Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2009-049

Evenflo Canada Inc.

v.

President of the Canada Border Services Agency

Decision and reasons issued Wednesday, May 19, 2010

Canada

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IN THE MATTER OF an appeal heard on March 16, 2010, pursuant to subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the President of the Canada Border Services Agency, dated May 22, 2009, with respect to requests for further re-determination, pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

EVENFLO CANADA INC. **Appellant**

AND

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

DECISION

The appeal is allowed.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	March 16, 2010
Tribunal Member:	Pasquale Michaele Saroli, Presiding Member
Counsel for the Tribunal:	Alain Xatruch
Research Director:	Randolph W. Heggart
Research Officer:	Denise Bergeron
Manager, Registrar Office:	Michel Parent
Registrar Officer:	Véronique Frappier

PARTICIPANTS:

Appellant	**Counsel/Representatives**
Evenflo Canada Inc.	Sydney H. Mintzer Margaret-Rose Tretter Jamie M. Wilks Jonathan Hood
Respondent	**Counsel/Representatives**
President of the Canada Border Services Agency	Paul Battin Derek Rasmussen

WITNESS:

Connie Sauernheimer
Director
Evenflo Canada Inc.

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Evenflo Canada Inc. (Evenflo) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*[1] from decisions made by the President of the Canada Border Services Agency (CBSA) pursuant to subsection 60(4) thereof.

2. The issue in this appeal is whether various models of infant car seat/stroller combinations, commonly referred to as "travel systems" (the goods in issue), are properly classified under tariff item No. 8715.00.00 of the schedule to the *Customs Tariff*[2] as baby carriages and parts thereof, as determined by the CBSA, or, as submitted by the CBSA in the alternative, under tariff item No. 9401.80.10 as other seats, for domestic purposes, or should be classified under tariff item No. 9401.80.90 as other seats, other than for domestic purposes, as claimed by Evenflo.

PROCEDURAL HISTORY

3. Evenflo imported the goods in issue between October 4, 2004, and December 23, 2005, under 65 separate transactions. The goods were classified under tariff item No. 8715.00.00 as baby carriages and parts thereof.

4. In September and October 2008, Evenflo applied for a refund of duties pursuant to subsection 74(1) of the *Act* on the basis that duties were paid as a result of an error in the tariff classification of the goods in issue. In this regard, Evenflo claimed that the goods in issue should have been classified under tariff item No. 9401.80.90 as other seats, other than for domestic purposes.

5. In November and December 2008, the CBSA determined that the goods in issue had been properly classified under tariff item No. 8715.00.00 and, therefore, denied Evenflo's applications for a refund of the duties paid on the goods in issue. Pursuant to subsection 74(4) of the *Act*, these denials were deemed to be re-determinations under paragraph 59(1)(*a*).

6. On January 16 and 28, 2009, Evenflo filed requests for further re-determination pursuant to subsection 60(1) of the *Act*.

7. On May 22, 2009, the CBSA issued its decisions under subsection 60(4) of the *Act*, which denied the requests and confirmed its prior re-determinations that the goods in issue had been properly classified under tariff item No. 8715.00.00.

8. On August 18, 2009, Evenflo filed the present appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

9. The Tribunal held a public hearing in Ottawa, Ontario, on March 16, 2010. Ms. Connie Sauernheimer, Director, Evenflo, testified on its behalf. No witnesses were called by the CBSA.

1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].
2. S.C. 1997, c. 36.

GOODS IN ISSUE

10. The goods in issue consist of five models of infant/child travel systems manufactured by Evenflo Company, Inc., a U.S. corporation, and imported into Canada by Evenflo. The goods in issue are pre-packaged sets that comprise an infant car seat, a car seat base and a full-size stroller. The infant car seat, which can be used for infants weighing up to 22 pounds,[3] is designed to snap into the car seat base, which is itself installed in a motor vehicle by means of an anchoring system or seat belts. In addition, the infant car seat is equipped with a handle that allows it to be used independently as an infant carrier. Finally, the infant car seat is designed to snap into the stroller. The stroller, which can also be used without the infant car seat, can, depending on the exact model, accommodate infants and children weighing up to 50 pounds.[4]

11. The five specific models of the goods in issue are as follows:[5]

Aura™ Elite Travel System

Aura™ Select Travel System

Journey™ Elite Travel System

Comfort Dimensions Signature™ Travel System (also sold under the name Portabout 5™ Travel System)

Ellipsa™ LX Travel System

12. Evenflo filed three samples of the goods in issue as physical exhibits with the Tribunal: two samples of the Aura™ Elite Travel System (one assembled and one packaged in a box) and one sample of the Journey™ Elite Travel System (assembled). Although these exhibits were 2009 models, Ms. Sauernheimer testified that, for all intents and purposes, they were the same as the goods in issue (i.e. models that were imported in 2004 and 2005).[6] The CBSA did not object to having these exhibits considered as being representative of the goods in issue.[7]

13. For the purpose of comparison, Evenflo also filed, as a physical exhibit, an umbrella stroller that was itself not in issue. The CBSA did not file any physical exhibits.

