

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140923

Docket: A-369-13

Citation: 2014 FCA 208

**CORAM: NOËL J.A.
GAUTHIER J.A.
NEAR J.A.**

BETWEEN:

**PRESIDENT OF THE CANADA BORDER
SERVICES AGENCY**

Appellant

and

EURO-LINE APPLIANCES INC.

Respondent

Heard at Ottawa, Ontario, on September 9, 2014.

Judgment delivered at Ottawa, Ontario, on September 23, 2014.

REASONS FOR JUDGMENT BY:

NOËL J.A.

CONCURRED IN BY:

**GAUTHIER J.A.
NEAR J.A.**

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REASONS FOR JUDGMENT

NOËL J.A.

[1] This is an appeal brought by the President of the Canada Border Services Agency (the CBSA) against a decision of the Canadian International Trade Tribunal (the CITT) allowing an appeal by Euro-Line Appliances Inc. (the respondent) with respect to the tariff classification of Liebherr-manufactured refrigerator-freezer model CS2060 (the goods in issue).

CONTEXT AND ISSUES

[2] The goods in issue are 36-inch wide freestanding units with one door to access the refrigerator compartment above and two drawers below, which act as the containers of the freezer department. They feature separate compressors for the refrigeration and freezing functions, and are sold for household use.

[3] Further to a request for an advance ruling, the CBSA determined that the goods in issue were to be classified under tariff item No. 8418.10.90 of the schedule to the *Customs Tariff*, S.C. 1997, c. 36 (the Customs Tariff) as “other [combined refrigerator-freezers, fitted with separate external doors]” (the text of the relevant Customs Tariff provisions is set out in the annex to these reasons). On appeal, the CITT, focusing on the fact that the freezer portion of the goods in issue were fitted with drawers rather than doors, held that they were properly classified under tariff item No. 8418.69.90 as “other [refrigerating or freezing equipment]”. In so holding, the CITT rejected the CBSA’s alternative contention that the goods in issue should be classified as “[r]efrigerators, household type: compression type” under tariff item No. 8418.21.00.

[4] The CBSA does not challenge the finding that the goods in issue cannot be classified under tariff item No. 8418.10.90 because they are fitted with drawers rather than doors. The dispute before us now turns on Section Note 3 to Section XVI (Section Note 3) which, according to the CBSA, required the CITT to apply subheading No. 8418.21. This note provides:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to

Sauf dispositions contraires, les combinaisons de machines d'espèces différentes destinées à fonctionner ensemble et ne constituant qu'un seul

form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

corps, ainsi que les machines conçues pour assurer deux ou plusieurs fonctions différentes, alternatives ou complémentaires, sont classées suivant la fonction principale qui caractérise l'ensemble.

[my emphasis]

The Explanatory Note to Section XVI (the Explanatory Note) specifies that Section Note 3 does not apply – *i.e.*: “the context otherwise requires” – when a “composite machine is covered as such (“comme telle” in the French text) by a particular heading” [my emphasis].

[5] The CITT declined to apply Section Note 3 for two reasons. Purporting to rely on its prior decision in *Costco Wholesale Canada Ltd. v. President of the CBSA*, AP-2011-009 [*Costco*] as a precedent, the CITT first held that “the context otherwise requires” because the goods in issue were covered “as such” by subheading No. 8418.69. In coming to this conclusion, the CITT rejected CBSA’s contention that subheading No. 8418.69 cannot apply because it covers “refrigerating or freezing equipment” [my emphasis]. According to the CITT, the word “or” as it appears in heading No. 84.18 is conjunctive rather than disjunctive.

[6] In what amounts to an alternative finding, the CITT opined in a footnote that Section Note 3 could not apply in any event, because neither the freezer nor refrigerator component of the goods in issue is subordinate to the other so that neither “performs the principal function”.

[7] In support of its appeal, the CBSA contends that the CITT misconstrued Section Note 3 as well as the word “or” in heading No. 84.18. It asks this court to hold that the CITT erred in not applying Section Note 3 and declare that the goods in issue are properly classified under tariff item No. 8418.21.00.

[8] For the reasons which follow, I am of the view that the appeal must fail, but for reasons which differ, in part, from those of the CITT.

