

# Customs and Global Trade Update

October 2014



## Tariff classification of multifunction goods – lessons from the Administrative Appeals Tribunal

As products evolve, tariff classification becomes increasingly challenging. This is primarily due to modern products being designed to be multi-functional.

Recently, a decision by the Australian Administrative Appeals Tribunal demonstrated the difficulty of classifying a ceiling fan which had an integrated light. The approach taken in his case provides guidance for classifying all goods with multiple functions.

### CLASSIFYING - ESSENTIAL CHARACTER

In *Mercator Lighting Pty Ltd and CEO of Customs*, the Administrative Appeals Tribunal (AAT) considered whether a ceiling fan with an integrated electric light should be classified as a fan or as a light. If classified as a fan, a concession applied providing duty free entry. If classified as a light, the goods would attract 5% duty.

Where a good falls under two tariff headings the *Customs Tariff Act* prescribes a set of rules to decide which single classification should apply. In this case the AAT considered the classification rule that composite goods shall be classified as if they consist of the material or component which gives them their essential character. If no essential character can be identified, the goods will be classified under the tariff heading which occurred last in numerical order.

The key question was whether the fan function or the light function gives a ceiling fan with an integrated light its essential character.

The AAT decided that neither function gave the product its essential character and classified the goods under the light heading, which occurred later in numerical order to the fan heading.

## LESSONS FROM THE AAT REGARDING CLASSIFYING GOODS WITH MULTIPLE FUNCTIONS

1. For a component to give a product its essential character it must have a dominating influence upon the essence of the product
2. The question of what is the essential character of the goods is one of “basic fact” and one should not look for “subtleties”
3. Where two distinct goods complement each other and are combined, it will not ordinarily be the case that one article gives the set its essential character
4. It is irrelevant how the individual components would operate independently if they did not form part of the composite good
5. It is relevant to question whether there is one critical function to which the other functions are ancillary. In this case it was held that the light and fan functions were discrete and independent
6. Visual dominance of a component is not relevant – it is necessary to consider their nature and function
7. The fact that the light was fitted to the fan did not diminish the significance of the light function
8. The respective cost of the different functions is irrelevant
9. Evidence as to why customers may buy separate goods as opposed to composite goods is irrelevant
10. The structural dominance of one component over another would only be relevant if that was evident from a wharf side review in the products’ state as imported.

### Authors:

Russell Wiese, Partner

Lynne Grant, Special Counsel

Fran Smyth, Lawyer

## LESSONS FROM THE AAT REGARDING CLASSIFICATION IN GENERAL

1. Classification is determined by an objective test, not the intentions of the manufacturer, exporter, importer or particular user of the goods
2. It should normally be possible to classify the goods merely by looking at them and considering their nature and the functions the goods were designed to serve
3. Regard must be paid to the characteristics of the goods as they would present themselves to an informed observer at the time of import
4. In identifying the goods for the purpose of classification, the naming and description of the goods in advertising is of little relevance – the key issue is the goods themselves
5. Export invoices indicating classification in the country of export are irrelevant
6. The Australian Tribunal will not adopt a classification simply on the basis of rulings in other jurisdictions (there were NZ and US decisions classifying the same goods as fans)
7. Previous tariff advices provided by Australian Customs will not influence the Tribunal.

## AVOID THE PROBLEM – BE PROACTIVE

Classification of multifunction goods can be extremely difficult. It is less problematic to obtain a binding tariff advice/ruling from Customs and renewing that advice every 5 years. With a ruling in place, Customs can only vary the classification in respect to future imports, giving the importer certainty regarding the past and time to obtain new concessions for future imports if needed. In this case, if a concession had been obtained for the product under the lighting classification, it is unlikely the importer would have disputed the classification.