



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2003-025

Canmade Furniture Products Inc.

v.

Commissioner of the Canada
Customs and Revenue Agency

*Decision and reasons issued
Wednesday, June 2, 2004*

TABLE OF CONTENTS

DECISION OF THE TRIBUNALi
REASONS FOR DECISION1
 EVIDENCE.....1
 ARGUMENT3
 DECISION4

IN THE MATTER OF an appeal heard on January 14, 2004, 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 May 1, 2003, with respect to a request for re-determination under subsection 60(1) of the *Customs Act*.

BETWEEN

CANMADE FURNITURE PRODUCTS INC.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Ellen Fry
Ellen Fry
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

James A. Ogilvy
James A. Ogilvy
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 14, 2004

Tribunal Members: Ellen Fry, Presiding Member
Zdenek Kvarda, Member
James A. Ogilvy, Member

Counsel for the Tribunal: John Dodsworth

Clerk of the Tribunal: Margaret Fisher

Appearances: Jeffrey Goernert and Marco Ouellet, for the appellant
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REASONS FOR DECISION

1. The goods in issue are metal drawer slides, which function to permit drawers to slide smoothly into and out of furniture.
2. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8302.42.00 of the schedule to the *Customs Tariff*¹ as other base metal mountings, fittings and similar articles suitable for furniture, as determined by the Commissioner of the Canada Customs and Revenue Agency, or should be classified under tariff item No. 9403.90.00 as other furniture and parts thereof or in heading No. 84.82 as ball or roller bearings, as argued by Canmade Furniture Products Inc. (Canmade).
3. The relevant tariff nomenclature is as follows:

83.02	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat-racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal.
8302.42.00	--Other, suitable for furniture
84.82	Ball or roller bearings.
8482.50.00	-Other cylindrical roller bearings
8482.80.90	---Other
94.03	Other furniture and parts thereof.
9403.90.00	-Parts

EVIDENCE

4. Canmade's first witness was Mr. Mauro Folco, Vice-President of Canmade, an importer of furniture parts and fittings. Mr. Folco testified that the goods in issue are metal drawer slides, which function to permit drawers to slide smoothly into and out of furniture.
5. Two types of slides are involved in this appeal.² The first type is a bottom or side-mounted slide with two runners, one attached to each side of a drawer with a corresponding runner attached to the inner side of the furniture wall. Nylon wheels run along the two runners and facilitate the sliding motion of the drawer. The second type was described by Mr. Folco as a "quatro" slide, which consists of three interlocked tracks that incorporate rollers. He indicated that each track slides into the other, achieving a "telescopic" sliding effect when the drawer slides. Mr. Folco testified that the two types differ because they are used with drawers of different weights.
6. Mr. Folco testified that, in the industry, a fitting is considered to be a part that is used to connect, assemble or hold in place two pieces of wood. A mounting would be very similar to a fitting, but differs because its location on a piece of furniture can be adjusted or moved, whereas the location of a fitting is

1. S.C. 1997, c. 36.

2. The appeal with respect to a third type of slide, referred to as "box slide", (referred to in Canmade's brief, para. 13b); Exhibit A-2) was settled prior to the hearing.

fixed. He testified that the term “accessory” is used in the industry to refer to something with a decorative use.³

7. Mr. Folco testified that the goods in issue are specifically designed for furniture, but not for a specific type of furniture. He testified that the goods in issue enhance the functioning of the drawer by allowing the drawers to slide with less friction than would occur with wooden slides. He testified that, although the drawer can function without the slides, it functions better and more safely with them. In contrast, a hinge is essential to the functioning of a door because it will not open without a hinge. He testified that, in the industry, the goods in issue are considered to be parts because they are specific to this function—they have no other purpose. Mr. Folco also testified that, in the industry, the goods in issue are considered to be bearings, although customers would not refer to them as such.⁴ In addition, he testified that the terms “accessory fittings” and “accessory mountings” are not commonly used in the industry.⁵

8. Dr. Stavros Tavoularis, a professor of mechanical engineering, also testified on behalf of Canmade. The Tribunal accepted Dr. Tavoularis as an expert in mechanical engineering.

