



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2012-031

Curry's Art Stores

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Monday, April 29, 2013*

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IN THE MATTER OF an appeal heard on March 21, 2013, pursuant to subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated August 7, 2012, with respect to a request for review of an advance ruling on tariff classification, pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**CURRY'S ART STORES**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is dismissed.

Stephen A. Leach  
Stephen A. Leach  
Presiding Member

Dominique Laporte  
Dominique Laporte  
Secretary

Place of Hearing: Ottawa, Ontario  
Date of Hearing: March 21, 2013

Tribunal Member: Stephen A. Leach, Presiding Member

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**PARTICIPANTS:****Appellant**

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## STATEMENT OF REASONS

### BACKGROUND

1. This is an appeal filed by Curry's Art Stores (CAS) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision made on August 7, 2012, by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4), with respect to a request for review of an advance ruling on tariff classification.

2. The issue in this appeal is whether three models of aluminum easels (the goods in issue) are properly classified under tariff item No. 9403.20.00 of the schedule to the *Customs Tariff*<sup>2</sup> as other metal furniture (in the case of two models) and under tariff item No. 7616.99.90 as other articles of aluminum (in the case of one model), as determined by the CBSA, or should be classified under tariff item No. 9403.10.00 as metal furniture of a kind used in offices, as claimed by CAS.

### PROCEDURAL HISTORY

3. On November 8, 2011, CAS filed an application for an advance ruling with respect to the tariff classification of the goods in issue.

4. On November 23, 2011, the CBSA issued an advance ruling, pursuant to paragraph 43.1(1)(c) of the *Act*, classifying the goods in issue under tariff item No. 9403.20.00 as other metal furniture.

5. On December 6, 2011, CAS requested a review of the advance ruling pursuant to subsection 60(2) of the *Act*. It submitted that the goods in issue should be classified under tariff item No. 9403.10.00 as metal furniture of a kind used in offices.

6. On August 7, 2012, the CBSA issued a decision, pursuant to subsection 60(4) of the *Act*, affirming its advance ruling.<sup>3</sup>

7. On August 30, 2012, CAS filed the present appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

8. The Tribunal held a public hearing in Ottawa, Ontario, on March 21, 2013. The parties did not call any witnesses.

### GOODS IN ISSUE

9. The goods in issue are three-legged aluminum easels designed to hold an artist's canvas at an inclined angle. The CBSA filed physical exhibits of the goods in issue.<sup>4</sup>

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

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

3. In the context of the present appeal, the CBSA took the position that one of the models of the goods in issue is properly classified under tariff item No. 7616.99.90 as other articles of aluminum.

4. Exhibit A-01 is the "Deluxe Tri-Pod Aluminum Easel TRI 602"; Exhibit A-02 is the "Black Aluminum Table Easel with Clip A13217"; Exhibit A-03 is the "Alvin Heritage Aluminum Easel HAE 620" (black); and Exhibit A-04 is the "Alvin Heritage Aluminum Easel HAE 625" (silver/grey).

10. The “Deluxe Tri-Pod Aluminum Easel TRI 602” (model 1) is a lightweight easel featuring a spring-loaded top clamp and a wide bottom support tray capable of holding a gallery canvas. The legs are independently adjustable and may be collapsed for use on a table top. It comes with a nylon carrying case with a shoulder strap and designed to be used both indoors and outdoors.<sup>5</sup>

11. The “Black Aluminum Table Easel with Clip A13217” (model 2) is a lightweight easel consisting of an “A” frame construction and featuring a clip mechanism for holding canvas of up to 50 cm in size. It is designed to rest on a table top.<sup>6</sup>

12. The “Alvin Heritage Aluminum Easel HAE 620” and “Alvin Heritage Aluminum Easel HAE 625” (collectively, model 3), which differ only in colour, are portable and adjustable easels suitable for tabletop, studio and display use. The independently adjustable legs and the heavy duty aluminum construction make them appropriate for field use. They may fit a wide range of canvases, pads or boards and come with a nylon carrying case.<sup>7</sup>

## STATUTORY FRAMEWORK

13. 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).<sup>8</sup> 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.

