



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2018-039

9291-9281 Quebec Inc. DBA  
IMPEKK

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Thursday, August 22, 2019*

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IN THE MATTER OF an appeal heard on April 25, 2019, 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 July 11, 2018, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**9291-9281 QUEBEC INC. DBA IMPEKK**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is allowed.

Cheryl Beckett  
Cheryl Beckett  
Presiding Member

Place of Hearing: Ottawa, Ontario  
Date of Hearing: April 25, 2019  
Tribunal Member: Cheryl Beckett, Presiding Member  
Support Staff: Kalyn Eadie, Counsel

**PARTICIPANTS:**

<b>Appellant</b>	<b>Counsel/Representative</b>
9291-9281 Quebec Inc. DBA IMPEKK	Jean-Marc Clément
<b>Respondent</b>	<b>Counsel/Representative</b>
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**WITNESS:**

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CEO/President  
Hardware Rebels

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## STATEMENT OF REASONS

### INTRODUCTION

1. This is an appeal filed by 9291-9281 Quebec Inc. DBA IMPEKK (IMPEKK) on October 5, 2018, pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision made by the President of the Canada Border Services Agency (CBSA), dated July 11, 2018, made pursuant to subsection 60(4).
2. The issue in this appeal is whether mechanisms for retractable wall beds (the goods in issue) are properly classified under tariff item No. 9403.20.00 as other metal furniture, as determined by the CBSA, or should be classified under tariff item No. 9403.90.00 as parts of other furniture, as claimed by IMPEKK.

### PROCEDURAL HISTORY

3. From 2014 to 2016, IMPEKK imported the goods in issue under 52 separate import transactions and declared the goods to be classified under tariff item No. 9403.90.00 as parts of other furniture.
4. On February 13, 2017, pursuant to a trade compliance verification, the CBSA determined that the goods in issue were properly classified under tariff item 9403.20.00 as other metal furniture. As a result, the CBSA re-determined, pursuant to paragraph 59(1)(a) of the *Act*, the tariff classification of the goods imported under two import transactions. Subsequently, as required under section 32.2 of the *Act*, IMPEKK submitted corrections to the tariff classification of the same and similar goods imported under 50 separate import transactions. These were treated as re-determinations pursuant to paragraph 59(1)(a) of the *Act*.
5. On May 10, 2017, and November 10, 2017, IMPEKK submitted a request for further re-determinations pursuant to subsection 60(1) of the *Act*, arguing that the goods in issue should be classified under tariff item No. 9403.90.00 as parts of other furniture.
6. On July 11, 2018, pursuant to subsection 60(4) of the *Act*, the CBSA further re-determined the classification of the goods in issue and maintained that they were properly classified as other metal furniture of tariff item No. 9403.20.00.
7. On October 5, 2018, IMPEKK filed this appeal with the Tribunal.
8. The Tribunal held a public hearing on April 25, 2019. The Tribunal heard testimony from Mr. Daniel Audet, CEO of Hardware Rebels, who was qualified as an expert in the area of furniture design, production and marketing, specifically as relating to retractable wall beds.<sup>2</sup>

### DESCRIPTION OF THE GOODS IN ISSUE

9. The goods in issue are the mechanisms for several models of retractable wall beds.<sup>3</sup> At the time of importation, the goods in issue consisted of the following: left and right steel mechanism brackets; left and right steel “U-shaped” legs; two steel mattress retaining brackets; left and right halves of the steel frame (with poplar mattress support slats already installed); two gas pistons; two steel end flat bars; and a steel cross tube for the legs. The box also contained four additional loose wooden slats, additional plastic fittings, and miscellaneous hardware.<sup>4</sup> The goods in issue are designed to be installed into a cabinet, which was not imported with the goods in issue.

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

2. *Transcript of Public Hearing* at 32.

3. Exhibit AP-2018-039-01 at 9, Vol. 1; *Transcript of Public Hearing* at 107.

4. Exhibit AP-2018-039-03 at 16-63, Vol. 1; *Transcript of Public Hearing* at 44-57, 67, 76, 77, 78.

## LEGAL FRAMEWORK

10. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*,<sup>5</sup> which is designed to conform to the Harmonized Commodity Description and Coding System developed by the World Customs Organization (WCO). 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.

11. 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*<sup>6</sup> and the *Canadian Rules*<sup>7</sup> set out in the schedule.

