



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

---

## DECISION AND REASONS

Appeal No. AP-2012-052

Cross Country Parts  
Distributors Ltd.

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Monday, June 9, 2014*

## TABLE OF CONTENTS

DECISION.....	i
STATEMENT OF REASONS .....	1
INTRODUCTION .....	1
PROCEDURAL HISTORY .....	1
GOODS IN ISSUE.....	2
STATUTORY FRAMEWORK.....	2
TARIFF CLASSIFICATIONS AT ISSUE.....	3
POSITIONS OF PARTIES.....	5
Cross Country .....	5
CBSA .....	6
TRIBUNAL ANALYSIS.....	7
Framework of Analysis .....	8
Are the Goods in Issue Classifiable as “Shower-baths of Plastics” in Heading No. 39.22?.....	8
DECISION .....	12

IN THE MATTER OF an appeal heard on February 20, 2014, 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 September 27, 2012, with respect to a request for an advance ruling pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**CROSS COUNTRY PARTS DISTRIBUTORS LTD.**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is dismissed.

Jason W. Downey  
Jason W. Downey  
Presiding Member

Gillian Burnett  
Gillian Burnett  
Secretary

Place of Hearing: Ottawa, Ontario  
Date of Hearing: February 20, 2014  
  
Tribunal Member: Jason W. Downey, Presiding Member  
  
Counsel for the Tribunal: Carrie Vanderveen  
  
Student-at-law: Kalyn Eadie  
  
Registrar Officer: Ekaterina Pavlova

**PARTICIPANTS:****Appellant**

Cross Country Parts Distributors Ltd.

**Counsel/Representatives**Victor Truong  
Brad Hogeterp**Respondent**

President of the Canada Border Services Agency

**Counsel/Representative**

Helene Robertson

**WITNESS:**Glenn Heavens  
Territory Manager  
Cross Country Parts Distributors 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](mailto:secretary@citt-tcce.gc.ca)

## STATEMENT OF REASONS

### INTRODUCTION

1. This appeal was filed by Cross Country Parts Distributors Ltd. (Cross Country) on December 11, 2012, pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from a re-determination of an advance ruling made by the President of the Canada Border Services Agency (CBSA) on September 27, 2012, pursuant to subsection 60(4).

2. The issue in this appeal is whether inflatable decontamination shower cabins (the goods in issue) are properly classified under tariff item No. 3922.10.00 of the schedule to the *Customs Tariff*<sup>2</sup> as shower-baths of plastics, as determined by the CBSA, or should be classified under tariff item No. 8424.89.00 as other mechanical appliances for dispersing or spraying liquids, as claimed by Cross Country.

### PROCEDURAL HISTORY

3. On April 15, 2011, Cross Country applied for an advance ruling with respect to the goods in issue. The CBSA issued an advance ruling on July 29, 2011, in which it classified the goods in issue under tariff item No. 9406.00.20 as prefabricated air-supported buildings.<sup>3</sup>

4. On October 26, 2011, Cross Country requested a review of the advance ruling. In response, the CBSA requested additional information regarding the composition of the goods in issue. On the basis of this information, the CBSA issued a preliminary determination on March 27, 2012, in which it classified the goods in issue under tariff item No. 3922.10.00 as shower-baths of plastics.<sup>4</sup>

5. On April 24, 2012, Cross Country requested a further re-determination of the tariff classification of the goods in issue.<sup>5</sup> On July 24, 2012, the CBSA issued a revised preliminary determination, this time re-determining the goods in issue as classifiable under tariff item No. 6307.90.99 as other made up articles of other textile materials.<sup>6</sup>

6. On September 4, 2012, Cross Country expressed dissatisfaction with the revised preliminary determination, following which the CBSA issued a final determination on September 27, 2012. This determination affirmed the classification of the goods in issue made in its revised preliminary determination, in which it had determined that the goods in issue were classifiable under tariff item No. 6307.90.99.<sup>7</sup>

7. On December 11, 2012, Cross Country appealed the CBSA's decision.

8. The Tribunal held a public hearing in Ottawa, Ontario, on February 20, 2014. Cross Country produced a single witness, Mr. Glenn Heavens, Territory Manager at Cross Country and requested that the Tribunal qualify him as an expert witness with respect to decontamination cabins and hazardous materials.<sup>8</sup> After considering Mr. Heavens' education, employment history and experience, and the submissions of the

---

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

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

3. Exhibit AP-2012-052-04A at Appendix 2, Vol. 1.

4. *Ibid.*

5. *Ibid.* at Appendix 5.