9. Dr. Tavoularis testified that a bearing is “[a] machine part that supports another part which rotates, slides, or oscillates in or on it.”⁶ Bearings are used to transfer a load from one surface to another and to reduce friction. Bearings can be found in a variety of forms; for example, they can run in tracks or, in the case of ball bearings, incorporate spherical elements. Roller bearings are bearings that incorporate a cylindrical element. Needle roller bearings have longer cylindrical elements that look like needles. Dr. Tavoularis testified that sliding bearings are formed when two materials are in sliding contact with each other. “Sliding bearings” refer to both linear bearings, which consist of a flat surface and a slider, and radial bearings, which consist of a shaft and a sleeve within which the shaft rotates. In the case of roller bearings, a load is transferred from one object to another through elements in rolling contact with the objects.

10. In Dr. Tavoularis’s opinion, the goods in issue are all bearings and, more specifically, roller bearings. Dr. Tavoularis testified that there are parts of the goods in issue that do not relate to the bearing function, but that he considered the goods in issue to be bearings since the bearing function is a “major function” of the slide.

11. The Canada Border Services Agency (CBSA) (formerly the Canada Customs and Revenue Agency) called as a witness Mr. John Burns, who has been a cabinetmaker for approximately 12 years. Mr. Burns testified that the sliding function of the goods in issue could be achieved without the mechanical slides being attached to the drawers. He testified that all the functions of the goods in issue could be replicated with wood and that the goods in issue add nothing to the structural integrity of the drawer. He described the goods in issue as an option, not a necessity. Mr. Burns testified that, in his view, the goods in issue could be called either fittings or mountings, but that he had never heard anyone in the industry refer to the goods in issue as “accessory mountings” or “accessory fittings”.

12. Mr. Burns also testified that he has never heard anyone in the industry refer to the goods in issue as bearings; in his experience, they are known as drawer slides or runners.

3. *Transcript of Public Hearing*, 14 January 2004 at 39.

4. *Ibid.* at 15.

5. *Ibid.* at 38.

6. *Ibid.* at 53.

ARGUMENT

13. Canmade argued that, if the goods in issue are determined to be parts of furniture, then they should be classified under tariff item No. 9403.90.00. In the alternative, Canmade argued, if the goods can be considered to be bearings, they should be classified as bearings under tariff item No. 8482.80.90. If the goods cannot be classified under one or the other of these tariff items by virtue of Rule 1 of the *General Rules for the Interpretation of the Harmonized System*,⁷ Canmade argued, the classification should be determined pursuant to Rule 3, in accordance with the essential character of the goods.

14. In arguing that the goods in issue should be classified in heading No. 94.03, Canmade referred to Mr. Folco's testimony and the physical exhibits, which, it argued, demonstrate that the goods in issue are integral to the design and essential to the drawer's functioning and are therefore parts.

15. Canmade argued that the goods in issue could also be classified in heading No. 84.82 as roller bearings. It referred to dictionary definitions that define a "bearing" as a part of a machine that supports another part, which rotates or slides. It also referred to the testimony of Dr. Tavoularis who stated that the goods in issue constituted bearings and noted that the CBSA had not tendered any evidence that the goods in issue were not bearings. Canmade noted that Note 1(f) of Section XV specifically excludes bearings of heading No. 84.32 from that section, which includes heading No. 83.02.

16. Canmade argued that the goods in issue are not mountings or fittings as described in heading No. 83.02. In Canmade's view, the evidence indicates that the words "mounting" and "fitting" mean more or less the same thing: they are things that are used to connect, assemble or hold two pieces of wood together.

