



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2019-039

Instant Brands Inc.

v.

President of the Canada Border
Services Agency

*Decision issued
Wednesday, March 3, 2021*

*Reasons issued
Friday, March 26, 2021*

TABLE OF CONTENTS

DECISION..... **Erreur ! Signet non défini.**

STATEMENT OF REASONS 1

 OVERVIEW 1

 FACTUAL BACKGROUND 1

 CBSA’s decision 1

 Additional evidence on appeal..... 3

 Oral hearing 3

POSITIONS OF THE PARTIES ON APPEAL 5

 Instant Brands 5

CBSA 5

ANALYSIS 6

 Statutory framework 7

DECISION 13

IN THE MATTER OF an appeal heard on November 3, 2020, 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 October 17, 2019, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

INSTANT BRANDS INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Susan D. Beaubien

Susan D. Beaubien
Presiding Member

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

Place of Hearing: Via videoconference
Date of Hearing: November 3, 2020
Tribunal Panel: Susan D. Beaubien, Presiding Member
Support Staff: Kalyn Eadie, Counsel
Zackery Shaver, Counsel

PARTICIPANTS:**Appellant**

Instant Brands Inc.

Counsel/RepresentativesMichael Sherbo
Andrew Simkins**Respondent**

President of the Canada Border Services Agency

Counsel/Representative

Amani Delbani

WITNESS:Jennifer Pritchard
Director of Global Product Compliance
Corelle Brands

Please address all communications to:

The Deputy Registrar
Telephone: 613-993-3595
E-mail: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

OVERVIEW

[1] Instant Brands Inc. (Instant Brands) appeals from a decision of the Canada Border Services Agency (CBSA) concerning the classification, for the purposes of the *Customs Tariff*,¹ of goods identified as “Instant Pot™ Duo 60 7-in-1 Model #IP-DUO60 Cooker” (Instant Pot™).

[2] The Instant Pot™ has a multiplicity of cooking functions, including being operable as a rice cooker. The CBSA has classified this product under tariff item No. 8516.60.90 as “Other cookers”. Instant Brands disputes the correctness of this classification and says that the Instant Pot™ is a “rice cooker” and should be classified accordingly under tariff item No. 8516.60.10 as “Rice cookers”.

FACTUAL BACKGROUND

[3] On November 20, 2018, Instant Brands sought an advance ruling from the CBSA concerning the tariff classification of the goods at issue.²

[4] The CBSA concluded that the goods should be classified under tariff item 8516.60.90.³ Instant Brands disputed this conclusion and appealed to the CBSA’s Recourse Directorate pursuant to subsection 60(2) of the *Customs Act*.

CBSA’s decision

[5] The CBSA considered the product description of the Instant Pot™, noting that it is a multi-programmable cooker that replaces seven individual kitchen appliances. It speeds up cooking by up to 206 times using up to 70 percent less energy. The Instant Pot™ is operable as a pressure cooker, slow cooker, rice cooker, steamer, yogurt maker and food warmer. It can also be used to sauté or sear.⁴

[6] The Instant Pot™ comprises a base and heating unit, control panel, and removable stainless steel inner pot with a three-ply bottom for even heat distribution. A stainless steel and non-metal lid includes a float and exhaust valve, silicon cap, anti-block shield, steam-release handle and sealing ring. Also included are a stainless steel steam rack with handles, rice paddle, soup spoon, measuring cup, condensation collector and recipe booklet.⁵

[7] Product literature indicates that the Instant Pot™ has numerous functional and operational features. The CBSA summarized these as follows:

- 13 smart built-in programs -soup/broth, meat/stew, bean/chili, poultry, sauté/searing, steam, rice, porridge, multigrain, slow cook, keep-warm, yogurt and pressure cook.
- Dual pressure setting
- 24-hour delay start, i.e. for delayed cooking
- Automatic keep-warm to hold the temperature of the food until it is ready to serve.

¹ S.C. 1997, c. 36.

² Exhibit AP-2019-039-13 at 58.

³ *Ibid.* at 112.

⁴ Exhibit AP-2019-039-01 at 9.

⁵ *Ibid.* at 10.