6. *Ibid.* at Appendix 2.

7. *Ibid.*

8. *Transcript of Public Hearing*, 20 February 2014, at 14.

parties on the issue at the hearing, the Tribunal, applying the test set out in *R. v. Mohan*,<sup>9</sup> declined to qualify him as an expert witness.<sup>10</sup> In the Tribunal's view, Mr. Heavens did not have sufficient relevant or necessary expertise to assist the Tribunal; he was also appearing before the Tribunal on behalf of his employer, Cross Country.<sup>11</sup> However, the Tribunal did allow Mr. Heavens to testify as a lay witness as to the goods in issue.

9. On the basis of information received after the filing of the appeal, the CBSA initially argued that the goods in issue should be classified under tariff item No. 9406.00.20 as prefabricated air-supported buildings or, in the alternative, under tariff item No. 3922.10.00 as shower-baths of plastics.<sup>12</sup> On February 18, 2014, two days before the hearing, the CBSA withdrew its claim with respect to tariff item No. 9406.00.20 but maintained its claim with respect to tariff item No. 3922.10.00.<sup>13</sup>

## GOODS IN ISSUE

10. The goods in issue are inflatable decontamination shower cabins (model 150) that, when connected to a water source, allow individuals who have been exposed to hazardous materials to quickly enter the shower and be sprayed with water and/or other decontamination agents.<sup>14</sup>

11. The goods in issue consist of (1) an inflatable structural support frame composed of a rubberized textile, (2) curtains or walls composed of a synthetic polyethylene plastic-coated textile, (3) a shower system, which includes hoses, (4) shower strips fitted with 9 nozzles, (5) water tap handles and valves, (6) a shower floor and (7) a pre-decontamination basin.<sup>15</sup> In addition, the goods in issue come with a repair kit, a hand pump, pegs, a hammer, a carrying bag and a manual.<sup>16</sup>

## STATUTORY FRAMEWORK

12. The schedule to the *Customs Tariff* is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).<sup>17</sup> It 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.

13. 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*<sup>18</sup> and the *Canadian Rules*<sup>19</sup> set out in the schedule.

---

9. [1994] 2 SCR 9.

10. *Transcript of Public Hearing*, 20 February 2014, at 24-25.

11. *Ibid.* at 22-25.

12. Exhibit AP-2012-052-20A at para. 16, Vol. 1A.

13. Exhibit AP-2012-052-33, Vol. 1C; *Transcript of Public Hearing*, 20 February 2014, at 4-5.

14. Exhibit AP-2012-052-04A at para. 2.10, Vol. 1.

15. Exhibit AP-2012-052-20A, tab 5, Vol. 1A.

16. *Ibid.*, tab 4.

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

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

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

14. 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.

15. 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*<sup>20</sup> and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>21</sup> published by the WCO. While the *Classification Opinions* and the *Explanatory Notes* are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.<sup>22</sup>

16. 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.<sup>23</sup>

17. 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 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 CLASSIFICATIONS AT ISSUE

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

### Chapter 39

#### PLASTICS AND ARTICLES THEREOF

...

**39.22** Baths, shower-baths, sinks, wash-basins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware, of plastics.

**3922.10.00** -Baths, shower-baths, sinks and wash-basins

...

### Chapter 84

#### NUCLEAR REACTORS, BOILERS, MACHINERY AND MECHANICAL APPLIANCES; PARTS THEREOF

...

