



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2013-053

IKEA Supply AG

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Thursday, September 18, 2014*

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IN THE MATTER OF an appeal heard on June 12, 2014, pursuant to subsection 67(1) of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated September 23, 2013, pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

IKEA SUPPLY AG

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Ann Penner
Ann Penner
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: June 12, 2014
Tribunal Member: Ann Penner, Presiding Member
Counsel for the Tribunal: Carrie Vanderveen
Student-at-law: Cassandra Baker
Registrar Officer: Ekaterina Pavlova

PARTICIPANTS:

Appellant	Counsel/Representative
IKEA Supply AG	Jean-Marc Clément
Respondent	Counsel/Representative
President of the Canada Border Services Agency	Agnieszka Zagorska

WITNESS:

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STATEMENT OF REASONS

INTRODUCTION

1. This appeal was filed by IKEA Supply AG (IKEA) on December 11, 2013, pursuant to subsection 67(1) of the *Customs Act*¹ in response to a re-determination of the President of the Canada Border Services Agency (CBSA) pursuant to subsection 60(4).

2. The issue in this appeal is whether KARSTEN swivel chairs (the goods in issue) are properly classified under tariff item No. 9401.30.10 of the schedule to the *Customs Tariff*² as swivel seats with variable height adjustment for domestic purposes, as determined by the CBSA, or should be classified under tariff item No. 9401.30.90 as other swivel seats with variable height adjustment, as claimed by IKEA.

GOODS IN ISSUE

3. The goods in issue are armless swivel chairs, each consisting of a seat made from plywood, polyurethane foam and a polyester-cotton cover, a back made of steel covered in a polyester mesh fabric, and a star base frame made from reinforced polyamide plastic, and castors.³ The swivel chair has height adjustment and tilt mechanisms and swivels sideways on a vertical axis.⁴

PROCEDURAL HISTORY

4. On or about October 7, 2010, IKEA imported the goods in issue, which were classified under tariff item No. 9401.30.10 as swivel seats with variable height adjustment *for domestic purposes*. On or about February 1, 2012, IKEA filed an application pursuant to paragraph 74(1)(e) of the *Act* for an amendment to the classification of the goods in issue to tariff item No. 9401.30.90 as *other* swivel seats with variable height adjustment.⁵

5. On May 28, 2012, the CBSA re-determined the classification of the goods in issue under tariff item No. 9401.30.10 as swivel chairs with variable height adjustment for domestic purposes.⁶

6. On or about August 24, 2012, IKEA requested that the CBSA make a further re-determination. The CBSA did so and confirmed the classification on July 31, 2013. Its further re-determination was re-affirmed on September 23, 2013, in the CBSA's final decision.⁷

7. On December 11, 2013, IKEA appealed the CBSA's final decision to the Canadian International Trade Tribunal (the Tribunal).

8. The Tribunal held a public hearing on June 12, 2014. IKEA called one witness, Ms. Anna Furtado, Country Sales Leader, IKEA Canada.

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

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

3. Exhibit AP-2013-053-07A at para. 16, Vol. 1; Exhibit AP-2013-053-09A, tab 2, Vol. 1A.

4. Exhibit AP-2013-053-07A at para. 17, Vol. 1.

5. *Ibid.* at paras. 3-4, Vol. 1.

6. *Ibid.* at para. 5, Vol. 1.

7. *Ibid.* at paras. 6-9, Vol. 1.

LEGAL FRAMEWORK

9. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).⁸ The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

10. Subsection 10(1) of the *Customs Tariff* provides that the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*⁹ and the *Canadian Rules*¹⁰ set out in the schedule.

11. The *General Rules* comprise six rules. Classification begins with Rule 1, which provides that 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 other rules.

12. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*¹¹ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*¹² published by the WCO. While classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.¹³

13. Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to determine the proper subheading and tariff item, applying Rule 6 of the *General Rules* in the case of the former and the *Canadian Rules* in the case of the latter.

