



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2008-015

J.I.T. Industrial Supply &
Distribution Ltd.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, February 17, 2010*

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DECISION 11

IN THE MATTER OF an appeal heard on September 22, 2009, pursuant to 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 28, 2008, with respect to requests for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

J.I.T. INDUSTRIAL SUPPLY & DISTRIBUTION LTD.

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Ellen Fry
Ellen Fry
Presiding Member

Diane Vincent
Diane Vincent
Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: September 22, 2009

Tribunal Members: Ellen Fry, Presiding Member
Diane Vincent, Member
Pasquale Michael Saroli, Member

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by J.I.T. Industrial Supply & Distribution Ltd. (JIT) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ from decisions of the President of the Canada Border Services Agency (CBSA), dated July 28, 2008, with respect to requests for re-determination pursuant to subsection 60(4).

2. The issue in this appeal is whether 10 models of drawer slides (the goods in issue), used in the manufacture of metal filing cabinets and imported by JIT, are properly classified under tariff item No. 8302.42.00 of the schedule to the *Customs Tariff*² as other base metal mountings, fittings and similar articles suitable for furniture, as determined by the CBSA, or should be classified under tariff item No. 9403.90.00 as other furniture and parts thereof or, in the alternative, under tariff item No. 8482.80.90 as linear ball bearings, as submitted by JIT.

PROCEDURAL HISTORY

3. JIT imported the goods in issue on behalf of Teknion Canada Limited (Teknion), under various import transactions in 2004, under tariff item No. 9403.90.00 as parts of other furniture.

4. On September 29, 2005, the CBSA made a re-determination pursuant to subsection 59(2) of the *Act*, classifying the goods in issue under tariff item No. 8302.42.00 as other base metal mountings, fittings and similar articles suitable for furniture.

5. On December 22, 2005, pursuant to subsection 60(1) of the *Act*, JIT appealed the CBSA's re-determination.

6. On June 8, 2006, the CBSA issued a preliminary decision that the goods in issue were properly classified under tariff item No. 8302.42.00 and indicated that it would hold JIT's appeal in abeyance until other appeals with the Tribunal on drawer slides were decided.

7. On July 28, 2008, pursuant to subsection 60(4) of the *Act*, the CBSA confirmed its decision classifying the goods in issue under tariff item No. 8302.42.00.

8. On October 24, 2008, pursuant to subsection 67(1) of the *Act*, JIT appealed the CBSA's decision to the Tribunal.

9. On September 16, 2009, JIT filed, pursuant to rule 24 of the *Canadian International Trade Tribunal Rules*,³ a notice of objection and motion to strike the CBSA's additional documents, authorities, exhibits and witness list filed with the Tribunal on September 11, 2009. The CBSA filed a response on September 18, 2009.

10. The Tribunal held a public hearing in Ottawa, Ontario, on September 22, 2009.

11. At the hearing, the Tribunal denied JIT's motion and gave its reasons for this decision.⁴

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

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

3. S.O.R./91-499.

4. *Transcript of Public Hearing*, 22 September 2009, at 4-7.

12. Mr. Kevin Bly, President of JIT, and Mr. Gene Varaschin, Director of Operations, Fileco (a division of Teknion), testified on behalf of JIT. Dr. Mohammed Ali Dokainish, Professor Emeritus, Department of Mechanical Engineering, McMaster University, and Mr. Brian P. Burns, Associate Professor, School of Industrial Design, Carleton University, also testified on behalf of JIT. Dr. Dokainish was qualified as an expert witness in mechanical engineering and, more particularly, machine dynamics, while Mr. Burns was qualified as an expert witness in industrial design and, more particularly, ergonomic work station design and manufacture, product testing and evaluation, and environmentally sustainable design.