12. 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.

13. 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*<sup>8</sup> and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,<sup>9</sup> 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.<sup>10</sup>

14. 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. 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.<sup>11</sup>

15. 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.<sup>12</sup> The final step is to determine the proper tariff item.<sup>13</sup>

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

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

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

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

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

10. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 at paras. 13, 17; *Canada (Attorney General) v. Best Buy Canada Inc.*, 2019 FCA 20 at para. 4.

11. *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) [*Igloo Vikski*] at para. 21.

12. Rules 1 through 5 of the *General Rules* apply to classification at the heading level. 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 [Rules 1 through 5] . . .” and that “the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

13. 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.

**Relevant tariff nomenclature, legal and explanatory notes**

16. The relevant tariff nomenclature is as follows:

**SECTION XX: MISCELLANEOUS MANUFACTURED ARTICLES****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.**

**9403.10.00**    **-Metal furniture of a kind used in offices**

**9403.20.00**    **-Other metal furniture**

**9403.30.00**    **-Wooden furniture of a kind used in offices**

**9403.40.00**    **-Wooden furniture of a kind used in the kitchen**

**9403.50.00**    **-Wooden furniture of a kind used in the bedroom**

**9403.60**        **-Other wooden furniture**

...

**9403.70**        **-Furniture of plastics**

...

**-Furniture of other materials, including cane, osier, bamboo or similar materials:**

**9403.81**        **--Of bamboo or rattan**

...

**9403.89**        **--Other**

...

**9403.90.00**    **-Parts**

17. Note 2 to Chapter 94 provides as follows:

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;

(b) Seats and beds.

18. 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).

...

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

(A) Any “movable” articles (**not included** under other more specific heading 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, cinema offices, churches, schools, cafes, restaurants, laboratories, hospital, 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.

...

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.

19. The relevant explanatory notes to heading No. 94.03 provide as follows:

This heading covers furniture and parts thereof, **not covered** by the previous headings. It includes furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing-desks, escritaires, book-cases, and other shelved furniture (including single shelves presented with supports for fixing them to the wall), etc.), and also furniture for special uses.

#### POSITIONS OF THE PARTIES

##### IMPEKK

20. IMPEKK’s position is that the goods in issue are parts of subheading No. 9403.90 and that the goods in issue can be classified in that subheading solely through the application of Rule 1 of the *General Rules*. IMPEKK submits that the goods in issue are “parts” in accordance with the criteria identified in past



Tribunal decisions; specifically, that they are identifiable by their shape and features as parts designed solely for retractable wall beds and that they are necessary components of a complete retractable wall bed and essential to its operation.

21. IMPEKK argued that the CBSA incorrectly classified the goods in issue in subheading No. 9403.20 by misapplying Rule 2(a) of the *General Rules* and finding that the goods in issue possess the essential character of the complete retractable wall bed. IMPEKK submitted that, in *Igloo Vikski*, the Supreme Court of Canada found that it is unnecessary to resort to Rule 2(a) where there is a heading that describes an unfinished (or incomplete) good as such, and gave heading No. 64.06, Parts of footwear, as an example of such a heading.<sup>14</sup> Accordingly, IMPEKK argued that the CBSA was precluded from considering Rule 2(a) because the goods in issue are described as such by subheading No. 9403.90.

22. IMPEKK further argued that, even if Rule 2(a) is applied, the goods in issue cannot be classified in subheading No. 9403.20 because they do not have the essential character of the complete article of furniture. IMPEKK submitted that, because the cabinet is not imported with the goods in issue, the goods in issue cannot perform the essential function of a retractable bed, which is to move a mattress up and down from a horizontal to a vertical position and hold the mattress in a vertical position within the cabinet when not in use. IMPEKK noted that, even when assembled, the goods in issue would not be able to hold a mattress in a horizontal position as only two legs are provided. In addition, IMPEKK submitted that the goods in issue cannot be classified in subheading No. 9403.20 as they do not, in and of themselves, meet the definition of “furniture” found in note 2 and in the general explanatory notes to Chapter 94.

