



Ottawa, Wednesday, June 7, 2000

**Appeal No. AP-98-092**

IN THE MATTER OF an appeal heard on October 7, 1999, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue dated October 27, 1998, with respect to a request for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**SHARP ELECTRONICS OF CANADA LTD.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**AND**

**CANON CANADA INC., TOSHIBA OF CANADA LIMITED  
AND RICOH CANADA**

**Interveners**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

Arthur B. Trudeau  
Arthur B. Trudeau  
Presiding Member

Peter F. Thalheimer  
Peter F. Thalheimer  
Member

Richard Lafontaine  
Richard Lafontaine  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-98-092

SHARP ELECTRONICS OF CANADA LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

and

CANON CANADA INC., TOSHIBA OF CANADA LIMITED  
AND RICOH CANADA

Interveners

The goods in issue are photocopier toner cartridges which are temporarily attached to photocopiers in order to transfer toner contained in the cartridge into the toner hopper of photocopiers. The toner functions in the photocopying process to make the image being photocopied visible on plain paper. The issue in this appeal is whether the toner cartridges are properly classified under tariff item No. 3707.90.00 as other chemical preparations for photographic uses, as determined by the respondent, or should be classified under tariff item No. 9009.90.90 as other parts and accessories of a photocopying apparatus, as claimed by the appellant.

**HELD:** The appeal is allowed. The evidence indicates that the cartridges are classifiable under tariff item No. 9009.90.90 as accessories of a photocopying apparatus. The cartridges are attached to specific models of photocopiers and enhance their effectiveness. The cartridges facilitate the delivery of toner to the photocopier without spillage. Pursuant to Rule 1 of the *General Rules for the Interpretation of the Harmonized System*, the Tribunal concludes that Note 2 to Chapter 90, which states that parts and accessories, if suitable for use solely or principally with a particular kind of machine, are to be classified with the machines, instruments or apparatus of that kind, directs the classification of the goods in issue under tariff item No. 9009.90.90.

Place of Hearing: Ottawa, Ontario  
Date of Hearing: October 7, 1999  
Date of Decision: June 7, 2000

Tribunal Members: Arthur B. Trudeau, Presiding Member  
Peter F. Thalheimer, Member  
Richard Lafontaine, Member

Counsel for the Tribunal: Gerry Stobo  
John Dodsworth

Clerk of the Tribunal: Anne Turcotte

Appearances: Michael Kaylor, for the appellant  
Meghan Castle, for the respondent  
Darrel H. Pearson and J. Peter Jarosz, for the interveners

Appeal No. AP-98-092

**SHARP ELECTRONICS OF CANADA LTD.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**and**

**CANON CANADA INC., TOSHIBA OF CANADA LIMITED  
AND RICOH CANADA**

**Interveners**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member  
PETER F. THALHEIMER, Member  
RICHARD LAFONTAINE, Member

**REASONS FOR DECISION**

**INTRODUCTION**

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> from a decision of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency) made under section 63 of the Act. The issue in this appeal is whether the toner cartridges imported by the appellant are properly classified in heading No. 37.07 of Schedule I to the *Customs Tariff*<sup>2</sup> as chemical preparations for photographic uses, as determined by the respondent, or should be classified in heading No. 90.09 as parts and accessories of photocopying apparatus, as claimed by the appellant.

On May 10, 1999, Canon Canada Inc., Toshiba of Canada Limited and Ricoh Canada (Ricoh) requested that they be granted intervener status in the appeal. By letter dated June 3, 1999, the Tribunal informed the parties that these companies had been permitted to appear as interveners.

The goods in issue are Sharp toner cartridges, which are temporarily attached to photocopiers to allow the transfer of the toner into the toner hopper of the photocopier. The toner is used in the photocopying process to produce a visible image.

The relevant portions of the headings and subheadings at issue are as follows:

37.07	Chemical preparations for photographic uses (other than varnishes, glues, adhesives and similar preparations); unmixed products for photographic uses, put up in measured portions or put up for retail sale in a form ready for use.
3707.90.00	-Other
90.09	Photo-copying apparatus incorporating an optical system or of the contact type and thermo-copying apparatus. -Electrostatic photo-copying apparatus:
9009.90	-Parts and accessories
9009.90.90	---Other

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].
2. R.S.C. 1985 (3d Supp.), c. 41.

## EVIDENCE

Mr. Graeme Donald, who develops instructional courses as a staff member of the Technical Education Department at Sharp Electronics of Canada Ltd. and who has been working with the company since 1991, gave testimony on behalf of the appellant.