ANALYSIS

Law

14. In appeals pursuant to section 67 of the *Act* concerning tariff classification matters, the Tribunal determines the proper tariff classification of the goods in issue in accordance with prescribed interpretative rules.

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

3. Tribunal Exhibit AP-2009-049-07A, tab 4, paras. 4-7.
4. *Ibid.*
5. Tribunal Exhibit AP-2009-049-33.
6. *Transcript of Public Hearing*, 16 March 2010, at 8-9.
7. *Ibid.* at 9-10.
8. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.

tariff items. Sections and chapters may include notes concerning their interpretation. Sections 10 and 11 of the *Customs Tariff* prescribe the approach that the Tribunal must follow when interpreting the schedule in order to arrive at the proper tariff classification of goods.

16. Subsection 10(1) of the *Customs Tariff* provides as follows: ". . . the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System[9] and the Canadian Rules[10] set out in the schedule."

17. The *General Rules* comprise six rules structured in sequence so that, if the classification of the goods cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, and so on, until classification is completed.[11] Classification therefore begins with Rule 1, which provides as follows: ". . . for legal purposes, 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 following provisions."

18. Section 11 of the *Customs Tariff* provides as follows: "In interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System[12] and the Explanatory Notes to the Harmonized Commodity Description and Coding System,[13] published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time." Accordingly, unlike chapter and section notes, the *Explanatory Notes* are not binding on the Tribunal in its classification of imported goods. However, the Federal Court of Appeal has stated that these notes should be respected, unless there is a sound reason to do otherwise, as they serve as an interpretative guide to tariff classification in Canada.[14]

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 and tariff item, applying Rule 6 of the *General Rules* in the case of the former and the *Canadian Rules* in the case of the latter.

Tariff Classification at Issue

20. As previously stated, the issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8715.00.00 as baby carriages and parts thereof, as determined by the CBSA, or, as submitted by the CBSA in the alternative, under tariff item No. 9401.80.10 as other seats, for domestic purposes, or should be classified under tariff item No. 9401.80.90 as other seats, other than for domestic purposes, as claimed by Evenflo.

21. Consequently, the dispute between the parties arises at the heading level. However, should the Tribunal determine that the goods in issue are properly classified in heading No. 94.01, as argued by Evenflo, the parties also disagree as to the tariff item under which the goods in issue should be classified.

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9. S.C. 1997, c. 36, schedule [*General Rules*].
10. S.C. 1997, c. 36, schedule.
11. Rules 1 through 5 of the *General Rules* apply to classification at the heading level (i.e. to four digits). Under Rule 6 of the *General Rules*, Rules 1 through 5 apply to classification at the subheading level (i.e. to six digits). Similarly, the *Canadian Rules* make Rules 1 through 5 of the *General Rules* applicable to classification at the tariff item level (i.e. to eight digits).
12. World Customs Organization, 2d ed., Brussels, 2003 [*Classification Opinions*].
13. World Customs Organization, 4th ed., Brussels, 2007 [*Explanatory Notes*].
14. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII), paras. 13, 17.

22. The relevant nomenclature of the *Customs Tariff* reads as follows:

Chapter 87

VEHICLES OTHER THAN RAILWAY OR TRAMWAY ROLLING-STOCK, AND PARTS AND ACCESSORIES THEREOF

. . .

8715.00.00 Baby carriages and parts thereof.

. . .

Chapter 94

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

. . .

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

. . .

9401.80 -Other seats

9401.80.10 - - -For domestic purposes

9401.80.90 - - -Other

23. The Tribunal will fist determine classification at the heading level, followed by classification at the subheading level and finally classification at the tariff item level.

Heading Analysis

24. Both parties agree that the goods in issue should be classified at the heading level pursuant to Rule 3 of the *General Rules*.[15] However, the CBSA submitted that classification at the heading level can be done through the application of Rule 3 (b), while Evenflo submitted that such classification can only be done through the application of Rule 3 (c).