ARGUMENTS ON APPEAL

The CBSA

[9] The CBSA argues that the CITT fundamentally erred by reading the exception to Section Note 3 too broadly. Specifically, the CBSA argues that the phrase “[u]nless the context otherwise requires” contemplates the existence of a specific subheading that names or describes the composite goods. It follows that a residual subheading, such as subheading No. 8418.69, cannot justify a refusal to give effect to Section Note 3.

[10] Were it otherwise argues the CBSA, Section Note 3 would never find application as the residual provision at any given level would always preclude the application of this Note.

[11] The CBSA bolsters the view that coverage under residual provisions cannot engage the exception to Section Note 3 by reference to the Explanatory Note, which states that the exception applies when a “composite machine is covered as such by a particular heading” [my emphasis].

Relying on a dictionary entry defining the phrase “as such” to mean “as being what has been indicated or named ...”, the CBSA argues that a residual subheading will necessarily fall short of this definition, as a residual subheading by virtue of its reason for being (*i.e.* to catch all goods included in the heading which are not specifically named or described) will never refer to specific goods.

[12] The CBSA reinforces this interpretation of the Explanatory Note with several examples of headings the CBSA suggests would cover a particular composite machine “as such”. The first of these is in fact drawn from a fuller quote from the Explanatory Note itself, which reads in the paragraph in question:

Note 3 to Section XVI **need not be invoked** when the composite machine is covered as such by a particular heading, for example, some types of air conditioning machines (heading 84.15).

Le recours à la Note 3 de la Section XVI **n’est pas nécessaire** lorsque la combinaison de machines est couverte comme telle par une position distincte, ce qui est le cas, par exemple, de certains groupes pour le conditionnement de l’air (n° 84.15).

[Emphasis by CBSA]

[13] The CBSA further provides language from heading No. 84.15, to which the Explanatory Note refers:

Air-conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which humidity cannot be separately regulated.

Machines et appareils pour le conditionnement de l’air comprenant un ventilateur à moteur et des dispositifs propres à modifier la température et l’humidité, y compris ceux dans lesquels le degré hygrométrique n’est pas réglable séparément.

[14] The CBSA offers four more examples of similarly specific headings from the Customs Tariff (CBSA's memorandum at para. 38). The CBSA compares the specificity of the language in these headings to the broad language in subheading No. 8418.69, arguing that the contrast supports the narrower interpretation of the exception to Section Note 3 which would preclude the possibility of a residual provision covering any particular goods "as such".

[15] The CBSA further relies on two prior decisions where the CITT applied Section Note 3, even though there existed a residual provision that could have, on the interpretation of the CITT in the case at bar, covered the goods in issue (*Royal telecom Inc. v. Canada (National Revenue)*, AP-90-027 (CITT) and *Panasonic Canada Inc. v. Canada (Border Services)*, AP-2005-035 (CITT)).

[16] According to the CBSA, the prior decision of the CITT in *Costco* does not support the view that a residual provision can exclude the application of Section Note 3 as the goods in issue in that case were expressly described in the language of the heading ultimately applied.

[17] With respect to the CITT's principal function analysis, the CBSA reiterates before us the marketing and storage capacity arguments put before and rejected by the CITT. These arguments are set out more fully in the analysis which follows.

[18] Finally, with respect to the CITT's analysis of the word "or" in heading No. 84.18, the CBSA simply asserts that the CITT's conclusion was unreasonable, and provides no supporting reasons other than to say in effect that "or means or".

The respondent

[19] In response, the respondent supports the decision of the CITT by essentially insisting on the reasonableness of the reasons that it gave.

[20] With respect to the CITT's refusal to apply Section Note 3, the respondent insists that although subheading No. 8418.69 merely reads "other", a contextual reading of the subheading reveals that it includes all goods which come within the language of heading No. 84.18, but not within any of the heading's subheadings.

[21] According to the respondent, the decision of the CITT does not leave Section Note 3 meaningless. Rather, the CITT gave Section Note 3 meaning, but simply decided that it did not apply in the circumstances of this case.

