



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2006-033

Rona Corporation Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Friday, February 29, 2008*

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IN THE MATTER OF an appeal heard on September 25, 2007, 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 August 3, 2006, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

RONA CORPORATION INC.

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Ellen Fry
Ellen Fry
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: September 25, 2007

Tribunal Members: Pierre Gosselin, Presiding Member
Ellen Fry, Member
Meriel V. M. Bradford, Member

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Rona Corporation Inc. (Rona) under subsection 67(1) of the *Customs Act*¹ from decisions made on August 3, 2006, by the President of the Canada Border Services Agency (CBSA) under subsection 60(4).

2. The issue in this appeal is whether gallery gazebos with bug nets sold as Rona Mendoza Sunshades, Model No. 3811034 (the goods in issue), are properly classified under tariff item No. 6306.22.00 of the schedule to the *Customs Tariff*² as tents of synthetic fibres, as determined by the CBSA, or should be classified under tariff item No. 7308.90.90 as other structures (excluding prefabricated buildings of heading 94.06) and parts of structures of iron or steel, as claimed by Rona.

3. The goods in issue are sold at Rona retail stores. According to the evidence, the goods in issue are composed of a synthetic fabric roof, synthetic fabric bug-screen sides, a steel frame, which includes four corner posts, and steel rods, which support the textile roof. The frame comes with two planter holders, and the steel base is equipped with holes so that the gazebo can be secured to a deck or concrete pad. The goods in issue were imported and sold in an unassembled form.

4. The goods in issue were imported from Hong Kong on January 14 and February 14, 2005. The CBSA originally classified them under tariff item Nos. 6306.19.00 (for the first importation) and 6601.10.00 (for the second importation). Subsequently, the CBSA classified the goods in issue under tariff item No. 6306.22.00 pursuant to paragraph 59(1)(a) of the *Act*.

5. On June 28, 2005, Rona requested a further re-determination pursuant to subsection 60(1) of the *Act* and claimed that the goods in issue should be classified under tariff item No. 7308.90.90. On August 3, 2006, the CBSA denied Rona's request and issued two decisions (one for each import transaction) confirming the classification of the goods in issue under tariff item No. 6306.22.00.

6. On October 6, 2006, Rona appealed the decisions to the Tribunal.

7. The nomenclature of the *Customs Tariff* which, Rona submitted, should apply to the goods in issue reads as follows:

...

73.08 Structures (excluding prefabricated buildings of heading 94.06) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frame-works, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel.

...

7308.90 -Other

...

7308.90.90 ---Other

...

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

2. S.C. 1997, c. 36.

8. The nomenclature which the CBSA ruled applicable to the goods in issue reads as follows:

...

63.06 **Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods.**

...

-Tents:

...

6306.22.00 **--Of synthetic fibres**

ANALYSIS

9. For the purposes of this appeal, the Tribunal must follow sections 10 and 11 of the *Customs Tariff*. Section 10 provides that the classification of imported goods shall be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*³ and the *Canadian Rules*.⁴ Section 11 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*⁵ and to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*.⁶

10. The *General Rules* consist of six rules structured in cascading form. If the classification of goods cannot be determined in accordance with Rule 1, then regard must be had to Rule 2 and so on, until classification is completed.

11. Rules 1 through 5 of the *General Rules* apply to classification at the heading level. Rule 6 of the *General Rules* makes these rules also applicable to classification at the subheading level. Similarly, the *Canadian Rules* make Rules 1 through 5 of the *General Rules* applicable to classification at the tariff item level.

12. Rule 1 of the *General Rules* reads 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.

13. Rule 2 (a) of the *General Rules* refers to goods presented in an unassembled or disassembled condition and reads as follows:

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.

3. *Ibid.*, schedule [*General Rules*].

4. *Supra* note 2, schedule.

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

6. World Customs Organization, 3d ed., Brussels, 2002 [*Explanatory Notes*].

14. Rules 3 (a) and (b) of the *General Rules* read as follows:
3. When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to Rule 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

15. It is common ground between the parties that the goods in issue are imported unassembled. According to Rule 2 (a) of the *General Rules*, the Tribunal must therefore determine whether heading No. 63.06 or heading No. 73.08 applies to the goods in issue.