**84.24** Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray

---

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

21. World Customs Organization, 5th ed., Brussels, 2012 [*Explanatory Notes*].

22. 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*.

23. Rules 1 through 5 of the *General Rules* apply to classification at the heading level.

**guns and similar appliances; steam or sand blasting machines and similar jet projecting machines.**

...

**8424.89.00 - -Other**

19. The relevant notes to Chapter 39 provide as follows:

1. Throughout the Nomenclature the expression “plastics” means those materials of headings 39.01 to 39.14 which are or have been capable, either at the moment of polymerisation or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticiser) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.

Throughout the Nomenclature any reference to “plastics” also includes vulcanised fibre. The expression, however, does not apply to materials regarded as textile materials of Section XI.

2. This Chapter does not cover:

...

- (s) Articles of Section XVI (machines and mechanical or electrical appliances);

...

20. The relevant notes to Section XVI, which includes Chapter 84, provides as follows:

...

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.

...

**Supplementary Note.**

1. In this Section the term “mechanically operated” refers to those goods which are comprised of a more or less complex combination of moving and stationary parts and do work through the production, modification or transmission of force and motion.

21. The relevant notes to Chapter 84 provide as follows:

Subject to Note 2 to this Chapter and Note 3 to Section XVI, a machine the principal purpose of which is not described in any heading or for which no one purpose is the principal purpose is, unless the context otherwise requires, to be classified in heading 84.79. . . .

22. The relevant explanatory notes to Chapter 39 provide as follows:

**GENERAL**

In general, this Chapter covers substances called polymers and semi-manufactures and articles thereof, **provided** they are not excluded by Note 2 to the Chapter.

...

**Plastics**



The expression “plastics” is defined in Note 1 to this Chapter as meaning those materials of headings 39.01 to 39.14 which are or have been capable, either at the moment of polymerisation or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticiser) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence. Throughout the Nomenclature, the expression “plastics” also includes vulcanised fibre.

The expression, however, does not apply to materials regarded as textile materials of Section XI. It should be noted that this definition of “plastics” is applicable throughout the Nomenclature.

The term “polymerisation” is used in this definition in a wide sense and denotes any method of forming a polymer, including addition polymerisation, rearrangement polymerisation (polyaddition) and condensation polymerisation (polycondensation).

...

#### **Plastics and textile combinations**

Wall or ceiling coverings which comply with Note 9 to this Chapter are classified in heading 39.18. Otherwise, the classification of plastics and textile combinations is essentially governed by Note 1 (h) to Section XI, Note 3 to Chapter 56 and Note 2 to Chapter 59. The following products are also covered by this Chapter:

- (a) Felt impregnated, coated, covered or laminated with plastics, containing 50 % or less by weight of textile material or felt completely embedded in plastics;
- (b) Textile fabrics and nonwovens, either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour;
- (c) Textile fabrics, impregnated, coated, covered or laminated with plastics, which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15 °C and 30 °C;
- (d) Plates, sheets and strip of cellular plastics combined with textile fabrics (as defined in Note 1 to Chapter 59), felt or nonwovens, where the textile is present merely for reinforcing purposes.

23. The relevant explanatory notes to heading No. 39.22 provide as follows:

This heading covers fittings designed to be permanently fixed in place, in houses, etc., normally by connection to the water or sewage systems. It also covers other sanitary ware of similar dimensions and uses, such as portable bidets, baby baths and camping toilets.

24. The relevant explanatory notes to heading No. 84.24 provide as follows:

This heading covers machines and appliances for projecting, dispersing or spraying steam, liquids or solid materials (e.g., sand, powders, granules, grit or metallic abrasives) in the form of a jet, a dispersion (whether or not in drips) or a spray.