TARIFF CLASSIFICATION AT ISSUE

14. Tariff item Nos. 9401.30.10 and 9401.30.90 provide as follows:

Chapter 94

**FURNITURE; BEDDING, MATTRESSES, MATTRESS SUPPORTS, CUSHIONS AND
SIMILAR STUFFED FURNISHINGS; LAMPS AND LIGHTING FITTINGS, NOT
ELSEWHERE SPECIFIED OR INCLUDED; ILLUMINATED SIGNS, ILLUMINATED
NAME-PLATES AND THE LIKE; PREFABRICATED BUILDINGS**

...

94.01 **Seats (other than those of heading 94.02), whether or not convertible into beds,
and parts thereof.**

...

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

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

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

11. World Customs Organization, 2d ed., Brussels, 2003 [*Classification Opinions*].

12. World Customs Organization, 5th ed., Brussels, 2012 [*Explanatory Notes*].

13. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13 and 17 where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that explanatory notes be respected unless there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to classification opinions.

9401.30	-Swivel seats with variable height adjustment
9401.30.10	-- -For domestic purposes
10	---- -Of metal
90	---- -Other
9401.30.90	-- -Other
10	---- -Of metal
90	---- -Other

15. There are no relevant Section or Chapter notes. Given that the dispute in this case involves only the correct classification at the tariff item level, section 11 of the *Customs Tariff* is not applicable; therefore, no regard need be had of the *WCO Classification Opinions* or *Explanatory Notes*.

TRIBUNAL'S ANALYSIS

16. The parties agree that the goods in issue are properly classified in subheading No. 9401.30 as swivel seats with variable height adjustment. The Tribunal finds no reason to disagree. Therefore, the only issue in dispute between the parties is whether the goods in issue are swivel seats "for domestic purposes" under tariff item No. 9401.30.10, as determined by the CBSA, or "other" swivel seats under tariff item No. 9401.30.90, as claimed by IKEA.

17. Consistent with the Tribunal's decision in *Alliance Ro-Na Home Inc. v. Commissioner of the Canada Customs and Revenue Agency*,¹⁴ the appropriate test for determining whether the goods in issue are "for domestic purposes" is whether the goods were *primarily intended* for *domestic or household purposes*.¹⁵ Indeed, the Tribunal has found that it is the *intended*, not the actual, use of the goods in issue that matters, as the phrase "for domestic purposes" does not create an end-use provision.¹⁶

18. Accordingly, for IKEA to discharge its burden of proof, it must establish that the goods in issue were not primarily intended for domestic or household purposes. Contrary to the view put forward by the CBSA,¹⁷ IKEA may discharge this burden in two ways: it may establish that the goods in issue were equally intended for domestic and other purposes or it may establish that they were primarily intended for non-domestic purposes (e.g. business purposes). The Tribunal has never accepted evidence of mere occasional or potential use in a non-domestic setting as being sufficient to discharge a claimant's burden of proof that the goods are not primarily intended for domestic purposes.¹⁸

14. (25 May 2004), AP-2003-020 (CITT).

15. *Ibid.* at para. 10.

16. *6572243 Canada Ltd. o/a Kwality Imports v. President of the Canada Border Services Agency* (3 August 2012), AP-2010-068 (CITT) [*Kwality*] at para. 47.

17. *Transcript of Public Hearing*, 12 June 2014, at 85-86; Exhibit AP-2013-053-07A, tab 2, Vol. 1.

18. *Kwality* at para. 45.

19. Whether or not the goods in issue were intended for domestic purposes is a question of mixed law and fact and will vary according to the facts of each case.¹⁹ As in previous cases, the Tribunal will consider factors such as the design, characteristics, marketing and pricing of the goods in issue in order to determine their proper tariff classification.²⁰ The Tribunal will consider each of these factors in turn.