14. 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>9</sup> and the *Canadian Rules*<sup>10</sup> set out in the schedule.

15. 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.

16. 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>11</sup> and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,<sup>12</sup> published by the WCO. While the *Classification Opinions* and the *Explanatory Notes* are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.<sup>13</sup>

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5. See product literature at Tribunal Exhibit AP-2012-031-04A, tab 1.

6. *Ibid.*

7. *Ibid.*

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

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

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

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

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

13. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that the *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*.

17. 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.<sup>14</sup>

18. 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>15</sup> The final step is to determine the proper tariff item.<sup>16</sup>

## RELEVANT CLASSIFICATION PROVISIONS

19. The relevant provisions of the *Customs Tariff* provide as follows:

### Chapter 76

#### ALUMINUM AND ARTICLES THEREOF

...

**76.16**        **Other articles of aluminum.**

...

**-Other:**

...

**7616.99**     **--Other**

...

**7616.99.90**   **--Other**

...

### 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**

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

15. 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."

16. 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." The *Classification Opinions* and the *Explanatory Notes* do not apply to classification at the tariff item level.

20. Note 1 to Section XV, which includes Chapter 76, provides as follows:

1. This Section does not cover:

...

(k) Articles of Chapter 94 (for example, furniture, mattress supports, lamps and lighting fittings, illuminated signs, prefabricated buildings);

...

21. 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 . . . and unit furniture;

(b) Seats and beds.

22. The relevant *Explanatory Notes* to heading No. 76.16 provide as follows:

This heading covers all articles of aluminium **other than** those covered by the preceding headings of this Chapter, or by Note 1 to Section XV, or articles specified or included in **Chapter 82** or **83**, or more specifically covered elsewhere in the Nomenclature.

23. The relevant *Explanatory Notes* to Chapter 94 provide as follows:

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 purpose 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 characteristics 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 paragraph (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.



It therefore follows that this Chapter **does not cover** other wall fixtures such as coat, hat and similar racks, key racks, clothes-brush hangers and newspaper racks, nor furnishings such as radiator screens. Similarly, the Chapter **excludes** the following types of goods **not** designed for placing on the floor: small articles of cabinet-work and small furnishing goods of wood (**heading 44.20**), and office equipment (e.g., sorting boxes, paper trays) of plastics or of base metal (**heading 39.26 or 83.04**).

24. 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, escritorios, 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.

The heading includes furnitures for:

- (1) **Private dwellings, hotels etc.**, such as: cabinets, linen chests, bread chests, log chests; chests of drawers, tallboys; pedestals, plant stands; dressing-tables; pedestal tables; wardrobes, linen presses; hall stands, umbrella stands; side-boards, dressers, cupboards; food-safes; beside tables; beds (including wardrobe beds, camp-beds, folding beds, cots, etc.); needlework tables; foot-stools, fire screens; draught-screens, pedestal ashtrays; music cabinets, music stands or desks; play-pens; serving trolleys (whether or not fitted with a hot plate).
- (2) **Offices**, such as: clothes lockers, filing cabinets, filing trolleys, card index files, etc.
- (3) **Schools**, such as: school-desks, lecturers' desks, easels (for blackboards, etc.).
- (4) **Churches**, such as: altars, confessional boxes, pulpits, communion benches, lecterns, etc.
- (5) **Shops, stores, workshops, etc.**, such as: counters; dress racks; shelving units; compartment or drawer cupboards; cupboards for tools, etc.; special furniture (with cases or drawers) for printing-works.
- (6) **Laboratories or technical offices**, such as: microscope tables, laboratory benches (whether or not with glass cases, gas nozzles and tap fittings, etc.); fume-cupboards; unequipped drawing tables.