13. Mr. Robert Bell, Professor, Mechanical and Aerospace Engineering, Carleton University, and Mr. George Rothschild, Professor, Cabinetmaking and Furniture Technician Program, Building Trades Faculty, Algonquin College, testified on behalf of the CBSA. Mr. Bell was qualified as an expert witness in mechanical engineering and the teaching of design, including the use of ball and roller bearings. Mr. Rothschild was qualified as an expert in the construction and design of cabinets and furniture made of wood and composite materials, specifically with respect to the use of drawer slides, hardware, fittings and other similar items in cabinet and furniture design.

GOODS IN ISSUE

14. The goods in issue are 10 models of linear ball-bearing drawer slides. They are custom-designed drawer slides (suspension arms) of various lengths used exclusively in the manufacture of metal filing cabinets for attaching the drawers to allow them to slide in and out. The slide members are made of hardened cold-rolled steel with mounting screw holes and incorporate carburized steel ball bearings and a lubricant. Each drawer slide basically consists of parts that slide one within the other. They are side-mounted, where one runner is attached to the outside of the drawer side and the corresponding runner is attached to the inner side of the cabinet wall.⁵

15. Each model is distinguishable by size and strength and whether it is installed on the right or left side of the finished filing cabinet.⁶ Mr. Varaschin testified that each model of slide has a specific application in a specific filing cabinet.⁷

16. The following physical exhibits, representing some models of the goods in issue, were submitted by JIT:

| | |
|--------------|---------------------------------------|
| Exhibit A-01 | PPSLIDE2001N—3/4 Extension Slide |
| Exhibit A-02 | PPSLIDE2601N—Full Extension Slide |
| Exhibit A-03 | PESLIDE1215—Full Extension Slide |
| Exhibit A-04 | JPSLIDE20R/L06—Full Extension Slide |
| Exhibit A-05 | JPSLIDE16R/L06—Full Extension Slide |
| Exhibit A-06 | PPSLIDE1501—3/4 Extension Slide |
| Exhibit A-07 | PESLIDE1224—Full Extension Slide |
| Exhibit A-08 | PESLIDE1230—Full Extension Slide |
| Exhibit A-09 | JPSLIDE26R/L06—Full Extension Slide |
| Exhibit A-10 | PLSLIDE1602—18-in. Lateral File Slide |

5. Appellant's brief at 3. This description, which is not disputed by JIT, is taken from the CBSA's preliminary decision of June 8, 2006.

6. Appellant's brief at 2; respondent's brief at 2.

7. *Transcript of Public Hearing*, 22 September 2009, at 27-28.

ANALYSIS

Law

17. In appeals pursuant to section 67 of the *Act* concerning tariff classification matters, the Tribunal determines the proper tariff classification of the goods in issue in accordance with prescribed interpretative rules.

18. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System developed by the World Customs Organization.⁸ The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items. Sections and chapters may include notes concerning their interpretation. Sections 10 and 11 of the *Customs Tariff* prescribe the approach that the Tribunal must follow when interpreting the schedule in order to arrive at the proper tariff classification of goods.

19. Subsection 10(1) of the *Customs Tariff* provides as follows: “. . . the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System^[9] and the Canadian Rules^[10] set out in the schedule.”

20. The *General Rules* comprise six rules structured in sequence so that, if the classification of the 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

21. Section 11 of the *Customs Tariff* provides as follows: “In interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System^[12] and the Explanatory Notes to the Harmonized Commodity Description and Coding System,^[13] published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time.” Accordingly, unlike chapter and section notes, the *Explanatory Notes* are not binding on the Tribunal in its classification of imported goods. However, the Federal Court of Appeal has stated that these notes should be respected, unless there is a sound reason to do otherwise, as they serve as an interpretative guide to tariff classification in Canada.¹⁴

22. Section 13 of the *Official Languages Act*¹⁵ provides that the English and French versions of any act of Parliament are equally authoritative.

8. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.

9. S.C. 1997, c. 36, schedule [*General Rules*].

10. S.C. 1997, c. 36, schedule.

11. Rules 1 through 5 of the *General Rules* apply to classification at the heading level (i.e. to four digits). Under Rule 6 of the *General Rules*, Rules 1 through 5 are applicable to classification at the subheading level (i.e. to six digits). Similarly, the *Canadian Rules* make Rules 1 through 5 of the *General Rules* applicable to classification at the tariff item level (i.e. to eight digits).