## **POSITIONS OF PARTIES**

### **Cross Country**

25. Cross Country argued that the goods in issue should be classified in heading No. 84.24 as mechanical appliances for dispersing and spraying liquids, as this heading considers their essential function

and properties.<sup>24</sup> Specifically, Cross Country argued much of its case on the mechanical aspect of the taps and valves included in the goods in issue in order to demonstrate the “operational” nature of the fixtures. According to Cross Country, the fact that parts of the goods in issue can be “mechanically operated” or “hand operated” gives them a clearly defined function as “mechanical appliances”.<sup>25</sup>

26. In this respect, Cross Country submitted that the goods in issue are similar to fire extinguishers<sup>26</sup> and emergency wash stalls classified in heading No. 84.24, since all these goods are mechanically operated and disperse liquids.<sup>27</sup>

27. Cross Country argued that, as the goods in issue are complex and advanced portable decontamination shower units whose essential character is for the safety of persons who have been exposed to hazardous substances, they cannot be classified in a heading that covers simple articles of plastic, such as portable bidets, baby baths and camping toilets.<sup>28</sup>

28. Moreover, Cross Country submitted that heading No. 39.22 covers sanitary ware of hard plastic and, with the exception of flushing cisterns, does not name anything mechanical with an active feature.<sup>29</sup> Furthermore, Cross Country maintained that the composite nature of the goods in issue, being made of polyethylene, textile material, rubber and metal, prevent them from being classified in heading No. 39.22.<sup>30</sup>

## CBSA

29. Although the CBSA changed its position a number of times regarding the proper classification of the goods in issue, its final stance was that the goods in issue were properly classified under tariff item No. 3922.10.00 as shower-baths of plastics.<sup>31</sup>

30. In the CBSA’s view, in order to be classified in heading No. 39.22, the goods in issue must be (1) shower-baths (2) of plastics and (3) other sanitary ware of dimensions and uses similar to those of a fitting designed to be fixed permanently in place.<sup>32</sup>

31. The CBSA argued that the goods in issue meet all these requirements. They meet the ordinary meaning of the words “shower” and “douche”; they have the required physical characteristics of an enclosed space; and they have the required function of permitting users to stand under a spray of water to remove contaminating matter.<sup>33</sup> In the CBSA’s view, the goods in issue meet these definitions even though they are used to decontaminate the user of hazardous materials rather than dirt.<sup>34</sup>

32. The CBSA submitted that, although the goods in issue consisted of various components of different materials, the explanatory notes to Rule 2 (b) of the *General Rules* indicate that the terms of a heading may

---

24. Exhibit AP-2012-052-28A, at para. 4.5, Vol. 1B; *Transcript of Public Hearing*, 20 February 2014, at 65.

25. Exhibit AP-2012-052-04A at paras. 5.27-5.28, Vol. 1.

26. See *Integrated Protection Inc. v. Deputy M.N.R.* (7 February 1997), AP-95-240 (CITT); *Grinnell Corp. of Canada Ltd. dba Grinnell Fire Protection v. Deputy M.N.R.* (14 February 1997), AP-95-254 (CITT).

27. *Transcript of Public Hearing*, 20 February 2014, at 59-61, 67-68.

28. Exhibit AP-2012-052-28A at para. 4.29, Vol. 1B.

29. *Transcript of Public Hearing*, 20 February 2014, at 54-55.

30. *Ibid.* at 56-57.

31. Exhibit AP-2012-052-35, Vol. 1C; *Ibid.* at 4-5, 70.

32. Exhibit AP-2012-052-20A at para. 49, Vol. 1A.

33. *Ibid.* at paras. 51-56; *Transcript of Public Hearing*, 20 February 2014, at 76.

