CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, December 23, 1998

**Appeal No. AP-97-070**

IN THE MATTER OF an appeal heard on August 13, 1998, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF two decisions of the Deputy Minister of National Revenue dated June 23, 1997, with respect to a request for re-determination pursuant to section 63 of the *Customs Act*.

**BETWEEN**

**LES INDUSTRIES ET ÉQUIPEMENTS LALIBERTÉ LTÉE** **Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE** **Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Raynald Guay
Raynald Guay
Presiding Member

Anita Szlazak
Anita Szlazak
Member

Richard Lafontaine
Richard Lafontaine
Member

Michel P. Granger
Michel P. Granger
Secretary

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TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

**UNOFFICIAL SUMMARY**

**Appeal No. AP-97-070**

**LES INDUSTRIES ET ÉQUIPEMENTS LALIBERTÉ LTÉE** **Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE** **Respondent**

This is an appeal under section 67 of the *Customs Act* from two decisions of the Deputy Minister of National Revenue pursuant to section 63 of the *Customs Act*.

The issue in this appeal is whether the grates imported by the appellant are properly classified under tariff item No. 7308.90.90 as other structures and parts of structures of steel, as determined by the respondent, or should be classified under tariff item No. 8436.80.10 as other agricultural machinery, as claimed by the appellant.

**HELD:** The appeal is dismissed. The Tribunal is of the opinion that the grates in issue are properly classified in heading No. 73.08 as parts of structures of steel. The Tribunal has had the opportunity, on many occasions in the past, to hear appeals involving the classification of goods as parts. The Tribunal has noted that each case must be determined on its own merits and that there is no universal test to determine whether a product is a part of another product. The following three criteria are relevant in this appeal: (1) is the grate incorporated into the structure? (2) is the grate a necessary and integral part of the structure? and (3) common trade usage and practice.

In this appeal, the grates in issue fulfil the three criteria and constitute parts of structures. Although the grates are not attached to the concrete, they are physically part of the structure. They rest on the concrete, which is poured specifically for this purpose, and do not move unless human action is taken specifically to remove them. Similarly, the grates are a necessary and integral part of the structure at issue, namely, a pigsty. The pigsty would not be usable without the grates because, without them, the pits would not be covered. The fact that the concrete is poured specifically to accommodate the grates clearly shows the extent to which they are an integral part of the structure. Common trade usage and practice confirm that the grates are parts of the structure. In fact, it is the appellant itself, the vendor of the grates, that contacts the construction contractor to send it the concrete cross-sections that will allow for the incorporation of the grates into the structure.

The Tribunal does not accept the appellant's position that the grates in issue should be classified in heading No. 84.36 as agricultural machinery. As counsel for the respondent pointed out, there is a difference between the wording of the French version of the heading, namely, "*machines et appareils pour l'agriculture*" ("agricultural machinery and appliances"), and that of the corresponding English version, namely, "agricultural … machinery." In fact, the term "appliances" includes goods that are not "machinery." Since the law must be consistent and the versions in both languages are official, they must have the same meaning. When, as in this case, one version has a broader meaning and the other, a more limited one, the limited meaning must be preferred, since it is the only one common to both linguistic versions. In this appeal, the expression "agricultural machinery" in the English version of heading No. 84.36 has a more limited meaning than the expression "*machines et appareils pour l'agriculture*" found in the French version, since only the French version includes agricultural appliances. Thus, only agricultural machinery can be classified

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in that heading. The Tribunal feels that the lack of moving parts in the grates in issue means that they do not meet the definition of "machine," as established by case law.

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| Place of Hearing: | Ottawa, Ontario |
| Date of Hearing: | August 13, 1998 |
| Date of Decision: | December 23, 1998 |
| Tribunal Members: | Raynald Guay, Presiding Member<br>Anita Szlazak, Member<br>Richard Lafontaine, Member |
| Counsel for the Tribunal: | Philippe Cellard |
| Clerk of the Tribunal: | Anne Jamieson |
| Appearances: | Jean-Robert Noiseux, for the appellant<br>Louis Sébastien, for the respondent |

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

**Appeal No. AP-97-070**

**LES INDUSTRIES ET ÉQUIPEMENTS LALIBERTÉ LTÉE** **Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE** **Respondent**

TRIBUNAL: RAYNALD GUAY, Presiding Member
ANITA SZLAZAK, Member
RICHARD LAFONTAINE, Member

## REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*[1] (the Act) from two decisions of the Deputy Minister of National Revenue dated June 23, 1997, pursuant to section 63 of the Act.

