined in accordance with Rule 1, then Rule 2, etc. shall be disregarded.⁹ Rule 1 provides as follows: "... for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes"

12. Note 4 to Chapter 99 provides that the words and expressions used in that chapter have the same meaning as in Chapters 1 to 97. Thus, the meaning that the Tribunal gives to the words and expressions used in heading No. 84.36, for example, apply to identical words and expressions used in tariff item No. 9903.00.00.

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

5. By way of section 13 of the *Official Languages Act*, R.S.C. 1985 (4th Supp.), c. 31, the English and French versions of the schedule to the *Customs Tariff* are equally authoritative.

6. Section 11 of the *Customs Tariff* relates to headings and subheadings and requires that regard 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*, of which there are none for Chapter 99, given that it is reserved for special classifications.

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

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

9. Rules 3 (a) and 6 of the *General Rules* are not applicable to Chapter 99 in any event. Note 1 to Chapter 99 provides that Rule 3 (a) is not applicable to the provisions that chapter. Rule 6 is not applicable because it deals with the classification of goods in the subheadings of a heading, of which there are none in Chapter 99.

13. The relevant portions of the schedule to the *Customs Tariff* provide as follows:

Chapter 84

**NUCLEAR REACTORS, BOILERS, MACHINERY
AND MECHANICAL APPLIANCES; PARTS THEREOF**

...

84.36 Other agricultural, horticultural, forestry, poultry-keeping or beekeeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders.

...

Chapter 99

SPECIAL CLASSIFICATION PROVISIONS – COMMERCIAL

...

9903.00.00 Articles and materials that enter into the cost of manufacture or repair of the following, and articles for use in the following:

...

Agricultural or horticultural machines of heading 84.36;

...

14. The Tribunal will now turn its attention to the Court's two questions.

Are integrated climate and environmental control systems for greenhouses agricultural or horticultural machines of heading No. 84.36?

15. The parties agree that integrated greenhouse systems are agricultural or horticultural machines of heading No. 84.36.

16. The Tribunal concurs with the parties. In *Prins Greenhouses*, the Tribunal held that integrated greenhouse systems of a type substantially similar to those discussed in the present appeal were agricultural or horticultural machines of heading No. 84.36.

17. Therefore, the Tribunal finds that integrated greenhouse systems are agricultural or horticultural machines of heading No. 84.36.

If integrated greenhouse systems are agricultural or horticultural machines of heading No. 84.36, are the aluminum reflectors (the goods in issue in this case) articles for use in or articles that enter into the cost of manufacture of integrated systems for the purpose of heading No. 9903.00.00, on the ground that they are attached to lighting fixtures which are used in integrated systems?

“Articles”

18. In the original appeal, the parties and the Tribunal agreed that the reflectors constituted “articles”. This finding was not appealed to the Court. Therefore, the reflectors are “articles”.

“For use in”

19. The crux of the case is whether the reflectors are “for use in” the integrated greenhouse systems, i.e. for use in agricultural or horticultural machines of heading No. 84.36.

20. Subsection 2(1) of the *Customs Tariff* defines the phrase “for use in” as follows:

“for use in”, wherever it appears in a tariff item, in respect of goods classified in the tariff item, means that the goods must be wrought or incorporated into, or attached to, other goods referred to in that tariff item.

It is well-established that this phrase means that the goods must be “. . . physically connected and functionally joined”¹⁰

21. As mentioned, P.L. Light Systems has taken the position that the reflectors are “for use in” integrated greenhouse systems because they are attached to lighting fixtures which are used in the integrated greenhouse system.

22. The CBSA’s position is that the reflectors are not “for use in” integrated greenhouse systems because, as parts of lighting fixtures of heading No. 94.05, they are attached to the lighting fixtures, not to the integrated greenhouse system, and that tariff item No. 9903.00.00 refers to “[a]gricultural or horticultural machines of heading 84.36” and not to “[a]gricultural or horticultural machines of heading 84.36” *and parts thereof*.

23. The Tribunal has previously held that an article may be physically connected to another article either directly or via a third item. For example, in *Kverneland Group North America Inc. v. President of the Canada Border Services Agency*,¹¹ the CBSA admitted, and the Tribunal found, that a hay bale wrapper was physically connected to a tractor via a hitch located on the rear of the tractor and obtained its power through a system of hoses, which were connected to the tractor.¹² The Tribunal’s decision in that case was upheld by the Court.¹³

24. The same logic applies to the present case. The evidence clearly discloses that the reflectors are physically connected to the integrated greenhouse system via the lighting fixtures, of which the reflectors are part, and electrical cables.¹⁴

25. Goods are functionally joined to the goods referred to in a tariff item (commonly referred to as “hosts”) when they enhance or complement the function of those other goods.¹⁵

10. See, for example, *Agri-Pack v. Commissioner of the Canada Customs and Revenue Agency* (2 November 2004), AP-2003-010 (CITT) at para. 31; *Jam Industries Ltd. v. Canada (Border Services Agency)*, 2007 FCA 210 (CanLII).

11. (30 April 2010), AP-2009-013 (CITT) [*Kverneland*].

12. Similarly, in *Jam Industries Ltd. v. President of the Canada Border Services Agency* (20 March 2006), AP-2005-006 (CITT) [*Jam Industries*] at paras. 9, 42-45, keyboard synthesizers were physically connected to computers through the use of Musical Instrument Digital Interface cables or connection via a PC interface, though they were not functionally joined.