It was explained that the toner cartridge allows toner to be transferred without stopping the photocopier. The toner cartridge is made up of two relatively distinct sections: the bottle, which contains the toner, and the top portion of this bottle, which is designed with a slide mechanism. The slide mechanism, which allows interaction with specific models, attaches to the photocopier's toner access port.

When the toner hopper of the photocopier needs to be refilled, the toner bottle is attached to the opening of the toner hopper located on the outside of the photocopier. This is achieved by sliding the plate of the toner bottle onto the corresponding slide mechanism on the photocopier. When the toner bottle has been attached properly, a seal covering the opening of the bottle is then removed, allowing the toner to be transferred into the toner hopper of the photocopier.

After the toner has been transferred into the toner hopper, the cartridge can be removed. The slide mechanism of the toner cartridge engages an electronic switch on the machine, informing the photocopier that the correct toner supply has been added. Mr. Donald indicated that this operation takes approximately 30 seconds. The toner cartridge can remain attached while the photocopier is making copies.

The toner is formulated specifically for a particular type of photocopier. The use of the wrong type of toner in a photocopying machine can cause poor copy quality and/or damage to the photo-conductor. The design of the toner cartridge is such that it only attaches to the types of machines for which the toner contained within it is intended. This prevents a customer from putting the wrong type of toner in a photocopying machine.

Mr. Donald explained the difference between toner and developer. The toner is made up of carbon black and resins; it is what makes the image being reproduced visible on the paper. The developer, on the other hand, is a ferrite bead, which acts to get the toner to the photo-conductor (the drum). In contrast to the delivery of the toner by way of the toner cartridge, the developer is placed in the machine only at the time of installation and is replenished during service. Mr. Donald testified that there is no developer in the toner contained in the goods in issue. However, there is a small amount of toner in the developer.

In answering questions from the Tribunal, Mr. Donald stated that dealers purchase the toner cartridges from the appellant in packages of ten. Each individual container is wrapped in plastic. The individual dealers sell to customers in whatever quantities that they wish.

Mr. Donald stated that the goods in issue could be refilled by removing the black interlock mechanism, refilling the toner bottle itself, and inserting and locking into place a fresh or brand new cap. However, Mr. Donald testified that the cartridges are not refilled by the appellant. He also stated that third parties do not produce refilled or remanufactured toner cartridges until the particular type of photocopier for which the toner cartridge is designed has been on the market for about three years.

In answering a question from the Tribunal, Mr. Donald stated that manually pouring the toner into the toner hopper on the photocopier could not be done without producing copy problems.

Mr. Kevin Derrick testified on behalf of one of the interveners, Ricoh. Mr. Derrick, Director of Distribution and Remanufacturing at Ricoh, has been working in the industry since 1972.

Mr. Derrick explained that the modern process of photocopying is known as xerography and that it is not the same as photography. In photography, Mr. Derrick stated, the final image is produced on a photosensitive surface, that is, photographic paper. However, in xerography, the final image is produced on plain paper, which cannot be considered a photosensitive surface.

The witness for the respondent was Mr. Brian Finch, Chief of the Polymer and Textile Products Laboratory at the Department of National Revenue (Revenue Canada) (now the Canada Customs and Revenue Agency). The respondent sought to have Mr. Finch qualified as an expert witness in the field of photography. However, the interveners filed a notice of motion with the Tribunal in which they objected, stating that Mr. Finch was not an expert regarding the issues raised in this appeal. By letter dated July 15, 1999, the Tribunal informed the parties of its decision to grant the interveners' motion, such that Mr. Finch was not qualified to testify as an expert witness in the field of photography, nor on the meaning of terms and processes described in the *Customs Tariff*. Mr. Finch did testify, however, as a non-expert witness.

Mr. Finch testified that the chemical analysis of the toner contained in the goods in issue, undertaken by Revenue Canada, revealed that the toner is a mixture composed of 80 percent co-polymer of styrene (which is a resin), 8 percent carbon black and small amounts of other materials (iron oxide and silica).

In answering questions from the Tribunal, Mr. Finch explained that a photosensitive surface is a surface that changes in response to the action of light. The drum in a photocopier is a photosensitive surface. Mr. Finch stated that, in both ordinary photography and photocopying, a latent image is created on a photosensitive surface and that a second process of development is required to make that latent image visible. In his examination, Mr. Finch testified that toner was a co-agent in the process of rendering the latent photographic image visible.

