



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2018-037

Philips Electronics Ltd.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, October 9, 2019*

TABLE OF CONTENTS

DECISION.....	i
STATEMENT OF REASONS	1
SUMMARY	1
PROCEDURAL HISTORY	1
DESCRIPTION OF THE GOODS IN ISSUE	2
LEGAL FRAMEWORK	2
POSITIONS OF THE PARTIES	4
Philips	4
CBSA	5
TRIBUNAL'S ANALYSIS	6
The goods in issue are classifiable under tariff item No. 9603.21.00	7
The goods in issue do not qualify for duty relief under tariff item No. 9977.00.00	8
CONCLUSION	9
DECISION	9

IN THE MATTER OF an appeal heard on July 9, 2019, 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 28, 2018, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

PHILIPS ELECTRONICS LTD.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Rose Ann Ritcey
Rose Ann Ritcey
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: July 9, 2019

Tribunal Panel: Rose Ann Ritcey, Presiding Member

Support Staff: Sarah Perlman, Counsel

PARTICIPANTS:**Appellant**

Philips Electronics Ltd.

Counsel/RepresentativesMichael Kaylor
Michael R. Smith**Respondent**

President of the Canada Border Services Agency

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WITNESSES:Laura L. Iorio
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STATEMENT OF REASONS

SUMMARY

1. This concerns an appeal filed by Philips Electronics Ltd. (Philips) under subsection 67(1) of the *Customs Act*¹ from a decision made by the President of the Canada Border Services Agency (CBSA) on September 28, 2018, pursuant to subsection 60(4) of the *Act*.
2. The appeal relates to an advance ruling regarding the tariff classification of “Philips Sonicare DiamondClean Toothbrush Heads” (the goods in issue).
3. Philips originally argued that the goods in issue are properly classified in heading No. 85.09 of the schedule to the *Customs Tariff*² as electro-mechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading No. 85.08. However, following a change in Philips’ position at the hearing, the parties agreed that the goods in issue are classifiable in heading No. 96.03 as brushes (including brushes constituting parts of machines, appliances or vehicles).³ Therefore, the dispute is at the tariff item level: whether the goods in issue are properly classified under tariff item No. 9603.21.00 as tooth brushes, including dental-plate brushes, as determined by the CBSA, or under tariff item No. 9603.50.00 as other brushes constituting parts of machines, appliances or vehicles, as claimed by Philips.
4. Should the Tribunal find that the goods in issue are classifiable under tariff item No. 9603.21.00, Philips submits that they should qualify for duty relief under tariff item No. 9977.00.00 as articles for use in appliances used in dental science.
5. For the reasons that follow, the Canadian International Trade Tribunal (the Tribunal) finds that the goods in issue are tooth brushes of tariff item No. 9603.21.00, without the benefits of tariff item No. 9977.00.00, as classified by the CBSA.

PROCEDURAL HISTORY

6. On November 6, 2017, Philips filed with the CBSA a request for advance ruling on the tariff classification of the goods in issue. On February 20, 2018, the CBSA issued an advance ruling pursuant to paragraph 43.1(1)(c) of the *Act*, classifying the goods in issue under tariff item No. 9603.21.00, without the benefits of tariff item No. 9977.00.00.
7. On March 7, 2018, Philips requested a review of the advance ruling under subsection 60(2) of the *Act*. The CBSA confirmed the original advance ruling on September 28, 2018.
8. On October 2, 2018, Philips filed this appeal with the Tribunal under subsection 67(1) of the *Act*.
9. On July 2, 2019, Philips requested permission for the late filing of physical exhibits, namely Philips Sonicare brush heads and brush handle, and an Oral-B tooth brush. The CBSA took no position in the matter. On July 3, 2019, the Tribunal accepted the late filing of the physical exhibits.⁴

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

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

3. *Transcript of Public Hearing* at 83-84.

