Federal Court of Appeal | Cour d'appel fédérale

Date: 20220602

Docket: A-64-21

Citation: 2022 FCA 100

CORAM: **PELLETIER J.A.**
WEBB J.A.
RIVOALEN J.A.

BETWEEN:

KEURIG CANADA INC.

Appellant

and

PRESIDENT OF THE CANADA BORDER SERVICES AGENCY

Respondent

Heard by online video conference hosted by the Registry on March 23, 2022.

Judgment delivered at Ottawa, Ontario, on June 2, 2022.

REASONS FOR JUDGMENT BY: PELLETIER J.A.

CONCURRED IN BY: WEBB J.A.
RIVOALEN J.A.

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REASONS FOR JUDGMENT

PELLETIER J.A.

[1] This is an appeal brought by Keurig Canada Inc. (Keurig) under subsection 68(1) of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.) of a decision by the Canadian International Trade Tribunal (CITT, or the Tribunal) (Appeal No. AP-2019-009) (the Decision). In its Decision, the Tribunal dismissed Keurig's appeal of a decision of the President of the Canada Border Services

Agency (CBSA) regarding the tariff classification of certain goods imported by Keurig in December 2014.

[2] The Tribunal described the goods in question as Keurig K40 Elite automatic single-cup brewing systems for home use (K40 brewing systems, or the goods). This model has since been rebranded and is known as a K50, but the K40 brewing systems in question and the K50 models that are currently available are identical. At the time the goods were imported, they were classified under tariff item number 8516.71.10 of the Schedule to the *Customs Tariff*, S.C. 1997, c. 36 as "coffee makers". Keurig argues that this classification should be changed to tariff item number 8516.79.90, "other electro-thermic appliances".

[3] For the reasons that follow, I would dismiss Keurig's appeal and maintain the CBSA's classification, namely, that the goods in question should be classified under tariff item 8516.71.10 as coffee makers.

I. Facts

[4] K40 brewing systems are small home appliances that brew beverages using Keurig's "K-Cup" pods. About 80-90% of K-Cups sold contain and produce coffee, but Keurig also sells K-Cups that produce tea, hot chocolate, or other hot beverages. The K40 brewing system consists of an electro-thermic mechanism that heats water, a lid, a water reservoir, a handle, a K-Cup pod holder/housing, a drip tray assembly, a power cord, and a spout. To use the K40 brewing system, the user plugs it in, fills the reservoir with water, inserts a K-Cup into the holder, closes the lid, and places a mug or other vessel on the drip tray below the spout. Two holes are punctured in the

pod – one in the top and one in the bottom. When the user hits a button, the water is heated by the electro-thermic mechanism. The heated water flows through the punctured K-Cup at a specific temperature and pressure and the brewed beverage flows out the spout into the waiting vessel.

[5] The K40 brewing systems were initially imported by Keurig in December 2014 and were declared at the time to be "coffee makers" under the Schedule to the *Customs Tariff*. In July 2018, Keurig applied to the CBSA for a refund of duties under paragraph 74(1)(*e*) of the *Customs Act*, claiming that the goods should instead be classified as "other electro-thermic devices". The CBSA denied the application in September 2018. In November 2018, Keurig asked for a redetermination of that denial under subsection 60(1) of the *Customs Act*, and in March 2019, the President of the CBSA dismissed the appeal and confirmed that the goods were properly classified as coffee makers. Keurig appealed that dismissal to the CITT, which dismissed Keurig's appeal in December 2020. It is Keurig's appeal of the CITT Decision that is before this Court.

II. The CITT Decision

[6] The CITT began its Decision with an overview of the legal framework within which goods receive their tariff classifications. Canada's *Customs Tariff* and its Schedule are designed to conform to an international scheme, the Harmonized Commodity Description and Coding System (Harmonized System) of the World Customs Organization (WCO). Any good imported into Canada is classified under the Schedule to the *Customs Tariff*, which contains lists of goods divided into sections. Within each section, there are multiple chapters, headings, and

subheadings, which lead to the eight-digit code that identifies the goods. Multiple levels of subheadings are broken down by “dash-level” - that is, the first level of subheading has one dash, the second two dashes, etc. The number of levels of subheadings varies throughout the document. The final level, which identifies the good and contains the eight-digit code, is not referred to as a subheading but rather as the “tariff item”.