## POSITION OF THE PARTIES

The appellant argued that the toner cartridges are parts and accessories of photocopiers and, therefore, should be classified in heading No. 90.09.

The appellant referred to section 11 of the *Customs Tariff* that states that, in interpreting headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*.<sup>3</sup> In support of its argument, the appellant identified two Classification Opinions published by the World Customs Organization. The appellant argued that these opinions classify two types of toner cartridges, one with moving parts and the other without moving parts, as parts and accessories of photocopying apparatus.

According to the appellant, the goods in issue are essentially identical to at least one of the two types of cartridges classified as parts and accessories in these opinions. The only difference is that they are attached to the inside of the photocopier, while the goods in issue are attached to the outside of the photocopier. Therefore, the appellant argued there is no reason why the goods in issue should not also be classified as parts and accessories of photocopiers.

The appellant argued that the toner cartridges are parts because they are committed for use with particular types of photocopiers and can remain attached to the photocopier while in operation. The appellant dismissed the idea that a product needed to be a permanent attachment to a particular machine in order to be considered a part, as evidenced by the Classification Opinions.

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3. Customs Co-operation Council, 1st ed., Brussels, 1987 [hereinafter Classification Opinions].

The appellant argued further that the toner cartridges could not be classified in heading No. 37.07, as they do not constitute chemical preparations for photographic uses. The appellant urged the Tribunal to find that photocopying does not constitute photography, since any visible image formed in the photocopying process is done so on plain paper, which is not a photosensitive surface.

The appellant argued that the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>4</sup> to heading No. 32.15 support the view that the toner contained in the toner cartridges in issue could not be classified in heading No. 37.07.<sup>5</sup> The appellant referred to the testimony of Mr. Donald who stated that the toner found in the goods in issue is a mixture of carbon black and thermal plastic resins and does not contain any developer or carrier. The appellant argued that the fact that the Explanatory Notes directed developers, which have a different composition than the toner in the goods in issue, to be classified in heading No. 37.07, indicated that the drafters did not intend the toner in the goods in issue to be classified in that heading.

The appellant also argued that, as indicated in Rule 5 (b) of the *General Rules for the Interpretation of the Harmonized System*,<sup>6</sup> the goods in issue cannot be classified in heading No. 37.07, since the cartridge in which the toner is contained is suitable for repetitive use.<sup>7</sup> Therefore, the appellant argued, heading No. 37.07 was inapplicable for the purposes of classification of the cartridges according to Rule 1 of the General Rules.

The interveners argued that toner cartridges can be categorized into three types. Type A cartridges are inserted into the photocopier and remain there until they are empty. They have moving parts that interact with the photocopier. Type B cartridges are inserted into the photocopier and remain there until empty. They have no moving parts in the cartridge itself. Type C cartridges are those that fit into a slot on the top of the photocopier; the toner is loaded into the toner hopper, and then the cartridge is removed. Type C cartridges are referred to as detachable cartridges and describe the goods in issue.

The interveners stated that Type A and Type B toner cartridges are the types that are mentioned in the Classification Opinions as classifiable in heading No. 90.09. The interveners argued that Type C cartridges should also be classified in that heading, as they are not that different. Type C cartridges, they argued, are merely an improvement, or a redesign, of the other two products.

The interveners argued that the goods can be classified as parts of photocopiers in heading No. 90.09. The interveners argued that the goods in issue are dedicated for use in photocopiers and that the evidence indicates that it would be impossible to make photocopies without toner. In addition, the toner cartridges are dedicated for use with a certain brand of photocopier and, within that brand, dedicated for use with certain models and series of models. As such, the interveners argued that the cartridges meet several of

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4. Customs Co-operation Council, 1st ed., Brussels, 1986 [hereinafter Explanatory Notes].

5. The Explanatory Notes to heading No. 32.15 state, in part:

This heading **does not include**:

- (a) Developers consisting of a toner (a mixture of carbon black and thermoplastic resins) compounded with a carrier (grains of sand coated with ethylcellulose), used in photocopying machines (**heading 37.07**).

6. *Supra* note 2, Schedule I [hereinafter General Rules].

7. Rule 5 (b) of the General Rules states:

Subject to the provisions of Rule 5 (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

the criteria to be used in classifying parts, as set out in *DMNRCE v. Dannyco Trading*<sup>8</sup> and, therefore, should be classified in heading No. 90.09.