34. *Transcript of Public Hearing*, 20 February 2014, at 75.

be extended to cover goods composed of more than one material, as long as the additional material does not deprive the goods of the character of the kind of goods covered by the terms of the heading.<sup>35</sup> The CBSA maintained that the curtains that form the shower enclosure are made of a plastic-coated textile that the explanatory notes to Chapter 39 classify as a plastic.<sup>36</sup> Since these curtains give the shower cabin its essential nature, pursuant to Rule 2 (b), the shower cabin, as a whole, may be said to be made of plastics.<sup>37</sup>

33. Finally, the CBSA argued that the goods in issue are sanitary ware of dimensions and uses similar to those of shower-baths permanently fixed in place in houses, in that they are structures designed to be connected to water systems in which a user may stand upright to be sprayed by water.<sup>38</sup>

34. The CBSA argued that the goods in issue are properly classified under tariff item No. 3922.10.00, as subheading No. 3922.10, which specifically provides for “shower-baths”, is not further subdivided.<sup>39</sup>

35. The CBSA argued that the goods in issue cannot be classified in heading No. 84.24. In the CBSA’s view, the definitions of “mechanical” and “machine”, along with Tribunal jurisprudence, establish that a good must be capable of transmitting force from one component to another in order to be a mechanical appliance.<sup>40</sup> As the goods in issue are incapable of transmitting force from one component to another or to an external body, they do not meet the definition of “mechanical appliance” and, thus, cannot be classified in heading No. 84.24.<sup>41</sup>

## TRIBUNAL ANALYSIS

36. Before beginning its analysis, the Tribunal would like to address the numerous changes in the CBSA’s position prior to and after the filing of this appeal by Cross Country. As mentioned above, the CBSA initially determined that the goods in issue were classified under tariff item No. 9406.00.20 as prefabricated air-supported buildings. The CBSA then changed its position regarding the proper classification of the goods in issue twice before the filing of the appeal, once after the filing of the appeal and then again two days before the hearing. Throughout this process, the CBSA has argued, at various times, that the goods in issue were properly classified under three different tariff items.

37. There is no question that the CBSA was permitted to change its advance ruling and its position in this appeal before the Tribunal. Moreover, Cross Country has not objected to these changes and was given every opportunity to fully make its case throughout the present appeal.

---

35. Exhibit AP-2012-052-20A at paras. 61-62, Vol. 1A.

36. *Ibid.* at paras. 67-70; *Transcript of Public Hearing*, 20 February 2014, at 78.

37. Exhibit AP-2012-052-20A at para. 71, Vol. 1A; *Transcript of Public Hearing*, 20 February 2014, at 78-80.

38. Exhibit AP-2012-052-20A at para. 73, Vol. 1A.

39. *Ibid.* at para. 75.

40. Exhibit AP-2012-052-20A at paras. 80-83, Vol. 1A, citing *Canadian Tire Corporation Limited v. President of the Canada Border Services Agency* (29 November 2007), AP-2006-041 (CITT), *Classic Chef Corp. v. Deputy M.N.R.* (17 December 1999), AP-98-078 (CITT), *Alliance RO-NA Home Inc. v. Commissioner of the Canada Customs and Revenue Agency* (17 September 2001), AP-2000-028 (CITT), and *Canper Industrial Products Ltd. v. Deputy M.N.R.* (24 January 1995), AP-94-034 (CITT).

41. Exhibit AP-2012-052-20A at para. 84, Vol. 1A.

38. However, in the Tribunal's view, the CBSA should be mindful that consistency is an important and desirable objective in administrative decision-making. It helps build public confidence in the integrity of the regulatory process and enables parties to plan their affairs in an atmosphere of stability and predictability.<sup>42</sup>

39. The Tribunal has already recognized the desirability of consistent decision-making in *R. Christie v. President of the Canada Border Services Agency*.<sup>43</sup> In that case, the Tribunal noted that the appellant would have been less likely to have had to deal with a "moving target" if the CBSA's approach had been more consistent.<sup>44</sup>

40. Moreover, the Tribunal wishes to remind the parties that they should not be presenting the Tribunal with a basket of varying arguments from which it is invited to pick and choose whichever position feels right. Parties should have well-defined positions that are supported by evidence and reasonable arguments.