25. Rule 3 of the *General Rules* provides as follows:

> 3. When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
>
> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

15. Tribunal Exhibit AP-2009-049-09A, paras. 17-19; Tribunal Exhibit AP-2009-049-22A, para. 16.

> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to Rule 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
>
> (c) When goods cannot be classified by reference to Rule 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

26. The *Explanatory Notes* to Rule 3 of the *General Rules* provide as follows:

> I) This Rule provides three methods of classifying goods which, *prima facie*, fall under two or more headings, either under the terms of Rule 2 (b) or for any other reason. These methods operate in the order in which they are set out in the Rule. Thus Rule 3 (b) operates only if Rule 3 (a) fails in classification, and if both Rules 3 (a) and (b) fail, Rule 3 (c) will apply. The order of priority is therefore (a) specific description; (b) essential character; (c) heading which occurs last in numerical order.

27. The Tribunal agrees with the parties that Rule 3 of the *General Rules* applies for purposes of classifying the goods in issue at the heading level. It is clear that, in the present case, the goods in issue are, *prima facie*, classifiable in two headings, namely, heading No. 87.15, if considered strollers, and heading No. 94.01, if considered infant car seats.

28. Rule 3 (a) of the *General Rules* provides that goods are to be classified in the heading which provides the most specific description. However, Rule 3 (a) also states that, when two or more headings each refer to ". . . part only of the items in a set put up for retail sale . . .", those headings are to be considered as being equally specific, even if a particular heading provides a more complete or precise description of the goods. Rule 3 (b) further provides that goods ". . . put up in sets for retail sale . . .", which cannot be classified pursuant to Rule 3 (a), are to be classified as if they consisted of the component which gives them their essential character.

29. In the Tribunal's view, the fact that goods are presented to consumers in the market as a "set" is not dispositive of whether they should be treated as such for classification purposes. Therefore, as a first step, one must determine whether the goods in issue were properly considered goods ". . . put up in sets for retail sale . . ." at the time of their importation into Canada.[16]

30. In this regard, the *Explanatory Notes* to Rule 3 of the *General Rules* provide as follows:

> (X) For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:
>
> (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. . . .
>
> (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
>
> (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

16. See *Sealand of the Pacific Ltd. v. Deputy M.N.R.* (11 July 1989), 3042 (CITT) at 7, where the Tribunal stated as follows: "It is well established in customs law that goods must be classified according to their nature at the time of importation. This principle was stated by the Supreme Court of Canada in *The Minister of National Revenue v. MacMillan and Bloedel Ltd. et al., [1965] S.C.R. 366* and has been affirmed on many occasions since that time."

31. In this case, the Tribunal is satisfied that the goods in issue meet each of these three requirements. Specifically, the goods in issue (i) consist of at least two different articles which are, *prima facie*, classifiable in different headings (i.e. an infant car seat and a full-size stroller), (ii) consist of articles put up together to carry out the specific activity of infant/child transportation and (iii) are imported into Canada in packaged form suitable for sale directly to consumers. Accordingly, the goods in issue are properly considered ". . . goods put up in sets for retail sale . . ."—a point that was not contested by the parties.[17]

32. Having established that the goods in issue are properly considered ". . . goods put up in sets for retail sale . . .", which cannot be classified at the heading level pursuant to Rule 3 (a) of the *General Rules*, the Tribunal must proceed to Rule 3 (b) and attempt to classify the goods in issue as if they consisted of the component which gives them their essential character. In other words, the Tribunal must attempt to determine whether the essential character of the goods in issue is conferred by the infant car seat or the stroller.

33. According to Note (VIII) of the *Explanatory Notes* to Rule 3 of the *General Rules*, "[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods."

34. The CBSA submitted that the essential character of the goods in issue is conferred by the stroller and that, as such, the goods in issue are properly classified in heading No. 87.15 as baby carriages. It submitted that the fundamental nature of the goods in issue relates to the transportation of infants and children and that the component which primarily carries out that function is the stroller. It argued that the stroller component, used independently of the infant car seat component, provides all the "end uses" of the goods in issue, whereas the infant car seat requires the use of a motor vehicle to transport the infant. According to the CBSA, the infant car seat is simply a "bonus" to the overall stroller function.

35. The CBSA further submitted that several other factors, some of which have previously been considered by the Tribunal,[18] indicate that the essential character of the goods in issue is conferred by the stroller and that, as a result, there is no need to proceed to Rule 3 (c) of the *General Rules*. Specifically, it submitted: that the stroller makes up the largest portion of the goods in issue (i.e. it is the larger and heavier of the items and occupies more space); that the stroller can bear more weight than the infant car seat and can thus be used for a longer duration of time; that the stroller is the more costly component of the set (i.e. when purchased separately, the stroller has a higher retail value than the infant car seat); and that, at several major distributors, Evenflo markets the goods in issue as strollers and even emphasizes their weight capacity.