17. Canmade referred to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁸ to heading No. 83.02, which state: "This heading covers general purpose classes of base metal accessory fittings and mountings". It argued that the word "accessory", as used in the *Explanatory Notes*, means "aiding or contributing in a secondary way: . . . assisting as a subordinate".⁹ It argued that the goods in issue are not secondary or optional; hence, they are not "accessories" and are not covered by that heading.

18. Furthermore, Canmade argued, the *Explanatory Notes* to heading No. 83.02 state that the heading does not extend to goods forming an essential part of the structure of the article. It argued that Mr. Folco's testimony, as well as an examination of the physical exhibits, supported the view that the goods in issue are essential to the structure of the host drawer. Consequently, the goods form an integral and essential part of cabinet furniture and are excluded from heading No. 83.02 by virtue of the *Explanatory Notes* to that heading.

19. Canmade argued that, since the goods in issue should be classified in heading No. 94.02, they are excluded from classification in heading No. 83.02 by virtue of Note 1(k) of the *Explanatory Notes* to Section XVI, which states: "This Section does not cover . . . Articles of Chapter 82 or 83".

20. The CBSA argued that the goods in issue should be classified according to Rule 1 of the *General Rules* under tariff item No. 8302.42.00 as other base metal mountings, fittings and similar articles suitable for furniture. It argued that the goods in issue constitute fittings because they are fitted or mounted

7. *Supra* note 1, schedule [*General Rules*].

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

9. See Canmade's brief, para. 38.

to the outer part of the drawers. They are suitable for furniture because they are sold as fittings or mountings for drawers for a variety of furniture articles.

21. The *Explanatory Notes* to heading No. 83.02 confirm that the goods in issue are properly classified in that heading, according to the CBSA. The *Explanatory Notes* to that heading state, in part: “This heading covers general purpose classes of base metal accessory fittings and mountings”. The goods are of “general use”, given that they may be mounted on a variety of furniture articles and are specifically identified in the *Explanatory Notes* to heading No. 83.02.

22. The CBSA argued that the word “accessory”, as used in the *Explanatory Notes* to heading No. 83.02, does not mean “secondary to the function”, as it would if the word had been included in the heading itself. The word “accessory”, as it appears in the *Explanatory Notes*, simply means that it is added to an item. It should be read in light of the examples in the tariff item, which include things such as door hinges, pegs and castors. None of these items would qualify as “accessories” if that word were to be given the meaning of “secondary to the function”. The CBSA argued that the goods in issue do not provide the drawer its essential character, nor are they essential to the structure of the drawer and, hence, they are accessories to the drawer.

23. The CBSA argued that the goods in issue do not form an essential part of furniture and, therefore, are not excluded by the wording of the *Explanatory Notes* to heading No. 83.02. It referred to Mr. Folco’s testimony that the goods in issue enhance, but are not necessary for, the functioning of the drawers or furniture. Instead, the CBSA argued that it is possible to make fully functional furniture with drawers without the metal slides and that the structural integrity of the drawers and furniture is the same with or without the goods in issue.

24. The CBSA argued that the goods in issue cannot be classified in heading No. 94.03. Since they are not committed by design for use with any specific furniture and are classified in heading No. 83.02, they are “parts of general use”. Since Note 1(d) of Chapter 94 excludes “[p]arts of general use” from that chapter, the goods cannot be classified in heading No. 94.03.

25. Further, the CBSA argued that the goods in issue cannot be classified in heading No. 84.82, as proposed by Canmade in the alternative. The goods are not bearings, according to the CBSA, given that the tracks into which the rollers are fixed comprise the essential character of the goods in issue. The rollers only allow for a smoother movement along the tracks.

DECISION

26. The goods in issue are two types of metal drawer slides, which function to permit drawers to slide smoothly into and out of furniture: the first type is a bottom or side-mounted slide with two runners, and the second type is referred to as a “quatro” slide. The Tribunal was informed at the hearing that the classification of a third type of slide, referred to as “box slides”, is no longer in dispute.

