



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2009-072

Rona Corporation Inc.

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Tuesday, February 15, 2011*

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DECISION..... 13

IN THE MATTER OF an appeal heard on October 19, 2010, 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 January 13, 2010, with respect to requests for further re-determination of tariff classification, pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**RONA CORPORATION INC.**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is dismissed.

Serge Fréchette  
Serge Fréchette  
Presiding Member

Dominique Laporte  
Dominique Laporte  
Secretary

Place of Hearing: Ottawa, Ontario  
Date of Hearing: October 19, 2010

Tribunal Member: Serge Fréchette, Presiding Member

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**PARTICIPANTS:****Appellant**

Rona Corporation Inc.

**Counsel/Representative**

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**Respondent**

President of the Canada Border Services Agency

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**WITNESS:**

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## STATEMENT OF REASONS

### BACKGROUND

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

2. The issue in this appeal is whether certain glue guns (the goods in issue) are properly classified under tariff item No. 8516.79.90 of the schedule to the *Customs Tariff*<sup>2</sup> as other electro-thermic appliances of a kind used for domestic purposes, as determined by the CBSA, or should be classified under tariff item No. 8465.99.90 as other machine-tools (including machines for nailing, stapling, glueing or otherwise assembling) for working wood, cork, bone, hard rubber, hard plastics or similar hard materials, as claimed by Rona.

### PROCEDURAL HISTORY

3. The goods in issue were imported by Rona on May 17, 2006, and April 13, 2007, under tariff item Nos. 3506.10.00 as products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg, and 8516.79.90 as other electro-thermic appliances of a kind used for domestic purposes respectively.

4. On June 5 and 28, 2007, Rona applied for a refund of duties pursuant to subsection 74(1) of the *Act* on the basis that duties had been paid as a result of an error in the tariff classification of the goods in issue. In this regard, Rona requested that the goods in issue be classified under tariff item No. 8465.99.90 as other machine-tools (including machines for nailing, stapling, glueing or otherwise assembling) for working wood, cork, bone, hard rubber, hard plastics or similar hard materials.

5. On February 7, 2008, the CBSA denied Rona's applications for a refund of the duties paid on the goods in issue. Pursuant to subsection 74(4) of the *Act*, these denials were deemed to be re-determinations under paragraph 59(1)(a).

6. On April 7, 2008, Rona filed requests for further re-determination pursuant to subsection 60(1) of the *Act*.

7. On January 13, 2010, the CBSA issued its decisions, pursuant to subsection 60(4) of the *Act*, which denied the requests and confirmed that the goods in issue were properly classified under tariff item No. 8516.79.90 as other electro-thermic appliances of a kind used for domestic purposes.

8. On February 10, 2010, Rona filed the present appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

9. The Tribunal held a public hearing in Ottawa, Ontario, on October 19, 2010. Mr. George Rothschild, Professor and Departmental Coordinator in the Cabinetmaking and Furniture Technician Program, Building Trades Faculty, at Algonquin College in Ottawa, appeared as a witness for the CBSA. Mr. Rothschild was qualified by the Tribunal as an expert in tools and machinery for use in the woodworking and cabinetmaking industry. No witnesses were called by Rona.

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

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

## GOODS IN ISSUE

10. The goods in issue consist of three models of SUREBONDER® glue guns, model Nos. GM-160, H-270 and DT-270, which are manufactured in the People's Republic of China and subsequently imported from the United States into Canada by Rona. The goods in issue use electricity to power an internal heating element which melts the glue and allows it to be applied or deposited in a specific location. Glue sticks are inserted in the back of the goods in issue and are mechanically moved forward through the nozzle by using the trigger.

11. According to the manufacturer's product literature,<sup>3</sup> model No. GM-160 is a 10-watt "Mini High Temperature" glue gun which reaches a temperature of 350°F (176°C), weighs 4 oz. (113.4 g) and uses glue sticks with a 0.285 in. (7.2 mm) diameter; model No. H-270 is a 40-watt "Full Size High Temperature" glue gun which reaches a temperature of 380°F (193°C), weighs 7.2 oz. (204.1 g) and uses glue sticks with a 0.445 in. (11.3 mm) diameter; and model DT-270 is a 40-watt "Full Size Dual Temperature" glue gun which reaches temperatures of 250°F (121°C) and 380°F (193°C), weighs 7.2 oz. (204.1 g) and uses glue sticks with a 0.445 in. (11.3 mm) diameter. All three models are described as being ideal for "... crafts, floral and do it yourself projects."<sup>4</sup>

12. The CBSA filed, as physical exhibits, samples of the goods in issue.<sup>5</sup> Rona did not file any physical exhibits.

## ANALYSIS

### Statutory Framework

13. 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.