36. With respect to the U.S. classification ruling to which Evenflo referred in support of its position, the CBSA submitted that there is no indication that the goods in that appeal are the same as the goods in issue. It also added that the Tribunal has made it clear on several occasions that it is not bound by rulings from foreign jurisdictions.[19]

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17. Tribunal Exhibit AP-2009-049-09A, para. 24; Tribunal Exhibit AP-2009-049-22A, paras. 17, 19.
18. The CBSA referred to the Tribunal's decisions in *Costco Canada Inc. v. Commissioner of the Canada Customs and Revenue Agency* (30 November 2001), AP-2000-050 (CITT), *Sanofi Canada Inc. v. Deputy M.N.R.* (18 December 1998), AP-97-117 (CITT) and *Regal Confections Inc. v. Deputy M.N.R.* (25 June 1999), AP-98-043, AP-98-044 and AP-98-051 (CITT).
19. The CBSA referred to the Tribunal's decision in *Korhani Canada Inc. v. President of the Canada Border Services Agency* (18 November 2008), AP-2007-008 (CITT) and *Sigvaris Corporation v. President of the Canada Border Services Agency* (23 February 2009), AP-2007-009 (CITT).

37. On the other hand, Evenflo submitted that neither the infant car seat nor the stroller confers, on the goods in issue, their essential character. In its view, both components add equal functional value to the goods in issue, which precludes the Tribunal from considering Rule 3 (b) of the *General Rules* and requires that classification be done pursuant to Rule 3 (c). It submitted that the fundamental nature of the goods in issue is to facilitate all types of infant transportation and that this is achieved by using the infant car seat and stroller together and independently from one another. In this respect, it submitted that market research and evidence from consumers demonstrate that parents consider both the infant car seat and stroller equally important to their use of the goods in issue.

38. Evenflo submitted that its marketing and product literature equally promotes the benefits of both the infant car seat and stroller. It added that the goods in issue are marketed as a distinct product category, sold separately from infant car seats and strollers, and that this serves to further demonstrate that neither component plays a greater role than the other in the use of the goods in issue.

39. Evenflo further submitted that, in several cases,[20] the Tribunal has ignored quantitative metrics such as bulk, weight or quantity, when the facts demonstrated that each component played an equal role in the finished product. While it acknowledged that the stroller is clearly bulkier and heavier than the infant car seat, it submitted that this is by design because consumers prefer lighter and more portable infant car seats. Moreover, Evenflo submitted that the value (i.e. cost) of the infant car seat and stroller is not indicative of the essential character of the goods in issue, given that, depending on the ultimate combination of infant car seat and stroller, one ends up with different values. It also provided a U.S. classification ruling in which a travel system manufactured by one of its competitors was classified pursuant to Rule 3 (c) of the *General Rules*.

40. Finally, Evenflo submitted that, while the stroller has a higher weight capacity than the infant car seat, evidence shows that parents do not use the full-size stroller much longer than the infant car seat and that, in fact, most parents typically switch from the bulky full-size stroller to a lightweight, portable umbrella stroller by the time a child reaches 12 months of age. It added that, even if some parents do use the stroller longer than the infant car seat, that fact alone is insufficient to conclude that the stroller gives the goods in issue their essential character.

41. On the issue of "essential character", the Federal Court of Appeal, in *Mon-Tex Mills Ltd. v. Canada (Commissioner of the Canada Customs and Revenue Agency)*,[21] explained that the purpose of an analysis under Rule 3 (b) of the *General Rules* ". . . is not merely to weigh the various elements of Explanatory Note VIII against one another, but rather to determine the essence or fundamental nature of the goods." The Federal Court of Appeal added that, ". . . to be essential, a characteristic must pertain to the essence of something. It must be fundamental."

42. In this regard, the Tribunal notes that, while criteria such as bulk, quantity, weight and value are intrinsically objective, they are not, in and of themselves, necessarily dispositive. As explained by the Tribunal in *Transilwrap*, ". . . that weight can be considered an objective measure is not sufficient for it to be the determining factor in the classification of goods. It must also have an impact on the essential character of

20. Evenflo referred to the Tribunal's decisions in *Automed Technologies Inc. v. President of the Canada Border Services Agency* (20 April 2009), AP-2007-028 (CITT), *Transilwrap of Canada Ltd. v. Commissioner of the Canada Customs and Revenue Agency* (11 September 2001), AP-2000-018 (CITT) [*Transilwrap*] and *Oriental Trading (MTL) Ltd. v. Deputy M.N.R.* (31 August 1992), AP-91-081 and AP-91-223 (CITT) [*Oriental Trading*].
21. 2004 FCA 346 (CanLII).

