



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2008-011

Sarstedt Canada Inc.

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Friday, April 30, 2010*

Canada

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IN THE MATTER OF an appeal heard on October 22, 2009, pursuant to subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the President of the Canada Border Services Agency, dated July 9, 2008, with respect to requests for re-determination pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**SARSTEDT CANADA INC.**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is allowed in part.

Diane Vincent  
Diane Vincent  
Presiding Member

Ellen Fry  
Ellen Fry  
Member

Jason W. Downey  
Jason W. Downey  
Member

Dominique Laporte  
Dominique Laporte  
Secretary

Place of Hearing: Ottawa, Ontario  
Date of Hearing: October 22, 2009

Tribunal Members: Diane Vincent, Presiding Member  
Ellen Fry, Member  
Jason W. Downey, Member

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**PARTICIPANTS:****Appellant**

Sarstedt Canada Inc.

**Counsel/Representative**

Michael Kaylor

**Respondent**

President of the Canada Border Services Agency

**Counsel/Representative**

Lune Arpin

**WITNESSES:**

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Sales Manager  
Sarstedt Canada Inc.

Luc Dubé  
Laboratory Technician  
Department of Biological Sciences  
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Dr. John Vierula  
Associate Professor of Biology  
Director of the Biochemistry Program  
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## STATEMENT OF REASONS

1. This is an appeal filed by Sarstedt Canada Inc. (Sarstedt) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from decisions of the President of the Canada Border Services Agency (CBSA), dated July 9, 2008, with respect to requests for re-determination pursuant to subsection 60(4).

2. The issue raised by the parties in this appeal is whether Sarstedt Series 86 serological pipettes and Sarstedt Series 70 pipette tips are properly classified under tariff item No. 3926.90.90 of the schedule to the *Customs Tariff*<sup>2</sup> as other articles of plastics and articles of other materials of heading Nos. 39.01 to 39.14, as determined by the CBSA, or should be classified under tariff item No. 8413.91.30 as parts of the goods of tariff item Nos. 8413.20.00 and 8413.19.90, respectively, as submitted by Sarstedt.

### PROCEDURAL HISTORY

3. Sarstedt imported the goods in issue in various transactions from January to February 2001. The goods in issue were imported under tariff item No. 3926.90.90 as other articles of plastics and articles of other materials of heading Nos. 39.01 to 39.14.<sup>3</sup>

4. On July 28, 2004, Sarstedt requested an advance ruling for various products, including the goods in issue. The CBSA issued a ruling on March 24, 2005, that serological pipettes were to be classified under tariff item No. 9018.90.90. Another advance ruling was issued by the CBSA on March 30, 2005, whereby pipette tips were to be classified under tariff item No. 9018.90.90.<sup>4</sup>

5. On January 20, 2005, Sarstedt requested a re-classification of the goods in issue under tariff item No. 3926.90.10.<sup>5</sup>

6. On July 5, 2005, the CBSA issued a decision pursuant to subsection 59(2) of the *Act* denying the requests.<sup>6</sup>

7. On July 9, 2008, the CBSA issued decisions pursuant to subsection 60(4) of the *Act* confirming classification of the goods in issue under tariff item No. 3926.90.90. These decisions superseded the advance rulings for the goods in issue previously issued on March 24 and 30, 2005.

8. On October 1, 2008, pursuant to subsection 67(1) of the *Act*, Sarstedt appealed the CBSA's decisions to the Tribunal.

9. Sarstedt submitted in its brief filed on December 9, 2008, that the goods in issue should be classified under tariff item No. 9018.90.90 as other instruments and appliances used in medical, surgical, dental or veterinary sciences. As an alternative classification, Sarstedt submitted that the goods in issue should be classified under tariff item No. 8424.89.10 as pipettes to be employed in medical research.

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

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

3. Tribunal Exhibit AP-2008-011-01A.

4. Appellant's book of reference materials, tab 2.

5. Appellant's revised brief, para. 6.

6. Respondent's additional book of reference material, tab B.

10. The CBSA submitted in its brief filed on February 9, 2009, that the goods in issue were properly classified under tariff item No. 3926.90.90 as other articles of plastics.

11. On April 16, 2009, Sarstedt requested permission from the Tribunal to submit argument that the goods in issue qualified for the benefits of duty relief under tariff item No. 9977.00.00 as articles for use in instruments and appliances used in medical, surgical, dental or veterinary sciences. At the same time, Sarstedt indicated that it would no longer argue for classification under tariff item No. 9018.90.90.

12. The Tribunal allowed Sarstedt to file a supplemental brief in regard to the new tariff item being argued and provided an opportunity for the CBSA to reply to the new submissions. Sarstedt filed its supplemental brief on April 27, 2009. The CBSA filed its supplemental brief on May 7, 2009.

