

Ottawa, Wednesday, February 14, 1996

Appeal No. AP-94-357

IN THE MATTER OF an appeal heard on August 22, 1995,
under section 67 of the *Customs Act*, R.S.C. 1985, c. 1
(2nd Supp.);

AND IN THE MATTER OF decisions of the Deputy Minister of
National Revenue dated January 26, 1995, with respect to requests
for re-determination under section 63 of the *Customs Act*.

BETWEEN

KRUEGER INTERNATIONAL CANADA INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Raynald Guay
Raynald Guay
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-94-357

KRUEGER INTERNATIONAL CANADA INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

The appellant manufactures and imports office furniture, furniture systems and movable partitions. The goods in issue, SystemsWall panels, are unitized panel systems which are movable. The goods in issue also contain conduits for cabling (e.g. electrical) and allow for the insertion of door frames or glass panels. The issue in this appeal is whether the "SystemsWall panels" imported by the appellant are properly classified under tariff item No. 7308.90.90 as "other steel structures," as determined by the respondent, or should be classified under tariff item No. 9403.20.00 as "other metal furniture," as claimed by the appellant.

HELD: *The appeal is allowed. The Tribunal is of the view that the goods in issue may be best described as a type of wall and, as "walls" are not specifically provided for in Schedule I to the Customs Tariff, they must be classified in the heading that best provides for them. Although the goods in issue may not seem to be what may usually be considered furniture, the Tribunal finds that they satisfy all the requirements of the definition of "furniture" found in the Explanatory Notes. Furthermore, the Tribunal takes particular note that "prefabricated buildings," something that the Tribunal would have thought to be a clear example of "structures," are specifically excluded from heading No. 73.08 and are included in Chapter 94.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: August 22, 1995
Date of Decision: February 14, 1996*

*Tribunal Members: Raynald Guay, Presiding Member
Arthur B. Trudeau, Member
Desmond Hallissey, Member*

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Anne Jamieson

*Appearances: Michael Sherbo, for the appellant
Stéphane Lilkoff, for the respondent*

Appeal No. AP-94-357

KRUEGER INTERNATIONAL CANADA INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: RAYNALD GUAY, Presiding Member
ARTHUR B. TRUDEAU, Member
DESMOND HALLISSEY, Member

REASONS FOR DECISION

This is an appeal pursuant to subsection 67(1) of the *Customs Act*¹ (the Act) from decisions of the Deputy Minister of National Revenue dated January 26, 1995.

The appellant manufactures and imports office furniture, furniture systems and movable partitions. The goods in issue, SystemsWall panels, are unitized panel systems which are movable. The goods in issue also contain conduits for cabling (e.g. electrical) and allow for the insertion of door frames or glass panels.

The goods in issue were imported in a number of transactions occurring in 1991. The appellant filed a request for reclassification under tariff item No. 9403.20.00 of Schedule I to the *Customs Tariff*.² This request was rejected. The appellant subsequently filed a further request for re-determination and, by decision dated January 26, 1995, the respondent maintained the classification of the goods in issue under tariff item No. 7308.90.90 on the basis that they are not “furniture,” as they do not equip an office or room, but rather make the office or room. Further, the respondent noted that the goods in issue are not movable, since they fit into a track which is mounted on the ceiling.

The issue in this appeal is whether the “SystemsWall panels” imported by the appellant are properly classified under tariff item No. 7308.90.90 as “other steel structures,” as determined by the respondent, or should be classified under tariff item No. 9403.20.00 as “other metal furniture,” as claimed by the appellant.

The relevant tariff nomenclature in Schedule I to the *Customs Tariff* reads as follows:

73.08 *Structures (excluding prefabricated buildings of heading No. 94.06) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, 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*

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. R.S.C. 1985, c. 41 (3rd Supp.).