the goods."[22] A similar approach was also taken by the Tribunal in *Oriental Trading* where it had to determine which component of cotton swabs—the cotton wadding or the polypropylene stem—gave the goods their essential character. Despite the evidence that the polypropylene stem weighed more, was bulkier and accounted for more of the cost of the cotton swabs than the cotton wadding, the Tribunal found that, based on the role that the cotton wadding played in contributing to the personal hygiene nature of the product, the essential character of the product was conferred by the cotton wadding.[23]

43. According to the CBSA, the essential character of the goods in issue is conferred by the stroller as it is this component that independently provides all the "end uses" of the goods in issue. As for specific factors, the CBSA argued that the relative weight, bulk, value and useful life of the stroller, as well as the marketing of the goods in issue, all militate in favour of the Tribunal finding that the stroller confers on the goods in issue their essential character.

44. Examining each of these factors in turn to see how they bear upon the essential character of the goods in issue, the Tribunal accepts that the relatively lighter weight and lower bulk of the infant car seat, which is also used as a hand-held infant carrier, is a design feature intended to respond to a specific and understandable demand of consumers.[24] On the issue of value, the Tribunal notes that, depending on the specific model of the goods in issue, the value of the stroller is either comparable to, or higher than, that of the infant car seat.[25]

45. As for useful life, the Tribunal notes that, while the full-size stroller can accommodate older children by virtue of its greater weight limit relative to that of the infant car seat, Evenflo submitted market research and anecdotal evidence which indicates that, as a practical matter, the actual duration of usage of the stroller does not extend much beyond that of the infant car seat, as consumers tend to switch to the lighter and more convenient umbrella stroller once a child has outgrown the infant car seat.[26] However, the Tribunal also notes that, despite this evidence, the validity of which was brought into question by the CBSA,[27] there are undoubtedly some consumers who continue to use the stroller after a child has outgrown the infant car seat.

46. Finally, as for the marketing of the goods in issue, the Tribunal accepts that "travel systems" are generally marketed as a distinct product category and sold separately from infant car seats and strollers.[28] The Tribunal also agrees that Evenflo's marketing and product literature promotes the benefits of both components of the goods in issue.[29] The Tribunal does note however that, in certain instances, more prominence is given to the stroller by the fact that its features are described first and in greater detail than those of the infant car seat.[30]

22. *Transilwrap* at 3.
23. *Oriental Trading* at 2.
24. *Transcript of Public Hearing*, 16 March 2010, at 10-11, 23-25; Tribunal Exhibit AP-2009-049-07B, tab 11 at 10.
25. *Transcript of Public Hearing*, 16 March 2010, at 45-46; Tribunal Exhibit AP-2009-049-26C, tab 1; Tribunal Exhibit AP-2009-049-25A, tab 4.
26. *Transcript of Public Hearing*, 16 March 2010, at 26-36; Tribunal Exhibit AP-2009-049-26A, tab 5; Tribunal Exhibit AP-2009-049-07A, tabs 8, 9, 26.
27. *Transcript of Public Hearing*, 16 March 2010, at 153-54, 170.
28. Tribunal Exhibit AP-2009-049-07A, tab 15; Tribunal Exhibit AP-2009-049-26A, tab 7.
29. Tribunal Exhibit AP-2009-049-07A, tabs 3, 14.
30. *Ibid.* tab 3 at 1-3; Tribunal Exhibit AP-2009-049-26A, tab 10 at 6.

47. Moreover, in the present case, it is the Tribunal's view that an equally compelling argument can be made that a consideration of the respective role of each component of the goods in issue would confer essential character not on the full-size stroller, but rather on the infant car seat. In this regard, the infant car seat (which snaps into both the car seat base and the stroller and which can also be used independently as an infant carrier), is designed to come into play in each of the three travel modes (i.e. by car, by hand and by stroller) covered by the goods in issue. Indeed, it is the centricity of the infant car seat to the goods in issue that allows the components to operate synergistically as a travel system until the time when the infant car seat can no longer be used due to its weight limit having been exceeded. Thus, it is clear that, contrary to the CBSA's assertions, the stroller does not independently provide all the "end uses" of the goods in issue, as it does not come into play in two of the three travel modes (i.e. by car and by hand).

48. Therefore, while the stroller component may predominate to a certain degree in terms of such factors as relative weight, bulk, value, useful life and marketing, it could also be reasonably argued that it is the functional compatibility of the infant car seat with both the car seat base on the one hand, and the stroller on the other, that connects the individual articles to create a multi-modal travel "system" during the period of child infancy.[31] In this regard, the fact that the stroller and infant car seat are purchased as a set rather than separately[32] evinces an intention on the part of the consumer to use them as part of an integrated travel system, which further underscores the importance of the infant car seat as the common denominator across all three modes of transport covered by the goods in issue.

