



Ottawa, Thursday, January 11, 2001

Appeal No. AP-2000-015

IN THE MATTER OF an appeal heard on November 16, 2000,
under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Commissioner of
the Canada Customs and Revenue Agency dated February 28, 2000,
with respect to a request for redetermination under section 63 of
the *Customs Act*.

BETWEEN

COSTCO CANADA INC.

Appellant

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS
AND REVENUE AGENCY**

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Patricia M. Close
Patricia M. Close
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-2000-015

COSTCO CANADA INC.

Appellant

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS
AND REVENUE AGENCY**

Respondent

This is an appeal under section 67 of the *Customs Act* from decisions of the Commissioner of the Canada Customs and Revenue Agency dated February 28, 2000, regarding goods imported into Canada on December 19, 1997, and January 26, 1998. The goods in issue are benches made of metal and wood and are referred to as Iris Benches. The parties agree that the goods in issue are properly classified in subheading No. 9401.79 as other seats with metal frames, other than upholstered. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9401.79.10 as other seats with metal frames, “[o]f a kind used for domestic purposes” or, as the tariff line description was changed on January 1, 1998, “[f]or domestic purposes”, as determined by the respondent, or should be classified under tariff item No. 9401.79.90 as “[o]ther” such seats, as claimed by the appellant.

HELD: The appeal is dismissed. It is the Tribunal’s view that the goods in issue are used for domestic purposes. The evidence shows that the goods in issue, because of their physical characteristics, their design and their price, are clearly made to be used in a domestic setting, such as a private garden, a backyard lawn or a patio. Accordingly, the Tribunal finds that the goods in issue are properly classified under tariff item No. 9401.79.10 as other seats with metal frames, other than upholstered, “[o]f a kind used for domestic purposes”, or “[f]or domestic purposes”, as amended on January 1, 1998.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	November 16, 2000
Date of Decision:	January 11, 2001
Tribunal Member:	Patricia M. Close, Presiding Member
Counsel for the Tribunal:	Marie-France Dagenais
Clerk of the Tribunal:	Anne Turcotte
Appearances:	Michael Sherbo, for the appellant Marie-Josée Bertrand, for the respondent



Appeal No. AP-2000-015

COSTCO CANADA INC.

Appellant

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS
AND REVENUE AGENCY**

Respondent

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member

REASONS FOR DECISION

INTRODUCTION

This is an appeal under section 67 of the *Customs Act*¹ from decisions of the Commissioner of the Canada Customs and Revenue Agency dated February 28, 2000, regarding goods imported into Canada on December 19, 1997, and January 26, 1998. The goods in issue are benches made of metal and wood and are referred to as Iris Benches. The parties agree that the goods in issue are properly classified in subheading No. 9401.79 of Schedule I to the *Customs Tariff*² as other seats with metal frames, other than upholstered. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9401.79.10 as other seats with metal frames, “[o]f a kind used for domestic purposes”, or as the tariff line description was changed on January 1, 1998, “[f]or domestic purposes”, as determined by the respondent, or should be classified under tariff item No. 9401.79.90 as “[o]ther” such seats, as claimed by the appellant.

The tariff nomenclature relevant to the issue in this appeal is as follows:

94.01	Seats (other than those of heading No. 94.02), whether or not convertible into beds, and parts thereof. -Other seats, with metal frames:
9401.71	--Upholstered
9401.79	--Other
9401.79.10	---Of a kind used for domestic purposes [replaced by “For domestic purposes” on January 1, 1998]
9401.79.90	---Other

EVIDENCE

Mr. Kevin Wherry, Park Planning Technician and Park Construction Inspector for the City of Nepean, Ontario, gave evidence on the respondent’s behalf. Mr. Wherry testified that he is responsible for the planning, design, purchase and installation of park benches in the City of Nepean. He testified that he has examined the invoicing of the goods in issue and their drawing, which shows their characteristics, and

