Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal Nos. AP-2013-019 and AP-2013-020

Philips Electronics Ltd. and Les Distributions Saeco Canada Ltée

v.

President of the Canada Border Services Agency

Decision and reasons issued Thursday, April 24, 2014

Canada

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IN THE MATTER OF appeals heard on January 9, 2014, pursuant to subsection 67(1) of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF 11 decisions of the President of the Canada Border Services Agency, dated May 8 and 23, 2013, with respect to a request for review of an advance ruling on tariff classification and requests for re-determinations and further re-determinations pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

PHILIPS ELECTRONICS LTD. AND LES DISTRIBUTIONS SAECO CANADA LTÉE **Appellant**

AND

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

DECISION

The appeals are dismissed.

Ann Penner
Ann Penner
Presiding Member

Gillian Burnett
Gillian Burnett
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	January 9, 2014
Tribunal Member:	Ann Penner, Presiding Member
Counsel for the Tribunal:	Laura Little Catalin Tripon (student-at-law)
Registrar Officer:	Haley Raynor

PARTICIPANTS:

Appellants	**Counsel/Representative**
Philips Electronics Ltd. Les Distributions Saeco Canada Ltée	Sean Everden
Respondent	**Counsel/Representatives**
President of the Canada Border Services Agency	Alexander Gay Sarah Sherhols

WITNESSES:

Steven Rizzuto Manager Anthony's Espresso Equipment Inc.	Bruno Rocha Professor Algonquin College

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STATEMENT OF REASONS

BACKGROUND

1. These are appeals filed by Philips Electronics Ltd. (Philips) and its subsidiary, Les Distributions Saeco Canada Ltée (Saeco),[1] pursuant to subsection 67(1) of the *Customs Act*[2] from 11 decisions issued by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4), dated May 8 and 23, 2013. These decisions reaffirmed an advance ruling made by the CBSA on July 5, 2012, pursuant to paragraph 43.1(1)(*c*) and 10 re-determinations and further re-determinations made by the CBSA on January 25, 2013, pursuant to paragraph 59(1)(*a*).

2. The issue in these appeals is whether certain espresso machines (the goods in issue) are properly classified under tariff item No. 8516.71.10 of the schedule to the *Customs Tariff*[3] as coffee makers, as determined by the CBSA, or whether they should be classified under tariff item No. 8509.80.90 as other electro-mechanical domestic appliances, as claimed by Philips and Saeco.

PROCEDURAL HISTORY

3. On May 23, 2012, Philips, pursuant to section 43.1 of the *Act*, applied for an advance ruling in respect of the goods in issue, requesting that they be classified under tariff item No. 8509.80.90.[4]

4. On July 5, 2012, 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. 8516.71.10 as coffee makers.[5]

5. On July 23, 2012, Philips requested a review of the advance ruling, pursuant to subsection 60(2) of the *Act*.[6]

6. On January 11, 2013, pursuant to subsection 74(1) of the *Act*, Saeco requested refunds of duty in relation to its importation of the goods in issue under 10 separate transactions between January and May 2009 (i.e. prior to its acquisition by Philips). Saeco disputed the CBSA's classification of the goods in issue under tariff item No. 8516.71.10, claiming that they should be classified under tariff item No. 8509.80.90. Anticipating the rejection of its request, Saeco simultaneously submitted a request for further re-determination under section 60.[7]

7. On January 25, 2013, pursuant to paragraph 59(1)(*a*) of the *Act*, the CBSA issued a re-determination denying Saeco's request and affirming that the goods in issue were properly classified under tariff item No. 8516.71.10, for each of the 10 import transactions.

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1. Philips purchased Saeco in 2010 and currently manages the Saeco brand. See Exhibit AP-2013-019-07A at para. 5, Vol. 1; Exhibit AP-2013-019-09A at para. 7, Vol. 1B.
2. R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].
3. S.C. 1997, c. 36.
4. Exhibit AP-2013-019-07A, tab 1, Vol. 1.
5. *Ibid.*, tab 2.
6. *Ibid.*, tab 3.
7. *Ibid.* at 1; Exhibit AP-2013-019-09A at 3, Vol. 1B.