7308.90.90 ---Other
94.03 Other furniture and parts thereof.
9403.20.00 -Other metal furniture

The appellant's representative called one witness, Mr. Herbert Franz, Project Manager with Krueger International Canada Inc. Mr. Franz has worked for the appellant for approximately 15 years. He is responsible for managing a project from the receipt of an order through to the design and installation of the products purchased from the appellant. Mr. Franz described the goods in issue as movable unitized panel systems which are installed in buildings to create offices or subdivide space. The goods in issue are movable in the sense that they can be relocated from one area to another on a floor or from one floor or one building to another without the loss of any materials. Further, the individual panels are "demountable" in the sense that the panel face or shell can be taken off the frame of an individual panel without having to dismantle the whole panel.

The system is designed so that it will not destroy any existing structure and is attached to the ceiling by means of a ceiling track or channel which holds the panels at the top and is held to the ceiling by means of clips. Thus, when dismounted, the ceiling is not damaged. In a similar vein, the panels rest on the floor and are prevented from slipping by means of carpet grippers or screws which are in the floor channel. Therefore, when a panel is removed, the only sign that a wall was there is an indentation in the carpet. The goods in issue are sold as alternatives to conventional drywall or stud demountable systems and allow purchasers the flexibility of moving offices without damage to existing structures, construction debris, etc.

During cross-examination, Mr. Franz explained that the appellant does not directly provide installation services, but rather contracts these services out to furniture installers or installation companies which are trained by the appellant in the installation of its particular products. Mr. Franz identified the appellant's installation and service manuals, which were entered into evidence, and stated that it takes a trained person approximately 30 minutes to install a linear foot of the goods in issue. He estimated that an average installation was approximately 500 linear feet and, thus, it would take about 250 person-hours in total to install a system of that size.

Mr. Franz described the goods in issue as being made of a steel frame upon which is placed a panel shell. With respect to the ceiling track, the witness indicated that, although the panels can stand by themselves, a ceiling track is used when the products being installed are of ceiling height. He also discussed the manner in which electrical cabling and outlets are handled in these products. Mr. Franz agreed that, once installed, the goods in issue create a certain privacy for the person working within the area defined by the goods in issue and make that area somewhat soundproof.

In response to questions from the Tribunal, Mr. Franz indicated that, for greater stability, it was preferable if the ceiling channel was fixed to the T-bar in a suspended ceiling. He also explained that the goods in issue are not hung from a ceiling nor do they support a ceiling. The witness stated that, in addition to being used to create offices, the goods in issue are used to create storage areas and corridors and that, in effect, they have the same function as a wall. With respect to questions about the length of time that clients retain the configuration of their initial installation of the goods in issue, Mr. Franz stated that an average client changes approximately 10 to 15 percent of its floor layout each year and, over a 10-year period, is likely to reconfigure an entire floor once or twice.

In argument, the appellant's representative initially dealt with why, in his submission, the goods in issue could not be classified in heading No. 73.08. He suggested that the relevant wording in heading No. 73.08 is the phrase "[s]tructures ... and parts of structures" and offered the following definition of "structure":

*something ... made of parts fitted or joined together // the essential supporting portion of this.*³

The representative also argued that the Explanatory Notes to the Harmonized Commodity Description and Coding System⁴ (the Explanatory Notes) to heading No. 73.08 suggest that one characteristic of a structure is that, once placed, it generally remains where it has been placed or, as he stated later, a structure has a "permanency" to it. The goods in issue do not have such "permanency," as they are designed and sold with the intent of allowing the purchaser the flexibility of moving them. The goods in issue also do not "support" anything in the building in which they are installed. Rather, they simply support themselves. The representative suggested that the goods in issue should be considered to be essentially the same as other partition systems, except that they go to the ceiling rather than stopping somewhere before the ceiling. He also noted that "partitions" are specifically found at the 10-digit or statistical level under tariff item No. 9403.20.00 in the most recent version of Schedule I to the *Customs Tariff*. The representative acknowledged that this level of breakdown is not legally relevant for classification purposes.

