Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2017-021

Cavavin (2000) Inc.

v.

President of the Canada Border Services Agency

Decision issued
Friday, October 4, 2019

Reasons issued
Friday, October 18, 2019

Canada

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IN THE MATTER OF an appeal heard on May 14 and 15, 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 July 14, 2017, with respect to a request for a further re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

CAVAVIN (2000) INC. **Appellant**

AND

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

DECISION

The appeal is dismissed.

Serge Fréchette
Serge Fréchette
Presiding Member

The statement of reasons will be issued at a later date.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	May 14 and 15, 2019
Tribunal Panel:	Serge Fréchette, Presiding Member
Support Staff:	Laura Colella, Counsel Helen Byon, Counsel

PARTICIPANTS:

Appellant	**Counsel/Representatives**
Cavavin (2000) Inc.	Rajesh Mamtora Sean Everden
Respondent	**Counsel/Representative**
President of the Canada Border Services Agency	Luc Vaillancourt
Intervener	**Counsel/Representatives**
Danby Products Limited	Thang Trieu Justin Kutyan Martin Gentile

WITNESSES:

Reda Ihaddadene Refrigeration Technician Cavavin (2000) Inc.	Nathalie Fortier President Cavavin (2000) Inc.
Dave Miller Vice-President Product & Marketing Danby Products Limited	Steve Atkinson Senior Category Manager Danby Products Limited
Greg Hall Director of Product Lifecycle Development Danby Products Limited	

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Cavavin (2000) Inc. (Cavavin) on August 11, 2017, pursuant to subsection 67(1) of the *Customs Act*,[1] from a decision of the President of the Canada Border Services Agency (CBSA) made under subsection 60(4) of the *Act* on July 14, 2017.

2. The issue is whether the goods in issue are properly classified under tariff item No. 8418.50.10 as other furniture for storage and display, incorporating refrigerating equipment, as submitted by the CBSA during these proceedings, or under tariff item No. 8418.69.90 as "other" refrigerating or freezing equipment, as submitted by Cavavin.

PROCEDURAL HISTORY

3. The goods in issue were imported between 2011 and 2015[2] under tariff item No. 8418.50.10 as "other furniture (chests, cabinets, display counters, showcases and the like) for storage and display, incorporating refrigerating or freezing equipment."

4. On October 30, 2015, Cavavin applied for a refund of duty paid under paragraph 74(1)(e) of the *Act*, arguing that the goods should be classified under tariff item No. 8418.69.90 as "other refrigerating or freezing equipment."

5. On November 16, 2015, the CBSA denied Cavavin's refund application under subsection 74(4) of the *Act*, determining the goods in issue to be properly classified under tariff item No. 8418.50.10.

6. On February 15, 2016, Cavavin requested a further re-determination under subsection 60(1) of the *Act*, claiming that the goods in issue should be classified under tariff item No. 8418.69.90.

7. On March 22, 2017, the CBSA issued a preliminary decision classifying the goods in issue using compression technology under tariff item No. 8418.21.00 as "refrigerators, household type and compression-type" and the goods in issue using thermodynamic technology under tariff item No. 8418.29.00 as "other refrigerators, household type".[3]

8. On June 8, 2017, Cavavin responded to the CBSA's preliminary decision with further submissions in support of its proposed tariff classification.[4]

9. On July 14, 2017, the CBSA issued a final decision under subsection 60(1) of the *Act*, confirming classification of the goods under tariff item Nos. 8418.21.00 and 8418.29.00.[5]

10. On August 11, 2017, Cavavin filed its notice of appeal with the Tribunal.[6]

11. On March 2, 2018, the Tribunal received a Notice of Intervention from Danby Products Limited (Danby).[7] The parties did not oppose Danby's request for intervenor status.[8]

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1. R.S.C. 1985 (2nd Supp.), c. 1 [*Act*].
2. Exhibit AP-2017-021-58A, Vol. 1V at para. 2.
3. Exhibit AP-2017-021-04A, Vol. 1 at 21-23.
4. Exhibit AP-2017-021-04A, Vol. 1 at 26-33.
5. Exhibit AP-2017-021-04A, Vol. 1 at 56-62.
6. Exhibit AP-2017-021-01, Vol. 1.
7. Exhibit AP-2017-021-12, Vol. 1C.
8. Exhibit AP-2017-021-13, Vol. 1C; Exhibit AP-2017-021-14, Vol. 1C.

12. On March 26, 2018, the Tribunal granted Danby's request and the hearing was subsequently rescheduled in consultation with the parties.

13. On October 5, 2018, Danby and Cavavin filed supplementary materials. Danby's supplementary record contained standards published by the Canadian Standards Association (CSA standards), including CSA C300-15, *Energy performance and capacity of household refrigerators, refrigerator-freezers, freezers, and wine chillers*, March 2015 (CSA C300-15) and CSA C300-18, *Energy performance and capacity of household refrigerators, refrigerator-freezers, freezers, and miscellaneous refrigeration products*, July 2018 (CSA C300-18).

