



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2010-019

HBC Imports c/o Zellers Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, April 6, 2011*

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DECISION 15

IN THE MATTER OF an appeal heard on January 20, 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 March 31, 2010, with respect to a request for review of an advance ruling pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

HBC IMPORTS C/O ZELLERS INC.

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Jason W. Downey

Jason W. Downey
Presiding Member

Dominique Laporte

Dominique Laporte
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 20, 2011

Tribunal Member: Jason W. Downey, Presiding Member

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PARTICIPANTS:**Appellant**

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President of the Canada Border Services Agency

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WITNESS:

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by HBC Imports c/o Zellers Inc. (HBC) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ 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 hanging shelf organizers (the goods in issue) are properly classified under tariff item No. 6307.90.99 of the schedule to the *Customs Tariff*² as other made-up articles of other textile materials, as determined by the CBSA, or should be classified under tariff item No. 9403.89.19 as other furniture and parts thereof, for domestic purposes, as claimed by HBC.

PROCEDURAL HISTORY

3. On July 10, 2009, HBC submitted a request for an advance ruling with respect to the tariff classification of the goods in issue. On October 8, 2009, the CBSA issued an advance ruling pursuant to paragraph 43.1(1)(c) of the *Act*, which classified the goods in issue under tariff item No. 6307.90.99 as other made-up articles of other textile materials.³

4. On November 3, 2009, HBC requested a review of the advance ruling pursuant to subsection 60(2) of the *Act*.⁴ On March 31, 2010, the CBSA affirmed the advance ruling pursuant to subsection 60(4).⁵

5. On June 28, 2010, HBC filed the present appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.⁶

6. On January 20, 2011, the Tribunal held a public hearing in Ottawa, Ontario.

7. The CBSA called one witness, Ms. Celeste Irvine-Jones, Interior Designer, Creative Friction. The Tribunal qualified Ms. Irvine-Jones as an expert in interior design.⁷ HBC did not call any witnesses.

GOODS IN ISSUE

8. The goods in issue are two models of hanging shelf organizers. Model No. 59103580 is a frontal, cylindrical four-shelf organizer, and model No. 59104026 is a frontal, square six-shelf organizer.⁸

9. The goods in issue are made from a nylon textile material and paperboard. The paperboard is sewn into the textile material to create shelves. The goods in issue are designed to hang from a closet rod by means of a hook-and-loop Velcro[®] fastener, which is incorporated into the goods in issue. In fact, it is because the goods in issue hang that they develop, through gravity, their shape and function. The goods in issue are designed to store relatively lightweight articles, such as stuffed animals, toys, clothing and shoes.⁹

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

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

3. Tribunal Exhibit AP-2010-019-03A, tabs 1, 2.

4. *Ibid.* tab 3.

5. *Ibid.* tab 4.

6. Tribunal Exhibit AP-2010-019-01.

7. Tribunal Exhibit AP-2010-019-08A.

8. Tribunal Exhibit AP-2010-019-03A at paras. 5, 6, tab 1.

9. *Ibid.* at paras. 5, 6, tab 1.

10. HBC filed a physical exhibit for each model of the goods in issue.¹⁰

ANALYSIS

Statutory Framework

11. 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.

12. 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.¹¹ The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items. 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.

13. 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^[12] and the Canadian Rules^[13] set out in the schedule.”

14. 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.¹⁴ Rule 1 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.”

15. 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^[15] and the Explanatory Notes to the Harmonized Commodity Description and Coding System,^[16] 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.¹⁷

10. Exhibit A-01, frontal, square six-shelf organizer, model No. 59104026, and Exhibit A-02, frontal, cylindrical four-shelf organizer, model No. 59103580.

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

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

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

14. 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).

15. World Customs Organization, 2d ed., Brussels, 2003.

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

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

16. Thus, the Tribunal must first determine whether the goods in issue can be classified according to the terms of the headings and any relevant section or chapter notes in the *Customs Tariff*.

17. 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.¹⁸

18. Section 13 of the *Official Languages Act* provides that the English and French versions of any act of Parliament are equally authoritative.¹⁹

Relevant Provisions of the Customs Tariff, General Rules and Explanatory Notes

19. The relevant provisions of the *Customs Tariff*, which HBC claimed should apply to the goods in issue, are as follows:

Section XX

MISCELLANEOUS MANUFACTURED ARTICLES

Chapter 94

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

...

94.03 Other furniture and parts thereof.

...

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

...

9403.89 --Other

--For domestic purposes:

...