ANALYSIS AND DISPOSITION

[22] The standard of review applicable to decisions of the CITT pertaining to tariff classification is reasonableness (see for instance *President of the Canada Border Services Agency v. Saf-Holland Canada Ltd.*, 2014 FCA 3 [*Saf-Holland*]). This standard applies to decisions involving the construction of Customs Tariff provisions as well as Section Notes and Explanatory Notes.

[23] The decision of the CITT will meet the test of reasonableness "if it falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law, and the reasons

establish ‘justification, transparency and intelligibility within the decision-making process’”

(*Saf-Holland* at para. 5, citing *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47).

[24] Having regard to the reasons of the CITT and the arguments raised by the parties, the questions which must be answered are, in order:

- 1) Is the word “or” in heading No. 84.18 conjunctive so as to allow the goods in issue which perform both a refrigerating and a freezing function to be classified under the “other” such equipment of subheading No. 8418.69?
- 2) Does the fact that the goods in issue come within the residual description set out in subheading No. 8418.69 and not within any other specific subheading provide a contextual reason for not applying Section Note 3?
- 3) Do the freezer and refrigerator components of the goods in issue have equally important functions so as to make the principal function test set out in Section Note 3 inapplicable?

First question

[25] Turning to the first question, the CITT provided three separate justifications for concluding that the word “or” operates conjunctively rather than disjunctively for the purposes of applying subheading No. 8418.69. The CITT first noted that legislation often uses the word in this sense (reasons at para. 63, citing Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed., Markham: Lexis Nexis (2008) at 82); the CITT added that subheading No. 8418.69, by its residual nature, is intended to serve an inclusive purpose; finally, the CITT referred to the French language version of heading No. 84.18 (reasons at para. 64, citing the French text of the heading, which covers “[a]utres matériels, machines et appareils ***pour la production du froid***” [emphasis by CITT]). Relying on the shared meaning, the CITT concluded that the word “or” in the English text was conjunctive rather than disjunctive.

[26] While each of the first two justifications, relating respectively to standard legislative usage and legislative intent, would on its own provide an intelligible and plausible basis for an inclusive reading, the third justification goes further, providing a compelling and conclusive answer to the question at hand.

[27] The CBSA does not explain why the shared meaning rule should not be applied in this case. According to this rule, where, in a given case, a provision allows for multiple interpretations in one language, but allows for only one in the other, the “common meaning” prevails. Indeed, this rule was applied by this Court in a tariff classification matter in *Deltonic Trading Corp. v. Deputy Minister of National Revenue, Customs & Excise*, (1990), 113 N.R. 7; 3 T.C.T. 5173 (F.C.A.).

[28] In my view, the CITT’s interpretation of the word “or” for the purposes of applying subheading No. 8418.69 easily meets the test of reasonableness.

Second question

[29] The reasoning of the CITT for answering the second question in the affirmative is set out at paragraphs 56 to 59 and 65 of its reasons. The CITT citing its prior decision in *Costco* observed that the words “[u]nless the context otherwise requires” in Section Note 3 make it clear that composite machines are not classified according to the principal function test in all cases. Specifically, if the goods in issue “are covered by another subheading of heading 84.18”, Section Note 3 would not be applicable (reasons at para. 58).

[30] The CITT, upon noting that the goods in issue are not covered, as such, by subheading Nos. 8418.21, 8418.29, 8418.30, 8418.40, 8418.50 or 8418.61, states that the only remaining question is whether they are covered by subheading No. 8418.69, which covers “other [refrigerating or freezing equipment]” (reasons at para. 59). After having concluded that the word “or” in heading No. 84.18 is not an obstacle to the application of subheading No. 8418.69 to the goods in issue, the CITT held that the goods in issue “are covered as such by (this) subheading” (reasons at para. 65) [my emphasis].

[31] The conclusion that the goods in issue are covered “as such” by the word “other” is unexplained. Nowhere in its reasons does the CITT confront the question as to how goods can be said to be classified “as such” in a subheading that is residual in nature. By definition, the words “as such” (“comme telle” in the French text) contemplate a specific description. Indeed, the reasoning advanced in Costco, on which the CITT relies extensively, makes it clear that the application of Section Note 3 is excluded only where the goods are described “as such in a specific tariff heading” (Costco at para. 39 [first emphasis in original; second emphasis added]; see also paras. 40 and 41 where the same point is twice emphasized).

