



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2008-012

P.L. Light Systems Canada Inc.

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Wednesday, September 16, 2009*

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IN THE MATTER OF an appeal heard on June 16, 2009, 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 5, 2008, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

**BETWEEN**

**P.L. LIGHT SYSTEMS CANADA INC.**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is allowed.

Ellen Fry  
Ellen Fry  
Presiding Member

Serge Fréchette  
Serge Fréchette  
Member

Diane Vincent  
Diane Vincent  
Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

Place of Hearing: Ottawa, Ontario  
Date of Hearing: June 16, 2009

Tribunal Members: Ellen Fry, Presiding Member  
Serge Fréchette, Member  
Diane Vincent, Member

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**PARTICIPANTS:****Appellant**

P.L. Light Systems Canada Inc.

**Counsel/Representatives**

Michael Sherbo  
Martha Kirby

**Respondent**

President of the Canada Border Services Agency

**Counsel/Representative**

Elizabeth Kikuchi

**WITNESSES:**

Claire Boivin  
Director, Research and Development  
Savoura

Simon Chrétien  
Owner and CEO  
Horizon Agrobiotech Inc.

David Napper  
General Manager  
P.L. Light Systems Canada Inc.

Tom Wingreen  
Professor  
Greenhouse Production and Woody Plant Courses  
Department of Horticulture  
Algonquin College

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## STATEMENT OF REASONS

### BACKGROUND

1. This is an appeal filed by P.L. Light Systems Canada Inc. (P.L. Light Systems) with the Canadian International Trade Tribunal (the Tribunal) under 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 5, 2008, made pursuant to subsection 60(4), in response to the dispute of an advance ruling.

2. The issue in this appeal is whether aluminum reflectors for lighting (the goods in issue), in addition to being classified under tariff item No. 9405.99.00 of the schedule to the *Customs Tariff*,<sup>2</sup> should be classified under tariff item No. 9903.00.00 as articles and materials 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.

### PROCEDURAL HISTORY

3. On January 23, 2008, P.L. Light Systems requested an advance ruling on the tariff classification of the goods in issue.<sup>3</sup>

4. On March 6, 2008, the CBSA issued an advance ruling, pursuant to paragraph 43.1(1)(c) of the *Act*, classifying the goods in issue under tariff item No. 7616.99.90 as other articles of aluminum, and stated that tariff item No. 9903.00.00 did not apply.<sup>4</sup>

5. On May 23, 2008, P.L. Light Systems disputed the advance ruling, asserting that the goods in issue were properly classified in heading No. 94.05, with the benefit of tariff item No. 9903.00.00.<sup>5</sup> According to a letter from Corporate Efficiency Consulting Inc., dated August 27, 2008, the CBSA issued a preliminary decision on August 12, 2008, classifying the goods in issue under tariff item No. 9405.99.90, without the benefit of tariff item No. 9903.00.00.<sup>6</sup>

6. On August 27, 2008, P.L. Light Systems wrote to the CBSA, expressing agreement with the CBSA's classification of the goods in issue under tariff item No. 9405.99.90, but submitting that the goods in issue were eligible for the benefit of tariff item No. 9903.00.00.<sup>7</sup>

7. On September 5, 2008, the CBSA issued its decision, pursuant to subsection 60(4) of the *Act*.

8. On October 20, 2008, P.L. Light Systems filed an appeal with the Tribunal.

9. On June 16, 2009, the Tribunal held a public hearing in Ottawa, Ontario. P.L. Light Systems called three witnesses to testify on its behalf. Mr. Simon Chrétien, owner and CEO, Horizon Agrobiotech Inc., was qualified by the Tribunal as an expert in plant growth, photosynthesis and plant growing systems, including integrated greenhouse systems. Ms. Claire Boivin, Director, Research and Development, Savoura, was

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

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

3. Respondent's brief, tab 4.

4. Respondent's brief, tab 4.

5. Respondent's brief, tab 4.

6. Respondent's brief, tab 4.

7. Respondent's brief, tab 4.

qualified by the Tribunal as an expert in plant growth and greenhouse design, installation and operations, including the functioning of an integrated greenhouse system. Mr. David Napper, General Manager, P.L. Light Systems, was also called as a witness.

10. The CBSA called Mr. Tom Wingreen, Professor, Greenhouse Production and Woody Plant Courses, Department of Horticulture, Algonquin College, to testify on its behalf. Mr. Wingreen was qualified by the Tribunal as an expert in horticulture and the operation of greenhouses.