9403.89.19 ----Other

20. There are no relevant section notes to Section XX.

21. The relevant chapter note to Chapter 94 provides as follows:

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

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

(a) Cupboards, bookcases, other shelved furniture and unit furniture;

(b) Seats and beds.

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

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

This Chapter covers, **subject** to the exclusions listed in the Explanatory Notes to this Chapter:

(1) All furniture and parts thereof (headings 94.01 to 94.03).

...

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

(A) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, laboratories, hospitals, dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

(B) The following:

(i) Cupboards, bookcases, other shelved furniture and unit furniture, designed to be hung, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles (books, crockery, kitchen utensils, glassware, linen, medicaments, toilet articles, radio or television receivers, ornaments, etc.) and separately presented elements of unit furniture.

(ii) Seats or beds designed to be hung or to be fixed to the wall.

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

...

Headings 94.01 to 94.03 cover articles of furniture **of any material** (wood, osier, bamboo, cane, plastics, base metals, glass, leather, stone, ceramics, etc.). . . .

23. The relevant *Explanatory Notes* to heading No. 94.03 provide as follows:

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

The heading includes furnitures for:

(1) **Private dwellings, hotels, etc.**, such as: cabinets, linen chests, bread chests, log chests; chests of drawers, tallboys; pedestals, plant stands; dressing-tables; pedestal tables; wardrobes, linen presses; hall stands, umbrella stands; side-boards, dressers, cupboards; food-safes; bedside tables; beds (including wardrobe beds, camp-beds, folding beds, cots, etc.); needlework tables; foot-stools, fire screens; draught-screens; pedestal ashtrays; music cabinets, music stands or desks; play-pens; serving trolleys (whether or not fitted with a hot plate).

...

The heading **does not include**:

(a) Travelling chests, trunks and the like, not having the character of furniture (**heading 42.02**).

- (b) Ladders and steps, trestles, carpenters' benches and the like not having the character of furniture; these are classified according to their constituent material (**headings 44.21, 73.26**, etc.).

...

- (e) Hammocks (generally **heading 56.08** or **63.06**).

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

Section XI

TEXTILES AND TEXTILE ARTICLES

...

Chapter 63

**OTHER MADE UP TEXTILE ARTICLES; SETS;
WORN CLOTHING AND WORN TEXTILE ARTICLES; RAGS**

...

63.07 Other made up articles, including dress patterns.

...

6307.90 -Other

...

---Other:

...

6307.90.99 ---Of other textile materials

25. The relevant section notes to Section XI provide as follows:

1.- This Section does not cover:

...

- (s) Articles of Chapter 94 (for example, furniture, bedding, lamps and lighting fittings);

...

7.- For the purposes of this Section, the expression "made up" means:

...

- (e) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded);

...

26. The relevant chapter notes to Chapter 63 provide as follows:

1. Sub-Chapter I applies only to made up articles, of any textile fabric.

27. The relevant *Explanatory Notes* to Section XI provide as follows:

In general, Section XI covers raw materials of the textile industry (silk, wool, cotton, man-made fibres, etc.), semi-manufactured products (such as yarns and woven fabrics) and the made up articles made from those products. . . .

. . .

Made up articles.

Under Note 7 to this Section, the expression “made up” in Chapters 56 to 63 means:

. . .

- (5) **Assembled by sewing, gumming or otherwise.** These articles, which are very numerous, include garments. It should be noted, however, that piece goods consisting of two or more lengths of identical material joined end to end, or composed of two or more textiles assembled in layers, are not regarded as “made-up”. Nor are textile products in the piece composed of one or more layers of textile materials assembled with padding by stitching or otherwise.

28. The relevant *Explanatory Notes* to Chapter 63 provide as follows:

This Chapter includes:

- (1) Under headings 63.01 to 63.07 (sub-Chapter I) made up textile articles of any textile fabric (woven or knitted fabric, felt, nonwovens, etc.) which are **not** more specifically described in other Chapters of Section XI or elsewhere in the Nomenclature. (The expression “made up textile articles” means articles made up in the sense defined in Note 7 to Section XI (see also Part (II) of the General Explanatory Note to Section XI.)

This sub-Chapter includes articles of tulle or other net fabrics, lace or embroidery, whether made directly to shape or made up from the tulle or other net fabrics, lace or embroidered fabrics of heading 58.04 or 58.10.

The classification of articles in this sub-Chapter is not affected by the presence of minor trimmings or accessories of furskin, metal (including precious metal), leather, plastics, etc.

