



Ottawa, Tuesday, September 17, 2002

Appeal No. AP-2001-065

IN THE MATTER OF an appeal heard on May 28, 2002, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Commissioner of the Canada Customs and Revenue Agency dated August 14, 2001, with respect to a request for redetermination under section 61 of the *Customs Act*.

BETWEEN

ALLIANCE RO-NA HOME INC.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-2001-065

ALLIANCE RO-NA HOME 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 a decision of the Commissioner of the Canada Customs and Revenue Agency dated August 14, 2001, regarding goods imported into Canada on September 30, 1999. The goods in issue are padded steel folding chairs. The parties agree that the goods in issue fall in subheading No. 9401.71 as other upholstered seats with metal frames. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9401.71.10 as other upholstered seats with metal frames for domestic purposes, as determined by the respondent, or should be classified under tariff item No. 9401.71.90 as other upholstered seats with metal frames other than for domestic purposes, as claimed by the appellant.

HELD: The appeal is allowed. It is the Tribunal's view that the goods in issue, which are commonly known as folding chairs, do not have use by individuals in a domestic setting as a primary purpose. The evidence shows that the chairs in issue closely resemble the chairs advertised in the catalogues as commercial furniture and that they are, in fact, used in non-domestic sites, such as hotels and conference centres for different events. The Tribunal is of the view that there was no evidence to demonstrate that the goods in issue, because of their physical characteristics, their design and their price, are primarily made to be used in a domestic setting. Accordingly, the Tribunal finds that the goods in issue should be classified under tariff item No. 9401.71.90 as other upholstered seats with metal frames for purposes other than domestic purposes.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	May 28, 2002
Date of Decision:	September 17, 2002
Tribunal Member:	Richard Lafontaine, Presiding Member
Counsel for the Tribunal:	Marie-France Dagenais
Clerk of the Tribunal:	Anne Turcotte
Appearances:	Michael A. Sherbo, for the appellant Jean-Robert Noiseux, for the respondent



Appeal No. AP-2001-065

ALLIANCE RO-NA HOME INC.

Appellant

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY

Respondent

TRIBUNAL: RICHARD LAFONTAINE, Presiding Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ from a decision of the Commissioner of the Canada Customs and Revenue Agency dated August 14, 2001, regarding goods imported into Canada on September 30, 1999. The goods in issue are padded steel folding chairs. The parties agree that the goods in issue fall in subheading No. 9401.71 of the schedule to the *Customs Tariff*² as other upholstered seats with metal frames. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9401.71.10 as other upholstered seats with metal frames for domestic purposes, as determined by the respondent, or should be classified under tariff item No. 9401.71.90 as other upholstered seats with metal frames for purposes other than domestic purposes, as claimed by the appellant. More specifically, the Tribunal must determine whether upholstered folding chairs are used for purposes other than domestic purposes.

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
9401.71.10 ---For domestic purposes
10----*Chairs*
90----*Other*
9401.71.90 ---Other

EVIDENCE

The goods in issue can be broadly described as chairs made of a tubular steel frame, with a plywood seat and steel back, both padded with foam covered with a polyvinyl chloride plastic sheet. The respondent filed two exhibits: exhibit A is an example of an upholstered chair with a metal frame used, according to the respondent, for domestic purposes; exhibit B is an upholstered chair with a metal frame which, according to the respondent, is an example of a folding chair used for purposes other than domestic purposes.

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

Ms. Madeleine Saikaley, Senior Project Manager, Alliance Group, gave evidence on the appellant's behalf. Ms. Saikaley testified that she organizes conferences, trade shows and seminars and that her responsibilities include seating arrangements. As such, she testified that she deals with furniture suppliers that are contracted to supply folding chairs for these events. After examining the two chairs filed as exhibits by the respondent, she explained that she has seen both types of chairs being used on sites such as hotels and conference centres and has rented these two types of chairs for the different events that she organized. She went through some of the documents filed by the respondent and testified that some of the chairs shown would be seen at the various hotels where most of the events would be held. The folding chairs in the catalogues filed by the respondent were described, for example, as having a metal frame and a seat cushion with polyfoam bonded to a hardboard seat brace.