13. On May 19, 2009, the Tribunal granted a postponement of the hearing requested by Sarstedt due to the inability of its counsel to appear for personal health reasons. A new hearing date was set for June 4, 2009.

14. On May 28, 2009, having retained new counsel, Sarstedt requested an additional postponement of the hearing to enable its new counsel to become familiar with the file. This request was granted by the Tribunal on the same day.

15. On May 28, 2009, Sarstedt also asked permission from the Tribunal to file a further supplementary brief. On June 19, 2009, the Tribunal granted this request, setting aside the submissions made to that date and directing both Sarstedt and the CBSA to file revised briefs, expert witness reports and any other relevant submissions.

16. In its brief filed on July 15, 2009, Sarstedt modified its position a second time and put forward five different classification alternatives for the Tribunal to consider. The CBSA was given the opportunity to reply to these new submissions.

17. Sarstedt submitted that the goods in issue should be classified in the following heading or under one of the following tariff items:

- (a) heading No. 90.27 as instruments and apparatus for physical or chemical analysis;
- (b) tariff item No. 8479.90.90 as parts of other machines and mechanical appliances of tariff item No. 8479.89.99;
- (c) tariff item No. 8413.91.30 as parts of pumps of tariff item No. 8413.19.90; or
- (d) tariff item No. 8424.89.10 as pipettes to be employed in medical research.

18. Sarstedt further submitted that the goods in issue should qualify for duty-free treatment under tariff item No. 9977.00.00 as articles for use in instruments and appliances used in medical, surgical, dental or veterinary sciences.

19. On June 23, 2009, the CBSA requested an extension of the time to file its revised brief. This was granted by the Tribunal. In its revised brief, the CBSA maintained its position that the goods in issue were properly classified under tariff item No. 3926.90.90 as other articles of plastics.

20. In a letter received by the Tribunal on October 21, 2009,<sup>7</sup> Sarstedt advised the Tribunal that it would limit its arguments to classification under tariff item No. 8413.91.30 as parts of pumps of tariff item No. 8413.20.00 for the serological pipettes and as parts of pumps of tariff item No. 8413.19.90 for the pipette tips.<sup>8</sup> This position was reiterated by Sarstedt at the beginning of the hearing.

21. The Tribunal held a public hearing in Ottawa, Ontario, on October 22, 2009.

22. Sarstedt called two witnesses to testify on its behalf. Mr. Luc Dubé, Laboratory Technician in the Department of Biological Sciences at the Université du Québec à Montréal, was qualified by the Tribunal as an expert in pipette and pipette tip use. Mr. Alain Côté, Sales Manager for Sarstedt, was also called as a witness for Sarstedt.

23. The CBSA called Dr. John Vierula, Associate Professor of Biology and Director of the Biochemistry Program at Carleton University, to testify on its behalf. The Tribunal qualified Dr. Vierula as an expert in laboratory equipment and methodology.

## GOODS IN ISSUE

24. The goods in issue in this appeal are serological pipettes and pipette tips, which vary in size and are used for a range of laboratory applications, manufactured from clear polystyrene plastic. They are more precisely described as “Serological Pipettes, Products # 86” and “Pipette Tips, Products # 70”.<sup>9</sup>

25. The following physical exhibits were filed by Sarstedt, and both parties agreed that they were samples of the goods in issue.<sup>10</sup>

Exhibit A-01 Article 70.760.502, stack pack yellow pipette tips (Series 70)

Exhibit A-02 Article 70.762.211, stack pack blue pipette tips Biosphere (Series 70)

Exhibit A-06 Article 86.1252.025, serological pipettes 2 ml (Series 86)

Exhibit A-07 Article 86.1251.025, serological pipettes 1 ml (Series 86)

Exhibit A-08 Article 86.1254.001, serological pipettes 10 ml (Series 86)

## ANALYSIS

### Law

26. In appeals under section 67 of the *Act* concerning tariff classification matters, the Tribunal’s jurisdiction is to determine the proper tariff classification of the goods in accordance with prescribed interpretative rules.

27. 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.<sup>11</sup> The schedule is divided into sections and chapters, with

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7. October 21, 2009, was the day before the public hearing.

8. Tribunal Exhibit AP-2008-011-057.

9. Appellant’s book of reference materials, tab 6; CBSA’s preliminary decision issued August 17, 2007.

10. *Transcript of Public Hearing*, 22 October 2009, at 10-11.

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

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.

28. 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<sup>[12]</sup> and the Canadian Rules<sup>[13]</sup> set out in the schedule.”

29. 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.<sup>14</sup>

30. 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<sup>[15]</sup> and the Explanatory Notes to the Harmonized Commodity Description and Coding System,<sup>[16]</sup> 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.

31. However, the Federal Court of Appeal has indicated 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.<sup>17</sup>

32. Section 13 of the *Official Languages Act* provides that the English and French versions of any act of Parliament are equally authoritative.<sup>18</sup>

33. Classification therefore begins with Rule 1, which provides 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”. Thus, the Tribunal must first determine whether 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*.