[32] The obvious difficulty which results from the CITT’s decision to preclude the application of Section Note 3 on the basis of a subheading that is residual in nature is that this note would never find application with respect to goods that come within a subheading by virtue of not being specifically described or itemized elsewhere. Yet, the reason for being of Section Note 3 is that it be applied in this precise situation.

[33] The respondent argues that the CITT did not leave Section Note 3 “meaningless”.

According to the respondent, the CITT simply decided, based on the circumstances before it, that Section Note 3 did not apply (respondent’s memorandum at para. 34).

[34] I agree that the decision of the CITT, as all classification decisions, turns on its facts.

However, the proposition for which it stands is that a subheading describes goods “as such” even though neither the subheading nor the tariff item selected within it provides any description beyond the word “other”. This result is indefensible.

[35] In my view, the CBSA has succeeded in demonstrating that this aspect of the CITT’s decision is unreasonable.

Third question

[36] In support of its challenge against the CITT’s conclusion as to the third question, the CBSA reiterates the arguments advanced and dealt with by the CITT, and asks this Court to come to a different conclusion.

[37] Specifically, the CBSA argues that the refrigerator performs the principal function by reason of relative capacity (*i.e.* the refrigerator component having the larger capacity) and of the fact that the goods in issue are marketed primarily as refrigerators.

[38] In support of its position, the CBSA relies on the statement in *Tyco Safety Products v. President of the CBSA*, AP-2010-055 at paragraph 61 to the effect that in the context of a Section Note 3 analysis:

... the relative importance of each function is dependent, in large part, upon the demands of the marketplace and the level of technology involved in the performance of that function.

[39] In rejecting this argument, the CITT seemingly accepted the respondent's submission that, while Section Note 3 is intended to apply to machines featuring complementary functions, the goods in issue feature distinct functions which are of equal importance for the users (reasons at para. 55). The detailed reasoning of the CITT is as follows (reasons, footnote 59):

In any event, the Tribunal is not persuaded by the CBSA's argument that it is the refrigerator component which performs the principal function of the goods in issue. While the Tribunal accepts that the refrigerator component has a greater capacity and while combined refrigerator-freezer units are often simply described, for marketing purposes, as "refrigerators", this is not dispositive in the circumstances. As a matter of fact, the evidence indicates that "[a] fridge is designed to run at around about 5 degrees centigrade [while] ... [a] freezer runs at an average of minus 18 ...", Transcript of Public Hearing, 7 May 2013, at 48. Thus, the goods in issue respond to the storage temperature requirements of different foods. On that basis, the Tribunal finds that the refrigerator and freezer perform different functions, with neither being subordinate to the other in terms of its importance. In the Tribunal's view, Mr. Eglinton's acknowledgement that it is difficult to find simple refrigerators on the market and the fact that, while they need an appliance that perform both functions, consumers typically do not have enough space in their residence to install both a refrigerator and a freezer support this conclusion. Transcript of Public Hearing, 7 May 2013, at 47-48, 62-63.

[40] There is no doubt that where the respective functions of a composite machine are equal in importance, the test set out in Section Note 3 becomes impracticable. The issue therefore is whether the CITT could conclude that the two functions are equal in importance on the basis of the criteria proposed by the respondent and accepted by the CITT.

[41] I acknowledge that different criteria, such as those proposed by the CBSA, could have been used. However, Section Note 3 does not set out any particular method for resolving the issue. Indeed, it is apparent from the case law cited by the CBSA that the approach may vary depending on the particularities of the composite machine in issue. In the present case, the CITT relied on the fact that the goods in issue perform distinct functions that are of equal importance to the users and resolved the issue on this basis.

[42] In my view, the approach used by the CITT is defensible when regard is had to the facts and the law, and therefore withstands the test of reasonableness. Because the equivalence in freezing and refrigerating functions of the goods in issue is a self-standing reason for not applying Section Note 3, the CITT did not err in declining to give effect to it.