14. 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>6</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.<sup>7</sup> 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.

15. 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>[8]</sup> and the Canadian Rules<sup>[9]</sup> set out in the schedule."

3. Tribunal Exhibit AP-2009-072-09A, tab 2.

4. *Ibid.*

5. Exhibits B-01, B-02 and B-03.

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

7. The Tribunal notes that section 13 of the *Official Languages Act*, R.S.C. 1985 (4th Supp.), c. 31, provides that the English and French versions of any act of Parliament are equally authoritative. Thus, the Tribunal may examine both the English and French versions of the schedule to the *Customs Tariff* in interpreting the tariff nomenclature.

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

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

16. 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>10</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.”

17. 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>[11]</sup> and the Explanatory Notes to the Harmonized Commodity Description and Coding System,<sup>[12]</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 respected, unless there is a sound reason to do otherwise, as they serve as an interpretative guide to tariff classification in Canada.<sup>13</sup>

18. Thus, the Tribunal must first determine whether the goods in issue can be classified according to Rule 1 of the *General Rules* according to the terms of the headings and any relative section or chapter Notes in the *Customs Tariff*, having regard to any relevant *Classification Opinions* and *Explanatory Notes*. It is only if the Tribunal is not satisfied that the goods in issue can be properly classified at the heading level through the application of Rule 1 of the *General Rules* that it becomes necessary to consider subsequent rules in order to determine in which tariff heading the goods in issue shall be classified.

19. Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to determine the proper subheading and tariff item, applying Rule 6 of the *General Rules* in the case of the former and the *Canadian Rules* in the case of the latter.

### **Tariff Classification of the Goods in Issue**

20. As previously stated, the issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8516.79.90 as other electro-thermic appliances of a kind used for domestic purposes, as determined by the CBSA, or should be classified under tariff item No. 8465.99.90 as other machine-tools (including machines for nailing, stapling, glueing or otherwise assembling) for working wood, cork, bone, hard rubber, hard plastics or similar hard materials, as claimed by Rona.

21. Consequently, the dispute between the parties arises at the heading level. Rona claims that the goods in issue should be classified in heading No. 84.65, whereas the CBSA determined that the goods in issue are properly classified in heading No. 85.16.

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10. 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 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).

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

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

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

22. The nomenclature of the *Customs Tariff*, which Rona claims should apply to the goods in issue, reads as follows:

**Chapter 84**

...

**84.65**      **Machine-tools (including machines for nailing, stapling, glueing or otherwise assembling) for working wood, cork, bone, hard rubber, hard plastics or similar hard materials.**

...

**-Other:**

...

**8465.99**    **--Other**

...

8465.99.90    ---Other

23. Part (A) of the *Explanatory Notes* to Chapter 84 provides as follows:

**Subject** to the provisions of the General Explanatory Note to Section XVI, this Chapter covers all machinery and mechanical appliances, and parts thereof, not more specifically covered by **Chapter 85** . . . .

...

In general, Chapter 84 covers machinery and mechanical apparatus and Chapter 85 electrical goods. However, certain machines are specified in headings of Chapter 85 (e.g., electro-mechanical domestic appliances) while Chapter 84 on the other hand covers certain non-mechanical apparatus (e.g., steam generating boilers and their auxiliary apparatus, and filtering apparatus).

It should also be noted that machinery and apparatus of a kind covered by Chapter 84 remain in this Chapter even if electric . . . .

24. Further, the relevant *Explanatory Notes* to heading No. 84.65 provide as follows:

This heading covers machine-tools for the shaping or surface-working (including cutting, forming and assembling) of wood (and materials derived from wood), cork, bone, hardened rubber, hard plastics and similar hard materials (horn, corozo, mother of pearl, ivory, etc.).

The heading **excludes** machines for working materials which although referred to in the heading do not possess the characteristics of hard materials at the time work commences on them. . . .

In general, machine-tools are power-driven but similar machines, worked by hand or pedal, are also covered by this heading. These latter types can be distinguished from the hand tools of **heading 82.05** and from the tools for working in the hand of **heading 84.67**, by the fact that they are usually designed to be mounted on the floor, on a bench, on a wall or on another machine, and are thus usually provided with a base plate, mounting frame, stand, etc.



25. The nomenclature of the *Customs Tariff*, which the CBSA considers applicable to the goods in issue, reads as follows:

**Chapter 85**

...

**85.16** Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electro-thermic hair-dressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric smoothing irons; other electro-thermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 85.45.

...

**-Other electro-thermic appliances:**

...

**8516.79** --Other

...