4. Exhibit AP-2018-037-18, Vol. 1; Exhibit AP-2018-037-19, Vol. 1; Exhibit AP-2018-037-21, Vol. 1.

10. On July 9, 2019, the Tribunal held a public hearing in Ottawa, Ontario. Philips called Ms. Laura L. Iorio, registered dental hygienist, and Dr. Mark McCullough, dentist, as lay witnesses.⁵

11. Although Philips originally intended to call a third witness, Mr. Evan Dengler, development engineer for Philips Oral Healthcare, Philips advised the Tribunal on July 3, 2019, that Mr. Dengler was no longer available to testify at the hearing due to a scheduling conflict. At the hearing, the CBSA argued that Mr. Dengler's presentation submitted on June 18, 2019, should not be given any weight and should not be admitted into evidence by the Tribunal. However, as already stated in its letter of July 5, 2019, the Tribunal admitted the presentation on the record and indicated that it would give it the weight it deserves in the circumstances.⁶

DESCRIPTION OF THE GOODS IN ISSUE

12. The goods in issue are "Philips Sonicare DiamondClean Toothbrush Heads". They consist of a plastic arm with one end designed to attach to various Philips Sonicare electric tooth brushes, and the other end having bristles fixed to form a tooth brush head.

LEGAL FRAMEWORK

13. The tariff nomenclature is set out in detail in the schedule of the *Customs Tariff*,⁷ which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).⁸ 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.

14. Subsection 10(1) of the *Customs Tariff* provides that classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*⁹ and the *Canadian Rules*¹⁰ set out in the schedule.

15. 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.

16. 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*¹¹ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,¹² published by the WCO. While classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.¹³

5. On June 20, 2019, Philips confirmed that it did not seek to qualify Ms. Iorio and Dr. McCullough as expert witnesses; Exhibit AP-2018-037-15, Vol. 1.

6. Exhibit AP-2018-037-13, Vol. 1; Exhibit AP-2018-037-20, Vol. 1; Exhibit AP-2018-037-23, Vol. 1; *Transcript of Public Hearing* at 4-5;

7. S.C. 1997, c. 36.

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

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

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

11. World Customs Organization, 4th ed., Brussels, 2017.

12. World Customs Organization, 6th ed., Brussels, 2017.

13. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17 and *Canada (Attorney General) v. Best Buy Canada Inc.*, 2019 FCA 20 at para. 4.

17. 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. It is only where Rule 1 does not conclusively determine the classification of the goods that the other *General Rules* become relevant to the classification process.¹⁴

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 use a similar approach to determine the proper subheading.¹⁵ The final step is to determine the proper tariff item.¹⁶

19. The relevant tariff nomenclature is as follows:

SECTION XX: MISCELLANEOUS MANUFACTURED ARTICLES

...

Chapter 96

MISCELLANEOUS MANUFACTURED ARTICLES

96.03 **Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees).**

...

-Tooth brushes, shaving brushes, hair brushes, nail brushes, eyelash brushes and other toilet brushes for use on the person, including such brushes constituting parts of appliances:

9603.21.00 **- -Tooth brushes, including dental-plate brushes**

...

9603.50.00 **-Other brushes constituting parts of machines, appliances or vehicles**

20. In addition, Chapter 99, which includes tariff item No. 9977.00.00, provides special classification provisions that allow certain goods to be imported into Canada duty-free. The provisions of this chapter are not standardized at the international level. 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.

14. *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) at para. 21. Rules 1 through 5 of the *General Rules* apply to classification at the heading level.

15. Rule 6 of the *General Rules* provides that "... the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, mutatis mutandis, to the above Rules [i.e. Rules 1 through 5] ..." and that "... the relative Section and Chapter Notes also apply, unless the context otherwise requires."

16. Rule 1 of the *Canadian Rules* provides that "... the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, mutatis mutandis, to the [*General Rules*] ..." and that "... the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires." Classification opinions and explanatory notes do not apply to classification at the tariff item level.

21. Notes 3 and 4 to Chapter 99 are 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.

22. Tariff item No. 9977.00.00 reads as follows, in relevant parts:

9977.00.00 Articles for use in the following:

...

Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; ...

23. Subsection 2(1) of the *Customs Tariff* defines “for use in” as follows:

for use in, wherever it appears in a tariff item, in respect of goods classified in the tariff item, means that the goods must be wrought or incorporated into, or attached to, other goods referred to in that tariff item.