[7] The CITT quoted the relevant provisions in the Schedule to the *Customs Tariff*, which demonstrate the heading and subheading system described above, and how coffee makers are coded as tariff item 8516.71.10 and “other” electro-thermic appliances are coded as tariff item 8516.79.90:

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	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
Chapter 85	Chapitre 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	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 Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus;	85.16 Chauffe-eau et thermoplongeurs électriques; appareils électriques pour le chauffage des locaux, du sol ou pour

electro-thermic 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.	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.
…	[...]
-Other electro-thermic appliances:	-Autres appareils électrothermiques :
8516.71 - -Coffee or tea makers	8516.71 - -Appareils pour la préparation du café ou du thé
8516.71.10 - - -Coffee makers	8516.71.10 - - -Appareils pour la préparation du café
8516.71.20 - - - Tea makers	8516.71.20 - - - Appareils pour la préparation du thé
. . .	[…]
8516.79 - -Other	8516.79 - -Autres
. . .	[...]
8516.79.90 - - -Other	8516.79.90 - - -Autres

[8] The CITT also explained that, as provided in subsection 10(1) of the *Customs Tariff* goods are classified in this system according to the General Rules for the Interpretation of the Harmonized System (General Rules) and the Canadian Rules, both contained in the Schedule to the *Customs Tariff*. Rule 1 of the General Rules states that "classification shall be determined according to the terms of the headings and any relative [*sic*] Section or Chapter Notes" and by the rules that follow. Section 11 of the *Customs Tariff* further states that "[i]n interpreting the headings and subheadings, regard shall be had to [classification opinions and explanatory notes published by the WCO]". The Supreme Court has described these rules as a "hierarchy",

explaining that 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": *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38, [2016] 2 S.C.R. 80 at paras. 7, 21 [*Igloo Vikski*].

[9] Therefore, the CITT concluded, it must determine whether it can classify the goods at the heading level according to the heading terms together with any section or chapter notes, and with regard to any classification opinions and explanatory notes. Rule 6 of the General Rules prescribes a similar process for each subheading. For the subheadings in question, the CITT noted that there are "no relevant chapter or heading notes, or classification opinions": Decision at para. 21. It appended the relevant section notes and explanatory notes at the end of its Decision.

[10] With this background established, the CITT then turned to the positions of the parties. As shown above, the dispute begins at the "two-dash" level of subheading - whether the goods should be classified under "8516.71 - - Coffee or tea makers" or "8516.79 - - Other". Keurig argued that the "or" in subheading 8516.71 is disjunctive, meaning that it covered coffee makers and tea makers as two distinct appliances. The K40 brewing systems, it argued, make both coffee and tea and therefore cannot be a "coffee maker" or a "tea maker" at the tariff item level. CBSA argued that the "or" was conjunctive, meaning that the subheading covered makers of coffee or tea or both, and at the tariff item level, the appliances should then be classified as "coffee makers" or "tea makers" based on their primary use.

[11] The CITT considered the evidence of a Mr. Godfrey, the Head of the Program Management Office at Keurig. He testified as to the function of the K40 brewing system, its development, and its marketing and advertisement. He also provided evidence on K-Cups and on Keurig's corporate history and business model. The CITT used this evidence to make three findings of fact: that the K40 brewing system was identical to the K50, that Keurig has always been involved in the coffee industry, and that Keurig brewing systems are part of an integrated business model that includes the sale of K-Cups, the vast majority of which produce coffee drinks.