The interveners also argued that the case referenced by the respondent, *Xerox Canada v. DMNRCE*,<sup>9</sup> is different from this case because, in *Xerox*, the heading at issue was completely descriptive of the goods in issue. Similarly, in this case, the words “parts of photocopiers” describe the complete goods, while the words “chemical preparations for photographic uses” clearly do not describe the complete goods, they describe only the toner and not the cartridge.

The interveners also argued that, in the alternative, the goods should be classified under tariff item No. 9009.90.90 as accessories for photocopiers. In *Dannyco*, the goods were not integrated in the manufacture of another product, and they were found to be accessories. The air diffusers in *Dannyco*, they argued, performed much the same role as the toner cartridges do. They were briefly attached when needed, performed a function and detached when not needed.

In response to questions from the Tribunal, the interveners noted that the distinction between a part and an accessory is that an accessory is not permanently integrated into the machine nor is it necessary for the operation of the machine. A part, on the other hand, is defined as committed for use and necessary to the operation of the machine. The interveners argued that the toner cartridges are both parts and accessories.

The interveners also argued that the goods in issue cannot be classified as “chemical preparations for photographic uses” in heading No. 37.07. They argued that the photographic process involves the production of a latent image on a photosensitive surface and that the visible image must be produced on that same photosensitive surface. The interveners also argued that the toner cartridges cannot be classified in heading No. 37.07, since that heading does not describe the toner cartridges in their entirety. As indicated in Rule 5 (b) of the General Rules, as the cartridges are refillable and not packing containers, they cannot be classified with the toner.

Finally, the interveners argued that, if the Tribunal found that the goods in issue were classifiable in heading Nos. 37.07 and 90.09, Note 2(b) to Chapter 90 of the *Customs Tariff* is a complete scheme for classifying all parts and accessories of machines of Chapter 90. Note 2 to Chapter 90 accounts for classification of all these goods, once they are found to be parts or accessories.

The respondent argued that the only relevant definition of the word “photographic” for classification purposes is that found in Chapter Note 2 of the Explanatory Notes to Chapter 37.<sup>10</sup> The evidence, the respondent argued, establishes that photocopying meets that definition, in that a visible image is formed by the action of light on a photosensitive surface – the photocopier drum.

The respondent argued that the cartridge is merely a container and delivery system for the toner and, to that effect, he referred to *Gillette Canada Inc. v. DMNR*<sup>11</sup> in which the goods in issue, made up of correction film and dispensers, were classified as a whole as correction film. In that case, the dispensers were considered to be applicators and, therefore, classifiable with the correction film. By analogy, in this case, the cartridge is simply an applicator of the toner for use in photocopying.

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8. (28 April 1997), 129 F.T.R. 314 (FCTD) [hereinafter *Dannyco*].

9. (15 July 1988), 17 C.E.R. 47 [hereinafter *Xerox*].

10. Chapter Note 2 states:

In this Chapter the word “photographic” relates to the process by which visible images are formed, directly or indirectly, by the action of light or other forms of radiation on photosensitive surfaces.

11. (20 November 1998) AP-97-116 (CITT).

Further, the respondent argued that the cartridges are classified with the toner according to Rule 5 (b) of the General Rules, as the evidence has not established that the cartridges are reusable and that, in normal circumstances, they are simply discarded after use.

The respondent indicated, in his brief, that he did not challenge the classification of the two toner cartridges described in the Classification Opinions as parts and accessories in heading No. 90.09. However, he argued that the toner cartridges in issue, the Type C cartridges, are distinct from those mentioned in the Classification Opinions, as they dealt with cartridges with moving parts, while the toner cartridges in issue do not have moving parts. The cartridges mentioned in the Classification Opinions serve the same function as the toner hopper in the photocopiers.

The respondent argued that, in *Xerox*, the Tariff Board held that the typewriter ribbon contained in cartridges is clearly a supply and does not become a part simply because its container is used as a delivery system. In *Xerox*, the typewriter ribbon cartridge was actually incorporated into the typewriter to provide ink on the ribbon on demand. The respondent argued that, in this case, the photocopier toner, a consumable, does not become a part simply because its container acts as a delivery system.

Further, the respondent argued that the toner cartridges are not parts or accessories, since they are not essential to the photocopying process. Photocopiers operate whether or not the cartridge is attached to the machine. The cartridge is attached to the machine for a matter of seconds for the purpose of emptying the toner into the machine and triggering a switch on the machine when the container has been emptied. The respondent argued that the cartridge does nothing to enhance the effectiveness of the photocopier, no more so than a gas pump nozzle can be said to improve the effectiveness of a car.