### Framework of Analysis

41. The Tribunal has previously held that goods are not *prima facie* classifiable in two headings if, by virtue of a relevant section or chapter note, the terms of one heading are expressly excluded from the other.<sup>45</sup> The Tribunal has also held that, if there is such a relevant exclusionary note, the Tribunal should begin its analysis with the heading to which the exclusionary note does not apply.<sup>46</sup>

42. In this case, Note 2(s) to Chapter 39 expressly excludes articles of Section XVI from Chapter 39. Therefore, the Tribunal will begin its analysis by determining whether the goods in issue are *prima facie* classifiable as "shower-baths of plastics" in heading No. 39.22. If the Tribunal finds that the goods in issue are classifiable in that heading, it need not determine whether they are also classifiable in heading No. 84.24.<sup>47</sup>

### Are the Goods in Issue Classifiable as "Shower-baths of Plastics" in Heading No. 39.22?

43. On the basis of the text of the heading and the relevant explanatory notes, in order to be classified in heading No. 39.22, the goods in issue must be (1) shower-baths (2) of plastics and (3) sanitary ware of dimensions and uses similar to those of fittings designed to be permanently fixed in place.

#### Shower-bath

44. There is no relevant note that defines "shower-bath" or gives it a special meaning. As such, resort may be had to the ordinary meaning of the word.

---

42. MacLauchlan, H. Wade, "Some Problems with Judicial Review of Administrative Inconsistency" (1984), 8 Dalhousie L.J. 435 at 446, as cited in *Domtar Inc. v. Quebec (Commission d'appel en matière de lésions professionnelles)*, [1993] 2 S.C.R. 756 at 784.

43. (15 January 2014), AP-2012-072 (CITT).

44. *Ibid.* at para. 39.

45. *Sanus Systems v. President of the Canada Border Services Agency* (8 July 2010), AP-2009-007 (CITT) [*Sanus*] at para. 35; *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency* (6 April 2011), AP-2010-019 (CITT) [*Zellers*] at para. 49.

46. *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (29 July 2013), AP-2012-041 and AP-2012-042 [*Costco*] at para. 46.

47. *Zellers* at para. 49; *Sanus* at para. 35; *Costco* at para. 72; *Korhani Canada Inc. v. President of the Canada Border Services Agency* (18 November 2008), AP-2007-008 (CITT) at para. 28.

45. The *Shorter Oxford English Dictionary* defines “shower” as “. . . 5 [a] bath or cubicle in which a person stands under a spray of water; the apparatus used for this; an act of bathing in a shower. Also more fully **shower-bath** . . . .”<sup>48</sup> It defines “bathe” as “. . . 1 [i]mmerse in liquid for cleansing or therapy. Also, immerse in any other medium for analogous effects . . . .”<sup>49</sup>

46. These dictionary definitions indicate that a shower-bath (the full name for a shower) is a bath or cubicle in which a body is sprayed with water or other liquid in order to cleanse it.

47. The physical characteristics and function of the goods in issue indicate that they meet the requirements of the definitions above. The goods in issue have an inflatable frame onto which curtains are attached with Velcro to form a completely enclosed cubicle or enclosure<sup>50</sup> that prevents contaminants from being dispersed and ensures the privacy of the occupants.<sup>51</sup>

48. The goods in issue also include a shower system, which is composed of hoses, nine shower nozzles, valves and taps, which allows the occupant to be sprayed with water or other liquid from all sides.<sup>52</sup> Mr. Heavens testified that the main purpose of the goods in issue is to decontaminate or cleanse a person after exposure to hazardous materials.<sup>53</sup>

49. Mr. Heavens mentioned that decontamination agents could be added to the water by means of an optional inducer.<sup>54</sup> In the Tribunal’s view, the introduction of other agents into the water stream does not preclude the goods in issue from meeting the definition of a shower-bath, as the definitions above clearly envisage the use of media for cleansing other than just water. Moreover, the use of additional decontamination agents with the goods in issue is optional and requires the use of an inducer that does not form part of the goods in issue as imported.

50. Furthermore, the Tribunal agrees with the CBSA that there is little difference between a shower used to remove daily grime and a shower used to remove contaminants. More importantly, heading No. 39.22 does not limit the types of uses to which a shower-bath may be put. Therefore, a good consisting of a designated enclosure in which a person may be sprayed with water may be covered by this heading regardless of the purpose of the good, be it domestic or industrial.