[12] The CITT then began the tariff classification. It noted the principle that residual subheadings are only to be turned to if subheadings that are more specific are not applicable. Therefore, it must first determine whether the goods fall under the specific subheading "8516.71 - - Coffee or tea makers" before turning to the residual "8516.79 - - Other". It applied the modern approach to statutory interpretation to determine that the "or" was disjunctive, meaning that "goods may be classified in subheading No. 8516.71 if they are 'coffee makers' or 'tea makers'": Decision at para. 50.

[13] The CITT then moved to the tariff item level to determine if the goods should be coded as "8516.71.10 - - - Coffee makers". The CITT considered various dictionary definitions of "coffee maker", as well as another CITT decision that classified espresso machines as "coffee makers" (*Philips Electronics Ltd. and Les Distributions Saeco Canada Ltée v. President of the Canada Border Services Agency* (24 April 2014), AP-2013-019 and AP-2013-020 (CITT) [*Philips Saeco*]). It also considered the appearance, design, best use, marketing and distribution

of the goods. It noted that these factors are not a test, and are to be seen as indicative rather than determinative of the proper classification of the goods.

[14] The CITT ultimately confirmed that the K40 brewing systems should be classified as "coffee makers" under tariff item 8516.71.10. In reaching this conclusion, it relied on the fact that the dictionary definitions of "coffee maker" all referred to "making coffee" or "brewing coffee", and the conclusion from *Philips Saeco* that brewing systems are not precluded from being classified as coffee makers because they can brew other beverages as well. It also relied on the fact that Keurig itself refers to and markets its brewing systems as "coffee makers". It also considered that Keurig brewing systems are designed to be used with K-Cups specifically, and that the vast majority of K-Cups contain or are based on coffee.

III. Standard of review and issues

[15] This Court has jurisdiction over this case by virtue of subsection 68(1) of the *Customs Act*, which provides that decisions of the CITT may be appealed to this Court on "any question of law". Two recent decisions of this Court have discussed the "circumscribed" nature of this right of appeal, holding that there needs to be an extricable question of law in order for jurisdiction to be "triggered": see *Canada (Attorney General) v. Impex Solutions Inc.*, 2020 FCA 171, 328 A.C.W.S. (3d) 511 at paras. 29-37 [*Impex*] and *Neptune Wellness Solutions v. Canada (Border Services Agency)*, 2020 FCA 151, 328 A.C.W.S. (3d) 510 at paras. 13-18 [*Neptune*].

[16] *Neptune* also confirms that the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1 [*Vavilov*] changed the

standard of review for statutory appeals: *Neptune* at para. 13. The appellate standards from *Housen v. Nikolaisen*, 2002 SCC 33, [2002] S.C.R. 235 now apply, which means that the standard of review for questions of law is correctness: *Vavilov* at para. 37.

[17] In order to identify a question of law in an appeal under subsection 68(1), "the appeal's 'essential character' or 'true substance' must be identified by looking at the notice of appeal and sometimes to the appellant's memorandum of fact and law when the grounds set out in a notice of appeal are articulated in a different way": *Impex* at para. 37. Both *Impex* and *Neptune* involved the interpretation of certain provisions of the Schedule to the *Customs Tariff* implicated in the classification of a good, and both found that these "pure question[s] of statutory interpretation" were questions of law: *Impex* at para. 40. *Impex* also identified a second question of law, which was whether the CITT did not consider a note it was required by law to consider: *Impex* at para. 39. *Impex* cautions, though, that it can be a "challenge" to distinguish questions of law from questions of mixed fact and law: *Impex* at para. 36, citing *Neptune* at para. 16.

[18] Keurig's notice of appeal lists a number of reasons for why the CITT Decision is allegedly incorrect, which, when read alongside Keurig's memorandum of fact and law, can be grouped into three general categories: (1) the Tribunal made incorrect findings of fact; (2) the Tribunal erred in its interpretation of the Schedule to the *Customs Tariff* ; and (3) the Tribunal erred in considering certain pieces of evidence.