8516.79.90 ---Other

26. Part (A) of the *Explanatory Notes* to Chapter 85 provides as follows:

This Chapter covers all electrical machinery and equipment, **other than:**

- (a) Machinery and apparatus of a kind covered by **Chapter 84**, which remains classified there even if electric (see the General Explanatory Note to that Chapter).

...

This Chapter covers:

...

- (3) Certain machines and appliances which depend for their operation on the properties or effects of electricity, such as its electro-magnetic effects, heating properties, etc. (headings 85.05, 85.11 to 85.18, 85.25 to 85.31 and 85.43).

...

It should, however, be noted that this Chapter covers **only certain types of electro-thermic apparatus**, e.g., furnaces, etc. (heading 85.14) and space heating equipment, domestic appliances, etc. (heading 85.16).

...

In general, however, electrically heated apparatus falls in other Chapters (mainly in **Chapter 84**), for example: steam generating boilers and super-heated water boilers (**heading 84.02**), air conditioning machines (**heading 84.15**), roasting, distilling or other apparatus of **heading 84.19**, calendering or other rolling machines and cylinders therefor (**heading 84.20**), poultry incubators and brooders (**heading 84.36**), general purpose branding machines for wood, cork, leather, etc. (**heading 84.79**), medical apparatus (**heading 90.18**).

27. Further, the relevant *Explanatory Notes* to heading No. 85.16 provide as follows:

**(E) OTHER ELECTRO-THERMIC APPLIANCES OF A KIND USED FOR DOMESTIC PURPOSES**

This group includes all electro-thermic machines and appliances **provided** they are **normally used in the household**. Certain of these have been referred to in previous parts of this Explanatory Note (e.g., electric fires, geysers, hair dryers, smoothing irons, etc.). Others include . . . .

28. The Tribunal notes that, at the start of the hearing, the parties indicated that they had agreed that the goods in issue are electro-thermic, have no motor and, in certain circumstances and for certain purposes, can be used for glueing wood.<sup>14</sup>

29. The Tribunal will begin its analysis by determining whether the goods in issue are classifiable in each of the competing headings by examining the terms of the headings in accordance with Rule 1 of the *General Rules*,<sup>15</sup> while also having regard to the relevant *Explanatory Notes*. If this exercise leads to the classification of the goods in issue in one, and only one, heading, the Tribunal will then proceed to determine the classification of the goods in issue at the subheading and tariff item levels.

Are the Goods in Issue Classifiable in Heading No. 85.16?

30. On the basis of the terms of heading No. 85.16, it is clear that, in order for the goods in issue to be classifiable in that heading, they must meet three conditions, namely, they must be (i) electro-thermic, (ii) an appliance and (iii) of a kind used for domestic purposes. As stated above, the parties agreed that the goods in issue are electro-thermic. The Tribunal also agrees, as the evidence clearly indicates, that the goods in issue use electricity to power an internal heating element that melts glue.<sup>16</sup> However, the parties held opposing views with respect to the other two conditions, and the Tribunal will need to consider these further.

31. Rona submitted that the goods in issue cannot be classified in heading No. 85.16, as they are tools rather than appliances, and that they are not “. . . of a kind used for domestic purposes . . . .” It submitted that the dictionary defines the word “tool” as a “. . . handheld device that aids in accomplishing a task . . . .”<sup>17</sup> and that the goods in issue are such devices. In this regard, it noted that, throughout his testimony, Mr. Rothschild referred to the goods in issue as “tools”. In support of its position, Rona also referred to the Tribunal’s decision in *Canadian Tire Corp. Ltd. v. President of the Canada Border Services Agency*,<sup>18</sup> where the Tribunal found that the *Explanatory Notes* to heading No. 85.16 did not support the CBSA’s argument that hand tools like the heat guns that were in issue in that case were appliances and that, accordingly, they were not classifiable in that heading. It added that the examples of goods listed in the *Explanatory Notes* to heading No. 85.16 are for such uses as popcorn making, cooking, ironing and hair drying and that none of them are remotely similar to the goods in issue.

32. Rona submitted that its position that the goods in issue are not for domestic purposes is also supported by the Tribunal’s decision in *Canadian Tire*, where the Tribunal determined that the heat guns in issue were not “. . . of a kind used for domestic purposes . . . .” According to Rona, the goods in issue are very similar to the heat guns that were in issue in *Canadian Tire*. It further submitted that, even if it were to accept that the goods in issue are for hobbies and crafts, these are things that are done outside the daily work

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14. *Transcript of Public Hearing*, 19 October 2010, at 4.

15. The Tribunal notes that, for the purposes of the present appeal, there are no relevant section or chapter notes.

16. Tribunal Exhibit AP-2009-072-09A, tab 2; *Transcript of Public Hearing*, 19 October 2010, at 25.

17. *Merriam Webster’s Collegiate Dictionary*, 11th ed., s.v. “tool”.

