



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2015-021

Rona Corporation

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Monday, October 17, 2016*

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DECISION 12

IN THE MATTER OF an appeal heard on June 21, 2016, pursuant to section 67 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 August 3, 2015, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

RONA CORPORATION

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Jason W. Downey
Jason W. Downey
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: June 21, 2016
Tribunal Member: Jason W. Downey, Presiding Member
Counsel for the Tribunal: Kalyn Eadie
Student-at-law: Amélie Cournoyer
Supervisor, Registry Operations: Haley Raynor
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STATEMENT OF REASONS

INTRODUCTION

1. This is an appeal filed by Rona Corporation (Rona) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ from a further re-determination by the President of the Canada Border Services Agency (CBSA), dated August 3, 2015, made pursuant to subsection 60(4).

2. The issue in this appeal is whether Soleus Air JC-128 wine coolers (the goods in issue) are properly classified under tariff item No. 8418.50.10 of the schedule to the *Customs Tariff*² as other furniture (chests, cabinets, display counters, showcases and the like) for storage and display, incorporating refrigerating or freezing equipment, as determined by the CBSA, or should be classified under tariff item No. 8418.69.00 as other refrigerating or freezing equipment, as claimed by Rona.

PROCEDURAL HISTORY

3. On September 24, 2010, the goods in issue were imported under tariff item No. 8418.21.00 as household compression-type refrigerators.

4. On September 10, 2014, Rona filed a request for re-determination and a refund request under sections 60 and 74 of the *Act*, respectively, claiming that the goods in issue should be classified under tariff item No. 8418.69.00.

5. On November 12, 2014, the CBSA denied Rona's refund request and forwarded the request for re-determination to the Recourse Division for further re-determination.

6. On August 3, 2015, the CBSA issued a further re-determination under subsection 60(4) of the *Act*, finding that the goods in issue were properly classified under tariff item No. 8418.50.10.

7. On October 26, 2015, Rona filed this appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

8. On April 6, 2016, the Tribunal notified the parties by letter that it would require further evidence on the characteristics and functioning of the goods in issue, specifically the type of cooling mechanism that they use. The Tribunal requested that such evidence be presented at the hearing, then scheduled for April 21, 2016, and indicated that parties may be permitted to file post-hearing written submissions on the issue as well.

9. On April 11, 2016, the CBSA requested that the Tribunal reschedule the hearing so that the CBSA could locate and engage a witness who would be able to speak to the issues identified in the Tribunal's April 6, 2016, letter. The Tribunal granted the request, and the hearing was rescheduled for June 21, 2016.

10. On June 21, 2016, the Tribunal held a public hearing. Rona called Mr. Reda Ihaddadene, Team Leader, Refrigeration, at Cavavin Inc., a Canadian wine cellar manufacturer and importer, and requested that he be qualified as an expert witness. The Tribunal accepted Mr. Ihaddadene as an expert witness in the concept, design and functioning of refrigeration systems.³ Rona also called Ms. Nathalie Fortier, CEO of

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

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

3. *Transcript of Public Hearing*, 21 June 2016, at 51-52.

Cavavin Inc., as a lay witness to testify to the characteristics of different products in the Canadian wine cooler marketplace.

11. The CBSA called Mr. Liam Doody, Territory Manager, Ottawa West, Kirkwood Diamond Canada, and professor in the sommelier program at Algonquin College, Ottawa, Ontario, as a lay witness to testify to the proper wine storage methods and attributes of wine coolers.

DESCRIPTION OF THE GOODS IN ISSUE

12. The Tribunal notes that no physical exhibits were submitted by the parties. Instead, Rona filed the owner's manual for the goods in issue, which describes the goods in detail.⁴ Moreover, the witnesses based their testimony on the owner's manual since neither of them had the opportunity to examine the goods in issue.⁵

13. The goods in issue have been described as follows: the goods in issue measure 20.5 inches wide by 22 inches deep by 33 inches high and weigh 86 lbs.; they contain five removable wine racks, one flat half shelf and one lower shelf; they are designed for resting on a flat surface, such as a floor, and have adjustable feet to allow them to be leveled; their capacity is 46 standard-size (750 mL) wine bottles; the top features a countertop which can be used to serve beverages; and the door is made of amber-tinted glass.

LEGAL FRAMEWORK

14. 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).⁶ 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.