In cross-examination, she testified that both chairs filed as exhibits are very similar. She also testified that, when she rents folding chairs for different events, she does not ask for specific characteristics, just folding chairs. She explained that an upscale type of folding chair is white with a little gold frame on the back, which is very different from the chairs filed as exhibits.

The respondent called Mr. Richard C. Durocher, co-owner and Vice-President of Trans-Canada Industries (1984) Inc., as a witness. This company manufactures chairs that are used for commercial purposes and imports folding chairs from the People's Republic of China and the United States that are sold in the commercial segment of the chair market. The respondent asked the Tribunal to recognize Mr. Durocher as an expert witness on chairs that are designed, manufactured and sold in the commercial market. The appellant objected to Mr. Durocher being qualified as an expert witness. While the Tribunal acknowledged that Mr. Durocher possesses general and some specific knowledge of the commercial segment of the chair market, the Tribunal did not consider his knowledge sufficient to qualify him as an expert witness in this field. However, the Tribunal heard Mr. Durocher's testimony regarding facts on which he has personal knowledge.

Mr. Durocher testified to the source of the chairs that were filed as exhibits by the respondent: exhibit A was purchased at Zellers; exhibit B was manufactured by ABCO Office Furniture, a U.S. company, and imported by Trans-Canada Industries (1984) Inc.

Mr. Durocher testified that these two chairs are very different from one another. Exhibit B is principally sold to store chains, office furniture retailers, organizations and municipalities for recurring use. Exhibit A, which he believes, clearly resembles the goods in issue, is used in a domestic setting.

Mr. Durocher explained that several comparisons can be made between these chairs. These can be summarized as follows:

- The chair that is used for commercial purposes, Exhibit B, has a 15-inch metal base on which lies a masonite fiberboard and padding; the other chair, Exhibit A, has a metal base measuring only 12 inches that is made of masonite fiberboard and padding, and lies on a tubular frame.
- With regard to strength,
 - Exhibit B has a metal back rest held by six screws; the other chair has a plastic back rest held by two screws;
 - the stiles of Exhibit B rest on the back legs of the chair and are welded; the stiles of Exhibit A are inserted one into the other and a small rivet and tack welding hold the chair together; and
 - both chairs are made of steel tubes with a 20-gauge thickness.

- The vinyl covering is thicker on Exhibit B and the padding is a fire-retardant foam, which is not the case for Exhibit A.
- The difference in price must be considered an indicator of quality. Exhibit B sells for about \$38 on a price scale of \$22 to \$150, whereas Exhibit A sells for about \$10 in department stores.

Finally, Mr. Durocher stated that he would not recommend the chair identified as exhibit A to his clients that purchase chairs for non-domestic use.

In cross-examination, Mr. Durocher acknowledged that schools would use chairs similar to exhibit A. He also acknowledged that some of the folding chairs imported by KI and advertised as “chairs for commercial use” in the documents produced by the respondent are similar to the chair identified as exhibit A.

ARGUMENT

Since both parties agree that the goods in issue are classifiable in subheading No. 9401.71 as upholstered seats with metal frames, the appellant submitted that the issue in this appeal is whether the goods in issue fall within the meaning of the term “domestic purposes”. If the Tribunal determines that the goods in issue are not primarily used for domestic purposes, then the appellant argued that they should be classified in accordance with Rule 1 of the *General Rules for the Interpretation of the Harmonized System*³ under tariff item No. 9401.71.90 as other upholstered seats with metal frames for purposes other than domestic purposes.

The appellant made reference to the literature filed by the respondent, in which all the characteristics of folding chairs used for commercial purposes, such as size of the tubing, composition of the seat and thickness of the padding, are described in detail and submitted that the characteristics of the folding chairs in issue are identical. It submitted that the chairs sold as commercial chairs are of the same nature as the goods in issue.

The appellant argued that folding chairs are chairs used in a commercial or institutional manner and that the Tribunal should not interpret the term “folding chairs” in a way that creates two classes of folding chairs, namely, folding chairs used for domestic purposes and folding chairs used for commercial purposes. According to the appellant, the evidence shows that the only distinction to be made is that there are expensive folding chairs and lower-priced folding chairs. The appellant submitted that the evidence also shows that the only characteristic necessary in a folding chair is that of offering temporary seating. The chairs in issue, which are sold at a lower price, compete with the more expensive chairs in the marketplace and are used in the same manner and for the same purposes.

