



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2009-066

Danson Décor Inc.

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Friday, May 27, 2011*

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IN THE MATTER OF an appeal heard on January 27, 2011, 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 October 29, 2009, with respect to a request for a further re-determination, pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**DANSON DÉCOR INC.**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is allowed.

Diane Vincent  
Diane Vincent  
Presiding Member

Dominique Laporte  
Dominique Laporte  
Secretary

Place of Hearing: Ottawa, Ontario  
Date of Hearing: January 27, 2011

Tribunal Member: Diane Vincent, Presiding Member

Counsel for the Tribunal: Georges Bujold

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**PARTICIPANTS:****Appellant**

Danson Décor Inc.

**Counsel/Representative**

Michael Kaylor

**Respondent**President of the Canada Border Services  
Agency**Counsel/Representative**

Maude Breton-Voyer

**WITNESS:**Erik Smith  
Sales Analyst/Category Manager  
Danson Décor Inc.

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## STATEMENT OF REASONS

### BACKGROUND

1. This is an appeal filed by Danson Décor Inc. (Danson Décor) with the Canadian International Trade Tribunal (the Tribunal) 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) pursuant to subsection 60(4).
2. The issue in this appeal is whether certain gift bows (the goods in issue) are properly classified under tariff item No. 3926.90.90 of the schedule to the *Customs Tariff*<sup>2</sup> as other articles of plastics, as determined by the CBSA, or should be classified under tariff item No. 9505.10.00 as articles for Christmas festivities, as claimed by Danson Décor.<sup>3</sup>

### PROCEDURAL HISTORY

3. On August 25, 2007, Danson Décor imported the goods in issue under tariff item No. 3926.90.90 as other articles of plastics.
4. On January 12, 2009, Danson Décor applied for a refund of the customs duties paid on the goods in issue, pursuant to paragraph 74(1)(e) of the *Act*. It claimed that the goods in issue should have been classified under tariff item No. 9505.10.00 as articles for Christmas festivities. On February 23, 2009, the CBSA denied the request for a refund of duties, pursuant to paragraph 59(1)(a), and re-determined the classification of the goods in issue under tariff item No. 3926.90.90.
5. On February 23, 2009, Danson Décor requested a further re-determination of the tariff classification of the goods in issue pursuant to subsection 60(1) of the *Act*. On October 29, 2009, the CBSA denied this request, pursuant to subsection 60(4), and held that the goods in issue were properly classified under tariff item No. 3926.90.90.
6. On January 6, 2010, Danson Décor filed the present appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.
7. On January 27, 2011, the Tribunal held a public hearing in Ottawa, Ontario.
8. Danson Décor called one witness during the public hearing, Mr. Erik Smith, Sales Analyst/Category Manager, Danson Décor. The CBSA did not call any witnesses.

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

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

3. Danson Décor initially claimed that the goods in issue should be classified under tariff item No. 9505.90.00 as other festive articles. However, at the hearing, it modified its position and submitted that, in view of the evidence before the Tribunal that indicates that the goods in issue are articles used for Christmas festivities, it would be more appropriate for the goods in issue to be classified under tariff item No. 9505.10.00. *Transcript of Public Hearing*, 27 January 2011, at 97.

## GOODS IN ISSUE

9. The goods in issue are 11 models of gift bows imported by Danson Décor, namely, models X6115, X6138, X6966, X6967, X6968, X6969, X6970, X6971, X86134, X86135 and X86136. They consist of multiple layers of plastics that have been formed into flexible metallized strip or metallized die-cut shapes.<sup>4</sup> The bows are metallic in appearance and come in a variety of sizes (small or large), colours (red, green, blue, gold or silver), finishes (shiny, dull or with a holographic image) and shapes (rosette or florist bow, narrow curly streamers or starburst). The goods in issue are held together by a pin, staple or thread, and are attached to a paperboard backing with a disposable release paper.

10. The goods in issue are either attached to a paperboard holder for hanging from a hook or enclosed in bags held together at the top by a piece of folded paperboard, which are all prepared for retail sale. The front side of the paperboard is printed with the words “*Décorations de Noël*” and “Christmas Decorations” or “*Une Tradition de Noël*” and “A Holiday Tradition”. The reverse side of the paperboard is printed with Danson Décor’s address, a computer barcode and instructions for removing the disposable release paper.<sup>5</sup>

11. Danson Décor filed four physical exhibits of the goods in issue,<sup>6</sup> along with physical exhibits of various packaging and advertising materials relating to goods other than the goods in issue.<sup>7</sup> The CBSA filed two additional exhibits, including Danson Décor’s 2009 Christmas catalogue.<sup>8</sup>

## ANALYSIS

### Statutory Framework

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

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.<sup>9</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

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4. In this regard, the Tribunal notes that both parties agree that the goods in issue are made of layers of plastics, as indicated in a laboratory report filed by the CBSA concerning 8 of the 11 models of the goods in issue. Tribunal Exhibit AP-2009-066-12.