15. 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*⁷ and the *Canadian Rules*⁸ set out in the schedule.

16. 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.

17. 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*⁹ and the *Explanatory Notes to the Harmonized Commodity Description and Coding*

4. Exhibit AP-2015-021-04A, tab 6, Vol. 1.

5. *Transcript of Public Hearing*, 21 June 2016, at 73, 124.

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

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

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

9. World Customs Organization, 2nd ed., Brussels, 2003.

System,¹⁰ 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.¹¹

18. 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. As the Supreme Court of Canada indicated in *Canada (Attorney General) v. Igloo Vikski Inc.*, it is “. . . only where Rule 1 does not conclusively determine the classification of the goods that the other General Rules become relevant to the classification process”¹²

19. 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. 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.”

20. Finally, the Tribunal must determine the proper tariff item classification. 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.

TERMS OF RELATIVE HEADINGS AND LEGAL AND EXPLANATORY NOTES

Section XVI

**MACHINERY AND MECHANICAL APPLIANCES;
ELECTRICAL EQUIPMENT; PARTS THEREOF;
SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE
AND SOUND RECORDERS AND REPRODUCERS, AND PARTS
AND ACCESSORIES OF SUCH ARTICLES**

...

Chapter 84

**NUCLEAR REACTORS, BOILERS, MACHINERY
AND MECHANICAL APPLIANCES; PARTS THEREOF**

...

- 84.18** Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines of heading 84.15.
- 8418.10** -Combined refrigerator-freezers, fitted with separate external doors

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

11. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) 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.

12. 2016 SCC 38 (CanLII) at para. 21.

...	
	-Refrigerators, household type:
8418.21.00	--Compression-type
...	
8418.29.00	--Other
8418.30	-Freezers of the chest type, not exceeding 800 litres capacity
...	
8418.40	-Freezers of the upright type, not exceeding 900 litres capacity
...	
8418.50	-Other furniture (chests, cabinets, display counters, showcases and the like) for storage and display, incorporating refrigerating or freezing equipment
8418.50.10	--- Refrigerating or refrigerating-freezing type
...	
	-Other refrigerating or freezing equipment; heat pumps:
8418.61	--Heat pumps other than air conditioning machines of heading 84.15
8418.69	--Other
...	
	-Parts:
8418.91	--Furniture designed to receive refrigerating or freezing equipment
...	
8418.99	--Other

21. The relevant explanatory notes to heading No. 84.18 provide as follows:

**(I) REFRIGERATORS, FREEZERS AND OTHER
REFRIGERATING OR FREEZING EQUIPMENT**

The refrigerators and refrigerating equipment of this heading are in the main machines or assemblies of apparatus for the production, in a continuous cycle of operations, of low temperatures (in the region of 0°C or less) at the active cooling element, by the absorption of the latent heat of evaporation of liquefied gases (e.g., ammonia, halogenated hydrocarbons), of volatile liquids or, in the case of certain marine types, of water.

The heading therefore **excludes**:

- (a) Freezing-salt type freezers (**heading 82.10 or 84.19**).
- (b) Water-flow coolers of the simple heat-exchange type (see the Explanatory Note to **heading 84.19**).
- (c) Ice-chests, insulated cabinets, etc., not designed for fitting with refrigerating units (generally **heading 94.03**).

The refrigerators of this heading are of two main types:

(A) COMPRESSION TYPE REFRIGERATORS

Their essential elements are:

- (1) **The compressor** which receives expanded gas from the evaporator and delivers it under pressure to
- (2) **The condenser** or liquefier where the gas is cooled and liquefied, and
- (3) **The evaporator**, the active cooling element, consisting of a tubular system in which the condensed refrigerant, released through an expansion valve, evaporates rapidly with the absorption of heat from the surrounding air or, in the case of large cooling installations, from brine or a solution of calcium chloride kept in circulation around the evaporator coils.

In the marine type there is no compressor and condenser in the refrigerant (water or brine) circuit, but the evaporation is induced by a vacuum produced by an ejector pump working with a steam condenser. The latter condenses and disposes of the vapours produced, which are not returned to the system.

22. The relevant legal notes to Chapter 94 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

...

1. This Chapter does not cover:

...

- (e) Furniture specially designed as parts of refrigerating or freezing equipment of heading 84.18; ...

...