Where, however, the presence of these other materials constitutes **more than** mere trimming or accessories, the articles are classified in accordance with the relative Section or Chapter Notes (General Interpretative Rule 1), or in accordance with the other General Interpretative Rules as the case may be.

29. The relevant *Explanatory Notes* to heading No. 63.07 provide as follows:

This heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.

It includes, in particular:

. . .

- (5) Domestic laundry or shoe bags, stocking, handkerchief or slipper sachets, pyjama or nightdress cases and similar articles.
- (6) Garment bags (portable wardrobes) **other than** those of **heading 42.02**.

Positions of Parties

HBC

30. HBC argued that, pursuant to Rule 1 of the *General Rules* and the relevant section and chapter notes and *Explanatory Notes*, the goods in issue should be classified in heading No. 94.03 as other furniture.²⁰

31. HBC argued that consideration must first be given to whether the goods in issue are classifiable in Chapter 94 as furniture²¹ because Note 1(s) to Section XI, which covers Chapters 50 to 63, excludes articles of Chapter 94 from classification in Section XI. It noted the absence of a corresponding note in Chapter 94, excluding articles of Section XI.²² In its view, therefore, once the goods in issue are determined to be furniture, they would be specifically excluded from being made-up textile articles of Chapter 63.

32. HBC contended that the goods in issue are shelved furniture because they meet all the criteria listed in Note 2 to Chapter 94 and the definition of “furniture” provided in the *Explanatory Notes* to Chapter 94.

33. In this respect, HBC argued that the goods in issue (1) are moveable articles because they possess hook-and-loop Velcro[®] fasteners for easy hanging and removal, (2) contain four or six shelves and are designed to be hung and (3) are designed to store lightweight articles, such as stuffed animals, clothes, shoes, toys, etc., in the home, which HBC considered to be a utilitarian function used in a private dwelling.²³ HBC argued that, by meeting these criteria, the goods in issue are considered to be furniture. In support of its conclusion, HBC referred to the Tribunal’s decision in *Spacesaver Corporation v Deputy M.N.R.*,²⁴ in which the Tribunal listed and analyzed these criteria.²⁵

34. HBC noted that, according to the *Explanatory Notes* to Chapter 94 and the definition of “furniture” contained therein, furniture need not only be made of wood, metal or plastic.²⁶ HBC submitted that heading Nos. 94.01 to 94.03 cover furniture that can be made of any material²⁷ and gave the example of a beanbag chair as a piece of furniture made from a material other than wood, metal or plastic.²⁸

35. With respect to the CBSA’s argument that a shelf must be composed of a rigid material, HBC noted that the only common elements among the definitions of “shelf” provided by both parties are that a shelf consists of a material, is horizontal to the floor and supports objects.²⁹ HBC further submitted that paperboard is defined as a stiff material and that the definition of “stiff” includes the word “rigid”.³⁰

20. Tribunal Exhibit AP-2010-019-03A at para. 18; *Transcript of Public Hearing*, 20 January 2011, at 35.

21. *Transcript of Public Hearing*, 20 January 2011, at 40.

22. *Ibid.* at 35-37.

23. Tribunal Exhibit AP-2010-019-03A at paras. 21-24, *Transcript of Public Hearing*, 20 January 2011, at 42-43.

24. (26 March 1996), AP-95-013, AP-95-073 and AP-95-078 (CITT) [*Spacesaver*].

25. Tribunal Exhibit AP-2010-019-03A, tab 12; *Transcript of Public Hearing*, 20 January 2011, at 40-42.

26. *Transcript of Public Hearing*, 20 January 2011, at 46, 47, 89.

27. Tribunal Exhibit AP-2010-019-03A at paras. 25-27; *Transcript of Public Hearing*, 20 January 2011, at 43-45.

28. *Transcript of Public Hearing*, 20 January 2011, at 89.

29. Tribunal Exhibit AP-2010-019-05A, tab 4; Tribunal Exhibit AP-2010-019-11A, tab 4; *Transcript of Public Hearing*, 20 January 2011, at 47-49.

30. Tribunal Exhibit AP-2010-019-11A, tabs 5, 6; *Transcript of Public Hearing*, 20 January 2011, at 88, 89.

36. Finally, in support of its position that the goods in issue are shelved furniture, HBC noted that, in the CBSA's decision of March 31, 2010, the CBSA agreed that the goods in issue possess shelves, hang from closet rods and are used to store goods.³¹

CBSA

37. The CBSA submitted that the essential character of the goods in issue is that of a textile and that they are therefore properly classified in heading No. 63.07.³² It submitted that the goods in issue are made-up articles composed of nylon fabric with compartments containing paperboard.