8. On May 8, 2013, the CBSA, pursuant to subsection 60(4) of the *Act*, issued a decision re-affirming the advance ruling issued to Philips, having concluded that the goods in issue should be classified under tariff item No. 8516.71.10 as coffee makers.[8]

9. On May 23, 2013, in response to Saeco's requests for re-determination and further re-determinations, the CBSA, pursuant to subsection 60(4) of the *Act*, issued 10 decisions re-affirming the classification of the goods in issue under tariff item No. 8516.71.10 as coffee makers.[9]

10. On June 3, 2013, Philips and Saeco filed their respective notices of appeal with the Tribunal, pursuant to subsection 67(1) of the *Act*, claiming that the goods in issue should be classified under tariff No. 8509.80.90.

11. On June 6, 2013, Philips and Saeco requested that the two appeals be joined and heard together, given that Philips owns Saeco and that the goods in issue, as well as the issues to be resolved, are identical.[10] On June 7, 2013, the CBSA indicated that it did not oppose the request to join the two appeals. The Tribunal granted the request on June 13, 2013, pursuant to rule 6.1 of the *Canadian International Trade Tribunal Rules*.[11]

12. A hearing was held in Ottawa, Ontario, on January 9, 2014.

13. Two witnesses testified at the hearing. Mr. Steven Rizzuto, General Manager, Anthony's Espresso Equipment Inc., testified on behalf of Philips and Saeco as an expert in how espresso machines operate and how they are repaired.[12] Dr. Bruno Rocha, a full-time professor in thermodynamics and fluid mechanics at Algonquin College, with a background in aerospace engineering, testified on behalf of the CBSA as an expert in the science behind the electro-mechanical and electro-thermic components of espresso machines.[13]

GOODS IN ISSUE

14. The goods in issue are Philips Saeco espresso machines (the Talea Giro Plus, model RI9822/47).[14] They are designed for the preparation of espresso and intended for home use only.

15. The parties agreed that the goods in issue are domestic appliances that contain three electro-mechanical components (i.e. a bean grinder, a brewing unit/gearbox and a steam pump/hot water dispenser) and one electro-thermic component (i.e. a water boiler).[15]

8. Exhibit AP-2013-019-09A, tab 1, Vol. 1B.
9. Exhibit AP-2013-019-07A, tab 8, Vol. 1.
10. Exhibit AP-2013-019-04, Vol. 1.
11. S.O.R./91-499.
12. *Transcript of Public Hearing*, 9 January 2014, at 9.
13. *Ibid.* at 67.
14. The relevant CBSA decisions in these appeals repeatedly referred to model "R**1**9822/47" [bold added for emphasis]; however, it is clear from the materials filed by Philips and Saeco that the goods in issue are correctly identified as model "R**I**9822/47" [bold added for emphasis]. For example, see Exhibit AP-2013-019-07A, tabs 16, 17, Vol. 1; Exhibit AP-2013-019-09A, tab 10, Vol. 1B.
15. Exhibit AP-2013-019-07A at 4-5, 144, Vol. 1; Exhibit AP-2013-019-07B at 160, 168, Vol. 1A; Exhibit AP-2013-019-09A at 2, 15, Vol. 1B.

STATUTORY FRAMEWORK

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 (WCO).[16] 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.

17. Subsection 10(1) of the *Customs Tariff* provides that the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*[17] and the *Canadian Rules*[18] set out in the schedule.

18. The *General Rules* comprise six rules. Classification begins with Rule 1, which provides that 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 other rules.

19. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*[19] and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,[20] published by the WCO. While classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.[21]

20. The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the *General Rules* as per 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. If the goods in issue cannot be classified at the heading level through the application of Rule 1, then the Tribunal must consider the other rules.[22]

21. 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 use a similar approach to determine the proper subheading.[23] The final step is to determine the proper tariff item.[24]

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16. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.
17. S.C. 1997, c. 36, schedule [*General Rules*].
18. S.C. 1997, c. 36, schedule.
19. World Customs Organization, 2d ed., Brussels, 2003 [*Classification Opinions*].
20. World Customs Organization, 5th ed., Brussels, 2012 [*Explanatory Notes*].
21. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that the *Explanatory Notes* be respected unless there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to the *Classification Opinions.*
22. Rules 1 through 5 of the *General Rules* apply to classification at the heading level.
23. Rule 6 of the *General Rules* provides that ". . . the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules [i.e. Rules 1 through 5] . . ." and that ". . . the relative Section and Chapter Notes also apply, unless the context otherwise requires."
24. Rule 1 of the *Canadian Rules* provides that ". . . the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the [*General Rules*] . . ." and that ". . . the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires." The *Classification Opinions* and the *Explanatory Notes* do not apply to classification at the tariff item level.

Tariff Nomenclature

22. The relevant provisions of the *Customs Tariff* provide as follows:

> **85.09 Electro-mechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 85.08.**
>
> . . .
>
> **8509.80 -Other appliances**
>
> . . .
>
> 8509.80.90 - - -Other
>
> . . .
>
> **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.**
>
> . . .
>
> **8516.71 - -Coffee or tea makers**
>
> 8516.71.10 - - -Coffee makers

23. Chapter 85 falls within Section XVI. The notes to that section provide as follows:

> **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**
>
> . . .
>
> 3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.
>
> 4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.
>
> 5. 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.

24. The explanatory notes to Section XVI provide as follows:

> **(VI) MULTI-FUNCTION MACHINES AND COMPOSITE MACHINES**
>
> (Section Note 3)
>
> In general, multi-function machines are classified according to the principal function of the machine.

> Multi-function machines are, for example, machine-tools for working metal using interchangeable tools, which enable them to carry out different machining operations (e.g., milling, boring, lapping).
>
> Where it is not possible to determine the principal function, and where, as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretative Rule 3 (c); . . . .
>
> Composite machines consisting of two or more machines or appliances of different kinds, fitted together to form a whole, consecutively or simultaneously performing **separate** functions which are generally complementary and are described in different headings of Section XVI, are also classified according to the principal function of the composite machine.
>
> . . .
>
> For the purposes of the above provisions, machines of different kinds are taken to be **fitted together to form a whole** when incorporated one in the other or mounted one on the other, or mounted on a common base or frame or in a common housing.
>
> Assemblies of machines should not be taken to be fitted together to form a whole unless the machines are designed to be permanently attached either to each other or to a common base, frame, housing, etc. . . .
>
> . . .
>
> Note 3 to Section XVI **need not be invoked** when the composite machine is covered as such by a particular heading, for example, some types of air conditioning machines (heading 84.15).

25. Note 3 to Chapter 85 provides that heading No. 85.09 covers only the following electro-mechanical machines of the kind commonly used for domestic purposes:

> (a) Floor polishers, food grinders and mixers, and fruit or vegetable juice extractors, of any weight;
>
> (b) Other machines provided the weight of such machines does not exceed 20 kg.
>
> The heading does not, however, apply to . . . electro-thermic appliances (heading No. 85.16).

26. The explanatory notes to heading No. 85.09 further state that this heading covers a number of domestic appliances in which an electric motor is incorporated, which may fall within two different groups: first, a limited class of articles, irrespective of weight, which includes "(2) **[f]ood grinders** . . . (for coffee . . .)"; and, second, a non-limited class of articles, provided their weight is 20 kg or less.

27. The 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:
>
> . . .
>
> (3) Coffee or tea makers (including percolators).

POSITIONS OF PARTIES

Philips and Saeco

28. Philips and Saeco submitted that the goods in issue are properly classified in heading No. 85.09 as electro-mechanical domestic appliances, pursuant to Rule 3 (a) of the *General Rules*,[25] or, in the alternative, Rule 3 (b).[26] In its view, Rule 1 is not determinative in this case because the goods in issue are domestic appliances with both electro-mechanical and electro-thermic components. On the basis of their composite nature, the goods in issue are, *prima facie*, classifiable in heading Nos. 85.09 and 85.16.