14. On October 11, 2018, the CBSA requested a postponement of the hearing to give the President of the CBSA an opportunity to reconsider the tariff classification. The Tribunal granted the request, giving the CBSA until November 30, 2018, to inform the Tribunal of its intention. On November 29, 2018, the CBSA informed the Tribunal that the parties were unable to come to an agreement and that they wished to pursue the appeal and make further submissions.

15. The CBSA also advised the Tribunal that having considered the CSA standards filed by Danby, the goods in issue should be classified under tariff item No. 8418.50.10. The CBSA made supplementary submissions with respect to its new tariff classification on December 28, 2018, to which Cavavin and Danby responded on January 21, 2019.

16. The hearing was held in Ottawa, Ontario, on May 14 and 15, 2019.

17. Additional submissions from the CBSA and Cavavin were filed on June 7, 2019.

DESCRIPTION OF THE GOODS IN ISSUE

18. The goods in issue are 26 models of wine coolers of different sizes and capacities, with some larger models having two compartments with different temperatures.[9] They are designed for the cooling and storage of wine, beer, beverages, or a combination thereof, but not food.[10] They are electrical appliances which operate by either compression-type or thermodynamic cooler technology.[11] They are fitted with wine racks or shelves and feature a glass door for viewing the bottles or cans inside. There are a variety of features, such as digital temperature control and display, security lock, interior light, auto defrost, anti-UV glass doors, and humidity control. Some larger models have two compartments with different temperatures.[12] The goods in issue are subject to the CSA standards (C-300) with respect to energy performance and capacity.

LEGAL FRAMEWORK

19. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*,[13] which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System)

9. The parties have agreed that the goods in issue can be referred to as wine cellars/coolers and beverage centres/coolers. See Agreed Statement of Facts, Exhibit AP-2017-021-58A, Vol. 1V at para. 3. Accordingly, the Tribunal accepts these terms as being synonymous for the purposes of this appeal. Unless otherwise stated in this SOR, the goods in issue will be referred to as "wine coolers".
10. Exhibit AP-2017-021-58A, Vol. 1V at paras. 1-4.
11. Exhibit AP-2017-021-04A, Vol. 1 at 21.
12. Exhibit AP-2017-021-58A, Vol. 1V at para. 3.
13. S.C. 1997, c. 36.

developed by the World Customs Organization (WCO).[14] 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.

20. 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*[15] and the *Canadian Rules*[16] set out in the schedule.

21. 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.

22. 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*[17] and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,[18] 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.[19]

23. 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. As the Supreme Court of Canada indicated in *Igloo Vikski*, it is "only where Rule 1 does not conclusively determine the classification of the good that the other General Rules become relevant to the classification process."[20]

24. 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.[21] The final step is to determine the proper tariff item.[22]

25. The relevant tariff nomenclature for heading No. 84.18 provides as follows:

> **84.18 Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines of heading 84.15.**

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14. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.
15. S.C. 1997, c. 36, schedule [*General Rules*].
16. S.C. 1997, c. 36, schedule.
17. World Customs Organization, 4th ed., Brussels, 2017.
18. World Customs Organization, 6th ed., Brussels, 2017.
19. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17; *Canada (Attorney General) v. Best Buy Canada Inc.*, 2019 FCA 20, at para. 4.
20. *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 [*Igloo Vikski*] at para. 21.
21. 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 [Rules 1 through 5] . . ." and that "the relative Section and Chapter Notes also apply, unless the context otherwise requires."
22. 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.

. . .

-Refrigerators, household type:

8418.21.00 - -**Compression-type**

. . .

8418.29.00 - -Other

. . .

8418.50 -Other furniture (chests, cabinets, display counters, showcases and the like) for storage and display, incorporating refrigerating or freezing equipment

8418.50.10 - - -Refrigerating or refrigerating-freezing type

. . .

-Other refrigerating or freezing equipment; heat pumps:

. . .

8418.69 - -Other

. . .

8418.69.90 - - -Other

26. The relevant explanatory notes for heading No. 84.18 provide as follows:

> The refrigerators and refrigerating equipment of this heading are in the main machines or assemblies of apparatus for the production, in a continuous cycle of operations, of low temperatures (in the region of 0° or less) at the active cooling element, by the absorption of the latent heat of evaporation of liquefied gases (e.g., ammonia, halogenated hydrocarbons), of volatile liquids or, in the case of certain marine types, of water.
>
> Apparatus of the foregoing kinds are classified in this heading if in the following forms:
>
> . . .
>
> 2) Cabinets or other furniture or appliances incorporating a complete refrigerating unit or an evaporator of a refrigerating unit, whether or not equipped with ancillary devices such as agitators, mixers, moulds. These appliances include domestic refrigerators, refrigerated show cases and counters, ice-cream or frozen food storage containers, refrigerated water or beverage fountains, milk cooling vats, beer coolers, ice-cream makers, etc.