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

13. World Customs Organization, 4th ed., Brussels, 2007 [*Explanatory Notes*].

14. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII), paras. 13, 17.

15. R.S.C. 1985 (4th Supp.), c. 31.

23. Classification therefore begins with Rule 1 of the *General Rules*, which reads as follows:

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.

Thus, the Tribunal must first determine whether the goods in issue can be classified according to the terms of the headings and any relevant Section or Chapter Notes in the *Customs Tariff*.

Tariff Classification Issues

24. As indicated above, the Tribunal must determine if the goods in issue are classifiable in heading No. 83.02 as base metal mountings, fittings and similar articles, in heading No. 84.82 as ball or roller bearings or in heading No. 94.03 as parts of other furniture.

Are the goods in issue classifiable in heading No. 83.02 as base metal mountings, fittings and similar articles?

25. The relevant provisions of the *Customs Tariff* provide as follows:

Section XV

BASE METALS AND ARTICLES OF BASE METAL

...

Chapter 83

MISCELLANEOUS ARTICLES OF BASE METAL

...

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.

26. The *Explanatory Notes* to heading No. 83.02 state 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.

The heading covers:

...

(E) **Mountings, fittings and similar articles suitable for furniture**

This group includes:

- (1) Protective studs (with one or more points) for legs of furniture, etc.; metal decorative fittings; shelf adjusters for book-cases, etc.; fittings for cupboards, bedsteads, etc.; keyhole plates.

[Emphasis added]

27. In other words, heading No. 83.02 covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc., but does not extend to goods used on furniture that form an essential part of the structure of the article of furniture. In the present appeal, both parties agreed that the goods in issue are made of base metal and are used in furniture, and that they facilitate the in and out movement of the drawer.¹⁶ The Tribunal agrees that the evidence so indicates. However, the parties did not agree on whether the goods in issue are an essential part of the structure of the filing cabinets and whether the goods in issue are “general mountings and fittings”.

28. The CBSA submitted that, despite their support function, the goods in issue are not an “essential part of the structure”. For this reason, the CBSA was of the view that the goods in issue are accurately described and classified in heading No. 83.02 pursuant to Rule 1 of the *General Rules*.¹⁷

29. JIT argued that the goods in issue are not general mountings and fittings. JIT submitted that the goods in issue are specifically designed for and essential to the structural functionality of the filing cabinets and, consequently, are classifiable in heading No. 94.03 as parts of other furniture, namely, metal filing cabinets.

30. In order to determine whether the goods in issue are classifiable in heading No. 83.02, the Tribunal will consider first whether the goods in issue are essential to the structure of the filing cabinet. In order to do so, the Tribunal will first look at the meaning of the word “structure” and then at the concept of “essentiality” in the context of the structure of metal filing cabinets.

31. The *Canadian Oxford Dictionary* defines “structure” as *inter alia* “. . . the way in which a building etc. is constructed . . . a set of interconnecting parts of any complex thing; a framework . . .”¹⁸ *Le Petit Larousse illustré* defines “structure” as *inter alia* the “. . . [c]onstitution, disposition et assemblage des éléments qui forment l’ossature d’un bâtiment, d’une carrosserie, d’un fuselage, etc. . . .”¹⁹ (composition, arrangement and assembly of the elements that form the framework of a building, of the body of a vehicle, of an aircraft, etc.). Thus, heading No. 83.02 does not cover goods used in furniture that form an essential part of the construction or framework of the furniture.

32. JIT made reference to *Canmade Furniture Products Inc. v. Commissioner of the Canada Customs and Revenue Agency*,²⁰ where the Tribunal noted that the determination of whether an item is accessory or essential to the structure of an article has to be made in relation to the host article. JIT emphasized the fact that the filing cabinet was a dynamic-structured article, its structure being dependent on its ability to fulfil its intended function. On the other hand, the CBSA argued that the drawer slide is an accessory, not an “essential part” of the structure of a filing cabinet, as the structure of a filing cabinet is still the structure of a filing cabinet even if it does not have base metal drawer slides.²¹

33. In the Tribunal’s opinion, the structure of an article is based on its intended functional use. Therefore, essentiality as to structure includes essentiality as to the intended function of the article.