5. Tribunal Exhibit AP-2009-066-08A at paras. 2-4; Tribunal Exhibit AP-2009-066-12.

6. Exhibits A-9: model X6970, A-10: model X6115, A-11: model X6967 and A-12: X6138.

7. Exhibit A-01—“Banana Nut Cheerios” cereal box and inner bag; Exhibit A-02—roll of luxury gift wrap depicting Santa Claus (blue); Exhibit A-03—roll of luxury gift wrap depicting stars, Santa Claus, etc. (beige); Exhibit A-04—roll of gift wrap “Happy Birthday” (red); Exhibit A-05—16-pack of non-smudge wedge erasers; Exhibit A-06—big green bow, model X86137; Exhibit A-07—two silver “snowflake” bows, model X86140; Exhibit A-08—red bow, red curly ribbon and roll of red ribbon, model X86138; Exhibit A-13—box of “After Eight” chocolates with green bow attached to box; Exhibit A-14—President’s Choice Belgian chocolate “Hollow Chocolate Holiday Bear”; Exhibit A-15—four Russell Stover marshmallow Santas; Exhibit A-16—six rolls of Life Savers; Exhibit A-17—“Give a Gift Can Card Holder”; Exhibit A-18—Russell Stover “Ducks Unlimited Canada” assorted chocolates; Exhibit A-19—newspaper flyer, “Nissan Year-End Sales Event”; Exhibit A-20—newspaper flyer, “*Centre du Rasoir*” holiday wish sale; Exhibit A-21—Chapters Indigo Happy Giving Gift Guide 2010; Exhibit A-22—newspaper flyer, “Dumoulin”; Exhibit A-23—newspaper flyer, “*L’Art de donner tout simplement*”, Pharmaprix; Exhibit A-24—newspaper flyer, “*Audio Video Centrale*”; Exhibit A-25—newspaper flyer, “*Zellers Idées-cadeaux*”; Exhibit A-26—Trader Joe’s Dark Chocolate Crisps (empty box).

8. Exhibit B-01—Danson Décor 2009 Christmas catalogue; Exhibit B-02—luxury gift wrap set.

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

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.

14. 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<sup>[10]</sup> and the Canadian Rules<sup>[11]</sup> set out in the schedule.”

15. 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.<sup>12</sup> 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.”

16. 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<sup>[13]</sup> and the Explanatory Notes to the Harmonized Commodity Description and Coding System,<sup>[14]</sup> 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.<sup>15</sup>

17. Thus, the Tribunal must first determine whether the goods in issue can be classified according to Rule 1 of the *General Rules* as per the terms of the headings, any relevant section or chapter notes in the *Customs Tariff*, having regard to any relevant *Explanatory Notes* or *Classification Opinions*. It is only if the Tribunal is not satisfied that the goods in issue can be properly classified at the heading level through the application of Rule 1 of the *General Rules* that it becomes necessary to consider subsequent rules in order to determine in which tariff heading the goods in issue shall be classified.

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 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.<sup>16</sup>

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

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

12. Rules 1 through 5 of the *General Rules* apply to classification at the heading level (i.e. to four digits). Pursuant to 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).

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

14. World Customs Organization, 4th ed., Brussels, 2007 [*Explanatory Notes*].

15. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17.

16. Rule 6 of the *General Rules* stipulates as follows: “For legal purposes, 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, on the understanding that only subheadings at the same level are comparable. For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

19. The Tribunal notes that section 13 of the *Official Languages Act*<sup>17</sup> provides that the English and French versions of any Act of Parliament are equally authoritative. Thus, the Tribunal may examine both the English and French versions of the schedule to the *Customs Tariff* in interpreting the tariff nomenclature.

#### **Relevant Provisions of the Customs Tariff, Section and Chapter Notes, and Explanatory Notes**

20. The relevant provisions of the nomenclature of the *Customs Tariff*, which Danson Décor claims should apply to the goods in issue, read as follows:

#### **Section XX**

#### **MISCELLANEOUS MANUFACTURED ARTICLES**

#### **Chapter 95**

#### **TOYS, GAMES AND SPORTS REQUISITES, PARTS AND ACCESSORIES THEREOF**

...

**95.05** Festive, carnival or other entertainment articles, including conjuring tricks and novelty jokes.

**9505.10.00** -Articles for Christmas festivities

...

**9505.90.00** -Other

21. There are no section notes to Section XX nor are there chapter notes to Chapter 95 that are relevant to this appeal.

22. The relevant *Explanatory Notes* to Chapter 95 provide as follows:

The articles of this Chapter may, in general, be made of any material **except** natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed), precious metal or metal clad with precious metal. They may, however, incorporate **minor constituents** made of these materials.

23. The relevant *Explanatory Notes* to heading No. 95.05 provide as follows:

This heading covers:

(A) **Festive, carnival or other entertainment articles**, which in view of their intended use are generally made of non-durable material. They include:

(1) Festive decorations used to decorate rooms, tables, etc. (such as garlands, lanterns, etc.); decorative articles for Christmas trees (tinsel, coloured balls, animals and other figures, etc); cake decorations which are traditionally associated with a particular festival (e.g., animals, flags).

(2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees, nativity scenes, nativity figures and animals, angels, Christmas crackers, Christmas stockings, imitation yule logs, Father Christmases.

...

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17. R.S.C. 1985, (4th Supp.), c. 31.



The heading also **excludes** articles that contain a festive design, decoration, emblem or motif and have a utilitarian function, e.g., tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen.

...

This heading also **excludes**:

...

- (c) Packagings of plastics or of paper, used during festivals (classified according to constituent material, for example, **Chapter 39** or **48**).

24. The relevant provisions of the nomenclature of the *Customs Tariff*, which the CBSA considers applicable to the goods in issue, read as follows:

**Section VII**

**PLASTICS AND ARTICLES THEREOF;  
RUBBER AND ARTICLES THEREOF**

...

**Chapter 39**

**PLASTICS AND ARTICLES THEREOF**

...

**39.26**        **Other articles of plastics and articles of other materials of headings 39.01 to 39.14.**

...

**3926.90**     **-Other**

...

3926.90.90    - - -Other

25. There are no section notes to Section VII that are relevant to this appeal. The relevant chapter notes to Chapter 39 provide as follows:

2. This Chapter does not cover:

...

(y) Articles of Chapter 95 (for example, toys, games, sports requisites); or

...

26. There are no *Explanatory Notes* to Section VII or Chapter 39 that are relevant to this appeal. The relevant *Explanatory Notes* to heading No. 39.26 provide as follows:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14.

## Positions of Parties

### Danson Décor

27. Danson Décor submitted that the goods in issue are festive articles that are classifiable in heading No. 95.05, pursuant to Rule 1 of the *General Rules*. Furthermore, Danson Décor argued that, since the goods in issue are imported and labelled for use during the Christmas season and sold as items to be attached to Christmas gifts, they should be classified under tariff item No. 9505.10.00 as articles for Christmas festivities.

