

Ottawa, Friday, June 30, 2000

Appeal No. AP-99-012

IN THE MATTER OF an appeal heard on October 25, 1999,
under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Deputy Minister of
National Revenue dated February 26, 1999, with respect to a
request for re-determination under section 63 of the *Customs Act*.

BETWEEN

RITTAL SYSTEMS LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed in part.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Raynald Guay
Raynald Guay
Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-99-012

RITTAL SYSTEMS LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 67 of the *Customs Act* from a decision of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency). This appeal deals with the classification of the following goods imported by the appellant: junction boxes, steel industrial enclosures, fibreglass industrial enclosures, data communications enclosures and enclosure components.

HELD: The appeal is allowed in part. The junction boxes in issue are not classifiable in heading No. 85.36 as electrical apparatus for making connections to or in electrical circuits. The appellant has not satisfied the Tribunal that the junction boxes in issue were equipped with terminals or other devices for connecting together those electrical wires which are part of the electrical circuits. It cannot be maintained that the junction box itself is used to connect the various parts of an electrical circuit. Those connections are made independently. Pursuant to the *Explanatory Notes to the Harmonized Commodity Description and Coding System* (the Explanatory Notes) to heading No. 85.36 and given that the junction boxes in issue are used solely as protective covers with respect to the enclosed connections, the junction boxes should be classified according to their constituent material. The Tribunal accepts the respondent's position that the junction boxes should be classified as articles of steel in heading No. 73.26.

The Tribunal has not heard convincing evidence that the industrial enclosures protect the electrical components themselves against a problem of an electrical nature, as would fuses or other devices for preventing the overload of circuits. Consequently, the industrial enclosures in issue cannot be classified in heading No. 85.36 as electrical apparatus for protecting electrical circuits. The industrial enclosures cannot be classified in heading No. 85.38 as parts suitable for use solely or principally with the apparatus of heading No. 85.36, given that the term "part" implies the idea of a greater whole to which it relates. As the industrial enclosures in issue are not found in any of the places listed in the relevant Explanatory Notes, but are rather found in places such as plants or other industrial environments, it is the Tribunal's view that the industrial enclosures are not properly classified in heading No. 94.03 as furniture. Since the steel industrial enclosures are clearly articles of steel and none of the alternative classifications proposed by the parties convinced the Tribunal, the steel industrial enclosures should be classified in heading No. 73.26 as articles of steel. For the same reasons, the fibreglass industrial enclosures should be classified in heading No. 70.19 as articles of glass fibres.

It is the Tribunal's view that the data communications enclosures are the equivalent of "stands" for classification purposes. The Explanatory Notes to heading No. 84.73 clearly indicate that, while furniture designed for office use is not covered by heading No. 84.73, stands for machines of heading Nos. 84.69 to 84.72 not normally usable except with the machines in question remain in heading No. 84.73. If stands which are usable with certain specific machines are to be classified in heading No. 84.73, data communications enclosures, which also support and protect specific machines, should also be classified in this heading, as accessories of automatic data processing machines.

As for the enclosure components, the side walls, the doors, the 19-in. rails and the swing frames should be classified in heading No. 73.26 as articles of steel. The component shelves, for their part, should be classified in heading No. 84.73 as accessories of automatic data processing machines, given that they directly support automatic data processing machines.

Place of Hearing: Ottawa, Ontario
Date of Hearing: October 25, 1999
Date of Decision: June 30, 2000

Tribunal Members: Richard Lafontaine, Presiding Member
Raynald Guay, Member
Peter F. Thalheimer, Member

Counsel for the Tribunal: Philippe Cellard

Clerk of the Tribunal: Margaret Fisher

Appearances: Darrel H. Pearson and J. Peter Jarosz, for the appellant
Lynne Soublière, for the respondent

Appeal No. AP-99-012

RITTAL SYSTEMS LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: RICHARD LAFONTAINE, Presiding Member
RAYNALD GUAY, Member
PETER F. THALHEIMER, Member

REASONS FOR DECISION

INTRODUCTION

This is an appeal under section 67 of the *Customs Act*¹ from a decision of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency), dated February 26, 1999. The first issue in this appeal is whether certain junction boxes imported by the appellant are properly classified under tariff item No. 7326.90.99 of Schedule I to the *Customs Tariff*² as other articles of steel, as submitted by the respondent, or should be classified under tariff item No. 8536.90.20 as junction boxes or, alternatively, under tariff item No. 8538.90.99 as other parts of certain electrical apparatus of a voltage not exceeding 1,000 volts, as claimed by the appellant.

