



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2012-052R

Cross Country Parts
Distribution Ltd.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Friday, August 19, 2016*

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DECISION 11

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 judgment of the Federal Court of Appeal, dated September 8, 2015, which set aside the decision of the Canadian International Trade Tribunal in Appeal No. AP-2012-052 made on June 9, 2014, and remitted the matter to the Canadian International Trade Tribunal.

BETWEEN

CROSS COUNTRY PARTS DISTRIBUTION 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

Tribunal Member: Jason W. Downey, Presiding Member

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STATEMENT OF REASONS

INTRODUCTION

1. The Canadian International Trade Tribunal (the Tribunal) conducted this remand further to a judgment of the Federal Court of Appeal (the Court),¹ which set aside the Tribunal's decision in *Cross Country Parts [Distribution] Ltd. v. President of the Canada Border Services Agency*.²

2. The Court remitted the matter to the Tribunal on the basis that the Tribunal should have begun its analysis with Chapter 84 of the schedule to the *Customs Tariff*³ rather than Chapter 39.⁴ Having reconsidered the matter, the Tribunal finds that the inflatable decontamination shower cabins (the goods in issue) are not classifiable in heading No. 84.24,⁵ for the reasons that follow. As a result, the Tribunal maintains its conclusion that the goods in issue are properly classified in heading No. 39.22.⁶

BACKGROUND

3. In *Cross Country (CITT)*, the Tribunal dismissed the appeal involving the tariff classification of the goods in issue.⁷ The Tribunal found that the goods in issue were *prima facie* classifiable under tariff item No. 3922.10.00 as shower-baths of plastics, as determined by the President of the Canada Border Services Agency (CBSA).⁸

4. Cross Country Parts Distribution Ltd. (Cross Country) applied for judicial review of the Tribunal's decision. In its judgment of September 8, 2015, the Court found that the Tribunal erred in its application of the test set out in the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,⁹ more specifically, Note 2(s) of the explanatory notes to Chapter 39.¹⁰ Note 2(s) provides that Chapter 39 does not cover "... Articles of Section XVI (machines and mechanical or electrical appliances) ...". The Court held that the Tribunal's decision was unreasonable because its analysis should have begun with Chapter 84 rather than Chapter 39. The matter was remitted to the Tribunal so that it could address the application of Chapter 84 and, specifically, tariff item No. 8424.90.00 to the goods in issue.¹¹

5. The Court declined to comment on other aspects of the Tribunal's decision that were challenged by Cross Country. In particular, the Court held that it would be inappropriate for it to conclude that the goods in issue ought to have been classified under tariff item No. 8424.89.00, as argued by Cross Country, since the

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1. *Cross Country Parts Distribution Ltd. v. Canada (Border Services Agency)*, 2015 FCA 187 (CanLII) [*Cross Country (FCA)*].
 2. (9 June 2014), AP-2012-052 (CITT) [*Cross Country (CITT)*].
 3. S.C. 1997, c. 36.
 4. *Cross Country (FCA)* at para. 3.
 5. *Ibid.* at para. 2.
 6. Having found that the goods in issue are not covered by heading No. 84.24, there is no need to review the Tribunal's original analysis or conclusion in relation to heading No. 39.22 because the Court did not remit that portion of the Tribunal's decision. Specifically, the Court stated that "Cross Country has not established either that the CITT's conclusion, based on its factual findings (paragraphs 58, 62 and 68), is not within the range of outcomes that are defensible in respect of the facts and the law." *Cross Country (FCA)* at para.6.
 7. *Cross Country (CITT)* at para. 70.
 8. *Ibid.* at para. 69.
 9. World Customs Organization, 5th ed., Brussels, 2012 [*Explanatory Notes*].
 10. *Cross Country (FCA)* at para. 2.
 11. *Ibid.* at para. 3.

Tribunal had not made any findings of fact in respect of heading No. 84.24.¹² Moreover, the Court¹³ was not persuaded that the Tribunal had committed any reviewable error in its application of the *General Rules for the Interpretation of the Harmonized System*.¹⁴

6. On November 10, 2015, the Tribunal commenced this proceeding. As the parties did not wish to file additional submissions, the Tribunal referred to the arguments and evidence filed in *Cross Country CITT*, as well as the transcript of the hearing that was held by the Tribunal on February 20, 2014.

