



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2013-015

Xerox Canada Ltd.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, February 25, 2014*

*Corrigenda issued
Monday, March 10, 2014*

TABLE OF CONTENTS

DECISION..... i

CORRIGENDA ii

STATEMENT OF REASONS 1

 BACKGROUND 1

 PROCEDURAL HISTORY 1

 GOODS IN ISSUE..... 1

 STATUTORY FRAMEWORK..... 2

 TARIFF CLASSIFICATION AT ISSUE..... 3

 POSITIONS OF PARTIES..... 4

 Xerox 4

 CBSA 5

ANALYSIS..... 6

 Can the Goods in Issue be Classified Under Tariff Item No. 9927.00.00?..... 6

DECISION 12

IN THE MATTER OF an appeal heard on November 12, 2013, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated February 25, 2013, pursuant to subsection 60(4) of the *Customs Act*, with respect to a request for review of an advance ruling on tariff classification.

BETWEEN

XEROX CANADA LTD.

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Jason W. Downey

Jason W. Downey
Presiding Member

Dominique Laporte

Dominique Laporte
Secretary

IN THE MATTER OF an appeal heard on November 12, 2013, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c.1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated February 25, 2013, pursuant to subsection 60(4) of the *Customs Act*, with respect to a request for review of an advance ruling on tariff classification.

BETWEEN

XEROX CANADA LTD.

Appellant

AND

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

Respondent

CORRIGENDA

Paragraph 2 of the Statement of Reasons should read as follows:

The issue in this appeal is whether bulk toner chemicals imported in 52-kilogram drums (the goods in issue), in addition to being classifiable under tariff item No. 3707.90.90 of the schedule to the *Customs Tariff*, can be classified under tariff item No. 9927.00.00 as articles and materials to be employed in the manufacture of certain listed products for use by printers and, thereby, benefit from duty-free treatment.

The second sentence of paragraph 21 of the Statement of Reasons should read as follows:

The parties agree that the goods in issue are classifiable in Chapter 37 under tariff item No. 3707.90.90 as other chemical preparations for photographic uses.

By order of the Tribunal,

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 12, 2013
Tribunal Member: Jason W. Downey, Presiding Member
Counsel for the Tribunal: Carrie Vanderveen
Acting Manager, Registrar Programs and Services: Lindsay Vincelli
Acting Registrar Officer: Haley Raynor

PARTICIPANTS:**Appellant**

Xerox Canada Ltd.

Counsel/RepresentativesMichael Kaylor
John M. Peterson
Maria E. Celis**Respondent**

President of the Canada Border Services Agency

Counsel/Representative

Aileen Jones

WITNESS:James Stevens
National Marketing Manager
Xerox Canada Ltd.

Please address all communications to:

The Secretary
Canadian International Trade Tribunal
15th Floor
333 Laurier Avenue West
Ottawa, Ontario K1A 0G7Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: secretary@citt-tcce.gc.ca

STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Xerox Canada Ltd. (Xerox) on May 23, 2013, pursuant to subsection 67(1) of the *Customs Act*¹ from a decision of the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4), with respect to a request for review of an advance ruling on tariff classification.

2. The issue in this appeal is whether bulk toner chemicals imported in 52-kilogram drums (the goods in issue), in addition to being classifiable under tariff item No. 3703.90.90 of the schedule to the *Customs Tariff*,² can be classified under tariff item No. 9927.00.00 as articles and materials to be employed in the manufacture of certain listed products for use by printers and, thereby, benefit from duty-free treatment.

PROCEDURAL HISTORY

3. On July 3, 2012, Xerox requested an advance ruling pursuant to section 43.1 of the *Act*. On August 16, 2012, the CBSA issued an advance ruling that denied the application of the special provisions of tariff item No. 9927.00.00 to the goods in issue.

4. Pursuant to subsection 60(2) of the *Act*, Xerox requested a review of the advance ruling on August 30, 2012. On January 30, 2013, the CBSA issued a preliminary decision to affirm the advance ruling and invited Xerox to submit further information to substantiate its claim. Xerox responded to the CBSA's preliminary decision on February 18, 2013.