- Generates almost no noise and leaks no steam.
- An embedded microprocessor - monitors the pressure and temperature, keeps time and adjusts heating intensity.
- Dimensions: 13.39” X 12.2”1 X 12.48”, weighs 11.80 pounds, 120V-60Hz power supply, 1000 watts heating element, 35 inches power supply cord with 3-prong plug.
- The option to increase or decrease the pressure cooking time manually.
- Pressure release method through natural release or quick release (by physically turning the steam release handle to the venting position).⁶

[8] The user’s manual for the Instant Pot™ states that “this appliance cooks under pressure” and that 3 of its 13 built-in programs are non-pressure-cooking programs (sauté, slow cook and yogurt), while the remainder are steam-pressured programs.⁷

[9] The CBSA considered relevant provisions of the *Customs Tariff* and went on to examine several online resources that were descriptive of the Instant Pot™ product. Since the Instant Pot™ is marketed and advertised as a pressure-cooking appliance, the CBSA found that the product is “an electric pressure cooker appliance with multi-purpose functionality whose principal function is the pressure cooking function”.⁸ As steam is created and trapped by the cooker the increasing pressure within the appliance leads to rising temperatures which, in turn, leads to faster cooking.

[10] Although the Instant Pot™ can function as a rice cooker, the CBSA found that it is *not* primarily designed as a rice cooker. The rice cooker function is atypical of a rice cooker appliance. The product has a lid that prevents the release of steam. During operation, the build-up of steam pressure in the pot enables the cooking of rice and other food items. A conventional rice cooker will cook rice (and other food items) at a much slower pace.

[11] In view of these findings, the CBSA concluded that the Instant Pot™ could not be classified under tariff item 8516.60.10, which specifically provides for bread makers, indoor smokeless barbecues and rice cookers, or under tariff item 8516.60.20, which covers “Ovens, cooking stoves and ranges”. Accordingly, the CBSA decided that the residual tariff item 8516.60.90 (“Other”) was applicable.⁹

[12] The CBSA’s decision was issued on October 17, 2019, pursuant to subsection 60(4) of the *Customs Act*.¹⁰

[13] Instant Brands filed a notice of appeal with the Tribunal on January 14, 2020.¹¹

⁶ *Ibid.*

⁷ *Ibid.* at 12.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.* at 9.

¹¹ Exhibit AP-2019-039-01.

Additional evidence on appeal

[14] In support of its appeal, Instant Brands filed a copy of the decision under appeal;¹² product information literature for the goods at issue;¹³ and an online review article titled “Top 10 Rice Cookers of 2019 - Best Reviews Guide.”¹⁴

[15] Instant Brands also gave notice that it intended to call Jennifer Pritchard as a fact witness at the oral hearing of the appeal.¹⁵

[16] By way of responding brief, the CBSA filed the following:

- (a) a copy of the request for an advance ruling as submitted by Instant Brands to the CBSA;¹⁶
- (b) a copy of the advance ruling as issued by the CBSA;¹⁷
- (c) a copy of the decision under appeal;¹⁸
- (d) copies of printouts taken from Instant Brands’s website;¹⁹
- (e) excerpts from online dictionaries pertaining to definitions for the words “electrothermal”,²⁰ “appliance”,²¹ “domestic”,²² and “cooker”,²³
- (f) Product User Manual for the Instant Pot™ product;²⁴ and
- (g) a printout of an article titled “How to Cook Rice”.²⁵

[17] The CBSA advised that it would not be calling any witnesses at the hearing.

[18] Both parties also submitted written arguments, together with copies of relevant statutory authorities and jurisprudence being relied upon.

Oral hearing

[19] An oral hearing was held by way of videoconference on November 3, 2020. Both parties were represented throughout and made submissions to the Tribunal.

¹² *Ibid.* at 9.

¹³ Exhibit AP-2019-039-10 at 11-14.

¹⁴ *Ibid.* at 15.

¹⁵ Exhibit AP-2019-039-16.

¹⁶ Exhibit AP-2019-039-13 at 57-106.

¹⁷ *Ibid.* at 107-109.

¹⁸ *Ibid.* at 110-114.

¹⁹ *Ibid.* at 25-55.

²⁰ *Ibid.* at 127-130.

²¹ *Ibid.* at 131-139.

²² *Ibid.* at 140-151.

²³ *Ibid.* at 209-212.

²⁴ *Ibid.* at 152-208.

²⁵ *Ibid.* at 216-225.