#### Of Plastics

51. The second requirement of heading No. 39.22 is that the goods in issue be made “of plastics”.

52. The Tribunal has previously stated that it must look at a good as a whole rather than its individual components in order to determine its proper tariff classification.<sup>55</sup> In this case, the goods in issue consist of a variety of materials, including Airtex 200, a nylon woven fabric coated on both sides by isoprene rubber,<sup>56</sup>

---

48. Fifth ed. s.v. “shower”. Similar definitions can be found in the *Canadian Oxford Dictionary*, 2nd ed., s.v. “shower” and *Webster’s New World College Dictionary*, 4th ed. s.v. “shower”.

49. S.v. “bathe”.

50. Exhibit AP-2012-052-04A, Appendix 1, Vol. 1.

51. *Transcript of Public Hearing*, 20 February 2014, at 43.

52. *Ibid.* at 44; Exhibit AP-2013-052-04A, Appendix 1, Vol. 1.

53. *Transcript of Public Hearing*, 20 February 2014, at 43.

54. *Ibid.* at 28, 37, 39.

55. *Proctor-Silex Canada v. President of the Canada Border Services Agency* (8 April 2013), AP-2011-065 (CITT) at para. 34.

56. Exhibit AP-2013-052-20A, tab 1, Vol. 1A.

Airtex 150, a woven polyethylene textile material coated or covered on both sides by polymer of ethylene,<sup>57</sup> polyvinyl chloride<sup>58</sup> and other unidentified materials.

53. The CBSA argued that Airtex 150, of which the shower curtains are composed, is a plastic and textile combination covered by heading No. 39.22.<sup>59</sup> In contrast, Cross Country argued that this material is covered by Chapter 63.<sup>60</sup>

54. Note 1 to Chapter 39 defines “plastics” as “. . . those materials of heading 39.01 to 39.14 which are or have been capable, either at the moment of polymerisation or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticiser) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.” It also indicates that “plastics” do not apply to materials regarded as textile materials of Section XI.

55. Moreover, the explanatory notes to Chapter 39 state that the term “polymerisation” “. . . denotes any method of forming a polymer . . .” It also states that Chapter 39 covers polymers not otherwise excluded by Note 2 to that chapter.

56. In the Tribunal’s view, these explanatory notes indicate that the polymer of ethylene coating in the Airtex 150 is a plastic that is covered by Chapter 39. It is a polymer that is not otherwise excluded by Note 2 to that chapter.

57. However, this plastic coats a polyethylene textile. The explanatory notes to Chapter 39 address textile and plastic combinations, stating that Chapter 39 covers “[t]extile fabrics and nonwovens, either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour”.

58. The CBSA’s analysis of the Airtex 150 material indicates that it is made from a polyethylene textile that is coated or covered on both sides by a clear coating of polymer of ethylene. The coating of polymer of ethylene is visible to the naked eye.<sup>61</sup> As such, the Tribunal finds that Airtex 150 meets the requirements of this provision in the explanatory notes and can be covered by Chapter 39.<sup>62</sup>

59. Even if Airtex 150 can be classified in Chapter 39, Cross Country argued that the other materials forming part of the goods in issue, in particular the taps and valves, prevent them from being classified in this Chapter.<sup>63</sup>

60. The CBSA disagreed, arguing that the shower curtains, which are classifiable in Chapter 39, give the goods in issue their essential character. In accordance with the explanatory notes to Rule 2 (b) of the *General Rules*, the goods in issue, as a whole, may therefore be classified in heading No. 39.22.<sup>64</sup>

---

57. *Ibid.*

58. *Ibid.*, tab 5, describes the floor material as “PVC 650g/m<sup>2</sup>, standard color grey”.

59. Exhibit AP-2013-052-20A at paras. 67-70, Appendix A, Vol. 1A.

60. *Transcript of Public Hearing*, 20 February 2014, at 56.