7. The Tribunal will begin its analysis with Chapter 84 and, specifically, heading No. 84.24, as per Note 2(s) of the explanatory notes to Chapter 39 and in accordance with the judgment of the Court. The relevant statutory framework and the Tribunal's analysis are set out below.

STATUTORY FRAMEWORK

8. In appeals pursuant to section 67 of the *Customs Act*¹⁵ concerning tariff classification matters, the Tribunal determines the proper tariff classification of goods in accordance with the tariff nomenclature and the prescribed interpretive rules.

9. 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 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.

10. 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* and the *Canadian Rules*¹⁷ set out in the schedule.

11. 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." The phrase "according to the following provisions" refers to Rules 2, 3, 4, 5 and 6.

12. The application of Rule 2 (a) of the *General Rules* was in question in this proceeding. It provides as follows:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

12. *Ibid.* at para. 5.

13. *Ibid.* at para. 6.

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

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

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.

13. Section 11 of the *Customs Tariff* requires the Tribunal, when interpreting the headings and subheadings, to consider the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*¹⁸ and the *Explanatory Notes*, 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.¹⁹

14. 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.

Classification Provisions and Related Notes

15. The relevant provisions in the schedule to the *Customs Tariff* are as follows:

Chapter 84

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

...

8424 Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines.

...

8424.89.00 --Other

16. The relevant explanatory notes to Section XVI, which includes Chapter 84, provide as follows:

5.- For the purposes of these Notes, the expression “machine” means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.

...

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.

...

(IV) INCOMPLETE MACHINES

(See General Interpretative Rule 2 (a))

Throughout the Section any reference to a machine or apparatus covers not only the complete machine, but also an incomplete machine (i.e., an assembly of parts so far advanced that it already has the main essential features of the complete machine). Thus a machine lacking only a flywheel, a bed plate, calender rolls, tool holders, etc., is classified in the same heading as the machine, and not

18. World Customs Organization, 2nd ed., Brussels, 2003 [Classification Opinions].

19. 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*.

in any separate heading provided for parts. Similarly a machine or apparatus normally incorporating an electric motor (e.g., electro-mechanical hand tools of heading 84.67) is classified in the same heading as the corresponding complete machine even if presented without that motor.

17. 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.

ARE THE GOODS IN ISSUE CLASSIFIED IN HEADING NO. 84.24?

Positions of Parties

Cross Country

18. Cross Country submitted that the goods in issue should be classified in heading No. 84.24 as mechanical appliances for dispersing or spraying liquids. It argued that the decontamination shower cabin as a whole is, in itself, a mechanical appliance pursuant to Rule 1 of the *General Rules*.²⁰ In support, it referred to the mechanical operation of the water tap handles and valves that regulate the flow of water inside the cabin, which it argued was sufficient to qualify the entire goods in issue as mechanical appliances.²¹

19. In the alternative, Cross Country submitted that the Tribunal should consider the application of Rule 2 (a) to classify the goods in issue in heading No. 84.24 as *incomplete* mechanical appliances for dispersing or spraying liquids.²² In particular, it submitted that the mechanical nature of the water tap handles and valves give the goods in issue the essential character of a complete decontamination system.²³

20. Cross Country relied on two previous Tribunal decisions²⁴ that dealt with the classification of fire extinguishing systems and fire sprinkler systems in subheading No. 8424.10. It argued that the Tribunal's approach in those cases was relevant in defining "... what is mechanical ... in terms of fluids."²⁵ Cross Country also referred the Tribunal to an advance ruling by the CBSA that classified an emergency wash stall unit (which Cross Country alleged was similar to the goods in issue) under tariff item No. 8424.89.90 as other mechanical appliances for dispersing or spraying liquids.²⁶

CBSA

21. The CBSA submitted that the goods in issue are not covered by heading No. 84.24 and are properly classified in heading No. 39.22. In its view, the presence of the two valves inside the decontamination shower cabin is insufficient to qualify the entire goods in issue as "mechanical appliances" of heading

20. *Transcript of Public Hearing*, 20 February 2014, at 61, 68.

