

Ottawa, Wednesday, September 27, 2000

Appeal No. AP-99-063

IN THE MATTER OF an appeal heard on March 6, 2000, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue dated July 8, 1999, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

GL&V/BLACK CLAWSON-KENNEDY

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Raynald Guay

Raynald Guay
Member

James A. Ogilvy

James A. Ogilvy
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-99-063

GL&V/BLACK CLAWSON-KENNEDY

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 (now the Commissioner of the Canada Customs and Revenue Agency) on July 8, 1999, pursuant to section 63 of the *Customs Act*.

The issue in this appeal is whether the goods in issue, which are aluminum alloy walkway systems, consisting of walkways, steps, ladders, stairs, handrails and supports, are properly classified under tariff item No. 7610.90.00 of Schedule I to the *Customs Tariff* as other aluminum structures, as claimed by the respondent, or should be classified under tariff item No. 8439.99.90 as other parts of machinery for making pulp of fibrous cellulosic material, as claimed by the appellant.

HELD: The appeal is allowed. As part of the re-determination, the respondent rejected considering the goods in issue as “parts” of paper-making machines as, in his opinion, they did not meet the test for parts, i.e. they did not contribute to the production of the end product (paper).

The Tribunal disagrees with this conclusion. The evidence submitted in this case leads the Tribunal to the conclusion that the goods in issue are an integral part of the paper-making machines. The design of a paper-making machine’s section clearly contemplates walkway systems and, although they are fabricated by a third party, each system is uniquely designed for a paper-making machine. The evidence submitted was that not only are the goods in issue physically and permanently affixed to the chassis of the paper-making machine when installed *in situ*, but they are also installed for testing purposes at the appellant’s plant during the final testing of the machine to ensure that they fit properly.

Place of Hearing: Ottawa, Ontario
Date of Hearing: March 6, 2000
Date of Decision: September 27, 2000

Tribunal Members: Arthur B. Trudeau, Presiding Member
Raynald Guay, Member
James A. Ogilvy, Member

Counsel for the Tribunal: Michèle Hurteau

Clerk of the Tribunal: Anne Turcotte

Appearances: Giovanna Pirrera, for the appellant
Étienne Trépanier, for the respondent

Appeal No. AP-99-063

GL&V/BLACK CLAWSON-KENNEDY

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
RAYNALD GUAY, Member
JAMES A. OGILVY, Member

REASONS FOR DECISION

BACKGROUND

This is an appeal under section 67 of the *Customs Act*¹ from two decisions of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency) on July 8, 1999, pursuant to section 63 of the Act.

The issue in this appeal is whether the goods in issue, aluminum alloy walkway systems, are properly classified under tariff item No. 7610.90.00 of Schedule I to the *Customs Tariff*² as other aluminum structures, as claimed by the respondent or should be classified under tariff item No. 8439.99.90 as other parts of machinery for making pulp of fibrous cellulosic material, as claimed by the appellant.

The goods in issue were imported into Canada under two separate transactions, on April 3 and October 27, 1997. They consist of walkways, handrails, stairs, ladders and support brackets, which, when assembled and attached to paper-making machines, provide access to strategic places to allow operators to adjust and service the equipment.

The relevant tariff nomenclature 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. |
| 76.10 | Aluminum structures (excluding prefabricated buildings of heading No. 94.06) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); aluminum plates, rods, profiles, tubes and the like, prepared for use in structures. |
| 7610.90.00 | -Other |
| 84.39 | Machinery for making pulp of fibrous cellulosic material or for making or finishing paper or paperboard. |

1. R.S.C. 1985 (2nd Supp.), c. 1 [hereinafter Act].
2. R.S.C. 1985 (3d Supp.), c. 41.

-Parts:
8439.99 --Other
8439.99.90 ---Other

EVIDENCE

Mr. Yvan Parent, Engineering Manager at GL&V/Black Clawson-Kennedy, in Trois-Rivières, Quebec, testified as an expert witness on behalf of the appellant. Mr. Parent was qualified by the Tribunal as a mechanical engineer with specialized knowledge in pulp- and paper-making machines.

