



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2003-020

Alliance Ro-Na Home Inc.

v.

Commissioner of the Canada
Customs and Revenue Agency

*Decision and Reasons issued
Tuesday, May 25, 2004*

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IN THE MATTER OF an appeal heard on February 23, 2004, under subsection 67(1) 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 May 6 and June 6, 2003, with respect to requests for re-determination under subsection 60(4) 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.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Susanne Grimes
Susanne Grimes
Acting Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: February 23, 2004

Tribunal Member: Pierre Gosselin, Presiding Member

Counsel for the Tribunal: Eric Wildhaber

Clerk of the Tribunal: Margaret Fisher

Appearances: Michael A. Sherbo, for the appellant
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REASONS FOR DECISION

1. This is an appeal under section 67 of the *Customs Act*¹ from decisions of the Commissioner of the Canada Customs and Revenue Agency (CCRA), dated May 6 and June 6, 2003, pursuant to subsection 60(4) of the *Act*. The issue in this appeal is whether various portable chairs² are properly classified under tariff item No. 9401.79.10 of the schedule to the *Customs Tariff*³ as other seats with metal frames, other than upholstered, for domestic purposes, as determined by the CCRA, or should be classified under tariff item No. 9401.79.90 as other seats with metal frames, other than upholstered, other than for domestic purposes, as claimed by Alliance Ro-Na Home Inc. (Ro-Na).

2. The sole issue in this appeal is whether the goods in issue are “[f]or domestic purposes”.

3. The relevant portions of the *Customs Tariff* are as follows:

-Other seats with metal frames:

9401.79	--Other
9401.79.10	---For domestic purposes
9401.79.90	---Other

4. Physical exhibits that were representative of the goods in issue were filed with the Tribunal. They are collapsible or folding chairs of polyester fabric and tubular metal that are sold with a carrying bag with drawstring. From the open position, the chairs fold up for insertion into the carrying bag; this can be likened to an umbrella that is closed and inserted into its sleeve.

EVIDENCE

5. Mr. Jean-Pierre Choquette, Category Manager, Seasonal Products, at Ro-Na, testified on behalf of Ro-Na. He buys seasonal products, including the goods in issue, and is responsible for merchandising them. In his view, they are primarily used for temporary seating at any number of outdoor events or activities, such as fireworks displays, sporting events (soccer games, baseball games, etc.) or for activities such as camping. These chairs are very popular because they fold up for easy transportation and compact storage in the carrying bag with which they are sold. A label affixed to the chairs gives a warning as to weight and use restrictions; it also indicates the following: “THIS ARTICLE DOES NOT MEET CALIFORNIA BUREAU OF HOME FURNISHINGS FLAMMABILITY REQUIREMENTS TECHNICAL BULLETIN 117. CARE SHOULD BE EXERCISED NEAR OPEN FLAME OR WITH BURNING CIGARETTES.” Mr. Choquette testified that the goods in issue are not suitable for extended indoor use, in a home or in an institutional environment (e.g. office, school, commercial building).

6. Ms. Jill Biesenthal, Team Leader, Technical Services, Furniture Division, Commercial and Consumer Products Directorate, at the Department of Public Works and Government Services testified on behalf of the CCRA. Among other tasks, her job entails the purchase of furniture for the Government of Canada. She testified that the goods in issue were unsuitable for use in an institutional environment.

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

2. For the precise identification of the goods in issue, see *Transcript of Public Hearing*, 23 February 2004 at 4.

3. S.C. 1997, c. 36.

ARGUMENT

7. Ro-Na argued that, for the goods in issue to be classifiable under tariff item No. 9401.79.10 (“[f]or domestic purposes”), they must primarily be used for domestic purposes. In this regard, the Tribunal should be guided by its decisions in *Alliance Ro-Na Home Inc. v. Commissioner of the Canada Customs and Revenue Agency*⁴ and *Costco Canada Inc. v. Commissioner of the Canada Customs and Revenue Agency*.⁵ Ro-Na argued that the evidence on file in this appeal fails to demonstrate that the goods in issue have any particular primary use whatsoever, let alone one that could conclusively be shown to be “for domestic purposes”. Accordingly, Ro-Na submitted that the goods in issue are classifiable under tariff item No. 9401.79.90.

8. The CCRA contended that the goods in issue are indeed “[f]or domestic purposes” because they are “used by members of a household” or “the average citizen” (“monsieur et madame Tout-le-monde”) around the home or while camping (a “home away from home” it is argued) or at outdoor events where members of a household are in attendance.

9. In support of their respective positions, the parties referred to the text of heading Nos.05.07, 63.06, 73.21, 85.09, 85.16 and 94.01, and/or to their respective section, chapter or heading notes, or to the corresponding *Explanatory Notes to the Harmonized Commodity Description and Coding System*.⁶

DECISION

10. The Tribunal reiterates the position that it adopted in *Costco*⁷ and *Ro-Na*⁸ to the effect that “domestic purposes” should not be interpreted narrowly. However, the test remains that, to qualify as such, the goods must be primarily for domestic or household use.