The appellant's representative submitted that the goods in issue are more appropriately classified in heading No. 94.03 because they meet the definition of "furniture" found in the Explanatory Notes to Chapter 94. First, the goods in issue are "movable" articles because they can be and are moved to a different location once they have been installed. The representative acknowledged that the goods in issue had to be dismantled to be moved, but also noted that this was no different from moving large modular furniture. The representative noted that goods may be considered to be movable even if designed for bolting to the floor, e.g. chairs on a ship. He then discussed the requirement in the definition that articles have the essential characteristic of being constructed for placing on the floor. He submitted that the goods in issue satisfy this requirement because that is exactly how they are designed and actually function. Third, the goods in issue are goods used for a utilitarian purpose, namely, equipping offices. The representative argued that Mr. Franz's testimony indicated at least three ways in which this requirement is satisfied: the goods in issue are practical for creating office space, they enclose an area, thus providing privacy, and they have a utilitarian purpose.

With respect to the respondent's position that the goods in issue will not stand unless attached to a ceiling, the appellant's representative argued that this was incorrect because the evidence is that the goods in issue stand on their own and, while they may be attached to a ceiling, the reason for this is so that they will not sway and to give added rigidity. Further, the representative submitted that, while the Explanatory Notes may preclude something hanging from a ceiling from being considered furniture, they do not preclude a piece of furniture from being attached to a ceiling. Finally, the representative submitted that, in the event that the Tribunal considered both headings under consideration to be of equal merit, then, under Rule 3(c) of the General Rules for the Interpretation of the Harmonized System⁵ (the General Rules), the goods in issue should be classified in heading No. 94.03.

3. The New Lexicon Webster's Encyclopedic Dictionary of the English Language, Canadian ed. (New York: Lexicon Publications, 1988) at 983.

4. Customs Co-operation Council, 1st ed., Brussels, 1986.

5. *Supra*, note 2, Schedule I.

Counsel for the respondent first reviewed what he submitted were the important facts in this case. These included the fact that the panels or partitions have an internal structure or frame made of steel and have different components. Also, although the goods in issue are movable, the process of installing or moving them is complex, with many steps which require specific training, and is time-consuming, as is the cabling or wiring that may be done in conjunction with the use of the goods in issue. Further, the name of the products, "SystemsWall," describes the goods in issue as they are, namely, that they are walls, a point reiterated by the witness when he stated that they have the same function as a fixed wall.

Counsel for the respondent submitted that the goods in issue fit both the description of goods classified in heading No. 73.08 and the description of "structure" in the Explanatory Notes to the heading, as well as the dictionary definition which states, in part, that a structure is "something ... made of parts fitted or joined together." In addition, he submitted that they satisfy that part of the definition of "structure" that states that it is "the essential supporting portion of this (e.g. the framework of steel girders supporting a building)."⁶

With respect to the arguments of the appellant's representative, counsel for the respondent first submitted that there is no "permanency" requirement in respect of goods classified in heading No. 73.08, as the Explanatory Notes state only that such goods "generally" remain in the position in which they are put. Second, counsel submitted that the goods in issue are not "movable" in the common understanding of this word, as they cannot simply be picked up and moved (i.e. removed or displaced). Rather, to be moved, the panel must be taken down, the track then removed, repositioned and refixed to a ceiling, and the panel reattached to the track. Furthermore, this work needs to be done by trained workers, unlike the moving of furniture, which can be done by almost anyone. Third, the goods in issue are not designed to "equip" buildings, but rather are parts of those buildings, just like walls, ceilings or floors.

With respect to the argument of the appellant's representative as to the goods in issue being akin to "partitions," counsel for the respondent submitted that partitions are not the same type of article as the goods in issue because they do not depend on being fastened to a ceiling in order to stand, and they are generally shorter than walls. In addition, counsel noted that "partitions" are not set out at the 10-digit level in the 1991 version of Schedule I to the *Customs Tariff*. In the event that the Tribunal considers Rule 3 of the General Rules, counsel submitted that the Tribunal should not need to consider Rule 3(c), as the goods in issue should be classified based on their essential character under Rule 3(b) and that would be in heading No. 73.08 as "structures," as they are metal structures acting as panels.

In reply, the appellant's representative submitted that the wording of the headings in issue had to be looked at in context of the markets that the goods in issue are being sold into and of the actual end users. In this regard, he noted that prefabricated buildings were specifically excluded from heading No. 73.08 and yet, in his view, these would be a perfect example of a "structure." He also noted that, with respect to the various items set out in heading No. 73.08, "walls" are not included. He suggested that, among the items in this list, only windows and doors were similar to the goods in issue. He submitted that windows could not be considered furniture because, once placed in a building, they rarely, if ever, are moved. Doors could not be considered furniture because they do not meet the requirement that they rest on a floor. The representative also reiterated that the goods in issue do not support anything and, therefore, could not be considered structures.