24. In the context of this case, in order for the goods in issue to be classified under tariff item No. 9979.00.00, they must be (1) articles; (2) for use in; (3) appliances used in dental science.¹⁷

POSITIONS OF THE PARTIES

Philips

25. Philips originally submitted that the goods in issue are classifiable under heading No. 85.09 as electro-mechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading No. 85.08. However, as noted above, Philips withdrew this argument at the hearing and agreed with the CBSA that the goods in issue are properly classified in heading No. 96.03.¹⁸

26. Philips submitted that the goods in issue are not tooth brushes at the time of importation, and therefore cannot be classified under tariff item No. 9603.21.00. Philips submitted the following definition of “toothbrush”: “a small brush with a long handle, for cleaning the teeth”.¹⁹ According to Philips, the goods in issue do not have a long handle and cannot be used on their own to brush teeth. As such, Philips submitted that the goods in issue should be classified under tariff item No. 9603.50.00 as “other brushes constituting parts of machines, appliances or vehicles”.²⁰

17. *Beckman Coulter Canada Inc. v. President of the Canada Border Services Agency* (17 January 2012), AP-2010-065 (CITT) at para. 21 [*Beckman*].

18. *Transcript of Public Hearing* at 79, 83-84. Accordingly, Philips no longer relied on the argument that the goods in issue did not meet the definition of “brush” provided in the explanatory notes to heading No. 96.03, admitting instead that they are brushes.

19. Exhibit AP-2018-037-03A, Vol. 1 at 46.

20. *Transcript of Public Hearing* at 75, 79-80.

27. Should the Tribunal find that the goods in issue are classifiable under tariff item No. 9603.21.00, Philips submitted that the goods in issue are entitled to duty relief under tariff item No. 9977.00.00 as articles for use in appliances used in dental science. Philips submitted that the goods in issue are articles and that they are “for use in” appliances, namely electric tooth brushes. In addition, Philips submitted that the Philips Sonicare electric tooth brush is “used in” dental science, where “dental science” – or “dentistry” – is defined as “the science concerned with the diagnosis, prevention, and treatment of diseases of the teeth, gums, and related structures of the mouth and including the repair or replacement of defective teeth.”²¹ Philips submitted that Philips Sonicare electric tooth brushes are used to address and prevent oral ailments such as gingivitis, and are therefore used in dental science.²²

CBSA

28. The CBSA submitted that the goods in issue are properly classified under tariff item No. 9603.21.00 because they are tooth brushes. More specifically, the CBSA submitted that the goods in issue are brushes of a kind used as parts of machines.²³

29. The CBSA submitted that the goods in issue cannot be classified under tariff item No. 9603.50.00 because it is a residual category, whereas the goods in issue can be more specifically classified under tariff item No. 9603.21.00 as tooth brushes. The CBSA noted that “goods cannot be *prima facie* classifiable in a residual item unless the Tribunal has first satisfied itself that the goods cannot be classified in a more specific item.”²⁴

30. With regard to tariff item No. 9977.00.00, the CBSA submitted that the words “instruments and appliances used in medical, surgical, dental or veterinary sciences” should have the same meaning as in Chapter 1 to 97 as per note 4 to Chapter 99. Accordingly, the CBSA submitted that the explanatory notes to heading No. 90.18, which use the same language, can be used for guidance when assessing whether goods qualify for duty relief.²⁵

31. The explanatory notes to heading No. 90.18 state that the “heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent or treat an illness or to operate etc.”²⁶ The explanatory notes also provide examples of dental instruments or appliances covered by heading No. 90.18: surgeons’ finger-guards, forceps, instruments for endodontic treatment, bone scissors and files, special instruments for cleaning gums and sockets, probes, filling instruments, dental burrs, discs, drills and brushes for use with a dental drill engine, etc.

21. Exhibit AP-2018-037-03A, Vol. 1 at 51. Other definitions submitted by Philips include “the branch of medical science concerned with the diagnosis and treatment of diseases and disorders of the teeth and gums” and “the science or professions dealing with the prevention or treatment of diseases of the teeth, gums, and oral cavity, the correction or removal of decayed, damaged, or malformed parts, and the replacement of lost structures.”

22. Exhibit AP-2018-037-03A, Vol. 1 at 53-71; *Transcript of Public Hearing* at 71-75, 85.

23. *Transcript of Public Hearing* at 87-88, 95.

24. *Danby Products Limited v. President of the Canada Border Services Agency* (16 February 2018), AP-2017-009 (CITT) at para. 35; *Transcript of Public Hearing* at 90.

25. *Transcript of Public Hearing* at 90.

26. *Eastern Division Henry Schein Ash Arcona Inc. v. President of the Canada Border Services Agency* (15 August 2016), AP-2013-029R (CITT) at para. 11.