2. The articles (other than parts) referred to in headings 94.01 to 94.03 are to be classified in those headings only if they are designed for placing on the floor or ground.

The following are, however, to be classified in the above-mentioned headings even if they are designed to be hung, to be fixed to the wall or to stand one on the other:

- (a) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture;

...

23. The 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).

...

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.
- (B) The following:
- (i) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture, designed to be hung, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles (books, crockery, kitchen utensils, glassware, linen, medicaments, toilet articles, radio or television receivers, ornaments, etc.) and separately presented elements of unit furniture.
- (ii) Seats or beds designed to be hung or to be fixed to the wall.

Except for the goods referred to in subparagraph (B) above, the term “furniture” **does not apply** to articles used as furniture but designed for placing on other furniture or shelves or for hanging on walls or from the ceiling.

POSITIONS OF PARTIES

Rona

24. Rona’s principal position in this appeal is that the CBSA erred in determining that the goods in issue fall under subheading No. 8418.50 because they (1) are not furniture and (2) are not “for storage and display”.

25. With respect to this first point, Rona argued that the goods in issue are appliances and that an appliance cannot be furniture. Rona also argued that the CBSA should not have relied on the definition of “furniture” found in the explanatory notes to Chapter 94, because that definition, by its own terms, applies only to Chapter 94.

26. Rona also argued that the CBSA misapplied Note 1(e) to Chapter 94 in its decision under subsection 60(4) of the *Act*. Rona submitted that the goods in issue are not “easily” movable and that, even if Note 1(e) applies, the goods in issue do not meet the definition of “furniture” in the explanatory notes to Chapter 94.

27. With respect to the second point, Rona agreed with the CBSA that the goods in issue are “for storage”, but differs on whether the goods in issue are “for display”.

28. Rona submitted that the goods in issue are not specifically designed for display *per se*, because the glass front is amber-tinted and the bottles are not designed to be placed so that the labels can be read with ease. Instead, it is more specifically designed for storage and conservation of wine under desirable conditions. In its supplementary submissions, Rona argued that the term “*exposition*” used in the French version of subheading No. 8418.50 more properly translates to “exhibition” in English, rather than “display”, and that “exhibition” has a more restrictive meaning than “display”.

29. Rona claimed that the goods in issue should be classified under tariff item No. 8418.69.00 as other refrigerating or freezing equipment since they cannot be classified in any other subheading of heading No. 84.18.

30. Rona argued that the goods in issue could not be classified under tariff item No. 8418.21.00 or 8418.29.00 since the characteristics, the temperatures and the purpose of the goods in issue are not the same as a “household type” refrigerator.

31. Finally, in support of its argument that the goods in issue should be classified under tariff item No. 8418.69.90, Rona submitted evidence that similar goods had previously been classified under this tariff item.

CBSA

32. The CBSA submitted that the goods in issue are properly classified under tariff item No. 8418.50.10 as other furniture (chests, cabinets, display counters, showcases and the like) for storage and display, incorporating refrigerating or freezing equipment. Specifically, the CBSA argued that the goods in issue are cabinets with countertops, which makes them furniture as described by the terms of subheading No. 8418.50.¹³

33. In reply to Rona’s submissions, the CBSA argued that whether or not the goods in issue can be described as appliances is irrelevant.

34. The CBSA further argued that, in accordance with the principles of statutory interpretation, the definition of “furniture” found in the explanatory notes to Chapter 94 should be applied to other uses of the word “furniture” within the *Customs Tariff*, in order to ensure that the statute is interpreted in an internally consistent manner.

35. According to the CBSA, the goods in issue meet all the criteria enumerated in the definition of “furniture” in the explanatory notes to Chapter 94. Specifically, the CBSA submitted that the goods in issue are constructed to be placed on the floor or ground, since they have adjustable feet, that they are useful, rather than decorative, that they have the utilitarian function of storing and displaying wine bottles, as well as keeping their contents cool, and that they are used to equip private dwellings, etc., as opposed to commercial facilities.

36. With respect to the requirement that the goods in issue be “movable”, the CBSA submitted that the definition does not require that goods be “easily” movable, as advocated by Rona, and noted that the owner’s manual provides relatively simple instructions for moving the goods in issue.