28. Danson Décor submitted that it cannot be disputed that the goods in issue are articles. It further argued that the term “festive” covers occasions such as Christmas, birthdays, Mother’s Day or Father’s Day. In support of its position on this issue, Danson Décor referred to the interpretation of the phrase “festive occasions” contained in previous Tribunal decisions, in which the Tribunal found that the phrase “festive occasions” included weddings, anniversaries, and other holidays or joyous occasions.<sup>18</sup> On that basis, Danson Décor argued that the goods in issue meet the terms of heading No. 95.05.

29. Noting that the *Explanatory Notes* to heading No. 95.05 indicate that the heading covers “[f]estive decorations used to decorate rooms, tables, etc. . . .”, Danson Décor argued that the goods in issue are festive decorations, since they are used to decorate gifts, and that such decorations are not excluded from classification in heading No. 95.05. Danson Décor submitted that, while decorations used to decorate gifts are not expressly mentioned in the *Explanatory Notes* as examples of festive decorations covered by heading No. 95.05, the *Explanatory Notes* merely provide a non-exhaustive illustrative list of items covered by heading No. 95.05, which cannot restrict the plain, unambiguous and expansive meaning of the term “festive articles” used in the heading. In this regard, Danson Décor submitted that the *Explanatory Notes* include the term “etc.”, which is the short form for “*et cetera*”, thereby indicating that the types of festive decorations that are classifiable in heading No. 95.05 are not restricted to those used to decorate rooms or tables. Given that the *Explanatory Notes* do *not* read “festive decorations used to decorate rooms, tables *and similar or like goods*”, Danson Décor submitted that the terms of heading No. 95.05 cannot be interpreted to include only one class of festive decorations, namely, those used to decorate rooms or tables.

30. With respect to exclusionary note (c) in the *Explanatory Notes* to heading No. 95.05, which provides that “[p]ackagings of plastics or of paper, used during festivals . . .” are not covered by heading No. 95.05, Danson Décor argued that the goods in issue are not “packagings”. In Danson Décor’s view, the goods in issue are not used to package or wrap gifts but are used to decorate or ornament packagings (e.g. boxes or bags) that contain gifts.

31. Danson Décor further submitted that the term “packagings” that appears in exclusionary note (c) in the *Explanatory Notes* to heading No. 95.05 means the preparation of products for transportation, storage and sale and, thus, is typically used in association with actions performed by a manufacturer in order to bring saleable goods to a market. Danson Décor argued that the term “packagings” must therefore be distinguished from the word “wrapping”, which refers to what consumers do, after a product has been packaged, to conceal the product if their intention is to offer it as a gift. In Danson Décor’s view, the goods in issue, which are simply used to decorate a gift that has been wrapped, are not “packagings”, since they have nothing to do with the outer coverings used to protect goods and enhance their appeal to consumers in a commercial context. In the alternative, Danson Décor also submitted that, even if the term “packagings”

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18. *Nicholson Equipment Ltd. v. Deputy M.N.R.* (25 April 1997), AP-96-080 (CITT) [*Nicholson 1997*]; *Nicholson Equipment Ltd. v. Deputy M.N.R.* (2 September 1998), AP-97-110 and AP-97-113 (CITT) [*Nicholson 1998*].

could be interpreted to include the wrapping of a gift, the goods in issue do not constitute packagings or wrappings since their purpose is simply to add a decorative element to a package or a gift that has already been wrapped. In this connection, Danson Décor argued that consumers would not normally consider that they are packaging or wrapping a gift by putting a bow on it.

32. In response to the CBSA's submissions that consideration should be given to Customs Notice N-179<sup>19</sup> in order to define the phrase "[p]ackagings of plastics or of paper, used during festivals . . .", Danson Décor argued that the Tribunal is not bound to follow the interpretation of exclusionary note (c) in the *Explanatory Notes* to heading No. 95.05, which is set out in that document, since it only provides internal administrative guidelines that are not determinative of the type of products that should actually be excluded from the scope of heading No. 95.05. Moreover, Danson Décor submitted that, in any event, Customs Notice N-179 does not state that bows are "packagings". To the contrary, it specifically names bows, in addition to "packagings", as goods that are excluded from the scope of heading No. 95.05.<sup>20</sup> In Danson Décor's view, this indicates that even the CBSA recognizes that there is a difference between packagings and bows because it deemed it necessary to specify, in Customs Notice N-179, that "packaging and bows" (not only packagings) are excluded from heading No. 95.05.

### CBSA

33. Referring to the terms of heading No. 39.26, which read "Other articles of plastics and articles of other materials of headings 39.01 to 39.14", the CBSA submitted that the goods in issue meet the two conditions of this heading: they are composed of plastics, which was confirmed by laboratory analysis, and they are not covered by another heading in Chapter 39.

34. Referring to note 2(y) to Chapter 39, which reads "This Chapter does not cover . . . [a]rticles of Chapter 95 (for example, toys, games, sports requisites)", the CBSA submitted that the goods in issue are not articles of Chapter 95.

35. The CBSA accepted that the essential function of the goods in issue is to decorate gifts at festive occasions. However, applying the limited class or *ejusdem generis* rule of interpretation, the CBSA argued that the relevant *Explanatory Notes* make it clear that the goods in issue are not of the kind of festive articles covered by heading No. 95.05. In this regard, the CBSA argued that the only festive decorations covered by heading No. 95.05 are those used to decorate *rooms or tables*, such as garlands or lanterns. The CBSA argued that the goods in issue decorate gifts, not rooms or tables, and, thus, are not festive decorations of the type covered by heading No. 95.05.