TRIBUNAL ANALYSIS

27. In this case, the parties agree that the goods are properly classified under heading No. 84.18 as "refrigerators, freezers and other refrigerating or freezing equipment, electric or other", but disagree over the classification at the subheading level.

28. In resolving the tariff classification issue in this appeal, the Tribunal has been asked to reconsider its findings in *Rona*,[23] a case that dealt with similar products to the goods in issue. As will be discussed in more detail below, in *Rona*, the Tribunal determined that wine coolers were "refrigerators, household type" based on its consideration of, among other things, its interpretation of the term "refrigerator" in its common and ordinary sense. Applying the findings of *Rona*, the CBSA had initially classified the goods in issue as "refrigerators, household type" under tariff item Nos. 8418.21.00 and 8418.29.00.

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23. *Rona Corporation v. President of the Canada Border Services Agency* (17 October 2016), AP-2015-021 (CITT) [*Rona*].

29. The CSA standards submitted by Danby, which were not before the Tribunal in *Rona*, have been a key issue in each of the parties' submissions. The CSA standards contain definitions for each of the terms "refrigerator" and "wine chiller". Based on these definitions, which are discussed in detail below, the parties have each argued that "refrigerators, household type" should be interpreted to mean an appliance used for storing food. Given that the purpose of wine coolers is to store wine, the parties argued that the features or technical specifications of wine coolers distinguish them from refrigerators. Following the submission of the CSA standards, the CBSA revised its proposed classification of the goods in issue to subheading No. 8418.50 as "other furniture . . . incorporating refrigerating equipment".

30. While Cavavin maintains that the goods in issue should be classified under subheading No. 8418.69 as "other refrigerating . . . equipment", it submitted that if the Tribunal found the goods in issue to be refrigerators, that they are not of a household type. According to Cavavin, the term "household type" does not apply where the goods are equally intended for household and commercial use.

31. Considering the submissions of the parties, the Tribunal's finding in *Rona*, and the residual nature of the subheadings that are invoked by the parties in this appeal,[24] the Tribunal is of the view that it must first determine whether "refrigerators, household type" includes the goods in issue. To resolve this issue, the Tribunal must consider whether a different finding than in *Rona* is warranted based on:

(i) the definitions provided in the CSA standards;

(ii) the evidence regarding consumers' knowledge of refrigerators;

(iii) the distinguishing features or technical specifications of wine coolers; and

(iv) the intended use of the goods in both domestic and commercial settings.

32. The Tribunal will also consider other evidence that was before the CBSA in respect of the goods in issue.

33. It is only if the Tribunal concludes that the goods in issue should not be classified as "refrigerators, household type" that it will examine whether the goods in issue are "refrigerating equipment" under subheading No. 8418.69 as proposed by Cavavin and Danby or as furniture incorporating "refrigerating equipment" under subheading No. 8418.50, as proposed by the CBSA.

34. After consideration of the above factors and for the reasons below, the Tribunal finds that the goods in issue are "refrigerators, household type". Consequently, the Tribunal does not need to consider the applicability of subheadings No. 8418.50 and 8418.69.

The Tribunal's analysis in *Rona*

35. To begin the analysis, it is important to clearly lay out the reasons for the Tribunal's findings in *Rona*. The Tribunal first interpreted the word "refrigerators" and then proceeded to consider the words "household type".

36. As the term "refrigerators" was not defined in the *Customs Tariff*, the Tribunal considered dictionary definitions in determining the common and ordinary meaning of the word "refrigerator". The

24. In *Euro-Line Appliances v. President of the Canada Border Services Agency* (12 August 2013), AP-2012-026 (CITT) at para. 23, the Tribunal stated: "The use of the word 'other' to modify 'refrigerating or freezing equipment' renders subheading No. 8418.69 a residual classification covering refrigerating and freezing equipment not falling within one of the subheadings that precedes it."