37. With respect to the “display” requirement, the CBSA submitted that nothing in subheading No. 8418.50 or in the explanatory notes to that subheading states that the goods displayed need to be clearly recognizable and points out that it is possible to count the number of bottles contained and to read the labels if the bottles are accordingly positioned. Further, the CBSA argued that the fact that the goods in issue have a glass door, as opposed to a wooden or metal one, indicates that they are somehow intended to be used for display.

13. Exhibit AP-2015-021-08A, tab 1 at 6, 10, Vol. 1A; *Transcript of Public Hearing*, 21 June 2016, at 210.

TRIBUNAL ANALYSIS

38. On appeals under section 67 of the *Act* concerning tariff classification matters, the Tribunal determines the proper tariff classification of the goods in accordance with prescribed interpretative rules.

39. As stated above, the Tribunal must 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.

40. In this case, the parties agree that the only relevant heading is heading No. 84.18. A survey of the other headings of Chapters 84 and 85, and of the other sections of the *Customs Tariff*, reveals no other relevant heading. Consequently, in pursuant to Rule 1 of the *General Rules*, the Tribunal finds that the goods in issue are properly classified in heading No. 84.18.

41. The parties disagree on the classification of the goods in issue at the subheading level. Classification at the subheading level also starts by applying Rule 1 of the *General Rules* (pursuant to Rule 6), i.e. by examining the terms of the subheadings and any relative section, chapter or subheading notes.

42. Rule 6 of the *General Rules* also provides that only subheadings at the same level are comparable. Accordingly, the appropriate one-dash subheading must first be chosen using the principles of classification contained in Rules 1 through 5. If the appropriate one-dash subheading is subdivided, then the appropriate two-dash subheading must be chosen using the same technique.

43. Generally, the Tribunal would commence with an examination of whether the goods in issue could *prima facie* be classified in either or both subheadings proposed by the parties, in accordance with the *mutatis mutandis* application of Rule 1 of the *General Rules*. However, Rona has proposed classification in a subheading that the Tribunal has previously determined to be residual. Indeed, according to the Tribunal's decision in *Euro-Line v. President of the Canada Border Services Agency*,¹⁴ goods cannot be *prima facie* classifiable in subheading No. 8418.69.¹⁵

44. Accordingly, the Tribunal will start its analysis with an examination of the subheading proposed by the CBSA, namely, subheading No. 8418.50.

45. The Tribunal finds that the goods in issue cannot be classified in subheading No. 8418.50 as other furniture (chests, cabinets, display counters, showcases and the like) for storage and display, *incorporating* refrigerating or freezing equipment. As will be demonstrated below, the goods in issue are *refrigerators* in and of themselves. It follows that the goods in issue cannot be furniture that *incorporates* refrigerating equipment.

46. This position is supported by the expert report of Mr. Ihaddadene, wherein he writes that "wine coolers are generally sold to be built in kitchen cupboards and are mostly sold in appliance retail stores in

14. (12 August 2013), AP-2012-026 (CITT).

15. *Ibid.* at para. 23, where the Tribunal stated as follows: "The use of the word 'other' to modify 'refrigerating or freezing equipment' renders subheading No. 8418.69 a residual classification covering refrigerating and freezing equipment not falling within one of the subheadings that precedes it."

the refrigerator and other appliances section”¹⁶ [translation]. In other words, the goods in issue are sold as stand-alone refrigerating units and not furniture into which refrigerating equipment has been incorporated.

47. The evidence on the record indicates that the goods in issue are specifically described by the terms of subheading No. 8418.20, “Refrigerators, household-type”.¹⁷

48. Rona argued that the goods in issue are distinct from “household-type” refrigerators and, therefore, are not properly classified in subheading No. 8418.20.

49. Mr. Ihaddadene testified that wine coolers are specifically designed to store wine, while refrigerators are designed to store food.¹⁸ Ms. Fortier testified to the same effect.¹⁹

50. Rona also argued that wine coolers have unique features that refrigerators do not have. Mr. Ihaddadene’s expert report emphasized that wine coolers are set to higher temperatures than traditional refrigerators and that they are subject to different regulatory standards.²⁰ In her testimony, Ms. Fortier mentioned other distinctive characteristics of wine coolers, including their dark interiors, the absence of vibrations, the absence of odours, the glass door, the humidity control and the specific layout that facilitates storing bottles on their sides.²¹

51. Mr. Doody confirmed that wines should ideally be conserved at a constant temperature of approximately 12°C in a vibration-free environment with limited light and sufficient humidity.²²

52. Moreover, in its brief, Rona referred to definitions of different types of refrigerators for energy efficiency rating purposes, as well as to industry documents discussing the pros and cons of different types of cooling systems for wine storage, to support this distinction.²³

53. While the Tribunal concedes that there may be differences between wine coolers and common household refrigerators, the *Customs Tariff* unfortunately does not provide for such a distinction.