Design and Characteristics

20. The CBSA pointed to differences between IKEA's "office approved chairs" and the goods in issue to argue that the goods in issue were primarily intended for "domestic" purposes.²¹ Specifically, it highlighted the facts that the goods in issue were not intentionally designed for prolonged periods of use, compliant with certain high industrial standards²² related to ergonomics, stability, strength, durability and dimensions, or sold with a 10-year guarantee covering defects in materials and workmanship, to conclude that the goods in issue were intended primarily for domestic purposes as opposed to "other" (business) related ones.²³ Furthermore, the CBSA argued that, as the goods in issue had only two adjusting features, they could be distinguished from "office approved" models that had several adjustable features.²⁴

21. IKEA stressed that the goods in issue were intentionally designed to be "work chairs" in both domestic and non-domestic environments.²⁵ IKEA pointed to several physical characteristics that it viewed as demonstrating that the goods in issue were designed to meet customers' needs in business environments. These included a quick height adjustment, tilting feature with variable tension control, wheels, castors and a mesh backrest.²⁶ In addition, it noted that these intentional characteristics, while not necessary, could be used in domestic environments as well.²⁷

22. In the Tribunal's view, the evidence establishes that IKEA intentionally designed the goods in issue to be "work chairs" above all else. As such, their intentional characteristics and design enable IKEA's customers to use them for a variety of purposes in business and home settings (e.g. working on a computer, writing notes, sitting around a conference table, doing homework, etc.).²⁸ Ms. Furtado described wheels and height adjustability as absolutely essential in a chair used for different tasks in an office:²⁹ wheels or castors allow an individual to easily move the chair while doing different tasks behind a desk or from room to room;³⁰ and height adjustability allows the chair to be used easily by different people in a business setting.³¹

19. *Kwality* at para. 47.

20. *Kwality* at para. 47; *Curry's Art Stores v. President of the Canada Border Services Agency* (29 April 2013), AP-2012-031 (CITT) at para. 42.

21. Exhibit AP-2013-053-09A at paras. 22-31, Vol. 1A.

22. The CBSA submitted that the goods in issue were not compliant with the British Standard EN 1335-*Test methods for office furniture including swivel chairs* or the American ANSI/BIFMA X5.1-2002 *Standards for Professional Office Use*.

23. Exhibit AP-2013-053-09A at paras. 23-29, 39, Vol. 1A; *Transcript of Public Hearing*, 12 June 2014, at 38-39, 47.

24. Exhibit AP-2013-053-09A at para. 31, Vol. 1A; *Transcript of Public Hearing*, 12 June 2014, at 90.

25. *Transcript of Public Hearing*, 12 June 2014, at 72-73.

26. Exhibit AP-2013-053-07A at paras. 48, 79, Vol. 1.

27. *Ibid.* at para. 48, Vol. 1.

28. *Transcript of Public Hearing*, 12 June 2014, at 27, 59.

29. *Ibid.* at 21-22.

30. *Ibid.* at 22.

31. Exhibit AP-2013-053-07A at para. 49, Vol. 1.

23. Moreover, even though the goods in issue were not intended for prolonged periods of sitting and do not adhere to the same industrial standards as some of IKEA's other "work chairs", the Tribunal considers that they were designed for more than "incidental" or "occasional" use in a business setting. Design features, such as the tilting function and mesh backrest, were included to make the chairs more comfortable during longer sitting periods, as they allowed the user to stretch and relieve chair fatigue and provided better breathability.³²

24. The Tribunal also accepts Ms. Furtado's testimony that IKEA's business customers were neither aware of nor concerned by the fact that the goods in issue did not meet certain industrial standards for chairs.³³ As such, the Tribunal does not consider that the lack of compliance with certain industrial standards proves that the goods in issue were primarily intended for domestic purposes, as suggested by the CBSA.

25. For these reasons, the Tribunal considers that the design and characteristics of the goods in issue indicate that they could be used equally in domestic and non-domestic settings. Even more, the evidence leads the Tribunal to conclude that their characteristics were deliberately and intentionally designed for far more than domestic purposes alone. In fact, their characteristics and design lead the Tribunal to consider whether that conclusion could even be taken one step further, in that IKEA may have designed the goods in issue in such a way as to serve the needs of its business customers first and its "domestic" ones second.