## CBSA

23. The CBSA argued that, in accordance with Rule 2(a) of the *General Rules*, the goods in issue are to be treated as complete articles of furniture as they have the essential character of “beds designed to be fixed to the wall”, in accordance with note 2(b) to Chapter 94 and clause (B)(ii) of the definition of furniture found in the general explanatory notes to Chapter 94. The CBSA submitted that, contrary to IMPEKK’s assertions, the fact that the cabinet is not imported with the goods in issue is not determinative. The cabinet is not an essential feature, but simply a decorative casing for the bed. The CBSA submitted that, according to dictionary definitions of “Murphy bed”, the retractable bed frame is the distinguishing characteristic of a wall bed. The fact that the goods in issue, when fully assembled, cannot function as a complete wall bed does not matter as long as the goods in issue have the essential features of the complete good.

24. The CBSA also submitted that the complete mechanism that allows the bed to retract (brackets, gas piston and mattress retaining brackets) is present in the goods in issue. Once assembled, the goods in issue have the complexity, design and appearance of a complete wall bed and are distinguishable from conventional bed frames. The CBSA submitted that the goods in issue require only assembly operations as opposed to further manufacturing in order to become a complete good. The CBSA also noted that IMPEKK markets the goods in issue as “wall beds” rather than as “wall bed frames”.<sup>15</sup>

25. Finally, the CBSA submitted that the goods in issue cannot be considered parts of subheading No. 9403.90 because they are “more than just parts”. The CBSA submitted that the goods in issue are sold in a package that contains most of the fundamental components of a wall bed and they are thus a whole thing in and of themselves. In addition, the CBSA submitted that the goods in issue are installed into the

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14. *Igloo Vikski* at paras. 22, 23 and footnote 4.

15. Exhibit AP-2018-039-05A at Annex 10, Vol. 1.

cabinets and not into a retractable wall bed per se, and therefore cannot be considered to be parts of a retractable wall bed in accordance with the Tribunal's case law regarding "parts".

## ANALYSIS

### Tariff classification at the heading and subheading levels

26. The parties agree that the goods in issue should be classified in heading No. 94.03. However, the explanatory notes to heading No. 94.03 stipulate that the "heading covers furniture and parts thereof, **not covered** by the previous headings" [emphasis in original]. Accordingly, the preceding headings should be eliminated from consideration. Headings No. 94.01 and 94.02 cover seats and medical furniture, respectively, and are not applicable. The Tribunal finds that the goods in issue are classified in heading No 94.03.

27. The dispute between the parties is at the subheading level. Classification at the subheading level commences by, *mutatis mutandis*, the application (pursuant to Rule 6) of Rule 1 of the *General Rules*, i.e. in accordance with the terms of the subheadings and any relative section, chapter or subheading notes.

#### Application of Rule 2(a)

28. Rule 2(a) provides that:

2. (a) Any 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.

29. The parties agree that the goods in issue are imported both incomplete and unassembled. At the hearing, the CBSA argued that, because they are incomplete and unassembled, the goods in issue cannot be classified according to Rule 1 alone and the analysis should commence with Rule 2(a), beginning with the examination of the essential character of the goods in issue.<sup>16</sup> The CBSA referred to the Tribunal's analysis in *C. Keay Investments Ltd. d.b.a. Ocean Trailer Rentals v. President of the Canada Border Services Agency* as support for its argument that unassembled goods cannot be classified on the basis of Rule 1 alone.<sup>17</sup>

30. As the CBSA acknowledged, the analysis in *Ocean Trailer* was influenced by the fact that the explanatory notes to Chapter 87 contain specific direction on the classification of incomplete and unassembled vehicles, which include the requirement to consider essential character in accordance with the principles of Rule 2(a); in other words, essential character was considered as part of the Rule 1 analysis, and not as the result of the application of Rule 2(a).

31. Somewhat similarly, the explanatory notes to Chapter 94 provide that "articles of furniture presented disassembled or unassembled are to be treated as assembled articles of furniture, provided the parts are presented together." Accordingly, there is no need to refer to Rule 2(a) to deal with the fact that goods in issue are presented unassembled in this case; this can be dealt with by applying the explanatory notes to Chapter 94 in the course of the analysis under Rule 1.

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16. *Transcript of Public Hearing* at 124-127.

17. (15 May 2018), AP-2017-031 (CIIT) [*Ocean Trailer*].