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

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

14. 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 are applicable 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).

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

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

17. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII), para. 17.

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



**Customs Tariff Provisions**

34. The relevant portions of Chapter 39 of the *Customs Tariff* read as follows:
- |  |   |
|--|---|
| <p><b>39.26</b>      <b>Other articles of plastics . . . .</b></p> <p>...</p> <p><b>3926.90</b>    <b>-Other</b></p> <p>...</p> <p>3926.90.90    ---Other</p> <p>...</p> | <p><b>39.26</b>      <b>Autres ouvrages en matières plastiques [...].</b></p> <p>[...]</p> <p><b>3926.90</b>    <b>-Autres</b></p> <p>...</p> <p>3926.90.90    ---Autres</p> <p>[...]</p> |
|--|---|
35. Notes 2(p) and (r) to Chapter 39 read as follows:
- |  |   |
|--|---|
| <p>2. This Chapter does not cover:</p> <p>...</p> <p>(p) Articles of Section XVI (machines and mechanical appliances);</p> <p>...</p> <p>(r) Articles of Chapter 90 . . .</p> <p>...</p> | <p>2. Le présent Chapitre ne comprend pas :</p> <p>[...]</p> <p>p) les articles de la Section XVI (machines et appareils, matériel électrique);</p> <p>[...]</p> <p>r) les articles du Chapitre 90 [...]</p> <p>[...]</p> |
|--|---|
36. The *Explanatory Notes* to heading No. 39.26 provide that:
- |   |  |
|---|--|
| <p>This heading covers articles, not elsewhere specified or included, of plastics . . . .</p> | <p>La présente position couvre les ouvrages non dénommés ni compris ailleurs en matières plastiques [...].</p> |
|---|--|
37. Therefore, in order to be classified in heading No. 39.26, the goods in issue:
- (a) need to be made of plastic;
  - (b) must not be articles of Section XVI (such as articles of Chapter 84);
  - (c) must not be articles of Chapter 90; and
  - (d) must not be specified or included elsewhere in the tariff schedule.
38. Heading No. 90.18 covers the following:
- |  |   |
|--|---|
| <p>Instruments and appliances used in medical, surgical, dental . . . sciences . . . .</p> | <p>Instruments et appareils pour la médecine, la chirurgie, l'art dentaire [...].</p> |
|--|---|
39. Note 1(l) to Chapter 90 reads as follows:
- |  |  |
|--|--|
| <p>1. This Chapter does not cover:</p> <p>...</p> <p>(l) Capacity measures, which are to be classified according to their constituent material;</p> <p>...</p> | <p>1. Le présent Chapitre ne comprend pas :</p> <p>[...]</p> <p>l) les mesures de capacité, qui sont classées avec les ouvrages de la matière constitutive;</p> <p>[...]</p> |
|--|--|
40. Therefore, if the goods in issue are “capacity measures”, they must be classified according to their constituent material (which, in this case, is plastic) and are not covered by Chapter 90.

41. The relevant portions of Chapter 84 of the *Customs Tariff* provide as follows:

<b>84.13</b>	<b>Pumps for liquids, whether or not fitted with a measuring device . . . .</b>	<b>84.13</b>	<b>Pompes pour liquides, même comportant un dispositif mesureur [...].</b>
	<b>-Pumps fitted or designed to be fitted with a measuring device:</b>		<b>-Pompes comportant un dispositif mesureur ou conçues pour comporter un tel dispositif :</b>
...		[...]	
<b>8413.19</b>	<b>--Other</b>	<b>8413.19</b>	<b>--Autres</b>
...		[...]	
8413.19.90	---Other	8413.19.90	---Autres
...		[...]	
<b>8413.20.00</b>	<b>-Hand pumps, other than those of subheading No. 8413.11 or 8413.19</b>	<b>8413.20.00</b>	<b>-Pompes à bras, autres que celles des nos 8413.11 ou 8413.19</b>
...		[...]	
	<b>-Parts:</b>		<b>-Parties :</b>
<b>8413.91</b>	<b>--Of pumps</b>	<b>8413.91</b>	<b>--De pompes</b>
...		[...]	
8413.91.30	---... Other, of the goods of tariff item No. . . . 8413.19.90, 8413.20.00 . . .	8413.91.30	---[...] Autres, des marchandises des nos tarifaires [...] 8413.19.90, 8413.20.00 [...]
...		[...]	
<b>84.14</b>	<b>Air or vacuum pumps . . . .</b>	<b>84.14</b>	<b>Pompes à air ou à vide [...].</b>
...		[...]	
<b>8414.90</b>	<b>-Parts</b>	<b>8414.90</b>	<b>-Parties</b>
...		[...]	
8414.90.90	---Other	8414.90.90	---Autres
...		[...]	
<b>84.24</b>	<b>Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders . . . .</b>	<b>84.24</b>	<b>Appareils mécaniques (même à main) à projeter, disperser ou pulvériser des matières liquides ou en poudre [...].</b>
...		[...]	
<b>8424.89</b>	<b>--Other</b>	<b>8424.89</b>	<b>--Autres</b>
8424.89.10	---. . . Pipettes to be employed in medical research . . .	8424.89.10	---[...] Pipettes devant être utilisées pour la recherche médicale [...]
...		[...]	