29. According to Philips and Saeco, espresso machines are distinguished from traditional coffee makers by their electro-mechanical components and, therefore, do not fall within the meaning of "coffee makers (including percolators)" for the purposes of Note (E)(3) of the explanatory notes to heading No. 85.16. In this regard, it argued that Parliament's original legislative intent was to classify coffee machines and espresso machines differently, claiming that heading No. 84.19, which applies to appliances for industrial use, made a distinction between these two types of machines, prior to its amendment on January 28, 2009.

30. Philips and Saeco argued that the goods in issue are more specifically described by heading No. 85.09 as electro-mechanical domestic appliances, by virtue of their "principal function", in accordance with Rule 3 (a) of the *General Rules*. For Philips and Saeco, the electro-mechanical components (i.e. the grinder, brewing unit and steam pump) enable the goods in issue to achieve their principal function of making espresso, whereas the electro-thermic component (the boiler) is less specific to that task.

31. In the alternative, Philips and Saeco submitted that the goods in issue are classifiable in heading No. 85.09 on the basis of their "essential character", pursuant to Rule 3 (b) of the *General Rules*. In their view, the electro-mechanical components give the goods in issue their essential character because they are integral to the process of injecting steam or hot water under pressure through the brewing unit to produce the *crema* (foam), which is a key characteristic of espresso and one that distinguishes it from regular coffee.

32. Finally, Philips and Saeco argued that, since there is currently no domestic production of the goods in issue, Parliament's historical rationale for the imposition of duties on imported coffee makers and espresso makers (dating back to 1993) no longer stands and, hence, these goods should be imported duty-free.

CBSA

33. In general, the CBSA maintained that the goods in issue are "coffee makers", for the purposes of tariff classification, and are therefore properly classified in heading No. 85.16 as electro-thermic domestic appliances, pursuant to Rule 1 of the *General Rules*.

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25. Rule 3 (a) of the *General Rules* provides as follows: "The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods."
26. Rule 3 (b) of the *General Rules* provides as follows: "Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to Rule 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

34. The CBSA argued that, as composite machines that perform two or more complementary functions, the goods in issue should be classified on the basis of the component that performs their principal function, in accordance with Note 3 to Section XVI. In its view, the boiler is essential to the principal function of the goods in issue (i.e. making coffee) and, therefore, directs their classification. Conversely, the electro-mechanical components, such as the grinder, do not represent the fundamental purpose of the goods in issue. In addition, the CBSA argued that Note 3 to Chapter 85 excludes the goods in issue, as electro-thermic appliances of heading No. 85.16, from classification in heading No. 85.09.

35. If the Tribunal were to find that Rule 1 of the *General Rules* was not determinative of the tariff classification of the goods in issue, the CBSA suggested that the analysis should move to Rule 3 (b),[27] with the same result. For the CBSA, the electro-thermic component (the boiler) gives the goods in issue their essential character, as hot water is necessary for making coffee, regardless of the different electro-mechanical components that may be involved in performing subsidiary functions, such as grinding the beans or injecting pressure to force the hot water through the ground beans.

36. Lastly, the CBSA rebutted Philips and Saeco's argument that Parliament intended to distinguish coffee makers from espresso machines on the basis of the historical terms of heading No. 84.19. It submitted that the *Customs Tariff*, in its current form, makes no distinction between these two types of goods. Although heading No. 84.19 contained such a distinction prior to its amendment in January 2009, that heading only applies to appliances for industrial use, whereas domestic appliances are covered by Chapter 85.

ANALYSIS

37. The parties agreed that the goods in issue are domestic appliances of Chapter 85 and include electro-thermic and electro-mechanical components. The main issue in these appeals, then, is whether the goods in issue are properly classified in heading No. 85.16 as other electro-thermic appliances of a kind used for domestic purposes or in heading No. 85.09 as electro-mechanical domestic appliances, with self-contained electric motor.

38. In the Tribunal's view, Philips and Saeco's allegation that import tariffs should not be applied to the goods in issue in the absence of domestic production of competing products has no bearing on the matter before the Tribunal in these appeals, i.e. the proper tariff classification of the goods in issue in accordance with the provisions of the schedule to the *Customs Tariff*.