The issue in this appeal is whether the grates imported by the appellant are properly classified under tariff item No. 7308.90.90 of Schedule I to the *Customs Tariff*[2] as other structures and parts of structures of steel, as determined by the respondent, or should be classified under tariff item No. 8436.80.10 as other agricultural machinery, as claimed by the appellant. In the alternative, the respondent contended that, if the Tribunal refused to classify the grates in issue under tariff item No. 7308.90.90, they should be classified under tariff item No. 7322.90.99 as other steel radiators for central heating. For the purposes of this appeal, the relevant provisions of the tariff nomenclature are as follows:

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| 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 |
| 7308.90.90 | ---Other |
| 73.22 | Radiators for central heating, not electrically heated, and parts thereof, of iron or steel; air heaters and hot air distributors (including distributors which can also distribute fresh or conditioned air), not electrically heated, incorporating a motor-driven fan or blower, and parts thereof, of iron or steel. |
| | -Radiators and parts thereof: |
| 7322.19.00 | --Other |
| 7322.90 | -Other |
| | ---Other: |
| 7322.90.99 | ----Other |

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

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| 84.36 | Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders. |
| 8436.80 | -Other machinery |
| 8436.80.10 | ---Agricultural or horticultural type |

During the hearing, Mr. Jean-Charles Laliberté, President and Director General of Les Industries et Équipements Laliberté Ltée, testified. Mr. Laliberté indicated that the grates consisted of parallel steel bars spaced 10 mm apart with other steel bars crossing them. A unique feature of the grates in issue is the fact that one part of the grate is covered with a steel plate, under which are located a pipe in which hot water circulates, insulation and a galvanized metal sheet that prevents the heat from escaping and directs it to the plate that covers the grate.

Mr. Laliberté explained that the grates are used in the part of a pigsty where sows farrow (hereinafter referred to simply as the pigsty). They form the base of the farrowing crates that contain the sow and the piglets. They are used to support the sow and the piglets, to allow for the disposal of the excreta of these animals and to keep the piglets comfortable. Mr. Laliberté pointed out that the correct name for the goods in issue was "*caillebotis*" ("grates"), but that, since this word is not very well known, in agricultural circles, reference is usually made to "*plancher*" ("floor") or "*plancher ajouré*" ("perforated floor"). The expression "grates" is used by the manufacturer of the goods in issue.

Mr. Laliberté pointed out that the grates in issue are used to cover pits between one and two metres deep which hold the excreta of the animals. He acknowledged that, as a result, the pigsty could not be used without the grates. The use of these grates requires the concrete which forms the foundation of the pigsty to be poured in such a way that the sides of the grates can rest on it. It is the appellant that provides the concrete cross-sections to the contractor hired to build the pigsty. Mr. Laliberté explained that the grates are installed over the pits only when the major work, and even the finishing of the pigsty, is more or less complete. Generally, the grates, which are not attached to the concrete, do not have to be moved because the pits can be cleaned with them in place.

Mr. Laliberté indicated that, once the grates are in place, the upper part of the cages is attached to the concrete on which the grates lie. Each cage, which consists of a grate and an upper part, is divided into three sections. One section is usually unoccupied. The middle section is occupied by the sow, which is itself inside a cage to ensure that it does not crush its young. The other section is reserved for the piglets. Mr. Laliberté stated that it is the part of the grates that forms the base of this last section of the cage that is partly covered with a steel plate. When the grates are installed, the pipe, the insulation and the galvanized metal sheet are installed under each of the steel plates. The plates are heated by the pipes within which circulates water heated by a boiler located in the pigsty. The plates, whose temperature is the same as that of the piglets, ensure that the latter are comfortable and, in doing so, prevent them from crowding one another. The piglets thus benefit from conditions which encourage growth and prevent illness. Mr. Laliberté also explained that the manufacturer of the grates used the expression "grate system" to describe the grates in issue because they contain a number of different components.

Counsel for the appellant argued that the grates in issue are agricultural appliances and, consequently, should be classified under tariff item No. 8436.80.10. He maintained that the inclusion in the wording of heading No. 84.36 of a thermal germination plant indicated that it was possible to classify the grates in the same heading since they also included a thermal device. In his view, it is this device that makes

the grates appliances. He also contended that the difference between the French version of heading No. 84.36, which includes the words "*machines et appareils*" ("machinery and appliances"), and the English version of the heading, which uses only the word "machinery," should be resolved in favour of a broad interpretation that would encompass equipment. In his opinion, this interpretation is supported by the *Explanatory Notes to the Harmonized Commodity Description and Coding System*[3] (the Explanatory Notes), which state that automatic watering troughs, appliances that are not machinery in the ordinary meaning of the word, must, in his view, be classified in heading No. 84.36.