5. On February 25, 2013, the CBSA affirmed its preliminary decision.

6. On May 23, 2013, Xerox filed a notice of appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

7. The Tribunal held a public hearing in Ottawa, Ontario, on November 12, 2013. Xerox produced a single witness, Mr. James Stevens, National Marketing Manager in Xerox's Production Products Group. The CBSA did not produce any witnesses. The CBSA produced little factual evidence in its written and oral submissions, none of which contradicted Mr. Stevens' testimony.

GOODS IN ISSUE

8. The goods in issue are imported from Japan for use in the production of toner cartridges designed specifically for use in the Xerox 4590/4110 EPS and 4110 CP printer models.

9. The Xerox toner cartridges containing the goods in issue are specially shaped to fit only in particular Xerox printer models.³ The toner cartridges contain a "customer replaceable microchip" and an antenna.⁴ The microchip constantly monitors the functioning of the cartridge and the toner levels and, with the antenna, communicates with the printers to let users know when the toner is getting low and a new

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

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

3. *Transcript of Public Hearing*, 12 November 2013, at 30.

4. *Ibid.* at 29.

cartridge needs to be ordered.⁵ It also ensures that the toner cartridge will not work if placed in the wrong printer.⁶ When the toner in a cartridge is used up, the cartridge is sent to a third-party contractor for recycling or disposal; it is not refilled or refurbished.⁷

10. According to Mr. Stevens, the 4110 printer model falls within the “light production segment of the market” and the 4590 printer model, which he described as a “seam product”, falls into the “departmental digital portion of the business”. He testified that the departmental digital segment is the highest end of Xerox’s office technology products but that it is a category below the light production segment which, for its part, has a more defined commercial identity.⁸ He further described the 4590 printer model as an alternative to print shop printers, as it will do some of the same work but at a lower price.⁹

11. The product manual filed by Xerox indicates that the 4110 printer model has a 110-page-per-minute print engine, six input trays holding up to 4,000 sheets, a 40-gigabyte hard drive, DocuSP[™], integrated and EFI[®] controllers setting up the output and automating the pre-press work,¹⁰ a scanner, a post-fuse insertion module, a variable-length stapler, and a 2/3 or 3/4 hole punch.¹¹ Optional components include high-capacity feeder trays, a booklet maker finisher and a folder.¹² The 4110 printer model typically prints 100,000 impressions per month, while the 4590 printer model prints 60,000 impressions per month.¹³

12. Customers for the 4110 printer model in Canada are 50 percent commercial printers (such as Office Max, Staples, Office Depot and Print-for-Pay), 25 percent marketing, retail and professional accounts, and 25 percent financial, government and manufacturing accounts.¹⁴ At the time that Xerox sold the 4110 and 4590 printer models, their typical selling price would start at approximately \$30,000 but could increase depending on the additional software or hardware options.¹⁵

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 interpretive 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 (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. Sections and chapters may include notes concerning their interpretation. Sections 10

5. *Ibid.* at 29.

6. *Ibid.* at 31.

7. Exhibit AP-2013-015-22, Vol. 1B.

8. *Transcript of Public Hearing*, 12 November 2013, at 21-22.

9. *Ibid.* at 21-23.

10. *Ibid.* at 10-11.

11. Exhibit AP-2013-015-16A, tabs 1,5, Vol. 1A; *Transcript of Public Hearing*, 12 November 2013, at 14-15.

12. Exhibit AP-2013-015-16A, tabs 1,5, Vol. 1A.

13. *Transcript of Public Hearing*, 12 November 2013, at 17.

14. Exhibit AP-2013-015-07A at para. 10, Vol. 1; *Transcript of Public Hearing*, 12 November 2013, at 40.

15. *Transcript of Public Hearing*, 12 November 2013, at 19-20, 46. These printers are no longer produced or sold by Xerox.

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

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 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.