16. The CBSA argued that, based on Rule 1 of the *General Rules*, the goods in issue are properly classified under tariff item No. 6306.22.00 as tents of synthetic fibres because they are tent-like articles. Should the Tribunal determine that the goods in issue are *prima facie* classifiable under both heading Nos. 63.06 and 73.08, the CBSA submitted that, alternatively, based on Rule 3 (a), they are more specifically described by the terms of heading No. 63.06. In the further alternative, the CBSA submitted that, even if Rule 3 (b) were applicable in this appeal, the application of Rule 3 (b) would also support classification in heading No. 63.06, since the essential character of the goods is to provide shelter, and that it is the tent fabric, not the frame, that holds the textile and carries out the gazebo's primary role of protecting the users from the sun or bugs.

17. The Tribunal will first determine whether the goods in issue are *prima facie* classifiable in heading No. 63.06, heading No. 73.08 or both. If necessary, it will then address the CBSA's alternative arguments.

Heading No. 63.06

18. According to Rule 1 of the *General Rules*, classification shall be based on the terms of the heading and any relevant Section or Chapter Notes. In interpreting the terms of the headings, section 11 of the *Customs Tariff* directs the Tribunal to have regard to the *Explanatory Notes*.

19. Note 1 to Chapter 63 states that "Sub-Chapter I [which includes heading No. 63.06] applies only to made up articles, of any textile fabric."

20. Note 1 of the *Explanatory Notes* to Chapter 63 reads as follows:

...

The classification of articles in this sub-Chapter is not affected by the presence of minor trimmings or accessories of furskin, metal (including precious metal), leather, plastics, etc.

Where, however, the presence of these other materials constitutes **more than** mere trimming or accessories, the articles are classified in accordance with the relative Section or Chapter Notes (General Interpretative Rule 1), or in accordance with the other General Interpretative Rules as the case may be.

...

21. With regard to the term “tent”, the *Explanatory Notes* to heading No. 63.06 read as follows:

Tents are shelters made of lightweight to fairly heavy fabrics of man-made fibres, cotton or blended textile materials, whether or not coated, covered or laminated, or of canvas. They usually have a single or double roof and sides or walls (single or double), which permit the formation of an enclosure. The heading covers tents of various sizes and shapes, e.g., marquees and tents for military, camping (including backpack tents), circus, beach use. They are classified in this heading, whether or not they are presented complete with their tent poles, tent pegs, guy ropes or other accessories.

22. Rona submitted that the goods in issue are not “made up articles, of any textile fabric” because, according to the evidence, while the synthetic fabric roof is “made up” of textile, the value of the metal frame, which is obviously not an article “made up” of textile fabric, amounts to more than 50 percent of the total value of the goods in issue.⁷

23. Rona further argued that the goods in issue cannot be classified in heading No. 63.06 because they do not meet the definition of the term “tents” which is found in the *Explanatory Notes* or the dictionary definitions that the CBSA provided. Based on the *Explanatory Notes*, Rona submitted that heading No. 63.06 is designed to cover textile shelters with minor trimmings or accessories. In view of the fact that the goods in issue have a metal frame that represents more than 50 percent of their value and weighs approximately 50 kg, Rona argued that the non-textile component of the goods constitutes “more than mere trimming or accessories”. In this regard, Rona referred to the definition of the term “accessory” used by the Federal Court of Canada in *Canada (Deputy Minister of National Revenue) v. Dannyco Trading Ltd.*, namely, “an additional or extra thing”, “a small attachment or fitting”.⁸ In Rona’s view, since their metal component is more than “mere trimming or accessories”, the goods in issue are excluded from Chapter 63.

24. In addition, Rona noted that the *Explanatory Notes* to heading No. 63.06 state that tents are to be classified in this heading whether or not they are presented with poles, pegs, ropes and other accessories. Rona submitted that this wording does not cover the goods in issue, which have an elaborate metal structure and do not have poles, pegs or ropes. Rona also submitted that the assembly instructions do not refer to the goods in issue as tents, but rather as gazebos, and that they are not sold in the same retail channels as tents.