32. With respect to the fact that the goods in issue are also incomplete, in *Igloo Viski*, the Supreme Court of Canada explained that:

[22] In some cases, applying Rule 1 alone does not settle the classification of a good. Where the goods are unfinished or where they are comprised of a mix of materials or substances (and where no heading specifically describes the unfinished or composite good as such),<sup>4</sup> Rule 2 is applied in conjunction with Rule 1 to determine the *prima facie* classification of such goods.

[23] Rule 2 is a deeming provision. Rule 2(a) deems unfinished goods to be finished goods, and directs that they be classified using Rule 1 as if they were goods in a complete or finished state. . . .

<sup>4</sup> An example of a heading that specifically describes an unfinished good is 64.06 (“Parts of footwear”), and an example of a heading that specifically describes a composite good is 59.06 (“Rubberized textile fabrics”). Where a good falls within one of those headings, there would be no need to apply Rule 2, as the heading specifically contemplates the incomplete or composite nature of the good in question. Rule 1’s direction that the classification of goods should be determined according to the terms of the headings therefore suffices.<sup>18</sup>

33. The Court clearly states that Rule 1 and Rule 2(a) are to be applied *in conjunction* to determine whether goods can be *prima facie* classified in a particular heading. To paraphrase, the purpose of Rule 2(a) is to expand the terms of the headings to include goods that would otherwise fall in those headings if complete or finished, provided that they have the essential character of the complete or finished good. However, the Court also clearly sets out that it is not necessary to apply Rule 2(a) where an incomplete good is specifically described “as such” by a heading, and gives “Parts of footwear” as an example of such a heading. The Tribunal has previously interpreted this guidance to mean that classification in the “parts” heading (or subheading) should be considered before turning to the analysis of whether the goods have the essential character of the finished good.<sup>19</sup>

34. Accordingly, the Tribunal will start its analysis by determining whether the goods in issue are “parts of other furniture” of subheading No. 9403.90.

Are the goods in issue “parts of other furniture” of subheading 9403.90?

35. The explanatory notes to Chapter 94 state that “[t]his 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.”

36. In order to be classifiable as parts of other furniture, the goods in issue must therefore be:

- Parts;
- Identifiable by their shape and other specific features as parts designed solely or principally for;
- An article of headings 94.01 to 94.03 and 94.05, i.e. an article that meets the definition of “furniture”;
- Not included more specifically elsewhere in the nomenclature.

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18. *Igloo Viski* at paras. 22, 23 and footnote 4.

19. *Alliance Mercantile Inc. v. President of the Canada Border Services Agency* (3 November 2017), AP-2016-038 (CIIT) [*Alliance Mercantile*] at para. 49.

- Are the goods in issue parts?

37. When determining whether something is a “part”, the Tribunal has previously stated that each case must be determined on its own merits and that there is no universal test.<sup>20</sup> However, the Tribunal has also previously set out the following general criteria for “parts”:

- whether the product is essential to the operation of other goods;
- whether the product is a necessary and valid component of other goods;
- whether the product is installed in the other goods in the course of manufacture; and
- common trade usage and practice.<sup>21</sup>

38. IMPEKK submitted that the goods in issue are necessary components of retractable beds and essential to their operation. IMPEKK submitted that the goods in issue will be installed into the cabinet as the final stage of the manufacture and installation of the retractable wall bed.

39. The CBSA submitted that IMPEKK has misapplied these criteria in arguing that the goods in issue are parts of the retractable wall beds. The CBSA submitted that, in accordance with the Tribunal’s decision in *GL&V/Black Clawson-Kennedy v. The Deputy Minister of National Revenue*,<sup>22</sup> the “other goods” referred to in the criteria listed above should be considered to be the cabinets, not the retractable wall beds. The CBSA submitted that it follows that the goods in issue are not essential to the operation of the “other goods”, i.e. the cabinet.

40. As noted above, the CBSA further submitted that the goods in issue are “more than just parts”; specifically, that the goods in issue are a “wall bed frame”, which is a complete good in and of itself. The CBSA argued that the goods in issue constitute the bed frame that holds the mattress, and that being able to support a mattress is the defining characteristic of a bed. The CBSA also argued that the commercial invoices and marketing material for the goods in issue refer to them as “wall bed frames” and treat them as a whole good, namely, a bed. At the hearing, the CBSA highlighted Mr. Audet’s testimony that the goods in issue contain the mechanism (in particular, the gas pistons and brackets) that enables the wall bed to be raised and lowered.