18. (2 November 2007), AP-2006-038 (CITT) [*Canadian Tire*].

activity of a household and should therefore not be considered as domestic functions. It added that, if the Tribunal were to interpret the term “domestic” in a broad manner to include any activity done at home, it would open the door for a large number of goods to be considered of a kind used for domestic purposes.

33. The CBSA, on the other hand, submitted that the goods in issue are appliances and “. . . of a kind used for domestic purposes . . . .” It submitted that, while the *Customs Tariff* and the *Explanatory Notes* do not provide a definition of the word “appliance”, dictionary definitions, including those previously relied upon by the Tribunal,<sup>19</sup> indicate that an appliance is an instrument or a device that uses energy in order to perform a specific task or for a specific purpose. It therefore submitted that the goods in issue are appliances because they are devices which use electrical energy for the specific task of glueing and producing a result. It further submitted that there is nothing in the legal notes or *Explanatory Notes* which precludes appliances from being hand-held and that, in fact, the Tribunal has already determined in a previous appeal<sup>20</sup> that an appliance can be hand-held. It added that, contrary to Rona’s contention, the goods in issue are not similar to the heat guns that were in issue in *Canadian Tire*, as they do not contain a fan or a self-contained motor.

34. The CBSA submitted that, in *Evenflo Canada Inc. v. President of the Canada Border Services Agency*,<sup>21</sup> a recent appeal, the Tribunal confirmed that goods are for domestic purposes if they are primarily used in the home and/or its direct surroundings. In the CBSA’s view, the goods in issue are for domestic purposes because they are primarily used by individuals performing domestic chores, such as do-it-yourself tasks, minor household repairs and crafts in domestic settings. Relying on the manufacturer’s product literature, as well as Mr. Rothschild’s testimony, the CBSA argued that the goods in issue are not designed for industrial or commercial use, are not advertised as being for such use and generally lack the types of features normally found on industrial glue guns, such as a higher wattage rating, stainless steel heaters and a warranty. It noted that, instead, the goods in issue are found in the manufacturer’s craft, floral, home decor, and gift catalogue and are advertised as products for small repairs or arts and crafts and hobby projects, which are domestic uses. The CBSA also provided a U.S. classification ruling in which a glue gun similar to the goods in issue was classified as “. . . other electrothermic appliances of a kind used for domestic purposes . . . .”

35. With respect to the issue of whether the goods in issue are appliances, the Tribunal notes that the *Canadian Oxford Dictionary* defines the term “appliance” as follows: “. . . **1** an electrical or gas-powered device or piece of equipment used for a specific task, esp. for domestic tasks such as washing dishes etc. . . .”<sup>22</sup> It also defines the term “device” as follows: “. . . **1 a** a thing made or adapted for a particular purpose, esp. a mechanical contrivance . . . .”<sup>23</sup> In the Tribunal’s view, the evidence on the record makes it clear that the goods in issue are electrical devices, or “things”, that are used for a specific task or made for a particular purpose and are therefore appliances. As previously stated, the goods in issue use electricity to power an internal heating element and are thus electrical. Moreover, the manufacturer’s product literature and Mr. Rothschild’s testimony both confirm that the goods in issue are used for the specific task or purpose of dispensing glue and that this is usually done for crafts, and floral and do-it-yourself projects.<sup>24</sup>

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19. The CBSA specifically referred to the Tribunal’s decision in *Teledyne Canada Mining Products v. Deputy M.N.R.C.E.* (12 April 1994), AP-93-019 (CITT).

20. *Black & Decker Canada Inc. v. Deputy M.N.R.C.E.* (16 December 1992), AP-90-192 (CITT).

21. (19 May 2010), AP-2009-049 (CITT) [*Evenflo*].

22. 2d ed., s.v. “appliance”.

23. 2d ed., s.v. “device”.

24. Tribunal Exhibit AP-2009-072-09A, tab 2; *Transcript of Public Hearing*, 19 October 2010, at 23, 25.

36. Although the Tribunal has found that the goods in issue can be referred to as “appliances”, it notes that there are a number of other terms which could also aptly describe the goods in issue. In addition to the definitions provided above, which equate an appliance to a “device” or a “piece of equipment”, some other definitions refer to it as a “tool” or “machine”.<sup>25</sup> Moreover, Part (A) of the *Explanatory Notes* to Chapter 85 generally describes appliances as “apparatus” and the *Explanatory Notes* to heading No. 85.16 clearly equate the terms “machine” and “appliance”. In the Tribunal’s view, the fact that such a large number of terms can seemingly be used to describe the same goods suggests that these terms should be interpreted broadly rather than narrowly. Therefore, even if the goods in issue can be referred to as “tools”, as indicated above and as argued by Rona, this by no means precludes them from also being referred to as “appliances”.