[43] Given that the application of Section Note 3 is the only issue that was raised by the CBSA in support of its challenge against the decision of the CITT, the aforesaid conclusion is dispositive of the appeal.

[44] I would dismiss the appeal with costs.

“Marc Noël”

J.A.

“I agree
Johanne Gauthier J.A.”

“I agree
D.G. Near J.A.”

ANNEX

Relevant Legislative Provisions:

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

Advance rulings

43.1 (1) Any officer, or any officer within a class of officers, designated by the President for the purposes of this section shall, before goods are imported, on application by any member of a prescribed class that is made within the prescribed time, in the prescribed manner and in the prescribed form containing the prescribed information, give an advance ruling with respect to

...

(c) the tariff classification of the goods.

...

Request for review

60. (2) A person may request a review of an advance ruling made under section 43.1 within ninety days after it is given to the person.

...

President's duty on receipt of request

60. (4) On receipt of a request under this section, the President shall, without delay,

...

Loi sur les douanes, L.R.C. 1985 (2e supp), c.1

Décisions anticipées

43.1 (1) L'agent chargé par le président, individuellement ou au titre de son appartenance à une catégorie d'agents, de l'application du présent article est tenu, sur demande d'un membre d'une catégorie réglementaire présentée dans le délai réglementaire, selon les modalités réglementaires, en la forme et avec les renseignements déterminés par le ministre, de rendre, avant l'importation de marchandises, une décision anticipée:

[...].

c) sur le classement tarifaire des marchandises

[...]

Demande de révision

60. (2) Toute personne qui a reçu une décision anticipée prise en application de l'article 43.1 peut, dans les quatre-vingt-dix jours suivant la notification de la décision anticipée, en demander la révision.

[...]

Intervention du président

60. (4) Sur réception de la demande prévue au présent article, le président procède sans délai à l'une des interventions suivantes:

[...]

(b) affirm, revise or reverse the advance ruling ...

b) la confirmation, la modification ou l'annulation de la décision anticipée [...]

...

[...]

Appeal to the Canadian International Trade Tribunal

Appel devant le Tribunal canadien du commerce extérieur

67. (1) A person aggrieved by a decision of the President made under section 60 or 61 may appeal from the decision to the Canadian International Trade Tribunal by filing a notice of appeal in writing with the President and the Secretary of the Canadian International Trade Tribunal within ninety days after the time notice of the decision was given.

67. (1) Toute personne qui s'estime lésée par une décision du président rendue conformément aux articles 60 ou 61 peut en interjeter appel devant le Tribunal canadien du commerce extérieur en déposant par écrit un avis d'appel auprès du président et du secrétaire de ce Tribunal dans les quatre-vingt-dix jours suivant la notification de l'avis de décision.

...

[...]

Appeal to Federal Court

Recours devant la Cour d'appel fédérale

68. (1) Any of the parties to an appeal under section 67, namely,

68. (1) La décision sur l'appel prévu à l'article 67 est, dans les quatre-vingt-dix jours suivant la date où elle est rendue, susceptible de recours devant la Cour d'appel fédérale sur tout point de droit, de la part de toute partie à l'appel, à savoir :

...

[...]

(b) the President ...

b) le président [...]

may, within ninety days after the date a decision is made under section 67, appeal therefrom to the Federal Court of Appeal on any question of law.

...

[...]

Customs Tariff, S.C. 1997, c. 36

Tarif des douanes, L.C. 1997, c. 36

Classification of goods in the List of

Classement des marchandises dans la

Tariff Provisions

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.

...

Interpretation

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.

...

General Rules for the Interpretation of the Harmonized System

1. The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.

...

6. For legal purposes, the

liste des dispositions tarifaires

10. (1) Sous réserve du paragraphe (2), le classement des marchandises importées dans un numéro tarifaire est effectué, sauf indication contraire, en conformité avec les Règles générales pour l'interprétation du Système harmonisé et les Règles canadiennes énoncées à l'annexe.

[...]

Interprétation de la liste des dispositions tarifaires

11. Pour l'interprétation des positions et sous-positions, il est tenu compte du Recueil des Avis de classement du Système harmonisé de désignation et de codification des marchandises et des Notes explicatives du Système harmonisé de désignation et de codification des marchandises et de leurs modifications, publiés par le Conseil de coopération douanière (Organisation mondiale des douanes).

