



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2013-049

Dynatrac Sleep Products Ltd.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, September 16, 2014*

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IN THE MATTER OF an appeal heard on June 19, 2014, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF decisions of the President of the Canada Border Services Agency, dated September 6, 2013, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

DYNATRAC SLEEP PRODUCTS LTD.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Ann Penner
Ann Penner
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: June 19, 2014
Tribunal Member: Ann Penner, Presiding Member
Counsel for the Tribunal: Elysia Van Zeyl
Student-at-law: Cassandra Baker
Registrar Officer: Haley Raynor

PARTICIPANTS:

Appellant	Counsel/Representative
Dynatrac Sleep Products Ltd.	Michael Kaylor
Respondent	Counsel/Representative
President of the Canada Border Services Agency	Lune Arpin

WITNESSES:

Elio DeBartolo	Michael Bernier
President	Vice-President
Dynatrac Sleep Products Ltd.	Mattress Mart

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Dynatrac Sleep Products Ltd. (Dynatrac) on November 21, 2013, pursuant to subsection 67(1) of the *Customs Act*¹ in response to four decisions by the President of the Canada Border Services Agency (CBSA) made on September 6, 2013, pursuant to subsection 60(4).

2. The issue in this appeal is whether certain unassembled metal bed frames (the goods in issue) were properly classified under tariff item No. 9403.20.00 of the schedule to the *Customs Tariff*² as other metal furniture, as determined by the CBSA, or whether they should be classified under tariff item No. 9403.90.00 as parts, as argued by Dynatrac.

3. The Canadian International Trade Tribunal (the Tribunal) held a public hearing in Ottawa, Ontario, on June 19, 2014. Dynatrac called two witnesses, Mr. Elio DeBartolo, President of Dynatrac, and Mr. Michael Bernier, Vice-President of Mattress Mart.

GOODS IN ISSUE

4. The goods in issue are metal bed frames, the components of which are imported into Canada in a disassembled state. All of the necessary parts, hardware and fasteners required for their assembly are imported with them in a single box.

PROCEDURAL HISTORY

5. Between January and December 2010, Dynatrac imported the goods in issue in four separate transactions.

6. Following a determination by the CBSA that the goods in issue were classified as other metal furniture under tariff item No. 9403.20.00, Dynatrac submitted a request for a re-determination pursuant to subsection 60(1) of the *Act*.

7. On September 6, 2013, the CBSA issued its final decisions pursuant to subsection 60(4) of the *Act*, upholding its earlier decisions that the goods in issue were classified as other metal furniture under tariff item No. 9403.020.00.

8. On November 21, 2013, Dynatrac filed this appeal with the Tribunal. Dynatrac filed its brief on January 9, 2014, and the CBSA filed its brief on March 17, 2014, following the granting of a one-week extension.

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).³ The schedule is divided into sections and chapters,

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

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

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

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*⁴ and the *Canadian Rules*⁵ 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*⁶ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,⁷ 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.⁸

13. The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the *General Rules* as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. If the goods in issue cannot be classified at the heading level through the application of Rule 1, then the Tribunal must consider the other rules.⁹

14. 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 use a similar approach to determine the proper subheading.¹⁰ The final step is to determine the proper tariff item.¹¹

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

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

6. World Customs Organization, 2d ed., Brussels, 2003.

7. World Customs Organization, 5th ed., Brussels, 2012.

8. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) [*Suzuki*] at paras. 13, 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.

9. Rules 1 through 5 of the *General Rules* apply to classification at the heading level.

10. Rule 6 of the *General Rules* provides that “. . . the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules [i.e. Rules 1 through 5] . . .” and that “. . . the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

11. Rule 1 of the *Canadian Rules* provides that “. . . the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the [*General Rules*] . . .” and that “. . . the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires.” Classification opinions and explanatory notes do not apply to classification at the tariff item level.

TARIFF CLASSIFICATION AT ISSUE

15. The relevant provisions of the *Customs Tariff* 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**

...

94.03 **Other furniture and parts thereof.**

...

9403.20.00 **-Other metal furniture**

...