27. The Tribunal is of the view that the goods in issue are properly classified under tariff item No. 8302.42.00 as base metal mountings, fittings and similar articles suitable for furniture, according to Rule 1 of the *General Rules*, as determined by the CBSA.

28. The Tribunal is of the view that the goods in issue are made of “base metals”, as that expression is defined in Note 3 to Section XV,¹⁰ and that they are suitable for furniture, given that they are used on drawers. These points were not at issue.

29. The Tribunal also is of the view that the goods in issue are “mountings, fittings and similar articles”.

30. The CBSA submitted that the *Collins Cobuild English Dictionary for Advanced Learners* defines “fitting”, in part, as follows:

one of the smaller parts on the outside of a piece of equipment or furniture, for example a handle or a tap.¹¹

31. The *Academic Press Dictionary of Science and Technology* defines “fitting”, in part, as follows:

any of various devices used to join or fit two parts together, such as pipes, engine components, or machinery.¹²

32. Neither Canmade nor the CBSA provided a dictionary definition of the word “mounting”. The *Oxford English Dictionary* defines “mounting”, in part, as follows:

Something that serves as a mount, support, or setting to anything.¹³

33. Similarly, *The Canadian Oxford Dictionary* defines the verb “mount”, in part, as follows:

set in or attach to a backing, setting, or other support.¹⁴

34. When interpreting these terms, it is also appropriate to have regard to how the industry uses them.¹⁵ In this regard, the Tribunal notes that Mr. Folco, a hardware importer, testified that the goods in issue constitute parts, not fittings or mountings. On the other hand, Mr. Burns, a furniture maker, testified that the goods in issue could be called either fittings or mountings, but that, if asked to choose one or the other, he would consider them to be mountings. Thus, the testimony was inconclusive concerning industry usage.

35. The Tribunal considered the fact that the tariff items under heading No. 83.02 and the *Explanatory Notes* to that heading specifically name examples of items such as hinges, automotive window opening mechanisms, fittings for sliding doors or windows of shops, garages, etc., shelf adjusters for bookcases, etc., and automatic door closers, that are to be classified in that heading. In the Tribunal’s opinion, the goods in issue perform functions that are similar to those performed by the items in these examples.¹⁶

36. Accordingly, the Tribunal is of the view that the goods in issue are base metal mountings or fittings.

10. Note 3 to Section XV states, in part: “Throughout the Nomenclature, the expression ‘base metals’ means: iron and steel, copper, nickel, aluminum, lead, zinc, tin, tungsten (wolfram)”. According to the evidence, these slides are made of steel.

11. Third ed., s.v. “fitting”.

12. 1991, s.v. “fitting”.

13. Second ed., s.v. “mounting”.

14. 1998, s.v. “mount”.

15. *Consbec Inc. v. M.N.R.* (24 February 2004), AP-2002-094 (CITT). Although this appeal did not involve tariff classification, the Tribunal believes that the principle also applies in tariff classification cases.

16. The wording of the relevant provisions of the *Customs Tariff* and the *Explanatory Notes* that applied to the importations under appeal did not change from the time of the first importation.

37. The Tribunal also considered the introductory paragraph of the *Explanatory Notes* for heading No. 83.02, which provides as follows:

This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles). The heading **does not**, however, **extend** to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.

38. The *Explanatory Notes* to heading No. 83.02 appear to indicate that the heading is intended to cover “fittings and mountings” that are “accessory”.

39. Canmade submitted that the term “accessory”, as used in the *Explanatory Notes* to heading No. 83.02, means “aiding or contributing in a secondary way: . . . assisting as a subordinate”. The CBSA argued that the word accessory “simply means that they are added to the item”,¹⁷ not secondary to the function, and noted that “accessory” appears only in the *Explanatory Notes*, not in the terms of the heading itself, and should be read in light of the examples in the tariff item. The testimony indicates that the terms “accessory fittings” and “accessory mountings” are not commonly used in the industry and that, therefore, industry usage is not of assistance in interpreting these terms.

