



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2005-028

Renelle Furniture Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Friday, March 23, 2007*

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IN THE MATTER OF an appeal heard on August 15 and 16, 2006, under subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the President of the Canada Border Services Agency, dated July 13, 2005, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

RENELLE FURNITURE INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Serge Fréchette
Serge Fréchette
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

James A. Ogilvy
James A. Ogilvy
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing: Vancouver, British Columbia
Dates of Hearing: August 15 and 16, 2006

Tribunal Members: Serge Fr chette, Presiding Member
Pierre Gosselin, Member
James A. Ogilvy, Member

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal under subsection 67(1) of the *Customs Act*¹ from decisions made on July 13, 2005, by the President of the Canada Border Services Agency (CBSA), under subsection 60(4) of the *Act*.
2. The issue in this appeal is whether unassembled metal futon frames for futon sofa beds and futon bunk beds (the goods in issue) should be classified in subheading Nos. 9401.90 and 9403.90 of the schedule to the *Customs Tariff*² as parts for seats and parts for other furniture, as claimed by Renelle Furniture Inc. (Renelle), or whether they are properly classified under tariff item Nos. 9401.40.00 and 9403.20.00 as seats, convertible into beds, and other metal furniture, as determined by the CBSA.
3. The goods in issue were imported between February 8 and October 25, 2002.
4. The relevant nomenclature from the *Customs Tariff* that was in effect when the goods in issue were imported reads as follows:

...	
94.01	Seats (other than those of heading 94.02), whether or not convertible into beds, and parts thereof.
...	
9401.40.00	-Seats other than garden seats or camping equipment, convertible into beds
...	
9401.90	-Parts
...	
9401.90.90	---Other
...	
94.03	Other furniture and parts thereof.
...	
9403.20.00	-Other metal furniture
...	
943.90.00	-Parts
...	

5. The relevant *Explanatory Notes to the Harmonized Commodity Description and Coding System*³ are as follows:

...

[Chapter 94]

For the purposes of this Chapter, the term “furniture” means:

- (A) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on

1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].
2. S.C. 1997, c. 36.
3. World Customs Organization, 4th ed., Brussels, 2007 [*Explanatory Notes*].

the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, laboratories, hospitals, dentists' surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be "movable" furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

(B) The following:

- (i) Cupboards, bookcases, other shelved furniture and unit furniture, designed to be hung, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles (books, crockery, kitchen utensils, glassware, linen, medicaments, toilet articles, radio or television receivers, ornaments, etc.) and separately presented elements of unit furniture.
- (ii) Seats or beds designed to be hung or to be fixed to the wall.

...

[Heading No. 94.01]

The heading also covers identifiable parts of chairs or other seats, such as backs, bottoms and arm-rests (whether or not upholstered with straw or cane, stuffed or sprung), and spiral springs assembled for seat upholstery.

...

6. Mr. Jerry Burch, President of Renelle, testified at the hearing. He explained that Renelle is a manufacturer of futons, futon frames, platform bed frames, futon covers, memory foam mattresses and latex mattresses. He testified that Renelle also imports both metal and hardwood frames. He explained that the goods in issue are imported unassembled. He also explained that Renelle's clients are all retailers that purchase some or all of their products from Renelle, i.e. some buy futon frames, some buy futon mattresses, some buy futon covers and some buy a combination of the three. Mr. Burch explained that futons are sold as separate components rather than as sets, depending on preferences such as style, colour, price, etc. He further stated that a futon sofa bed is not complete until a futon mattress is added to the futon frame. He stated that a futon frame has no function or use without a futon mattress.

7. The following witnesses, appearing before the Tribunal as a panel, also testified on behalf of Renelle: Mr. Geoff McLeary, President of McLeary's Bedroom Centre Ltd.; Ms. Valerie J. Semeniuk, owner of Kootenai Moon Furniture; Mr. John Rogers, owner of John's Bedroom Barn & Foam Warehouse; Ms. Wendy Foster, owner of Dreamscape Futons; and Mr. Bruce Sheppard, owner of MB&G Marketing. They testified that a futon sofa bed is not considered a complete product unless a futon mattress is added to a futon frame. They stated that a futon frame has no function or use without a futon mattress. They agreed that a futon frame is integral to the design of a futon sofa bed.