[19] The first category is quite clearly factual, and can therefore not be reviewed by this Court. However, the second contains an identifiable question of tariff interpretation: was the

Tribunal correct in its interpretation of subheading “8516.71 - - Coffee or tea makers” and in its interpretation of subheading “8516.71.10 - - - Coffee makers”? I will address the extent to which the final category raises a question of law following my interpretation analysis.

IV. Analysis

A. *The interpretation of subheading 8516.71 and tariff item 8516.71.10*

(1) Subheading 8516.71

[20] Keurig’s position is that the CITT was correct in finding that the “or” in “subheading 8516.71 - - Coffee or tea makers” was disjunctive, but was incorrect in concluding that it could still classify an item that didn’t only make coffee (or only make tea) under subheading 8516.71.

[21] CBSA’s position is that it doesn’t matter whether the “or” is disjunctive or conjunctive in the subheading, but rather whether the Tribunal was correct in its interpretation of the term “coffee makers” in “tariff item 8516.71.10 - - - Coffee makers”.

[22] Rules 1 and 6 of the General Rules state that headings and subheadings are to be interpreted according to their terms and any relevant chapter, heading, or subheading notes, and section 11 of the *Customs Tariff* adds the additional requirement of interpreting the headings and subheadings with regard to any classification opinions and explanatory notes. Rule 1 of the Canadian Rules states that tariff items are to be interpreted according to the General Rules, and that section, chapter, and subheading notes also apply. However, at the tariff item level, there is no requirement to consider classification opinions and explanatory notes.

[23] Heading 85.16 has one explanatory note: in English, it reads “coffee or tea makers (including percolators)” and in French, “les appareils pour la préparation du café ou du thé (cafetières, y compris les percolateurs, par exemple)”. There are no relevant section notes, chapter notes, heading notes, or classification opinions. The CITT made reference to Note 3 to Section XVI in its Decision, which says that composite machines should be classified according to their primary use, but only to say that neither party argued it was relevant. I agree, largely for the same reasons as set out in paragraphs 41 and 42 of *Philips Saeco* - the note only applies to composite machines that are not covered “as such” by a particular heading. In this case, the particular heading is “coffee or tea makers”.

[24] The word “or” can be interpreted conjunctively or disjunctively, depending on the context: *Essar Steel Algoma Inc. v. Jindal Steel and Power Limited*, 2017 FCA 166, 281 A.C.W.S. (3d) 762 at para. 20. Ruth Sullivan, relying in part on the American legislative drafting scholar Reed Dickerson, identifies a “presumption favouring the inclusive ‘or’ and the joint and several ‘and’”, but acknowledges that this presumption can be “readily rebutted by linguistic considerations or by knowledge of the world”: Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham, Ontario: LexisNexis, 2014) at §4.96-4.102.

[25] The context in this case is the use of “or” in subheading “8516.71 Coffee or tea makers”, which includes two tariff items “8516.71.10 Coffee makers” and “8516.71.20 Tea makers”. It is apparent from this structure that the subheading refers to goods which can be classified according to the two tariff items in the subheading. Accordingly, subheading 8516.71 signals that both types of goods are properly classified as tariff items under the subheading. That is to say,

the end goal of the classification exercise is to identify the appropriate tariff item, and the exercise should not stop at the subheading level. The headings and subheadings in the Schedule to the *Customs Tariff* are used to direct the classifier to the appropriate tariff item, but goods are not classified as a subheading, they are classified as a tariff item.

[26] The *Oxford English Reference Dictionary*, (Oxford: Oxford University Press, 1995) defines "conjunctive" as "serving to join, connective" while "disjunctive" is defined as "expressing a choice between two words etc. e.g. *or* in *asked if he was going or staying*". In terms of the tariff classification of goods, the choice between two possibilities occurs at the tariff item level and not at the subheading level, which simply indicates the types of goods covered by the subheading. I find that the "or" in subheading 8516.71 is conjunctive and not disjunctive.