38. The CBSA submitted that the goods in issue meet the definition of "made up" found in Note 7(e) to Section XI.³³ Specifically, the expression "made up" means "[a]ssembled by sewing, gumming or otherwise"

39. The CBSA argued that the goods in issue have the same characteristics and purpose as goods classified in heading No. 63.07. The goods in issue are made of a similar textile material, can be hung, hold lightweight goods and hang upright from closet rods like domestic laundry bags, shoe bags or garment bags, which are listed in the *Explanatory Notes* to heading No. 63.07.³⁴

40. The CBSA argued that the goods in issue do not fit within heading No. 94.03 because they do not have the "character" of furniture nor do they constitute shelved furniture. To this end, while referring to the examples mentioned in Note (1) of the *Explanatory Notes* to heading No. 94.03, it argued that the goods in issue have nothing in common with what is normally understood as furniture.

41. The CBSA specifically noted that furniture is not normally made from nylon and paperboard³⁵ and that the individual compartments created by the paperboard inserts are not shelves.³⁶

42. The CBSA referred to the *Explanatory Notes* to Chapter 94 to argue that the goods in issue cannot be "other shelved furniture" because they are not similar to cupboards or bookcases.³⁷ It noted that the dictionary definitions of the word "shelf" suggest that, generally, shelves are made of a rigid material, such as wood, metal or glass.³⁸

43. The CBSA indicated that the definitions of "shelf" make no mention of a material such as cardboard or paperboard. The CBSA argued that, since the goods in issue are composed of textile and paperboard, they do not resemble the goods usually classified in heading No. 94.03, *i.e.* goods made from metal, wood or plastics.

44. The CBSA also noted that the types of goods mentioned in Note (B) of the *Explanatory Notes* to Chapter 94, *i.e.* books, crockery, kitchen utensils, glassware, linen, medicaments, toilet articles, radio or television receivers, ornaments, are the types of articles that would be appropriate for placement on shelved furniture.³⁹ In its view, these articles are not suitable for placement in the goods in issue.

31. Tribunal Exhibit AP-2010-019-03A at paras. 28-30.

32. Tribunal Exhibit AP-2010-019-05A at para. 18; *Transcript of Public Hearing*, 20 January 2011, at 68.

33. Tribunal Exhibit AP-2010-019-05A at para. 19; *Transcript of Public Hearing*, 20 January 2011, at 69.

34. Tribunal Exhibit AP-2010-019-05A at paras. 20, 21; *Transcript of Public Hearing*, 20 January 2011, at 70, 71.

35. Tribunal Exhibit AP-2010-019-05A at paras. 13-15; *Transcript of Public Hearing*, 20 January 2011, at 64, 65.

36. Tribunal Exhibit AP-2010-019-05A at para. 16; *Transcript of Public Hearing*, 20 January 2011, at 75.

37. *Transcript of Public Hearing*, 20 January 2011, at 60-65, 71, 73.

38. Tribunal Exhibit AP-2010-019-05A at para. 11, tab 4; *Transcript of Public Hearing*, 20 January 2011, at 61, 62.

39. Tribunal Exhibit AP-2010-019-05A at para. 13; *Transcript of Public Hearing*, 20 January 2011, at 63.

45. Ms. Irvine-Jones testified that the heavy objects mentioned in the *Explanatory Notes* are not likely to be stored in the goods in issue and that glassware and tableware are too fragile to store in such an unstable medium.⁴⁰ The CBSA recognized, however, that the goods in issue are appropriate for storing various “lightweight articles”.

46. The CBSA argued that the simple fact that the goods in issue are marketed as shelves is insufficient for them to be considered as shelves.⁴¹

47. Finally, the CBSA supported its position by referring to U.S. and EU customs rulings, in which hanging closet or shelf organizers were classified in heading No. 63.07 and a wooden closet organizer was classified in heading No. 94.03.⁴² The CBSA acknowledged that the Tribunal is not bound by these rulings.

Tariff Classification of the Goods in Issue

48. As indicated above, the Tribunal must determine whether the goods in issue are properly classified under tariff item No. 6307.90.99 as other made-up articles of other textile materials, as determined by the CBSA, or should be classified under tariff item No. 9403.89.19 as other furniture and parts thereof, for domestic purposes, as claimed by HBC.