16. Appellant’s brief, para. 13; respondent’s brief, para. 2.

17. Respondent’s brief, paras. 2, 44.

18. Second ed., s.v. “structure”.

19. 2004, s.v. “structure”.

20. (2 June 2004), AP-2003-025 (CITT) [*Canmade*].

21. Respondent’s brief, paras. 26-30.

34. In this regard, there is ample evidence before the Tribunal to indicate that the goods in issue are essential parts of the structural framework of filing cabinets, considering the crucial role that they play in the functionality of the cabinets.

35. Mr. Varaschin explained to the Tribunal how each of the goods in issue is an integral part of filing cabinets, both relating to the case (or supporting structure) and relating to the drawer containing the load. He testified that each one of the goods in issue contributes to the dynamics of filing in terms of drawer extension, load transfer, file accessibility, drawer closure and anti-rebounding.²²

36. In explaining why the goods in issue do not work in other filing cabinets, or why other slides found in hardware stores would not be interchangeable with the goods in issue, Mr. Varaschin pointed to several features that highlight the specificity of the goods in issue.

37. These attributes of the goods in issue include a safety feature referred to as “interlock” that prevents more than one drawer in a cabinet from opening at a given time.²³ There is also an “anti-deflection” feature that provides for the smooth opening and closing of the individual drawers or, in technical terms, for a cantilevered load when a drawer is pulled out.²⁴

38. In addition, the goods in issue are affixed to the cabinet in a way to counter deflection from side to side; this was described by Mr. Varaschin as one of the critical features that make the slides unique. The goods in issue also have to allow for the full extension of the drawer and sustain weights of up to 200 lbs with repeated use.²⁵ Another important feature of the goods in issue is the anti-rebounding feature, which ensures that, when a drawer is closed, it stays in that position and is prevented from opening.²⁶

39. As to the essentiality of the goods in issue in allowing the filing cabinet to achieve its dynamic purpose, Mr. Burns testified that “. . . the drawer slide is the only dynamic piece. . . . [T]he cabinet doesn’t move. It’s static. The drawer, relative to anything else, doesn’t move. . . . [T]he only thing that moves is the slide, and that means that other things move relative to it.”²⁷

40. Mr. Rothschild testified that he considered mechanical slides “necessary” for filing cabinets for a number of reasons, including their load-bearing capacity and the ease with which the drawers can be moved within the cabinet. He indicated that the final selection of slides depends on the specific attributes required for the cabinet, such as multiple drawers requiring interlocking slides.²⁸

41. Similarly, Dr. Dokainish testified that linear drawer slides are an integral part of a filing cabinet. The design and width of the slide increases the load-bearing capacity of the goods in issue. He stressed the importance of proper slides in the design of a filing cabinet. In response to a question posed by the Tribunal, he testified that there was a correlation between the size of the drawer, the weight that it will bear and the width of the particular slide that is used.²⁹

22. *Transcript of Public Hearing*, 22 September 2009, at 36.

23. *Ibid.* at 26.

24. *Ibid.* at 105.

25. *Ibid.* at 24, 28, 29, 30, 36, 42, 48, 63, 72, 85, 105, 106, 110, 111.

26. *Ibid.* at 47.

27. *Ibid.* at 202.

28. *Ibid.* at 286.

29. *Ibid.* at 149, 151, 152, 156.

42. Therefore, the Tribunal is of the opinion that the goods in issue are essential to the structure of the filing cabinet and, accordingly, in light of the *Explanatory Notes* to heading No. 83.02, are not classifiable in this heading.

Are the goods in issue classifiable in heading No. 84.82 as ball or roller bearings?