32. Considering these explanatory notes, the CBSA argued that tariff item No. 9977.00.00 cannot be applied to the goods in issue because Philips Sonicare electric tooth brushes are not used in dental science.²⁷ The CBSA submitted that the instruments and appliances of heading No. 90.18 are more than simple home tooth brushes; they are used by dentists in their offices.²⁸ On the contrary, the CBSA noted that the safety instructions state that “Philips Sonicare is a personal care device and is not intended for use on multiple patients in a dental office or institution”.²⁹

33. In addition, according to the CBSA, the fact that the electric tooth brushes assist in reducing the risk of oral ailments such as gingivitis does not support the finding that they are used in dental science. The CBSA submitted that this reasoning would lead to dental floss being considered instruments used in dental science as well.³⁰

TRIBUNAL’S ANALYSIS

34. The parties agree that electric tooth brushes, such as the Philips Sonicare electric tooth brush, are properly classified in heading No. 85.09 as electro-mechanical domestic appliances, with self-contained electric motor. The Tribunal sees no reason to find otherwise.

35. The notes to Section XVI state that brushes of a kind used as parts of machines of Chapter 85 are classifiable in heading No. 96.03.³¹ As noted by the CBSA, the explanatory notes to heading No. 96.03 define brooms and brushes as small tufts or knots of flexible or springy fibres or filaments mounted on a broom or brush stock or back. The Tribunal is satisfied that the goods in issue fit this description, in that flexible bristles are attached to the head of a plastic arm.³²

36. Furthermore, the parties agree that the goods in issue are “parts” that are intended to be used in Philips Sonicare electric tooth brushes.³³ The Tribunal agrees.

37. Considering the above, since the terms of heading No. 96.03 explicitly include “brushes constituting parts of machines or appliances”, the Tribunal finds that the goods in issue are classifiable in heading No. 96.03. The Tribunal will now consider whether the goods in issue are classifiable under tariff item No. 9603.21.00 as tooth brushes, including dental-plate brushes, or under tariff item No. 9603.50.00 as other brushes constituting parts of machines, appliances or vehicles.

27. The CBSA provided the following definitions of “dentistry”: “The treatment of diseases and other conditions that affect the teeth and gums, especially the repair and extraction of teeth and the insertion of artificial ones”, “the branch of medical science concerned with the diagnosis and treatment of diseases and disorders of the teeth and gums”, and “the work done by a dentist”. Exhibit AP-2018-037-07, Vol. 1 at 11-12.

28. *Transcript of Public Hearing* at 90-92. Furthermore, the CBSA noted that brushes specialized for use in dentistry are specifically excluded from heading No. 96.03 as per note 1(f) to Chapter 96 and note (B)(e) of the explanatory notes to heading No. 96.03

29. Exhibit AP-2018-037-03A, Vol. 1 at 21.

30. *Transcript of Public Hearing* at 91.

31. Note 1(o) to Section XVI provides as follows, in relevant parts: “This Section does not cover: . . . brushes of a kind used as parts of machines (heading 96.03); . . .” Note 5 to Section XVI also provides as follows: “For the purpose of these Notes, the expression “machine” means any machine, machinery, plant, equipment, apparatus or appliances cited in the headings of Chapter 84 or 85.”

32. Exhibit AP-2018-037-03A, Vol. 1 at 3-5, 12.

33. Exhibit AP-2018-037-03, Vol. 1 at 7-8; Exhibit-AP-2018-037-07, Vol. 1 at 13; *Transcript of Public Hearing* at 74, 76-77, 95.

The goods in issue are classifiable under tariff item No. 9603.21.00

38. Classification at the subheading level commences by *mutatis mutandis* application (pursuant to Rule 6) of Rule 1 of the *General Rules*, i.e. in accordance with the terms of the subheadings and any relative section, chapter or subheading notes. Rule 6 also provides that only subheadings at the same level are comparable. Accordingly, the appropriate one-dash subheading must first be chosen using the principles of classification contained in Rules 1 through 5.

39. In this case, the competing one-dash subheadings are “[t]ooth brushes, shaving brushes, hair brushes, nail brushes, eyelash brushes and other toilet brushes for use on the person, including such brushes constituting parts of appliances” and “[o]ther brushes constituting parts of machines, appliances or vehicles”.