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. Classification therefore begins with Rule 1, which provides that “. . . 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* requires the Tribunal, when interpreting the headings and subheadings, to consider the *Compendium of Classification Opinions*¹⁹ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,²⁰ published by the WCO. While the *Classification Opinions* and *Explanatory Notes* are not binding on the Tribunal in its classification of imported goods, the Tribunal will apply them unless there is a sound reason to do otherwise.²¹

18. 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 AT ISSUE

19. Chapter 99 provides special classification provisions that allow certain goods to be imported into Canada duty-free. As none of the headings of Chapter 99 are divided at the subheading or tariff item level, the Tribunal need only consider, as the circumstances may require, Rules 1 through 5 of the *General Rules* in determining whether goods may be classified in that chapter. Moreover, since the *Harmonized System* reserves Chapter 99 for special classifications (i.e. for the exclusive use of individual countries), there are no classification opinions or explanatory notes to consider.

20. There are no notes to Section XXI. However, the Tribunal considers Notes 3 and 4 to Chapter 99 to be relevant to the present appeal. These notes provide as follows:

3. Goods may be classified under a tariff item in this Chapter and be entitled to the Most-Favoured-Nation Tariff or a preferential tariff rate of customs duty under this Chapter that applies to those goods according to the tariff treatment applicable to their country of origin only after classification under a tariff item in Chapters 1 to 97 has been determined and the conditions of any Chapter 99 provision and any applicable regulations or orders in relation thereto have been met.
4. The words and expressions used in this Chapter have the same meaning as in Chapters 1 to 97.

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 and 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*.

21. In accordance with Note 3 to Chapter 99, the goods in issue may only be classified in Chapter 99 after classification under a tariff item in Chapters 1 to 97 has been determined. The parties agree that the goods in issue are classifiable in Chapter 37 under tariff item No. 3703.90.90 as other chemical preparations for photographic uses. On the basis of the evidence, the Tribunal accepts this classification. Therefore, for the purposes of this appeal, the Tribunal is of the view that the condition set out in Note 3 to Chapter 99 has been met.

22. Consequently, the only remaining issue before the Tribunal is whether the goods in issue meet the conditions of tariff item No. 9927.00.00, which provides as follows:

Articles and materials to be employed in the manufacture of the following, for use by printers, lithographers, bookbinders, paper or foil converters, manufacturers of stereotypes, electrotypes or printing plates or rolls, or by manufacturers of articles made from paper, paperboard or foil:

...

Offices machines and accessories thereof, other than typewriters and word-processing machines, calculating machines, accounting machines, postage-franking machines, ticket-issuing machines and similar machines incorporating a calculating device, cash registers, automatic data processing [ADP] machines and units thereof, magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, machinery for stitching or stapling of a kind using wire, portable electronic organizers, and accessories thereof;

Printing machinery and machines for uses ancillary to printing;

...

Parts of all the foregoing.

POSITIONS OF PARTIES

Xerox

23. Xerox maintained that the goods in issue can be classified under tariff item No. 9927.00.00 as: (a) they are “materials”; (b) they are used in the manufacture of a “part” of a printing machine; and (c) those who purchase Xerox’s toner cartridges qualify as “printers”.

24. To support its first argument, Xerox submitted that the goods in issue qualify as “materials” based on previous case law finding that a “material” is a matter or substance that has no end use of its own and has not been constructed into an article of a specific design, size or shape.²²

25. Regarding the “manufacture” component of its second argument, Xerox maintained that the steps followed to make a complete toner cartridge meet the Supreme Court of Canada’s definition of “manufacturing”.²³ In *The Queen v. York Marble, Tile and Terrazzo Ltd.*,²⁴ the Supreme Court of Canada defined “manufacture” as “. . . the production of articles for use from raw or prepared materials by giving to those materials *new forms, qualities and properties or combinations* whether by hand or machinery”²⁵ [emphasis in original].

22. Exhibit AP-2013-015-07A at paras. 67-69, Vol. 1; *Transcript of Public Hearing*, 12 November 2013, at 58.

23. Exhibit AP-2013-015-07A at para. 65, Vol. 1; *Transcript of Public Hearing*, 12 November 2013, at 58-59.

24. [1968] S.C.R. 140 [*York Marble*].

25. *York Marble* at 145.