[27] As a result, the CITT erred when it found, at paragraph 50 of its Decision, that the "or" in subheading 8516.71 was disjunctive because it was broken down into two tariff items. That said, the distinction between conjunctive and disjunctive is irrelevant. Before this Court (as I believe it was before the CITT), this interpretive exercise was dictated by Keurig's desire to draw a rigid distinction between coffee makers and tea makers, so as to justify classifying the goods under tariff item 8516.71.90, a lower rated tariff. Keurig's argument conflated the subheading and the relevant tariff items in support of the distinction it sought to draw. Whether subheading 8516.71 is conjunctive or disjunctive does not constrain the definition of coffee maker and tea maker, as demonstrated by the CITT's analysis, which did not rely on that distinction in arriving at the classification of the goods, a question to which I now turn.

(2) Tariff item 8516.71.10

[28] There was no argument before this Court, or before the CITT, that the K40 brewing systems should be classified as tariff item 8516.71.20 “tea makers”. Keurig maintains its argument that “coffee maker” must be interpreted as “an appliance that can make only coffee”.

[29] The argument that a tariff item should be interpreted in such a restrictive way has been unsuccessful at this Court in the past. In *Partylite Gifts Ltd. v. Canada (Customs & Revenue Agency)*, 2005 FCA 157, 333 N.R. 388 [*Partylite*], a case that concerned the classification of goods under tariff item No. 9405.50.10 “non-electrical lamps and lighting fittings - candlesticks and candelabras – ”, the appellant argued that since the goods had multiple uses, the CITT could not classify them under that tariff item. This Court dismissed the appeal, stating that “the fact that the goods in issue could be put to more than one use did not preclude the finding made by the CITT that they were designed to hold candles”: *Partylite* at para. 3. This was an appeal on a reasonableness standard and an interpretation of a different tariff item, but it confirms that the CITT can classify a good with multiple uses based on, among other things, the use for which it was designed.

[30] The specific tariff item in question in this case was interpreted by the CITT in the *Philips Saeco* case, which dealt with a dispute over whether “espresso machines” should be classified as “coffee makers” under tariff item 8516.71.10. There, the CITT found that even though the goods in question could be used to make a “variety of hot beverages, such as espresso coffee, medium coffee, long coffee, cappuccino, lattes, and tea”, they were coffee makers: *Philips Saeco* at para.

56. Clearly, the CITT did not interpret “coffee maker” as Keurig wants it to now, that is, it did not find that coffee makers are appliances that make only coffee and nothing else. Rather, they found that “the goods in question can indeed make coffee” and therefore are coffee makers: *Philips Saeco* at para. 52. Although this interpretation is not binding on this Court, I find it persuasive.

[31] Administrative tribunals, including the CITT, are not bound by their previous decisions, but they should “not depart from the decisions of earlier panels unless there is good reason”: *Canada (Attorney General) v. Bri-Chem Supply Ltd.*, 2016 FCA 257, [2017] 3 F.C.R. 123 at para. 44. This is particularly important for the CITT in matters of tariff classification since, as discussed in *Igloo Vikski* at paragraph 4, one of the purposes of the Harmonized System is to foster a stable and predictable classification system. In such a system, departures from previous decisions are particularly undesirable.

[32] Keurig argues that the issue of the disjunctive “or” was not raised in *Philips Saeco*, and therefore this case is different, but the “or” in subheading 8516.71 does not impact the interpretation of tariff item 8516.71.10 “coffee maker”. Keurig’s failed argument on the disjunctive “or” is no reason to depart from *Philips Saeco*. Whether Keurig’s argument is that the CITT erred in considering *Philips Saeco* or that the interpretation from *Philips Saeco* is incorrect, I disagree.