41. With respect to the CBSA’s argument that the Tribunal should assess the relationship between the goods in issue and the cabinet as opposed to that between the goods in issue and a completed retractable wall bed when determining whether the goods in issue are parts, the Tribunal notes that the CBSA relied on one case to establish this principle. In several other cases where the Tribunal has considered whether goods are parts, it has assessed their relationship to the complete good and not to another part.<sup>23</sup> The Tribunal considers that this is the correct approach.

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20. *Atomic Ski Canada Inc. v. Deputy Minister of National Revenue* (8 June 1998), AP-97-030 and AP-97-031(CITT) [*Atomic Ski*] at 6.

21. *Alliance Mercantile* at para. 56; *York Barbell Company Limited v. Deputy Minister of National Revenue for Customs and Excise* (19 August 1991), AP-90-161 (CITT) [*York Barbell*]; *Atomic Ski* at 6.

22. *GL&V/Black Clawson-Kennedy v. The Deputy Minister of National Revenue* (27 September 2000), AP-99-063 (CITT).

23. See *Alliance Mercantile* at para. 57 (boot bottoms were a necessary component of and essential to the functioning of the goods as footwear, not the other components of the boots); *York Barbell* at 6-7 (computers to be installed in rowing machines were considered in relation to the end product of computerized rowing machines); *Atomic Ski* at 6 (plastic shells for in-line skates were essential to and necessary and integral components of in-line skating boots).

42. Turning to the analysis of the criteria set out above, the Tribunal first notes that it was uncontested that, as demonstrated by the installation instructions and Mr. Audet's testimony, the goods in issue are incorporated into the retractable wall bed when the latter is installed.<sup>24</sup> Accordingly, the goods in issue are installed into other goods.

43. The parties disagreed regarding whether the goods in issue are essential to the operation of other goods, and particularly regarding what constitutes the operation of a retractable wall bed. The CBSA suggested that the primary purpose of a retractable wall bed is to provide a surface for sleeping and that the most important operation of a retractable wall bed is to support a mattress. IMPEKK acknowledged that the purpose of a wall bed is many-fold, but that while functionally it is to be a bed for sleeping, it also must serve the purpose of retracting the bed back into a cabinet so that the room where the cabinet is located can be used for multiple purposes. Mr. Audet testified that the key feature for consumers is that the bed can be hidden from view, and that providing a surface for sleeping was not the primary purpose of a wall bed.<sup>25</sup> Accordingly, IMPEKK's position is that it is the ability to retract that is the key operation of a retractable wall bed.

44. The Tribunal agrees that the key operation of a retractable wall bed is its ability to retract. Further, the Tribunal finds that the goods in issue are essential to this operation as they contain the main parts of the mechanism – the gas pistons and brackets – that move the frame up and down and hold the mattress in place when it is in a vertical position.

45. For similar reasons, the Tribunal considers that the goods in issue are a necessary and valid component of the retractable wall bed, and agrees with IMPEKK that, based on Mr. Audet's testimony, it is highly improbable that they would be used in any other application. Mr. Audet explained that IMPEKK is a supplier to a furniture manufacturer, Bestar, that sells retractable wall beds to consumers. He testified that the goods in issue are only used by Bestar and were in fact developed in partnership with that company.<sup>26</sup> As a result, these particular goods in issue cannot be sold either to other furniture manufacturers or directly to consumers due to the existence of a non-disclosure agreement between IMPEKK and Bestar.<sup>27</sup> Furthermore, Mr. Audet testified that the retractable wall beds are designed so that the cabinet doors provide a counterweight for the retraction mechanism; as a result, there are particular specifications as to the size and weight of the cabinet doors that can be used with the goods in issue, which would make it difficult for them to be used with other types of cabinets.<sup>28</sup>

46. Finally, the Tribunal does not accept the CBSA's argument that the goods in issue are "more than just parts". In support of this argument, the CBSA made several references to the assembly instructions, invoices and marketing material, noting that these refer to the goods in issue as "wall beds" rather than "wall bed frames" or "mechanisms".

47. The Tribunal does not find that the wording of the specific documentation referred to by the CBSA establishes that the goods in issue are actually beds. The Tribunal notes that other documents on the record refer to the goods in issue as "mechanisms".<sup>29</sup> In any case, a brief description of the goods in issue on an

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24. Exhibit AP-2018-039-03 at 72-113, Vol. 1; *Transcript of Public Hearing* at 64.