## POSITIONS OF PARTIES

### CAS

25. CAS originally submitted that all three models of the goods in issue should be classified under tariff item No. 9403.10.00 as metal furniture of a kind used in offices. However, at the hearing, CAS agreed with the CBSA that model 2 of the goods in issue is properly classified under tariff item No. 7616.99.90 as other articles of aluminum.<sup>17</sup>

26. CAS submitted, in agreement with the CBSA, that models 1 and 3 of the goods in issue are “metal furniture” classified in heading No. 94.03, as they are made of aluminum and meet the definition of “furniture” provided in Note (A) of the *Explanatory Notes* to Chapter 94.

27. With respect to the subheading level, CAS submitted that the goods in issue are metal furniture “of a kind used in offices” of subheading No. 9403.10.

28. In support of this position, CAS submitted that easels are used by artists, who are professionals who paint for some kind of consideration. Further, CAS argued that the ordinary meaning of “office” designates

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17. *Transcript of Public Hearing*, 21 March 2013, at 6.

any place in which professionals operate their businesses. CAS submitted that an artist's studio, as the place in which the artist operates a business, is therefore an "office" within the meaning of the tariff.

29. CAS also argued that furniture "of a kind used in offices" serves the primary purpose of equipping offices. As such, CAS submitted that easels remain furniture "of a kind used in offices" even though artists may occasionally use them to perform their work outside their studios.

30. Finally, CAS submitted that the nylon carrying cases included with models 1 and 3 of the goods in issue are specifically shaped for the easels, are suitable for long-term use and, as such, must be classified together with the easels pursuant to Rule 5 (a) of the *General Rules*.

## CBSA

31. The CBSA submitted that models 1 and 3 of the goods in issue are properly classified under tariff item No. 9403.20.00 as other metal furniture and that model 2 is properly classified under tariff item No. 7616.99.90 as other articles of aluminum.

32. The CBSA submitted that Note 2 to Chapter 94 and the *Explanatory Notes* to Chapter 94 and heading No. 94.03 set the criteria for goods to be classified as "furniture" in heading No. 94.03. The CBSA agreed that, applying these criteria, models 1 and 3 of the goods in issue are "furniture" of heading No. 94.03. However, it submitted that, pursuant to the same criteria, model 2 of the goods in issue—a table easel which is not designed to be placed on the ground—cannot be classified in that heading.

33. The CBSA submitted that models 1 and 3 of the goods in issue cannot be classified in subheading No. 9403.10 as metal furniture of a kind used in offices. It argued that the words "of a kind used in offices" reasonably require that the goods in issue be used *primarily* in offices.<sup>18</sup> As the goods in issue may be used in the field, outdoors or in a studio, according to the CBSA, their primary function is to enable artists to work in a variety of locations and not primarily in offices.

34. The CBSA further argued that the term "offices" in subheading No. 9403.10 has a specific meaning that does not apply to all places of work. This argument was based on the *Explanatory Notes* to heading No. 94.03, which, according to the CBSA, distinguish offices from other places of work, such as private dwellings, hotels, schools, shops, stores and workshops. It concluded that "offices" designates places of business where administrative or commercial types of tasks are performed.

35. The CBSA submitted that easels are not primarily used for administrative or commercial tasks, nor are they akin to the examples of office furniture provided in the *Explanatory Notes* to heading No. 94.03. Thus, they are not used *primarily* in an *office* within the meaning of the tariff.

36. With respect to model 2 of the goods in issue, the CBSA submitted that, as no other heading more specifically describes it, it is properly classified in heading No. 76.16 as other articles of aluminum. According to the CBSA, model 2 of the goods in issue is properly classified under tariff item No. 7616.99.90, applying Rule 6 of the *General Rules* and Rule 1 of the *Canadian Rules*.