8. Mr. Don Gray, Sales Manager at Renelle, also testified at the hearing. Mr. Gray explained that every customer who buys a futon sofa bed must choose three things: a frame, a futon mattress and a futon mattress cover. He explained that the main difference between a futon sofa bed and a conventional bed with a mattress is that the former will not function without a futon frame, whereas the latter will perform its primary function without a platform or a support.

9. Mr. George Rothschild, a professor of cabinet making at Algonquin College, in Ottawa, Ontario, testified for the CBSA. Mr. Rothschild indicated that he considers a distinct piece of furniture to be something that has an applied finish and that can be marketed and sold separately. He also explained that a part would be something that, without the other pieces, does not constitute a whole.

ANALYSIS

10. For the purposes of this appeal, the Tribunal must follow section 10 of the *Customs Tariff*, which provides that the tariff classification of goods shall be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*⁴ and the *Canadian Rules*.⁵ Rule 1 of the *Canadian Rules* provides that “. . . the classification of goods in the tariff items of a subheading or of a heading . . .” shall be determined according to the *General Rules*. The *General Rules* comprise six rules structured in cascading form. If the classification of goods cannot be determined in accordance with Rule 1 of the *General Rules*, then regard must be had to Rule 2 of the *General Rules* and so on, until classification is completed.

11. In addition, the Tribunal is guided by section 11 of the *Customs Tariff*, which 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*⁶ and to the *Explanatory Notes*.

12. Rules 1, 2 (a) and 6 of the *General Rules* are as follows:

1. 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.
2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.
6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings 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.

13. The Tribunal notes that the parties agreed that the proper headings for the goods in issue are 94.01, for the futon sofa bed frames, and 94.03, for the futon bunk bed frames. Accordingly, the dispute between the parties arises at the subheading level only. Renelle claimed that the futon sofa bed frames are not, in and of themselves, seats, convertible into beds, and that the futon bunk bed frames are not other metal furniture, as classified by the CBSA, but should be classified in subheading No. 9401.90 as parts for seats and subheading No. 9403.90 as parts for other furniture.

4. *Supra* note 2, schedule [*General Rules*].

5. *Supra* note 2, schedule.

6. World Customs Organization, 2d ed., Brussels, 2003.

14. Renelle argued that futon sofa beds and futon bunk beds are not complete pieces of furniture until three components, namely, a futon frame, a futon mattress and a futon mattress cover, come together. It stressed that the goods in issue are imported in unassembled condition, without a futon mattress or a futon mattress cover, and that it is only at the retail level that the three components of a futon sofa bed or a futon bunk bed come together. In Renelle's submission, the goods in issue are merely frames, or simply parts of futon sofa beds or futon bunk beds, which require two other components—a futon mattress and a futon mattress cover—to be considered complete; they cannot function by themselves, either as a seat, as a bed or as a bunk bed. Conversely, Renelle submitted that a futon mattress by itself (i.e. without the goods in issue) cannot be adjusted to form a sofa.

15. The CBSA argued that the goods in issue have the essential character of furniture and that they should therefore be classified as such pursuant to Rule 2 (a) of the *General Rules*. In this regard, the CBSA pointed to the *Explanatory Notes* to Chapter 94 and heading No. 94.01 and submitted that the goods in issue are value-added products that are more than simple mattress supports because they are varnished or painted, have an aesthetic component and comprise a degree of industrial design (including arm rests, rounded edges, springs and hinges, stairs, etc.).

16. The Tribunal notes that, although unassembled, the goods in issue were imported in a finished state, i.e. not requiring further fabrication or finishing, with all the parts necessary for assembly into complete frames. The Tribunal also notes that the goods in issue were not imported with either futon mattresses or futon mattress covers and, therefore, cannot be said to form complete futon sofa beds or futon bunk beds.

17. The Tribunal recalls however that Rule 2 (a) of the *General Rules* extends the scope of the terms “[s]eats . . . , convertible into beds” of tariff item No. 9401.40.00 and “[o]ther metal furniture” of tariff item No. 9403.20.00 to include incomplete and unassembled seats, convertible into beds, and other metal furniture such that, if the goods in issue, in their incomplete and unassembled state, have the essential character of a complete or finished article, they are to be classified under tariff item Nos. 9401.40.00 and 9403.20.00.