9403.90.00 **-Parts**

16. The relevant explanatory notes to Chapter 94 provide as follows:

GENERAL

This Chapter covers, **subject** to the exclusions listed in the Explanatory Notes to this Chapter:

- (1) All furniture and parts thereof (headings 94.01 to 94.03).
- (2) Mattress supports, mattresses and other articles of bedding or similar furnishing, sprung, stuffed or internally fitted with any material, or of cellular rubber or plastics, whether or not covered (heading 94.04).

...

For the purposes of this Chapter, the term “furniture” means:

- (A) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, laboratories, hospitals, dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

...

Articles of furniture presented **disassembled** or **unassembled** are to be treated as assembled articles of furniture, **provided** the parts are presented together. This applies whether or not the furniture incorporates sheets, fittings or other parts of glass, marble or other materials (e.g., a wooden table with a glass top, a wooden wardrobe with a mirror, a sideboard with a marble top).

PARTS

This Chapter only covers parts, whether or not in the rough, of the goods of headings 94.01 to 94.03 and 94.05, when identifiable by their shape or other specific features as parts designed solely or principally for an article of those headings. They are classified in this Chapter when not more specifically covered elsewhere.

POSITIONS OF PARTIES

Dynatrac

17. Dynatrac argued that the goods in issue are not properly classified as furniture because, even once assembled, they still do not form a complete bed and cannot be used as a bed.

18. While Dynatrac did not dispute that the goods in issue contain all the component parts to form a metal bed frame, it continued to stress that the goods in issue are not properly classified as furniture. In putting forward this view, Dynatrac relied on the Tribunal's decision in *Simmons Canada Inc. and Les Entreprises Sommex Ltée v. Deputy M.N.R.*¹² in which the Tribunal found that a mattress was not furniture. By inference, Dynatrac argued that "... the goods in issue are no less a part than the mattress support or the mattress itself."¹³

19. Dynatrac also pointed to the explanatory notes to Chapter 94, which require all parts to be presented together, to suggest that the goods in issue cannot be treated as an assembled bed, since they are imported without the other parts of a bed (e.g. mattress, mattress support). Therefore, it proposed that the goods in issue should be classified under tariff item No. 9403.90.00 as parts because, in its view, they do not constitute furniture in and of themselves.

CBSA

20. The CBSA insisted that, while the goods in issue were not a complete bed at the time of importation, they meet the definition of furniture as defined in Note (A) of the explanatory notes to Chapter 94. In particular, the CBSA noted that the goods in issue serve a utilitarian purpose because of their ability to receive a mattress, are designed to be placed on the floor, have wheels and can be moved, and are used to furnish a bedroom of a residence, hotel or other such space.

21. Given that the goods in issue are unassembled at the time of importation, the CBSA applied Rule 2 (a) of the *General Rules* to classify the goods in the same heading as the assembled article. By finding that the assembled article of a bed frame met the definition of furniture, the CBSA argued that goods must therefore be classified under tariff item No. 9403.20.00 as other metal furniture.

TRIBUNAL'S ANALYSIS

22. Both parties agree on a number of key issues that will set the framework for the Tribunal's analysis: (1) the goods in issue were imported into Canada in a disassembled state, but in a box that contained the necessary components and hardware to assemble the pieces into a complete metal bed frame;¹⁴ (2) the applicable heading is 94.03, which covers other furniture or parts thereof; (3) classification of the unassembled components of the bed frame as a complete bed frame can and should be done according to Rule 2 (a) of the *General Rules*;¹⁵ and (4) the goods in issue, once assembled, have the essential character of a complete metal bed frame.¹⁶

12. (15 September 1997), AP-96-063, AP-96-085 and AP-96-089 (CITT).

13. Exhibit AP-2013-049-04A at para. 23, Vol. 1.

14. *Transcript of Public Hearing*, 19 June 2014, at 13-14, 27-28.

15. Rule 2 (a) of the *General Rules* states that "[a]ny reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled."

16. *Transcript of Public Hearing*, 19 June 2014, at 63.

23. However, parties disagree on whether the metal bed frames can be considered furniture in their own right at the time of importation into Canada, or whether the fact that the goods in issue will be ultimately combined with a mattress and box spring to form a bed makes them parts of furniture.

24. This is the sole issue before the Tribunal in this appeal.

25. As noted above, Dynatrac argued that a complete metal bed frame cannot be considered furniture on its own. In its view, even once assembled, a metal bed frame is simply a part of furniture, namely, a part of a complete bed. The CBSA argued to the contrary, pointing to the applicability to the goods in issue of the definition of “furniture” in Note (A) of the explanatory notes to Chapter 94.