Mr. Parent testified that the appellant designs and builds sections of paper-making machines that are then installed in its customers' plants and that building such sections is its main activity. Mr. Parent added that all the walkways constructed by LIAS S.r.l. Aluminium Technology (LIAS), the appellant's subcontractor in Italy, are unique as they are custom-designed for each project and, more specifically, for one section of a paper-making machine. Mr. Parent further testified that it would not be possible to use the walkways on a machine other than the one for which it was designed. He also said that, because of the size of the machines, it would not be practical to design moulded walkways given their size and the shipping requirements. The walkways are not interchangeable from one machine to another or, indeed, from one section of the machine to another without major modifications. To illustrate his point, Mr. Parent took the Tribunal through a number of documents, including plans for the modification of a pulp machine "Press Front" and "Press Back" for Uniforêt Pâte Port-Cartier Inc., in Port Cartier, Quebec. Similarly, there were plans for projects to modify existing paper-making machines for Kimberley-Clark Nova Scotia, in New Glasgow, Nova Scotia and Kruger Inc., in Trois-Rivières, as well as for several other projects.³

Mr. Parent testified that the appellant provides plans outlining the details of the stairways, ladders and footwalks to LIAS, which produces all the individual items for the walkways according to the appellant's specifications on the plans. Once completed by LIAS, the individual items, unassembled, are shipped to the appellant's plant in Trois-Rivières, where the actual section of the paper-making machine is being fabricated. The paper-making machines, including the chassis, the mechanisms and the walkway systems, are pre-assembled at the plant to ensure that they fit together. He testified that the goods in issue provide the operators with access to the machines to enable them to make adjustments or changes to the components and maintain the equipment. The appellant designs and custom-builds the equipment to suit its customers' specific needs.

Mr. Parent testified that he had not personally worked on the design of the plans for the walkways for the various sections of the paper-making machines, as this task was generally done at the appellant's Montréal, Quebec, office. However, as part of its quality control, the pre-assembly of the walkways to the machines takes place at the Trois-Rivières plant. Mr. Parent also clarified that the goods in issue are shipped from Italy in containers, in an unassembled form. The individual pieces forming the stairways, ladders and footwalks are numbered according to the plans for their eventual attachment to the chassis of the machine for which they were designed.

Mr. Parent explained the role of the walkways in relation to the various sections of the paper-making machines being produced, such as the headbox, the fourdrinier, the former and the press. He explained that the operators use the walkways to make adjustments during the actual production process. Also, the walkways are essential in order to change the wire and felts on the machines and to perform maintenance while the equipment is either running or stopped. As the machines are very large, some of the

3. Appellant's brief at Tab 3.

walkway systems can be as high as 25 feet. Without them, access by the operators to the machines would be impossible. The walkways provide safe access across, along and to different sections of a paper-making machine, while the steps and ladders provide access to the uppermost sections of the machine.

Mr. Parent described in detail the elaboration of plans from the initial request by a customer to the final installation of a section of a paper-making machine in the customer's plant.

At a customer's request, the appellant drafts plans. These include plans outlining the elevation, the cross-section of the paper-making machine, the details of the walkway system and the manner in which the rolls, felts and wire will be changed. In summary, the draft plans provide the details concerning the section of the machine to be built. The plans are then submitted to the customer for approval and modified if necessary. Mr. Parent emphasized that the designs of the machine and the walkway system are created simultaneously as they are interrelated in that the walkway system allows the customer's employees to operate and service the machine. Mr. Parent indicated that, in short, the objective is to have units that are "user friendly".⁴

The chassis of the machine and the walkway system are designed as a unit. Some walkways are transversal, others join two sections of a machine. In addition, there are steps and ladders. Certain parts of the walkway system are designed to remain fixed and be joined to the chassis of the machines with bolts, others are designed to pivot and be moved when required for operational purposes, for example to change the rolls, felts or wire. Mr. Parent explained that the plans provide for predrilled holes in order to fasten the walkway system to the chassis.

Mr. Parent stated that, for certain sections of a paper-making machine, such as the press, the fourdrinier and the former, the goods in issue are essential. Customers always order sections of paper-making machines that include a walkway system. Mr. Parent testified that he has never known a walkway system to be bought separately. Mr. Parent testified that walkway systems do not support the machines; they are designed to support the weight of the operators who perform operational and maintenance functions.

Mr. Parent provided a sketch,⁵ which describes the head of a typical paper-making machine. The sketch includes details of the headbox, the fourdrinier, the former, the press and the dryer, as well as the various rolls, such as the couch roll, the pick-up roll and the press roll. Mr. Parent described several of the operators' functions at each step of production. The walkways are also required for maintenance purposes, as they provide access to the various sections of the paper-making machines, to allow operators to change the rolls, felts and wire on a regular basis. He testified that these operations could not be performed without the walkways being in place.