36. In any event, the CBSA submitted that the goods in issue are "[p]ackagings of plastics . . . used during festivals . . ." that are expressly excluded from heading No. 95.05 by virtue of exclusionary note (c) in the *Explanatory Notes* to heading No. 95.05. On the basis of this specific exclusion, the CBSA submitted that the goods in issue must be classified according to their constituent material (plastics) in heading No. 39.26. The CBSA further submitted that, in interpreting the phrase "[p]ackagings of plastics . . . used during festivals . . .", one must read these words together in a way that gives meaning to the entire phrase. Therefore, the CBSA argued that the phrase "packagings of plastics or of paper" cannot be read in isolation, without taking into account the context provided by the phrase "used during festivals" and that, reading these words together, one must conclude that specific types of packagings, namely, packagings used during festivals, are excluded from heading No. 95.05.

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19. CBSA, "The Administration of Heading 95.05" (3 November 1997).

20. Tribunal Exhibit AP-2009-066-08A, tab G at 48.

37. When used in this particular context, the CBSA submitted that the term “packagings” includes the goods in issue, because gift bows form part of or are included in the packaging of gifts that are exchanged on festive occasions. The CBSA further submitted that one could conceive of situations where a gift would be “packaged” with only a gift bow, such as the giving of a larger item or one that is difficult to wrap.

38. In response to Danson Décor’s submission on this issue, the CBSA submitted that the definition of the term “packagings” proposed by Danson Décor ignores the language in the *Explanatory Notes* to heading No. 95.05, which, by indicating that the exclusion is for packagings used *during festivals*, clearly refers to something other than packagings used to protect goods during shipment. In other words, the CBSA argued that it is necessary to distinguish the narrow definition of the term “packagings” submitted by Danson Décor from the type of packagings of plastics that are used during festivals, which are described in the *Explanatory Notes* to heading No. 95.05.

### **Tariff Classification of the Goods in Issue**

39. As indicated above, the Tribunal must determine whether the goods in issue are properly classified under tariff item No. 3926.90.90 as other articles of plastics, as determined by the CBSA, or should be classified under tariff item No. 9505.10.00 as articles for Christmas festivities, as claimed by Danson Décor. Consequently, the dispute between the parties arises at the heading level.

40. Pursuant to Rule 1 of the *General Rules*, classification shall be determined according to the terms of the headings and any relative section or chapter notes. In this regard, the Tribunal observes that note 2(y) to Chapter 39 excludes articles of Chapter 95 from being classified in Chapter 39. Consequently, to the extent that the goods in issue are articles of Chapter 95 (which includes heading No. 95.05), they are precluded from being classified in Chapter 39 (which includes heading No. 39.26).<sup>21</sup> Accordingly, the Tribunal will first determine whether the goods in issue are articles of heading No. 95.05, as claimed by Danson Décor. In the event that the Tribunal determines that the goods in issue are classifiable in heading No. 95.05, pursuant to note 2(y) to Chapter 39, the Tribunal would have to conclude that the goods in issue are not covered by Chapter 39 and, by implication, not properly classified in heading No. 39.26.

#### Are the Goods in Issue Festive Articles of Heading No. 95.05?

41. The Tribunal notes that heading No. 95.05 covers “Festive, carnival or other entertainment articles . . .”<sup>22</sup> In order to be classifiable in heading No. 95.05, the goods in issue must therefore be either festive, carnival or other entertainment articles.

42. First, the Tribunal examined whether the goods in issue are “articles”. On this issue, the Tribunal notes that, while the term “article” is not defined for the purposes of Chapter 95, it has previously accepted that this term generally means “. . . ‘any finished or semi-finished product, which is not considered to be a material.’”<sup>23</sup> Moreover, the ordinary meaning of the word “article” is “**1** a particular or separate thing, esp. one of a set . . .”<sup>24</sup> The evidence indicates that the goods in issue are finished products that are ultimately

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21. Conversely, the Tribunal notes the absence of any relevant or applicable exclusionary notes in Section XX or Chapter 95 that preclude articles of plastics of Chapter 39 from being classified in a heading of Chapter 95, if such an article otherwise meets the terms of that heading.

22. The French version of heading No. 95.05 reads as follows: “*Articles pour fêtes, carnaval ou autres divertissements . . .*”

23. *Wolseley Canada Inc. v. President of the Canada Border Services Agency* (18 January 2011), AP-2009-004 (CITT) at para. 25.

24. *Canadian Oxford Dictionary*, 2d ed., s.v. “article”.

sold at the retail level. The Tribunal further notes that both competing headings in this appeal cover articles, a fact which indicates that both parties consider that the goods in issue are articles. For these reasons, the Tribunal is satisfied that the goods in issue are finished products, as opposed to a material, and are therefore articles. The Tribunal is also satisfied that the ordinary meaning of the word “article” is sufficiently broad to encompass the goods in issue.

43. Second, the Tribunal examined whether the goods in issue are “festive” articles. In this regard, the Tribunal notes that the witness called by Danson Décor, Mr. Erik Smith, testified that the sale of the goods in issue is a seasonal business that occurs in November and December, specifically for the Christmas period, which accounts for 95 percent of the company’s business. Furthermore, Mr. Smith testified that the goods in issue are marketed for a specific period, the Christmas season, and could also be sold, to a much lesser degree, for use at Easter or St. Valentine’s Day.<sup>25</sup> Thus, according to the evidence, the goods in issue are sold for use primarily during the Christmas season, while they may sporadically be used for other holidays or joyous occasions.

44. In *Nicholson 1997* and *Nicholson 1998*, the Tribunal found that the term “festive” had a broad meaning and that festive articles covered by heading No. 95.05 may include articles used for a feast, a festival, holidays or other joyous occasions, such as a birthday or a wedding. In the Tribunal’s opinion, following these precedents, it is clear that Christmas, Easter and St. Valentine’s Day are to be considered festive occasions. In view of the above and considering that both parties agree that the goods in issue are used to adorn or decorate gifts exchanged at such festive occasions,<sup>26</sup> the Tribunal concludes that they are festive articles within the meaning of the terms of heading No. 95.05.