49. 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 1(s) to Section XI excludes articles of Chapter 94 from being classified in Section XI (i.e. in Chapters 50 to 63). The Tribunal also acknowledges the absence of any exclusionary notes in Section XX or Chapter 94 that preclude articles of Section XI or Chapter 63 from being classified in Section XX. Given the absence of a corresponding exclusionary note in Section XX or Chapter 94, the Tribunal will first determine whether the goods in issue are articles of Chapter 94.

Are the Goods in Issue “Other Furniture” of Heading No. 94.03?

50. Heading No. 94.03 covers “other furniture and parts thereof”. Note 2 to Chapter 94 specifies certain criteria that goods must meet in order to be classified in heading Nos. 94.01 to 94.03. Note 2 reads as follows:

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

[Emphasis added]

51. The Tribunal notes however that Note 2 to Chapter 94 and the *Explanatory Notes* to Chapter 94 contain certain exceptions to the above-mentioned criteria. Note 2 states the following:

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

- (a) Cupboards, bookcases, *other shelved furniture* and unit furniture;
- (b) Seats and beds.

[Emphasis added]

40. Tribunal Exhibit AP-2010-019-05A at para. 21; *Transcript of Public Hearing*, 20 January 2011, at 20-22.

41. Tribunal Exhibit AP-2010-019-05A at para. 12; *Transcript of Public Hearing*, 20 January 2011, at 64.

42. Tribunal Exhibit AP-2010-019-05A at para. 17, tabs 5, 6; *Transcript of Public Hearing*, 20 January 2011, at 69, 70.

52. The *Explanatory Notes* to Chapter 94 read as follows:

This Chapter covers . . .

(1) All furniture and parts thereof (headings 94.01 to 94.03).

. . .

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

- (A) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). . . .
- (B) The following:
- (i) Cupboards, bookcases, other shelved furniture and unit furniture, *designed to be hung*, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles (books, crockery, kitchen utensils, glassware, linen, medicaments, toilet articles, radio or television receivers, ornaments, etc.) and separately presented elements of unit furniture.
 - (ii) Seats or beds designed to be hung or to be fixed to the wall.

[Emphasis added]

53. On the basis of Note 2 to Chapter 94 and the *Explanatory Notes* to Chapter 94, the Tribunal considers that, in order for the goods in issue to be shelved furniture, they must meet two criteria: (1) meet the definition of “furniture”; and (2) have shelves. Should the Tribunal determine that they do not meet one of these criteria; the goods in issue cannot be classified in Chapter 94.

54. The Tribunal will first determine whether the goods in issue are furniture. For the purposes of tariff classification, the definition of “furniture” in the *Explanatory Notes* to Chapter 94 provides the Tribunal with the necessary guidance.⁴³

55. Part (A) of the definition indicates that the goods in issue must meet the following criteria: (i) they must be movable; (ii) they must be articles; (iii) they must have the essential characteristic of being constructed for placing on the floor or ground; (iv) they must be used mainly with a utilitarian purpose; and (v) they must be used to equip private dwellings. However, Part (B) of the definition expands the definition in part (A) to include certain items that may not necessarily be constructed for placing on the floor or ground. Specifically, the goods may be designed to be hung.

56. First, the Tribunal has examined the physical exhibits and finds that the goods in issue are easily portable and agrees with the parties that they are movable.⁴⁴ They are neither constructed nor designed to be or to become an immovable item as understood by law.

43. These criteria were examined in *Spacesaver* and are applied here.

44. *Transcript of Public Hearing*, 20 January 2011, at 29, 42.

57. Second, the Tribunal accepts the definition of “article” as “any finished or semi-finished product, which is not considered to be a material”.⁴⁵ The Tribunal observes that the goods in issue are packaged as retail products and can be used to store various objects. The Tribunal is satisfied that the goods in issue are finished products, as opposed to base products, and are therefore articles.

58. Third, the evidence clearly indicates that the goods in issue are designed to be hung from closet rods by virtue of the built-in hook-and-loop Velcro[®] fasteners. In fact, the goods in issue only take their shape and serve their function when hung from a closet rod. In other words, hanging is the essential feature of the goods in issue for them to function as designed.⁴⁶ The Tribunal therefore finds that the goods in issue are designed to be hung.