40. The Tribunal considers that the goods in issue are supplementary to the drawers to an extent similar to the examples from the tariff items and *Explanatory Notes* referred to above. Accordingly, the Tribunal considers that the goods in issue are “accessory” to furniture, as contemplated in the *Explanatory Notes*.

41. The *Explanatory Notes* to heading No. 83.02 also state that the “[g]oods . . . remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles). The heading **does not**, however, **extend** to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.”

42. The Tribunal does not consider that the goods in issue are “an essential part of the structure” of drawers or cabinets containing drawers. The testimony of the witnesses for both Canmade and the CBSA indicates that cabinets with drawers can function without the goods in issue and that their absence would not compromise the structural integrity of the drawers or the cabinets.

43. In light of the foregoing, the Tribunal considers that the goods in issue are properly classified in heading No. 83.02.

44. Given that the goods in issue are properly classified under tariff item No. 8302.42.00, the Tribunal is of the view that they should not be classified in heading No. 94.03. The *Explanatory Notes* to Chapter 94 state the following:

This Chapter only covers parts . . . of the goods of headings 94.01 to 94.03 and 94.05, when identifiable by their shape or other specific features as parts designed solely or principally for an article of those headings. They are classified in this Chapter when not more specifically covered elsewhere.

45. The Tribunal considers that the description “[b]ase metal mountings, fittings and similar articles suitable for furniture” in heading No. 83.02 is a more specific description of the goods in issue than the description “parts [of furniture]” in heading No. 94.03. Since the goods in issue are more specifically

17. *Transcript of Public Argument*, 14 January 2004 at 62.

described in heading No. 83.02, the *Explanatory Notes* to Chapter 94 indicate that they cannot be classified in Chapter 94.

46. With respect to Canmade's submission that the goods in issue could be classified in heading No. 84.82 as bearings, the Tribunal accepts the evidence of Canmade's expert witness who testified that, while the bearings did not constitute the entire goods in issue, the goods could be called bearings based on their "major function". The Tribunal accepts that, from a technical perspective, the slides can be considered to be bearings, in that they bear the weight of the drawer and both provide for and govern the possible movements of the drawer.

47. However, the Tribunal also considered whether the goods in issue are referred to as bearings in the industry. The two witnesses who work in the furniture industry gave conflicting testimony on this issue. Mr. Folco testified that, within the industry, the goods in issue are considered to be bearings, but Mr. Burns indicated that he has never referred to drawer slides as bearings or heard them referred to as bearings. The Tribunal notes that, despite Mr. Folco's testimony, the goods in issue are not identified as "bearings" on Canmade's Web site. On balance, the Tribunal concludes that, in industry usage, these drawer slides are not generally referred to as bearings and that, given the type of goods, the industry usage should be applied in preference to the technical definition in this instance.

48. The Tribunal also considered the *Explanatory Notes* to Chapter 84. The relevant part of the *Explanatory Notes* to Chapter 84, in effect at the time of both importations, state as follows: "this Chapter covers all machinery and mechanical appliances, and parts thereof, not more specifically covered by **Chapter 85**".

49. It could be argued that any device with moving parts is, in some sense, machinery, a mechanical appliance or a part thereof. However, in the Tribunal's view, it would be inappropriate to classify the goods in issue in Chapter 84 when it is clear that a more specific classification exists in Chapter 83. In the Tribunal's view, based on these explanatory notes, the goods in issue are not the type of goods that were intended to be covered by Chapter 84.

50. In light of the foregoing, the Tribunal does not consider that it would be correct to classify the goods in issue in heading No. 84.82.

51. Consequently, the goods are properly classified in heading No. 83.02, and the appeal is dismissed.

Ellen Fry
Ellen Fry
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

James A. Ogilvy
James A. Ogilvy
Member