45. The Tribunal is also unable to accept the CBSA’s argument that the goods in issue are not covered by heading No. 95.05 because they are not of the kind or class of festive articles expressly referred to in the *Explanatory Notes* to heading No. 95.05. note (A)(1) of the *Explanatory Notes* to heading No. 95.05 reads as follows:

This heading covers:

- (A) **Festive, carnival or other entertainment articles**, which in view of their intended use are generally made of non-durable material. They *include*:
- (1) Festive decorations used to decorate rooms, tables, *etc.* (such as garlands, lanterns, *etc.*) . . . .

[Emphasis added]

It is true that, according to the evidence, the goods in issue are not used to decorate rooms or tables. However, the Tribunal considers that note (A)(1) of the *Explanatory Notes* to heading No. 95.05 does *not* indicate that the only festive decorations covered by heading No. 95.05 are those used to decorate rooms or tables. On the contrary, while this note indicates that festive decorations of this sort are included in the broad category of festive, carnival or other entertainment articles, it does not contain language that suggests that the scope of the phrase “festive articles” or “festive decorations” is limited to one class or kind of decorations. In fact, the list of festive decorations specifically mentioned is followed by “*etc.*”, which signals that other decorative items may be included. The Tribunal therefore accepts Danson Décor’s submissions that the use of the term “*et cetera*” allows for the inclusion of other types or classes of festive decorations

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25. *Transcript of Public Hearing*, 27 January 2011, at 10-12.

26. Tribunal Exhibit AP-2009-066-08A at para. 15; *Transcript of Public Hearing*, 27 January 2011, at 54-55.

within the scope of heading No. 95.05 when interpreting the *Explanatory Notes*.<sup>27</sup> The Tribunal is of the view that the use of the term “*et cetera*” is at odds with the closed or restrictive interpretation of the *Explanatory Notes* put forward by the CBSA.

46. Therefore, contrary to the CBSA’s submissions, this is not an instance where the rule of interpretation, known as the “limited class” rule, can be applied. Typically, this rule may apply when the legislature sets out a list of items followed by a general term that embraces the listed items, thereby suggesting that the scope of the general term may be limited to any class of goods to which the specific items all belong.<sup>28</sup> However, this is not the case here, since the list of covered items set out in the *Explanatory Notes* (i.e. articles to decorate rooms or tables) is not followed by a general term that embraces them.

47. Accordingly, although the goods in issue are not specifically named in the *Explanatory Notes* to heading No. 95.05, the Tribunal finds that the use of the word “etc.” in the *Explanatory Notes* to heading No. 95.05 allows for a broad interpretation of the phrase “festive decorations” and that these notes can be interpreted to encompass the goods in issue, since they are festive articles used to decorate gifts.

48. Having determined that the goods in issue meet the terms of heading No. 95.05, the Tribunal examined whether, as argued by the CBSA, they are precluded from being classified in that heading by virtue of a specific exclusion set out in the *Explanatory Notes* to heading No. 95.05.

49. On this issue, it bears repeating that exclusionary note (c) in the *Explanatory Notes* to heading No. 95.05 reads as follows:

This heading also *excludes*:

...

- (c) *Packagings* of plastics or of paper, *used during festivals* (classified according to constituent material, for example, **Chapter 39** or **48**).

(Emphasis added)

50. The French version of exclusionary note (c) in the *Explanatory Notes* to heading No. 95.05 reads as follows:

*Sont également exclus de cette position :*

...

- c) *Les emballages en matière plastique ou en papier utilisés à l’occasion des fêtes (régime de la matière constitutive, par exemple, **Chapitres 39 ou 48**).*

[Underlining added for emphasis]

51. The CBSA argued that the term “packagings” or, in French, “*emballages*”, in the *Explanatory Notes* to heading No. 95.05 is sufficiently broad to cover articles used to decorate gifts. While the CBSA noted that there is no definition of the term “packagings” in the *Customs Tariff* or the *Explanatory Notes*, it argued that the definition submitted by Danson Décor applies in the context of the packaging of materials for transportation, but not in the relevant context, namely, the exchange of gifts

27. *Transcript of Public Hearing*, 27 January 2011, at 56.

28. R. Sullivan, *Statutory Interpretation*, 2d ed. (Toronto: Irwin Law, 2007) at 178-82; Tribunal Exhibit AP-2009-066-08A, tab L.

during festive occasions.<sup>29</sup> In other words, the CBSA argued that the *Explanatory Notes* broaden the meaning of the term “packagings” to cover articles used to decorate gifts. In the CBSA’s view, gift bows are included in “packagings of plastics used during festivals” because gift bows are used as packagings for gifts that are exchanged on festive occasions.

52. Danson Décor referred to the terms of heading No. 48.19 (“... other packing containers . . .”), to the terms of the statistical suffix under tariff item No. 4804.41.00 (“[w]rapping paper”) and to the *Explanatory Notes* to heading No. 48.19 (“... containers . . . whether or not also having a decorative value”) to demonstrate that the term “packagings” refers to various containers for the sale of goods in a commercial context as opposed to the wrapping of a gift or the adornment of that gift with a bow in a domestic context.<sup>30</sup> Arguing that the *Customs Tariff* differentiates between packaging and wrapping operations, Danson Décor further submitted that the relevant exclusion to heading No. 95.05 relates only to packaging operations and does not cover goods used to wrap gifts. In any event, should the term “packagings” be interpreted to include wrapping operations, Danson Décor submitted that the goods in issue merely serve to decorate wrapped gifts and are not part of such wrapping operations.