26. As explanatory notes are considered binding on the Tribunal unless there is a sound reason to depart from them by virtue of section 11 of the *Customs Tariff* and the Federal Court of Appeal’s decision in *Suzuki*, the Tribunal will consider the applicability of this definition to the goods in issue to resolve the issue under appeal.

27. Note (A) of the explanatory notes to Chapter 94 provides that items of furniture must possess the following five attributes:

- they must be movable;
- they must be articles;
- they must have the essential characteristic of being constructed for placing on the floor or ground;
- they must be used mainly with a utilitarian purpose; and
- they must be used to equip private dwellings.

28. The Tribunal also notes that the definition of “furniture” contains the proviso that the article not be included under other more specific headings of the nomenclature.

29. The parties agree that four of the five requirements of the definition of “furniture” are met in this case.¹⁷

30. First, it is without question that the goods in issue are moveable. They have wheels and, even if they did not have wheels, they could still easily be moved.¹⁸

31. Second, the parties do not dispute that the goods in issue are considered articles.

32. Third, both parties agree that the goods in issue are constructed to be placed on the floor.¹⁹ Indeed, one would likely have a hard time placing them anywhere other than on the floor.

33. Fourth, the goods in issue are generally intended to equip private dwellings. The evidence shows that the goods in issue are sold to distributors or retailers and then ultimately sold to customers for use in their homes.²⁰ In most cases, the goods in issue are sold together with a mattress and mattress support; however, the witnesses testified that metal bed frames can be, and are, sold on their own and, indeed, certain marketing materials submitted to the Tribunal indicate that the bed frames are marketed for sale without an

17. *Ibid.* at 15, 26, 28, 29, 43.

18. *Ibid.* at 15, 28.

19. *Ibid.*

20. *Ibid.* at 10-11, 28.

accompanying mattress or mattress support.²¹ In addition, the goods in issue are sometimes used to equip hotels and bed-and-breakfasts.²²

34. Parties do not agree however on the applicability of the fifth requirement of the definition of “furniture”, namely, whether the goods in issue have a utilitarian purpose.

35. The witnesses for Dynatrac repeatedly stated that the goods in issue cannot be used as beds. Mr. DeBartolo and Mr. Bernier stated emphatically that a person could never lie or sleep on the goods in issue.²³

36. Certainly, the Tribunal recognizes that a person could not sleep or lie on the goods in issue as one would on a bed. As such, Dynatrac is correct that the goods in issue are not beds. However, the issue before the Tribunal is not whether the goods in issue are beds, but whether the goods in issue are other metal furniture. On the basis of the definition of furniture, the Tribunal must therefore consider whether the *goods in issue* have a utilitarian purpose in and of themselves. As Dynatrac rightly acknowledged, it alone has the onus of proving that the goods in issue do *not* have a utilitarian purpose.²⁴

37. When making arguments about whether the goods in issue have a utilitarian purpose, both parties highlighted the Tribunal’s decision in *Renelle Furniture Inc. v. President of the Canada Border Services Agency*.²⁵ In that case, the Tribunal considered whether or not a futon sofa bed was complete until combined with a futon mattress and, until such point, whether or not the futon frame had a function or use.²⁶ Accordingly, the Tribunal had to determine whether the futon frame constituted a part and ought to be classified under tariff item No. 9403.90.00. In its decision, the Tribunal was not persuaded by the fact that a person could not sit or lie comfortably on the goods, ultimately holding that the futon frames, once assembled, possessed the essential character of the complete futons because they had the complexity, design and appearance of the complete goods.²⁷

38. Dynatrac argued that the present case could be distinguished from *Renelle* for a number of reasons, one of which is particularly relevant to the issue at hand. For Dynatrac, *Renelle* was unlike the present case because one could conceivably lie on an assembled futon frame, albeit uncomfortably, whereas a person could never lie on the goods in issue. As the witnesses were very clear that a person could not lie on the goods in issue at any time, Dynatrac argued that “. . . the absence of the ability to do that . . . deprives the goods in issue of any sort of utilitarian purpose or function”²⁸

39. The Tribunal disagrees. The fact that a person cannot lie on the goods in issue does not inevitably lead to the conclusion that they lack a utilitarian purpose. “Utilitarian” simply means that an object can be

21. *Ibid.* at 12; Exhibit AP-2013-049-08A, tab 1, Vol. 1.