42. Notes 2(a) and (b) to Section XVI (of which Chapter 84 is part) read as follows:

- |   |  |
|---|--|
| <p>2. ... parts of machines ... are to be classified according to the following rules:</p> <p>(a) Parts which are goods included in any of the headings of Chapter 84 or 85 ... are in all cases to be classified in their respective headings;</p> <p>(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading ... are to be classified with the machines of that kind . . . .</p> | <p>2. [...] les parties de machines [...] sont classées conformément aux règles ci-après :</p> <p>a) les parties consistant en articles compris dans l'une quelconque des positions des Chapitres 84 ou 85 [...] relèvent de ladite position, quelle que soit la machine à laquelle elles sont destinées;</p> <p>b) lorsqu'elles sont reconnaissables comme exclusivement ou principalement destinées à une machine particulière ou à plusieurs machines d'une même position [...] les parties [...] sont classées dans la position afférente à cette ou à ces machines [...].</p> |
|---|--|

...

[...]

43. The *Explanatory Notes* to subheading Nos. 8413.11 and 8413.19 state the following:

<p>These subheadings cover only those pumps, of whatever type, which form, or have been designed to form, a unit with a device permitting the volumetric control of the quantity of liquid discharged, whether or not this device is presented at the same time as the pump.</p>	<p>Il est précisé que seules relèvent de ces sous-positions les pompes, quel qu'en soit le type, qui forment – ou sont conçues pour former – corps avec un dispositif permettant le contrôle volumétrique de la quantité de liquide débitée, que ce dispositif soit ou non présenté en même temps que la pompe.</p>
--	---

...

[...]

<p>On the other hand, when, for example, the measuring device is designed to be simply mounted on the tube through which the liquid set in motion by the pump flows, each of the two units (pump and measuring device) are to be classified in their own headings, even when presented together.</p>	<p>Par contre, lorsque, par exemple, le dispositif mesureur est conçu pour être simplement monté sur la tuyauterie où circulera le liquide mis en mouvement par la pompe, chacun des deux éléments (pompe et dispositif mesureur) suit séparément son régime propre, même s'ils sont présentés en même temps.</p>
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44. However, if the goods in issue are classifiable in a heading of Chapter 84 as parts of pumps, the Tribunal would need to determine the correct tariff item according to the type of pump for which the goods in issue are designed.

## Positions of Parties

45. Sarstedt submitted that the goods in issue are not suitable for use on their own and only perform a function when attached to the types of pumps of heading No. 84.13.<sup>19</sup> Sarstedt argued that the goods in issue form a complete unit with the pump, have no alternate function, are necessary for the prudent use of the pump and are designed specifically to work with the pump.<sup>20</sup>

46. Sarstedt further argued that, in accordance with note 2(b) of Section XVI, the goods in issue should be classified as parts of pumps, as the goods in issue are principally suitable for use, and designed specifically to be used,<sup>21</sup> with a particular kind of machine, i.e. pumps of heading No. 84.13.

47. For its part, the CBSA argued that the goods in issue are goods classifiable under tariff item No. 3926.90.90. It submitted that, since the goods are “capacity measures”, they must be classified according to their constituent material (i.e. plastic), in accordance with the wording of note 1(l) to Chapter 90.

48. The CBSA submitted that a definition for “capacity measure” is not found anywhere in the tariff nomenclature and that a “capacity measure” is an instrument or device designed and used to measure volume.<sup>22</sup> It argued that the goods in issue are “capacity measures” because they are capable of measuring an amount of liquid by virtue of the graduation marks along the side that give a visual indication of the volume of liquid.

49. In response to Sarstedt’s submission that the goods in issue are parts of pumps for liquids, whether or not fitted with a measuring device, classifiable in heading No. 84.13, the CBSA submitted that, as the goods in issue are measuring devices designed to be mounted on a pump of subheading No. 8413.19, they are excluded from classification in this heading by virtue of the *Explanatory Notes* to subheading Nos. 8413.11 and 8413.19. The CBSA submitted that the foregoing *Explanatory Notes* state that, if the goods in issue, being measuring devices, are designed to be simply mounted (or attached) to a pump of heading No. 84.13, then each of the two units (pump and measuring device) is to be classified in its own heading.

50. The CBSA argued that the goods in issue must therefore be classified in their own tariff item, as articles of plastic of heading No. 39.26.