26. Xerox argued that toner cartridges meet a sufficient number of the criteria established by the jurisprudence for being “parts”.²⁶ Toner cartridges are integral to the design of Xerox printers, are essential to their function and are specially shaped to work with only specific Xerox printer models.²⁷

27. Xerox asserted that its printing machines are described by “[p]rinting machinery and machines for uses ancillary to printing”, as they are advertised and sold as printing machines.²⁸

28. To support its third argument, Xerox pointed to an ordinary meaning of “printer” as “[a] person who prints, in any sense of the word . . .”²⁹ and the broad definition of the word “printers” as devices in the explanatory notes to heading No. 84.43.³⁰

29. Further, Xerox pointed to the removal of the words “exclusively” and “in their capacities as” from the phrase “for use exclusively by, and in their capacities as printers” from the pre-1997 versions of the tariff item. Xerox argued that Parliament, by removing these words, intended to expand the class of persons who may benefit from the tariff item beyond those whose sole business is printing.³¹

30. Xerox also argued that, had Parliament intended to limit the word “printers” to “commercial printers”, it could have so specified.³² Finally, Xerox maintained that the evidence indicates that all of Xerox’s customers of the 4590 and 4110 printer models are engaged in commercial printing as part of their overall business activity and that no one is using these printers in their home offices.³³

CBSA

31. The CBSA argued that the goods in issue cannot be classified under tariff item No. 9927.00.00 because: (a) the goods are not manufactured into a listed product; (b) toner cartridges do not fall within any of the listed products in the tariff item; and (c) those who purchase Xerox’s toner cartridges do not qualify as “printers”.

32. With respect to the “manufacture” requirement, the CBSA argued that the toner cartridges are manufactured and then filled with toner. The cartridge acts as a container for the toner, and the toner plays no part in the manufacture of the cartridge.³⁴

33. The CBSA submitted that the toner cartridges do not qualify as “office machines”, “printing machinery” or “parts” for these products. With respect to “office machines”, the CBSA pointed out that Xerox referred to its printers as “ADP machines”, which the list item for “office machines” explicitly excludes.

34. With respect to the term “printing machinery”, the CBSA argued that, given the exclusion in “office machines” for “ADP machines”, “. . . it does not stand to reason that the legislator would have . . . intended for

26. *Transcript of Public Hearing*, 12 November 2013, at 65.

27. Exhibit AP-2013-015-07A at para. 71, Vol. 1; *Transcript of Public Hearing*, 12 November 2013, at 62.

28. Exhibit AP-2013-015-07A at para. 67, Vol. 1.

29. *Ibid.* at para. 46.

30. *Ibid.* at para. 58.

31. *Ibid.* at paras. 34, 38, 39, 44; *Transcript of Public Hearing*, 12 November 2013, at 70-71.

32. Exhibit AP-2013-015-07A at para. 61, Vol. 1.

33. *Transcript of Public Hearing*, 12 November 2013, at 72-73.

34. Exhibit AP-2013-015-09A, tab 1 at 7, Vol. 1; *Transcript of Public Hearing*, 12 November 2013, at 88.

them to be included as parts of the very next list item, *printing machinery*”³⁵ [emphasis added]. The CBSA added that the context provided by the other items on the list, which does not include a reference to the words “printer” and “printing machine” and most often refers to the word “printing” to describe parts of a printing press, suggests that toner cartridges for a laser printer do not fit within the intended scope of the list.³⁶

35. With respect to “parts”, the CBSA maintained that toner cartridges are similar to the goods in previous cases, where the Tribunal did not consider those goods to be parts. In particular, the CBSA pointed to a previous case where the Tribunal concluded that rolls of film that supply ink to a fax machine were not parts of the fax machine even though the rolls of film were “. . . committed for use in particular models of Xerox facsimile machines, . . . [could not] be used with other machines and . . . the machines [could not] work without the goods”³⁷

36. With respect to the scope of the term “printers”, the CBSA argued that the context provided by the other occupations listed in tariff item No. 9927.00.00 indicates that the term “printers” should be limited those whose “core business purpose” relates to the printing industry.³⁸

37. The CBSA supported this position by arguing that the list of occupations in the tariff item indicates that “printers” must be interpreted in the context of the “. . . more traditional printing technologies of printing presses.”³⁹ It also pointed to the Tribunal’s decision in *Marmen Énergie Inc. and Marmen Inc. v. President of the Canada Border Services Agency*⁴⁰ to argue that tariff item No. 9927.00.00 was designed to provide tariff relief on products used by professionals in the printing industry.⁴¹

38. Finally, the CBSA argued that, given the evidence put forward by Mr. Stevens that companies whose primary business is printing use bigger, faster technology than the 4110 and 4590 printer models, there is insufficient evidence to find that the Xerox printers in this case are being used by companies whose core business is printing.⁴²

ANALYSIS

Can the Goods in Issue be Classified Under Tariff Item No. 9927.00.00?