Tribunal considered the following definitions: "something that refrigerates; especially: a room or appliance for keeping food or other items cool" and a "cabinet or room in which food, etc., is kept cold".[25] Having considered these definitions, the Tribunal found that refrigerators "can be intended to keep . . . wine cool".[26] However, the analysis did not end there. The Tribunal also considered the explanatory note to heading No. 84.18, which applies to both refrigerators and refrigerating equipment. The Tribunal found that the generic description applicable to both refrigerators and refrigerating equipment "focussed on the mechanics of the cooling apparatus"[27] and did not refer to any of the distinctions drawn by *Rona*, such as the specific temperature and humidity settings or different design features of wine coolers. In this regard the Tribunal stated as follows:

> In short, although they may be important from a commercial perspective, none of the differences outlined by Rona have any bearing on a decision that the goods in issue are "refrigerators" as that term is to be understood in the schedule to the Customs Tariff, which is in accordance with its ordinary meaning and by reference to the explanatory notes.[28]

37. The Tribunal also indicated that although it would consider industry definitions in interpreting the terms to the schedule of the *Customs Tariff*, the industry standards submitted in *Rona* did not contain any industry standard definition that restricted the meaning of "refrigerator".[29]

38. The Tribunal then considered whether the goods in issue in that case were "intended for household use" and found based on the evidence before it that they were.[30]

Whether the goods in issue are "refrigerators, household type"

Definitions in the CSA standards

39. According to the parties, had the CSA standards been available to the Tribunal in *Rona*, it would not have concluded that the goods in issue in that case were "refrigerators, household type". Danby specifically argued that the fact that the subheading refers to "household type" implies that the reference to "refrigerator" is limited to appliances that refrigerate food items. To support its proposition, Danby referred to the distinction made between refrigerators and wine coolers in the CSA standards. For the reasons below, the definitions found in the CSA standards do not persuade the Tribunal that "refrigerators, household type" is limited to refrigerators that store food items.

40. The CSA standards are incorporated by reference under the *Energy Efficiency Regulations, 2016*.[31] While various versions of the standards were submitted, the standards that were applicable at the time of importation to the goods in issue were the standards in CSA C300-08,[32] which were incorporated by reference under the repealed *Energy Efficiency Regulations*[33]. It should be noted that previous to the publication of CSA C300-08, wine chillers were not regulated under energy efficiency legislation.[34]

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25. *Rona* at para. 55.
26. *Rona* at para. 56.
27. *Rona* at paras. 57, 58.
28. *Rona* at para. 59.
29. *Rona* at para. 60.
30. *Rona* at para. 62.
31. SOR/2016-311. These regulations were enacted under the *Energy Efficiency Act*, S.C. 1992, c. 36.
32. CAN/CSA-C300-08 entitled *Energy Performance and Capacity of Household Refrigerators, Refrigerator-Freezers, Freezers and Wine Chillers* [CSA C300-08]**.** See Exhibit AP-2017-021-64A, Vol. 1Z at paras. 6, 7; *Transcript of Public Hearing* at 141, 142.
33. SOR/94-651.
34. *Transcript of Public Hearing* at 77.

41. Looking at the definition of "refrigerator" and "wine chiller" contained in the CSA standards, the parties submitted that refrigerators are products that are designed for the storage of food; "wine chillers" are therefore a separate product as they are intended for the storage of wine only.[35]

42. CSA C300-08 defines "refrigerator" as:

> a cabinet or any part of a cabinet that is designed for the refrigerated storage of food at temperatures above 0 C (32 F) and that has a source of refrigeration.[36]

43. These same standards define a "wine chiller" as:

> a cabinet designed and marketed exclusively for the cooling and storage of wine.
>
> **Hybrid wine chiller** – a cabinet intended for the cooling and storage of wine and also refrigerating and/or freezing other beverages and/or foodstuffs.[37]

44. The Tribunal has considered the above definitions as well as definitions found in more recent versions of the C300 series standards that have further specified the temperature range of a refrigerator from 0 degrees to 3.9 degrees. The definition of "wine chiller" in the more recent version of the standards, C300-15, refers to applicable temperatures, "a cabinet designed and marketed exclusively for the cooling and storage of wine, which is capable of reaching average temperature of 12.8°C (55°F) or below."[38] Moreover, the Tribunal notes that in the C300-18 standards, the term "wine chiller" no longer exists in the standards. Instead, various types of "coolers", e.g. "cooler, cooler-all-refrigerator, cooler-refrigerator" appears as a "miscellaneous refrigeration product" which is excluded from the definition of "refrigerator (basic refrigerator)".[39] For the reasons that follow, the Tribunal finds that definitions provided in the CSA standards are not dispositive of the issue at hand, that is, the intended meaning of "refrigerator, household type".

45. In weighing the definitions above in the Tribunal's interpretation of the relevant terms, the objectives of the CSA standards and their relevant definitions must be considered in light of the purpose of the *Customs Tariff*.

46. As stated by Mr. Greg Hall, the purpose of the CSA standards is to provide energy efficiency requirements in respect of products that distributors or manufacturers must comply with. The product definitions are important as energy limits are different for each product, i.e. fridges, freezers and wine coolers.[40] The Tribunal understands these comments to mean that product differentiation is important for regulating energy efficiency standards which account for the different temperatures and mechanisms of the appliance; these are derived, at least in part, from the type of consumable item they are intended to cool.