51. In response to the CBSA’s argument that the goods in issue were “capacity measures”, Sarstedt argued that the serological pipettes are not “capacity measures” within the meaning of note 1(l) to Chapter 90. Sarstedt argued that the goods in issue were mere holding devices for liquids.<sup>23</sup>

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19 Sarstedt submitted that the serological pipettes are parts of pumps of tariff item No. 8413.20.00 (hand pumps, other than those of subheading Nos. 8413.11 or 8413.19) and that the pipette tips are parts of pumps of tariff item No. 8413.19.90 (other pumps fitted or designed to be fitted with a measuring device). Tribunal Exhibit AP-2008-011-57.

20. *Transcript of Public Hearing*, 22 October 2009, at 180-81.

21. *Ibid.* at 175.

22. Respondent’s brief at 8; *Transcript of Public Hearing*, 22 October 2009, at 210.

23. Appellant’s revised brief at 4.

## Tariff Classification

52. Although the parties do not seem to make a distinction in their submissions between the tariff classification of serological pipettes and pipette tips, the Tribunal is of the view that serological pipettes and pipette tips are not identical goods either in form or function and, therefore, could potentially be classified under different tariff items.

53. Following its normal practice, the Tribunal will therefore consider the classification of the serological pipettes and pipette tips separately in order to determine their appropriate classification.

## Series 86 Serological Pipettes

54. The Tribunal will first deal with the classification of the serological pipettes.

55. As previously indicated, note 2(r) to Chapter 39 provides that articles of Chapter 90 are excluded from Chapter 39. In addition, note 2(p) to Chapter 39 stipulates that articles of Section XVI, which includes Chapter 84, are not covered in Chapter 39. Accordingly, the Tribunal will first determine if the serological pipettes are classifiable in a heading of Chapter 90 or Chapter 84, before considering classification in a heading of Chapter 39.

### Heading No. 90.18

56. The Tribunal will consider first if the serological pipettes are “capacity measures” and, thereby, excluded from Chapter 90.

57. The tariff schedule does not include a definition of “capacity measure”. As indicated above, the CBSA submitted that a “capacity measure” is an instrument or device designed and used to measure volume, based on the dictionary definitions submitted for “capacity” and “measure”. The online *Merriam-Webster’s Medical Dictionary* defines “capacity” as “. . . a measure of content: the measured ability to contain . . .” and defines “measure” as “. . . the dimensions, capacity, or amount of something ascertained by **measuring** . . .”<sup>24</sup> Sarstedt did not dispute these definitions submitted by the CBSA. Considering these definitions, the Tribunal agrees with the CBSA that the ordinary meaning of “capacity measure” is a device to measure volumetric capacity.

58. The tariff schedule does not include a definition of “pipette”. According to dictionaries, a pipette is defined as follows: “. . . a small piece of apparatus which typically consists of a narrow tube into which fluid is drawn by suction (as for dispensing or *measurement*) and retained by closing the upper end . . .”<sup>25</sup> [emphasis added]; a “. . . measuring instrument consisting of a graduated glass tube *used to measure* or transfer precise volumes of a liquid by drawing the liquid up into the tube”<sup>26</sup> [emphasis added]; and “a laboratory instrument used to transport a *measured* volume of liquid”<sup>27</sup> [emphasis added].

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24. Respondent’s brief, tabs 5, 6.

25. *Ibid.*, tab 10.

26. Respondent’s book of expert’s reference materials, tab 4.

27. Appellant’s revised brief, tab 3 at 16.

59. According to testimony, the term “serological”, once used in reference to bodily fluids, has now come to refer to pipettes with graduation marks which continue to the tip and serve to determine the actual volume one would expel if the entire volume of the pipette were blown out.<sup>28</sup>

60. Therefore, the Tribunal concludes that serological pipettes, like pipettes in general, have the function of measurement.

61. Sarstedt argued that the serological pipettes in issue are merely holding devices and are not suitable for measuring on their own. However, in the Tribunal’s view, the evidence leads to the contrary conclusion.

62. According to Dr. Vierula, the serological pipettes are used to measure a volume of liquid.<sup>29</sup> Mr. Côté testified that “. . . the markings on the pipette . . . measure the volume . . .” [translation]<sup>30</sup> and that the pipette itself “measures” [translation].<sup>31</sup>

63. Dr. Vierula, in his expert witness report, wrote the following: “The pipettes can be used on their own without a rubber-bulb-type pipette filler, pump or other device.”<sup>32</sup> During the hearing, Dr. Vierula demonstrated that pipettes can measure and hold liquid by themselves and stated that “. . . it’s strictly the pipette that does the measuring. . . . The pump is simply an assist device.”<sup>33</sup>

64. Mr. Côté testified that “. . . you are not counting on the pump to give you a precise volume. You are looking at the serological [pipettes] to have the precise volume.”<sup>34</sup> He also indicated that “. . . the pump is not necessary for measuring” [translation].<sup>35</sup>

65. Sarstedt argued that, in past practice, the function of drawing in, holding and transferring a liquid would have been performed by a person using his mouth to aspirate through the pipette<sup>36</sup> but that this procedure is advised against today. Both Mr. Côté and Dr. Vierula testified that pipetting by mouth is a practice that is discouraged by the Department of Health and is not promoted in any laboratory environment, for health and safety reasons.<sup>37</sup>

66. However, the Tribunal is of the view that, even though pipetting by mouth is not common practice, it does not diminish the fact that, as discussed above, when operated manually, without a pump, the serological pipettes are in fact devices used to measure volumetric capacity.