49. The Tribunal is therefore inclined to agree with Evenflo that the respective contributions of the infant car seat and stroller to the overall functionality of the goods in issue are such that no single component can be said to confer essential character. Consequently, the classification of the goods in issue at the heading level cannot be effected under Rule 3 (b) of the *General Rules*.

50. Accordingly, recourse must be had to Rule 3 (c) of the *General Rules*, whereby the classification of the goods in issue is based on the heading which occurs last in numerical order among those which merit equal consideration, namely, heading No. 94.01.

Subheading Analysis

51. Having classified the goods in issue at the heading level, the Tribunal must next determine in which subheading the goods in issue should be classified. However, as the goods in issue were classified in heading No. 94.01 pursuant to Rule 3 (c) of the *General Rules*, the Tribunal must proceed with classification at the subheading level and, for that matter, at the tariff item level, on the implied notion that it is the infant car seat component of the goods in issue that is being classified.

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31. In *Transilwrap* at 4, for example, the Tribunal found that ". . . the factor that determines essential character is the role of a constituent material in relation to the use of the goods in issue. There is a clear nexus between the role of one of the constituent materials in relation to the use of the goods in issue and the essential character of those goods."
32. According to Ms. Sauernheimer, while Evenflo did, in the past, sell strollers and infant car seats separately in Canada, they no longer sell the strollers separately (see *Transcript of Public Hearing*, 16 March 2010, at 85-86). However, evidence on the record indicates that Evenflo has continued to sell strollers and infant car seats separately in the United States (see Tribunal Exhibit AP-2009-049-25A, tab 4). Moreover, evidence on the record indicates that full-size strollers from other manufacturers continue to be sold separately in Canada (see Tribunal Exhibit AP-2009-049-26A, tab 10).

52. Both parties agree that infant car seats should be classified in subheading No. 9401.80.[33] The Tribunal also agrees. In this regard, heading No. 94.01 is subdivided into nine first-level subheadings, and the only one of these subheadings in which infant car seats could possibly be classified is subheading No. 9401.80, which covers "other seats".

53. This view also finds support in the *Classification Opinions*, which contain the following opinion with regard to subheading No. 9401.80:

> **9401.80** 1. **Car safety seats** suitable for use for the carriage of infants and toddlers in motor vehicles or other means of transport. They are removable and are attached to the vehicle's seats by means of the seat belt and a tether strap.

54. Therefore, pursuant to Rules 1 and 6 of the *General Rules*, the appropriate subheading is No. 9401.80.

Tariff Item Analysis

55. The Tribunal must next determine under which tariff item infant car seats and, by implication, the goods in issue should be classified.

56. Evenflo submitted that infant car seats should be classified under tariff item No. 9401.80.90 as other seats, other than for domestic purposes, while the CBSA submitted that they are properly classified under tariff item No. 9401.80.10 as other seats, for domestic purposes. Therefore, the issue of contention is reduced to whether infant car seats are for "domestic purposes".

57. The CBSA submitted that the definition of the word "domestic" indicates that it is that which refers to the normal everyday actions of a family or household.[34] It submitted that the primary purpose of infant car seats is the transportation of children by their parents—an activity relating to the family and therefore domestic in nature. It further submitted that the Tribunal has long held that the term "domestic" is to be interpreted broadly and should not be restricted to a single meaning. In this respect, it referred to the Tribunal's decision in *Black & Decker Canada Inc. v. Deputy M.N.R.C.E.*[35] and argued that the Tribunal rejected the notion that "domestic activities" can only take place within the confines of the family home and found that, in determining whether goods are being used for a domestic purpose, it is the nature of the activity which should be evaluated and not solely where it is taking place. The CBSA added that, in *Costco Canada Inc. v. Commissioner of the Canada Customs and Revenue Agency*,[36] the Tribunal ruled that the term "domestic" ". . . should be given a wide enough interpretation to include goods that can be found outside of the house, but which have, as a primary purpose, use by individuals in a domestic setting."[37]

58. The CBSA submitted that, while it is a modern reality that more and more goods created for domestic purposes find their usage outside the home, this does not mean that their original domestic purpose becomes void. It submitted that some activities, by their nature, are inherently domestic even if performed outside of the home. In its view, the fact that infant car seats are used in vehicles does not change their domestic purpose nor does it preclude their purpose from being domestic.