The second issue is whether certain steel industrial enclosures imported by the appellant are properly classified under tariff item No. 9403.20.00 as other metal furniture, as determined by the respondent, or should be classified under tariff item No. 8536.30.90 as other electrical apparatus for protecting electrical circuits or, alternatively, under tariff item No. 8538.90.99 as other parts of certain electrical apparatus of a voltage not exceeding 1,000 volts, as claimed by the appellant.

The third issue is whether certain fibreglass industrial enclosures imported by the appellant are properly classified under tariff item No. 9403.80.90 as other furniture of other materials, as determined by the respondent, or should be classified under tariff item No. 8536.30.90 as other electrical apparatus for protecting electrical circuits or, alternatively, under tariff item No. 8538.90.99 as other parts of certain electrical apparatus of a voltage not exceeding 1,000 volts, as claimed by the appellant.

The fourth issue is whether certain data communications enclosures imported by the appellant are properly classified under tariff item No. 9403.20.00 as other metal furniture, as determined by the respondent, or should be classified under tariff item No. 8473.30.99 as other parts and accessories of automatic data processing machines or, alternatively, under tariff item No. 8548.00.00 as electrical parts of machinery or apparatus, as claimed by the appellant.

Finally, the fifth issue is whether certain enclosure components are properly classified under tariff item No. 9403.20.00 as other metal furniture, as determined by the respondent, or should be classified under tariff item No. 8538.90.99 as other parts of certain electrical apparatus of a voltage not exceeding

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

1,000 volts or, alternatively, under tariff item No. 8473.30.99 as other parts and accessories of automatic data processing machines or, in the further alternative, under tariff item No. 8548.00.00 as electrical parts of machinery or apparatus, as claimed by the appellant.

The relevant tariff nomenclature provisions are as follows:

70.19	Glass fibres (including glass wool) and articles thereof (for example, yarn, woven fabrics).
7019.90	-Other
7019.90.90	---Other
73.26	Other articles of iron or steel.
7326.90	-Other
7326.90.99	---Other
84.71	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included.
84.73	Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of heading Nos. 84.69 to 84.72.
8473.30	-Parts and accessories of the machines of heading No. 84.71
8473.30.99	---Other
85.36	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 volts.
8536.30	-Other apparatus for protecting electric circuits
8536.30.90	---Other
8536.90	-Other apparatus
8536.90.20	---Junction Boxes
85.38	Parts suitable for use solely or principally with the apparatus of heading No. 85.35, 85.36 or 85.37.
8538.90	-Other
8538.90.99	---Other
8548.00.00	Electrical parts of machinery or apparatus, not specified or included elsewhere in this Chapter.
94.03	Other furniture and parts thereof.
9403.20.00	-Other metal furniture
9403.80	-Furniture of other materials, including cane, osier, bamboo or similar materials
9403.80.90	---Other

EVIDENCE

Mr. Rolf G. Kempf, General Manager at Rittal Systems Ltd., testified on behalf of the appellant. He stated that the appellant imports and sells enclosures used by a variety of industrial and data communications companies. The majority of the appellant's customers are original equipment manufacturers. The appellant also sells to end users in the data communications industry.

Mr. Kempf referred to the list of goods in issue found in the appellant's brief. He indicated that the steel industrial enclosures comprise the AK, PS, AE and CP product groups. He noted that the CP enclosures are attached to a pendant arm system. He indicated that the KS product group consists of fibreglass industrial enclosures. The KL enclosures are junction boxes. DK-PS and DK-VR are the product groups consisting of data communications enclosures. Enclosure components are also in issue. They are: plinths and cables for industrial enclosures; side walls for industrial and data communications enclosures; doors for industrial and data communications enclosures; component shelves for data communications enclosures; 19-in. rails for industrial and data communications enclosures; and swing frames for industrial and data communications enclosures.