18. The word “essential” is defined in the *Canadian Oxford Dictionary*⁷ as “. . . of or constituting the essence of a person or thing”⁸ The word “character” is defined as “. . . the collective qualities or characteristics . . . that distinguish a person or thing”⁹

19. In the Tribunal's view, in referring to an article as incomplete, Rule 2 (a) of the *General Rules* manifestly includes an article that may lack some components and that is therefore likely not fully operational. Renelle argued that the goods in issue are not furniture because they cannot be comfortably sat or lain on; in other words, they cannot be said to function as seats or beds because they are not imported with a futon mattress. The CBSA argued that that fact is irrelevant for classification purposes. The Tribunal agrees.

20. The Tribunal is not persuaded that the fact that the goods in issue cannot be comfortably sat or lain on is determinative of whether or not they may be classified, as the case may be, under tariff item No. 9401.40.00 as seats, convertible into beds (for the futon sofa beds) and under tariff item No. 9403.20.00 as other metal furniture (for the futon bunk beds). The goods as imported, albeit incomplete, are constituted of a finished frame that converts from a seat to a bed in the case of the sofa bed or from a seat with a stacked bed to a bunk bed. The frames have all the complexity, design and appearance of the complete goods. One

7. Second ed.

8. *Ibid.*, s.v. “essential”.

9. *Ibid.*, s.v. “character”.

need only glance at the goods in issue to immediately recognize them for what they are: futon sofa beds or futon bunk beds.

21. The essential character of the goods in issue is therefore that they convert from a seat to a bed or from a seat with a stacked bed to a bunk bed. In both cases, the element that is missing and that would make the goods in issue “complete” goods is a futon mattress and, perhaps, but to a lesser degree, a futon mattress cover. In the Tribunal’s opinion, the futon mattress is only necessary to render the sofa bed or the bunk bed fully functional. A futon mattress cover merely gives protection or an aesthetic component to the futon. The absence of a futon mattress, or of a futon mattress cover, at the time of importation, does not change the essential character of the frames as imported.

22. It should be stressed that, in order for an incomplete or unfinished article to be classified in the heading for the complete or finished article, it must be recognizable or identifiable as the complete or finished product. For example, if an automobile were imported without wheels, it could be classified in heading No. 87.03 for automobiles, because it is recognizable as the finished product. However, an automobile frame only (without motor, wheels, etc.) would be classified in heading No. 87.08 (parts and accessories of motor vehicles). The CBSA correctly referred to provisions contained in the *Explanatory Notes* to Chapters 86 and 87 to demonstrate how the principle of Rule 2 (a) of the *General Rules* is applied to automobiles or bicycles that would be missing their seats; such goods would still have the essential character of an automobile or a bicycle and would therefore be classified as such.

23. The *Explanatory Notes* to Chapter 86 read as follows:

...

Incomplete or unfinished vehicles are classified with the corresponding complete or finished vehicles, **provided** they have the essential character thereof. Such vehicles may include:

...

(2) Passenger coaches not fitted with seats.

...

24. The *Explanatory Notes* to Chapter 87 read as follows:

...

An incomplete or unfinished vehicle is classified as the corresponding complete or finished vehicle **provided** it has the essential character of the latter (see Interpretative Rule 2 (a)), as for example:

...

(c) A bicycle without a saddle and tyres.

...

25. Applying Rule 2 (a) of the *General Rules* to the facts of this appeal, the Tribunal is persuaded that the goods in issue are incomplete or unassembled sofa beds, as they have the essential character of seats, convertible into beds, and of other metal furniture. The evidence before the Tribunal is that the goods in issue, as imported, come in a box with all the parts required for the frame and merely require assembly, after delivery to the consumer.

DECISION

26. Accordingly, pursuant to Rule 2 (a) of the *General Rules*, the Tribunal finds that the goods in issue are properly classified under tariff item Nos. 9401.40.00 and 9403.20.00.

27. For the foregoing reasons, the appeal is dismissed.

Serge Fréchette
Serge Fréchette
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

James A. Ogilvy
James A. Ogilvy
Member