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18. The CBSA relied on *Rona Corporation Inc. v. President of the Canada Border Services Agency* (15 February 2011), AP-2009-072 (CITT) [*Rona*] at para. 40; *Costco Canada Inc. v. Commissioner of the Canada Customs and Revenue Agency* (11 January 2001), AP-2000-015 (CITT) [*Costco*] at 4; and *Ballarat Corporation Ltd. v. Deputy M.N.R.* (19 December 1995), AP-93-359 (CITT) at 3.

37. Finally, the CBSA agreed with CAS that the nylon carrying cases, presented together with models 1 and 3 of the goods in issue, are properly classified with the easels, in accordance with Rule 5 (a) of the *General Rules*.

## TRIBUNAL'S ANALYSIS

### Models 1 and 3 of the Goods in Issue

38. There is no dispute between the parties that models 1 and 3 of the goods in issue are properly classified in heading No. 94.03 as other furniture. The Tribunal agrees with this proposition.<sup>19</sup> The contentious issue in this appeal is classification at the subheading level.

39. The Tribunal must determine whether models 1 and 3 of the goods in issue are metal furniture<sup>20</sup> “of a kind used in offices” of subheading No. 9403.10, as argued by CAS, or properly classified in residual subheading No. 9403.20 as “other” metal furniture, as determined by the CBSA. CAS bears the burden of proving that the CBSA’s tariff classification of the goods is incorrect.<sup>21</sup>

40. Much of the disagreement between the parties related to the meaning of the word “offices” in subheading No. 9403.10, CAS arguing that a professional artist’s studio properly comes within its scope, and the CBSA maintaining that it includes only those places where administrative or commercial types of work occur, excluding artists’ studios.

41. While the interpretation of the word “offices” in subheading No. 9403.10 advanced by the CBSA could be considered as being unduly restrictive, it is not necessary for the purposes of the present appeal to determine the meaning of that term and, in particular, whether it encompasses artists’ studios. Indeed, even assuming that “offices” of subheading No. 9403.10 include artists’ studios, on the evidence in this case, the Tribunal finds that models 1 and 3 of the goods in issue are not metal furniture “of a kind used” in offices.

42. The Tribunal agrees with the parties that the requirement in subheading No. 9403.10 that furniture be “of a kind used” in offices indicates that the included furniture must be “primarily” used for that purpose. This is consistent with the Tribunal’s jurisprudence. For example, in *Rona*, the Tribunal interpreted the words “of a kind used for domestic purposes” to require that the goods be used “primarily” in or around the home.<sup>22</sup> As such, while there is no need to demonstrate that the goods in issue will *actually* be used in

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19. In accordance with the Tribunal’s explanation in *HBC Imports c/o Zellers Inc) v. President of the Canada Border Services Agency* (6 April 2011), AP-2010-005 (CITT) at para. 51, having regard to the *Explanatory Notes* to Chapter 94, goods must meet the following criteria in order to be considered “furniture” of heading No. 94.03: (i) they must be movable; (ii) they must be articles; (iii) they must have the essential characteristic of being constructed for placing on the floor or ground; (iv) they must be used mainly with a utilitarian purpose; (v) they must be used to equip buildings, transportation vehicles or outdoor spaces; and (vi) the goods must not be included under another more specific heading of the nomenclature. The Tribunal is of the view that models 1 and 3 of the goods in issue meet these conditions.

20. It is accepted that the goods in issue are made of metal.

21. See subsection 152(2) of the *Act*. See, also, *Canada (Border Services Agency) v. Miner*, 2012 FCA 81 (CanLII), in which this provision is discussed.

22. *Rona* at para. 40. See, also, *Costco*, where the Tribunal found that the expressions “of a kind used for domestic purposes” and “for domestic purposes” are interchangeable expressions which require that use in a domestic setting be the *primary purpose* of the items in issue. See, also, *6572243 Canada Ltd. o/a Kwaliti Imports v. President of the Canada Border Services Agency* (3 August 2012), AP-2010-068 (CITT) at paras. 44-45.

offices, the words “of a kind used in offices” require that, by their design, nature or character, the goods in issue be of the *type* primarily used in offices.