Mr. Kempf submitted that the products sold by the appellant are different from what would be considered furniture in terms of material specifications. All enclosures are made of solid sheet steel, with the exception of the KS enclosures, which are made of fibreglass. The enclosures in issue have many other technical specifications dedicated to industrial or data communications uses. The appellant's staff never refers to Rittal products as "furniture". The staff refers to the products as "enclosures".

Mr. Kempf testified that the industrial enclosures are designed for and are used with equipment of a voltage of up to 1,000 volts. Industrial enclosures are designed for harsh environments, such as those in a manufacturing plant. The protective finish, durable construction and electrical connections, or grounding, of the industrial enclosures serve as valuable protection for the enclosed equipment and for users. The industrial enclosures are also resistant to severe impact. Mr. Kempf submitted that electrical apparatus cannot be used without industrial enclosures because of the risk of damage to the apparatus and the possibility of electrical charges harmful to other equipment and users. The enclosures in issue are needed for safety and the efficient operation and insulation of the equipment enclosed. Mr. Kempf further testified that the industrial enclosures cannot be moved without the use of heavy lifting machinery, such as forklifts or cranes. He indicated that the heaviest PS industrial enclosure weighs 350 kg. However, in answer to questions by the Tribunal, Mr. Kempf indicated that some other industrial enclosures could weigh between 5 and 35 kg.

Mr. Kempf mentioned that, pursuant to a standard of the Canadian Standards Association, grounding of industrial enclosures is a mandatory requirement. He indicated that the industrial enclosures have grounding studs at the time of importation. The grounding cables and the fixing devices are sold separately. All industrial enclosures have a zinc-plated back panel and a zinc-plated bottom gland panel, or gland panels. Zinc plating is used because zinc, unlike other painted materials, is a conductive surface. Mr. Kempf explained that, if there were a loose wire in the machinery inside the enclosure, it would normally cause a shock to someone working with it. This is why the mounting panel conducts charges to ground, and all removable parts have grounding studs. Mr. Kempf indicated that grounding studs were used for safety, to protect users against electrical shocks.

With respect to the KL enclosures, the junction boxes, Mr. Kempf indicated that they are used for circuit junctions, namely, to connect the main power line with minor ones in terminals. Referring to an illustration found in the appellant's supplementary book of documents, Mr. Kempf gave, as an example of connections, the case where a main power source is going into the junction box and is divided into wires which are then connected to components, such as switches, fuses, terminal blocks and relays. He indicated that the junction box is used to house and protect the components which are needed to make connections. Without the enclosure, the connections among these individual components would have a very short life. He added that there is also an electrical connection between the junction terminal enclosed in a junction box and the grounding studs found within a junction box.

As regards data communications enclosures, Mr. Kempf indicated that they house and protect computer network components and servers. They permit cable entry for the linking of many components. The protective finish, durable construction and electrical connections, or grounding, of the data communications enclosures serve as valuable protection for the enclosed equipment and the users. The data communications enclosures also protect against dust and static charges.

Mr. Tony Mungham, Chief of Electronics and Computer Systems in the Laboratory and Scientific Services Directorate of the Department of National Revenue (now the Canada Customs and Revenue Agency), testified for the respondent. He mentioned that the Canadian Standards Association requires that any material which is conductive and not usually part of the current path be bonded to ground. He indicated that a bonded connection protects the end user from an electrical shock. He explained that the grounding stud is not part of the usual circuit path and that a grounding connector will not receive an electrical flow in a normal situation. In an abnormal situation it would receive it, for example, if a wire came in contact with the grounding connector or with the external enclosure.

ARGUMENT

The appellant submitted that the industrial enclosures, including the junction boxes which are a subset of industrial enclosures, satisfy the terms of heading No. 85.36. It stated that the evidence showed that industrial enclosures are used to protect apparatus, such as switches, relays, fuses, surge suppressors, plugs, sockets and connectors. It also noted that the final assembled industrial enclosures virtually always contain a grounding assembly which is an electrical connection to ground. The appellant submitted, in the alternative, that the industrial enclosures should be classified in heading No. 85.38 as parts suitable for use solely or principally with the apparatus of heading No. 85.36. It submitted that the industrial enclosures are committed for use with electrical equipment by design specifications and features, and are necessary for the safe and efficient functioning of such electrical equipment. With respect to the industrial enclosure components, the appellant submitted that they should be classified in heading No. 85.38, if the Tribunal were to accept either one of the classifications that the appellant proposed for the industrial enclosures.