Jennifer Pritchard

[20] Jennifer Pritchard appeared as a witness on behalf of Instant Brands. Ms. Pritchard is the Director of Global Product Compliance for Corelle Brands. According to Ms. Pritchard, Corelle Brands, a U.S. company, acquired Instant Brands by way of merger.²⁶

[21] Ms. Pritchard's job responsibilities involve ensuring that products manufactured for Corelle Brands "can work as intended safely and [making] sure that we are fulfilling all of our customer requirements."²⁷

[22] Ms. Pritchard is familiar with the Instant Pot™ product.²⁸ She described the product and its operation, saying that it has different ways of cooking food. This includes use of pressure cooking, a sauté function, which simulates cooking on the top of the stove, as well as a "slow-cook" function where the food is cooked using the heat generated within the appliance without the input of pressure generated by steam. The device has different pre-set programs for the various cooking functions, including four functions that may be used to cook rice.²⁹

[23] She also confirmed that the functionality of the cooking programs featured in the Instant Pot™ product have been laboratory-tested by Instant Brands.³⁰

[24] In a further aspect of her testimony, Ms. Pritchard was asked to compare the features and programs of the Instant Pot™ with another product (Zest) that is marketed by Instant Brands as a rice cooker.³¹

[25] On cross-examination, Ms. Pritchard conceded that product information literature pertaining to the Instant Pot™ refer to it as a "smart electric pressure cooker",³² and as a "programmable electric pressure cooker".³³

[26] The Tribunal found Ms. Pritchard to be a credible, cooperative and frank witness. The substance of her testimony was essentially confirmatory of the documentary evidence already filed by the parties.

[27] The CBSA called no witnesses.

[28] Following the testimony given by Ms. Pritchard at the hearing, both parties submitted oral arguments to the Tribunal.

²⁶ *Transcript of Public Hearing* at 8-9.

²⁷ *Ibid.*

²⁸ *Ibid.* at 11.

²⁹ *Ibid.* at 11-14.

³⁰ *Ibid.* at 11, 15-16.

³¹ *Ibid.* at 17-20, 27, 32-34, 38-40, 42-44.

³² *Ibid.* at 25.

³³ *Ibid.* at 28.

POSITIONS OF THE PARTIES ON APPEAL

Instant Brands

[29] After summarizing the procedural history and identifying relevant provisions of the *Customs Tariff*, Instant Brands provided an overview of the goods at issue, which are designed to function as a cooker, with thirteen preprogrammed cooking settings. The Instant Pot™ is marketed and sold as a replacement for seven kitchen appliances, including a rice cooker.

[30] Instant Brands notes that the parties are in agreement with respect to classification of the Instant Pot™ at the heading and subheading levels and disagree with respect to the applicable tariff item. It notes that the CBSA accepts that the goods at issue are “cookers”.

[31] Instant Brands concedes that it bears the burden to show that the CBSA has adopted an incorrect tariff classification. As the CBSA is relying upon a residual tariff classification, Instant Brands says that the first step is to determine whether the goods at issue fall within the description “Rice cooker”.

[32] According to Instant Brands, the Instant Pot™ is designed, marketed and sold as a rice cooker. Moreover, the device functions as a rice cooker. Instant Brands says that this functionality as a rice cooker has been conceded by the CBSA.

[33] As such, Instant Brands submits that the Instant Pot™ falls, *prima facie*, within the terms of tariff item 8516.90.10 and that this should be dispositive of the classification analysis.

[34] Instant Brands further contends that the CBSA has adopted an unduly narrow interpretation of “rice cooker” by finding that a “rice cooker” is a device whose functions are limited to cooking rice.

[35] The CBSA further erred, according to Instant Brands, in finding that the goods at issue are multi-functional. The Instant Pot™ has a single function, namely that of cooking food.

[36] Instant Brands contends that the classification analysis does not contemplate the reading of wording or concepts such as “principally” or “primarily” into the wording of the *Customs Tariff* with respect to product function. The issue is whether the product performs a particular function such as cooking rice. If answered in the affirmative, then the specific tariff item (8516.60.10) applies instead of the residual category of tariff item 8516.60.90 (“Other”). This is not a situation where competing classifications are in play because the device performs two functions falling within different subheadings or tariff items. If that were the case, Instant Brands submits that the Tribunal would have to consider which of the functions is the principal product function. In this case, other uses of the device do not operate to classify the Instant Pot™ under tariff item 8516.60.90.