37. In *Canadian Tire*, the Tribunal found that the *Explanatory Notes* to heading No. 85.16 did not support the CBSA’s argument that hand tools like the heat guns that were in issue in that case were appliances. The Tribunal reasoned that, while the list of goods included under Part (E), “**OTHER ELECTRO-THERMIC APPLIANCES OF A KIND USED FOR DOMESTIC PURPOSES**” was illustrative and not exhaustive, the fact remained that the list did not include any goods that appeared to be for use in the hand.<sup>26</sup> Having now had the opportunity to reconsider this issue in the context of the present appeal, the Tribunal has come to the conclusion that hand tools, or goods that are for use in the hand, can be considered appliances for purposes of heading No. 85.16.

38. Heading No. 85.16 covers, *inter alia*, “. . . electro-thermic hair-dressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers . . .” and “. . . other electro-thermic appliances of a kind used for domestic purposes . . .” The use of the word “other” before “electro-thermic appliances” suggests that such appliances are additional to the previously mentioned electro-thermic appliances. In this respect, the Tribunal notes that electro-thermic hair-dressing apparatus, which are previously mentioned in the heading, specifically include goods that are for use in the hand, such as hair dryers and hair curlers. Moreover, in addition to the fact that the list of goods included under Part (E) of the *Explanatory Notes* to heading No. 85.16 is illustrative and not exhaustive, this section also explicitly refers to hair dryers (which are for use in the hand) as being one of a number of electro-thermic machines and appliances that were referred to in previous parts of the *Explanatory Notes* to heading No. 85.16. Therefore, the Tribunal finds that it is reasonable to infer that electro-thermic appliances of heading No. 85.16 can be hand-held.

39. On the basis of the foregoing, the Tribunal considers that the goods in issue are appliances and thus meet the second condition for classification in heading No. 85.16.

40. Turning to the issue of whether the goods in issue are “. . . of a kind used for domestic purposes . . .”, the Tribunal notes that, in *Evenflo*, it reviewed a number of its previous decisions which interpreted the expression “domestic purposes”. The Tribunal confirmed that, in order to be considered as goods used for domestic purposes, goods must be primarily for domestic or household use, which entails that they must primarily be used in the home or its direct surroundings. In determining whether goods are primarily for use in the home or its direct surroundings, the Tribunal usually has regard to the features of the goods, such as their physical characteristics, their design and their price.<sup>27</sup>

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25. See *Gage Canadian Dictionary*, 1983, where the term “appliance” is defined as “. . . a tool, small machine, or some other device used in doing something . . .”

26. See *Canadian Tire* at para. 33.

27. See, for example, *Costco Canada Inc. v. Commissioner of the Canada Customs and Revenue Agency* (11 January 2001), AP-2000-015 (CITT) at 4; *Alliance Ro-Na Home Inc. v. Commissioner of the Canada Customs and Revenue Agency* (17 September 2002), AP-2001-065 (CITT) at 5.

41. In this case, the evidence on the record shows overwhelmingly that the goods in issue are primarily for use in the home or its direct surroundings. Indeed, the manufacturer's product literature clearly indicates that the goods in issue are designed and intended to be used for "...crafts, floral and do it yourself projects"<sup>28</sup> and "home decor",<sup>29</sup> tasks which the Tribunal considers as primarily being accomplished by individuals in the home. This is in contrast with some of the manufacturer's other product literature pertaining to its industrial glue guns, which makes no mention of such domestic uses.<sup>30</sup>

42. In his expert report, Mr. Rothschild stated that the specifications of the goods in issue demonstrate that they are suitable for craft and hobby use, but not for commercial use.<sup>31</sup> In particular, Mr. Rothschild noted that professional and commercial glue guns generally require 100 to 500 watts of power, are rated on the weight of glue that they are capable of delivering on a per hour basis and carry a manufacturer's warranty, whereas the goods in issue require only 10 to 40 watts of power, provide no information regarding the amount of glue that they can deliver on an hourly basis and do not appear to carry any warranty. At the hearing, Mr. Rothschild reiterated these points and explained that, in his opinion, this shows that the goods in issue are designed for home use as opposed to industrial or commercial purposes.<sup>32</sup> The Tribunal notes that no contradictory evidence was produced by Rona in this regard.