As regards the data communications enclosures, the appellant submitted that they should be classified in heading No. 84.73 as parts and accessories suitable for use solely or principally with the machines of heading Nos. 84.69 to 84.72. It noted that heading No. 84.71 describes “[a]utomatic data processing machines”, i.e. computers, servers, networks and the like. The appellant recalled that in *DMNRCE v. Dannyco Trading*,³ the Federal Court of Canada defined very widely “accessory” as an “additional or extra thing” and the adjectival form of “accessory” as “contributing or aiding in a minor way”. The appellant submitted that the principles found in *Winners Only (Canada) v. DMNR*⁴ and in *Bureau de relations d'affaires internationales (Busrel) v. DMNR*⁵ are applicable in the present appeal. It submitted that the data communications enclosures are only normally used with network servers and routers and that they perform special services relative to these computers, such as housing and protecting. The enclosures do more than just support the computer equipment. They are used as a second housing for a server or network component. The appellant also mentioned that the data communications enclosures are not considered furniture in the trade; instead, they are considered network cabinets. The appellant noted that it sells data communications enclosures to customer working in the computer field. In the alternative, the appellant argued that the data communications enclosures should be classified in heading No. 85.48 as electrical parts of machinery, on the basis that they are an integral part of the network, server or other

3. (28 April 1997) T—2084—94 (FCTD) [hereinafter *Dannyco*].

4. (13 May 1996), AP-94-142 (CITT) [hereinafter *Winners*].

5. (24 August 1999), AP-97-139 and AP-98-042 (CITT).

electrical apparatus. As regards the data communications enclosure components, the appellant submitted that they should be classified in the same heading as the enclosures themselves.

The appellant stated that the enclosures in issue cannot be classified in heading No. 94.03 as furniture, as determined by the respondent. It submitted that two of the three requirements found in the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁶ with respect to Chapter 94 are not fulfilled. The appellant acknowledged that some enclosures were placed on the ground or fixed to the wall. However, it submitted that the enclosures in issue are not movable and are not found in homes or offices.

The respondent submitted that the industrial enclosures cannot be classified in heading No. 85.36, as they are not electrical apparatus for making connections to or in electrical circuits nor electrical apparatus for protecting electrical circuits. According to the respondent, the industrial enclosures are not sufficiently complex to be called apparatus. Moreover, they are simply used to house and protect their contents from environmental conditions. They do not protect electrical circuits themselves, as fuses or breakers do. The respondent also submitted that the industrial enclosures cannot be classified as parts suitable for use solely or principally with the apparatus of heading No. 85.35, 85.36 or 85.37, since they are not identifiable components or integral to the design or essential to the function of any of the goods of these headings. Rather, the industrial enclosures are purchased separately by the end user for the purpose of housing, enclosing and facilitating equipment interconnection and access to any number of electrical components which are configured and chosen by the end user and which are in no way restricted to the above-mentioned headings. The respondent mentioned that purchasers and end users do have a wide variety of choice when it comes to choosing an enclosure for their electrical apparatus. It also submitted that the goods of heading No. 85.35, 85.36 or 85.37 are not, in any way, dependent on the presence of an industrial enclosure to operate.

Referring to the Explanatory Notes to heading No. 85.36, the respondent submitted that the KL junction boxes cannot be classified in that heading, given that they are not fitted internally with terminals or other devices for connecting together electrical wires. It stated that the grounding studs found in the junction boxes only connect the junction boxes to the ground. Consequently, the respondent submitted that the junction boxes should be classified according to their constituent material, in heading No. 73.26 as articles of steel.