21. *Ibid.* at 60.

22. Exhibit AP-2012-052-04A at paras. 5.36-5.37, Vol. 1; *Transcript of Public Hearing*, 20 February 2014, at 68-69.

23. Exhibit AP-2012-052-04A at paras. 5.18-5.19, 5.25, 5.29, Vol. 1; *Transcript of Public Hearing*, 20 February 2014, at 61-62, 65.

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

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

26. Exhibit AP-2012-052-28A at 43, Vol. 1B; *Transcript of Public Hearing*, 20 February 2014, at 67-68.

No. 84.24.²⁷ Furthermore, it argued that the tariff classification of fire extinguishing systems or an emergency wash stall unit, in the decisions on which Cross Country relied, involved goods that were more complex and “. . . significantly more mechanical . . .”²⁸ than the goods in issue. Conversely, it submitted that the goods in issue are not, in and of themselves, mechanical in nature.²⁹

Tribunal Analysis

22. To begin, the Tribunal must determine whether the classification of the goods in issue can be resolved in accordance with Rule 1 of the *General Rules*. In conducting the tariff classification exercise, it is important to keep in mind that the goods in issue must be evaluated as a whole, as imported, and not on the basis of any of their individual components.³⁰ The Tribunal is quite conscious of the fact that the goods in issue are composed of a number of individual parts with different characteristics and functions, but regard must be given to the characteristics and operation of the complete unit in determining whether it is in fact a “mechanical appliance”.

23. Cross Country’s arguments concentrated on specific components of the goods in issue. This narrow focus relied on the function of individual components but gave little regard to the goods in issue as a whole. In other words, Cross Country appears to have lost sight of the forest for the trees in this case. The Tribunal considers this approach unsound, as it runs a risk of incongruous conclusions. In particular, it was not helpful for the classification analysis in accordance with Rule 1 of the *General Rules*.

Are the Goods in Issue “Mechanical Appliances”?

24. In order to determine whether the goods in issue should be classified in heading No. 84.24 as mechanical appliances for dispersing or spraying liquids, the Tribunal first considered whether the goods in issue, as a whole, are “mechanical appliances”.

25. The term “mechanical appliances” is not defined in the schedule to the *Customs Tariff*.

26. The Tribunal has previously interpreted the meaning of the term “mechanical appliance” for the purposes of Chapter 84 as “. . . an instrument, device or apparatus, in the nature of a machine, which is designed to fulfill a particular use or function”³¹ and as “. . . articles that . . . do work through some combination of moving parts . . . and . . . produce, modify or transmit force to an external body . . .” [emphasis in original].³²

27. Those definitions are consistent with the ordinary meanings of the words “mechanical” and “appliance”. The word “mechanical” is defined as: “2 Of the nature of a machine or machines . . .”³³ and “1a(1): of or relating to machinery or tools . . .”³⁴ The word “appliance” is in turn defined as: “2 A thing

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

28. *Ibid.* at 83.

29. *Ibid.* at 80-84.

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

31. *Kinedyne Canada Limited v. President of the Canada Border Services Agency* (17 December 2013), AP-2012-058 (CITT) [*Kinedyne*] at para. 42.

32. *BMW Canada Inc. v. President of the Canada Border Services Agency* (16 September 2014), AP-2013-050 (CITT) at para. 56.

33. *Shorter Oxford English Dictionary*, 5th ed., s.v. “mechanical”.

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

applied as a means to an end: a device, a utensil, an apparatus”³⁵ and “1b: an instrument or device designed for a particular use or function”.³⁶

28. Supplementary Note 1 to Section XVI is also relevant to the meaning of the term “mechanical appliances” of heading No. 84.24.³⁷ It provides that “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.” Thus, the level of complexity need not be very high as long as the combination of moving and stationary parts work together to *produce, modify or transmit force or motion*.³⁸

29. In headings of Chapter 84, the terms “machine” and “mechanical appliances” are closely related.³⁹ The dictionary definition of “machine” is as follows: “4 An apparatus, an appliance; a device for applying mechanical power and having a number of interconnected parts, each with a definite function, *esp.* one that does not utilize human strength . . . Any instrument that transmits force or directs its application”⁴⁰ [emphasis in original].