25. The CBSA classified the goods in issue in heading No. 63.06 as “tents” because, in its view, they meet the description of a tent found in the *Explanatory Notes* to heading No. 63.06, as well as dictionary and encyclopaedic definitions of the term “tent”. It submitted that the goods in issue possess many of the characteristics of a tent.

26. The CBSA argued that one must not equate the term “tent” with camping tents. The term has a much broader meaning and encompasses a wide range of shelters, such as circus and military tents that may have an extensive support structure and may be semi-permanent. Based on the examples of tents listed in the *Explanatory Notes*, the CBSA submitted that tents included in heading No. 63.06 may have different shapes and sizes, may or may not have sides or walls and, depending on their type, may be used for short or extended periods of time. In its view, a tent is basically a product that provides shelter. The goods in issue are tents, since they are essentially designed to provide shelter. According to the CBSA, this is evidenced by the fact that the goods in issue are purchased and used to protect the users from the sun and insects.⁹

7. *Transcript of Public Hearing*, 25 September 2007 at 24, 33-34.

8. 1997 CANLII 5002 (F.C.) at 3.

9. *Transcript of Public Hearing*, 25 September 2007 at 25, 32-33.

27. The CBSA also submitted that Note 1 of the *Explanatory Notes* to Chapter 63 does not automatically exclude goods from being covered by Chapter 63 if their non-textile components are more than mere trimmings or accessories. Rather, the note indicates that, in such a case, further reference to related Section or Chapter Notes or to the *General Rules* is required to properly classify the goods. The CBSA argued that, in this appeal, consideration of such other notes and rules further supports the classification of the goods in issue in heading No. 63.06.

28. The Tribunal does not accept the CBSA's submission that the goods in issue are "tents" within the meaning of heading No. 63.06. In the Tribunal's view, even if the term "tent" is broadly defined, it does not encompass the goods in issue. The goods are gazebos, which are commonly found in yards and gardens. The evidence on the record does not demonstrate that such goods are regarded or referred to as tents.

29. The mere fact that the goods in issue provide basic shelter from the sun and insects is not sufficient to conclude that they are tents. While the relevant *Explanatory Notes* provide that "tents are shelters", this does not mean that all "shelters", or goods that provide shelter, are tents. The *Explanatory Notes* and the definitions provided by the CBSA indicate that tents have other characteristics that the goods in issue do not possess.

30. In particular, according to the evidence, the goods in issue are composed of relatively heavy metal panels attached together to form four metal pillars that support a metal roof framework, which is composed of metal rods and covered by a synthetic fabric. Accordingly, they are not assembled with the type of elements referred to as tent accessories in the *Explanatory Notes* (i.e. "their tent poles, tent pegs, guy ropes").¹⁰ Also, the evidence indicates that assembling the goods in issue is a fairly complex operation that can take up to six hours and that it is recommended that a gazebo be set up in the desired location to avoid moving it after assembly.¹¹ This suggests that, unlike goods which are referred to as tents in common parlance, the goods in issue are not designed for relatively easy set-up and takedown and are not portable. When asked whether the goods in issue possessed the characteristics of a tent listed by the CBSA, the witness for Rona testified that the goods in issue and tents do not have a lot of common traits.¹²

31. Accordingly, the Tribunal finds that the goods in issue are not properly classified in heading No. 63.06.

Heading No. 73.08

32. Given that the Tribunal has determined that the goods in issue are not classifiable in heading No. 63.06, the issue becomes whether they are classifiable in heading No. 73.08, as submitted by Rona.

33. In relevant part, the *Explanatory Notes* to heading No. 73.08 read as follows:

This heading covers complete or incomplete metal structures, as well as parts of structures. For the purpose of this heading, these structures are characterised by the fact that once they are put in position, they generally remain in that position. They are usually made up from bars, rods, tubes, angles, shapes, sections, sheets, plates, wide flats including so-called universal plates, hoop, strip, forgings or castings, by riveting, bolting, welding, etc. Such structures sometimes incorporate products of other headings such as panels of woven wire or expanded metal of heading 73.14. . . .