59. Fourth, the Tribunal is satisfied that the goods in issue are used for a utilitarian purpose. They are designed and used to store articles, such as clothing and toys. The Tribunal concludes that the utility of the goods in issue is for storage.⁴⁷

60. Fifth, the Tribunal is convinced that the goods in issue are used to equip private dwellings. The evidence that the goods in issue are designed for the storage of household items, such as children’s toys, linen, shoes and stuffed animals, along with the fact that they are not conceived as a heavy-duty item, implies a use in the home rather than in a commercial or industrial setting.⁴⁸

61. Finally, the Tribunal is not persuaded by the CBSA’s argument that the goods in issue cannot be considered furniture because they are not “. . . what one would normally consider to be furniture.”⁴⁹ The Tribunal views such a consideration to be particularly subjective and certainly variable from one person to the next. The Tribunal cannot ignore the criteria and definitions specified in the *Explanatory Notes*.⁵⁰

62. Given the above, the Tribunal finds that the goods in issue meet the criteria found in the definition of “furniture”. The Tribunal will now determine if the goods in issue meet the definition of “shelves”.

63. HBC and the CBSA each submitted three definitions of the word “shelf”.

64. The CBSA submitted that the goods in issue are not similar to cupboards, bookcases or other shelved furniture because definitions of the word “shelf” suggest an article composed of a rigid material, such as wood, metal or glass. It noted that there is no mention of cardboard or textiles in these definitions. The CBSA contended that the types of goods that shelved furniture holds, such as books, crockery, kitchen utensils, glassware, linens, medicaments, toilet articles, radio or television receivers and ornaments are the types of articles that would be unsuitable for placement on the shelves of the goods in issue.

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

46. *Transcript of Public Hearing*, 20 January 2011, at 29, 43.

47. Tribunal Exhibit AP-2010-019-03A at para. 24; Tribunal Exhibit AP-2010-019-05A at para. 21.

48. *Transcript of Public Hearing*, 20 January 2011, at 15-18.

49. *Ibid.* at 49.

50. This principle of statutory interpretation is emphasized in *Friesen v. Canada*, [1995] 3 S.C.R. 103 [*Friesen*].

65. The Tribunal notes that the following dictionary definitions of “shelf” provided by the parties do not all indicate that a shelf is required to be rigid:

1 a : a thin flat usu. long and narrow piece of *material* (as wood) fastened horizontally (as on a wall) at a distance from the floor *to hold objects*⁵¹

1 a a thin flat piece of wood or metal *etc.* projecting from a wall, or as part of a unit, *used to support books etc.*⁵²

A thin flat plank of wood, metal, **etc.**, fixed horizontally against a wall, **etc.**, **for the purpose of supporting objects.**⁵³

1.a. A flat, usu. rectangular structure composed of a rigid material, such as wood, glass, or metal, fixed at right angles to a wall or other vertical surface and used to hold or store objects.⁵⁴

A board or slab set horizontally into or against a wall to support articles, as books; also, one of the boards in a bookcase or closet.⁵⁵

A flat length of wood or rigid material attached to a wall or forming part of a piece of furniture, providing a surface for the storage or display of objects.⁵⁶

[Italics added for emphasis]

66. The Tribunal also notes that there is no legislative definition or requirement that shelves must be rigid, or in respect of the degree of rigidity required.

67. The definition of “rigid” in the *Canadian Oxford Dictionary*⁵⁷ reads as follows: “**1** not flexible; that cannot be bent”

68. Ms. Irvine-Jones testified that shelves are typically rigid, but that some shelves are not necessarily rigid and that the necessary rigidity for the intended purpose is provided by the supports themselves. With respect to the goods in issue, Ms. Irvine-Jones indicated that, because of the stiffness provided by the paperboard, the goods in issue possess “some rigidity” and that household products, such as furniture, were constantly evolving with the invention of new designs and materials.⁵⁸

69. The Tribunal observes that the evidence is not clear concerning the concept of rigidity. In this respect, Ms. Irvine-Jones referred to varying degrees of rigidity when describing shelves. The Tribunal also notes that definitions do not seem to include a middle ground, such as “semi-rigid”, which, in the Tribunal’s view, would more appropriately describe the flexible nature of the goods in issue. Furthermore, the parties do not agree that the concept of rigidity is a prerequisite for a product to be considered a shelf.

70. Therefore, on the basis of the foregoing discussion and the marked absence of a legislative requirement to this end, the Tribunal concludes that the concept of rigidity is not a prerequisite to determining whether a product is a shelf.

51. *Merriam-Webster’s Collegiate Dictionary*, 11th ed., s.v. “shelf”.

52. *Canadian Oxford Dictionary*, 2d ed., s.v. “shelf”.

53. Tribunal Exhibit AP-2010-019-11A, tab 4.

54. *Nelson Canadian Dictionary*, 1997, s.v. “shelf”.