43. Rona argued that none of the examples of goods listed in the *Explanatory Notes* to heading No. 85.16 are similar to the goods in issue. In its view, crafts and hobbies, unlike cooking, ironing and hair drying, are things that are done outside the daily work activity of a household. The Tribunal cannot accept this argument. As stated above, the list of goods included under Part (E) of the *Explanatory Notes* to heading No. 85.16 is illustrative and not exhaustive. Moreover, this section of the *Explanatory Notes* explicitly states that "...other electro-thermic appliances of a kind used for domestic purposes..." of heading No. 85.16 include "...all electro-thermic machines and appliances **provided they are normally used in the household**" [italics added for emphasis]. Therefore, for purposes of classification in heading No. 85.16, the Tribunal sees no distinction between goods used for activities that are done on a daily basis, such as cooking and cleaning, and goods used for other activities that may be done less frequently, such as crafts and hobbies. As long as the goods are normally used in the household, they will be considered "...of a kind used for domestic purposes..." In this case, it has been established that the goods in issue are normally used in the household.

44. Rona also argued that the goods in issue are very similar to the heat guns that were in issue in *Canadian Tire* and which were found by the Tribunal not to be "...of a kind used for domestic purposes..." The Tribunal notes that, in *Canadian Tire*, it determined that the heat guns were not primarily for domestic or household use because the evidence demonstrated that there was significant use of the goods for commercial purposes. No such evidence has been adduced in this case. In fact, as noted above, the evidence demonstrates that the goods in issue are primarily for use in the home or its direct surroundings.

45. On the basis of the foregoing, the Tribunal considers that the goods in issue are "...of a kind used for domestic purposes..." and thus meet the third and final condition for classification in heading No. 85.16. Therefore, the Tribunal finds that the goods in issue are classifiable in heading No. 85.16.

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28. Tribunal Exhibit AP-2009-072-09A, tab 2.

29. Tribunal Exhibit AP-2009-072-06A, tab 16.

30. *Ibid.*, tab 17.

31. Tribunal Exhibit AP-2009-072-09A, at 2.

32. *Transcript of Public Hearing*, 19 October 2010, at 19, 25-26, 28, 39, 41-43.

46. The Tribunal will now consider whether the goods in issue are also classifiable in heading No. 84.65.

Are the Goods in Issue Classifiable in Heading No. 84.65?

47. Rona submitted that the goods in issue should be classified in heading No. 84.65 as other machine-tools (including machines for nailing, stapling, glueing or otherwise assembling) for working wood, cork, bone, hard rubber, hard plastics or similar hard materials, because they meet all three conditions for classification therein. It submitted that the goods in issue are obviously for glueing, and are marketed and sold for glueing, among other things, hard materials such as metal, wood, plastic and ceramic and fall within the meaning of the term “machine-tool”. In this respect, it noted that, although the term “machine-tool” is not defined in the *Customs Tariff*, the *Explanatory Notes* to heading No. 84.65 provide that machine-tools are generally power-driven but that similar machines, worked by hand or pedal, are also covered by the heading. It submitted that the evidence in this case shows that the goods in issue are worked by hand.

48. As for the part of the *Explanatory Notes* to heading No. 84.65 which provides that machine-tools worked by hand “. . . can be distinguished from the hand tools of **heading 82.05** and from the tools for working in the hand of **heading 84.67**, by the fact that they are usually designed to be mounted on the floor, on a bench, on a wall or on another machine, and are thus usually provided with a base plate, mounting frame, stand, etc.”, Rona argued that it reflects a debate between heading Nos. 82.05, 84.65 and 84.67 and that, in no way, does it direct that machine-tools worked by hand be classified in heading No. 85.16. It therefore argued that, since the goods in issue cannot be classified in heading Nos. 82.05 and 84.67, the only remaining heading in which to classify the goods in issue is heading No. 84.65.

49. Rona also submitted that the *Explanatory Notes* to Chapter 85, which provide that electrically heated apparatus generally fall in other chapters, and mainly Chapter 84, support the classification of the goods in issue in heading No. 84.65.

50. The CBSA, on the other hand, submitted that the goods in issue are not machine-tools and that, if they are considered to be hand tools, they are then excluded from heading No. 84.65 by virtue of the *Explanatory Notes* to that heading, which exclude hand tools and tools for working in the hand from the heading. Relying on definitions taken from a Federal Court of Appeal case<sup>33</sup> and a specialized dictionary,<sup>34</sup> it submitted that a machine-tool is a power-driven and stationary combination of mechanical parts and of turning or sliding pieces connected and assembled in a framework for the purpose of working on solid materials. It further submitted that, according to Mr. Rothschild, such machines are fairly large and are used for shaping materials through a reductive or subtractive process. In its view, the goods in issue do not possess these characteristics and therefore cannot be considered machine-tools.