10. *Transcript of Public Hearing*, 25 September 2007 at 30. Even if the *Explanatory Notes* do not provide an exhaustive list of possible tent accessories, they certainly refer to usual tent accessories.

11. *Transcript of Public Hearing*, 25 September 2007 at 17-18, 20.

12. *Ibid.* at 28-30. As discussed below, the Tribunal also notes that the CBSA admitted that, if there was no textile component (i.e. the roof was made up of plastic instead of textile), the goods would not be tents.

34. Rona argued that the goods in issue meet the criteria to be considered structures of steel covered by heading No. 73.08. It submitted that they are made up of steel bars, rods or sections that are assembled by bolting, which is listed in the *Explanatory Notes* as an example of how goods of heading No. 73.08 are assembled. Rona noted that the *Explanatory Notes* indicate that structures that are classifiable in heading No. 73.08 “generally” remain in the same position once they are put in that position. In Rona’s view, the use of the word “generally” as opposed to “always” or “permanently” means that goods that do not permanently remain in position may be classified in heading No. 73.08. Further, Rona noted that the evidence indicates that the goods in issue generally remain in the same position, since they are designed to be secured to a deck or concrete pad, are usually attached to the ground and are not moved once they are assembled.¹³

35. In addition, Rona submitted that, based on the *Explanatory Notes*, the fact that the goods in issue incorporate products of other headings (i.e. textile fabric) does not preclude them from being classified in heading No. 73.08.

36. The CBSA did not contest that the term “structure” should apply to the metal component of the goods in issue and agreed that, if the roof of the goods in issue were made up of metal or plastic, the goods in issue would not be tents and could not be classified in heading No. 63.06. However, it submitted that the goods described as “structures” by the terms of heading No. 73.08 do not resemble gazebos like the goods in issue and that heading No. 63.06 more specifically describes them.

37. The Tribunal is of the view that the goods in issue are “structures of steel” and, thus, should be classified in heading No. 73.08 pursuant to Rule 1 of the *General Rules*. The Tribunal notes that they are mainly made of steel parts and pieces¹⁴ and agrees with Rona that the goods in issue fit the description of the term “structures” found in the *Explanatory Notes*. Consistent with the *Explanatory Notes*, the goods in issue are made up of steel bars, rods or sections held together by bolts and clips. Moreover, once assembled, the goods in issue usually remain in the same position. On this issue, the witness confirmed that consumers generally leave the structure in place all year long and, depending on the location in Canada, typically only remove the top section and the bug net during winter.

38. In addition, the Tribunal observes that the term “structure” is a general term which encompasses goods such as gazebos. The *Canadian Oxford Dictionary* defines a gazebo as a “small structure in a garden, park, etc., usually open or with screens on all sides to give a wide view.”¹⁵ Thus, according to this dictionary definition, gazebos are structures.

39. In summary, the Tribunal finds that classification of the goods in issue at the heading level should be done through the use of Rule 1 of the *General Rules*. The Tribunal determines that the goods in issue are structures and not tents. Therefore, they are not classifiable in heading No. 63.06, and the appropriate classification is heading No. 73.08. The gazebos in issue are metal structures, assembled primarily of metal panels and bars, bolted or clipped together, generally designed to be permanent (heavy steel members bolted together) and free-standing on the ground. According to the dictionary and in common parlance, a gazebo is a structure, with open or screen sides, designed for decorative or sunshade purposes.

40. Pursuant to Rule 6 of the *General Rules* and the *Canadian Rules*, the goods in issue should be classified under tariff item No. 7308.90.90.

13. *Transcript of Public Hearing*, 25 September 2007 at 14-16.

14. As noted above, according to the evidence, the value of the metal frame amounts to more than 50 percent of the value of the goods in issue.

15. *Canadian Oxford Dictionary*, 2d ed., s.v. “gazebo”.

DECISION

41. The Tribunal finds that the goods in issue should be classified under tariff item No. 7308.90.90 as other structures (excluding prefabricated buildings of heading 94.06) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frame-works, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel. Consequently, the appeal is allowed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Ellen Fry
Ellen Fry
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member