In his expert report,⁶ Mr. Parent indicated that the walkways serve three purposes: to allow safe access to certain parts of the paper-making machine where operators perform quality control activities; to allow safe access to certain parts of the machine for maintenance; and, finally, to allow safe access to operators who are changing the wire or felts.

During cross-examination, Mr. Parent agreed that the goods in issue are made of aluminum. He also agreed that they do not perform any mechanical functions as such. He added, however, that without the

4. *Transcript of Public Hearing*, 6 March 2000 at 18.

5. Exhibit A-1.

6. Appellant's Exhibit AP-99-063 – 9.1.

goods in issue, the paper-making machines would not be operational, as operators would not be able to perform essential operations. Hence, there could be no production of paper. Mr. Parent testified that some parts of the goods in issue, such as the stairs, are easily removable, while other parts are not. Essentially, the goods in issue are designed to be permanently affixed. He admitted that a walkway system could be adapted to a machine for which it was not designed, but that this would necessitate major modifications.

In response to the Tribunal's questions, Mr. Parent testified that the goods in issue are designed to be permanently affixed to a paper-making machine and can be dismantled and replaced when breakage or corrosion occur.

In answer to the Tribunal's questions on what constitutes a "structure", Mr. Parent stated that, in his view as a mechanical engineer, the term "structure" ("*bâtiment*") has a broad meaning and that its French equivalent, also has a general meaning. Mr. Parent stated that the frame of the paper-making machine could be considered a structure where a number of elements are bolted together and could include the machine and its mechanisms.

ARGUMENT

The appellant submitted that the goods in issue should be classified in heading No. 84.39 as parts of machinery for making paper or paperboard and not under tariff item No. 7610.90.00 as other aluminum structures, as claimed by the respondent. The appellant disputes the respondent's view that the goods in issue are structures as that term is used in relation to buildings or construction.

The appellant relied on Rule 1 of the *General Rules for the Interpretation of the Harmonized System*,⁷ which states, in part:

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.

The appellant submitted that, as the goods in issue are parts of paper-making machines, they should be classified as parts in heading No. 84.39. Furthermore, the appellant relied on Note 2(b) to Section XVI of Schedule I to the *Customs Tariff*, which sets out the rules for classifying parts:

Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines...are to be classified according to the following rules:... (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading... are to be classified with the machines of that kind.

It was argued that, if the goods in issue can be considered parts of paper-making machines, then they are excluded from heading No. 76.10 by Note 1(f) to Section XV, which states that "[t]his Section does not cover... [a]rticles of Section XVI (machinery, mechanical appliances and electrical goods)".

7. *Supra* note 2, Schedule I [hereinafter General Rules].

Furthermore, it was argued that Note (a) of the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁸ to heading No. 76.10, further supports legal note 1(f) as it states: “The heading excludes [a]ssemblies identifiable as parts of articles of **Chapters 84 to 88**”.

The appellant argued that the evidence shows that the goods in issue are an integral part of the paper-making machine, both at the time of its conception and during its operation. Therefore, given the degree of manufacture and conception at the time of importation, the goods in issue are clearly identifiable as being used with paper-making machines.

With respect to whether the goods in issue are structures within the meaning of heading Nos. 73.08 and 76.10, the appellant argued that they are not structures, as their principal function is not to support a load. To the extent that they do support a load, it is in no way similar to a building structure supporting the weight of a building or a truss supporting the weight of a roof or a bridge. The evidence indicates that the principal design and function of the goods in issue are to enable the operation of the paper-making machine. They are permanently affixed to the machine but do not support the load of the machine. It was also argued that the evidence establishes that the goods in issue are parts for machinery and that they are essential to the operation of the machine.