43. The relevant provisions of the *Customs Tariff* provide as follows:

Section XVI

**MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT;
PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION
IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND
ACCESSORIES OF SUCH ARTICLES**

...

Chapter 84

**NUCLEAR REACTORS, BOILERS, MACHINERY AND MECHANICAL APPLIANCES;
PARTS THEREOF**

...

84.82 Ball or roller bearings.

44. The *Explanatory Notes* to Chapter 84 provide as follows:

GENERAL

...

(B) GENERAL ARRANGEMENT OF THE CHAPTER

...

(6) Headings 84.81 to 84.84 cover certain general-purpose goods suitable for use as machinery parts or as parts of goods of other Chapters.

...

84.82 - Ball or roller bearings.

...

This heading covers all ball, roller or needle roller type bearings. They are used in place of smooth metal bearings and enable friction to be considerably reduced. They are generally fitted between the bearing housing and the shaft or axle, and may be designed to give radial support (radial bearings) or to resist thrust (thrust bearings). Certain bearings may be designed for both radial and thrust support.

Normally, bearings consist of two concentric rings (races) enclosing the balls or rollers, and a cage which keeps them in place and ensures that their spacing remains constant.

The bearings classified in this heading include:

(A) **Ball bearings**, with single or double rows of balls. This group also includes **slide mechanisms with bearing balls**, for example:

...

(2) The restricted-travel type, of steel, comprising a grooved cylinder, a ball cage and a housing.

...

Owing to the high pressure to which they are exposed, bearings are normally of steel (especially chromium steel), though some for particular uses are of bronze, copper or plastics.

45. JIT submitted that the goods in issue could be classified under tariff item No. 8482.80.90 because they are used as bearings by design and function to reduce friction under heavy load and to allow repeated movement in one direction and back.³⁰

46. The CBSA submitted that although the drawer slides contain ball bearings, they are not, in and of themselves, ball bearings. The CBSA submitted that the goods in issue are also excluded from heading No. 84.82 because they are not machinery or mechanical appliances, or machine parts, but are rather parts of general use.³¹

47. The Tribunal will consider first whether the goods in issue are ball bearings within the meaning of heading No. 84.82.

48. Dr. Dokainish testified that a bearing is the whole mechanism and not just steel balls:

It is a common mistake to refer to the identical balls (or rolling elements) as the ball-bearing itself. In fact, the ball-bearing is composed of the entire unit as a whole. Taken together, the unit acts to transfer a load from one surface to another smoothly by reducing friction.³²

49. As indicated above, the *Explanatory Notes* to heading No. 84.82 provide the following:

The bearings classified in this heading include:

- (A) **Ball bearings**, with single or double rows of balls. This group also includes **slide mechanisms with bearing balls**

50. In this regard, Mr. Bell specifically confirmed that the goods in issue are slide mechanisms with two rows of ball bearings.³³

51. The Tribunal accepts the testimony of Dr. Dokainish and Mr. Bell in this regard and, accordingly, concludes that the goods in issue are ball bearings within the meaning of heading No. 84.82. However, in order to determine whether the goods in issue are classifiable in heading No. 84.82, the Tribunal must also consider whether the goods are “general-purpose goods” as required by the *Explanatory Notes* to that heading.

52. In this regard, the evidence indicates that the goods in issue are not intended for use in cabinets generally, but rather were intensively engineered for use in metal filing cabinets designed to carry heavy loads, with each set of slides committed by design to a specific model of filing cabinet.

53. Mr. Rothschild examined the goods in issue and found them to be machined to much tighter tolerances and much higher quality than the multi-purpose products that are found in catalogues of some hardware distributors.³⁴

54. In addition, Mr. Varaschin testified that the goods in issue are not available in hardware stores, do not work in other filing cabinets and are specific in terms of design, load characteristics and features, and that each is etched with a part number corresponding to a particular filing cabinet.

30. Appellant’s brief at 28.

31. Respondent’s brief at 16; Tribunal Exhibit AP-2008-015-15B, para. 18.

32. Tribunal Exhibit AP-2008-015-15B, para. 18.

33. *Transcript of Public Hearing*, 22 September 2009, at 41, 51.