In his brief, the respondent identified Note 2 to Section VI of Schedule I to the *Customs Tariff* as being relevant, should the Tribunal determine that the goods in issue are classifiable in heading Nos. 37.07 and 90.09.<sup>12</sup> However, at the hearing, the respondent dropped this argument, indicating that Note 2 is inapplicable in the circumstances at issue.

## ANALYSIS

Section 10 of the *Customs Tariff* provides that the classification of imported goods under a tariff item shall be determined in accordance with the General Rules and the *Canadian Rules*.<sup>13</sup> Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in Schedule I, regard shall be had to the Classification Opinions and the Explanatory Notes.

The General Rules are structured in a cascading form. If the classification of an article cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, etc. Rule 1 provides the following:

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.

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12. Note 2 states:

Subject to Note 1 above, goods classifiable in heading No. 30.04, 30.05, 30.06, 32.12, 33.03, 33.04, 33.05, 33.06, 33.07, 35.06, 37.07 or 38.08 by reason of being put up in measured doses or for retail sale are to be classified in those headings and in no other heading of the Nomenclature.

13. *Supra* note 2, Schedule I.



The Tribunal must determine whether the goods in issue are properly classified as “chemical preparations for photographic uses” under tariff item No. 3707.90.00 or should be classified as parts and accessories of photocopying apparatus under tariff item No. 9009.90.90.

The Tribunal accepts that the toner contained in the goods in issue is in fact a chemical preparation. The toner is composed of a mixture of chemicals that has been prepared in a manner to comply with the requirements of specific photocopying machines. However, much evidence was put forward concerning the issue of whether photocopying could be considered photography for the purposes of Chapter 37 of the *Customs Tariff*. If photocopying is considered to be photography for the purposes of Chapter 37, then the toner, as a chemical preparation for use in photocopying, can be considered to be a chemical preparation for photographic uses.<sup>14</sup>

The evidence shows that, whether termed photocopying or xerography, the current process of document reproduction involves light being projected on the document being reproduced. The light is either absorbed in those areas of the document in which there is an image or reflected onto a photosensitive drum. The reflected light selectively neutralizes the electrical charge on the drum, leaving a charge on the drum only in those areas corresponding to the image being reproduced.

The toner is then carried to the drum by the action of the developer and is attracted to the charged areas of the drum. However, it is not until a further step occurs — the transfer of the toner from the drum to plain paper, followed by the sealing of the image on the paper by the action of heat — that the final product, i.e. a photocopy, is produced and the image becomes visible to the user.

The Tribunal, nonetheless, is of the view that the process of photocopying, used in the photocopiers for which the goods in issue are intended, fits the definition of “photographic” for the purposes of Chapter 37. It is clear that the definition contemplates that the visible image must be formed as a result of the action of light on a photosensitive surface. However, according to the appellant and the interveners, the definition means something different — that the final visible image must be formed on the same photosensitive surface on which the light has acted. The Tribunal does not agree with such a restrictive definition.

In this regard, the Tribunal does not, as urged by the appellant, make the inference from the Explanatory Notes to heading No. 32.15. The fact that the Explanatory Notes specify that one type of chemical preparation used in photostatic reproduction should be classified in subheading No. 3707.90 does not necessarily establish that all other chemical preparations used in document reproduction are not classified in that subheading. More importantly, the Explanatory Notes to heading No. 32.15 clearly contemplate that heading No. 37.07 applies to photocopying machines.

The Tribunal was presented with substantial evidence concerning the issue of whether the cartridge itself was “clearly suitable for repetitive use”. According to Rule 5 (b) of the General Rules, the cartridge, as a packing container for the toner, is classified with the toner. However, this rule is not binding if the packing container is “clearly suitable for repetitive use”.

In this respect, it is the Tribunal’s view that the toner cartridge itself is not “clearly suitable for repetitive use”. Although there was evidence suggesting that it was possible to remanufacture or refill the toner cartridges, it would not appear to be a simple process or to be done in normal circumstances. Generally, the remanufacture or refilling does not start until the photocopiers for which the cartridges are

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14. *Supra* note 9.

intended have been on the market for two to three years. The third parties that do refill other Sharp toner cartridges are not authorized to do so by the appellant. Mr. Donald, in testifying for the appellant, stated that he was not aware of anyone that remanufactures or refills the Sharp cartridges in issue. The appellant does not itself either remanufacture or refill the cartridges.