40. As the Tribunal stated in *Danby*, “goods cannot be *prima facie* classifiable in a residual item unless the Tribunal has satisfied itself that the goods cannot be classified in a more specific item.”³⁴ As submitted by the CBSA, the Tribunal is of the view that tariff item No. 9603.50.00 is residual; tariff item No. 9603.50.00 applies to “other brushes”, such that the Tribunal must first be satisfied that the goods in issue cannot be more specifically described in another tariff item. Therefore, the Tribunal will first consider whether the goods in issue are tooth brushes of tariff item No. 9603.21.00. The Tribunal will only consider the application of tariff item No. 9603.50.00 if the goods in issue cannot be classified under tariff item No. 9603.21.00.

41. Both parties submitted dictionary definitions of “toothbrush”, which generally define that term as a small brush for cleaning the teeth.³⁵ In addition, according to Ms. Iorio’s report, tooth brushes, whether manual or electric, consist of three parts: (1) the head, which contains the bristles, (2) the handle, which is used for grasping the tooth brush, and (3) the shank, which connects the head to the handle. Ms. Iorio stated that an electric tooth brush “must be assembled with the brush head on the metal shank and handle apparatus together to achieve its 62,000 brush movements per minute”, such that the goods in issue are not usable on their own.³⁶

42. The Tribunal does not accept the CBSA’s argument that, at the time of importation, the goods in issue could be readily or properly used to brush teeth on their own.³⁷ However, although the goods in issue may not consist of all three parts of a tooth brush, the Tribunal finds that the goods in issue are “tooth brushes” in that they are brushes for cleaning the teeth.³⁸

43. Furthermore, the Tribunal notes that the phrase “including such brushes constituting parts of appliances” applies to all brushes listed at the one-dash level of tariff item No. 9603.21.00, which includes tooth brushes. Indeed, there is no separation, such as through a semicolon, between “tooth brushes” and “including such brushes constituting parts of appliances”, which would have prevented this last part of the description from affecting the first part.³⁹

34. *Danby Products Limited v. President of the Canada Border Services Agency* (16 February 2018), AP-2017-009 (CITT) at para. 35.

35. Exhibit AP-2018-037-03A, Vol. 1 at 46, 50; Exhibit AP-2018-037-07, Vol. 1 at 9; *Transcript of Public Hearing* at 88.

36. Exhibit AP-2018-037-12, Vol. 1 at 9-11, 13, 65-68; *Transcript of Public Hearing* at 32, 60.

37. *Transcript of Public Hearing* at 88.

38. Exhibit AP-2018-037-03A, Vol. 1 at 3-5, 65.

39. *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (29 July 2013), AP-2012-041 and AP-2012-042 (CITT) at paras. 45-46; *Transcript of Public Hearing* at 87, 90, 95. The Tribunal notes that Philips did not address the wording of the one-dash level of tariff item No. 9603.21.00.

44. The Tribunal notes that the fact that there is a provision in the *Customs Tariff* for tooth brushes constituting parts of appliances must mean that this one-dash level applies to something more than complete manual tooth brushes. As the Tribunal has found that the goods in issue are tooth brushes and agrees that they are parts of appliances, the Tribunal finds that the goods in issue are properly classified under tariff item No. 9603.21.00. Accordingly, the Tribunal need not consider tariff item No. 9603.50.00.

The goods in issue do not qualify for duty relief under tariff item No. 9977.00.00

45. Tariff item No. 9977.00.00 provides tariff relief for articles for use in appliances used in dental science, among others. Both parties agree that the goods in issue are “articles for use in appliances”. The Tribunal agrees. The parties disagree however as to whether the appliances, namely Philips Sonicare electric tooth brushes, are used in dental science.⁴⁰

46. As noted by the CBSA, the terms “instruments and appliances used in medical, surgical, dental or veterinary sciences” in heading No. 90.18 are repeated in tariff item No. 9977.00.00. In accordance with note 4 to Chapter 99, the words and expressions of heading No. 90.18 may therefore inform of the meaning of those used in tariff item No. 9977.00.00. In addition, to the extent that the explanatory notes to heading No. 90.18 inform the meaning of the terms of tariff item No. 9977.00.00, the Tribunal ought to have regard to those notes unless there is a sound reason to do otherwise.⁴¹

47. In accordance with its decision in *Beckman*, the Tribunal finds that appliances do not have to be classified in heading No. 90.18 in order for articles for use in such appliances to be classifiable under tariff item No. 9977.00.00. The explanatory notes to heading No. 90.18 only provide an illustrative list of the products covered by that heading; they do not absolutely define the word “appliance” or “dental science”.⁴² In addition, the Tribunal notes that tariff item No. 9977.00.00 does not specify that the applicable “instruments and appliances used in medical, surgical, dental or veterinary sciences” are only those classified in heading No. 90.18. As such, the fact that appliances, in this case electric tooth brushes, are not classified in heading No. 90.18 does not necessarily mean that they are not used in dental science within the meaning and for the purposes of tariff item No. 9977.00.00.⁴³