Counsel for the appellant noted that the goods in issue were grates and not floors. He argued that the grates are not permanently attached to the concrete and stressed that they could be moved, although this did not happen often. To support his position, counsel referred to the Tribunal's decision in *Krueger International Canada Inc.* v. *The Deputy Minister of National Revenue*,[4] in which the Tribunal did not classify, as structures, movable unitized panel systems used to subdivide space in a building. He argued that the Tribunal's decision in *Nailor Industries Inc.* v. *The Deputy Minister of National Revenue*,[5] in which the Tribunal classified air diffusers as parts of structures, was not applicable to this case since the goods in issue in *Nailor* were permanently attached to a structure. Counsel also contended that it was not possible to conclude from the classification of stalls in heading No. 73.08 in accordance with the Explanatory Notes to that heading that the grates should also be included in that heading. Referring to Rule 3 (a) of the *General Rules for the Interpretation of the Harmonized System*[6] (the General Rules), counsel maintained that heading No. 84.36 was more specific than heading No. 73.08 and that, accordingly, the former had to be preferred to the latter.

Counsel for the respondent argued that the grates in issue are properly classified in heading No. 73.08. Referring to the Explanatory Notes to that heading, he noted that, theoretically, the structures had to remain stationary and that this was the case with the grates, although it was possible to move them. He contended that the grates corresponded to the description of the products contained in the Explanatory Notes. He also pointed out that the Explanatory Notes covered a very large number of products. Given the difference between the French and English versions of heading No. 84.36, counsel argued that the two versions had to agree with each other and argued that, for this to happen, a restrictive interpretation had to be preferred, one which would only include in that heading appliances of a mechanical nature. He continued by stating that the definition of "machinery," as contained in two Tribunal decisions, did not cover the grates in issue, since they neither contain any moving parts nor perform any work. Also relying on Rule 3 (a) of the General Rules, counsel for the appellant argued that heading No. 73.08 is more specific than heading No. 84.36. Counsel also noted briefly that, if Rule 3 (b) of the General Rules were applied, then the grates should be classified as radiators. Counsel also maintained that the provisions permitting the importation of goods duty free had to be given a restrictive interpretation.

According to section 10 of the *Customs Tariff*, the Tribunal must classify imported goods in accordance with the General Rules. Rule 1 of the General Rules is of the utmost importance. It provides that, 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 subsequent provisions.

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3. Customs Co-operation Council, 1st ed., Brussels, 1986.
4. Appeal No. AP-94-357, February 14, 1996.
5. Appeal Nos. AP-97-083 and AP-97-101, July 13, 1998.
6. *Supra* note 2, Schedule I.

The Tribunal is of the opinion that the grates in issue are properly classified in heading No. 73.08 as parts of structures of steel. It is not disputed that the grates are made of steel. In this appeal, the structure at issue is the building in which the pigsty is located.

The Tribunal has had an opportunity, on many occasions in the past, to hear appeals involving the classification of goods as parts.[7] The Tribunal has noted that each case must be determined on its own merits and that there is no universal test to determine whether one product is part of another product. Nevertheless, the following criteria have been found to be relevant when such a determination is to be made: (1) is the product in issue essential to the operation of the other product? (2) is the product in issue a necessary and integral part of the other product? (3) is the product in issue installed in the other product? (4) common trade usage and practice.[8]

The criteria proposed by the Tribunal have been applied, in most cases, to articles used with appliances or machinery. When applied to the analysis of determining whether an article is part of a structure, the first criterion does not apply, since a structure in itself does not function. The last three criteria set out above may, for the purposes of this appeal, be restated as follows: (1) is the grate incorporated into the structure? (2) is the grate a necessary and integral part of the structure? (3) common trade usage and practice.

In this appeal, the grates in issue fulfil the three criteria and constitute parts of structures. Although the grates are not attached to the concrete, they are physically part of the structure. They rest on the concrete, which is poured specifically for this purpose, and do not move unless human action is taken specifically to remove them. Similarly, the grates are a necessary and integral part of the structure. As Mr. Laliberté pointed out in his testimony, the pigsty could not be used without the grates because the pits would not then be covered. The fact that the concrete is poured specifically to accommodate the grates clearly shows the extent to which they are an integral part of the structure. Common trade usage and practice confirm that the grates are parts of the structure. In fact, it is the appellant itself, the vendor of the grates, that contacts the construction contractor to send it the concrete cross-sections which will allow for the grates to be incorporated into the structure.