Marketing

26. The CBSA argued that the manner in which IKEA's marketing materials described and grouped the goods in issue supported its position that they were primarily intended for domestic purposes.³⁴ These materials described the goods in issue as "... approved for home use ...", "Best at Home" and "... safe, stable and comfortable" rather than as "office approved" chairs that fulfilled "... high requirements on ergonomics, stability, strength and durability ..." and were "... capable of enduring full time desk work for many years."³⁵ The materials also grouped the goods in issue with chairs intended for domestic rather than commercial office purposes. For example, the 2009-2010 Work Chair Buying Guide listed the goods in issue in the "approved for home use" section rather than in the "office approved" section,³⁶ and the "Business Furniture Inspiration" section of IKEA's Web site did not include the goods in issue at all.³⁷

27. IKEA objected to the CBSA's arguments, claiming that its Web site and catalogue displays were designed to market the goods in issue to *both* domestic and non-domestic users.³⁸ As one example, IKEA pointed to the 2009-2010 "business" section of its Web site where the goods in issue were included in the full line of "work chairs" offered. Furthermore, IKEA highlighted that the goods in issue were featured as the "icon for work chairs" that year.³⁹

28. The Tribunal cannot accept the CBSA's position that the manner in which IKEA's marketing material described and grouped the goods in issue proves that they were primarily intended for domestic purposes. In the Tribunal's view, the evidence clearly demonstrates that IKEA marketed the goods in issue

32. *Transcript of Public Hearing*, 12 June 2014, at 22; Exhibit AP-2013-053-07A at para. 77, Vol. 1.

33. *Transcript of Public Hearing*, 12 June 2014, at 29, 58.

34. Exhibit AP-2013-053-09A at paras. 32-33, 91, Vol. 1A.

35. *Ibid.* at paras. 22-23, Vol. 1A.

36. *Ibid.* at para. 30, Vol. 1A; Exhibit AP-2013-053-09A, tab 7 at 56, Vol. 1A.

37. Exhibit AP-2013-053-09A at para 34, Vol. 1A; Exhibit AP-2013-053-07A, tab 7, Vol. 1.

38. *Transcript of Public Hearing*, 12 June 2014, at 74; Exhibit AP-2013-053-07A at 58-60, Vol. 1.

39. *Transcript of Public Hearing*, 12 June 2014, at 17-18, 25-26, 74-75.

to both home and business customers by using different descriptions, features and media to attract the greatest cross-section of customers to its products.

29. As Ms. Furtado explained, IKEA has been seeking to capture a greater number of business customers and has thereby tailored its marketing to appeal to the needs of its home and business customers.⁴⁰ IKEA's "for business" section of its Web site, for example, was designed to market the full line of work chairs, including the goods in issue, to a wide range of business customers and even used the goods in issue as the "icon for work chairs", as noted above.⁴¹ IKEA's catalogue, which featured the full line of work chairs, including the goods in issue when IKEA sold them, was used to attract "home" customers to IKEA's products.⁴² IKEA's physical displays were used to market the goods in issue to home and business customers alike, once they entered IKEA's stores.⁴³

30. In the Tribunal's view, the use of these various media to market the same work chairs, including the goods in issue, to both home and business customers supports Ms. Furtado's statement that IKEA intended "... to make it really clear that with any price level you could choose the chair that you want that would suit any environment for both business and home."⁴⁴ She explained that "home" versus "business" uses were never intended to be mutually exclusive and that phrases such as "office approved" and "approved for home use" were simply used to capture a wider market.⁴⁵

31. Finally, although not dispositive,⁴⁶ the Tribunal accepts Ms. Furtado's testimony that sales of the goods in issue were equally divided between business and home customers.⁴⁷ This suggests that IKEA's business customers were not deterred from purchasing the goods in issue by the fact that IKEA's marketing material emphasized their home use. More importantly, it supports the Tribunal's conclusion that IKEA's marketing was equally directed at home and business customers and, therefore, its finding that the goods in issue are properly classified for "other" purposes as opposed to "for domestic purposes".

Pricing

32. The CBSA noted that the goods in issue were less expensive than many of IKEA's "office approved" chairs while they were for sale. For example, it highlighted that IKEA sold the goods in issue for \$99.99, a price more in line with its range of chairs for "home use" (i.e. from \$29.99 to \$299.99). In contrast, the CBSA noted that chairs designated as "office approved" were far more expensive and ranged from \$249.99 to \$499.99. As such, the CBSA argued that the price differences confirm that the goods in issue should be classified as "for domestic purposes".⁴⁸

33. IKEA maintained that price is not indicative of whether a work chair was designed primarily for domestic versus non-domestic purposes. Instead, it argued that price simply indicates where a certain work chair sits on a retailer's price ladder and the features that it displays.⁴⁹

40. *Ibid.* at 10-11.