39. To determine whether the goods in issue can be classified under tariff item No. 9927.00.00, the Tribunal must determine whether: (1) the goods in issue are materials; (2) the goods are employed in the manufacture of a product; (3) the product into which the goods are manufactured is listed in tariff item No. 9927.00.00; and (4) the product is for use by printers.

Are the goods in issue “materials”?

40. Xerox has argued that the goods in issue are “materials”. The ordinary meaning of “materials” is “. . . the elements, constituents, or substances of which something is composed or can be made”⁴³

35. *Transcript of Public Hearing*, 12 November 2013, at 98.

36. *Ibid.* at 93-96.

37. *Xerox Canada Ltd./The Document Company v. Deputy M.N.R.* (10 June 1999), AP-98-061 (CITT) [*Xerox*] at 4.

38. Exhibit AP-2013-015-09A at paras. 45-52, Vol. 1; *Transcript of Public Hearing*, 12 November 2013, at 99-100.

39. *Transcript of Public Hearing*, 12 November 2013, at 99.

40. (14 December 2012), AP-2011-057 and AP-2011-058 (CITT).

41. *Transcript of Public Hearing*, 12 November 2013, at 102; Exhibit AP-2013-015-09A at para. 47, Vol. 1.

42. *Transcript of Public Hearing*, 12 November 2013, at 107.

43. *Merriam-Webster’s Collegiate Dictionary*, 11th ed., s.v. “material”.

Moreover, the Tribunal has considered “materials” to be inputs in the manufacture of a good.⁴⁴ As the goods in issue are substances that compose parts of toner cartridges and are used in the manufacturing process for toner cartridges, the Tribunal finds that they are “materials”.

Are the goods in issue employed in the manufacture of a product?

41. The Supreme Court of Canada, in *York Marble*, defined “manufacture” as “. . . the production of articles for use from raw or prepared materials by giving to these materials *new forms, qualities and properties or combinations* whether by hand or machinery”⁴⁵ [emphasis in original].

42. In this case, bulk toner powder is combined, on an assembly line, with an empty cartridge housing, plugs and a customer replaceable unit microchip with an antenna to form a toner cartridge.⁴⁶ The combination of the toner and the cartridge housing gives the finished product a new form and new properties; loose toner powder is transformed into a product that can be used exclusively in particular Xerox printing machines. Therefore, the Tribunal finds that the goods in issue have been employed in the manufacture of a product.

Is the manufactured product listed in tariff item No. 9927.00.00?

43. The Tribunal will address whether: (a) toner cartridges are parts; (b) the 4110 and 4590 printer models are “ADP machines”; (c) the 4110 and 4590 printer models are office machines and accessories thereof; and (d) the 4110 and 4590 printer models are printing machinery and machines for uses ancillary to printing.

– Are toner cartridges “parts”?

44. Previous jurisprudence has set out a number of criteria that can be used to determine whether a particular good is a “part”.

45. In *Deputy M.N.R. v. Androck Inc.*, the Federal Court of Appeal required a “part” to form a “necessary and integral part” of the entity with which it will be used and “. . . not simply [be] an optional accessory”.⁴⁷

46. In *Staub Electronics Ltd. v. Deputy M.N.R.C.E.*,⁴⁸ the Tribunal accepted that a good must be solely committed for use with another good and specifically designed for another good in order to be considered a “part”.

47. In *York Barbell Co. Ltd. v. Deputy M.N.R.C.E.*,⁴⁹ the Tribunal considered whether the part was essential to the operation of the other good and whether it was installed in the other good during manufacture. It also considered the common trade usage and practice of the good to be relevant to determining whether it was a “part”. However, the Tribunal has, on several occasions, stated that these

44. *Grodan Inc. v. President of the Canada Border Services Agency* (7 June 2012), AP-2011-030 (CITT) at para. 25; *Panini Canada Ltd. v. M.N.R.* (28 October 1991), AP-90-167 and AP-90-168 (CITT).