Finally, the appellant made reference to the Department of Industry’s Standard Industrial Classification code to show that folding chairs are categorized like auditorium seating, as metal office furniture, which supports its position that a folding chair is a commercial chair by nature.

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. 9401.71.90, as it is the last in numerical order.

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

The respondent agreed that the goods in issue are classifiable in subheading No. 9401.71. The respondent submitted that, in accordance with Rule 1 of the *Canadian Rules*,⁴ the Tribunal, in interpreting the expression “domestic purposes”, must look at the inherent characteristics of the goods in issue to determine whether the goods are for domestic purposes. The respondent argued that the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,⁵ the Chapter Notes and the Section Notes are not useful in classifying the goods in issue.

The respondent argued that the evidence shows that the folding chairs in issue, 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. The respondent submitted that the chairs that are made for commercial or institutional use are produced and marketed differently and are sold at a different kind of store. The respondent further argued that the goods in issue, even if they could be used in a commercial setting, are better suited for domestic purposes, because, as suggested by the evidence, they are made to withstand less rugged conditions than the chairs made for institutional or commercial settings.

The respondent further argued that the word “domestic”, found under tariff item No. 9401.71.10, should not be interpreted restrictively. To support his position, the respondent made reference to the Tribunal’s decisions in *Black & Decker Canada v. DMNRCE*,⁶ *Euro-Line Appliances v. DMNR*⁷ and *Costco Canada v. CCCRA*.⁸ The respondent submitted that the word “domestic” should be given a large interpretation to include goods that can be found outside the house, but the primary purpose of which is for 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 the schedule, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*⁹ and the Explanatory Notes.

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 under 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. 9401.71 as other upholstered seats with metal frames. The Tribunal agrees with the parties

4. *Supra* note 2, schedule.

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

6. (16 December 1992), AP-90-192 (CITT).

7. (31 January 1997), AP-95-230 (CITT).

8. (11 January 2001), AP-2000-015 (CITT) [hereinafter *Costco*].

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

in this respect. The competing tariff items in this appeal concern, therefore, whether the upholstered folding chairs fall within the meaning of the term “domestic purposes”.

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 tariff item No. 9401.71.10 should be given a broad enough interpretation to include products that are used primarily in a domestic setting. This is consistent with the Tribunal’s decision in *Costco*.

The Tribunal notes that, in the present case, the goods in issue, which are commonly known as folding chairs, are used in different settings and for different purposes. However, the Tribunal also notes that the primary purpose of a folding chair is to offer temporary seating, which is often done in circumstances outside the house. The chairs in issue are marketed as such.

The Tribunal also examined the inherent characteristics of the folding chairs in trying to determine whether the goods in issue are used for purposes other than domestic purposes. The Tribunal is of the view that there is no evidence to demonstrate that the goods in issue, because of their physical characteristics, their design and their price, are primarily made to be used in a domestic setting. To the contrary, the Tribunal notes that the evidence shows that the chairs in issue closely resemble the chairs advertised in the catalogues as commercial furniture. It is also clear from the evidence that the folding chairs in issue may be of a lesser quality, but are in fact used in non-domestic sites, such as hotels and conference centres, for different events. The Tribunal also accepts the evidence that the two chairs filed as exhibits may be at opposite ends of the range of folding chairs available in the marketplace, but are both, nonetheless, not used primarily in a domestic setting. The goods in issue are, therefore, according to the Tribunal, used for purposes other than domestic purposes.

Finally, the Tribunal is of the view that price is merely an indicator of quality but is not determinative of whether the goods in issue are used primarily for domestic purposes.

Given the above, the Tribunal is of the view that the goods in issue, which can be described as upholstered folding chairs, must be considered as other upholstered seats with metal frames for purposes other than domestic purposes.

Accordingly, the Tribunal finds that the goods in issue should be classified, on the basis of Rule 1 of the General Rules, under tariff item No. 9401.71.90. Consequently, the appeal is allowed.

Richard Lafontaine
Richard Lafontaine
Presiding Member