CBSA

[37] In its submissions, the CBSA outlined the procedural history giving rise to the appeal and provided an overview of the goods at issue, including a diagram showing the various components of the Instant Pot™.

[38] The CBSA provided a general statutory overview of tariff classification, including a recitation of the relevant portions of the *Customs Tariff*, and accompanying notes. The CBSA made submissions demonstrating that the goods at issue fall within heading 85.16 and subheading 8516.60.

[39] The CBSA agrees with Instant Brands that the dispute lies at the tariff item level within the *Customs Tariff*. It concedes that a residual classification should only be used where a more specific classification cannot be effected.

[40] Having regard to the terms of tariff item 8516.90.10, the CBSA asserts that its scope does not cover the complete good at issue, as required by statutory considerations. The design and function of the Instant Pot™ extend well beyond those of a rice cooker. The goods must be classified on the basis of the whole product at the time of importation and must not be limited to consideration of a single feature. There are other goods that may be used to cook rice, but this does not attract classification under tariff item 8516.60.10.

[41] The CBSA says that, according to Instant Brands's website, the goods at issue are presented and advertised as "multicookers". The Instant Pot™ is designed to cook various foods. The product manual is 57 pages long and provides instructions for the use of the various smart programs and settings provided for the making of specific types of food. Nine smart program buttons use pressure cooking. The product manual also includes 14 pages of information concerning pressure cooking and non-pressure cooking that may be accomplished using the Instant Pot™.

[42] Viewed in its overall context, the CBSA asserts that only a small proportion of the functionality of the Instant Pot™ is directed to the cooking of rice. Moreover, the goods are marketed as a "7-in-1" electric pressure cooker that is capable of replacing a pressure cooker, slow cooker, steamer, sauté pan, rice cooker, yogurt maker and food warmer. Instant Brands sells a different product as a "rice cooker". Accordingly, the CBSA contends that the goods at issue should be classified under tariff item 8516.60.90 because they are "multicookers" intended to replace a number of cooking appliances.

ANALYSIS

[43] Instant Brands has filed this appeal in accordance with subsection 67(1) of the *Customs Act*, which provides that a "person aggrieved" by a decision of the CBSA may appeal that decision to the Tribunal by filing a notice of appeal within the prescribed timeframe. There is no dispute that these requirements have been met and that Instant Brands is a "person aggrieved".³⁴

[44] On appeal to the Tribunal, there is a legal burden on the appellant to show that the CBSA has adopted an incorrect tariff classification.³⁵

[45] The Tribunal owes no deference to the CBSA's decision.³⁶ Appeals to the Tribunal are determined *de novo*, even though one or both parties may elect to carry forward all or part of the record at first instance, to supplement that record with new evidence or create a new one. The Tribunal must reach its own decision concerning the correct tariff classification of the goods. In doing so, the Tribunal is free to assess the record before it, up to and including the reweighing of

³⁴ *Danson Décor Inc. v. President of the Canada Border Services Agency* (25 September 2019), AP-2018-043 (CIIT) [*Danson Décor*] at paras. 75-79.

³⁵ *Customs Act*, section 152.

³⁶ *Danson Décor* at paras. 82-93.

evidence placed before the CBSA and giving new consideration to any new evidence that may be presented on appeal.

Statutory framework

[46] Sections 10 and 11 of the *Customs Tariff* prescribe the analytical approach that the Tribunal must adopt when determining how goods are to be classified:

10 (1) Subject to subsection (2), the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System and the Canadian Rules set out in the schedule.

(2) Goods shall not be classified under a tariff item that contains the phrase “within access commitment” unless the goods are imported under the authority of a permit issued under section 8.3 of the *Export and Import Permits Act* and in compliance with the conditions of the permit.

11 In interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System and the Explanatory Notes to the Harmonized Commodity Description and Coding System, published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time.

[47] The *General Rules*³⁷ are intended to be applied pursuant to a sequential, hierarchical analysis of the goods, as described by the Supreme Court of Canada in *Canada (Attorney General) v. Igloo Vikski Inc.*³⁸

[48] In performing this analysis, section 11 requires that the Tribunal also consider the *Explanatory Notes*,³⁹ as may be relevant and applicable to the goods at issue. The Tribunal should respect the guidance of the *Explanatory Notes* unless there is good reason to depart from it.⁴⁰

[49] The legislative scheme thus requires the Tribunal to follow several steps in determining the proper classification of goods on an appeal. The first step is to assess whether the goods fall, *prima facie*, within the scope of language used in a heading. Secondly, the Tribunal must consider whether the chapter or section notes preclude the heading from being applied to the goods. The third step is to examine the *Classification Opinions*⁴¹ and the *Explanatory Notes* for further guidance concerning the proper classification.