The respondent submitted that the data communications enclosures cannot be classified in heading No. 84.73 as parts and accessories suitable for use solely or principally with machines of heading Nos. 84.69 to 84.72. Data communications enclosures are not identifiable components of computers, nor are they integral to the design or essential to the function of computers. Computers, servers and the like of heading No. 84.71 are not dependent on these types of enclosures to operate. Therefore, data communications enclosures are not parts of the data processing machines of heading No. 84.71. The respondent submitted that the data communications enclosures also cannot be classified as accessories to these machines. Referring to the criteria found in the Explanatory Notes to heading No. 84.73 and in *Winners*, the respondent stated that the data communications enclosures do not adapt data processing machines to perform particular functions, do not perform a particular service relating to these machines and do not increase the range of operations of these machines. Further, according to the respondent, the data communications enclosures cannot be classified in heading No. 85.48 as electrical parts of machinery or apparatus given that they are not electrical apparatus and are not parts.

6. Customs Co-operation Council, 1st ed., Brussels, 1986 [hereinafter Explanatory Notes].

With respect to the enclosure components, the respondent submitted that they should be classified separately in the headings which best describe them or, alternatively, in heading No. 94.03 as parts of furniture.

Referring to Note 2 to Chapter 94, the *Explanatory Notes* to Chapter 94, the *Explanatory Notes* to heading No. 94.03 and *Krueger International Canada v. DMNR*,⁷ the respondent submitted that furniture, for classification purposes, has the following characteristics: it is movable; it has the central characteristic of being constructed for placing on the floor or hung or fixed to the wall; it is used for utilitarian purposes; and it is intended to equip a variety of locations and to fulfil a number of uses, including special uses. According to the respondent, the industrial enclosures and the data communications enclosures possess these characteristics.

DECISION

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 for the Interpretation of the Harmonized System*.⁸ Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in Schedule I to the *Customs Tariff*, regard shall be had to the *Explanatory Notes*.

The General Rules are structured in cascading form. If the classification of an article cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, etc. Rule 1 provides the following:

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 [subsequent] provisions.

The appellant claimed that the KL junction boxes and the other industrial enclosures in issue should be classified in heading No. 85.36. Before dealing with each product separately, the Tribunal will briefly conduct a single analysis applicable to both types of products. According to the appellant, the junction boxes should be classified as electrical apparatus for making connections to or in electrical circuits and the other industrial enclosures should be classified as electrical apparatus for protecting electrical circuits. Consequently, the Tribunal must, first, determine whether both the junction boxes and the industrial enclosures are classifiable as electrical apparatus.

In *Newsco Well Service v. DMNR*⁹, the Tribunal, after having referred to dictionary definitions of apparatus, stated that there were two common elements which run through those definitions. The first was that, to be considered an apparatus, an object must possess at least some degree of complexity. The second was that the object must be designed for a particular purpose or function. A product does not have to be very complex to be considered an apparatus. This is exemplified by the *Explanatory Notes* to heading No. 85.36, which indicate that plugs and sockets are considered apparatus. Consequently, in the Tribunal's view, the junction boxes and industrial enclosures in issue, which comprise the enclosure body, the door, gaskets and grounding studs or connectors, are sufficiently complex to meet the first criterion established by the Tribunal in *Newsco*. As for the second criterion, the Tribunal is also of the view that it is met. The junction boxes and the industrial enclosures in issue are clearly designed at least to protect their contents from the

7. (14 February 1996), AP-94-357 (CITT).

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

9. (18 May 1999), AP-95-128 (CITT) [hereinafter *Newsco*].

external environment. Therefore, it is the Tribunal's view that the junction boxes and the industrial enclosures in issue are apparatus.

The next question is whether they are "electrical" apparatus. Electrical is defined as "of or concerned with or of the nature of electricity".¹⁰ Broadly speaking, the junction boxes and industrial enclosures in issue may be considered electrical apparatus, given that they enclose electrical components and have a grounding system which can absorb electrical current. They are "concerned with . . . electricity".

The appellant claimed that the junction boxes should be classified as electrical apparatus for making connections to or in electrical circuits. To assess this position, regard shall be had to the Explanatory Notes to heading No. 85.36. Under "Apparatus for Making Connections to or in Electrical Circuits", the Explanatory Notes provide, in part, that:

This apparatus is used to connect together the various parts of an electrical circuit. It includes:

(C) **Junction boxes.** These consist of boxes fitted internally with terminals or other devices for connecting together electrical wires. Junction boxes not fitted with means of electrical connection, but used solely as a protective cover or to hold an insulating compound over a joint made independently, are not covered here, but are classified according to their constituent material.