30. In light of the above, the Tribunal applied the following criteria for “mechanical appliance”:

- the good must be an article, instrument, device or apparatus designed to fulfill a particular use or function;
- the good must be comprised of a more or less complex combination of stationary and moving parts (whether or not hand-operated); and
- the good, as a whole, must do work through the production, modification or transmission of force to an external body.

31. The Tribunal’s assessment of the goods in issue against each of these criteria is provided below.

– Article, Instrument, Device or Apparatus Designed to Fulfill a Particular Use or Function

32. The goods in issue are inflatable decontamination shower cabins that, when connected to a water source, allow persons who have been exposed to hazardous materials to quickly enter the enclosure and be sprayed with water and/or other decontamination agents.⁴¹ They consist of an inflatable structural support frame and cabin composed of a rubberized textile, curtains composed of a synthetic polyethylene plastic-coated textile, a shower system, including hoses and shower strips fitted with nine nozzles, water tap handles and valves, a shower floor and a pre-decontamination basin.⁴²

35. *Shorter Oxford English Dictionary*, 5th ed., s.v. “appliance”.

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

37. The Tribunal has previously applied this definition to its analysis of “mechanical appliances” and “machines” under Chapter 84, even if a particular heading does not expressly refer to “mechanically operated” goods, on the basis that these terms share a similar meaning. *Canadian Tire Corporation Ltd. v. Deputy M.N.R.* (12 October 1995), AP-94-157 (CITT) at 4; *Kinedyne* at paras. 43, 48.

38. *Grinnell* at 8; *Alliance RO-NA Home Inc. v. Commissioner of the Canada Customs and Revenue Agency* (17 September 2001), AP-2000-028 (CITT); *Kinedyne* at paras. 48, 51, 54, 59-60.

39. Note 5 to Section XVI provides that the term “machine” means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84.

40. *Shorter Oxford English Dictionary*, s.v. “machine”.

41. *Cross Country (CITT)* at para. 10.

42. *Ibid.* at para. 11; Exhibit AP-2012-052-20A, tab 5, Vol. 1A.

33. The Tribunal finds that the goods in issue meet the first criterion above because they fall within the meaning of the terms “article”, “device” and “apparatus”, which are all broadly defined.⁴³ In addition, the goods in issue are designed for a particular use, which is to decontaminate or cleanse persons after exposure to hazardous materials.⁴⁴ Key design features of the decontamination shower cabin include a shower system and an enclosure that gives users privacy and prevents contaminants from being dispersed into the environment.⁴⁵

– Complex Combination of Stationary and Moving Parts

34. The evidence shows that the goods in issue, as imported, are primarily comprised of several *stationary* parts, namely, a frame structure, an integrated pre-decontamination basin and a shower system and shower strips fitted with nozzles.⁴⁶ The only *moving* parts of the goods in issue are two water tap handles connected to valves that control the flow of water through the shower nozzles into the cabin.

35. The operation of the valves involves a simple mechanism that is controlled by turning the water tap handles. At the February 20, 2014, hearing held in *Cross Country (CITT)*, Mr. Glenn Heavens of Cross Country testified that users can turn the shower on or off from inside the cabin by turning the water tap handles 90 degrees in either direction to open and close the valves.⁴⁷ These moving parts are connected to the shower system of hoses and shower strips, which are supported and enclosed by the inflatable shower cabin (i.e. the stationary parts).⁴⁸

36. The Tribunal finds that the combination of moving and stationary parts that make up the goods in issue is sufficiently complex to satisfy the second criterion for “mechanical appliances”.

– Production, Modification or Transmission of Force to an External Body

37. In applying the third criterion, the Tribunal must determine whether the goods in issue do work through the production, modification or transmission of force to an external body.