³⁷ *General Rules for the Interpretation of the Harmonized System, Customs Tariff*, schedule [*General Rules*].

³⁸ 2016 SCC 38 [*Igloo Vikski*] at paras. 19-29.

³⁹ *Explanatory Notes to the Harmonized Commodity Description and Coding System*, World Customs Organization, 5th ed., Brussels, 2012 [*Explanatory Notes*].

⁴⁰ *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131.

⁴¹ *Classification Opinions to the Harmonized Commodity Description and Coding System*, World Customs Organization, 2nd ed., Brussels, 2003 [*Classification Opinions*].

[50] The provisions of the *Customs Tariff* relevant to this appeal are as follows:

SECTION XVI: MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT; PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES

CHAPTER 85

ELECTRICAL MACHINERY AND EQUIPMENT AND PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES

85.16 Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hair-dressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric smoothing irons; other electro-thermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 85.45.

...

8516.60 -Other ovens; cookers, cooking plates, boiling rings, grillers and roasters

8516.60.10 -- -Bread makers;
Indoor smokeless barbecues;
Rice cookers

...

8516.60.90 -- -Other

SECTION XVI : MACHINES ET APPAREILS, MATÉRIEL ÉLECTRIQUE ET LEURS PARTIES; APPAREILS D'ENREGISTREMENT OU DE REPRODUCTION DU SON, APPAREILS D'ENREGISTREMENT OU DE REPRODUCTION DES IMAGES ET DU SON EN TÉLÉVISION, ET PARTIES ET ACCESSOIRES DE CES APPAREILS

CHAPITRE 85

MACHINES, APPAREILS ET MATÉRIELS ÉLECTRIQUES ET LEURS PARTIES; APPAREILS D'ENREGISTREMENT OU DE REPRODUCTION DU SON, APPAREILS D'ENREGISTREMENT OU DE REPRODUCTION DES IMAGES ET DU SON EN TÉLÉVISION, ET PARTIES ET ACCESSOIRES DE CES APPAREILS

85.16 Chauffe-eau et thermoplongeurs électriques; appareils électriques pour le chauffage des locaux, du sol ou pour usages similaires; appareils électrothermiques pour la coiffure (sèche-cheveux, appareils à friser, chauffe-fers à friser, par exemple) ou pour sécher les mains; fers à repasser électriques; autres appareils électrothermiques pour usages domestiques; résistances chauffantes, autres que celles du no 85.45.

[...]

8516.60 -Autres fours; cuisinières, réchauds (y compris les tables de cuisson), grills et rôtissoires

8516.60.10 -- -Fours à pain;
Barbecues d'intérieur sans fumée;
Cuiseurs à vapeur pour le riz

[...]

8516.60.90 -- -Autres

[51] With respect to heading 85.16, the CBSA has submitted dictionary definitions⁴² in support of the contention that the goods at issue fall within the scope of the wording “other electro-thermic appliances of a kind used for domestic purposes.” The parties agree that the Instant Pot™ is an electrothermic appliance used for domestic purposes and that heading 85.16 thus applies.

[52] At the subheading level, the parties also agree that the Instant Pot™ falls within subheading 8516.60 – “Other ovens; cookers, cooking plates, boiling rings, grillers and roasters”, since it is a

⁴² With respect to the terms “electro-thermic”, “appliance” and “domestic”.

“cooker”. The CBSA has filed a dictionary definition of the word “cooker” which defines a “cooker” as “a utensil, device or apparatus for cooking”.⁴³

[53] The Tribunal agrees that the goods may be classified within subheading 8516.60⁴⁴ and that the issue for decision arises at the tariff item level, namely whether the Instant Pot™ should be classified under tariff item 8516.60.10 as a “rice cooker”, or under the residual tariff item 8516.60.90 (“Other”).