Mr. Kempf gave an example of the connections which are found inside the junction boxes in issue. He indicated that, in that case, the main power source which was going into the junction box was divided into different wires which were then connected to switches, fuses and terminal blocks and relays. In the Tribunal's view, these are the various parts of the electrical circuits.

It cannot be maintained that the junction box itself is used to connect the various parts of an electrical circuit. Those connections are made independently. The appellant has not satisfied the Tribunal that the junction boxes in issue were equipped with terminals or other devices for connecting together those electrical wires which are part of the electrical circuits.

The Tribunal does not agree with the appellant's argument that the fact that the grounding connector connects two wires together is sufficient to classify the junction boxes in issue as apparatus for making connections to or in electrical circuits. As explained by Mr. Mungham, the grounding connector is not part of the usual circuit path, and it will not receive an electrical flow in a normal situation. The fact that, under exceptional circumstances, when the enclosed electrical circuit does not function properly, electrical current will pass through the wires attached to the grounding connector is not sufficient to modify the classification of the junction boxes in issue. As stated earlier, the junction box plays no role in the connection of the various parts of the electrical circuit that it encloses. It is clear to the Tribunal that the connection contemplated in the Explanatory Notes is not a connection like the one involving the grounding connector. If such an ancillary connection were sufficient to classify products as junction boxes, the other industrial enclosures and the data communications enclosures in issue, which are grounded, could also be classified as junction boxes. Such a result cannot have been intended.

Given what precedes, it is the Tribunal's view that the junction boxes in issue cannot be classified in heading No. 85.36. Pursuant to the Explanatory Notes to this heading and given that the junction boxes in issue are used solely as protective covers with respect to the enclosed connections, the junction boxes should be classified according to their constituent material. The Tribunal accepts the respondent's position that the junction boxes should be classified as articles of steel in heading No. 73.26.

10. *The Canadian Oxford Dictionary*, 1998, s.v. "electrical".

With respect to the other industrial enclosures in issue, the appellant claimed that they should be classified in heading No. 85.36 as electrical apparatus for protecting electrical circuits. The appellant seems to believe that the specific products listed as examples in the text of heading No. 85.36 are products which will be protected by the electrical apparatus of heading No. 85.36. That is not the case. As clearly demonstrated by the Explanatory Notes to this heading, the specific products listed are products classified in heading No. 85.36. The Tribunal is of the view that, to be classified in heading No. 85.36 as electrical apparatus for protecting electrical circuits, products must protect electrical circuits against a problem of an electrical nature. This is demonstrated by the nature of the goods listed in the text of the heading. All of them have a direct role to play with respect to electrical circuits themselves. More specifically, this is also demonstrated by that part of the Explanatory Notes to heading No. 85.36 dealing with electrical apparatus for protecting electrical circuits. It reads, in part, as follows:

The heading includes fuses. These normally consist of a device in which a length of fuse wire is incorporated (or can be incorporated) so that, when they are inserted in the circuit, the fuse wire will melt and so break the circuit if the current increases dangerously.

The heading includes other devices for preventing overload of circuits (e.g., electro-magnetic devices which automatically break the circuit when the current exceeds a certain value).

It is clear to the Tribunal that the industrial enclosures in issue do not play a similar role with respect to the electrical circuits that they enclose. The evidence clearly shows that the industrial enclosures in issue protect the enclosed electrical components against the environment, for example dust and water, and that the grounding systems protect the users against electrical shocks. However, the Tribunal has not heard convincing evidence that the industrial enclosures protect the electrical components themselves against a problem of an electrical nature, as would fuses or other devices for preventing the overload of circuits. Consequently, the industrial enclosures in issue cannot be classified in heading No. 85.36 as electrical apparatus for protecting electrical circuits. The Explanatory Notes to heading No. 85.36 dealing with junction boxes confirm this reasoning. As indicated previously, they provide that junction boxes which are not fitted with means of electrical connection, but used solely as a protective cover, are classified according to their constituent material. If the protection of the electrical components against the elements were sufficient to permit classification in heading No. 85.36, the junction boxes, which are used solely as a protective cover, could still have been classified in heading No. 85.36 as electrical apparatus for protecting electrical circuits. The Explanatory Notes rule out this possibility.