13. *Kverneland Group North America Inc. v. Canada (Border Services Agency)*, 2011 FCA 109 (CanLII).

14. *Transcript of Public Hearing*, 16 June 2009, at 12, 15, 24-25, 122; Tribunal Exhibit AP-2008-012-05A at 69.

15. See, for example, *Kverneland* and *Jam Industries*.

26. In the present case, the evidence clearly discloses that the reflectors enhance or complement the function of the integrated greenhouse system. The function of the integrated greenhouse system is to provide a controlled environment for optimal plant growth.¹⁶ The reflectors are designed for use in integrated greenhouse systems to help with this function.¹⁷ Through an electronic control mechanism, the reflectors, together with the light fixtures, enhance the controlled growing environment by supplementing and directing the light inside it and thereby speeding the growth of the plants, significantly strengthening their roots, improving crop quality, and increasing crop yield.¹⁸ Working in tandem, the lights and reflectors can increase the yield of certain plants twofold or threefold.¹⁹ In winter, artificial lighting provides half of the total radiation that the plants receive.²⁰ Thus, artificial lighting is a “crucial” and “leading” element of the integrated greenhouse system.²¹ The reflectors’ contribution to this crucial element, in and of itself, is significant; the reflectors increase the efficiency of the artificial lights by 50 percent.²² For some crops, this kind of lighting system is necessary to keep the integrated greenhouse system commercially viable.²³

27. Therefore, the reflectors are both physically connected and functionally joined to the integrated greenhouse system and, as such, are “for use in” it.

“Enter into the cost of manufacture of”

28. Having found that the reflectors are “[a]rticles . . . for use in . . . [a]gricultural or horticultural machines of heading 84.36”, and therefore entitled to the benefit of duty-free treatment under tariff item No. 9903.00.00, the Tribunal does not need to consider whether the reflectors also constitute “[a]rticles . . . that enter into the cost of manufacture . . . of . . . [a]gricultural or horticultural machines of heading 84.36”.

29. However, the evidence in this respect clearly shows that the reflectors do also enter into the cost of manufacture of such machines, i.e. integrated greenhouse systems.

30. Much of the evidence before the Tribunal referred to the reflectors and lighting fixtures collectively as a “lighting system”, as “supplementary lighting” or as “artificial lighting”.²⁴ One witness, for example, testified that the reflectors are designed for use exclusively in greenhouses and are, for many types of plants, essential components of a greenhouse lighting system because they direct the artificial light from the fixture onto the plant, improving lighting efficiency by 50 percent.²⁵

31. The CBSA’s expert witness testified that “most” lighting systems are retrofitted in well-established greenhouse operations.²⁶ This evidence implies that lighting systems are installed in at least some new greenhouses.

16. *Transcript of Public Hearing*, 16 June 2009, at 30, 36-37; *Prins Greenhouses*.

17. *Transcript of Public Hearing*, 16 June 2009, at 12, 33.

18. *Ibid.* at 21-23, 37-38, 70, 90, 92-93.

19. *Ibid.* at 23, 78.

20. *Ibid.* at 74.

21. *Ibid.* at 46, 53, 119.

22. *Ibid.* at 32.

23. *Ibid.* at 23-24, 26, 31-32.

24. For example, see *Transcript of Public Hearing*, 16 June 2009, at 12-13, 21, 32, 52-53, 58, 99-100.

25. *Transcript of Public Hearing*, 16 June 2009, at 21, 32-33.

26. Tribunal Exhibit AP-2008-012-10A at 2.

32. Indeed, one witness, who is a sales manager of lighting systems and thus better situated to comment on this particular question, testified that up to 75 percent of lighting systems “. . . go into brand new greenhouses.”²⁷ He also testified that, when destined for a new integrated greenhouse system, a lighting system is planned and designed in consultation with the building plans for the greenhouse.²⁸

33. Likewise, an expert in integrated greenhouse systems testified that the lighting system and its cost are considered when planning the construction of an integrated greenhouse system.²⁹ Similarly, an expert in the design and operation of greenhouses testified that the purchase of a lighting system represents 10 percent of the total cost of a “greenhouse project” and 34 percent of the cost of the greenhouse structure itself.³⁰

34. Therefore, the reflectors are “[a]rticles . . . that enter into the cost of manufacture . . . of” integrated greenhouse systems for the purpose of tariff item No. 9903.00.00.

Conclusion

35. In response to the Court’s questions, the Tribunal concludes that integrated greenhouse systems are “[a]gricultural or horticultural machines of heading 84.36” and that the reflectors are “[a]rticles . . . for use in” and “[a]rticles . . . that enter into the cost of manufacture . . . of” integrated greenhouse systems, for the purposes of tariff item No. 9903.00.

DECISION

36. For the foregoing reasons, the Tribunal determines that the goods in issue are entitled to the benefit of duty-free treatment under tariff item No. 9903.00.00.

37. The appeal is allowed.

Serge Fréchette
Serge Fréchette
Presiding Member

Diane Vincent
Diane Vincent
Member

Jason W. Downey
Jason W. Downey
Member

27. *Transcript of Public Hearing*, 16 June 2009, at 19-20.

28. *Ibid.* at 17.

29. *Ibid.* at 60.

30. *Ibid.* at 73.