[54] Instant Brands argues that the CBSA erred in finding that the Instant Pot™ is not a “rice cooker” because the product cooks rice faster, due to the effects of steam pressure, as compared to a conventional rice cooker that does not use steam. The Tribunal agrees with Instant Brands to this extent - the relative speed of cooking is a secondary, if not irrelevant, factor. There is no dispute that the Instant Pot™ may be used to cook rice. However, the issue is whether that *particular* function is solely dispositive of the product description, at least for the purposes of classification under the *Customs Tariff*.

[55] In *Partylite Gifts Ltd. v. the Commissioner of the Canada Customs and Revenue Agency*,⁴⁵ the Tribunal found that glass candleholders should be classified as “non-electrical lamps and lighting fittings---candlesticks and candelabras”, instead of as “other glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes . . .”, as contended by the appellant in that case. The parties agreed that the goods had multiple functions. The shape of the item was consistent with a bowl or vase and its aesthetic features made it suitable for use as decorative glassware. Notwithstanding, the Tribunal found, after considering product packaging, marketing and other materials, that the goods were designed to hold candles and thus should be classified as candlesticks.

[56] However, that conclusion was entirely fact-driven, based on the evidence and the characteristics of the product at issue in that case. Although an article having multiple uses or functions may be classified on the basis of one of those functions, this conclusion does not automatically apply to all situations. The characteristics of the product in issue, including design, intended use, marketing, and channels of trade are relevant factors to consider when determining tariff classification. These are questions of fact.

[57] The Tribunal’s decision in *Partylite* was upheld on appeal on the basis that multiple potential uses for the goods did not preclude a finding that one particular use or characteristic was determinative for the purposes of classification under the *Customs Tariff*.⁴⁶

[58] In this case, the product literature for the Instant Pot™ identifies the product as a “multicooker” that is “seven appliances in one”. The Instant Pot™ is said to “replace” the following seven appliances which may be found in a kitchen: a pressure cooker, slow cooker, rice cooker, steamer, yogurt maker, warmer, cooking surface.⁴⁷

⁴³ Exhibit AP-2019-039-13 at 209.

⁴⁴ *Rona Corporation Inc. v. President of The Canada Border Services Agency* (15 February 2011), AP-2009-072 (CITT).

⁴⁵ (16 February 2004), AP-2003-008 (CITT) [*Partylite*].

⁴⁶ *Partylite Gifts Ltd. v. Canada (Customs & Revenue Agency)*, 2005 FCA 157.

⁴⁷ Exhibit AP-2019-039-01 at 9.

[59] As the Instant Pot™ incorporates the function of a “rice cooker”, Instant Brands asserts that this fact is dispositive of classification. Since “rice cookers” are specifically named within tariff item 8516.60.10, the analysis should stop there and there is no need to resort to the residual tariff item 8516.60.90 (“Other”).⁴⁸

[60] Neither party submitted a definition of “rice cooker”. Courts and tribunals may take judicial notice of relevant definitions from dictionaries, which may be published in electronic format and be accessible online.⁴⁹

[61] The *Merriam-Webster OnLine Dictionary* defines “rice cooker” as “an electric pot that is used for cooking rice”.⁵⁰ This definition implies a device that is specifically designed to cook one type of food, namely rice. However, this description does not describe the Instant Pot™. Rather, it provides only a partial or incomplete description.

[62] The Instant Pot™ is more than an “electric pot” for cooking rice. Although it includes an electric pot, it has other functional components including a lid assembly and steam rack. These features are characteristic of another type of “cooker”, namely a pressure cooker. Indeed, a “pressure cooker” is one of the appliances whose functions are subsumed by the “7-in-1” feature of the Instant Pot™.

[63] Of even greater significance is the fact that the Instant Pot™ has a multiplicity of button controls (i.e. “Pressure Cook”, “Porridge”, “Rice”, “Multigrain”, “Steam”, “Soup/Broth”, “Yogurt”, “Keep Warm”, “Sauté”, “Bean/Chili”, “Poultry”, “Slow Cook”, “Meat/Stew”)⁵¹ for each of its cooking functions which activate an algorithm or computer program that is specific to a particular type of cooking function or food being prepared. The program or algorithm is tailored to a range of variables, including heat, temperature and pressure, which are integral to the individual cooking functions.⁵² These features are not present by mere happenstance. Rather, they reflect a specific intent to design and manufacture a product with a multiplicity of modes of operation.

[64] This is not a situation where the device has been designed for a particular or predominant purpose, is packaged and marketed accordingly and the purchaser then adapts or uses the device for a different or secondary purpose. In essence, that was the argument advanced in *Partylite*.