53. The Tribunal notes that the parties agree that the principal use of the goods in issue is for decorating packages or gifts. This fact is supported by the evidence before the Tribunal. Mr. Smith testified that the purpose of the goods in issue is to decorate a gift that has been wrapped. He also explained that the bows that are attached to a box or an article (as depicted in advertising flyers filed with the Tribunal) indicate that the box or article is a gift and that Danson Décor’s small format bows are used to decorate gifts. Mr. Smith stated the following: “The bows are purchased for decorative purposes. You buy a gift and you wrap it with your paper and you decorate that paper with the bow.”<sup>31</sup>

54. The commercial documentation at the retailer and consumer levels also indicates that the goods in issue are not described as “packagings” or “wrappings” *per se*. This evidence also supports the view that the purpose of the goods in issue is decorative as opposed to utilitarian and that, while they are used as accessories in the process of wrapping a gift, they are not used to wrap or to package a gift *per se*.

55. In particular, the Tribunal reviewed Danson Décor’s 2009 Christmas sales catalogue, which is used by salespersons when making sale presentations to retailers.<sup>32</sup> Mr. Smith testified that he decided the order in which the catalogue was printed, including the order in which the various goods were presented for marketing purposes. He testified that bows are located in different sections of the catalogue: larger-sized bows, which do not form part of the goods in issue, ranging from 8 in. to 56 in., for decorating doors or windows, are found at page 67 of the catalogue, whereas the goods in issue are located under the subtitle “Gift Wrap Accessories”, which starts at page 226.

56. The Tribunal notes that, according to the table of contents of Danson Décor’s catalogue, the section covering “Gift Wrap” or “*Emballage à Cadeaux*” is found at pages 226 to 250. The section for gift wrap is divided into the following categories, expressed in English and French: “Bags • *sacs*”; “Boxes • *boîtes*”; “Wrapping Paper/Tissue Paper • *Papier d’emballage et papier tissue*”; “Ribbon Displays • *Présentoirs de rubans*”; “Craft Ribbon • *rubans*”; “Cards/Tags • *Cartes et étiquettes*”; and “Gift Wrap Accessories • *Accessoires d’emballage*”.

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29. Tribunal Exhibit AP-2009-066-08A at para. 22.

30. Tribunal Exhibit AP-2009-066-20A, tabs 3, 9; *Transcript of Public Hearing*, 27 January 2011, at 66-67.

31. *Transcript of Public Hearing*, 27 January 2011, at 8-11, 13, 17, 29.

32. Exhibit B-01.

57. The Tribunal observes that the goods in issue are not of the same nature as boxes, bags, wrapping paper; they are not grouped with boxes, bags and wrapping paper in the section covering gift wrap; they are in their own separate category, that is, gift wrap accessories. This grouping of products indicates to the Tribunal that the function of gift wrapping is performed through the use of other products in this list of goods and that bows are merely accessories to this function. While the catalogue displays a “Gift Wrapping Kit” on page 234 (i.e. model X83780), which Mr. Smith described as being “. . . three rolls of gift wrapping paper as well as eight self-adhesive bows”,<sup>33</sup> the Tribunal notes that, throughout his testimony, Mr. Smith described the concept of wrapping as being associated with paper, not with bows.<sup>34</sup>

58. The Tribunal further notes that the information which appears on the cardboard backing, or header card, to which the goods in issue are attached for retail sale purposes, supports the same conclusion. The front of the header card contains the words “*Décorations de Noël*” and “Christmas Decorations” or “*UNE TRADITION DE NOËL*” and “A HOLIDAY TRADITION”. The back of the header card contains the following instructions for the use of the goods in issue: “PEEL OFF BACKING[,] PRESS FIRMLY TO PACKAGE”.<sup>35</sup> Mr. Smith testified that the backing of the goods in issue is self-adhesive for use as decorations for gifts.<sup>36</sup> Accordingly, the goods in issue are designed to be attached to a package or a gift as a decoration and are described as such to consumers. They are not described as packaging material or gift wrapping articles *per se*.

59. For the foregoing reasons, the Tribunal finds that the goods in issue are accessories used to decorate wrapped gifts exchanged during festive occasions, principally at Christmas. In view of this finding, the question that needs to be addressed is whether such accessories constitute “packagings” within the meaning of exclusionary note (c) in the *Explanatory Notes* to heading No. 95.05.

60. In this regard, Mr. Smith testified that, as a package designer, he was responsible for creating the shape and structural integrity of packages for goods for sale and the package designs that the consumer sees.<sup>37</sup> He stated that packaging is associated with the manufacturing process and serves to protect the product from damage during transportation and to market the product at the retail level. In his view, packaging is not associated with the consumer’s actions or gift wrapping.<sup>38</sup> Mr. Smith also stated that packagings, from the consumer’s perspective, are what the consumer sees on the store shelf.<sup>39</sup> He further opined that the term “*emballages*” used in the French version of the *Explanatory Notes* to heading No. 95.05—as opposed to “packagings” in English—blurs the distinction between packaging and wrapping<sup>40</sup> and that the term “repackaging” means putting a gift in a box or bag as opposed to wrapping a gift in paper.<sup>41</sup>

61. Mr. Smith also referred to some of the physical exhibits submitted by Danson Décor as examples of packagings: Exhibit A-01, a “Banana Nut Cheerios” cereal box, contains a plastic sleeve to maintain the freshness of the cereal and a cardboard box to protect the cereal from being crushed during transport;<sup>42</sup> Exhibit A-05, a 16-pack of non-smudge erasers, consists of a cardboard backing that serves to keep the

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33. *Transcript of Public Hearing*, 27 January 2011, at 34.

34. *Ibid.* at 30-35.

35. In French: “*DÉTACHER L’ENDOS [ET] APPUYER FERMEMENT AU PAQUET*”.

36. *Transcript of Public Hearing*, 27 January 2011, at 9-11, 42.

37. *Ibid.* at 7-8.

38. *Ibid.* at 36-37.

39. *Ibid.* at 38.

40. *Ibid.* at 37.

41. *Ibid.* at 41.