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].
2. R.S.C. 1985 (3d Supp.), c. 41.

stated that several comparisons can be made between these benches and the benches that are typically installed in public parks. These can be summarized as follows:

- the wooden slats of the Iris Bench are thinner and have an oil-based finish compared to the unfinished cedar or pressure-treated yellow pine of a park bench; the Iris bench can be damaged more easily and requires more maintenance;
- the Iris Bench support legs are made of cast iron instead of steel and cannot be repaired in the event of a crack or breakage;
- the Iris Bench does not offer structural support throughout the middle of the bench and is more susceptible to flex under extreme pressure;
- the back of the Iris Bench, designed with an arch in the middle, could never be approved for installation in public parks for safety reasons;
- the entire length of the Iris Bench is far too short to provide a personal comfort zone necessary for use by more than one person at a time; and
- the Iris Bench has no mechanism for permanent installation.

Finally, Mr. Wherry testified that he would never buy the Iris Bench for a city park or playground and stated that a park bench costs approximately \$700.

In cross-examination, Mr. Wherry acknowledged that a park application is probably one of the most severe environments for a bench.

ARGUMENT

The appellant submitted that the goods in issue should be classified in accordance with Rule 1 of the *General Rules of Interpretation of the Harmonized System*,³ which provides that classification is based on the terms of the heading. Since both parties agree that the goods in issue are classifiable in subheading No. 9401.79, the appellant argued that regard should be given to Rule 1 of the *Canadian Rules*,⁴ which provides the following:

For legal purposes, the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the [General] Rules, on the understanding that only tariff items 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.

The appellant submitted that the terms of the tariff item that must be considered are “[f]or domestic purposes”. The appellant argued that nowhere in the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁵ to Chapter 94 or in any related Supplementary Notes is the expression “for domestic purposes” defined. Given this, the appellant argued that reference must be made to case law. It referred to the Tribunal’s decision in *Black & Decker Canada v. DMNRCE*⁶ where the Tribunal expanded the definition of domestic appliances to include appliances used outside the four walls of a house, as long as

3. *Supra* note 2, schedule I [hereinafter General Rules].

4. *Ibid.*

5. Customs Co-operation Council, 2d ed. Brussels, 1996 [hereinafter Explanatory Notes].

6. (16 December 1992), AP-90-192 (CITT) [hereinafter *Black & Decker*].

the appliance was performing a domestic chore. The appellant argued that, if that same logic is applied, seats, of a kind used for domestic purposes, should be interpreted to cover chairs which are used for domestic seating purposes, such as at a table or in front of a television. It submitted that the characteristics common to household seating are its design for functionality and long-term use, unlike the goods in issue which are not designed and manufactured to provide comfort or prolonged seating capability, but, akin to park benches, are for occasional seating.

Finally, the appellant argued that Note 4(A) of the Explanatory Notes to Chapter 94 makes a distinction between furniture used for domestic purposes and other seats, by separating articles with a utilitarian purpose used to equip private dwellings, which suggests a domestic application, and articles for use in gardens, squares and promenades. The appellant argued that the goods in issue are not articles with a utilitarian function. Given this, the appellant argued that the Tribunal should make the same distinction and should classify the goods in issue as articles for use in gardens, squares and promenades, thus, as other seats under tariff item No. 9401.79.90.

As a subsidiary argument, the appellant submitted that, should the Tribunal find that the goods in issue are *prima facie* classifiable under two tariff items, they should be classified in accordance with Rule 3 (c) of the General Rules under tariff item No. 9401.79.90, as it is the last in numerical order.

The respondent agreed that the goods in issue are classifiable in subheading No. 9401.79. However, the respondent submitted that, in accordance with Rule 1 of the *Canadian Rules*, the Tribunal, in interpreting the expression “for domestic purposes”, must look at the inherent characteristics of the goods in issue to determine whether the goods are made to be used in a domestic setting.