Thus, the grates in issue are properly classified in heading No. 73.08 as parts of structures of steel. The Tribunal does not feel that this finding must be affected by its decision in *Krueger*. The Tribunal is of the opinion that the facts in that case differ considerably from those in this case. It should merely be noted here that the movable panels in *Krueger* did not present the characteristics of necessity and incorporation into the structure that are present in this appeal.

The Tribunal does not accept the appellant's position that the grates in issue should be classified in heading No. 84.36 as agricultural machinery. As counsel for the respondent pointed out, there is a difference between the wording of the French version of the heading, namely, "*machines et appareils pour l'agriculture*" ("agricultural machinery and appliances"), and that of the corresponding English version, namely, "agricultural … machinery." In fact, the term "appliances" includes goods that are not "machinery." The definitions of the two terms are illuminating. "Appliances" is defined, as stated by counsel for the

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7. See, for example, *SnyderGeneral Canada Inc.* v. *The Deputy Minister of National Revenue*, Appeal No. AP-92-091, September 19, 1994; and *York Barbell Company Limited* v. *The Deputy Minister of National Revenue for Customs and Excise*, Appeal No. AP-90-161, August 19, 1991.
8. *Ibid*.

appellant, as an "*[a]ssemblage de pièces ou d'organes réunis en un tout pour exécuter un travail, observer un phénomène, prendre des mesures*[9]" ("assembly of parts or instruments combined in a single whole to do work, observe a phenomenon or to take measures"). A machine, as the Tribunal indicated in *Canper Industrial Products Ltd.* v. *The Deputy Minister of National Revenue*,[10] referred to by counsel for the respondent, has been defined in case law as "a more or less complex combination of moving and stationary parts [which] does work through the production, modification or transmission of force and motion." Thus, for example, it is not necessary for appliances, unlike a machine, to consist of a set of moving and stationary parts.

Since the law must be consistent and the versions in both languages are official, they must have the same meaning. When, as in this case, one version has a broader meaning and the other, a more limited one,, the limited meaning must be preferred, since it is the only one common to both linguistic versions. This method of interpretation is well established in Canadian law, as the following passage from *The Interpretation of Legislation in Canada*[11] attests:

> There is a third possibility: one version may have a broader meaning than another, in which case the shared meaning is the more narrow of the two.
>
> The French "tramway" was used to clarify the meaning of the more general English "railway" in *Toronto Railway Co.* v. *The Queen*. … In *R.* v. *Dubois*, "chantier public" restricted the meaning of the more general term "*public works*". … The adjective "mentioned" had its scope limited by "énumérés" in *Pollack Ltée* v. *Comité paritaire du commerce de détail*. … And in *Pfizer* v. *Deputy Minister of National Revenue* … and *Gravel* v. *City of St-Léonard*, … Justice Pigeon preferred the more restrictive of the two meanings, which in both cases was derived from the French version.

Moreover, the Tariff Board used this method of interpretation in *Caribex Seafoods Limited* v. *The Deputy Minister of National Revenue for Customs and Excise*,[12] referred to by counsel for the respondent.

In this appeal, the expression "agricultural machinery" in the English version of heading No. 84.36 has a more limited meaning than the expression "*machines et appareils pour l'agriculture*" found in the French version, since only the French version includes agricultural appliances. Thus, only agricultural machinery can be classified in that heading. Moreover, this interpretation is in accordance with the nature of the goods listed in the Explanatory Notes to that heading. As far as the reference to a thermal germination plant in the wording of the heading is concerned, it does not, in the Tribunal's view, support the appellant's position. In fact, if the presence of a thermal device had been sufficient for the article to be classified in the heading, it would have been unnecessary to make specific reference to a thermal germination plant. The fact that it is mentioned has the effect of including a thermal germination plant in the heading, not of including all the articles that contain a thermal device. The Tribunal also notes that automatic watering troughs, which are included in heading No. 84.36 by the Explanatory Notes to that heading, include a moving part (a plate), unlike the grates in issue. The Tribunal is of the opinion that the lack of moving parts in the grates in issue prevents them from falling within the definition of the term "machine," as established by case law.

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9. *Le Nouveau Petit Robert* (Montréal: DICOROBERT, 1995) at 100.
10. Appeal No. AP-94-034, January 24, 1995.
11. P.-A. Côté, 2nd ed. (Cowansville: Yvon Blais, 1991) at 273 and 275-76.
12. (1978), 6 T.B.R. 578.

For the above reasons, the Tribunal finds that the grates in issue were properly classified by the respondent under tariff item No. 7308.90.90 as other structures and parts of structures of steel. Consequently, the appeal is dismissed.

Raynald Guay
Raynald Guay
Presiding Member

Anita Szlazak
Anita Szlazak
Member

Richard Lafontaine
Richard Lafontaine
Member