42. *Ibid.* at 14.



product stationary and a blister shell;<sup>43</sup> Exhibit A-15, four Russell Stover marshmallow Santas that are individually wrapped and placed in an acetate tray that prevents crushing or movement during transport, all of which is enclosed in an acetate sleeve;<sup>44</sup> and Exhibit A-16, a box of six rolls of Life Savers, in which the Life Savers are packaged in the usual two layers of regular retail packaging—a first layer of aluminum wrap followed by a layer of paper wrapping—and the box is decorated with a Santa Claus for sale during Christmas.<sup>45</sup>

62. The Tribunal notes that Mr. Smith was not qualified as an expert witness and that, for this reason, his opinions on the meaning of the terms “packagings” and “wrapping” are not particularly authoritative. Moreover, the Tribunal is not persuaded by his evidence that the meaning of the term “packaging” is necessarily limited to the actions of a manufacturer to protect goods during their transportation and to enhance their appeal to consumers in a commercial context. In this regard, it is noteworthy that, in a written statement filed before the hearing, Mr. Smith stated that “[a] gift may then also be wrapped or *packaged* in additional material to hide its identity from the beneficiary or to give it a festive attribute” [emphasis added].<sup>46</sup> The Tribunal interprets this statement to mean that, in common parlance, a gift may be said to be wrapped or packaged. In answer to a question from the Tribunal, Mr. Smith further testified that a gift may be “wrapped” with wrapping paper or “repackaged” in a box.<sup>47</sup>

63. Thus, his evidence does not establish that the term “packagings” or “package” is only used at the manufacturer level or in a commercial context. On balance, the evidence indicates that these terms may also be used by consumers to refer to gift wrapping operations, in that a gift could be “packaged” in a box and “wrapped” in paper. Accordingly, the Tribunal concludes that the term “packagings” could apply at both the levels of the manufacturer, in the form of protective materials, and the consumer, in the form of gift packaging to conceal the identity of the gift and preserve the surprise.

64. In order to determine whether the goods in issue fall within the meaning of the term “packagings”, the Tribunal took judicial notice of several English dictionary definitions. *The Oxford English Dictionary* defines “packaging” as follows: “the action of making up into a package”.<sup>48</sup> The verb “package” is defined as follows: “To wrap up, make into a package.”<sup>49</sup> The noun “package” is defined as follows: “**1.** The packing of goods, etc. . . . **5.** A case, casing, box, or other receptacle in which goods are packed.”<sup>50</sup> The Tribunal notes that these definitions of “packaging” refer to the act of packaging or wrapping, not to the decoration of a package, and refer to various packaging materials, which do not include bows. The *Canadian Oxford Dictionary* defines the noun “packaging” as follows: “**1** a wrapping or container for goods. **2** the action or process of packing goods. . . .”<sup>51</sup> Similarly, according to *Webster’s New World Dictionary of the American Language*, “packaging” is defined as follows: “**1.** to wrap or box, as for transporting, carrying, etc. **2.** to wrap or seal (a commodity) in a container, wrappings, etc. designed to attract purchasers . . . .”<sup>52</sup>

43. *Ibid.* at 14-15.

44. *Ibid.* at 15-16.

45. *Ibid.* at 16-17.

46. Tribunal Exhibit AP-2009-066-20B.

47. *Transcript of Public Hearing*, 27 January 2011, at 41-42.

48. Second ed., s.v. “package”.

49. *Ibid.*

50. *Ibid.*

51. *Ibid.*

52. Tribunal Exhibit AP-2009-066-20A, tab 10.

65. For additional assistance, the Tribunal examined the definition of the term “*emballage*”, which is used in the French version of the *Explanatory Notes* to heading No. 95.05. *Le Petit Robert* defines this term as follows: “**1** Action d’emballer. ► **conditionnement, emballage**. . . . **2** Ce qui sert à emballer, enveloppes de matière et de forme diverses dans lesquelles on emballe. Principaux emballages : ampoule, bâche, ballotin, banne, baril, berlingot, bidon, blister, bocal, boîte, bourriche, bouteille, brique, cadre, cageot, cagette, caisse, carton, châssis, coffret, conteneur, corbeille, cornet, couffin, étui, film, flacon, flein, harasse, malle, pack, panier, poche, pot, sac, sachet, toilette, tonneau, touque, tourie, tube, valise. . . . SPÉCIALT Caisse, carton, enveloppe de papier fort servant à emballer. . . .”<sup>53</sup> “Emballer” is defined as follows: “**1** Mettre (une marchandise, un objet) dans un emballage, pour le transport ou pour la vente. . . .”<sup>54</sup>

66. Finally, the Tribunal examined several French-English dictionaries with a view to confirm the meaning of the terms “packagings” and “emballages”. The *Dictionnaire Larousse français anglais - anglais français* provides the following translation of “*emballage*” and “*emballer*”: “**1**. [gén] packaging - [papier] wrapper - [matière] wrapping OU packing materials . . . **2**. [processus] packing OU wrapping (up)”; “**1**. [emballer - marchandises] to pack (up); [- cadeau] to wrap (up).”<sup>55</sup> *Le Grand Dictionnaire Hachette-Oxford* provides the following translation of “*emballage*”: “**1** (dans du carton, plastique dur) packaging; (dans une feuille de papier, de plastique) wrapping; (dans une caisse) packing; sous ~ [livre, produit] wrapped; [vaisselle] packed; **2** (feuille de papier, plastique) wrapping; (carton, plastique dur) packaging”.<sup>56</sup> *Le Robert & Collins French-English English-French Dictionary* provides the following translation for “*emballage*” and “*emballer*”: “**1** (= action d’emballer) (dans un carton) packing (-up), packaging; (dans du papier) wrapping (-up); **2** (Comm) (= boîte, carton) package, packaging (NonC) [uncountable]; (= papier) wrapping (NonC) . . .”; “**1** (= emballer) (dans un carton, de la toile) to pack (up); (dans du papier) to wrap (up).”<sup>57</sup>

67. Upon review of these definitions, the Tribunal is of the view that the term “packaging”, when it is used to describe an action, refers specifically to the action of packing or wrapping something up. It does not refer to the action of decorating a package or a gift. When it is used as a noun, it refers to different wrapping or packing materials that do not include bows.