[65] Instead, the product manual and marketing material for the Instant Pot™ emphasize that the appliance will replace seven other appliances which may be found or used in a kitchen. The extent to which any, or all, of the features and cooking programs of the Instant Pot™ are actually used is dependent on the customer’s preferences and needs. Notwithstanding, the Instant Pot™ has simultaneous, stand-by utility for seven types of cooking function. A single appliance having a multiplicity of cooking uses or functions goes to the very essence of the Instant Pot™, its design, instructions for use and marketing.

⁴⁸ *J. Walter Company Ltd. v. President of the Canada Border Services Agency* (30 May 2008), AP-2006-029 (CITT) at 31-36.

⁴⁹ *Rona Inc. v. President of the Canada Border Services Agency* (18 October 2019), AP-2018-053 (CITT) at para. 111; *Envirodrive Inc. v. 836442 Alberta Ltd.*, 2005 ABQB 446, as cited in *Liverton Hotels International Inc v. Alicorp SAA*, 2007 CanLII 80870, at paras. 53-54.; *R. v. Krymowski*, 2005 SCC 7 at paras. 22-24.

⁵⁰ Online: <<https://www.merriam-webster.com/dictionary/rice%20cooker>>.

⁵¹ Exhibit AP-2019-039-13 at 166; *Transcript of Public Hearing* at 23.

⁵² *Transcript of Public Hearing* at 30-31.

[66] Instant Brands contends that the CBSA erred by finding that the Instant Pot™ is multi-functional because its only “function” is to cook food. The Tribunal considers this to be an overly literal, if not pedantic, reading of the word “function”. In the context of the Instant Pot™, the appliance can and does operate to provide the individual functions of seven distinct kitchen appliances, at the option of the user. This makes the Instant Pot™ multi-functional. As the type of cooking varies from food to food being prepared, different modes of operation will consequentially apply, for example when preparing soup versus cooking rice versus warming meat.

[67] There is no cogent evidence to support a conclusion that one particular cooking program or function is intended to conclusively define the appliance.

[68] The Tribunal gives little evidential weight to the Internet review article on rice cookers that was submitted by Instant Brands and lists the Instant Pot™ as being, ostensibly, a “rice cooker”.⁵³ Firstly, it is dated during the year 2019, when the dispute concerning classification of the Instant Pot™ remained pending before the CBSA. Secondly, there is no information concerning the author or publisher of the review, how the methodology of the assessment was designed and carried out, and how the candidate appliances were selected. Thirdly, it is unclear whether the product descriptions of the tested products were written by the reviewers or supplied by the product manufacturers.

[69] Instant Brands led comparative evidence seeking to demonstrate that many of the cooking functions and programs of the Instant Pot™ are either identical to, or functionally overlap with, features of a different appliance (Zest model) that is explicitly marketed by Instant Brands as a rice cooker. The Tribunal assigns relatively little weight to this evidence. Tariff classification of one product cannot be incorporated by reference to apply to another product, even when manufactured by the same company. The goods at issue must be assessed, for tariff classification purposes, having regard to their own features and functions and not by way of reference to a different product which may or may not fall within a different tariff item.

[70] In determining tariff classification, the Tribunal must consider the goods as they are, i.e. as an operable device, at the time of importation. Although the Instant Pot™ includes a rice cooking function, it can also be used as a pressure cooker, among other uses.⁵⁴ All of these uses are explicitly contemplated by the product manual and are consistent with how the product is marketed. The Instant Pot™ is no less a pressure cooker by virtue of the fact that it may also a function as a rice cooker (or as a slow cooker, steamer, yogurt maker, warmer or sauté pan) and vice versa.

[71] When the wording of subheading 8516.60 is given a purposive reading consistent with the modern approach to statutory interpretation,⁵⁵ the Tribunal notes that the appliances listed are each referable to (and limited to) a particular food (bread, rice) or type of cooking (barbeque). The language is categorical and does not imply the open-ended inclusion of multi-functional articles.

[72] The following explanatory note lists several appliances that are considered to be included within the scope of heading 85.16 as electro-thermic machines or appliances normally used in the household:

⁵³ Exhibit AP-2019-039-10 at 15.

⁵⁴ To name only two of the Instant Pot™'s functions.

