

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20140507**

**Docket: A-64-13**

**Citation: 2014 FCA 118**

**CORAM: NOËL J.A.  
WEBB J.A.  
SCOTT J.A.**

**BETWEEN:**

**MARMEN-ÉNERGIE INC. and  
MARMEN INC.**

**Appellants**

**and**

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

**Respondent**

Heard at Ottawa, Ontario, on May 7, 2014.  
Judgment delivered from the Bench at Ottawa, Ontario, on May 7, 2014.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NOËL J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Ottawa, Ontario, on May 7, 2014).

**NOËL J.A.**

[1] The issue in this appeal brought pursuant to section 68 of the *Customs Act*, R.S.C., 1985, c. 1 (2<sup>nd</sup> Supp.) is whether goods used by Marmen Énergie Inc. and Marmen Inc. (the appellants) in the manufacture of towers for wind turbines (the goods in issue) can be classified under tariff

item No. 9903.00.00 of the schedule to the *Customs Tariff*, S.C. 1997, c. 36 as “[a]rticles and materials that enter into the cost of manufacture or repair of”, or “[a]rticles for use in”, windmills, and thereby benefit from duty-free treatment pursuant to this classification.

[2] It has long been established that decisions of the Canadian International Trade Tribunal (the CITT) relating to tariff classification and the construction of tariff items stand to be reviewed on a standard of reasonableness (*Jam Industries Ltd. v. Canada (Border Services Agency)*, 2007 FCA 210 at para. 16; *Mon-Tex Mills Ltd. v. Canada (Commissioner of the Customs and Revenue Agency)*, 2004 FCA 346 at para. 2; *Conair Consumer Products Inc. v. Canada (Canada Customs and Revenue Agency)*, 2004 FCA 282 at para. 3; *Star Choice Television Network Inc. v. Canada (Commissioner of Customs and Revenue)*, 2004 FCA 153 at para. 7).

[3] The source of the disagreement as to the proper classification of the goods in issue is the introduction of the word “éoliennes” in the French text of tariff item No. 9903.00.00 in 1987 (S.C. 1987 c. 49). Prior to that amendment the operative words were “moulins à vent”. The corresponding word in the English text remained “windmills” throughout.

[4] After conducting a contextual analysis the CITT concluded that all host goods listed in tariff item No. 9903.00.00 must have a connection to farming, agriculture, horticulture or agri-business and that the goods in issue do not qualify as they have no such connection (reasons at paras. 93 to 100). Having so decided the CITT proceeded to dismiss the appeals brought by the appellants.

[5] As the appellants have demonstrated, it cannot be concluded with any certainty that tariff item No. 9903.00.00 requires that all the host goods have a farming, agricultural, horticultural or agri-business connection. Indeed, an addition to the classified goods in tariff item No. 9903.00.00 introduced in 2000 – “machinery for filling bottles for use in the beverage industry” – indicates on the face of it that all listed goods need not be connected to farming, agriculture, horticulture or agri-business. The CITT in its elaborate reasons does not deal with this description.

[6] In the absence of some explanation, a decision that is based on the premise that all host goods have a farm related use restriction in circumstances where the aforesaid description does not, cannot stand the test of reasonableness.

[7] The appeal will accordingly be allowed, the judgment of the CITT will be set aside and the matter will be referred back to the Tribunal for adjudication based on an analysis which takes into account the addition of “machinery for filling bottles for use in the beverage industry” in tariff item No. 9903.00.00.

[8] The appellants shall have their costs.

“Marc Noël”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-64-13

**STYLE OF CAUSE:** MARMEN-ÉNERGIE INC. and  
MARMEN INC. v. THE  
PRESIDENT OF THE CANADA  
BORDER SERVICES AGENCY

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** MAY 7, 2014

**REASONS FOR JUDGMENT OF THE COURT BY:** NOËL J.A.  
WEBB J.A.  
SCOTT J.A.

**DELIVERED FROM THE BENCH BY:** NOËL J.A.

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