39. As stated above, the Tribunal must begin the tariff classification exercise with Rule 1 of the *General Rules*. It is only when the goods in issue cannot be classified through the application of Rule 1 that the Tribunal will consider the other rules. In this case, for reasons that follow, the Tribunal finds that the classification of the goods in issue can be determined pursuant to Rule 1, according to the terms of the headings and the relevant section, chapter or explanatory notes. Recourse to the other rules is not necessary.

40. Philips and Saeco began by arguing that the goods in issue were "functional units" as opposed to "composite machines". They conceded at the hearing, however, that the goods in issue could be considered composite machines within the meaning of Note 3 to Section XVI.[28] Note 3 provides that "[u]nless the

27. In order to arrive at Rule 3 (b) of the *General Rules*, the CBSA argued that Rule 2 does not apply to the goods in issue and that Rule 3 (a) provides limited guidance because each heading refers to only certain components of the goods in issue and that, therefore, neither heading provides a more specific description.
28. *Transcript of Public Hearing*, 9 January 2014, at 138-39.

context otherwise requires, composite machines . . . are to be classified as if consisting only of that component or as being that machine which performs the principal function."

41. The phrase "unless the context otherwise requires" indicates that there are exceptions to this rule.[29] One such exception arises from the explanatory notes to Section XVI, which expressly provides that "*Note 3 to Section XVI need not be invoked* when the composite machine is covered *as such* by a particular heading . . ." [emphasis added]. As stated by the Tribunal in another case dealing with the same provisions, ". . . to suggest otherwise would result in the anomalous situation of a good being classified as if consisting only of one of its components notwithstanding the presence of a heading which covers the complete product."[30] In other words, when a composite machine is covered *as such* in a particular heading, it is precluded from being classified as if it consisted only of the component, or as being the machine, that performs its principal function.[31]

42. The Tribunal considers it appropriate to adopt a similar approach in this case. Accordingly, if it determines that the goods in issue, which the parties agree can be considered composite machines, are covered *as such* by a particular heading, then the goods in issue would be properly classified in that heading, pursuant to Rule 1 of the *General Rules*, and Note 3 to Section XVI would not apply.

43. Note 3(b) to Chapter 85 excludes electro-thermic appliances of heading No. 85.16 from classification in heading No. 85.09. Therefore, on the basis Tribunal jurisprudence,[32] the Tribunal will begin by considering whether the goods in issue fall within the heading that is excluded (i.e. 85.16).

Are the Goods in Issue Covered as Such by Heading No. 85.16?

44. Note (E)(3) of the explanatory notes to heading No. 85.16 is particularly relevant to the goods in issue and the case at hand. It specifically provides for the inclusion of "coffee or tea makers (including percolators)" in heading No. 85.16.

45. The French version of Note (E)(3) of the explanatory notes to heading No. 85.16 is even more helpful in understanding how the note applies to the goods in issue because it is more detailed than the English version. The French version provides as follows: "*les appareils pour la préparation du café ou du thé (cafetières, y compris les percolateurs, par exemple)*" (appliances used in the preparation of coffee or tea [coffee makers, including percolators, for example]).

46. In the Tribunal's view, Note (E)(3) of the explanatory notes to heading No. 85.16 serves to distinguish these appeals from other Tribunal jurisprudence dealing with the classification of composite machines and multi-function goods in Section XVI, in which the Tribunal considered the principal function and essential character of the goods as the basis for classification.[33] Given the specific reference to "coffee makers", if the Tribunal determines that the goods in issue are indeed coffee makers, then they would be

29. *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (19 January 2012), AP-2011-009 (CITT) [*Costco*] at para. 38.
30. *Costco* at para. 39.
31. *Costco* at para. 41.
32. It is well established in Tribunal jurisprudence that, when there is a single relevant exclusionary note precluding the *prima facie* classification of goods in both headings at issue in an appeal, the analysis should begin with the heading that is excluded. For example, see *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (29 July 2013), AP-2012-041 and AP-2012-042 (CITT) at para. 47.
33. For example, see *Weil Company Limited v. Deputy M.N.R.C.E.* (10 May 1993), AP-92-096 (CITT) at 3; *Proctor-Silex Canada Inc. v. Deputy M.N.R.C.E.* (11 January 1994), AP-92-225 (CITT) at 4.

covered *as such* by heading No. 85.16, and there would be no need to go through the principal function and essential character analysis for composite/multi-function machines pursuant to Note 3 to Section XVI and the related explanatory notes to that section.