## GOODS IN ISSUE

11. The goods in issue are aluminum reflectors for supplementary lighting fixtures specially designed for use and installation in integrated greenhouse systems. An integrated greenhouse system is a complete climate and environmental control system for a greenhouse and regulates all aspects of the climate and environment (e.g. temperature, light, humidity) to maximize plant growth and productivity.<sup>8</sup>

12. The goods in issue are suitable for lamps that use 150-W, 250-W, 400-W, 400-W Super, 600-W, 750-W and 1000-W bulbs.

13. There are seven models of the goods in issue: 1000-W, Deep, Midi, Medium, Wide, Super Wide and Maxima.<sup>9</sup>

14. A physical exhibit was filed at the hearing.<sup>10</sup> The exhibit was described at the hearing by Mr. Napper as a 600-W, high-pressure sodium lighting system developed specifically for greenhouses. The exhibit contained a ballast, which is the igniter that drives the bulb, and a reflector, which is the product in issue.<sup>11</sup>

## ANALYSIS

### Law

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

16. 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>12</sup> 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.

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8. Appellant's brief, at para. 22 and Appendix IV.

9. Appellant's brief, Appendix X.

10. Exhibit A-01.

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

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

17. 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>[13]</sup> and the Canadian Rules<sup>[14]</sup> set out in the schedule.”

18. 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.<sup>15</sup> 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.”

19. 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>[16]</sup> and the Explanatory Notes to the Harmonized Commodity Description and Coding System,<sup>[17]</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. However, the Federal Court of Appeal has stated that these notes should be applied, unless there is a sound reason to do otherwise.<sup>18</sup>

20. Section 13 of the *Official Languages Act*<sup>19</sup> provides that the English and French versions of any act of Parliament are equally authoritative.

21. Chapter 99 of the *Customs Tariff*, which includes tariff item No. 9903.00.00, provides special classification provisions that allow certain goods to be imported into Canada with tariff relief. As none of the headings of Chapter 99 are divided at the subheading or tariff item level, the Tribunal need only consider, as the circumstances may require, Rules 1 through 5 of the *General Rules* in determining whether goods may be classified in that chapter.<sup>20</sup> Moreover, since the Harmonized System reserves Chapter 99 for special classifications (i.e. for the exclusive use of individual countries), there are no *Classification Opinions* or *Explanatory Notes* to consider.

22. There are no section notes to Section XXI, which includes Chapter 99. Note 3 to Chapter 99 is relevant to the present appeal. It reads as follows:

3. Goods may be classified under a tariff item in this Chapter and be entitled to the Most-Favoured-Nation Tariff or a preferential tariff rate of customs duty under this Chapter that applies to those goods according to the tariff treatment applicable to their country of origin only after

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

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

15. 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).

16. World Customs Organization, 2d ed., Brussels, 2003 [*Classification Opinions*].

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

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

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

20. However, Note 1 to Chapter 99 provides that the rule of specificity in Rule 3 (a) of the *General Rules* does not apply to the provisions of Chapter 99. This reflects the fact that classification in Chapters 1 to 97 and Chapter 99 is not mutually exclusive.

classification under a tariff item in Chapters 1 to 97 has been determined and the conditions of any Chapter 99 provision and any applicable regulations or orders in relation thereto have been met.

23. In accordance with the preceding note, the goods in issue may only be classified in Chapter 99 after classification under a tariff item in Chapters 1 to 97 has been determined. The parties are in agreement that the goods in issue should be classified under tariff item No. 9405.99.00. Based on the evidence, the Tribunal accepts this classification. Therefore, the sole remaining issue before the Tribunal is to determine whether the goods in issue are eligible for the benefit of tariff item No. 9903.00.00, i.e. whether they are articles for use in agricultural or horticultural machines of heading No. 84.36.