54. The term “refrigerator” is not defined in the *Customs Tariff*. Accordingly, regard must be had for the common and ordinary meaning of the term.

55. The *Merriam-Webster’s Collegiate Dictionary* defines “refrigerator” as “... something that refrigerates; especially: a room or appliance for keeping food or other items cool”²⁴ [emphasis added].

16. Exhibit AP-2015-021-18A, tab 1 at 2, Vol. 1B.

17. It is well established that the Tribunal’s role in appeals under the Act is to arrive at the proper tariff classification, not merely to adjudicate between the positions of the parties. It is always open to the Tribunal to choose a classification not proposed or argued by the parties if the evidence in a given case permits such an approach. Accordingly, on April 6, 2016, the Tribunal directed the parties to be prepared to present argument on the applicability of tariff item No. 8418.21.00. In closing argument, the CBSA submitted to the Tribunal, in the alternative, that the goods in issue should be classified under tariff item No. 8418.21.00. *Transcript of Public Hearing*, 21 June 2016, at 196.

18. *Transcript of Public Hearing*, 21 June 2016, at 67-68.

19. *Ibid.* at 134-35.

20. Exhibit AP-2015-021-18A at paras. 8, 10, Vol. 1B.

21. *Transcript of Public Hearing*, 21 June 2016, at 110.

22. *Ibid.* at 154.

23. Exhibit AP-2015-021-04A, tab 16, Vol. 1.

24. Eleventh ed., s.v. “refrigerator”, <http://www.merriam-webster.com/dictionary/refrigerator>.

Similarly, the *Canadian Oxford Dictionary* defines “refrigerator” as a “. . . cabinet or room in which food, etc., is kept cold”²⁵ [emphasis added].

56. According to their ordinary meaning, refrigerators can be intended to keep items, such as wine, cool. Furthermore, none of the distinguishing features mentioned by Rona’s witnesses, such as the specific temperature and humidity settings or the different design features, are either mentioned or determinative in these definitions. With respect to the temperature aspect in particular, all that is required of a refrigerator according to these definitions is that it keeps items “cool” or “cold”; this is what these wine coolers do.

57. In addition, refrigerators and refrigerating equipment of heading No. 84.18 are generically described in the explanatory notes to heading No 84.18 as follows:

. . . machines or assemblies of apparatus for the production, in a continuous cycle of operations, of low temperatures (in the region of 0°C or less) at the active cooling element, by the absorption of the latent heat of evaporation of liquefied gases (e.g., ammonia, halogenated hydrocarbons), of volatile liquids or, in the case of certain marine types, of water.

58. Again, this description does not mention any of the distinctions drawn by Rona, but is instead focussed on the mechanics of the cooling apparatus; those very same mechanics are present in the goods in issue.

59. In short, although they may be important from a commercial perspective, none of the differences outlined by Rona have any bearing on a decision that the goods in issue are “refrigerators” as that term is to be understood in the schedule to the *Customs Tariff*, which is in accordance with its ordinary meaning and by reference to the explanatory notes.

60. In addition, although the Tribunal will consider industry definitions in interpreting the terms of the schedule to the *Customs Tariff*, the industry standards submitted by Rona do not contain any standard industry definition of “refrigerator” that restricts its meaning in the manner argued by Rona. Instead, these publications provide definitions of “wine cooler”, which is not a term that appears in the schedule.

61. The evidence on the record is that the goods in issue keep wine cool.²⁶ As a result, the goods in issue are clearly “refrigerators”, as that term is understood in the schedule to the *Customs Tariff*.

62. The Tribunal is also of the view that the goods in issue are intended for household use. The owner’s manual describes the goods in issue as being “. . . designed to improve your living and entertaining comfort”,²⁷ which describes household, rather than commercial, use. Furthermore, at the hearing, the witnesses confirmed that, although they could be used in commercial applications, the goods in issue were mainly intended for household use.²⁸

63. The Tribunal finds that the goods in issue are properly classified, at the one-dash subheading level, in subheading No. 8418.20. As a result, the Tribunal does not have to address the other subheading proposed by Rona.