47. The *Customs Tariff* encompasses an inclusive classification system, where all imported goods must be identified under a specific tariff item in the nomenclature for the purposes of applying the applicable

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35. *Transcript of Public Hearing* at 88. The Tribunal was also presented with evidence that for the purposes of CSA safety compliance certifications, no distinction in the classes of products tested by the CSA are made between a refrigerator, freezer or wine cooler as the potential hazards arising from these products are identical. All three types of products fall under the category of "refrigeration equipment". See Exhibit AP-2017-021-049A, Vol. IV at 816, *Transcript of Public Hearing* at 67.
36. Exhibit AP-2017-021-60, Vol. 1W at 36.
37. Exhibit AP-2017-021-60, Vol. 1W at 38.
38. See Exhibit AP-2017-021-30, Vol 1Q at 426.
39. Exhibit AP-2017-021-30, Vol. 1Q at 507, 508, 511.
40. *Transcript of Public Hearing* at 73, 74.

duties. In classifying goods, it is well established that a residual category is to be used only if the goods cannot be classified under the more specific category.[41]

48. As noted in *Rona*, the term "refrigerator" is not defined in the *Customs Tariff*. Therefore the Tribunal applies the modern rule of statutory interpretation which requires that "the words of an Act . . . to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."[42] The "ordinary meaning" of a provision refers "to the reader's first impression meaning, the understanding that spontaneously comes to mind when words are read in their immediate context."[43] It has also been described as the "natural meaning which appears when the provision is simply read through".[44]

49. The Tribunal in *Rona* found that nowhere in the common and ordinary meaning of "refrigerator", when considered in its context of the statutory scheme in which the term is used, as illustrated by its consideration of the explanatory note to heading No. 84.18, was there an indication that the type of consumable item refrigerated by the appliance was determinative of whether it was a "refrigerator" or not. Of that, the Tribunal remains convinced.

50. Cavavin submitted that the part of the explanatory note that describes the different forms of appliances that may be classified under heading No. 84.18 may aid in the interpretation of terms at the subheading level. In particular, the note refers to, among other things, "domestic refrigerators" and "beer coolers". In the Tribunal's view, this list provides examples of appliances that fall under the heading and is not determinative of classification at the subheading level.

51. The product definitions of the CSA standards are, as discussed above, intended to differentiate products for the purposes of applying energy requirements. For that reason, their description of the products are technical. There is no indication that these definitions are based on the ordinary meaning or everyday sense of the term they define. This is clear from the regular technical revisions that have been made to the product definitions as discussed above.

52. The Tribunal's position in this regard is consistent with the definition of refrigerator that has been included in the current version of the *Energy Efficiency Regulations, 2016*. The definition of "refrigerator" provided in section 39 includes "wine chiller" in the meaning of a household refrigerator. The definition reads as follows:

> ***refrigerator*** *means a household refrigerator that has a capacity of 1 100 L (39 cubic feet) or less and that has a defrost system, including a compressor-cycled automatic defrost system. It includes a wine chiller but does not include a household refrigerator that uses an absorption refrigeration system. (réfrigérateur)*
>
> ***réfrigérateur*** *Réfrigérateur domestique qui est muni d'un système de dégivrage — y compris d'un dispositif de dégivrage automatique à cycle du compresseur — et dont la capacité est d'au plus 1 100 L (39 pieds cubes). La présente définition vise le refroidisseur à vin, mais ne vise pas le réfrigérateur domestique muni d'un système de refroidissement par absorption. (refrigerator)*

41. *Partylite Gifts Ltd.* (16 February 2004), AP-2003-008 (CITT); *Canac Marquis Grenier Ltée v. President of the Canada Border Services Agency* (28 February 2017), AP-2016-005 (CITT) [*Canac*].
42. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 at para. 21.
43. R. Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. at 30.
44. *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Association*, [1993] 3 SCR 724, 1993 CanLII 31 (SCC) at p. 735 (Gonthier J.); see also *Pharmascience Inc. v. Binet*, [2006] 2 SCR 513, 2006 SCC 48 (CanLII) at para. 30.

53. In referring to the regulatory definition, the Tribunal does not view this definition as being more authoritative on the subject of the ordinary meaning of the term "refrigerator". However, the clear inclusion of a "wine chiller" in the meaning of a "household refrigerator" in the regulatory definition, suggests that the definitions found in the CSA standards are intended to differentiate products with greater specificity, i.e. for the purposes of applying energy requirements to particular products. They are not necessarily indicative of the ordinary meaning. As such, the Tribunal is not persuaded that the definitions found in the CSA standards negate or should be weighed more heavily than the regulatory definitions in considering the ordinary meaning of "refrigerator, household type".