11. Ro-Na has discharged its burden of proving that the goods in issue are *other than* for domestic purposes. The evidence on file has persuaded the Tribunal that they are used for temporary seating almost anywhere, but primarily outdoors, be it on a patio or deck, at a sporting event at a fireworks display, or while engaging in activities such as camping. The Tribunal notes that the goods in issue are unsuitable for an institutional environment.

12. The Tribunal remarks that the CCRA and its witness made no attempt to adduce evidence, other than dictionary definitions of “camping”, to demonstrate that the goods in issue are “for domestic purposes”, which is essentially a question of fact. Accordingly, the evidence provided by Ro-Na was not met with convincing opposing testimony, if any.

4. (17 September 2002), AP-2001-065 (CITT) [*Ro-Na*].

5. (11 January 2001), AP-2000-015 (CITT) [*Costco*].

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

7. In *Costco*, the issue was similar to the one in this proceeding: whether the goods were for domestic purposes. The Tribunal interpreted the terms “for domestic purposes” as going beyond “the four walls of a house” with the proviso that their primary purpose should be for use by individuals in a domestic setting. The test was therefore established as to whether the physical characteristics, design and price of the goods indicated use in a domestic setting. The goods were compared to park benches.

8. The Tribunal views *Ro-Na* as a simple reaffirmation of *Costco*. The Tribunal found that the folding chairs in *Ro-Na* were chairs *other than* for domestic purposes because their primary purpose, based on their construction, design characteristics and marketing, was to offer temporary seating. The goods were compared to similar folding chairs used in a commercial setting; despite some differences in robustness, the Tribunal decided that they were *other than* for domestic purposes.

13. The Tribunal finds that, unlike seats that are truly intended for domestic purposes, the goods in issue appear to be destined for anything but domestic purposes. In this regard, the Tribunal accepts that the warning to the effect that they do not meet the technical flammability standard is one of several indications that they are not recommended, at the very least, for extended in-home use, particularly if the user is a smoker. More specifically, however, in the Tribunal's view, the evidence shows that the fundamental design and characteristics of the goods in issue (portability, compactness, light weight, durability) allow their user to tote them around just about anywhere, as an easy and convenient alternative to standing. Essentially, the Tribunal cannot help but remark that the evidence on file and common knowledge would have it that the circumstances where these chairs could come in handy appear almost endless (those places described above, queuing for concert tickets, watching the ocean from a beach, etc.).

14. What appears clear, nevertheless, is that they are not designed for sitting for any extended period of time, anywhere, but especially not in the home, the very place that is, without a doubt and by definition, a domestic setting. There is no indication that the goods in issue offer the same look, comfort, stability, ergonomics, fire safety, etc., that one would expect of a domestic seat. Also, of the potential multitude of places and settings where the goods in issue could be used, most are beyond the strict confines of the home and its direct surroundings. In this respect, there is no evidence on file that the goods in issue could even be considered typical patio or lawn furniture, those places beyond the "four walls of a house" that have previously qualified as being "domestic".⁹

15. Furthermore, the various excerpts from the tariff nomenclature (other than the two competing tariff item numbers at issue), as well as the heading notes, chapter notes and *Explanatory Notes* cited by the parties, were of little use to the Tribunal. First and foremost, none of them related directly to the heading at issue. Most importantly, however, led by the CCRA, the parties relied upon them in discussing whether camping was a domestic activity. The Tribunal is not convinced that camping is a domestic activity, and even if it were, because of the other various non-domestic settings in which the goods in issue are put to use, the Tribunal is of the view that it would be impossible to label them as being for domestic purposes simply because one of its many uses might happen to be for occasional sitting in or around the home or while camping.

16. For the purposes of subheading No. 9401.79, seats are either for domestic purposes or they are not. The test therefore remains: is their primary use domestic? Because the Tribunal does not find that their primary use is in and around the house or even, by extension, for camping, whether that activity is domestic is largely inconsequential to the classification of the goods in issue. The Tribunal recognizes that the tariff nomenclature distinguishes domestic goods from camping goods on several occasions, yet the subheading at issue simply contains two competing tariff items, one for seats that are "[f]or domestic purposes", one for "[o]ther". Where might "camping seats" be classified, if there was such a thing? That question goes beyond the confines of this appeal, since it has not been established that the goods in issue are "camping seats". Indeed, both parties agree that the goods in issue can be used in a variety of settings, including but not limited to camping.

17. Finally, the Tribunal fails to see how the attendance of an event by members of a household turns an event into a domestic activity. Having failed to adduce convincing evidence to that effect, if any, the CCRA contended that, by way of the goods in issue being used by "members of a household" at a purportedly family event, such as a soccer game, they would thereby become domestic goods. The Tribunal rejects this point of view as being unfounded in both fact and law.

9. See *Costco and Ro-Na*.

18. Overall, the Tribunal does not accept the very elastic notion of “domestic setting” that the CCRA would have it adopt.

19. Accordingly, because it has been established that the goods in issue are other than for domestic purposes and that little or no convincing evidence to the contrary was brought forward, they should be classified under tariff item No. 9401.79.90.

20. For the foregoing reasons, the appeal is allowed.

Pierre Gosselin
Pierre Gosselin
Presiding Member