Alternatively, the appellant claimed that the junction boxes and the industrial enclosures should be classified in heading No. 85.38 as parts suitable for use solely or principally with the apparatus of heading No. 85.36. The term “part” implies the idea of a greater whole to which it relates.¹¹ In the present case, such is not the relationship between the industrial enclosures in issue and the goods covered by heading No. 85.36. Products such as switches, relays and fuses do not constitute a greater whole in relation to industrial enclosures. Even though it has already been stated that the junction boxes in issue should be classified in heading No. 73.26, the Tribunal notes that the foregoing conclusion would also be applicable to the junction boxes.

The respondent, while submitting that the junction boxes should be classified in heading No. 73.26, argues that the industrial enclosures are properly classified in heading No. 94.03 as furniture. Note 2 to Chapter 94, the Explanatory Notes to Chapter 94 and the Explanatory Notes to heading No. 94.03 indicate that there are three requirements for products to be classified as furniture. The first one is that they must be

11. “Part” is defined, notably, as “some but not all of a thing” and as “an essential . . . constituent of anything.” “Constituent” is defined as “composing or helping to make up a whole”. *Ibid.* s.v. “constituent” and “part”.

movable. The second one is that they must be constructed for placing on the floor or ground or, in certain cases, for being hung or fixed to the wall. The third one is that they must be used, mainly with a utilitarian purpose, to equip certain places. The list of places found in the relevant Explanatory Notes comprises private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, shops, stores, workshops, laboratories, technical offices, hospitals and dentists' surgeries. Given that the industrial enclosures in issue are not found in any of the places listed, but are rather found in places such as plants or other industrial environments, it is the Tribunal's view that the industrial enclosures are not properly classified as furniture. This conclusion is consistent with the Explanatory Notes to heading No. 85.36, which indicate that junction boxes, a type of industrial enclosure, which are not fitted with means of electrical connection, but used solely as a protective cover, are classified according to their constituent material. There seems to be no reason why one type of industrial enclosure would be classified according to its constituent material and not the other.

As indicated above and in accordance with the Explanatory Notes to heading No. 85.36, it is the Tribunal's view that the junction boxes in issue should be classified according to their constituent material, that is, in heading No. 73.26 as articles of steel. At the hearing, the Tribunal advised counsel that it was considering classifying the industrial enclosures in issue according to their constituent material. Given that the steel industrial enclosures are clearly articles of steel and that none of the alternative classifications proposed by the parties convinced the Tribunal, the steel industrial enclosures should be classified in heading No. 73.26 as articles of steel. For the same reasons, the fibreglass industrial enclosures (product group KS) should be classified in heading No. 70.19 as articles of glass fibres.

With respect to the data communications enclosures, the appellant contended that they should be classified in heading No. 84.73 as parts or accessories suitable for use solely or principally with automatic data processing machines. Mr. Kempf testified that the data communications enclosures were specifically designed to enclose data communications equipment constituting automatic data processing machines. He referred to the use, in the construction of the enclosures, of 19-in. rails which comply with the standard set by the Institute of Electrical and Electronics Engineers. He also presented evidence showing that the great majority of the appellant's customers that buy data communications enclosures were end users in the data communications industry. The Tribunal accepts the evidence that the data communications enclosures are principally used to enclose automatic data processing machines. The respondent's position that some of the equipment housed in the data communications enclosures may not be automatic data processing machines was not supported by sufficient evidence to convince the Tribunal that the data communications enclosures in issue did not principally enclose automatic data processing machines.

The next question is whether the data communications enclosures are parts or accessories of the automatic data processing machines that they enclose. They are not parts of the automatic processing machines, given that they are not a constituent of the automatic data processing machines.¹² For the purposes of determining whether the data communications enclosures are accessories of the automatic data processing machines, reference shall be made to the Explanatory Notes to heading No. 84.73. The Explanatory Notes indicate that the accessories covered by this heading are interchangeable parts or devices designed to adapt a machine for a particular operation, to perform a particular service relative to the main function of the machine or to increase its range of operations.

12. Even if the data communications enclosures had been a constituent of the automatic data processing machines, this would not have been sufficient to classify them as "parts". A part must be an essential constituent of the related product. There is a series of criteria on which the Tribunal typically relies to determine whether a product is a "part". See, for example, *Winners*.