51. The CBSA submitted that, in order for the goods in issue to fall within the description provided in the *Explanatory Notes* to heading No. 84.65, they must either be (i) power-driven machine-tools or (ii) similar machines worked by hand or pedal. With respect to the first option, it submitted that Rona did not argue that the goods in issue were power-driven and that, even if the goods in issue use electricity to heat the element in order to melt the glue, this does not make them power-driven. It added that, according to Mr. Rothschild, “power-driven” means having a motor. In this case, the parties agreed that the goods in

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33. *Ingersoll-Rand Door Hardware Canada Inc. v. Deputy M.N.R., Customs and Excise* [1987] F.C.J. 936, Tribunal Exhibit AP-2009-072-06A, tab 22.

34. *McGraw-Hill Dictionary of Scientific and Technical Terms*, 6th ed., s.v. “machine-tool”, Tribunal Exhibit AP-2009-072-06A, tab 7.

issue do not have a motor. With respect to the second option, it noted that the *Explanatory Notes* to heading No. 84.65 distinguish the “. . . similar machines, worked by hand or pedal . . .” from “. . . hand tools . . . and tools for working in the hand . . .” by stating that the former are “. . . usually designed to be mounted on the floor, on a bench, on a wall or on another machine . . .” In this regard, it submitted that Rona did not argue that the goods in issue were designed to be mounted as such and that, in fact, the evidence demonstrates that they are portable, as they are hand-held.

52. The Tribunal considers that, in order for the goods in issue to be classifiable in heading No. 84.65, they must be (i) machine-tools, (ii) for glueing, and (iii) for working wood, cork, bone, hard rubber, hard plastics or similar hard materials. The parties have agreed that, in certain circumstances, the goods in issue can be used for glueing wood. In his testimony, Mr. Rothschild similarly agreed that the goods in issue are capable of bonding materials such as wood and plastic.<sup>35</sup> In addition, the manufacturer’s product literature also specifically states that the goods in issue can be used at high temperatures to bond metal, wood, plastics and ceramics, which are considered hard materials.<sup>36</sup> Therefore, it seems to be accepted that the goods in issue can be used for glueing wood and other hard materials.

53. With respect to the issue of whether the goods in issue are machine-tools, the Tribunal notes that the *Canadian Oxford Dictionary* defines the term “tool” as follows: “. . . **1** a any device or implement used to carry out mechanical functions whether manually or by a machine . . .”<sup>37</sup> The Tribunal has already determined, in its consideration of whether the goods in issue were appliances, that the goods in issue are devices. The evidence also suggests that the goods in issue are used to carry out a mechanical function, in that they are used to mechanically push glue sticks through a nozzle which allows for the glue to be applied or deposited in a specific location.<sup>38</sup> In this respect, the Tribunal is satisfied that the goods in issue are tools.<sup>39</sup> However, the Tribunal must consider whether the goods in issue are machine-tools.

54. The *Canadian Oxford Dictionary* defines the term “machine” as follows: “. . . **1** an apparatus using or applying mechanical power, having several parts, each with a definite function which together perform certain kinds of work. . . .”<sup>40</sup> In the Tribunal’s opinion, the word “machine” in the expression “machine-tool” of heading No. 84.65 is used to qualify the types of tools that are intended to be covered by the heading. Therefore, it seems reasonable to conclude that, when read together, in light of their respective dictionary definitions, the words “machine” and “tool” are intended to designate a tool that uses or applies mechanical power and that has several parts, with each having definite functions which together perform some kind of work. The evidence on the record demonstrates that the goods in issue consist of several parts, with each having a definite function.<sup>41</sup> They use mechanical power, obtained by depressing the trigger, to advance the glue sticks. They also have a heating element to melt the glue and a nozzle to help direct the glue. Put together, the various parts of the goods in issue are performing work, in that they dispense glue which is used to bond various materials. Accordingly, it can reasonably be argued that the goods in issue are “machine-tools” in the general sense of the expression.

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35. *Transcript of Public Hearing*, 19 October 2010, at 66.

36. Tribunal Exhibit AP-2009-072-09A, tab 2.

37. 2d ed., s.v. “tool”.

38. *Transcript of Public Hearing*, 19 October 2010, at 23.

39. See above, where the term “appliance” was also defined as a “tool”.

40. 2d ed., s.v. “machine”.

41. *Transcript of Public Hearing*, 19 October 2010, at 23.

55. Although the goods in issue can be considered machine-tools that may be used for glueing wood and other hard materials, the Tribunal must nonetheless be satisfied that they are of the kind mentioned in heading No. 84.65. In other words, the Tribunal must be satisfied that the goods in issue are “machine-tools” of the type which was intended to be covered by heading No. 84.65. In this regard, the *Explanatory Notes* to heading No. 84.65 are quite instructive. They provide as follows:

In general, machine-tools are power-driven but similar machines, worked by hand or pedal, are also covered by this heading. These latter types can be distinguished from the hand tools of **heading 82.05** and from the tools for working in the hand of **heading 84.67**, by the fact that they are usually designed to be mounted on the floor, on a bench, on a wall or on another machine, and are thus usually provided with a base plate, mounting frame, stand, etc.