The respondent argued that the evidence shows that the Iris Benches, because of their physical characteristics, their design, their price and the materials used in their fabrication, are clearly made to be used in a domestic setting, such as a private garden, a backyard lawn or a patio. The respondent further argued that the goods in issue, even if they are made to look like park benches, are for domestic purposes, as they are made, as suggested by the evidence, to withstand less rugged conditions than the benches made for institutional or commercial settings. He further argued that the word “domestic” found in tariff item No. 9401.79.10 should not be interpreted restrictively, as to preclude the classification of goods which can be used outside the four walls of a house. To support his position, the respondent made reference to the Tribunal’s decision in *Black & Decker*. The respondent submitted that the word “domestic” should be given a large interpretation to include goods than can be found outside the house, but whose primary purpose is domestic use by individuals in and around the house.

DECISION

Section 10 of the *Customs Tariff* provides that the classification of imported goods under a tariff item shall be determined in accordance with the General Rules and the *Canadian Rules*. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in Schedule I, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*⁷ and the Explanatory Notes.

7. Customs Co-operation Council, 1st ed., Brussels, 1987.

The General Rules are structured in a cascading form. If the classification of an article cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, etc. Rule 1 provides the following:

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.

Moreover, Rule 1 of the *Canadian Rules* reiterates that the classification of goods in the tariff item of a subheading or of a heading shall be determined according to the General Rules.

The Tribunal notes that the parties agree that the goods in issue are properly classified in subheading No. 9401.79 as seats with metal frames, other than upholstered. The Tribunal agrees with the parties in this respect. The competing tariff items in this appeal concern, therefore, whether these seats are for domestic purposes or not.

The Tribunal first finds no substantive difference between the descriptions “[o]f a kind used for domestic purposes” and “[f]or domestic purposes” used before and after January 1, 1998; it appears to be merely a difference in style. The expression “domestic purposes” is not defined in the Chapter Notes or in the Explanatory Notes to heading No. 94.01. However, the Tribunal is of the view that the term “domestic” found in the tariff item should be given a wide enough interpretation to include goods that can be found outside of the house, but which have, as a primary purpose, use by individuals in a domestic setting. This is consistent with the Tribunal’s decision in *Black & Decker*. The Tribunal is of the view that benches used for sitting in a private garden or on a front porch can be considered goods for domestic use.

Furthermore, the Tribunal does not find that Note 4(A) of the Explanatory Notes to Chapter 94, which differentiates furniture used to equip a private dwelling from furniture for use in gardens, necessarily means that garden furniture is not for domestic use. Nor does the Tribunal find that, merely because the Iris Bench can be used in a commercial setting, e.g. in front of a store, such use disqualifies it as a product which is used primarily in a domestic setting. Both parties agreed that tariff item No. 9401.79.10 is not an end-use provision. The goods in issue, therefore, do not, according to the Tribunal, have to be exclusively used in or around the domicile to be considered goods for domestic purposes.

The Tribunal also examined the inherent characteristics of the Iris Benches in trying to determine whether the goods in issue are for domestic purposes. The Tribunal accepts the evidence that the goods in issue, because of their physical characteristics, their design and their price, are clearly made to be used in a domestic setting, such as a private garden, a backyard lawn or a patio. More specifically, the Tribunal notes that it is clear from the evidence that the Iris Benches do not offer as much personal space and comfort, cannot be easily and permanently secured to the ground, lack safety characteristics to prevent, for example, head entrapments and are less expensive than benches that will be used in a commercial setting or public parks.

Given the above, the Tribunal is of the view that the Iris Benches must be considered as other seats with metal frames, other than upholstered, of a kind used for domestic purposes, or for domestic purposes as amended on January 1, 1998.

In conclusion, the Tribunal finds that the goods in issue are properly classified, on the basis of Rule 1 of the General Rules, under tariff item No. 9401.79.10. Consequently, the appeal is dismissed.

Patricia M. Close
Patricia M. Close
Presiding Member