It may seem that the data communications enclosures do not play any of these roles with respect to the automatic data processing machines that they enclose. However, the Tribunal must be mindful of another paragraph of the Explanatory Notes to heading No. 84.73. This paragraph reads, in part, as follows:

But the heading excludes covers, carrying cases and felt pads; these are classified in their appropriate headings. It also excludes articles of furniture (e.g., cupboards and tables) whether or not specially designed for office use (heading 94.03). However, stands for machines of headings 84.69 to 84.72 not normally usable except with the machines in question, remain in this heading.

This paragraph clearly indicates that, while furniture designed for office use is not covered by heading No. 84.73, stands for machines of heading Nos. 84.69 to 84.72 not normally usable except with the machines in question remain in heading No. 84.73. It is the Tribunal's view that the data communications enclosures are the equivalent of "stands" for classification purposes. Indeed, if stands which are usable with certain specific machines are to be classified in heading No. 84.73, data communications enclosures, which also support and protect specific machines, should also be classified in this heading. The respondent has relied on *Winners* to support its position that the data communications enclosures cannot be classified as accessories of automatic data processing machines. In that case, the Tribunal came to the conclusion that computer desks could not be classified as accessories of automatic data processing machines because there was no evidence before the Tribunal to show that the goods in issue were not normally usable except with automatic data processing machines. In the Tribunal's view, *Winners* is distinguishable from the present appeal. As indicated earlier, the Tribunal accepts the evidence that the data communications enclosures are principally used to enclose automatic data processing machines. The evidence presented by the respondent has not convinced the Tribunal that the data communications enclosures in issue are normally usable with machines other than automatic data processing machines. Therefore, the data communications enclosures should be classified in heading No. 84.73 as accessories of automatic data processing machines.

With respect to the enclosure components, the Tribunal is of the view that almost all of them should be classified in heading No. 73.26 as articles of iron or steel. The plinths and cable bases are used with industrial enclosures, which are classifiable as articles of steel. Mr. Kempf testified that the plinths and bases were of metal construction. Therefore, they should be classified in heading No. 73.26 as articles of iron or steel. The side walls, the doors, the 19-in. rails and the swing frames can be used either with industrial enclosures or with data communications enclosures. These components cannot be classified in heading No. 85.38 as parts of electrical apparatus for protecting electrical circuits because the industrial enclosures are not classified as electrical apparatus for protecting electrical circuits, nor as parts thereof. The components also cannot be classified in heading No. 84.73 as parts or accessories suitable for use solely or principally with automatic data processing machines, given that they can be used with industrial enclosures as well as with data communications enclosures. Further, the components cannot be classified in heading No. 85.48 as electrical parts of machinery, since they do not incorporate electrical connections, insulated sections, coils, contacts or other specifically electrical elements.¹³ In the Tribunal's view, the side walls, the doors, the 19-in. rails and the swing frames should be classified in heading No. 73.26 as articles of steel. The component shelves in issue are used with data communications enclosures. As indicated above, the data communications enclosures should be classified in heading No. 84.73 as accessories of automatic data processing machines. Given that the component shelves directly support automatic data processing machines and for the reasons stated above with respect to data communications enclosures, the component shelves should also be classified in heading No. 84.73 as accessories of automatic data processing machines.

In conclusion, it is the Tribunal's view that the junction boxes in issue and the other steel industrial enclosures in issue should be classified under tariff item No. 7326.90.99 as other articles of steel, that the

13. Explanatory Notes to heading No. 85.48.

fibreglass industrial enclosures should be classified under tariff item No. 7019.90.90 as other articles of glass fibres, that the data communications enclosures in issue should be classified under tariff item No. 8473.30.99 as other accessories of automatic data processing machines, that the side walls, the doors, the 19-in. rails and the swing frames in issue should be classified under tariff item No. 7326.90.99 as other articles of iron or steel and that the component shelves should be classified under tariff item No. 8473.30.99 as other accessories of automatic data processing machines. Consequently, the appeal is allowed in part.

Richard Lafontaine

Richard Lafontaine
Presiding Member

Raynald Guay

Raynald Guay
Member

Peter F. Thalheimer

Peter F. Thalheimer
Member