48. The explanatory notes to heading No. 90.18 are nevertheless informative: they indicate that the instruments and appliances covered are, for the most part, used in professional practice, such as by dentists,

40. *Transcript of Public Hearing* at 74-77, 93-94. The parties disagreed as to whether the “appliance” was the entire electric tooth brush (i.e. the handle combined with the tooth brush head), as submitted by Philips, or solely the electric tooth brush handle, as submitted by the CBSA. However, the CBSA also noted in its submissions that “[b]oth the Appellant and the Respondent agree that once the tooth brush heads are mounted on the base, the Philips Sonicare electric tooth brushes are appliances.” (Exhibit-AP-2018-037-07, Vol. 1 at 13) The Tribunal is of the view that the appliance is the entire electric tooth brush.

41. *Holland Hitch of Canada Limited v. President of the Canada Border Services Agency* (18 January 2013), AP-2012-004 (CITT) at para. 92; *Great West Van Conversions Inc v. President of the Canada Border Services Agency* (30 November 2011), AP-2010-037 (CITT) at note 41.

42. *Beckman* at paras. 36-38.

43. On this point, the Tribunal’s decision in *Boehringer Mannheim Canada Ltd. v. The Commissioner of the Canada Customs and Revenue Agency* (22 February 2001), AP-99-104 (CITT) is different because it was dealing with tariff item No. 9977.00.00 as well as Code 2546 of the former *Customs Tariff*, R.S.C. 1985, c. 41 (2nd Supp.), which specifically covered articles for use in the goods of heading No. 90.18. In that case, the Tribunal addressed both tariff item No. 9977.00.00 and Code 2546 at once, and found that goods must be classified in heading No. 90.18 in order to benefit from tariff relief. The Tribunal finds that its decision in *Beckman*, which is more recent and limited to tariff item No. 9977.00.00, is more relevant in this case.

“either to make a diagnosis, to prevent or treat an illness or to operate, etc.” In that sense, the definitions of “dental science” and “dentistry” submitted by the parties accord with the description of “instruments and appliances used in medical, surgical, dental or veterinary sciences” in the explanatory notes.

49. Similarly to *Beckman*, the Tribunal finds that there is no requirement for appliances to be used exclusively in dental science; however, they must be sufficiently dedicated.⁴⁴ Based on the evidence and witness testimony, dentists and dental hygienists recommend electric tooth brushes to their clients and instruct them on their proper use because electric tooth brushes offer benefits compared to manual tooth brushes when it comes to disease prevention.⁴⁵

50. However, the evidence and witness testimony also shows that consumers can purchase and use electric tooth brushes as well as the goods in issue on their own, without any intervention from a dental hygienist or dentist. Further, it is clear that these electric tooth brushes are intended to be used by consumers at home and not in a professional setting.⁴⁶

51. Given the above, the Tribunal cannot conclude that the Philips Sonicare electric tooth brushes are sufficiently dedicated to dental science to be considered appliances used in dental science. Therefore, the Tribunal finds that the goods in issue do not qualify for duty relief under tariff item No. 9977.00.00 as articles for use in appliances used in dental science.

CONCLUSION

52. As the goods in issue are tooth brushes constituting parts of appliances, the Tribunal finds that the goods in issue are properly classified under tariff item No. 9603.21.00.

53. Furthermore, the goods in issue are not articles for use in appliances used in dental science and do not qualify for tariff relief under tariff item No. 9977.00.00.

DECISION

54. The appeal is dismissed.

Rose Ann Ritcey

Rose Ann Ritcey
Presiding Member

44. *Beckman* at paras. 45, 49-50.

45. Exhibit AP-2018-037-03A, Vol. 1 at 20, 61-71; Exhibit AP-2018-037-12, Vol. 1 at 8, 65-79; *Transcript of Public Hearing* at 15-18, 25-29, 33-36, 42, 44-48, 54-59, 65-67.

46. Exhibit AP-2018-037-03A, Vol. 1 at 20-22; *Transcript of Public Hearing* at 43, 67-68.