64. Subheading No. 8418.20 is itself broken out into two two-dash subheadings, subheading No. 8418.21, household compression-type refrigerators, and subheading No. 8418.29, other household

25. Second ed., s.v. “refrigerator”.

26. Exhibit AP-2015-021-04A, tab 6, Vol. 1; *Transcript of Public Hearing*, 21 June 2016, at 78.

27. Exhibit AP-2015-021-04A, tab 1, Attachment 1 at 2, Vol. 1.

28. *Transcript of Public Hearing*, 21 June 2016, at 126, 152, 153.

refrigerators. As noted above, the goods in issue were originally imported under tariff item No. 8418.21.00 as compression-type refrigerators. Rona based its request for re-determination on a previous CBSA ruling, which concerned a “28-bottle Sobra superconductor wine cooler with a mirrored glass door” [translation] (which was mechanically and physically different from the goods in issue).²⁹ In that ruling, the CBSA found that the goods were “...**NOT A COMPRESSION TYPE REFRIGERATOR, HOUSEHOLD TYPE.**”³⁰

65. According to the material submitted by Rona, there are two types of wine coolers: thermoelectric and compression.³¹ At the hearing, Rona’s expert witness confirmed that the terms “superconductor” and “thermoelectric” describe the same technology.³²

66. Accordingly, the use of the term “superconductor” in the description of the goods that were the subject of the previous CBSA ruling suggests that the cooling mechanism was not of the compression type, which would explain why the goods in that previous decision were not classifiable under tariff item No. 8418.21.00. Further, Rona conceded that the goods in this previous ruling were similar, but not identical, to the goods in issue and that, therefore, the reasoning underlying the decision that these were not classifiable in subheading No. 8418.21 did not necessarily apply in the present instance.³³ Considering that these are different goods, the comparison was of little use to the Tribunal.

67. On the basis of the evidence tendered at the hearing, the Tribunal finds that the goods in issue are compression-type refrigerators in accordance with the language used in the nomenclature.

68. Compression-type refrigerators are described in the explanatory notes to heading No. 84.18, which provide that the essential elements of compression-type refrigerators are the compressor, the condenser and the evaporator.

69. Mr. Ihaddadene gave an exhaustive description of compression-type refrigeration. He described the compression, expansion, cooling and evaporation processes involved and the role that the refrigerant plays in the process. Mr. Ihaddadene also explained how heat is exchanged following the flow of the coolant in the system, generating a cooler environment inside the appliance.³⁴

70. Mr. Ihaddadene testified that the goods in issue have a compressor, an evaporator, coils, a pump and a refrigerant. He explained that, even though the owner’s manual did not specifically show every single component, all these systems have the same mechanics and that, if a compressor is present, it necessarily has all these components included in order to achieve refrigeration.³⁵

71. This is in contrast to some of the materials initially filed by Rona that suggested that the goods in issue functioned by thermoelectric means,³⁶ which would direct their classification outside subheading No. 8418.21. However, the Tribunal finds Mr. Ihaddadene’s evidence persuasive and notes that it is supported by the fact that the owner’s manual states that the goods in issue contain compressors.

29. Exhibit AP-2015-021-04A, tab 1, Attachment 2 at 34, Vol. 1.

30. *Ibid.*

31. *Ibid.*, tabs 18, 19.

32. *Transcript of Public Hearing*, 21 June 2016, at 60.

33. Exhibit AP-2015-021-04A, tab 1 at 1, Vol. 1.

34. *Transcript of Public Hearing*, 21 June 2016, at 80-86.

35. *Ibid.* at 63, 80-95.

36. Exhibit AP-2015-021-04A, tab 1, Attachment 2, tabs 18, 19, Vol. 1; Exhibit AP-2015-021-13A, tabs 1-4, Vol. 1B.

72. On the basis of the foregoing analysis, the Tribunal finds that the goods in issue should be classified under tariff item No. 8418.21.00 as household compression-type refrigerators.

DECISION

73. The appeal is dismissed.

Jason W. Downey

Jason W. Downey
Presiding Member