[...]

Les générales pour l'interprétation du Système harmonisé

1. Le libellé des titres de Sections, de Chapitres ou de Sous-Chapitres est considéré comme n'ayant qu'une valeur indicative, le classement étant déterminé légalement d'après les termes des positions et des Notes de Sections ou de Chapitres et, lorsqu'elles ne sont pas contraires aux termes desdites positions et Notes, d'après les Règles suivantes.

[...]

6. Le classement des marchandises

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, on the understanding that only subheadings at the same level are comparable. For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

...

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 84

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

...

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

dans les sous-positions d'une même position est déterminé légalement d'après les termes de ces sous-positions et des Notes de sous-positions ainsi que, mutatis mutandis, d'après les Règles ci-dessus, étant entendu que ne peuvent être comparées que les sous-positions de même niveau. Aux fins de cette Règle, les Notes de Sections et de Chapitres sont également applicables sauf dispositions contraires.

[...]

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 84

RÉACTEURS NUCLÉAIRES, CHAUDIÈRES, MACHINES, APPAREILS ET ENGINS MÉCANIQUES; PARTIES DE CES MACHINES OU APPAREILS

[...]

84.18 Réfrigérateurs, congélateurs-conservateurs et autres matériel, machines et appareils pour la production du froid, à équipement électrique

			ou autre; pompes à chaleur autres que les machines et appareils pour le conditionnement de l'air du no 84.15.
...		[...]	
8418.10	- Combined refrigerator-freezers, fitted with separate external doors	8418.10	- Combinaisons de réfrigérateurs et de congélateurs-conservateurs munis de portes extérieures séparées
8418.10.10	--- Absorption-type, combination gas and electric powered, designed for permanent installation in recreational vehicles and for use in the manufacture of such vehicles	8418.10.10	--- À absorption, combinés au gaz et à l'électricité, devant être installés de façon permanente dans des véhicules de loisirs et devant servir à la fabrication de ces véhicules
8418.10.90	--- Other	8418.10.90	--- Autres
...		[...]	
8418.21	- Refrigerators, household type:	8418.21	- Réfrigérateurs de type ménager:
8418.21.00	--- Compression-type	8418.21.00	--- À compression
...		[...]	
8418.69	- Other	8418.69	- Autres
8418.69.20	--- Commercial refrigerating installations (store type)	8418.69.20	--- Installations frigorifiques commerciales du type pour magasins
8418.69.90	--- Other	8418.69.90	--- Autres
...		[...]	

Note 3 to Section XVI

Note 3 de la section XVI

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

...

Explanatory Notes to the Harmonized Commodity Description and Coding System, vol. 4 Sections XIV-XVI, Chapters 71-84, 5th ed. (Brussels: World Customs Organization, 2012).

Part VI (Section 3)

...

“Note 3 to Section XVI need not be invoked when the composite machine is covered as such by a particular heading”

Sauf dispositions contraires, les combinaisons de machines d'espèces différentes destinées à fonctionner ensemble et ne constituant qu'un seul corps, ainsi que les machines conçues pour assurer deux ou plusieurs fonctions différentes, alternatives ou complémentaires, sont classées suivant la fonction principale qui caractérise l'ensemble.

[...]

Notes explicatives du Système harmonisé de désignation et de codification des marchandises, vol. 4 Sections XIV-XVI, Chapitres 71-84, 5e éd., Bruxelles, Organisation Mondiale des Douanes, 2012.

Partie VI (Section 3)

[...]

« Le recours à la Note 3 de la Section XVI n'est pas nécessaire lorsque la combinaison de machines est couverte comme telle par une position distincte [...]»

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-369-13

STYLE OF CAUSE: PRESIDENT OF THE CANADA
BORDER SERVICES AGENCY v.
EURO-LINE APPLIANCES INC.

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: SEPTEMBER 9, 2014

REASONS FOR JUDGMENT BY: NOËL J.A.

CONCURRED IN BY: GAUTHIER J.A.
NEAR J.A.

DATED: SEPTEMBER 23, 2014

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