22. *Transcript of Public Hearing*, 19 June 2014, at 33.

23. *Ibid.* at 8, 33.

24. *Ibid.* at 52. The Tribunal also notes that paragraph 152(3)(c) of the *Act* provides as follows: “. . . in any proceeding under this Act, the burden of proof in any question relating to . . . the payment of duties on any goods . . . lies on the person, other than Her Majesty, who is a party to the proceeding . . .” [emphasis added]. The present appeal is a proceeding under subsection 67(1). Moreover, because liability for the payment of duties on imported goods ultimately depends upon their tariff classification, tariff classification is a question “relating to” the payment of duties on goods, within the meaning of paragraph 152(3)(c). With both conditions of paragraph 152(3)(c) having been met, the burden of proof resides with Dynatrac. See, for example, *Unicare Medical Products Inc. v. Deputy M.N.R.C.E.* (21 June 1990), 2437, 2438, 2485, 2591 and 2592 (CITT) at 3; *Canada (Border Services Agency) v. Miner*, 2012 FCA 81 (CanLII).

25. (23 March 2007), AP-2005-028 (CITT) [*Renelle*].

26. *Renelle* at para. 6.

27. *Renelle* at para. 20.

28. *Transcript of Public Hearing*, 19 June 2014, at 71.

used. Indeed, the *Canadian Oxford Dictionary* defines “utilitarian” as “. . . designed to be practically useful rather than attractive; functional”²⁹

40. The Tribunal finds that this definition applies to the goods in issue. Indeed, both witnesses repeatedly stated that the purpose of the goods in issue is to support and elevate a mattress and box spring.³⁰ Mr. DeBartolo, for example, noted that “. . . [a bed frame] is an item that is *used* in the industry to support mattresses and box springs and to attach headboards to the metal bed frame”³¹ [emphasis added]. By implication, then, the testimony of the witnesses establishes that the metal bed frames are useful and functional and, therefore, have a utilitarian purpose unto themselves.

41. In this respect, the Tribunal notes that the goods in issue are similar to other goods specifically listed in tariff item No. 9403.20.10. Dynatrac acknowledged that the goods listed in tariff item No. 9403.20.10 have a utilitarian purpose and generally equip the rooms in which they are located.³² For example, it noted that a cabinet equips a room by holding a range of household items. A wood holder equips a room by serving as a decoration and, more importantly, by holding wood.³³

42. Likewise, the goods in issue have a useful or utilitarian function, in that they elevate a box spring and mattress and allow one to attach a headboard, if so desired. Stated another way, the goods in issue equip a room in much the same way as do cabinets or wood holders, in that they hold other objects (i.e. mattresses and box springs). As stated by Mr. DeBartolo at the hearing, the goods in issue are designed to fit a box spring and mattress and, were they not so designed, “. . . all you [would] have is a [bunch] of metal [pieces].”³⁴

43. In the Tribunal’s view, the goods in issue are not simply a bunch of metal pieces that, once assembled, constitute a part serving no particular function in and of itself. Once assembled, these metal pieces constitute a finished bed frame which serves an identifiable utilitarian purpose: that purpose is, clearly and unequivocally, to hold a mattress support and a mattress. While this purpose is ultimately linked to the purpose of a bed, it is a utilitarian purpose nonetheless. The Tribunal can only conclude, as a result, that the goods in issue do indeed have a utilitarian purpose in and of themselves.

44. Accordingly, the Tribunal finds that the goods in issue meet all the requirements of the definition of “furniture”, as set out in the Note (A) of the explanatory notes to Chapter 94, notwithstanding Dynatrac’s arguments to the contrary. Therefore, on the basis of the evidence before it, the Tribunal finds that the goods in issue are furniture and are properly classified as other metal furniture under tariff item No. 9403.20.00.

DECISION

45. The appeal is dismissed.

Ann Penner
Ann Penner
Presiding Member

29. Second ed., s.v. “utilitarian”.

30. *Transcript of Public Hearing*, 19 June 2014, at 6, 28.

31. *Ibid.* at 5.

32. *Ibid.* at 44.

33. *Ibid.* at 53.

34. *Ibid.* at 22.