24. The relevant portions of the nomenclature of the *Customs Tariff* provide as follows:

<b>Section XVI</b>	<b>Section XVI</b>
MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT; PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES	MACHINES ET APPAREILS, MATÉRIEL ÉLECTRIQUE ET LEURS PARTIES; APPAREILS D'ENREGISTREMENT OU DE REPRODUCTION DU SON, APPAREILS D'ENREGISTREMENT OU DE REPRODUCTION DES IMAGES ET DU SON EN TÉLÉVISION, ET PARTIES ET ACCESSOIRES DE CES APPAREILS
...	[...]
<b>Chapter 84</b>	<b>Chapitre 84</b>
NUCLEAR REACTORS, BOILERS, MACHINERY AND MECHANICAL APPLIANCES; PARTS THEREOF	RÉACTEURS NUCLÉAIRES, CHAUDIÈRES, MACHINES, APPAREILS ET ENGIN MÉCANIQUES; PARTIES DE CES MACHINES OU APPAREILS
...	[...]
84.36 Other agricultural, horticultural, forestry, poultry-keeping or beekeeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders.	84.36 Autres machines et appareils pour l'agriculture, l'horticulture, la sylviculture, l'aviculture ou l'apiculture, y compris les germoirs comportant des dispositifs mécaniques ou thermiques et les couveuses et éleveuses pour l'aviculture.
...	[...]
<b>Chapter 99</b>	<b>Chapitre 99</b>
SPECIAL CLASSIFICATION PROVISIONS – COMMERCIAL	DISPOSITIONS DE CLASSIFICATION SPÉCIALE – COMMERCIALES
...	[...]
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;	9903.00.00 Articles et matières qui entrent dans le coût de fabrication ou de réparation des produits suivants, et articles devant servir dans ce qui suit :  [...]  Machines et appareils des types agricoles ou horticoles de la position 84.36;
...	[...]



25. P.L. Light Systems submitted that the goods in issue are eligible for the benefit of tariff item No. 9903.00.00 because they are affixed to lighting fixtures that are for use in integrated greenhouse systems, which, pursuant to the Tribunal's decision in *Prins Greenhouses Ltd. v. Deputy M.N.R.*,<sup>21</sup> are classified as agricultural machines of heading No. 84.36.

26. The CBSA submitted that the goods in issue are not eligible for the benefit of tariff item No. 9903.00.00 because they are affixed to supplementary lighting systems which are not for use in, and do not themselves constitute, agricultural machines of heading No. 84.36.

"Article"

27. While the term "article" is not defined for the purposes of tariff item No. 9903.00.00, the parties are in agreement that the goods in issue are "articles".<sup>22</sup>

28. Based on the normal usage of the term,<sup>23</sup> the Tribunal is in agreement with the position of the parties that the goods in issue are articles.

"Agricultural or horticultural"

29. The evidence is clear that the goods in issue are used in lighting systems for commercial greenhouses used to grow vegetables and other plants.<sup>24</sup> Therefore, it is clear that the lighting fixtures are for horticultural and agricultural purposes.

"Machine", "Machinery"/"Machine", "Appareil"

30. The Section Notes to Section XVI of the schedule to the *Customs Tariff*, the Section which contains Chapter 84, do not contain a definition of these terms. Similarly, the Chapter Notes to Chapter 84 do not contain a definition of these terms.

31. Note 5 to Section XVI refers to these terms as follows:

For the purpose of these Notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.	Pour l'application des Notes qui précèdent, la dénomination <i>machines</i> couvre les machines, appareils, dispositifs, engins et matériels divers cités dans les positions des Chapitres 84 ou 85.
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The same text appears as Note 5 of the *Explanatory Notes* to Section XVI.

32. P.L. Light Systems submitted that, based on Note 5 to Section XVI, a machine is "... anything [classified] in [Chapter] 84 or 85."<sup>25</sup> However, the Tribunal does not accept this argument, since Note 5 simply states that the term "... 'machine' means any machine ... cited in the headings of Chapter 84 or 85", and these headings do not provide any additional guidance regarding what constitutes a machine.

33. The Tribunal therefore concludes that the English terms "machine" and "machinery" and the corresponding French terms "*machine*" and "*appareil*" are not defined in the nomenclature for the purposes of Chapter 84 and, as a result, are also not defined for the purposes of tariff item No. 9903.00.00.

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21. (9 April 2001), AP-99-045 (CITT).

22. *Agreed Upon Statement of Fact*, at para. 2.

23. The *Canadian Oxford Dictionary*, 2d ed., defines "article" as follows: "1 a particular or separate thing, esp. one of a set . . ."

24. *Agreed Upon Statement of Fact*, at paras. 3, 4.

25. *Transcript of Public Hearing*, 16 June 2009, at 149.