38. As described above, the evidence on the record shows that turning the water tap handles on and off makes the valves open and close. This valve mechanism allows a person inside the cabin to control the flow of water through the nozzles of the shower system when the decontamination shower cabin is connected to a water source.⁴⁹ The Tribunal finds that the operation of the valves themselves involves a certain application of force (by hand) to the water tap handles, which is then transmitted to the valves.

43. The Tribunal has previously accepted the plain meaning of the term “article” as “. . . any finished or semi-finished product which is not considered to be a material”, *Prins Greenhouses Ltd. v. Deputy M.N.R.* (9 April 2001), AP-99-045 (CITT), note 3. The *Shorter Oxford English Dictionary*, 5th ed., defines the term “device” as “[a] thing designed for a particular function or adapted for a purpose; an invention, a contrivance, *esp.* a (simple) mechanical contrivance” [emphasis in original]. The word “apparatus” is defined in *Merriam-Webster’s Collegiate Dictionary*, 11th ed., as a “**1 a** : a set of materials or equipment designed for a particular use; . . . **c** : an instrument or appliance designed for a specific operation”, and in the *Shorter Oxford English Dictionary*, 5th ed., as “. . . the equipment needed for a particular purpose or function, *esp.* scientific or technical . . .”

44. *Cross Country (CITT)* at paras. 48, 67; *Transcript of Public Hearing*, 20 February 2014, at 43.

45. *Cross Country (CITT)* at para. 47; *Transcript of Public Hearing*, 20 February 2014, at 42-43.

46. *Kinedyne* at para. 30.

47. *Transcript of Public Hearing*, 20 February 2014, at 47-48.

48. *Cross Country (CITT)* at para. 47; Exhibit AP-2012-052-04A, Appendix 1, Vol. 1; *Transcript of Public Hearing*, 20 February 2014, at 43.

49. *Transcript of Public Hearing*, 20 February 2014, at 47-48.

39. While the valves are, in and of themselves, mechanical in nature, the Tribunal, as discussed above, cannot focus solely on the valve mechanism, but rather must look at the goods in issue as a whole. The Tribunal finds that the goods in issue are enclosed structures—comprised of a support frame, curtains and floor—with a shower system that allows persons exposed to hazardous materials to be cleansed while preventing contaminants from being dispersed into the surrounding environment.⁵⁰ To this effect, they consist of much more than the water tap handles and valves.

40. In the Tribunal's view, the component valves are insufficient to convey a mechanical nature on the decontamination shower cabin as a whole. Opening and closing the valves simply controls the release of water (and/or decontamination agent) into the cabin, similar to how one would operate a regular shower in the home. As previously stated, the Tribunal sees "... little difference between a shower used to remove daily grime and a shower used to remove contaminants."⁵¹ Turning a shower on and off involves a transmission of force between two components, i.e. the water tap handles and the valves, which in turn control the release of water into the cabin. However, this does not equate to an external application of force by the shower cabin as a whole. The Tribunal finds that the shower cabin is not a device for applying mechanical power to some outside thing or person; it provides a conduit for the water (or decontaminating agent) that flows through the shower system and is then released into the cabin.

41. The Tribunal carefully considered *Integrated Protection* and *Grinnell* upon which Cross Country relied. However, the Tribunal finds that there are important distinctions to be made with regard to those decisions. As discussed further below, both cases involved the classification of various components or pipe assemblies for fire extinguishing systems as incomplete goods of heading No. 84.24, pursuant to Rule 2 (a) of the *General Rules*. Accordingly, the analysis involved the Tribunal's assessment of whether the goods had the essential character of the complete fire extinguishing system.

42. The Tribunal agrees with the CBSA's argument that the *complete* goods, which determined the classification of the *incomplete* goods in those two cases, were significantly more mechanically complex than the goods in issue. Here, the relevant question is whether the goods in issue, in and of themselves, satisfy the third criterion for "mechanical appliances" in accordance with Cross Country's primary position. As indicated above, the Tribunal finds that they do not meet this criterion. In the next section, the Tribunal will deal with Cross Country's alternative argument, i.e. that the goods in issue should be classified as incomplete mechanical appliances of heading No. 84.24, under Rule 2 (a) of the *General Rules*.