Are the goods in issue "coffee makers"?

47. In order to determine whether the goods in issue are "coffee makers", the Tribunal must first consider whether espresso is the same thing as coffee, given that this was a key debate between the parties.[34] To that end, the Tribunal will consider definitions of "espresso", documentary evidence filed by Philips and Saeco and the testimony of Mr. Rizutto during the hearing.

48. The Tribunal notes that dictionaries define "espresso" as: "*[c]offee* made by forcing steam through ground *coffee* beans"[35] [emphasis added] and ". . . strong, concentrated, black *coffee* made by forcing steam through ground *coffee* beans . . ."[36] [emphasis added].

49. Similarly, the Tribunal finds that the documentary evidence filed by Philips and Saeco is replete with references to espresso as a type of coffee. The following are a few examples:

- the product operation and maintenance manual for the goods in issue makes numerous references to "coffee", i.e. "This *coffee* machine is suitable for preparing espresso *coffee*" [emphasis added], "The Saeco *coffee* machine is equipped with a self-adjusting system that allows the use of all types of *coffee* beans available on the market (not including flavored or caramelized)" [emphasis added] and "The *coffee* volume knob adjusts the amount of *coffee* brewed per cup" [emphasis added];[37]
- marketing materials for the goods in issue repeatedly refer to "coffee", i.e. "With Saeco espresso machines you can select your preferred *coffee* length and ground *coffee* quantity" [emphasis added] and "Saeco Brewing System allows you to choose the strength and consistency of your *coffee* . . ." [emphasis added];[38]
- background material about an "Italian *Coffee* Menu" [emphasis added], which includes espresso, macchiato, americano, cappuccino, caffé latte and caffé mocha.[39]

50. Furthermore, the Tribunal notes that Mr. Rizzuto's testimony characterized espresso as a type of coffee. While he explained that espresso is typically made with smaller coffee beans and requires a finer grind than regular coffee, he agreed that regular coffee beans could be used to make espresso of a lesser quality.[40] He also frequently used the word "coffee" when referring to how the goods in issue are used to prepare espresso. He stated that ". . . the piston will compress the *coffee*, which technically should be about

34. Philips and Saeco claimed that espresso is not the same thing as traditional coffee, in that it is an almost syrupy beverage with a layer of *crema*—a foam layer topping on espresso coffee that is produced by the emulsification of oils in ground coffee beans when highly pressurized hot water passes through them to make espresso. See Exhibit AP-2013-019-07B at 219-20, Vol. 1A. The CBSA relied on dictionary definitions and product marketing materials to establish that "espresso" is a type of coffee. See Exhibit AP-2013-019-09A at 145, 148, 150, Vol. 1B; Exhibit AP-2013-019-09A, tab 10, Vol. 1B.
35. *Shorter Oxford English Dictionary*, 5th ed., *s.v.* "espresso". See Exhibit AP-2013-019-07B at 233, Vol. 1A.
36. *Canadian Oxford Dictionary*, 2nd ed., *s.v.* "espresso", Exhibit AP-2013-019-09A at 145, Vol. 1B.
37. Exhibit AP-2013-019-07B at 159, 166, 167, Vol. 1A.
38. Exhibit AP-2013-019-07A at 137, 140, Vol. 1.
39. *Ibid.* at 83.
40. *Transcript of Public Hearing*, 9 January 2014, at 13, 14.

30 pounds of pressure for a proper espresso. After it compresses, it will go on to the next phase of making the *coffee* which introduces water"[41] [emphasis added]; and that, "[t]o make a proper espresso, it needs to be within that range of temperature. Anything higher will generally burn the *coffee*. . . . When the *coffee* is over-temperature, the crema dissipates very, very quickly"[42] [emphasis added].