The appellant argued against the respondent’s position that the goods in issue are structures similar to a bridge on a ship. According to the appellant, such a conclusion could not be reached as Section XVII, which deals with vehicles, aircraft, vessels and associated transport equipment, and Chapter 89, which covers ships, boats and floating structures, do not provide for the classification of parts. Accordingly, a bridge on a ship would properly be classified in heading No. 73.08 or 76.10, depending on the material of construction. This, it was argued, is not the case for the classification of machinery parts in the *Customs Tariff*. Heading No. 84.39 of Section XVI provides for the classification of parts for paper-making machinery. Note 2 (b) to Section XVI specifically states that parts of a machine, which are identifiable for a particular machine or a machine of the same heading, are to be classified within that heading. The appellant submitted that, since Note (c) of the Explanatory Notes to heading No. 73.08 and Note (a) of the Explanatory Notes to heading No. 76.10 clearly indicate that assemblies identifiable as parts of articles of Chapters 84 to 88 are specifically excluded, then these notes, Section notes and Explanatory Notes should be taken into consideration in the classification of goods. Consequently, the appellant submitted, sections 10 and 11 of the *Customs Tariff* govern the classification of goods.

The classification of machinery parts should be made according to the above-mentioned Explanatory Notes, as well as according to criteria established by the Tribunal in its decisions and by the Department of National Revenue in Memorandum D10-0-1.⁹

The Memorandum defines a “part” as “an identifiable component of an article, machine, apparatus, equipment, appliance or specific good which is integral to the design and essential to the function of the product in which it is used”.¹⁰ It also states that:

Five criteria have emerged over the years ... for the classification of parts. Parts:

- form a complete unit with the machine;
- have no alternative function;
- are marketed and shipped as a unit;

8. Customs Co-operation Council, 2d ed., Brussels, 1996 [hereinafter Explanatory Notes].

9. *Classification of Parts and Accessories in the Customs Tariff*, 24 January 1994 [hereinafter Memorandum].

10. *Ibid.* at 2.

- are necessary for the safe and prudent use of the unit; and/or
- are committed to the use of the unit.

These considerations have no particular order of precedence. Used singly or in combination, they are useful in determining whether or not an article constitutes a part.¹¹

The appellant used these criteria to argue that the goods in issue are a part, in that they are identifiable as a component of a paper-making machine and that they are integral to the design. The appellant pointed to Mr. Parent's testimony that the goods in issue are integral to the design and manufacture of a paper-making machine or a component thereof and that the machine must be taken into consideration when determining the specifications for the walkways. The evidence clearly shows that the goods in issue form a complete unit with the machine. While some parts may be moved, the evidence indicates that the goods in issue are permanently affixed to the machine and that they have no alternative function since they are designed to be used for one particular paper-making machine. Further, the paper-making machines are marketed and shipped with them. Mr. Parent also testified that, given the size of the machines and the inherent danger of moving components to make adjustments while the machines are running, the goods in issue are necessary for the safe use and servicing of the paper-making machine. Consequently, the appellant argued, the goods in issue are designed to provide safe access to the different components of a paper-making machine and are essential to the production of paper, namely the adjustments and periodic changing of the felts and wire. The appellant argued that, while the goods in issue need not meet all five criteria to be considered a part, but only a combination thereof, in the present case, they do meet all five. Finally, the appellant argued that, if all the criteria as established by the jurisprudence and the Memorandum are met by the goods in issue, then they should be classified as parts and not as structures, as claimed by the respondent.

The respondent submitted that section 10 of the *Customs Tariff* provides that the classification of imported goods under a tariff item shall be determined in accordance with the General Rules and the *Canadian Rules*.¹² Rule 1 of the General Rules provides that the classification of goods is determined first according to the terms of the headings and any relative Section or Chapter Notes. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in Schedule I, regard shall be had to the Explanatory Notes and the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*.¹³ Therefore, in accordance with the requirements of Rule 1 of the General Rules and the Explanatory Notes to heading Nos. 73.08 and 76.10, the goods in issue are properly classified under tariff item No. 7610.90.00 as other aluminum structures.

The Explanatory Notes to heading No. 76.10 state that the Explanatory Notes to heading No. 73.08 apply *mutatis mutandis* to this heading. The Explanatory Notes to heading No. 73.08 state, in part:

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. [Emphasis added]

Therefore, the respondent argued that the Explanatory Notes to heading No. 73.08 apply to the metal structures of heading No. 76.10 which include, among others, "complete or incomplete metal structures, as well as parts of structures . . . usually made up from bars, rods, tubes, angles shapes, sections,

11. *Ibid.* at 9.

12. *Supra* note 2, Annex I.