43. With respect to Cross Country's reference to the advance ruling on an emergency wash stall unit, the Tribunal finds it to be of limited probative value due to the lack of information provided that would allow for a meaningful comparison to the goods in issue. That being said, the Tribunal notes that the product description in the advance ruling indicates that the wash stall unit includes an electrical supply, which could indicate a greater level of mechanization than the goods in issue. In any event, and irrespective of any similarities that those goods may have to the goods in issue, the advance ruling by the CBSA is not binding.

44. In light of the above, the Tribunal finds that the goods in issue, as a whole, do not perform work through the production, modification or transmission of force to an external body. Therefore, they do not satisfy the third criterion for "mechanical appliances" of heading No. 84.24.

50. *Cross Country (CITT)* at paras. 47-48.

51. *Ibid.* at para. 50.

Are the Goods in Issue Classifiable as Incomplete Mechanical Appliances?

45. Having determined that the decontamination shower cabin is not, in itself, a mechanical appliance, the Tribunal next considered Cross Country's alternative argument, namely, that the goods in issue should be classified as *incomplete* mechanical appliances of heading No. 84.24, pursuant to Note (IV) of the explanatory notes to Section XVI and Rule 2 (a) of the *General Rules*.⁵² The Tribunal disagrees with this proposition because it finds that the goods in issue are not incomplete mechanical appliances at the time of importation.

46. In accordance with Note (IV) of the explanatory notes to Section XVI and Rule 2 (a) of the *General Rules*, the reference to "[m]echanical appliances . . . for projecting, dispersing or spraying liquids . . ." in heading No. 84.24 covers incomplete mechanical appliances, provided, at the time of importation, they have the essential character of the complete mechanical appliances.

47. The underlying premise for Cross Country's alternative argument is that the goods in issue can be used together with various other components or equipment as part of a full decontamination shower system, which qualifies as a complete mechanical appliance of heading No. 84.24. In particular, Cross Country sells various other components and equipment for use with the goods in issue, such as a water reservoir, a hydrophore pump, a water heater, a water manifold, an inducer, a hose set and a waste water pump.⁵³

48. The testimony of Mr. Heavens clarified for the Tribunal that the need for those other components and equipment will depend on the circumstances and environment in which the goods in issue are being used. In particular, he repeatedly referred to them as "optional accessories" that are sold separately from the goods in issue.⁵⁴ According to Mr. Heavens, Cross Country provides such optional accessories upon request, depending on the needs of its customers. For example, he testified that some customers will purchase a water reservoir ". . . to assist in the decontamination if water is not available on site through a water hydrant or through a pond"⁵⁵ and the water reservoir fluid bag has a valve that opens and closes.⁵⁶ Similarly, the need for an inducer, which is used to inject decontaminants into the water supply, will depend on the actual contaminant involved.⁵⁷ There may also be cases where purchasers of the goods in issue already have the above optional accessories.

49. The Tribunal finds that the above optional accessories may be used with the goods in issue, depending on the circumstances and specific user needs. However, they are not required in order to use the goods in issue for their intended purpose, i.e. providing an enclosed shower for decontamination purposes. Indeed, the testimony of Mr. Heavens established that the only requirement for using the goods in issue is that they must be connected to a clean water supply.⁵⁸

52. *Transcript of Public Hearing*, 20 February 2014, at 69.

53. Exhibit AP-2012-052-20A, tab 5 at 63, Vol. 1A.

54. Exhibit AP-2012-052-20A at 5-6, 63, 65, Vol. 1A; *Transcript of Public Hearing*, 20 February 2014, at 36-41.

55. *Transcript of Public Hearing*, 20 February 2014, at 38.

56. *Ibid.* at 39.

57. *Ibid.* at 39.

58. In this respect, the Tribunal notes that Cross Country filed product information for the goods in issue that indicates that a clean water supply and waste water units are required for a complete decontamination system. Exhibit AP-2012-052-20A at 63, Vol. 1A. However, Mr. Heavens testified that a user could simply place a hydrovac unit into the cabin and suck out the waste water ". . . rather than having it pumped out to an actual contaminant bag." *Transcript of Public Hearing*, 20 February 2014, at 49. Accordingly, the Tribunal finds that the goods in issue can be used without waste water units, provided they are connected to a clean water supply.