51. On the basis of these considerations, the Tribunal concludes that espresso is indeed a type of coffee.

52. Taking that conclusion one step further, the Tribunal is convinced that the goods in issue can indeed make coffee, given that the parties agreed that the goods in issue are domestic appliances used to prepare espresso, a type of coffee. Therefore, the Tribunal can only find that the goods in issue are "coffee makers" within the meaning of Note (E)(3) of the explanatory notes to heading No. 85.16.

53. The Tribunal's finding is conclusively supported by evidence on record. At the hearing, Philips and Saeco stated that the goods in issue are examples of ". . . the technological advancement with coffee makers in general or coffee-making machinery."[43] Even more persuasively, the Saeco product operation and maintenance manual clearly and repeatedly refers to the goods in issue as coffee makers and includes a declaration of product conformity with certain European Union standards, in which the product is identified as an "*automatic coffee maker*".[44] In addition, the product literature describes the operation of the goods in issue with a diagram titled "*Coffee cycle*".[45]

54. Philips and Saeco noted that ". . . while an espresso machine might produce coffee, a coffee-maker will not produce espresso."[46] Accordingly, in their view, heading No. 85.16 should only apply to coffee makers that are used to produce regular coffee, as distinguished from espresso machines that should be classified in heading No. 85.09. Philips and Saeco even went so far as to argue that Parliament intended such a distinction be made, on the basis of the historical terms of heading No. 84.19.

55. The Tribunal does not accept Philips and Saeco's argument regarding legislative intent. The amendment in question involved the consolidation of certain tariff items under heading No. 84.19. It did not however change the terms of heading No. 84.19 itself. Rather, the amendment broadened tariff item No. 8419.81.10 from "Machinery for making hot drinks, not including coffee making and dispensing machines but including espresso or cappuccino machines and combination roasting, milling and brewing machines" to "Machinery for making hot drinks". In the Tribunal's view, the removal of any distinction between coffee makers and espresso machines in that tariff item suggests the very opposite of Philips and Saeco's claim. Even more significant is the fact that heading No. 84.19 applies to machinery for industrial use, whereas there is a separate classification scheme for household machinery and appliances under Chapter 85, in which Parliament made no distinction (past or present) between coffee makers and espresso machines.[47]

56. While Philips and Saeco may be correct that a "regular" coffee maker cannot be used to prepare espresso, the Tribunal finds that the goods in issue can certainly be used to make a cup of "coffee" within the meaning of heading No. 85.16 and the related notes. Indeed, Philips and Saeco's own submissions

41. *Ibid.* at 18.
42. *Ibid.* at 19.
43. *Ibid.* at 143-44.
44. Exhibit AP-2013-019-07B at 159, 166, 193, Vol. 1A.
45. *Ibid.*, tab 18.
46. Exhibit AP-2013-019-07A at para. 49, Vol. 1.
47. The Tribunal notes that the amendment of tariff item No. 8419.81.10 on January 28, 2009, pre-dated the 10 transactions at issue, with the exception of one transaction dated January 19, 2009. See Exhibit AP-2013-019-09A at 41, Vol. 1B.

explained that users can select the "type of coffee (coffee, espresso, cappuccino)" on the control panel on the machine.[48] Likewise, Mr. Rizutto confirmed that the goods in issue can be used to make a variety of other hot beverages, such as espresso coffee, medium coffee, long coffee, cappuccino, lattes and tea.[49] While he suggested that espresso machines are more complex and "super automated" compared to "regular" coffee makers, he conceded that both types of machines operate on the same basic principle, namely, running/passing hot water through coffee beans to make different types of beverages.[50]

57. Philips and Saeco submitted that the use of the words "including percolators" in Note (E)(3) of the explanatory notes to heading No. 85.16 demonstrates that the heading was not intended to include all coffee makers, especially those with electro-mechanical components, such as the goods in issue. Yet, according to Philips and Saeco's own exhibits, the last of three key steps for preparing traditional espresso coffee is "Brewing (more correctly Percolation)"[51]. If percolation is a more correct word for "brewing", then percolators could be another form of brewers or coffee makers, including those that make espresso.