[33] As a result, I agree with the interpretation of “coffee maker” from both *Philips Saeco* and the CITT Decision in this case: an appliance that primarily, though not necessarily exclusively,

makes coffee. I would note that this is supported by dictionary definitions, as quoted by the CITT in paragraphs 53 to 54 of its Decision. It is also supported by the presumption against tautology, which says that the legislature does not speak in vain (see *A.G. (Que.) v. Carrières Ste-Thérèse Ltée*, [1985] 1 S.C.R. 831, 20 D.L.R. (4th) 602 at 838). Tariff items should not be interpreted so restrictively as to lead to no goods actually falling within the interpretation. There must exist goods that can be classified under every tariff item in the Schedule to the *Customs Tariff*, or else the words would be "mere surplusage": *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61 at para. 28. Although Keurig was not required, of course, to demonstrate other goods that would be classified under tariff item 8516.71.10 using their interpretation, I find it difficult to conceive of an appliance that could make coffee but was incapable of making another beverage.

[34] I acknowledge Keurig's point that the word "primary" (or similar, e.g., "main", "dominant", etc.) exists in other places in the Schedule to the *Customs Tariff* but not in subheading 8516.71 or in any related explanatory notes or classification opinions (see, for example, heading 87.03 "…principally designed for…", or heading 12.11 "…used primarily in…"), and that therefore the CITT should not consider primary use. However, this is not borne out by the *Customs Tariff* scheme as a whole.

[35] Interpreting tariff items too strictly would undermine the purpose of the Harmonized System. As the CITT points out in its Decision, "the Harmonized System cannot take into consideration each and every innovative product that comes onto the market … the tariff classification of new products is facilitated by the *General Rules*": Decision at para. 57. The General Rules refer to, for example, the "essential character" of the goods (in Rule 3(b)) and

classifying goods as "the goods to which they are most akin" (in Rule 4). Note 3 to Section XVI, which is not directly relevant to this appeal because the goods are covered by a particular heading, shows generally how the Schedule to the *Customs Tariff* approaches the problem of goods that are not *prima facie* classifiable as only one tariff item. It states that "[u]nless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole … are to be classified … as being that machine which performs the principal function" (my emphasis). I point to these to show that in multiple places, the Harmonized System conceives of the possibility of overlap between goods or tariff items or goods not fitting precisely within a tariff item, and generally instructs to look at the primary use of the good, rather than resorting to a residual classification.

[36] That said, as noted above in the context of subheadings, the hierarchical nature of the General Rules means that these rules are only to be applied when a good cannot be classified using Rule 1 alone. In this case, since Rule 1 conclusively determines the appropriate classification of the K40 brewing system, there is no need to apply them. However, they still demonstrate that it is not only when a heading, subheading, or tariff item uses the word "primary" (or similar) that the CITT can consider the primary use. As with all classification exercises, it depends on the application of the rules to the good in question.

[37] As the *Customs Act* limits appeals to this Court to questions of law, it is not open to the appellant to argue that the CITT was incorrect on a question of mixed fact and law. Having found that the Tribunal was correct in its interpretation of tariff item 8516.71.10, this Court

cannot re-weigh the evidence to decide if the CITT was correct in classifying the goods as it did and the appellant cannot ask this Court to do so.

[38] However, it is open to the appellant to argue that the CITT was legally barred from considering certain evidence, so I will now briefly turn to the CITT's analysis. The CITT referred to its own decision in the *Partylite* case (Appeal No. AP-2003-008) for the principle that the appearance, design, best use, marketing and distribution of a good can be used as indicative factors in classification. This approach was affirmed by this Court in *Partylite* and as such, the CITT was correct in considering those factors.

[39] Keurig argues that the CITT was precluded from considering any of this evidence because a disjunctive "or" would mean the goods should not be classified under subheading 8516.71 at all, but this is based on a faulty premise. The "or" is in fact conjunctive and the goods are classifiable under that subheading, so this argument too must fail.

V. Conclusion

[40] Based on the above reasons, I find that the CITT was incorrect in interpreting subheading 8516.71 disjunctively, but correct in interpreting tariff item 8516.71.10. At the tariff item level, the CITT made no legal errors in its consideration of the evidence. As such, I would not interfere with its classification of the K40 brewing systems as "coffee makers".

[41] I would dismiss the appeal with costs.

"J.D. Denis Pelletier"
J.A.

"I agree.
Wyman W. Webb J.A."

"I agree.
Marianne Rivoalen J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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