55. Tribunal Exhibit AP-2010-019-05A at para. 11, tab 4.

56. *Ibid.*

57. Second ed., s.v. “rigid”.

58. *Transcript of Public Hearing*, 20 January 2011, at 14, 19, 26.

71. The Tribunal recalls the Supreme Court of Canada's cautionary approach to reading words into acts of Parliament.⁵⁹ The CBSA's position is that the schedule should be read as containing the concept of "rigidity" even though this or other similar words are not present. The Tribunal will not do this.

72. The Tribunal understands that the CBSA's submission concerning a purported rigidity requirement is consistent with its view that the textile and paperboard composition of the goods in issue does not resemble the make-up of goods usually classified in heading No. 94.03 (metal, wood or plastics). In this respect, the Tribunal notes that the composition of furniture classified in heading No. 94.03 is not limited to specific types of materials.⁶⁰

73. The criteria listed in the *Explanatory Notes* do not impose the use of a specific material, such as metal, wood or plastics. Rather, the *Explanatory Notes* to Chapter 94 clearly state that "[h]eadings 94.01 to 94.03 cover articles of furniture **of any material** (wood, osier, bamboo, cane, plastics, base metals, glass, leather, stone, ceramics, etc.)." Indeed, the terms of subheading Nos. 9403.81 and 9403.89 refer to "Other", implying materials other than the materials (metal, wood and plastics) mentioned in the terms of the previous subheadings.

74. The Tribunal heard testimony that shelves are designed for different purposes: some are designed to hold heavy or breakable items, such as television sets or glassware; others are designed to hold lighter-weight articles and would not support heavier objects beyond their design capability.⁶¹ The Tribunal finds that, for the purpose of this case, a more suitable definition of shelf is a "horizontal surface of any material, designed to hold items".

75. In this respect, the Tribunal specifically notes that, in response to questions posed by the CBSA, Ms. Irvine-Jones agreed that the goods in issue contain shelves.⁶² In addition, the CBSA recognized, in its March 31, 2010, decision that the goods in issue contain shelves.⁶³

76. Given the above, the Tribunal is satisfied that the goods in issue have shelves.

77. By determining that the goods in issue meet the definition of "furniture" and that they have shelves, the Tribunal concludes that the goods in issue meet the definition of "shelved furniture" for the purposes of Chapter 94.

59. *Friesen* at para. 27: "The respondent is asking this Court to interpret the definition of 'inventory' as though it read: 'inventory' [for a taxation year] means a description of property the cost or value of which is relevant in computing a taxpayer's income from a business for [the] taxation year[.] The principal problem with the respondent's interpretation is that the bracketed words do not appear in the definition in the *Income Tax Act*. The addition of these words to the definition effects a significant change to the sense of the definition. It is a basic principle of statutory interpretation that the court should not accept an interpretation which requires the insertion of extra wording where there is another acceptable interpretation which does not require any additional wording. Reading extra words into a statutory definition is even less acceptable when the phrases which must be read in appear in several other definitions in the same statute. If Parliament had intended to require that property must be relevant to the computation of income in a particular year in order to be inventory in that year, it would have added the necessary phraseology to make that clear."

60. Tribunal Exhibit AP-2010-019-05A at para. 14; *Transcript of Public Hearing*, 20 January 2011, at 64, 65, 71-74.

61. *Transcript of Public Hearing*, 20 January 2011, at 85, 86.

62. *Ibid.* at 31, 32.

63. *Ibid.*; Tribunal Exhibit AP-2010-019-03A, tab 4.

78. The Tribunal notes that the definition of “furniture” in the *Explanatory Notes* to Chapter 94 also contains the proviso that the article not be included in other more specific headings of the nomenclature.⁶⁴ To ensure that this is not the case, in the section that follows, the Tribunal gave further consideration to the position advanced by the CBSA in respect of heading No. 63.07 and concluded that heading No. 63.07 was not more specific than heading No. 94.03.

Heading No. 63.07 is not More Specific Than Heading No. 94.03

79. The terms of heading No. 63.07 and the related chapter notes and *Explanatory Notes* require that three conditions be met in order for a product to be classified in that heading: (i) it must be an article; (ii) it must meet the definition of “made up”; and (iii) it must be of any textile fabric.

80. With respect to the first two conditions, the Tribunal has already determined that the goods in issue are articles and that they meet the definition of “made-up”.