25. *Transcript of Public Hearing* at 85-86.

26. *Transcript of Public Hearing* at 42, 83, 97-99, 102-104.

27. *Transcript of Public Hearing* at 98-99. Mr. Audet testified that IMPEKK has developed other models similar to the goods in issue that are sold to other sub-distributors as components: see *Transcript of Public Hearing* at 104-105.

28. *Transcript of Public Hearing* at 99-101.

29. Exhibit AP-2018-039-03 at 64, 71, Vol. 1; *Transcript of Public Hearing* at 81-82.

invoice or in marketing material is not sufficient evidence to establish the nature of the goods in issue. The goods in issue are the metal hardware parts that are included in a retractable wall bed and do not create a bed in and of themselves. Even when fully assembled, the goods in issue could not support a mattress in a horizontal position as only two legs are provided. Key parts are missing to create the bed, i.e. the cabinet that provides the support for the other end of the frame.

48. In light of all of the above, the Tribunal finds that the goods in issue are parts of retractable wall beds. The goods in issue are essential to the operation of, and are necessary and vital components of a retractable wall bed as, when attached to the cabinet, they form the mechanism to retract the mattress.

- Are the goods in issue identifiable by their shape and other specific features as parts designed solely or principally for the retractable wall beds?

49. Mr. Audet testified in great detail regarding each piece included within the box containing the goods in issue, identifying their overall purpose and why and how they were each individually designed to be incorporated into the Bestar retractable wall beds.<sup>30</sup> As noted above, IMPEKK and Bestar worked together to develop the goods in issue and they are not used in any other application. The Tribunal finds that Mr. Audet's testimony provided clear evidence that the goods in issue are identifiable by their shape and other specific features as having been designed solely or principally for the retractable wall beds.

- Are the goods in issue parts of a good that is an article of furniture of headings No. 94.01 to 94.03 or 94.05, i.e. are the complete retractable wall beds articles of furniture?

50. In order to be furniture of headings No. 94.01 to 94.03 or 94.05, the retractable wall beds must meet the definition of furniture found in the legal and explanatory notes to Chapter 94. The CBSA proposed that the retractable wall beds are "furniture" as described in note 2(b) to Chapter 94 and clause (B)(ii) of the definition of furniture found in the general explanatory notes to Chapter 94 as they are beds that are designed to be fixed to the wall. While IMPEKK argued that the goods in issue by themselves are not "furniture" as they do not meet the definition in the legal and explanatory notes, they did not argue that the complete retractable wall beds are not "furniture".

51. According to the installation instructions, the complete retractable wall beds are required to be fixed to the wall during installation.<sup>31</sup> The Tribunal therefore finds that the retractable wall beds meet the definition of furniture in the manner proposed by the CBSA.

52. As noted above, heading No. 94.01 covers seats and heading No. 94.02 covers medical furniture, and heading No. 94.05 covers lamps and other lighting fixtures. The complete retractable wall beds cannot be classified in those headings, and would therefore be classified in heading No. 94.03 as other furniture. As a result, the goods in issue are parts of furniture of heading No. 94.03.

- Are the goods in issue more specifically included elsewhere in the nomenclature?

53. The goods in issue are not more specifically included elsewhere in the nomenclature. In particular, as the Tribunal has determined that the goods in issue are parts, it follows that they are most specifically described by the subheading that explicitly provides for incomplete goods and are not more specifically described by any of the preceding subheadings in heading No. 94.03.

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30. *Transcript of Public Hearing* at 44-57.

31. Exhibit AP-2018-039-03 at 72-113, Vol. 1.

54. As a result of all of the above, the Tribunal finds that the goods in issue are classifiable in subheading No. 9403.90 as parts of other furniture in accordance with Rule 1 of the *General Rules*. Since the goods in issue are “as such” described by a subheading that explicitly includes incomplete articles, there is no need to resort to the deeming provision of Rule 2(a) and consider whether the goods in issue have the essential character of the complete or finished article.

**Tariff item classification**

55. Subheading No. 9304.90 only contains one tariff item. Accordingly, the goods in issue are classified in tariff item No. 9403.90.00.

**DECISION**

56. The appeal is allowed.

Cheryl Beckett  
Cheryl Beckett  
Presiding Member