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33. *Transcript of Public Hearing*, 16 March 2010, at 143, 171.
34. The CBSA referred to *Black's Law Dictionary*, 9th ed., where the term "domestic" is defined as follows: ". . . Of or relating to the family or the household <a domestic dispute>."
35. (16 December 1992), AP-90-192 (CITT) [*Black & Decker*].
36. (11 January 2001), AP-2000-015 (CITT) [*Costco*].
37. *Costco* at 4.

59. The CBSA also submitted that, in *Alliance Ro-Na Home Inc. v. Commissioner of the Canada Customs and Revenue Agency*,[38] the Tribunal relied upon certain factors, including the fundamental design of goods and their weight, in order to determine whether they were for domestic purposes. It submitted that, in this case, it is clear from the fundamental design of infant car seats that they are to be used primarily to accomplish a domestic purpose, being the transportation of children by their parents. It added that no evidence suggests that the infant car seats should be used for the commercial transportation of children. Finally, it submitted that the infant car seats are heavy and that this suggests that they are goods for domestic purposes.

60. On the other hand, Evenflo submitted that, while the term "domestic" is not defined in the Chapter Notes or *Explanatory Notes* to Chapter 94, previous Tribunal decisions demonstrate that "domestic" articles are those that are primarily used in and around the home. In particular, Evenflo referred to the Tribunal's decisions in *Costco*, *Alliance Ro-Na Home Inc. v. Commissioner of the Canada Customs and Revenue Agency*[39] and *Ro-Na II* as being supportive of this assertion. It also submitted that, in *Ro-Na II*, the Tribunal considered the terms "domestic" and "household" as being synonymous, which is consistent with a WCO study[40] issued in 2000 that arrived at the same conclusion. Regarding the CBSA's reference to *Black & Decker*, Evenflo noted that the Tribunal found, in that case, that hand-held vacuum cleaners were domestic articles because they were used in motor homes.

61. Evenflo further submitted that, in *Ro-Na II*, the Tribunal specifically rejected the proposition that the use of a product by individuals or household members, wherever they may be, transforms the product into a domestic article. It submitted that, if that rationale were applicable, every product purchased by a member of a household—or every product for personal use—would be considered "domestic". According to Evenflo, nothing in the tariff schedule evinces any intent to define "domestic" or "household" to mean "personal". It submitted that, on the contrary, the term "personal" is used in the tariff schedule to mean something other than "household". In this respect, it noted that Chapter 98 has numerous examples of headings that refer to goods that are either for personal or household use, but that the terms "domestic" and "household" never appear in the Harmonized System in the same heading or subheading, the implication being that the terms "domestic" and "household" are synonymous, whereas the terms "household" and "personal" are not. Therefore, in its view, a product is domestic only if it is primarily used in and around the home and not merely because it is for personal use in a non-commercial application.

62. Evenflo submitted that, in this case, infant car seats are primarily used in motor vehicles, but that they can also be removed so that a caregiver can carry the infant to other places such as a store, park or restaurant, or into a home. It submitted that, while infant car seats can be used in the home, their physical characteristics and design demonstrate that they are not primarily intended for use in and around the home and, therefore, are not for domestic purposes.

63. Whether infant car seats are for "domestic purposes" requires consideration of the proper interpretation to be ascribed to the word "domestic" in relation to "purposes". In this regard, the Tribunal considers it useful to review the cases cited by the parties that pertain to this issue.

64. In *Black & Decker*, the Tribunal found that lightweight, hand-held vacuum cleaners designed for use in vehicles and boats were "domestic appliances" because they were used for performing domestic chores or activities. The Tribunal noted that the word "domestic" did not restrict the location of the

38. (25 May 2004), AP-2003-020 (CITT) [*Ro-Na II*].
39. (17 September 2002), AP-2001-065 (CITT) [*Ro-Na I*].
40. See Tribunal Exhibit AP-2009-049-26B, tab 4.

performance of such activities to within the four walls of a house. However, it added that, in this respect, it was ". . . difficult to understand how domestic activities performed in a motor home are substantially different from the performance of the same activities in a house."[41]

65. In *Costco*, the Tribunal found that benches made of metal and wood were used for domestic purposes because their physical characteristics, their design and their price showed that they were clearly made to be used in a domestic setting, such as a private garden, a backyard lawn or a patio. The Tribunal noted that the term "domestic" ". . . should be given a wide interpretation to include goods that can be found outside the house, but which have, as a primary purpose, use by individuals in a domestic setting."[42] The Tribunal went on to state that this was consistent with its decision in *Black & Decker*.