45. *York Marble* at 145.

46. *Transcript of Public Hearing*, 12 November 2013, at 29.

47. [1987] F.C.J. No. 45.

48. (2 November 1989), 2764 (CITT).

49. (16 March 1992), AP-91-131 (CITT) [*York Barbell*].

criteria are not universally applicable to each case and that each set of facts must be determined on its own merits.⁵⁰

48. In the present case, the Tribunal finds that the toner cartridges, in which the goods in issue are integrated, are “parts”. The toner cartridges are highly engineered goods that are specially shaped and contain a customer replaceable unit microchip. Both the cartridge’s shape and microchip ensure that the cartridge is incapable of being used in any way other than in particular printer models and that no other cartridges fit in those printers.⁵¹

49. In addition, the Xerox printers for which they are designed will not operate without a toner cartridge.⁵² Thus, the toner cartridges are essential to the function of the Xerox printers for which they are designed, are solely committed for use with those printers, and are necessary and integral components of them.

50. In *Xerox*, the Tribunal held that thermal transfer film rolls for fax machines were simply disposable replaceable delivery systems for a material and, thus, not parts, even though the fax machine could not operate without them.⁵³ The CBSA argued that the Tribunal should follow this decision.⁵⁴

51. The Tribunal disagrees. There are a number of differences between the two cases.

52. First, Mr. Stevens testified that many parts other than just toner cartridges, such as staplers and drums, are changed regularly by service and maintenance technicians.⁵⁵ This testimony indicates that many parts essential to the functioning of these high-volume printers wear out in time and are regularly replaced. As such, the Tribunal finds that the test of “permanency” applied in *Xerox* is not applicable to the specific facts of the present case.

53. Second, the goods in issue are not the same. In *Xerox*, the goods were thermal transfer film rolls that delivered ink to fax machines. While the goods are similar, in that they supply materials to their host machine,⁵⁶ the goods in issue are not simply temporary ink delivery devices. Rather, they are highly engineered replacement units that accomplish functions in addition to supplying toner. With its electronic chip, a toner cartridge can interact with the printer’s software to monitor the cartridge’s functioning and toner levels, improve image quality and tell users in advance when toner levels are low and a new cartridge needs to be ordered.⁵⁷ Through its electronic chip, the cartridge becomes an essential component of the printer and, thus, a “part”.

54. Finally, the nature of the analysis is different in the two cases. In *Xerox*, the Tribunal had to determine which of the competing tariff classifications best described the goods. Such is not the case here. In this case, the Tribunal must only determine whether the terms of tariff item No. 9927.00.00 describe the goods in issue.

50. *York Barbell; Nokia Products Limited and Primecell Communications Inc. v. Commissioner of the Canada Customs and Revenue Agency* (5 August 2003), AP-2001-073, AP-2001-074 and AP-2001-084 (CITT).

51. *Transcript of Public Hearing*, 12 November 2013, at 30; Exhibit AP-2013-015-07A at para. 11, Vol. 1.

52. *Transcript of Public Hearing*, 12 November 2013, at 31.

53. *Xerox* at para. 26.

54. Exhibit AP-2013-015-09A at para. 60, Vol. 1.

55. *Transcript of Public Hearing*, 12 November 2013, at 48-49.

56. *Xerox* at 2.

57. *Transcript of Public Hearing*, 12 November 2013, at 32-33.

– Are Xerox printers “ADP machines”?

55. As indicated above, the CBSA argued that the 4110 and 4590 printer models are ADP machines and, therefore, do not fall within the categories of “office machines” or “printing machinery”.⁵⁸

56. In response, Xerox pointed to Note 5 to Chapter 84, which, it argues, expressly excludes printers from classification as ADP machines.⁵⁹

57. Note 4 to Chapter 99 indicates that the words and expressions used in this chapter have the same meaning as in Chapters 1 to 97. Therefore, the Tribunal will consider whether these other chapters provide guidance on whether Xerox laser printers are ADP machines.