81. The Tribunal notes that the third condition requires that goods be composed of any textile fabric. The goods in issue are a composite of a nylon textile material and paperboard.⁶⁵

82. In order to determine whether the goods in issue, which consist of a combination of textiles and another material, are classifiable in a heading of Chapter 63, the Tribunal refers to the *Explanatory Notes* to Chapter 63, which read as follows:

The classification of articles in this sub-Chapter [Sub-chapter I covers heading Nos. 63.01 to 63.07] is not affected by the presence of *minor trimmings or accessories* of furskin, metal (including precious metal), leather, plastics, etc.

Where, however, the presence of these other materials constitutes **more than** mere trimming or accessories, the articles are classified in accordance with the relative Section or Chapter Notes (General Interpretative Rule 1), or in accordance with the other General Interpretative Rules as the case may be.

[Italics added for emphasis]

83. In other words, goods will remain articles of heading No. 63.07 as long as trimmings or accessories of other materials remain “minor”.

84. In the present case, the Tribunal finds that the paperboard component of the goods in issue is *more* than a minor trimming or accessory. In fact, the Tribunal considers the paperboard to be a fundamental component of the goods in issue because it forms relatively stiff shelves that contribute to the utilitarian function of the goods.⁶⁶ Also, in relation to the quantity of textile used to manufacture the goods, the paperboard clearly occupies more than a minor presence. In answers to questions from the Tribunal, both parties agreed that the presence of the cardboard was significant, although they disagreed on the effect of the presence of the cardboard on the classification of the goods in issue.⁶⁷

64. The *Explanatory Notes* to heading No. 63.07 contain a similar requirement, whereby that heading covers made-up articles of any textile material which are not included more specifically in other headings of Section XI or elsewhere in the nomenclature.

65. Tribunal Exhibit AP-2010-019-03A at para. 6; Tribunal Exhibit AP-2010-019-05A at paras. 1, 16.

66. In answer to questions from the Tribunal, HBC submitted that the paperboard plays a significant role and provides the goods in issue with their function, whereas the CBSA submitted that the paperboard provides minor support. *Transcript of Public Hearing*, 20 January 2011, at 81-85.

67. *Transcript of Public Hearing*, 20 January 2011, at 81-85.

85. Because the paperboard component of the goods in issue is more than mere trimming or an accessory, and in accordance with the *Explanatory Notes* to Chapter 63, the Tribunal must consider whether the goods in issue are more specifically included in heading No. 63.07 according to Rule 1 of the *General Rules* and therefore examined the list of goods classified in that heading.

86. The CBSA argued that the goods in issue have the same characteristics as domestic laundry bags, shoe bags or garment bags, which are listed in the *Explanatory Notes* to heading No. 63.07. The Tribunal is not persuaded by that argument. Rather, as determined previously, the Tribunal considers that the goods in issue possess horizontal shelves, which are designed to hold items, making them shelved furniture. The goods listed in the *Explanatory Notes* to heading No. 63.07 do not share that defining characteristic. Accordingly, the Tribunal concludes that the goods in issue are not more specifically included in heading No. 63.07.

Classification at the Subheading and Tariff Item Levels

87. Having determined that the goods in issue should be classified in heading No. 94.03, the Tribunal must next determine the proper classification at the subheading and tariff item levels.

88. Heading No. 94.03 has nine subheadings at the three-dash level, of which eight pertain to furniture and one, which does not cover the goods in issue, pertains to parts. As seven of the eight subheadings pertain to furniture of metal, wood or plastics, the goods in issue must be classified in the only remaining subheading that pertains to furniture of other materials.

89. The only remaining subheading is further divided at the four-dash level into two subheadings according to composition, namely, "Of bamboo or rattan" or "Other". Therefore, pursuant to Rule 6 of the *General Rules*, the goods in issue should be classified in subheading No. 9403.89.

90. Subheading No. 9403.89 has two tariff items at the five-dash level. As the goods in issue are used in the home, the Tribunal considers them to be for domestic purposes. The tariff item under the title "For domestic purposes" is further divided at the six-dash level into two tariff items. As the first of these two tariff items is clearly inapplicable to the goods in issue, the goods in issue must be classified under the remaining tariff item as "Other". Therefore, pursuant to Rule 1 of the *Canadian Rules*, the goods in issue should be classified under tariff item No. 9403.89.19.

DECISION

91. For the foregoing reasons, the Tribunal concludes that the goods in issue should be classified under tariff item No. 9403.89.19 as other furniture and parts thereof, for domestic purposes.

92. Therefore, the appeal is allowed.

Jason W. Downey
Jason W. Downey
Presiding Member