54. The reference to "household type" following "refrigerator" for the purposes of subheading Nos. 8418.21 and 8418.29, read in its ordinary and grammatical sense, and its immediate context, qualifies the word "refrigerator" to a type that has characteristics for household use. Although it may be the case as argued by Danby that a refrigerator that stores food is one that is of a "household type", it is not limited to this. For instance, another characteristic of a refrigerator that is of a household type may be its capacity or size as indicated in the definition for "refrigerator" in the *Energy Efficiency Regulations, 2016* referred to above.[45]

55. The relevance of capacity in the determination of household and commercially rated products was discussed at the hearing. The Tribunal heard evidence that for regulating energy and safety standards, there is a distinction between household and commercially rated products. Different standards apply to household and commercial appliances because of their specific applications and possible hazards.[46] The standards reflect the "radically" different functions and energy consumption of commercial type refrigerating appliances.[47] This evidence suggests to the Tribunal that distinguishing a household refrigerator from a commercial refrigerator is also an objective of the energy regulatory framework.

56. In sum, the distinction between a "refrigerator" and a "wine chiller" in the CSA definitions does not, in the Tribunal's view, exclude a wine cooler from the ordinary sense of a household refrigerator for the purposes of tariff classification. In other words, the fact that a distinction is made between a refrigerator and a wine cooler for energy saving considerations does not imply that such a distinction is determinant or necessarily relevant in the context of classifying those goods under the *Custom Tariff*. If Parliament intended "refrigerators, household type" to be limited to refrigerators that store only food, or more generally to be read consistently with the CSA standards, this would have been more expressly stated.[48] In the absence of such language, the Tribunal finds that it would be improper to interpret the relevant terms as narrowly as the parties have suggested.

Consumer product knowledge

57. In assessing the meaning of "refrigerator, household type", the Tribunal also considered the evidence before it concerning consumer knowledge.

58. In that respect, Danby submitted as evidence results of an Ipsos survey, which showed that 99 percent of respondents (random sampling of adults across Canada) expected household-type refrigerators to be able to store food. While the Tribunal does not disagree with the survey results, it finds that the

45. According to the definition of "refrigerator" in the *Energy Efficiency Regulations, 2016*, a household refrigerator has a capacity of 1 100 L (39 cubic feet) or less.
46. *Transcript of Public Hearing* at 69, 70.
47. *Transcript of Public Hearing* at 72.
48. For example, tariff item No. 1905.40.10 refers to "Special dietary, as defined under regulations of Health Canada"; tariff item No. 2207.20.12 refers to "Denatured alcohol, within the meaning of the Excise Tax Act, 2001"; and tariff item No. 9996.00.00 refers to "(d) . . . 'commercial down', as defined in the Regulations."

wording of the survey question introduced bias in that it led with the reference to food storage.[49] This seriously limited the persuasiveness of the evidence.

59. Also, the Tribunal heard testimonial evidence that ordinary people refer to wine coolers as "refrigerators". Mr. Steve Atkinson of Danby described that consumers he encountered often referred to the product as a "wine refrigerator". He would then correct them by indicating that the product should be referred to as a "wine cooler" due to its distinguishing technical specifications, i.e. temperature performance and structure, which are required for refrigeration of wine rather than food. He also affirmed that prior to working for Danby more than a decade ago, he himself may have referred to a wine cooler as a "fridge".[50]

60. The apparent confusion in the marketplace concerning how to properly identify a wine cooler[51] demonstrates to the Tribunal that the common and ordinary meaning of a household refrigerator is not necessarily limited to refrigerators that store food. The Tribunal appreciates that there has been significant developments in the marketplace whereby wine coolers are far more common than in years past and, in that regard, terms used in the marketplace are evolving.[52] However, the proper application of the *Customs Tariff* cannot be modified simply as a result of these developments in the marketplace.[53] Moreover, while residual categories, such as those qualified by the term "other", are helpful in dealing with new or emerging products, consistent with established principles in tariff classification as mentioned above, they are to be used only if the goods cannot be classified under a more specific category. The fact that there is a residual category does not imply nor should it encourage a narrower reading of a more specific heading or subheading.[54]

61. Accordingly, for the reasons above, the submissions on consumer product knowledge of wine coolers and refrigerators have not persuaded the Tribunal to limit the meaning of "refrigerator, household type" to refrigerators that store food.[55]

Distinguishing features or technical specifications of wine coolers

62. The parties also submitted that the goods in issue are not refrigerators based on their technical differences. These technical differences stem from the fact that wine coolers are not designed to store food items. In this regard, wine coolers are set at higher temperatures[56] and humidity levels (to prevent corks from drying out),[57] contain racks for storing bottles only, and have dark interiors to prevent spoilage.