43. The evidence in this case does not indicate that models 1 and 3 of the goods in issue are designed with a view to being used primarily in professional artists’ studios. Rather, the product literature for models 1 and 3 of the goods in issue, which is the only evidence on the record with respect to their intended use, indicates and, indeed, emphasizes the fact that the goods in issue can be used practically anywhere by artists, whether or not professionals.

44. The product literature describes model 1 of the goods in issue in the following terms:

*Great for painting outdoors or taking to class!*

This sleek and lightweight easel has [its] own sturdy nylon [carrying] case with convenient shoulder strap. Featuring a spring loaded top clamp and wide bottom support tray capable of securely holding a gallery canvas, this aluminum easel *can be used in a variety of ways*. Each telescoping leg can be independently adjusted for *painting outdoors on uneven terrain, or maybe on the dock at the cottage*.

This easel is quickly collapsible to a shorter version which *can be used on a table or desk top*. . . .<sup>23</sup>

[Emphasis added]

45. Similarly, the product literature describes model 3 of the goods in issue as follows:

Alvin’s Heritage aluminum easels are finely *crafted with heavy duty aluminum to withstand the rigours of field use*. Portable & adjustable, these easels are also *suitable for tabletop, studio & display use*. . . . Each telescoping leg is independently adjustable which is *great for painting on uneven terrain*. . . . Nylon [carrying] case included.<sup>24</sup>

[Emphasis added]

46. The mere fact that the goods in issue may be *suitable* for studio use, in addition to being suitable for other uses, cannot meet the requirement of subheading No. 9403.10 that the furniture be “of a kind used in offices”. If mere suitability for use in offices were the test, subheading No. 9403.10 would serve little purpose; practically any furniture could, in some circumstance, be suitable for use in offices.

47. CAS, not having shown that they are of a type primarily used in studios, the Tribunal finds that models 1 and 3 of the goods in issue are not metal furniture of a kind used in offices, regardless of the exact scope of the term “offices”. Accordingly, as determined by the CBSA, models 1 and 3 of the goods in issue are properly classified in subheading No. 9403.20 as “other metal furniture”, and under tariff item No. 9403.20.00.

48. Finally, the Tribunal agrees with the parties that the nylon carrying cases included with models 1 and 3 of the goods in issue are properly classified with those goods pursuant to Rule 5 (a) of the *General Rules*.<sup>25</sup> The nylon carrying cases are specially shaped to contain the goods in issue, are suitable for

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23. See Tribunal Exhibit AP-2012-031-04A, tab 7.

24. *Ibid.*

25. Rule 5 (a) of the *General Rules* provides that “[c]amera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This Rule does not, however, apply to containers which give the whole its essential character.”

long-term use, are presented with the goods in issue and do not give the whole its essential character; they therefore meet all the conditions of Rule 5 (a).

### **Model 2 of the Goods in Issue**

49. While the CBSA initially classified model 2 of the goods in issue under tariff item No. 9403.20.00,<sup>26</sup> it revised its position and submitted to the Tribunal that it does not meet the definition of “furniture”. As such, the CBSA argued that model 2 of the goods in issue should be classified under tariff item No. 7616.99.90 as other articles of aluminum. At the hearing, CAS agreed with the CBSA’s position.<sup>27</sup>

50. The Tribunal agrees with the parties that model 2 of the goods in issue should be classified under tariff item No. 7616.99.90 as other articles of aluminum.

### **DECISION**

51. For the foregoing reasons, the Tribunal concludes that models 1 and 3 of the goods in issue are properly classified under tariff item No. 9403.20.00, as other metal furniture, and that model 2 of the goods in issue should be classified under tariff item No. 7616.99.90, as other articles of aluminum.

52. The appeal is therefore dismissed.

Stephen A. Leach  
Stephen A. Leach  
Presiding Member

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26. See Tribunal Exhibit AP-2012-031-04A, tab 6.

27. *Transcript of Public Hearing*, 21 March 2013, at 6.