66. In *Ro-Na I*, the Tribunal found that padded steel folding chairs were not used for domestic purposes because their physical characteristics, their design and their price showed that they were not primarily made to be used in a domestic setting. In taking an approach which it considered consistent with its decision in *Costco*, the Tribunal noted that ". . . the primary purpose of a folding chair is to offer temporary seating, which is often done in circumstances outside the house"[43] and that the folding chairs in issue were in fact ". . . used in non-domestic sites, such as hotels and conference centres, for different events."[44]

67. Finally, in *Ro-Na II*, the Tribunal found that collapsible or folding chairs of polyester fabric and tubular metal that were sold with a carrying bag with drawstring were not used for domestic purposes because their design and characteristics indicated that they could be used in a multitude of places and settings,[45] most of which were ". . . beyond the strict confines of the home and its direct surroundings."[46] In doing so, the Tribunal reiterated the position that it adopted in *Costco* and *Ro-Na I* to the effect that, to qualify as goods used for "domestic purposes", the goods must be primarily for domestic or household use. Moreover, the Tribunal rejected the notion put forth by the respondent in that case that goods could become domestic goods by way of being used by "members of a household" at a family event. In this respect, the Tribunal stated that it failed ". . . to see how the attendance of an event by members of a household turns an event into a domestic activity."[47]

68. In the Tribunal's opinion, these decisions make it clear that, in order to be considered as goods used for "domestic purposes", goods must be primarily for domestic or household use. These decisions make it equally clear that, in order for goods to be for domestic or household use, they must be used in the home or its direct surroundings. While the Tribunal's decision in *Black & Decker* appears, at first glance, to be inconsistent with these statements, a careful reading reveals that the activity which was being performed in that case took place in a motor home, which the Tribunal equated to a house.

69. The CBSA submitted that the definition of the word "domestic" found in *Black's Law Dictionary* indicates that it refers to the normal everyday actions of a family or household. However, the Tribunal has only ever defined the term "domestic" in relation to the household. In fact, as stated above, in *Ro-Na II*, the Tribunal explicitly rejected the notion that goods could become domestic by virtue of being used by

41. *Black & Decker* at 4.
42. *Costco* at 4.
43. *Ro-Na I* at 5.
44. *Ibid.*
45. The Tribunal was persuaded by the evidence on file that the collapsible or folding chairs were used for temporary seating almost anywhere, but primarily outdoors, such as at a sporting event or while engaging in activities such as camping.
46. *Ro-Na II* at para. 14.
47. *Ibid.* at para. 17.

members of a household at a family event. While the Tribunal recognizes that it may be appropriate, in certain circumstances, to refer to dictionary definitions for purposes of interpreting the tariff schedule, it is of the view that it is not appropriate to do so in this case. If the Tribunal were to accept that goods used for activities relating to the family could be considered as being for "domestic purposes", it would result in most goods for personal use being considered goods used for "domestic purposes". Given that the terms "domestic" and "household" are synonymous for purposes of the tariff schedule,[48] goods for personal use would also be considered goods for household use. Such a result does not seem to have been intended by the drafters since, as noted by Evenflo, the term "personal" is used in the tariff schedule to mean something other than "household".[49] In this regard, the Tribunal is mindful that it must always strive to interpret the words and expressions used in the tariff schedule in a manner that promotes internal coherence and consistency.

70. In light of the above, the Tribunal sees no reason why it should depart from previous decisions and, accordingly, will proceed to determine whether infant car seats are goods that are used for "domestic purposes" based on whether or not they are primarily used in the home and/or its direct surroundings.

71. In the Tribunal's view, it is clear that the infant car seats are not primarily used in and around the home. As the infant car seats are designed to facilitate the transportation of infants, be it by car, by stroller or by hand, it seems self-evident that any use of the infant car seats would primarily occur away from the home or in the transportation of infants at a distance from the home.[50] While the infant car seats may be used in the home or its direct surroundings, such use would generally be limited to transferring the infant to and from the car.[51] Accordingly, the Tribunal concludes that the infant car seats, and, by implication, the goods in issue, are not used for "domestic purposes".

72. Therefore, pursuant to the *Canadian Rules* and Rule 1 of the *General Rules*, the appropriate tariff item is No. 9401.80.90.

DECISION

73. For the foregoing reasons, the Tribunal concludes that the goods in issue should be classified under tariff item No. 9401.80.90 as other seats, other than for domestic purposes.

74. The appeal is therefore allowed.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

48. See the WCO study at Tribunal Exhibit AP-2009-049-26B, tab 4.
49. See, for example, heading Nos. 98.04 and 98.07, where both the terms "personal" and "household" are used.
50. *Transcript of Public Hearing*, 16 March 2010, at 11-13, 15.
51. *Ibid.* at 13.