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49. The survey question was stated as follows: "When you think of a household-type refrigerator, do you expect it to be able to store food?" See Exhibit AP-2017-021-21A, Vol. 1D at para. 21.
50. *Transcript of Public Hearing* at 52.
51. *Transcript of Public Hearing* at 133.
52. *Transcript of Public Hearing* at 38, 39
53. Mr. Greg Hall of Danby discusses the tension between the regulations and advances in industry and the fact that regulators need to catch up. *Transcript of Public Hearing* at 81.
54. Cavavin submitted that a refrigerator could be distinguished from a wine cooler insofar as there are specific subheadings for refrigerators and a residual category.
55. The Tribunal finds that the Federal Court of Appeal's decision in *Danfoss Manufacturing Ltd. v. Deputy Minister of National Revenue* (1972), 1972 CarswellNat 40 (FCA), cited by Danby, to be of limited precedential value in this appeal given that it predates the *Customs Tariff*.
56. A typical refrigerator used for food storage would have a temperature around 0 to 1 degree, whereas the temperatures for wine coolers, which do not store food items, would be higher, from 4 to 18 degrees. *Transcript of Public Hearing* at 47, 48.
57. *Transcript of Public Hearing* at 8, 9.

63. As stated above, the Tribunal does not find that "refrigerators, household type" excludes wine coolers. Consequently, the technical features specific to wine coolers are not a basis for removing the goods in issue from the relevant subheadings.

Intended use

64. In purporting that the goods in issue are not of a "household type", Cavavin submitted that they are not solely intended for household use, but rather, are equally intended for commercial use. In this regard, Cavavin applied the framework established by the Tribunal in cases such as *Ikea*, *Stylus*, and *Canac*, for determining whether goods may be classified as for "domestic purposes" or in the residual "other category".[58] To discharge its burden of showing that the goods in issue have a dual purpose, i.e. both domestic and commercial, Cavavin provided extensive submissions with respect to the factors considered by the Tribunal in determining the intended purpose of the goods, i.e. the design, characteristics, marketing and pricing of the goods.

65. For its part, the CBSA submitted that the Tribunal's decisions with respect to classifying goods for "domestic purposes" do not apply as there is a difference in meaning between "household type" and "domestic purposes". In this regard, the CBSA indicated that the terms "household" and "domestic" are synonymous. Additionally, based on dictionary definitions of the word "type" and "purpose", the CBSA submitted that the word "type" refers to common characteristics or similarities rather than the use of the goods.[59]

66. The Tribunal finds the CBSA's interpretation to be correct insofar as the phrase "household type" indicates that the goods must retain certain characteristics relating to its functionality or use in a household. In other words, to the extent that the refrigerator is a household refrigerator, the fact that the good is intended to be used also in a commercial setting would not exclude it from classification under "household type". Consequently, the goods in issue are refrigerators of a "household type" notwithstanding Cavavin's submissions that they are intended equally for non-household or commercial purposes.

67. The Tribunal's position in this regard is consistent with testimonial evidence that the intended use of the goods, whether for commercial or residential purposes, is not relevant to their inherent qualities. In response to questions regarding whether Cavavin's products may be distinguished from wine coolers that are used commercially, Ms. Nathalie Fortier of Cavavin testified that no such distinction could be made. Rather, the distinction is in relation to the type of wine that is preserved by the wine cooler.[60] Even the capacity of the wine cooler may not determine whether it is destined for commercial or residential use. For instance, a smaller restaurant may only need a wine cooler typically used in a home, and a residential purchaser may want a wine cooler with a much larger capacity.[61] This evidence suggests to the Tribunal that the distinction between household and commercial type refrigerators lies not in their intended use per se,

58. *IKEA Supply AG v. President of the Canada Border Services Agency* (18 September 2014), AP-2013-053 (CITT); *Canac*; *Stylus Sofas Inc., Stylus Atlantic, Stylus Ltd. and Terravest (SF Subco) Limited Parternship v. President of the Canada Border Services Agency* (19 August 2015), AP-2013-021, AP-2013-022, AP-2013-023 and AP-2013-024 (CITT).
59. The *Canadian Oxford Dictionary* defines the word "type" as "a class of people or things distinguished by common essential characteristics". The *Random House Webster's Unabridged Dictionary* provides the definition "a number of things or persons sharing a characteristic, or set of characteristics, that causes them to be regarded as a group, more or less precisely defined or designated". See Respondent's Brief, Exhibit AP-2017-021-08A at paras. 61, 62.
60. *Transcript of Public Hearing* at 21, 22.
61. *Transcript of Public Hearing* at 23.

although intended use is certainly a factor which may indicate the type of refrigerator for tariff classification purposes. Rather, a refrigerator is of a household type based on inherent characteristics relating to its functionality or use in a household. The fact that a household refrigerator may be used in a commercial setting, does not alter its "type" for tariff classification purposes.

Other indicators that the goods in issue are refrigerators of a "household type"

68. For the reasons above, the Tribunal does not agree with the position that "refrigerators, household type" for the purposes of subheading Nos. 8418.21 and 8418.29 are limited to refrigerators that store food as suggested by the parties. The Tribunal must now consider whether there is sufficient evidence indicating that the goods in issue have the characteristics of a "household type" refrigerator.