58. Note 5 to Chapter 84, which defines the term “ADP machines” and provides guidance on whether laser printers are included within the meaning of this term, provides as follows:

- (A) For the purpose of heading 84.71, the expression “[ADP] machines” means machines capable of:
 - (i) Storing the processing program or programs and at least the data immediately necessary for the execution of the program;
 - (ii) Being freely programmed in accordance with the requirements of the user;
 - (iii) Performing arithmetical computations specified by the user; and,
 - (iv) Executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run.
- (B) [ADP] machines may be in the form of systems consisting of a variable number of separate units.
- ...
- (D) Heading 84.71 does not cover the following when presented separately, even if they meet all of the conditions set forth in Note 5 (C) above:
 - (i) Printers, copying machines, facsimile machines, whether or not combined;
 - ...
- (E) Machines incorporating or working in conjunction with an [ADP] machine and performing a specific function other than data processing are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.

59. In the Tribunal’s view, the 4110 and 4590 printer models are capable of performing the functions outlined in Note 5 (A) to Chapter 84 and therefore fall within the definition of ADP machines. Both models contain hard drives⁶⁰ and flat panel user interfaces and are capable of processing the software that is sold with the machine.⁶¹ In addition, both models can process signals received from the microchip on the toner cartridge to send different messages to the user depending on the signals received.⁶²

58. *Ibid.* at 96-98.

59. *Ibid.* at 114-15.

60. Exhibit AP-2013-015-16A, tab 5, Vol. 1A. The Tribunal has no reason to doubt that the 4590 model contains a similar hard drive.

61. Exhibit AP-2013-015-16A, tab 1, Vol. 1A; *Transcript of Public Hearing*, 12 November 2013, at 20.

62. *Transcript of Public Hearing*, 12 November 2013, at 31-32.

60. However, Note 5 (E) to Chapter 84 indicates that machines that incorporate an ADP machine but perform a specific function other than data processing are to be classified in a heading appropriate to their function or in a residual heading.

61. The primary purpose of the 4110 and 4590 printer models is to print documents and not to process data. Therefore, Note 5 (E) to Chapter 84 excludes the 4110 and 4590 printer models from inclusion in heading No. 84.71 as ADP machines. This conclusion is confirmed by Note 5 (D), which states that heading No. 84.71 does not cover printers and copying machines, whether or not combined, when they are presented separately.

62. As such, even though the 4110 and 4590 printer models include ADP machines and Xerox refers to these models as ADP printers, they would not be classified in the tariff heading for ADP machines. Therefore, these printer models do not fall within the exclusion for ADP machines found in tariff item No. 9927.00.00 and could be covered by this tariff item.

– “Office Machines and accessories thereof”

63. Given that the Tribunal has found that the 4110 and 4590 printer models would not be classified as ADP machines, they are not explicitly excluded from the category of “office machines and accessories thereof”.

64. Although the category of “office machines” is broad and arguably could contain the 4110 and 4590 printer models, as will be discussed further below, the Tribunal considers that the category of “printing machinery” more specifically describes these printers, and it prefers to use a more specific description rather than a more general one.

– “Printing machinery and machines for uses ancillary to printing”

65. The ordinary meaning of “machinery” is “. . . machines in general or as a functioning unit . . .” and “. . . the working parts of a machine . . .”⁶³ The ordinary meaning of “machine” is “. . . an apparatus using or applying mechanical power, having several parts, each with a definite function which together perform certain types of work” or a “. . . particular kind of machine, e.g. a vehicle, piece of electrical or electronic apparatus, etc.”⁶⁴

66. Given that the 4110 and 4590 printer models function both mechanically and electronically⁶⁵ and have numerous parts that work together to print documents, the Tribunal finds that they are “printing machinery”.

67. The CBSA has argued that the context provided by tariff item No. 9927.00.00, in which the word “printing” is most often used to describe parts of printing presses, supports its argument that toner cartridges are not parts of printing machinery.⁶⁶ The Tribunal is not convinced.

63. *Merriam-Webster’s Collegiate Dictionary*, 11th ed., s.v. “machinery”.

64. *Canadian Oxford Dictionary*, 2nd ed., s.v. “machine”.

65. *Transcript of Public Hearing*, 12 November 2013, at 31.

66. *Ibid.* at 94-96.