13. Customs Co-operation Council, 1st ed., Brussels, 1987 [hereinafter *Classification Opinions*].

sheets, plates, wide flats...by riveting, bolting, welding”, which, once classified under a tariff item position, generally remain under that tariff item position.¹⁴ In the respondent’s submission, the enumeration under that tariff item position of certain structures such as gangways for ships, balconies, verandas, would include the goods in issue.¹⁵

Accordingly, the respondent submitted that heading No. 76.10 includes complete or incomplete aluminum structures, such as tubular scaffolding, lighthouse superstructures, gangways for ships, balconies and verandas, level-crossing gates, frameworks for greenhouses and permanent installations in shops, workshops and storehouses.

The respondent relied on dictionary definitions and on the criteria found under the tariff item to establish the classification of the goods: Are the structures made of aluminum? Are they complete or incomplete metal structures? Once in place, do they remain in that position, except for certain instances and are they built to remain in place? Can the goods in issue be compared to gangways for ships or balconies? Based on the evidence, the respondent argued that all these questions are answered in the affirmative.

Consequently, by applying Rule 1 of the General Rules, goods that are described in a generic fashion under a tariff item must be classified according to the generic description. In the current case, the goods in issue should be classified under heading No. 76.10. To support this position, the respondent relied on the decision in Appeal No. AP-91-131¹⁶ which states, in part:

When classifying goods as either parts of something or as entities in their own right, the application of Rule 1 of the General Rules for the Interpretation of the Harmonized System (General Rules) is of utmost importance. This rule states that classification is first determined by the wording of the tariff headings and any relevant legal note. Therefore, the first consideration of the Tribunal is whether the goods are named or generically described in a particular heading of the tariff schedule. If the goods are named in the heading, they are classified there, subject to any relevant legal note. If not, the Tribunal would give consideration to the heading of the product for which the goods are claimed to be a part.¹⁷

Based on this analysis, the respondent submitted that the goods in issue are properly classified in heading No. 76.10.

The respondent relied on the analysis done in Appeal No. AP-97-100¹⁸ to counter the appellant’s position that the goods in issue were parts of paper-making machines. In that decision, the Tribunal stated that a product must be defined as a part for it to be classified as a part. Furthermore, strict criteria must be met for goods to be parts, which the Tribunal enunciated in Appeal No. AP-94-329.¹⁹ These are:

(1) whether the product is essential to the operation of another product; (2) whether the product is a necessary and integral component of another product; (3) whether the product is installed in the other product; and (4) common trade usage and practice.²⁰

14. *Transcript of Public Argument*, 6 March 2000, at 41.

15. *Ibid.* at 42.

16. *York Barbell v. DMNRCE* (16 March 1992) (CITT).

17. *Ibid.* at 3.

18. *Brother International v. DMNR* (27 November 1998) (CITT).

19. *Simark Controls v. DMNR* (25 January 1996) (CITT).

20. *Ibid.* at 6.

The criteria may be considered independently from one another for an item to be considered a part. While the respondent conceded that the goods in issue met the third criterion, as they were in fact installed on the machines, he argued that the first two criteria are of utmost importance. The evidence in this case, the respondent argued, is that the goods in issue do not contribute to the operation of the paper-making machine, nor are they a necessary and integral component of the machine.

In summary, the respondent argued that the goods in issue do not meet the established criteria of parts, as they, by themselves, perform no function in the paper-making operation. Also, as they are generically described in heading No. 76.10, they should be classified as other aluminum structures under tariff item No. 7610.90.00, based on the proper application of Rule 1.

DECISION

With respect to the classification of the goods in issue, the Tribunal is guided by section 10 of the *Customs Tariff* which provides that, unless otherwise provided, the classification of imported goods under a tariff item shall be determined in accordance with the General Rules and the *Canadian Rules*. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in Schedule I, regard shall be had to the Classification Opinions and to the Explanatory Notes.

Rule 1 of the General Rules directs that, for classification purposes, the Tribunal must first consider the terms of the headings and any relative Section or Chapter headings or notes thereunder. If the goods are described in the heading, then they are classified in that heading. Where the Chapter Notes are not sufficient to classify the goods exclusively under one of the proposed headings, then one must go on to consider Rules 1 to 6 in sequence. Once the proper heading classification is settled, Rule 6 states, in part, that classification at the subheading level is to be determined according to the terms of the relevant subheadings and any related Subheading Notes and, *mutatis mutandis*, to Rules 1 through 5.²¹

In this case, the goods in issue were classified as other aluminum structures under tariff item No. 7610.90.00. The respondent relied essentially on the Explanatory Notes to heading No. 76.10, which state that the Explanatory Notes to heading No. 73.08 apply, *mutatis mutandis*, to this heading. The Explanatory Notes to heading No. 73.08 state, in part:

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. [Emphasis added]

As the goods were made of aluminum and consisted of bars, rods, tubes and angles, the decision was taken that this was the proper classification as, once in place, the goods in issue stayed in their position and became a structure.