67. Accordingly, the Tribunal concludes that the serological pipettes in issue are devices which measure volumetric capacity and, hence, are “capacity measures”. Consequently, in accordance with note 1(l) to Chapter 90, they are not classifiable in Chapter 90 and must be classified according to their constituent material.

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28. Appellant’s book of reference materials, tab 7 at 12; *Transcript of Public Hearing*, 22 October 2009, at 144.

29. *Transcript of Public Hearing*, 22 October 2009, at 132.

30. *Ibid.* at 29.

31. *Ibid.* at 57.

32. Expert report of Dr. John Vierula at 2.

33. *Transcript of Public Hearing*, 22 October 2009, at 132-34.

34. *Ibid.* at 42.

35. *Ibid.* at 58.

36. *Ibid.* at 44, 115, 165.

37. *Ibid.* at 44, 166.

### Heading No. 84.13

68. Sarstedt submitted that the serological pipettes are parts of pumps of heading No. 84.13, such as the pump filed as Exhibit A-10. Sarstedt argued that the serological pipette and pump work together as an integrated apparatus and perform in a much safer and more expeditious way than the serological pipette would on its own.

69. The Tribunal notes that there is no definition of “part” in the *Customs Tariff*. The *Merriam-Webster’s Collegiate Dictionary* defines “part” as “. . . a constituent member of a machine or other apparatus . . . .”<sup>38</sup>

70. In *York Barbell Company Limited v. Deputy M.N.R.C.E.*, the Tribunal indicated that, when it came to determining whether or not an item was a “part” of another item, “. . . there is no one universally applicable test and that each case must be determined on its merits. Further, common trade usage and practice are relevant to any determination of this kind.”<sup>39</sup>

71. As discussed above, the evidence indicates that the serological pipettes in issue can be used on their own to retain, measure and transfer liquid without a pump.<sup>40</sup> Accordingly, the Tribunal considers that the serological pipettes are not parts of a pump. Therefore, the pipettes are not classifiable in heading No. 84.13.<sup>41</sup>

### Heading No. 84.24

72. The Tribunal also considered whether the pipettes are classifiable in heading No. 84.24, as mechanical appliances for projecting, dispersing or spraying liquids or powders.<sup>42</sup> It is not contested by the parties that pipettes do not project and spray liquid; however, it is necessary to determine if the pipettes in issue are for dispersing liquids.

73. The word “disperse” is defined in the *Canadian Oxford Dictionary* as follows: “. . . drive, throw, send, or scatter in different directions . . . .”<sup>43</sup>

74. From the evidence submitted by the parties, it is clear that the serological pipettes are neither designed nor used to “disperse” a liquid or a powder.

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38. Tenth ed., s.v. “part”.

39. (19 August 1991) AP-90-161 (CITT) at 6.

40. Expert report of Dr. John Vierula at 2.

41. The Tribunal notes that, in support of its position that the goods in issue should be excluded from Chapter 84, the CBSA referred to note 1(c) to Chapter 84, which provides that articles of glass for use in a laboratory are excluded from classification in Chapter 84. The CBSA submitted that, with the evolution of laboratory practices favouring plastic articles over glass, the note should be interpreted to encompass articles of plastic for use in a laboratory as well. The Tribunal disagrees with this argument. It is clear that the meaning of “glass” does not include “plastic”.

42. Although tariff item No. 8424.89.10 specifically refers to “. . . [p]ipettes to be employed in medical research . . .” (“. . . [p]ipettes devant être utilisées pour la recherche médicale . . .”), the evidence indicates that the serological pipettes in issue are used and intended to be used in a much broader range of applications, including agricultural and forensic sciences. *Transcript of Public Hearing*, 22 October 2009, at 14, 15, 145.

43. Second ed., s.v. “disperse”.

75. None of the definitions for a pipette submitted as evidence by either party refers to the function of a pipette as “dispensing” a liquid or powder. Furthermore, the expert report submitted by Dr. Vierula stated that pipettes are not designed to project, disperse or spray liquids.<sup>44</sup> As well, Mr. Dubé testified that, although some dispersion could occur when liquid is evacuated from the pipettes, there is other specialized equipment that is specifically designed for dispersion.<sup>45</sup>

76. Therefore, the Tribunal does not consider that the serological pipettes are mechanical appliances used for projecting, dispersing or spraying liquids or powders<sup>46</sup> and, therefore, are not classifiable in heading No. 84.24.