69. First, the parties agreed that the goods in issue are subject to the CSA standards applicable to household refrigerators, refrigerator-freezers, freezers and wine chillers (C-300). This confirms that the goods in issue fall within the meaning of "household refrigerator" as such term is used in the definition of "refrigerator" in section 39 of the *Energy Efficiency Regulations, 2016*. While the Tribunal remains of the view that this regulatory framework does not dispose of the meaning of "household type" for tariff classification purposes, it nevertheless is an indicator that the goods in issue are household refrigerators on the basis of their capacity.[62] It must be noted that the CBSA did not find that the capacity of the goods in issue distinguished them as "other than household type".[63]

70. Additionally, in determining initially that the good in issue were of a "household type" the CBSA considered the design of the products. It referred to the "sturdy material" used for the outer cabinet, interior illumination, high-end and power compressors, shelving system, temperature control system, etc. Considering these design elements, the CBSA found no indications that the goods in issue were other than of a household type.[64]

71. The CBSA also found that the warranty terms set out in the owner's manual confirmed the residential application of the goods in issue.[65]

72. Furthermore, the CBSA referred to Cavavin's marketing material on social media sites which showcased some of the goods in issue in a household setting.[66] The CBSA also referred to Cavavin's website and its online catalogue which marketed the goods in issue as a household refrigerator.[67]

73. Finally, the CBSA found that the goods in issue were not distinguishable from non-household-type refrigerators based on price.[68]

74. It is clear that when the CBSA initially considered the above product and market characteristics of the goods in issue it did not reach a conclusion that they were distinguishable from refrigerators, household

62. According to the Agreed Statement of Facts, the largest wine cooler (model No. CAVA160NSZ) holds 160 bottles of wine. Based on the standard capacity of a wine bottle, 750 mL, the capacity of this model would be 120 L, which is well below the capacity noted for household refrigerators in the definition provided in section 39 of the *Energy Efficiency Regulations, 2016*. See AP-2018-021-58A, Vol. 1V at para. 2.
63. Exhibit AP-2017-021-08A, Vol. 1B at paras. 77, 80, 81
64. *Ibid.* at paras. 69-72.
65. *Ibid.* at paras. 74, 75.
66. *Ibid.* at paras. 82, 83, 93
67. *Ibid.* at para. 93.
68. *Ibid.* at paras. 96, 97.

type. In fact it concluded that they were exactly that. When the Tribunal considers those characteristics it reaches a similar conclusion. They support the conclusion that the goods in issue are refrigerators, household type.

Conclusion

75. On the basis of the foregoing analysis, the goods in issue should be classified under tariff item Nos. 8418.21.00, for the compression-type refrigerators, and 8418.29.00, for refrigerators using thermoelectric technology.

Abuse of Process

76. As noted above, based on the CSA standards that were submitted by Danby, the CBSA re-determined its classification of the goods in issue to tariff item No. 8418.50.10, which was the position of the CBSA in respect of the goods that were the subject of the appeal in *Rona*. Cavavin requested the Tribunal to determine whether the CBSA had committed an abuse of process based on the principles outlined in *Bri-chem.*

77. In *Bri-chem*, the Court made it clear the CBSA, as an administrator whose actions are regulated by the Tribunal, must follow its decisions. According to the principle of tribunal pre-eminence, "tribunals bind those who are subject to their decision, including administrators, subject to any later orders by reviewing courts."[69] Cavavin submitted that the CBSA's reclassification of the goods in issue and arguments made in support were the same ones it made in *Rona.*

78. After having reviewed the submissions of the parties, the Tribunal stated its decision at the hearing that the CBSA had not committed any abuse contrary to *Bri-chem* as the factual circumstances of this appeal were sufficiently different.[70] The definitions provided in the CSA standards provided factual evidence that was not considered by the Tribunal in *Rona* in assessing the applicability of the tariff items proposed by the CBSA as well as by Cavavin. In this regard, the Tribunal found that the exception articulated by the Court in *Bri-Chem* with respect to different facts was relevant to this appeal.[71]

DECISION

79. This appeal is dismissed.

Serge Fréchette
Serge Fréchette
Presiding Member

69. *Canada (Attorney General) v. Bri-Chem Supply Ltd.*, 2016 FCA 257 [*Bri-Chem*], at para. 45.
70. *Transcript of Public Hearing* at 5, 6
71. The Court stated: "It is uncontroversial that as long as an administrator is acting *bona fide* and in accordance with its legislative mandate, an administrator can assert – where principled and warranted – that an earlier tribunal decision on its facts does not apply in a matter that has different facts." See *Bri-Chem* at para. 47.