34. *Ibid.* at 249, 272.

55. Accordingly, the Tribunal does not consider the goods in issue to be general-purpose goods. Consequently, they are not classifiable in heading No. 84.82.

Are the goods in issue classifiable in heading No. 94.03 as parts of other furniture?

56. The relevant portions of the *Customs Tariff* provide as follows:

Chapter 94

FURNITURE . . .

. . .

94.03 Other furniture and parts thereof.

. . .

9403.90.00 -Parts

-----Frames, other than builders' fittings, of a kind used in offices and for domestic purposes.

57. The notes to Chapter 94 that are relevant to heading No. 94.03 read as follows:

Notes.

1. This Chapter does not cover:

. . .

(d) Parts of general use as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39), or safes of heading 83.03.

58. Similarly, the *Explanatory Notes* to Chapter 94 are relevant to heading No. 94.03 and read as follows:

GENERAL

This Chapter covers, **subject** to the exclusions listed in the Explanatory Notes to this Chapter:

(1) All furniture and parts thereof (headings 94.01 to 94.03).

. . .

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 the floor or ground, and which are used, mainly with a utilitarian purpose, to equip . . . offices . . .

. . .

PARTS

This Chapter only covers parts, whether or not in the rough, 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.

59. The *Explanatory Notes* to heading No. 94.03 state the following:

94.03 - Other furniture and parts thereof.

This heading covers furniture and parts thereof, **not covered** by the previous headings. It includes furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing-desks, escritorios, book-cases, and other shelved furniture, etc.), and also furniture for special uses.

The heading includes furniture for:

...

(2) **Offices**, such as: clothes lockers, filing cabinets, filing trolleys, card index files, etc.

60. In other words, heading No. 94.03 covers furniture and parts thereof that are not covered by previous headings. In order for the goods in issue to be classifiable in heading No. 94.03, (1) they must be identified by their shape or other features as parts designed solely or principally for an article of heading No. 94.03, and (2) they must not be more specifically covered elsewhere.

61. JIT submitted that the drawer slides should be classified under tariff item No. 9403.90.00 because they are identifiable by their shape and specific features as parts designed solely or principally for articles falling in heading No. 94.03. JIT further submitted that the goods in issue were not more specifically covered by another heading.

62. The CBSA submitted that the goods in issue are general-purpose parts that are more specifically covered by heading No. 83.02 as base metal mountings, fittings and similar articles suitable for furniture and, therefore, cannot be classified in heading No. 94.03.

63. Dealing with the first condition, the Tribunal is of the opinion that the goods in issue are designed solely for an article of heading No. 94.03, i.e. a filing cabinet. As discussed above, the evidence clearly demonstrates that the goods in issue were intensively engineered for use in metal filing cabinets designed to carry heavy loads and were not used for general purposes.³⁵

64. JIT argued that, unlike the situation in *Canmade*, where the goods were to be used with a variety of furniture items, the goods in issue are committed by design for use with a specific type of filing cabinet. The Tribunal concurs and considers that the evidence shows that the goods in issue are clearly distinguishable from the goods in *Canmade*.

65. Concerning the second condition, the Tribunal is of the view that the goods in issue are not more specifically covered elsewhere in the tariff nomenclature, given its conclusion that they are not covered by heading No. 83.02 or heading No. 84.82.

66. Therefore, the Tribunal finds that the goods in issue are classifiable in heading No. 94.03.

CONCLUSION

67. Based on the foregoing, the Tribunal considers that the goods in issue should be classified under tariff item No. 9403.90.00 as parts of other furniture.

35. *Ibid.* at 27-28, 36, 51-52, 63-64, 74; Appellant's brief, Tabs 3, 3H, 4, 5, 6.

DECISION

68. The appeal is allowed.

Ellen Fry
Ellen Fry
Presiding Member

Diane Vincent
Diane Vincent
Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member