Heading No. 39.26

77. Having found that the serological pipettes are not classifiable in Chapter 84 or Chapter 90, the Tribunal will now determine if the serological pipettes are classifiable in heading No. 39.26 as other articles of plastics.

78. It is not disputed by the parties that the serological pipettes in issue are made of plastic, and the Tribunal agrees with this conclusion.<sup>47</sup>

79. Consequently, the Tribunal is of the view that the serological pipettes in issue are properly classified in heading No. 39.26.

80. The CBSA submitted that the pipettes should be classified under classification No. 3926.90.90.94, because it specifically names laboratory ware. The CBSA argued that, since the serological pipettes are regularly used in a laboratory environment, they should be considered as laboratory ware.

81. The Tribunal does not agree with this position put forward by the CBSA. As indicated above, the *Customs Tariff* provides that tariff classification is to be based on the nomenclature of the Harmonized System. Tariff item numbers under the Harmonized System consist of eight digits. The classification number at the 10-digit level argued by the CBSA is not part of the legal regime for tariff classification; rather, it is an administrative code that has been established for gathering information under the *Statistics Act*.<sup>48</sup> Therefore, as indicated previously by the Tribunal, it is clear that 10-digit classification numbers have no bearing on classification pursuant to the *Customs Tariff*.<sup>49</sup>

82. The Tribunal is of the view that none of the specific subheadings under heading No. 39.26 apply to the serological pipettes. Therefore, the serological pipettes are classifiable in residual subheading No. 3926.90 as other articles of plastics and should be classified under residual tariff item No. 3926.90.90.

83. Therefore, the serological pipettes in issue should be classified under tariff item No. 3926.90.90 as other articles of plastics.

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44. Expert report of Dr. John Vierula at 2.

45. *Transcript of Public Hearing*, 22 October 2009, at 108-111.

46. *Ibid.* at 108-111; Expert report of Dr. John Vierula at 2.

47. Appellant’s revised brief at 3, para. 15.

48. R.S.C. 1985, c. S-19.

49. *Bio Agri Mix Ltd. v. Commissioner of the Canada Customs and Revenue Agency* (28 November 2000), AP-99-085 (CITT).



## Series 70 Pipette Tips

### Heading Nos. 84.13 and 84.14

84. The Tribunal will first determine if the pipette tips are classifiable in a heading of Chapter 84.

85. According to Dr. Vierula's expert report, pipette tips function to deliver a volume of liquid from one vessel to another.<sup>50</sup> Dr. Vierula testified that, because of the necessity to measure extremely small volumes of liquid in a laboratory environment, the pipette tips must be used with a pump<sup>51</sup> in order to achieve the required degree of accuracy in measurement.<sup>52</sup>

86. A demonstration by Dr. Vierula clearly showed the difficulty of using the pipette tips without a pump (called a pipettor), mainly due to the extremely small size of the pipette tip.<sup>53</sup>

87. Dr. Vierula also testified that the graduated marks on the pipette tips are not accurate enough to be used to measure the small volumes of liquid that are involved, but are rather used as a type of checking mechanism to help detect any problem that may occur when calibrating the pipettor.<sup>54</sup> Both Mr. Côté and Dr. Vierula testified that the moulded markings on the pipette tips were used only as a means to visually confirm that the measurement is accurate, in order to avoid mistakes.<sup>55</sup>

88. The testimony from the witnesses indicated specifically that the pipette tips in issue are used with a Sarpette® M1 pipettor,<sup>56</sup> or an equivalent device, in which is contained a very precise measuring mechanism, based on an endless screw design. It is this pipettor which is calibrated by the user to determine the required volume of liquid. Once the pipettor is calibrated for the desired volume, it draws up the exact amount of liquid required into the attached pipette tip. Mr. Côté testified that, in this case, the Sarpette® M1 pipettor is designed specifically for use with this type of pipette tip.<sup>57</sup>

89. The Tribunal is consequently of the view that the pipette tips cannot be considered to be "capacity measures", since they are not used for measuring a volume of liquid on their own.

90. Sarstedt submitted that the pipettors, such as the Sarpette® M1, should be classified in heading No. 84.13 as pumps for liquids, whether or not fitted with a measuring device. It submitted that the pipette tips are therefore parts of pumps of heading No. 84.13.

91. Before considering if the pipette tips are classifiable as parts of pumps of Chapter 84, the Tribunal must determine if the pipettor is itself classifiable in Chapter 84 as a machine and, more specifically, as a pump of heading No. 84.13 or 84.14.

92. Heading 84.13 covers pumps for liquids, whether or not fitted with a measuring device, while heading No. 84.14 covers air or vacuum pumps.