The Tribunal considers that the goods in issue should be classified under tariff item No. 9403.20.00 as "other metal furniture." The Tribunal comes to this conclusion bearing in mind that it is the legislation and

6. *Supra*, note 3.

the principles applicable to the interpretation of the legislation, including those set out in the General Rules, that must govern the classification of the goods in issue. The Tribunal is particularly cognizant of Rule 1 of the General Rules. As noted by this Tribunal in *York Barbell Co. Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*,⁷ Rule 1 of the General Rules is of the utmost importance when classifying goods under the Harmonized Commodity Description and Coding System.⁸ Rule 1 of the General Rules states that classification is first determined according to the terms of the headings and any relative Section or Chapter Notes. In this case, the Tribunal must, therefore, first consider the wording of heading Nos. 73.08 and 94.03.

In considering heading No. 73.08, the Tribunal must come to a view as to whether the goods in issue are “structures.” The words of the heading and the Explanatory Notes to heading No. 73.08 do not provide a specific definition of “structure.” Furthermore, the Explanatory Notes which provide that “structures” “are usually made up from bars, rods, tubes, angles, ... etc.,” while providing a place to begin to understand “structures” generally, are not particularly helpful when considering a particular product. Although, it may be said that the goods in issue are made up of parts fitted together, they do not “support” anything, contrary to a key characteristic required of a “structure” in the dictionary definition submitted to the Tribunal. As Mr. Franz testified in response to questions from the Tribunal, while the goods in issue may be “connected” to a ceiling when a ceiling channel is used, in such circumstances, they are not “hung” from a ceiling nor do they “support” a ceiling. The Tribunal, therefore, concludes that the goods in issue are not properly classified in heading No. 73.08.

Turning to heading No. 94.03, the Tribunal must consider whether the goods in issue satisfy the definition of “furniture” found in the Explanatory Notes. As indicated above, this definition has three requirements. First, the goods in issue must be movable. It is clear that, although the goods in issue may not be as movable as, for instance, a small chair, they are “movable.” In fact, they are designed with this characteristic as a primary selling feature. Furthermore, the evidence is that purchasers of the goods in issue move them to a significant degree. The Tribunal agrees with the appellant’s representative that the fact that the goods in issue have to be dismantled to be moved should not disqualify them from being considered furniture, as this is no different from, for instance, large modular furniture. The Tribunal also notes that there is no such restriction on defining goods as furniture in the definition. The second requirement in the definition is that articles have the essential characteristic of being constructed for placing on the floor. This criterion is again satisfied by the evidence, which shows that the goods in issue are designed to be placed on the floor and that they actually function this way. The third requirement is that the goods in issue must be used for a utilitarian purpose. The representative submitted that the purpose of the goods in issue is to equip offices. Mr. Franz testified that the goods in issue satisfy this requirement, as they are used for creating office space and enclosing or creating an area, thus providing privacy, and they have a utilitarian purpose. The evidence thus supports the conclusion that the goods in issue, in fact, equip offices.

The Tribunal is of the view that the goods in issue may be best described as a type of wall and, as “walls” are not specifically provided for in Schedule I to the *Customs Tariff*, they must be classified in the heading that best provides for them. Although the goods in issue may not seem to be what may usually be considered furniture, the Tribunal finds that they satisfy all the requirements of the definition of “furniture” found in the Explanatory Notes. Furthermore, the Tribunal takes particular note that “prefabricated

7. (1992), 5 T.C.T. 1150.

8. Customs Co-operation Council, 1st ed., Brussels, 1987.

buildings,” something that the Tribunal would have thought to be a clear example of “structures,” are specifically excluded from heading No. 73.08 and are included in Chapter 94.

Accordingly, the appeal is allowed.

Raynald Guay
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Presiding Member

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Desmond Hallissey
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