50. In light of the above, the Tribunal finds that the goods in issue, as presented at the time of importation, are complete goods and should be classified on that basis. Other components may potentially be added or used together with the goods in issue, but they are not always necessary in order for the decontamination shower cabin to perform its intended function.

51. This conclusion marks a key distinction from the past decisions cited by Cross Country regarding the tariff classification of fire extinguishing systems and fire sprinkler systems. In those cases, as stated above, the Tribunal found that the goods were properly classified in heading No. 84.24, pursuant to Rule 2 (a) of the *General Rules*.

52. In *Integrated Protection*, the goods were various components of a fire extinguishing system and the Tribunal determined they were properly classified in heading No. 84.24 as incomplete “fire extinguishers”, pursuant to Rule 2 (a) of the *General Rules*. This was based on the conclusion that the imported components included the main essential features of a complete fire extinguishing system, specifically, nozzles, a control head and a charge, and that the fire extinguishing system was encompassed by the term “fire extinguishers” in heading No. 84.24.⁵⁹

53. In *Grinnell*, the goods were fabricated pipe assemblies comprising various components, including pipe, pipe fittings, sprinkler heads and valves, ultimately to be incorporated into or used in the installation of a fire sprinkler system. The Tribunal commented that the valves, and possibly the sprinkler heads, could be considered mechanical. It went on to conclude that the complete fire sprinkler systems were mechanical appliances of heading No. 84.24 because they were akin to irrigation systems of that heading. The imported assemblies were therefore classified in that heading on the basis that they were incomplete fire sprinkler systems, i.e. pursuant to Rule 2 (a) of the *General Rules*. Specifically, the Tribunal stated as follows:

It is clear from the evidence that at least some of the components and, in particular, the valves, if not the sprinkler heads, could be considered mechanical appliances in their own right. The system as a whole is akin to the irrigation systems which are clearly intended to fall under the provision for mechanical appliances in heading No. 84.24 and, thus, the Tribunal concludes that the fire extinguishing⁶⁰ sprinkler systems are also mechanical appliances within the meaning of that heading

54. In both *Integrated Protection* and *Grinnell*, the Tribunal found it appropriate to classify the goods as incomplete mechanical appliances of heading No. 84.24, pursuant to Rule 2 (a) of the *General Rules*, on the basis that certain mechanical components gave the goods the essential character of mechanical appliances of that heading.

55. In the present appeal, the essential character of the goods in issue is not a relevant consideration for purposes of the tariff classification analysis in accordance with Rule 1 of the *General Rules*, given the Tribunal’s conclusion above that they are complete articles at the time importation. Accordingly, even though the goods in issue have valve components that are, in themselves, mechanical in nature akin to some of the components of the goods in *Integrated Protection* and *Grinnell*, those similarities are not determinative in the present appeal, because the Tribunal does not consider it appropriate to classify the goods in issue as incomplete mechanical appliances.

59. *Integrated Protection* at 4.

60. *Grinnell* at 8.

Conclusion

56. The Tribunal finds that the goods in issue are not classifiable in heading No. 84.24 as mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids.

57. As indicated above,⁶¹ the Tribunal need not review its original analysis in relation to heading No. 39.22 or its conclusion that the goods in issue are *prima facie* classifiable in that heading.⁶²

58. For the foregoing reasons, the Tribunal determines that the goods in issue are properly classified under tariff item No. 3922.10.00 as shower-baths of plastics.

DECISION

59. The appeal is dismissed.

Jason W. Downey
Jason W. Downey
Presiding Member

61. See note 6 above.

62. *Cross Country (CITT)* at para. 69. The Tribunal further notes that Cross Country indicated that it would accept the classification of the goods in issue in heading No. 39.22 if the Tribunal were to find that they are not “mechanical appliances” of heading No. 84.24. *Transcript of Public Hearing*, 20 February 2014, at 58.