⁵⁵ *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 SCR 27.

(E) OTHER ELECTRO-THERMIC APPLIANCES OF A KIND USED FOR DOMESTIC PURPOSES

This group includes all electro-thermic machines and appliances **provided** they are **normally used in the household**. Certain of these have been referred to in previous parts of this Explanatory Note (e.g., electric fires, geysers, hair dryers, smoothing irons, etc.). Others include:

- (1) Microwave ovens.
- (2) Other ovens and cookers, cooking plates, boiling rings, grillers and toasters (e.g., convention type, resistance type, infra-red, high frequency induction and combined gas-electric appliances).
- (3) Coffee or tea makers (including percolators).
- (4) Toasters, including toaster-ovens which are designed essentially for toasting bread but can also bake small items such as potatoes.
- (5) Kettles, saucepans, steamers; jacketed urns for heating milk, soup or the like.
- (6) Crepe makers.
- (7) Waffle irons.
- (8) Plate warmers and food warmers.
- (9) Sauté pans and chip pans (deep fryers).
- (10) Coffee roasting appliances.
- (11) Bottle heaters.
- (12) Yogurt and cheese makers.
- (13) Sterilizing apparatus for preparing preserves.
- (14) Popcorn cookers.

[73] It is noteworthy that these items are described as standalone items, with reference to a specific, functional use or purpose.

[74] Although a “rice cooker” may be used to cook foods other than rice, the underlying premise is that the goods are designed for the primary purpose of cooking rice, even though the end user may choose to place another type of food within the appliance and make consequential or experimental adjustment to cooking times or how the device is operated in order to cook that other food. That does not change the essential character of the device. If the pot within the rice cooker is used to store food on the kitchen counter, the appliance remains a “rice cooker”, albeit unused for its intended function. The Instant Pot™ is different because its functionality is not designed or limited to cooking rice. It is explicitly intended to allow the user to cook a range of foods and to do so by replacing seven other kitchen appliances having specific, individual functions.

[75] Instant Brands argued that assessing primacy of function is irrelevant to the tariff classification at issue in this case. However, the question to be asked is *not*: “Does the Instant Pot™ cook rice?” There are many ways and devices used in rice cooking. Rather, the following question must be asked: “Is the Instant Pot™ a rice cooker”? The underlying nuance is important because the

answer depends on looking to the good as a whole, including all of its features, functions and attributes.

[76] The Instant Pot™ cannot be classified as a “rice cooker” because it is more than a rice cooker. To find otherwise would require the Tribunal to ignore all of the other cooking features of the Instant Pot™ and focus exclusively on one aspect, instead of the product as a whole. If the Tribunal were to take that path, it would not be classifying the actual product as imported, but a different, fictional product having only a singular feature or function, i.e. that of “rice cooker”.

[77] The term “rice cooker” of tariff item 8516.60.10 is too narrow to conclusively describe the goods at issue,⁵⁶ having regard to product design, features, operation and marketing. This operates to exclude the Instant Pot™ from the ambit of tariff item 8516.60.10.

[78] As a matter of first impression through the eyes of a prospective purchaser, the Tribunal finds that the Instant Pot™ would be perceived as a “multicooker”, which is the term used by Instant Brands to describe the Instant Pot™ in marketing materials.⁵⁷ As the term “multicooker” is not found within the relevant subheadings or tariff items, the residual tariff item applies and the Instant Pot™ is properly classified under tariff item 8516.60.90.

[79] In arriving at this conclusion, the Tribunal is mindful of the principle that a residual category for classification should only be used in situations where the goods cannot be classified under a more specific category.⁵⁸ However, on the facts of this case, use of the more specific classification “rice cookers” is not justifiable or reasonable, as it would require the Tribunal to ignore or distort some of the characteristics of the goods at issue, which taken in combination, operate to define the product.

DECISION

[80] For the foregoing reasons, the appeal is dismissed.

Susan D. Beaubien

Susan D. Beaubien

Presiding Member

⁵⁶ *Igloo Vikski* at paras. 20-21.

⁵⁷ The Instant Pot™ is asserted to be the “number 1 selling multi-cooker”. See Exhibit AP-2019-039-10 at 12; *Transcript of Public Hearing* at 22-23.

⁵⁸ *Cavavin (2000) Inc. v. President of the Canada Border Services Agency* (4 October 2019), AP-2017-021 (CITT).