Indeed, as part of the re-determination, the respondent rejected considering the goods in issue as “parts” of paper-making machines as, in his opinion, they did not meet the test for parts, i.e. they did not contribute to the production of the end product (paper).

The Tribunal disagrees with this conclusion. The evidence presented in this case leads the Tribunal to the conclusion that the goods in issue are an integral part of the paper-making machines. The design of a

21. See *Continuous Colour Coat v. DMNR* (31 August 1994), AP-93-274 and AP-93-294 (CITT).

paper-making machine's section clearly contemplates the goods in issue and, although they are fabricated by a third party, each walkway system is uniquely designed for a paper-making machine. The evidence submitted was that, not only are the goods in issue permanently affixed to the chassis of the paper-making machine when installed *in situ*, they are also installed, for testing purposes, at the appellant's plant during the final testing of the machine to ensure that they fit properly.

The parties agree that the goods in issue apply to paper-making machines and that, once installed, they remain with the machine. What is at issue is whether the aluminum alloy walkway systems, when installed, become other structures of aluminum or parts of a paper-making machine.

The Tribunal considered the arguments presented by the respondent and the criteria for classifying the goods in issue as aluminum structures. The Tribunal had regard for the heading and Chapter Notes. According to heading No. 76.10, the goods in issue must be of aluminum. The parties agree that they are of aluminum; as well, the limited evidence provided indicates that the goods are of aluminum for corrosion resistance reasons. The next step is to determine if the goods in issue are "structures". The Tribunal must, therefore, determine what is a structure. The Tribunal is guided by the definitions of "structure" provided by the parties and by examples given in heading No. 76.10 (bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns). The Tribunal notes that nowhere in these terms is there the notion of machinery or equipment. The closest named example that the goods in issue could resemble would be, in the Tribunal's view, bridges and bridge-sections, and even that description fails to include the goods in issue in a generic sense. The Tribunal is not persuaded that the walkways are structures within the meaning of that term, as defined in heading No. 76.10. The goods in issue, when installed, are a permanent part of the machine, and serve as walkways for operators. Consequently, it is the Tribunal's view that, as such, the goods in issue do not meet the terms of heading No. 76.10 or its subheadings, nor are the Notes to the Chapters and Sections of assistance or conclusive.

The Tribunal considers that, as parts are specifically provided for in heading No. 84.39, it is key to determining if the goods in issue qualify as parts.

Based on a review of the jurisprudence and guided by the Memorandum, the Tribunal is of the view that the evidence clearly indicates that the goods in issue meet the established criteria for parts.

The Tribunal notes that each case must be determined on its own merits and that there is no universal test to determine whether one product is a part of another. The following criteria have been found to be relevant when such a determination is to be made: (1) whether the product in issue is essential to the operation of the other product; (2) whether the product in issue is a necessary and integral part of the other product; (3) whether the product in issue is installed in the other product; and (4) common trade usage and practice.

In this case, the Tribunal finds that the goods in issue fulfil the above-mentioned criteria. The evidence submitted by Mr. Parent was clear and uncontroverted that the goods are essential for the operation of the paper-making machines. Without them, he testified, the operators could not effectuate the necessary operations, such as making adjustments while the machines are operating, or changing felts or wire. As such the production of paper would not be possible. Indeed, the plans for the production of the machines required that both the chassis of the machine and the goods in issue be integrated and designed as a unit. The components of the goods in issue are produced by an outside supplier who has particular expertise in making them to specific plans. The evidence was also clear that the goods in issue are permanently affixed to a paper-making machine. There was no specific evidence on whether the goods are parts in the common

trade usage and practice, but it was certainly the opinion of the expert witness, Mr. Parent, that they are, as LIAS, which makes the walkways, not only produces them for the appellant but also for its competitors.

In light of the foregoing, it is the Tribunal's view that the goods in issue should be classified under tariff item No. 8439.99.90 as other parts of machinery for making pulp of fibrous cellulosic material. Consequently, the appeal is allowed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Raynald Guay

Raynald Guay
Member

James A. Ogilvy

James A. Ogilvy
Member