68. Each of the items on the list in tariff item No. 9927.00.00 is separated by a semi-colon, which indicates that they are separate items.⁶⁷ Moreover, nothing within the tariff item or in Chapter 99 indicates that “printing machinery and machines for uses ancillary to printing” is limited to printing presses. Indeed, if that were the case, the list of items would likely have been considerably shorter.

Is the product for use by printers?

69. As indicated above, the CBSA has argued that the term “printers” should be limited to those whose “core business purpose” relates to the printing industry. In contrast, Xerox has argued that the term “printers” could include anyone that prints and that, in any case, the evidence indicates that all of Xerox’s customers of the 4110 and 4590 printer models are engaged in commercial printing as part of their business activities.

70. The Tribunal will begin its analysis with the ordinary meaning of “printer” as it refers to a person rather than to a mechanical device. The *Canadian Oxford Dictionary* defines “printer” as “. . . a person or company that prints books, magazines, advertising matter, etc.” and as “. . . the owner of a printing business”⁶⁸

71. In the Tribunal’s view, these definitions indicate that a “printer” is one who is involved in the act of printing material. They also tend to orient the interpretation of “printer” to a commercial enterprise, where presumably larger volumes of printing are involved. As such, the Tribunal finds that individuals doing printing on home printers cannot be considered “printers” for purposes of tariff item No. 9927.00.00, as was argued by Xerox.

72. The Tribunal finds support for this view from the purpose of Chapter 99. In the Tribunal’s view, the general purpose of Chapter 99 is to support commercial enterprises. Most of the tariff headings clearly relate to goods used by particular industries, such as mining, logging, agriculture, oil and natural gas, pharmaceuticals and manufacturing. This makes it clear that the term “printers” is not so broad as to include all those that print, including those doing printing on home computers, as argued by Xerox. Rather, it includes only individuals and enterprises printing as part of a commercial enterprise.

73. On the other hand, the Tribunal considers that these definitions are not so narrow as to limit “printers” to only those whose core business is printing or to those using traditional printing technologies, such as printing presses, as argued by the CBSA.

74. The Tribunal finds support for this view from the 1997 modification of tariff item No. 9927.00.00 where the words “exclusively” and “in their capacity as” were removed from the phrase “for use exclusively by, and in their capacity as printers”. Although the Tribunal does not consider that the removal of these words substantially changes the meaning of the tariff item, it does consider that their removal indicates a softening of the rules regarding who must use the goods and that the people or enterprises using the goods are not limited to those whose core business is printing.

67. The Tribunal has taken a similar approach in previous cases. See *Bauer Nike Hockey Inc. v. President of the Canada Border Services Agency* (18 May 2006), AP-2005-019 (CITT) at para. 23; *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. 45.

68. Second ed., s.v. “printer”.

75. Rather, the Tribunal finds that the definitions cited above indicate that “printers” are those who, like statement printers, print-for-pay shops and in-house printing departments in large companies, print large volumes of items as part of a commercial enterprise.

76. During the hearing, Mr. Stevens testified that 100 percent of the 4110 and 4590 printer models are sold to businesses.⁶⁹ He also confirmed that, of the 4110 printer models that are sold, 50 percent go to commercial printers, which include those that print books for publishers and transaction statements for banks and print-for-pay shops,⁷⁰ 25 percent go to marketing companies, retailers and professional corporations, such as large accounting and law firms, and the remaining 25 percent go to financial, government and manufacturing accounts.⁷¹

77. Although Xerox did not provide a breakdown of the types of customers that purchased the 4590 model printer, Mr. Stevens indicated that Xerox targeted the same type of customers for both the 4590 and 4110 printer models and that many of the 4590 printer models were sold to commercial printers, marketing companies, retailers and professional corporations.⁷²

78. On the basis of this evidence, the Tribunal finds that the 4110 and 4590 printer models with which the goods in issue are intended to be used are “for use by printers” for the purpose of Chapter 99.

DECISION

79. On the basis of the foregoing, the appeal is allowed.

Jason W. Downey

Jason W. Downey
Presiding Member

69. *Transcript of Public Hearing*, 12 November 2013, at 27.

70. *Ibid.* at 26, 40-41.

71. *Ibid.* at 40.

72. *Ibid.* at 22-23.