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50. Expert report of Dr. John Vierula at 2.

51. Throughout their testimony, both Mr. Côté and Dr. Vierula referred to the additional device with which the pipette tips are used as both a pipettor and a pump.

52. *Transcript of Public Hearing*, 22 October 2009, at 139, 152.

53. *Ibid.* at 152.

54. *Ibid.* at 138-39.

55. *Ibid.* at 27, 138.

56. Exhibit A-09.

57. *Transcript of Public Hearing*, 22 October 2009, at 38.

93. The documentary evidence submitted by Sarstedt clearly shows that the pipettor to which the pipette tip is connected is a vacuum pump; as “[a] vacuum is generated by the vertical travel of a metal or ceramic piston within an airtight sleeve. As the piston moves upward, driven by the depression of the plunger, a vacuum is created in the space left vacant by the piston.”<sup>58</sup>

94. The product literature filed by both Sarstedt and the CBSA, as well as the testimony of the witnesses, also indicates that pipettors are considered by the parties to be vacuum pumps.<sup>59</sup>

95. The Tribunal is therefore of the view that the pipettor is classifiable under tariff item No. 8414.10.99 as other vacuum pumps.

96. Having determined that the pipettors are classifiable in heading No. 84.14 as vacuum pumps, the Tribunal will consider if the pipette tips are classifiable as parts of these vacuum pumps.

97. The approach used by the Tribunal to determine whether an item is a part of another item has been discussed above.

98. As discussed above, the evidence clearly shows that, in practical terms, the pipette tip cannot perform the function of measuring and transferring a volume of liquid alone, without being attached to a pipettor, because it does not measure accurately enough and is difficult to operate manually. When attached, the pipette tip and pipettor work together as a complete unit. The pipettor is calibrated manually to specifically measure the amount of liquid, and the pipette tip is used as the vessel to hold said amount. Therefore, the two components are essential to each another. Given the fact that the pipettor, not the pipette tip, is the principal measuring device and that the pipette tip is specifically designed for use with the pipettor (and not vice versa), it is clear that the pipette tip is a part of the pipettor, and not vice versa.

99. Note 2 to Section XVI (which includes Chapter 84) provides as follows: “. . . parts of machines . . . are to be classified according to the following rules: (a) Parts which are goods included in any of the headings of Chapters 84 or 85 . . . are in all cases to be classified in their respective headings; (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading . . . are to be classified with the machines of that kind . . . .”

100. The pipette tips are not included in any of the headings of Chapter 84 or 85. Therefore, note 2(a) is not applicable.

101. Mr. Côté testified that the pipette tips are moulded to fit perfectly on the pump.<sup>60</sup> When questioned by the Tribunal, Mr. Dubé testified that the pipettor is used exclusively with the pipette tips.<sup>61</sup> According to Dr. Vierula’s testimony, pipette tips are typically made to standard specifications and can be fitted on several manufacturers’ pipettors, including a Gilson pipettor.<sup>62</sup>

102. From this testimony, and from the demonstration at the hearing of how the pipette tips and pipettors function together as a unit, the Tribunal is of the view that the pipette tips are used solely or principally with the pipettor, which is a vacuum pump, and that, therefore, note 2(b) to Section XVI is applicable.

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58. Appellant’s revised brief, tab 3 at 17.

59. *Ibid.*, tab 3; respondent’s brief, tab 1; *Transcript of Public Hearing*, 22 October 2009, at 121, 163.

60. *Transcript of Public Hearing*, 22 October 2009, at 38.

61. *Ibid.* at 98.

62. *Ibid.* at 136-37. A Gilson pipettor was filed as Exhibit B-02.

103. The pipette tips are therefore classifiable in heading No. 84.14, in the same heading as the vacuum pumps with which they are used.

104. Subheading No. 8414.90 covers parts of vacuum pumps of heading No. 84.14. The pipette tips are therefore classifiable in subheading No. 8414.90. Since the pipette tips do not meet the requirements of tariff item No. 8414.90.10 as stators and rotors for compressors for use in refrigerating equipment, they are classifiable under tariff item No. 8414.90.90 as other parts of vacuum pumps.

Heading No. 39.26

105. Because the pipette tips are classifiable as an article of Section XVI, they are excluded from heading No. 39.26 by application of note 2(p) to Chapter 39.

**Conclusion**

106. For the above reasons, the Tribunal finds that Sarstedt Series 86 serological pipettes are classifiable under tariff item No. 3926.90.90 as other articles of plastics and that Sarstedt Series 70 pipette tips are classifiable under tariff item No. 8414.90.90 as other parts of vacuum pumps.

**DECISION**

107. The appeal is therefore allowed in part.

Diane Vincent  
Diane Vincent  
Presiding Member

Ellen Fry  
Ellen Fry  
Member

Jason W. Downey  
Jason W. Downey  
Member