56. In the Tribunal’s view, these *Explanatory Notes* make it clear that machine-tools “worked by hand” are different from “hand tools” and “tools for working in the hand”, in that they are usually designed to be mounted on the floor, on a bench, on a wall or on another machine. Therefore, it is readily apparent that the expression “worked by hand” means that, while the machine-tools may be operated by hand, they are not held in the hand. Indeed, the use of the term “mounted” implies that the machine-tools will be attached or affixed to the floor, bench, wall or other machine and will thus be stationary. The Tribunal notes that the definitions of “machine-tool” provided by the CBSA and Mr. Rothschild specified that these machines were stationary or fixed.<sup>42</sup> The fact that machine-tools of heading No. 84.65 would generally be required to be mounted on a solid surface or structure suggests to the Tribunal that they are generally larger machines used for performing work of a more industrious or robust nature. In fact, at the hearing, Mr. Rothschild explained that there exist large machines that can be used for spreading adhesives on a commercial basis.<sup>43</sup> The Tribunal is of the view that heading No. 84.65 is intended to cover such types of machines. The evidence in this case plainly indicates that the goods in issue are not the types of machine-tools that are intended to be covered by heading No. 84.65, as they are not designed to be mounted on a solid surface or structure so as to be fixed or stationary. Instead, they are small glue-dispensing machines (or appliances) that are designed to be held in the hand for working on crafts and hobbies.

57. Rona argued that the *Explanatory Notes* to heading No. 84.65 reflect a debate between heading Nos. 82.05, 84.65 and 84.67 and that, since the goods in issue cannot be classified in heading Nos. 82.05 and 84.67, they must necessarily be classified in heading No. 84.65. The Tribunal disagrees. The fact that the goods in issue cannot be classified in heading Nos. 82.05 or 84.67 does not mean that they are automatically classified in heading No. 84.65. They must still meet the terms of that heading in order to be classified therein. In this instance, as evidenced by the Tribunal’s analysis above, the goods in issue do not meet the terms of heading No. 84.65 and the associated *Explanatory Notes*. However, they do meet the terms of heading No. 85.16.

58. Rona also argued that the *Explanatory Notes* to Chapter 85 support the classification of the goods in issue in heading No. 84.65. While these *Explanatory Notes* do state that electrically heated apparatus are generally classified in Chapter 84, they also state that Chapter 85 covers certain types of electro-thermic apparatus and gives “domestic appliances” of heading No. 85.16 as an example. In the Tribunal’s view, the fact that certain goods may *generally* be classified in Chapter 84 does not preclude them from being classified in Chapter 85 if they are *specifically* described therein. In this case, the Tribunal has found that the goods in issue are specifically covered by Chapter 85 (in heading No. 85.16).

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42. Tribunal Exhibit AP-2009-072-06A, tab 7; Tribunal Exhibit AP-2009-072-09A, tab 10.

43. *Transcript of Public Hearing*, 19 October 2010, at 34-35.



59. In light of the above, the Tribunal finds that the goods in issue are not classifiable in heading No. 84.65. Accordingly, pursuant to Rule 1 of the *General Rules*, the goods in issue are properly classified in heading No. 85.16.

Classification at the Subheading and Tariff Item Levels

60. Having determined that the goods in issue are properly classified in heading No. 85.16, the Tribunal must next determine the proper classification at the subheading and tariff item levels. Heading No. 85.16 has nine first-level subheadings, of which only one specifically pertains to the goods in issue. This first level subheading, "Other electro-thermic appliances", is subdivided into three second-level subheadings as follows: "Coffee or tea makers", "Toasters" and "Other". As the goods in issue are not coffee or tea makers or toasters, they must be classified in the only remaining subheading, "Other". Therefore, pursuant to Rule 6 of the *General Rules*, the goods in issue are properly classified in subheading No. 8516.79.

61. Subheading No. 8516.79 has two tariff items. As the goods in issue are not fabric steamers of tariff item No. 8516.79.10, they must be classified under the only other tariff item, "Other". Therefore, pursuant to Rule 1 of the *Canadian Rules*, the goods in issue are properly classified under tariff item No. 8516.79.90.

**DECISION**

62. For the foregoing reasons, the Tribunal concludes that the goods in issue are properly classified under tariff item No. 8516.79.90 as other electro-thermic appliances of a kind used for domestic purposes, as determined by the CBSA.

63. The appeal is therefore dismissed.

Serge Fréchette  
Serge Fréchette  
Presiding Member