

FEDERAL COURT OF APPEAL

BETWEEN:

ATTORNEY GENERAL OF CANADA

and

MEDLINE CANADA CORPORATION

FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE	
FILED	FEB 28 2024
OTTAWA, ON	
Respondent	

NOTICE OF APPLICATION
(Application under section 28 of the *Federal Courts Act*)

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: February 28, 2024

Issued by: _____

(Registry Officer)

Address of local office: 90 Sparks Street, 5th Floor
Ottawa, Ontario K1A 0H9

TO: **Medline Canada Corporation**
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AND TO: **Canadian International Trade Tribunal**
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Ottawa, Ontario K1A 0G7
Tel: 613-998-2452
Fax: 613-990-2439

AND TO: **Federal Court of Appeal**
90 Sparks Street
Ottawa, Ontario K1A 0H9
Tel: 613-996-6795
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APPLICATION

1. This application for judicial review pursuant to subsection 28(1)(e) of the *Federal Courts Act*, RSC, 1985, c F-7 is in respect of a tariff classification decision of the Canadian International Trade Tribunal (“Tribunal”) dated January 29, 2024, in AP-2022-004 and AP-2022-017.
2. The Tribunal’s conclusion – that surgical gloves (“gloves”) are “for use in” surgical instruments, such as scalpels (“host goods”) – was unreasonable based on the facts and the record. The Tribunal’s overly broad interpretation of the tariff item – to apply to goods held by a human hand – is contrary to a plain reading of the relevant provisions.
3. By relying exclusively on evidence of the benefit of gloves to humans to conclude that the gloves are both physically connected and functionally joined to surgical scalpels, the Tribunal misconstrued the applicable legal test and erred in its application to the facts.
4. The Applicant requests the Court send the matter back to the Tribunal for re-determination based on the existing evidentiary record.
5. **The Applicant makes application for:**
 - a. An Order setting aside the Tribunal’s decision and referring the matter back to the Tribunal for a new decision, in accordance with such directions as this Court deems appropriate;
 - b. The costs of this application; and
 - c. Such further and other relief as counsel may advise and this Court permits.

6. **The grounds for the application are:**

7. The goods in issue are various models of surgical gloves, packaged in pairs and composed of polyisoprene, neoprene or latex.
8. The Tribunal properly found the gloves to be classified as rubber surgical gloves, but then went on to find that the gloves are entitled to the benefit of duty relief because these gloves are “for use in” surgical scalpels under tariff item 9977.00.00.
9. The relevant portion of heading 9977.00.00 covers:

articles for use in [...] instruments and appliances used in medical, surgical, dental or veterinary sciences including scintigraphic apparatus, other electromedical apparatus and sight-testing instruments

Articles devant servir dans ce qui suit [...] Instruments et appareils pour la médecine, la chirurgie, l'art dentaire ou l'art vétérinaire, y compris les appareils de scintigraphie et autres appareils électromédicaux ainsi que les appareils pour tests visuels

10. The Tribunal concluded that the gloves met the threshold for tariff relief of duties conferred by tariff item 9977.00.00, as “articles for use in” surgical instruments, such as scalpels.
11. Subsection 2(1) of the *Customs Tariff* defines “for use in,” which appears in tariff item 9977.00.00, as follows:

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

devant servir dans ou devant servir à Mention dans un numéro tarifaire, applicable aux marchandises qui y sont classées et qui doivent entrer dans la composition d'autres marchandises mentionnées dans ce numéro tarifaire par voie d'ouvrison, de fixation ou d'incorporation.

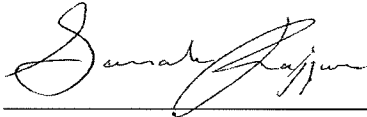
12. The Tribunal made the following errors:
 - a. misinterpreted subsection 2(1) of the *Customs Tariff*, as applicable to 9977.00.00, in a manner contrary to the modern approach to statutory interpretation;
 - b. misconstrued the “for use in” test in a manner inconsistent with a plain reading of the applicable provisions, and contrary to established jurisprudence, in particular as it relates to a physical connection;
 - c. conflated the requirement for a physical connection with the requirement for a functional relationship between the gloves and the scalpels.
 - d. misapprehended the evidence in its appreciation of the functional relationship between gloves and scalpels; and
 - e. erred in its application of the law to the facts of the case, in a manner unjustified in light of the legal and factual constraints.
13. *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.), ss 59, 60, 67, 74 and 152;
14. *Customs Tariff*, S.C. 1997, c. 36, ss 2 and 10, Schedules;
15. *Federal Courts Act*, R.S.C., 1985, c. F-7, ss 18.1, 28; and
16. Such further and other grounds as counsel may advise, and this Court will permit.
17. **The application will be supported by** the following material:
 - a. The relevant portions of the record that was before the Tribunal in file number AP-2022-004 and AP-2022-017;
 - b. Relevant portions of the transcripts of the hearing before the Tribunal in file number AP-2022-004 and AP-2022-017, heard on April 5, 2023;
 - c. The affidavit(s) filed by the Applicant in this proceeding, if any; and

d. Such further and other material as counsel may advise and this Court may permit.

Rule 317 Request

18. Pursuant to Rule 317 of the *Federal Courts Rules*, the Applicant requests that the CITT transmit to the Applicant and to the Registry a certified copy of all material that was before the Tribunal, including the transcripts produced during the hearing, when it rendered its decision in AP-2022-004 and AP-2022-017.

Date: February 28, 2024



ATTORNEY GENERAL OF CANADA

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Per: **Sarah Rajguru**
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Counsel for the Applicant

Federal Courts Fees Receipt
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NO. **A 623745**



Federal Court of Appeal /
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Federal Court /
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Court Martial Appeal Court of Canada /
 Cour d'appel de la cour martiale

To / À :

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Date :

February 28, 2024

Issuing Office / Bureau émetteur :

Ottawa

Prepared by / Préparé par :

J-F. Puyont

Court File No./

N° du dossier de la Cour :

A-81-24

Style of Cause & Description of Services Provided
 Intitulé de la cause et description des services rendus

Cost(s)
 Frais

Attorney General of Canada
v.

Medline Canada Corporation

Total =

50.00

Method of Payment / Mode de paiement

Account / Compte

Cheque No. / N° chèque :

American Express:

Dept# / # Département : *AGC*

Org Code / Code org : *013*

Reference Code / Code référence :

0130

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