34. The Tribunal examined dictionary definitions of these terms.

35. The English definition of the term “machine” is not entirely clear. The *Canadian Oxford Dictionary* essentially gives the following two meanings:

1 an apparatus using or applying mechanical power, having several parts, each with a definite function which together perform certain kinds of work. . . . 3 an instrument that transmits a force or directs its application”.<sup>26</sup>

In examining those two definitions, the Tribunal is of the view that there is some uncertainty as to whether mechanical power is required in order to be a “machine”. However, the French terms “*machine*” and “*appareil*” make it clear that mechanical power is not required. For instance, *Le Petit Robert* defines “*machine*” as follows:

*Objet fabriqué, généralement complexe . . . destiné à transformer l'énergie . . . et à utiliser cette transformation . . . . Tout système où existe une correspondance spécifique entre une énergie ou une information d'entrée et celles de sortie; tout système utilisant une énergie extérieure pour effectuer des transformations, des exécutions, sous la conduite d'un opérateur ou d'un autre système. (Manufactured object, generally complex . . . used to transform energy . . . and to utilize that energy . . . Any system that has a specific connection between input energy or information and output energy or information; any system that uses energy to transform, execute, and is controlled by an operator or another system.)<sup>27</sup>*

36. According to that definition, the lighting fixtures are clearly “machines” because they utilize a source of energy (electricity) and transform it into light.

37. The lighting fixtures are also clearly “*appareils*”. *Le Petit Robert* defines “*appareil*” as follows: “3. *Assemblage de pièces ou d'organes réunis en un tout pour exécuter un travail, observer un phénomène, prendre des mesures. (3. Assembly of pieces or parts brought together as one to perform work, observe a phenomenon, take measurements.)*

38. It is also clear from the context in Chapter 84 that the *Customs Tariff* intends the wider rather than the narrower of the two English definitions, i.e. the definition that does not include a requirement for mechanical power. The French versions of some tariff headings within Chapter 84 use both “*machine*” and “*appareil*”, as is the case with heading No. 84.36, while others only use “*machine*”. In the Tribunal’s opinion, the fact that heading No. 84.36 uses both “*machine*” and “*appareil*” indicates that it is intended to cover a wider range of meanings than tariff headings where only the word “*machine*” is used. This supports the conclusion that heading No. 84.36 should not be interpreted based on the narrower of the two English definitions of “machine”.

39. Further, the Tribunal notes that the lighting fixtures fall within the definition of “*machine*” and “*appareil*” regardless of whether they are operated by computer or manually, since the definitions do not require (or rule out) either of these modes of operation.

40. Lastly, the Tribunal notes that the English version of heading No. 84.36 refers to “machinery”, while the English version of tariff item No. 9903.00.00 refers to “machines”. However, the French versions of heading No. 84.36 and tariff item No. 9903.00.00 refer to both “*machine*” and “*appareil*”. The Tribunal therefore concludes that the *Customs Tariff* intends the word “machinery” in heading No. 84.36 to have the same meaning as the word “machines” in tariff item No. 9903.00.00.

41. Accordingly, the lighting fixtures are machines of heading No. 84.36.

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26. Second ed., s.v. “machine”.

27. 2006, s.v. “*machine*”.

“For use in”

42. Section 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.

Tribunal jurisprudence has interpreted this phrase by applying the practical test that the goods in issue be “physically connected and functionally joined”.<sup>28</sup>

43. The goods in issue are attached, i.e. physically connected, to the lighting fixtures in greenhouses. The physical exhibit filed with the Tribunal included a piece that is used to connect the goods in issue to the lighting fixtures.

44. The goods in issue are also integral parts with regard to the functioning of the lighting fixtures once they have been attached. Therefore, they are functionally joined to the lighting fixtures.

45. Accordingly, the Tribunal agrees with the parties’ view that the goods in issue are physically attached and functionally joined to the lighting fixtures.<sup>29</sup>

**Conclusion**

46. Since the lighting fixtures are classified in heading No. 84.36 as agricultural or horticultural machines of that heading and the goods in issue are articles for use in those lighting fixtures, the goods in issue fall under tariff item No. 9903.00.00.

**DECISION**

47. For the foregoing reasons, the Tribunal concludes that the goods in issue should be classified under tariff item No. 9405.99.00 and are entitled to the benefit of tariff item No. 9903.00.00.

48. The appeal is therefore allowed.

Ellen Fry

Ellen Fry  
Presiding Member

Serge Fréchette

Serge Fréchette  
Member

Diane Vincent

Diane Vincent  
Member

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28. *Agri-Pack v. Commissioner of the Canada Customs and Revenue Agency* (2 November 2004), AP-2003-010 (CITT).

29. *Agreed Upon Statement of Fact*, at paras. 3, 4.