41. *Ibid.* at 25-26.

42. *Ibid.*

43. *Transcript of Public Hearing*, 12 June 2014, at 25-26, 60.

44. *Ibid.* at 67.

45. *Ibid.* at 65.

46. *Kwality* at para. 43.

47. *Transcript of Public Hearing*, 12 June 2014, at 58.

48. Exhibit AP-2013-053-09A at paras. 40-41, Vol. 1A.

49. *Transcript of Public Hearing*, 12 June 2014, at 32; Exhibit AP-2013-053-07A at paras. 56-57, Vol. 1.

34. The Tribunal agrees with IKEA. Customers choose which work chairs to buy for many different reasons, including their preferences, budgets and needs.⁵⁰ Thus, for the CBSA to reach the conclusion that the goods in issue were intended primarily for domestic purposes simply because they were less expensive than “office approved” chairs denies the point that many businesses choose to spend less on the business furniture that they require. Furthermore, the CBSA’s conclusion precludes the possibility that some of IKEA’s “home” customers might choose to spend more on a “work chair” than would IKEA’s business customers to satisfy their particular budgets, desires and needs.

35. In this regard, the Tribunal accepts Ms. Furtado’s testimony that IKEA’s small business customers have smaller “wallet sizes” with which to purchase work chairs and that their most important consideration is “value for money”.⁵¹ It further accepts Ms. Furtado’s testimony that IKEA intentionally designed the goods in issue to be “mid-range” work chairs (i.e. less than \$100) with fewer features than more expensive work chairs to satisfy the needs and budgets of its business customers and to ensure that IKEA remained competitive with its biggest competitor, Staples.⁵²

36. In the Tribunal’s view, this evidence demonstrates that IKEA did not primarily intend for the goods in issue to be for domestic purposes. Instead, it confirms that IKEA intentionally priced the goods in issue to capture a specific share of business and home customers in the face of competition with its biggest rival in the marketplace.

Summary

37. In summary, the Tribunal finds that IKEA has discharged its burden. The intentional design and characteristics, marketing and pricing of the goods in issue confirm that IKEA did not intend them to be used primarily for domestic purposes. While they certainly can be (and are) used in domestic environments, a point that IKEA readily confirms, the goods in issue were designed to be “work chairs” and to equally meet the needs and demands of its customers in a wide range of business and/or domestic environments.

38. As such, the Tribunal finds the facts in this case to be markedly different from those in *Kwality*, notwithstanding the CBSA’s arguments to the contrary.⁵³ In *Kwality*, the appellant acted as a “middle man” between manufacturers and large-scale wholesalers. It was therefore unable to demonstrate the intent behind the design and marketing of the goods in that case or their ultimate destination.⁵⁴ In contrast, as the designer, manufacturer and retailer of the goods in issue, IKEA clearly established its intent to design and market the goods to both domestic and non-domestic customers. As the retailer of the goods in issue, IKEA could also provide evidence regarding their ultimate destination. Furthermore, the goods in *Kwality* were different from the goods in issue. In *Kwality*, the goods included sofas, loveseats and chairs, all of which are recognizable as being for use in a domestic setting. In contrast, the goods in issue are *work* chairs, intentionally designed and equipped as such to enable IKEA’s customers to perform their work in whatever business or domestic capacity that might entail.

50. *Transcript of Public Hearing*, 12 June 2014, at 28-29.

51. *Ibid.* at 13, 25, 28.

52. *Ibid.* at 24-25, 30.

53. Exhibit AP-2013-053-09A at paras. 43-44, Vol. 1A.

54. *Kwality* at paras. 48, 55, 65.

DECISION

39. Therefore, on the basis of the evidence before it, the Tribunal finds that the goods in issue should be classified under tariff item No. 9401.30.90 as other swivel seats.

40. The appeal is allowed.

Ann Penner

Ann Penner

Presiding Member