68. The Tribunal further notes that exclusionary note (c) in the *Explanatory Notes* to heading No. 95.05 refers to “packagings”, the nominal form of the verb “packaging”. On the basis of the dictionary definitions quoted above, a “packaging” is something that serves to pack or wrap up something. The Tribunal interprets the verb “package” to mean “to put in a package” or “to package”.<sup>58</sup> The Tribunal considers that, strictly speaking, a product cannot be put or packaged in a bow, but it can be put in a bag or box, or it can be covered with wrapping paper. The Tribunal considers that the goods in issue do not serve as “packaging”, as this term is defined above, but are rather applied to a package (according to the instructions, one must peel off the backing paper and put the bow on a package) and decorate a package. Thus, the Tribunal is persuaded by the evidence that the goods in issue, while they are used primarily with wrapping paper, gift bags or boxes, are not used to package or to wrap a gift *per se*.

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53. 2011, s.v. “*emballage*”.

54. 2011, s.v. “*emballer*”.

55. 2011, s.v. “*emballage*”, “*emballer*”.

56. 2001, s.v. “*emballage*”.

57. 2006, s.v. “*emballage*”, “*emballer*”.

58. In particular, the Tribunal notes that, according to *Le Petit Robert*, “*emballer*” (to package) means “*mettre dans un emballage*” (to put in a package).

69. The Tribunal also considers that not all packaging is subject to exclusionary note (c) in the *Explanatory Notes* to heading No. 95.05, but only specific types of packaging, namely, those composed of plastics and paper that are used during festivals to wrap or package gifts. The Tribunal is of the view that the legislative intent behind exclusionary note (c) is to circumscribe the meaning of the term “packagings”, because the term “packaging” ordinarily encompasses a variety of materials, more than just packagings of plastics or paper. In this regard, the Tribunal wishes to underscore the numerous examples of “packagings” listed in *Le Petit Robert*’s definition of “*emballage*”. This supports the Tribunal’s conclusion that, especially when used in this context, the term “packagings” should not be interpreted to include the goods in issue.

70. The Tribunal further observes that, according to the *Robert & Collins* dictionary, the term “packaging” is translated in different ways depending on the composition of the material used to package, such as cardboard or paper. In English, the term “packaging”, as a translation of the French term “*emballer*”, appears to be associated more with cardboard than paper. At any rate, in all the dictionary definitions cited above, the words “packaging”, “package” and “*emballage*” do not refer to accessories or decorations such as the goods in issue.

71. On the basis of the balance of evidence, the Tribunal concludes that the goods in issue are not “packagings” or “*emballages*” and, thus, are not excluded from heading No. 95.05 by virtue of exclusionary note (c) in the *Explanatory Notes* to heading No. 95.05. In summary, the Tribunal reaches this conclusion for the following reasons:

- The goods in issue are categorized as gift wrap accessories designed to decorate and adorn gifts that have been wrapped.
- The goods in issue are not boxes, bags or wrapping paper or other materials that are designed and serve to package or wrap gifts.
- The goods in issue are used on a package rather than used like wrapping paper, bags or boxes to hide a gift and preserve the surprise. Thus, the goods in issue serve a purpose other than wrapping or packaging.
- The goods in issue are used for festive occasions.
- On the basis of the dictionary definitions quoted above, bows such as the goods in issue, are not a type of packaging nor are they listed as examples of articles that may be used to package or wrap a gift. According to the evidence, the goods in issue are used to decorate a gift that has been wrapped or packaged.

72. Finally, with respect to the CBSA’s argument that Customs Notice N-179 supports an interpretation of the term “packagings” to include bows such as the goods in issue, the Tribunal considers that the contents of this document, which merely explains the manner in which the CBSA has interpreted the terms of heading No. 95.05, is not legally binding. Besides, the Tribunal agrees with Danson Décor that, even if Customs Notice N-179 was authoritative, the contents of this document do not support the view that bows are a type of “packaging”. Indeed, the CBSA deemed it necessary to distinguish between packagings and bows in its notice by adding the word “bows” as a separate example of goods that are, in its view, excluded from the scope of heading No. 95.05.

73. In view of the above, the Tribunal finds that the goods in issue are festive decorations for gifts and that exclusionary note (c) in the *Explanatory Notes* to heading No. 95.05 does not cover them. Therefore, the goods in issue should be classified in heading No. 95.05 as festive articles.

74. As the Tribunal has found that the goods in issue should be classified in heading No. 95.05 and are, as such, articles of Chapter 95, it finds that the goods in issue are excluded from classification in Chapter 39 by virtue of note 2(y) to Chapter 39. For this reason, it is not necessary to address the CBSA's argument that the goods in issue meet the requirements of heading No. 39.26 in order to dispose of this appeal.

Classification at the Subheading and Tariff Item Levels

75. Having determined that the goods in issue, in accordance with Rule 1 of the *General Rules*, should be classified in heading No. 95.05 as festive articles, the Tribunal must next determine the proper classification at the subheading and tariff items levels.

76. Heading No. 95.05 has a specific subheading and tariff item pertaining to articles for Christmas festivities. According to the evidence, the goods in issue are predominantly used to decorate gifts exchanged during the Christmas period and are labelled "Décorations de Noël" and "Christmas Decorations" or "UNE TRADITION DE NOËL" and "A HOLIDAY TRADITION". Pursuant to Rule 6 of the *General Rules* and Rule 1 of the *Canadian Rules*, it follows that the goods in issue should be classified under tariff item No. 9505.10.00 as articles for Christmas festivities.

**DECISION**

77. For the foregoing reasons, the Tribunal concludes that the goods in issue should be classified under tariff item No. 9505.10.00 as articles for Christmas festivities.

78. Therefore, the appeal is allowed.

Diane Vincent

Diane Vincent  
Presiding Member