61. Exhibit AP-2013-052-20A at para. 69, Appendix a, Vol. 1A.

62. This is confirmed by Note 2(a)(3) to Chapter 59 which states that heading No. 59.03 does not cover “[p]roducts in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour”.

63. *Transcript of Public Hearing*, 20 February 2014, at 56-57.

64. Exhibit AP-2013-052-20A at para. 71, Vol. 1A.

61. The Tribunal agrees. Rule 2 (b) of the *General Rules* provides that “. . . [a]ny reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance.” Notes XI and XII of the explanatory notes to Rule 2 (b) indicate that this rule extends a heading to cover composite goods unless the addition of the other material deprives the goods of the character of goods mentioned in the heading.

62. In the Tribunal’s view, the shower curtains form the shower enclosure, they ensure that contaminants do not spread outside of the contamination zone, and they give privacy to the occupant of the shower. Moreover, the non-plastic materials, such as the inflatable structural frame, the shower nozzles, and the taps and valves are part of the goods in issue, as a whole, and serve purposes within the whole. Their individual functions cannot be extracted in such a way that would deprive the goods in issue of their character as shower-baths.

63. Therefore, the Tribunal finds that the goods in issue are “of plastics”.

Sanitary ware of dimensions and uses similar to those of goods designed to be permanently fixed in place

64. Although the explanatory notes to heading No. 39.22 indicate that the heading covers shower-baths designed to be permanently fixed in place, they also indicate that the heading covers “. . . other sanitary ware of similar dimensions and uses, such as portable bidets, baby baths and camping toilets”. As the goods in issue are manifestly not designed to be permanently fixed in place, to be classifiable in heading No. 39.22, they must be (i) sanitary ware (ii) of dimensions similar to those designed to be permanently fixed in place and (iii) of uses similar to those designed to be permanently fixed in place.

65. The terms “sanitary” and “ware” are defined as articles of manufacture pertaining to the conditions affecting health, especially with reference to cleanliness and protection against infection.<sup>65</sup> Given this broad definition, the Tribunal considers that the goods in issue are sanitary ware; they are designed to cleanse an individual after exposure to a hazardous substance that, if not removed, would likely have a negative impact on that individual’s health.

66. Marketing material for the goods in issue and Mr. Heavens’ testimony indicate that they are generally designed to accommodate a single person.<sup>66</sup> They thus have dimensions similar to permanent shower-baths. As mentioned above, Mr. Heavens testified that the goods in issue are designed to be used to decontaminate or cleanse individuals after exposure to hazardous materials.<sup>67</sup>

67. Although this specific use is different from that of a permanently fixed shower in a private dwelling, which is to cleanse a person to remove regular dirt and grime, both the goods in issue and showers permanently fixed in homes are designed to wash the human body with liquid spray. Therefore, the goods in issue have a use which is broadly similar to the uses to which a shower-bath permanently fixed in a home would be put.

68. Therefore, the Tribunal finds that the goods in issue are sanitary ware of dimensions and uses similar to those of fittings designed to be permanently fixed in place.

---

65. *Shorter Oxford English Dictionary*, 5th ed., s.v. “sanitary” and “ware”.

66. Exhibit AP-2012-052-20A, tab 5, Vol. 1A; *Transcript of Public Hearing*, 20 February 2014, at 43, 48.

67. *Transcript of Public Hearing*, 20 February 2014, at 27-28.

69. On the basis of the foregoing, the Tribunal finds that the goods in issue are *prima facie* classifiable in heading No. 39.22 and under tariff item No. 3922.10.00 as shower-baths of plastics. In light of Note 2(s) to Chapter 39, the Tribunal need not consider whether the goods in issue are also classifiable in heading No. 84.24.

## DECISION

70. The Tribunal finds that the goods in issue are properly classified under tariff item No. 3922.10.00 as shower-baths of plastics. The appeal is therefore dismissed.

Jason W. Downey

Jason W. Downey

Presiding Member