While heading No. 37.07 would appear to cover the goods in issue, the Tribunal is persuaded that the goods should be classified under tariff item No. 9009.90.90 as parts and accessories of photocopying apparatus.

There is no question that the goods in issue are used in conjunction with photocopying apparatus. In this regard, the Tribunal is persuaded by the Classification Opinions relied upon by the appellant. The Tribunal notes that the respondent does not challenge the classification of the Type A and Type B toner cartridges described in the Classification Opinions as parts and accessories. Like the goods in issue, the toner cartridges described in the Classification Opinions are designed to facilitate the transfer of toner to the photocopier. While the Type A cartridges in the Classification Opinions have moving parts, the Type B cartridges differ from the goods in issue primarily with respect to the length of time that they remain attached to the photocopier. In the Tribunal's view, this is not reason enough to distinguish the Type C toner cartridges, the goods in issue, from the Type B toner cartridges for the purposes of classification according to Schedule I to the *Customs Tariff*.

The Tribunal is of the view that the toner cartridges can be considered accessories of photocopying apparatus and, as such, should be classified under tariff item No. 9009.90.90. The Tribunal notes that, in *Dannycos*, in reasoning that the air diffusers were accessories, the Federal Court of Canada stated:

Rather, they remained an additional or extra thing, dispensable, in the underlying objective of hair dryers, the drying of hair. Generally speaking, they remained an attachment or fitting and were manufactured as such. Again, generally speaking, they were not integrated in the manufacture of hair dryers into the hair dryers themselves. As such, they remained accessories.<sup>15</sup>

The goods in issue improve the manner in which the toner is delivered to the photocopier. As the evidence indicates, the old method of delivering toner to the toner hopper manually often required the photocopier to be turned off while the toner was being poured into the toner hopper, which resulted in delays. In addition, spillage often occurred during this process. Users of the photocopiers sometimes mistakenly poured the incorrect type of toner into the photocopiers, thereby leading to damage to the photocopier and a lessening of copy quality. The toner cartridges remove the possibility of such mistakes and, thus, enhance the effectiveness of the photocopier. The toner cartridges are attached to the photocopiers, unlike gas pump nozzles, which are attached to the gas pumps and not the recipient vehicles.

With respect to the respondent's argument that the goods in issue are disposable and, therefore cannot be considered either parts or accessories, the Tribunal is of the view that the fact that parts and accessories are disposable does not necessarily mean that they are not parts or accessories. The Tribunal is of the view that the toner cartridges are accessories because they are designed for specific models of photocopiers, their sole use is in conjunction with photocopiers, they play an effective role in preventing spillage of toner and they increase the efficiency of the machine.

Therefore, the Tribunal finds that the toner cartridges should be classified under tariff item No. 9009.90.90 as accessories of photocopying apparatus. Whether the terms of heading No. 37.07 cover the goods in issue becomes moot as Note 2(b) to Chapter 90 directs the classification of these goods in

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15. See note 8 at 318.

heading No. 90.09. The Tribunal is of the view that Note 2 to Section VI, which directs that certain goods classifiable in heading No. 37.07 be classified in that heading and in no other heading of the Nomenclature, does not apply in this case. Note 2 to Chapter 90 states, in part:

2. Subject to Note 1 above, parts and accessories for machines, apparatus, instruments or articles of this Chapter are to be classified according to the following rules:
    - (b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading No. 90.10, 90.13 or 90.31) are to be classified with the machines, instruments or apparatus of that kind.
- (Emphasis added)

The Tribunal has already found that the toner cartridges are accessories of photocopiers, photocopiers being classified in Chapter 90. Further, the evidence is clear that the toner cartridges are suitable for use solely with particular models of photocopiers produced by the appellant. Therefore, the Tribunal is of the view that Note 2(b) to Chapter 90 applies, thus directing the classification of the toner cartridges under tariff item No. 9009.90.90.<sup>16</sup>

Consequently, the Tribunal concludes that the goods in issue should be classified as accessories for photocopying apparatus under tariff item No. 9009.90.90.

For these reasons, the appeal is allowed.

Arthur B. Trudeau  
Arthur B. Trudeau  
Presiding Member

Peter F. Thalheimer  
Peter F. Thalheimer  
Member

Richard Lafontaine  
Richard Lafontaine  
Member

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16. The Tribunal notes that the decision of the United States Court of Appeals for the Federal Circuit applied a similar reasoning in the case of *Mita Copystar America v. United States*, decided November 6, 1998.