58. In this regard, the evidence of both expert witnesses confirmed that espresso is made by running or "percolating" hot water through coffee beans quickly with a great deal of pressure.[52] Once again, the goods in issue fall within the wording of heading No. 85.16.

59. Having thus established that espresso is a type of coffee that the goods in issue can make, the Tribunal is satisfied that they fall within the meaning of "coffee makers" in Note (E)(3) of the explanatory notes to heading No. 85.16 and are classified *as such* in heading No. 85.16, in accordance with the explanatory notes to Section XVI and pursuant to Rule 1 of the *General Rules*.

60. Accordingly, the goods in issue are explicitly excluded from heading No. 85.09 by application of Note 3(b) to Chapter 85.

61. Given the extensive arguments made by both parties in respect of the principal function and essential character of the goods in issue, the Tribunal wishes to add that, even if Note 3 to Section XVI was applicable in the context of these appeals, it would still have reached the same conclusion. Specifically, the Tribunal agrees with the CBSA that the electro-thermic component (the boiler) gives the goods in issue their essential character and allows them to achieve their principal function of making espresso, because espresso-type coffee cannot be made without hot water.

62. As both expert witnesses testified, the boiler is essential for heating the water and generating steam.[53] Mr. Rizzuto was absolute in stating that hot water is essential for making a "good cup of espresso", which he defined as ". . . an ounce and a half of hot espresso ground coffee with water . . . ."[54] A description of the process by which traditional espresso is brewed implies that temperature is one of the key factors in making a good cup of espresso.[55] For example, if the *crema* is pale, the water temperature may have been too low, whereas if it is white with large bubbles, the foam may have been too hot.

48. Exhibit AP-2013-019-07A at para. 22, Vol. 1.
49. *Transcript of Public Hearing*, 9 January 2014, at 40, 42, 47, 48, 59.
50. *Ibid.* at 52, 53.
51. Exhibit AP-2013-019-07B at 220, Vol. 1A.
52. *Transcript of Public Hearing*, 9 January 2014, at 57, 92.
53. *Ibid.* at 18, 72-73; Exhibit AP-2013-019-016A, tab A at paras. 18-20, Vol. 1C.
54. *Transcript of Public Hearing*, 9 January 2014, at 56.
55. Exhibit AP-2013-019-07B at 221, Vol. 1A.

63. Conversely, both parties agreed that one of the electro-mechanical components, the grinder, is not necessary for making espresso because pre-ground beans can be used.[56] There is no doubt that, as argued by Philips and Saeco, the other two electro-mechanical components, which together comprise the "brew group", make the goods in issue a highly complex and "super automatic" machine on the spectrum of espresso/coffee machines. Nonetheless, it is clear that espresso can also be made using a traditional, manual espresso machine, as described by Mr. Rizzuto[57] and the documentary evidence showing examples of manual espresso machines.[58] As a result, the electro-mechanical components of the brew group are not necessary for achieving the principal function of the goods in issue, i.e. making espresso.

64. The goods in issue are therefore properly classified in heading No. 85.16 as other electro-thermic appliances of a kind used for domestic purposes by virtue of not only Rule 1 of the *General Rules* but also Rule 3, taking into consideration the principal function and essential character of the goods in issue.

Sub-heading and Tariff Level Classification

65. In light of its finding that the goods in issue are "coffee makers", the Tribunal concludes that they are properly classified in subheading No. 8516.71 as coffee or tea makers and under tariff item No. 85.16.71.10 as coffee makers, in accordance with Rule 6 of the *General Rules* and Rule 1 of the *Canadian Rules*.

DECISION

66. For the foregoing reasons, the Tribunal concludes that the goods in issue are properly classified under tariff item No. 8516.71.10 as coffee makers, as determined by the CBSA.

67. The appeals are dismissed.

Ann Penner
Ann Penner
Presiding Member

56. *Transcript of Public Hearing*, 9 January 2014, at 51, 63.
57. *Ibid.* at 29-32, 46.
58. Exhibit AP-2013-019-09A, tab 23, Vol. 1B.