



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2010-057

Rlogistics Limited Partnership

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Tuesday, October 25, 2011*

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IN THE MATTER OF an appeal heard on June 28, 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 November 4, 2010, with respect to a request for review of an advance ruling pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**RLOGISTICS LIMITED PARTNERSHIP**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is allowed.

Serge Fréchette  
Serge Fréchette  
Presiding Member

Dominique Laporte  
Dominique Laporte  
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	June 28, 2011
Tribunal Member:	Serge Fréchette, Presiding Member
Counsel for the Tribunal:	Georges Bujold
Research Director:	Randolph W. Heggart
Research Officer:	Jan Wojcik
Manager, Registrar Office:	Michel Parent
Registrar Officer:	Cheryl Unitt

**PARTICIPANTS:****Appellant**

Rlogistics Limited Partnership

**Counsel/Representatives**Michael Sherbo  
Michael Kaylor**Respondent**President of the Canada Border Services  
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Holly LeValliant

**WITNESS:**Kevin Gordon  
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Apple Canada

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## STATEMENT OF REASONS

### BACKGROUND

1. This is an appeal filed by Rlogistics Limited Partnership (Rlogistics) 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), dated November 4, 2010, pursuant to subsection 60(4).

2. The issue in this appeal is whether armband cases (the goods in issue) for portable electronic devices should be classified under tariff item No. 4202.99.90 of the schedule to the *Customs Tariff*<sup>2</sup> as other trunks, suitcases, vanity cases, executive cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers, as determined by the CBSA, or should be classified under tariff item No. 8522.90.90 as other accessories suitable for use solely or principally with the apparatus of heading Nos. 85.19 to 85.21, as claimed by Rlogistics.

### PROCEDURAL HISTORY

3. On June 4, 2010, Rlogistics applied for an advance ruling with respect to the tariff classification of the goods in issue. It requested that the goods in issue be classified under tariff item No. 8522.90.90 as other accessories for use solely or principally with the apparatus of heading No. 85.19.<sup>3</sup>

4. On August 24, 2010, the CBSA issued an advance ruling, pursuant to subsection 43.1(1) of the *Act* and classified the goods in issue under tariff item No. 4202.99.90 as other trunks, suitcases, vanity cases, executive cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers.<sup>4</sup>

5. On September 16, 2010, Rlogistics requested a review of the advance ruling, pursuant to subsection 60(2) of the *Act*. On November 4, 2010, the CBSA affirmed the advance ruling, pursuant to paragraph 60(4)(b).<sup>5</sup>

6. On January 10, 2011, Rlogistics filed the present appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.<sup>6</sup>

7. On June 28, 2011, the Tribunal held a public hearing in Ottawa, Ontario.

8. Mr. Kevin Gordon, Customs Compliance Manager, Apple Canada, testified on behalf of Rlogistics. The CBSA did not call any witnesses.

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

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

3. Tribunal Exhibit AP-2010-057-03A at para. 2.1, tab 2; Tribunal Exhibit AP-2010-057-05A at para. 3, tab 2.

4. Tribunal Exhibit AP-2010-057-03A at para. 2.2, tab 2; Tribunal Exhibit AP-2010-057-05A at para. 3, tab 2.

5. Tribunal Exhibit AP-2010-057-03A at paras. 2.3, 2.4, tab 2; Tribunal Exhibit AP-2010-057-05A at paras. 4, 5, tabs 3, 4.

6. Tribunal Exhibit AP-2010-057-03A at para. 2.5, tab 2; Tribunal Exhibit AP-2010-057-05A at para. 6, tab 4.

## GOODS IN ISSUE

9. The goods in issue are Digital Lifestyle Outfitters fourth/fifth generation iPod Nano sport armband cases, product code DL1023.<sup>7</sup> The goods in issue consist of a padded neoprene case (with a clear plastic screen), an adjustable elastic armband and a clip. The neoprene case of the goods in issue holds a fourth/fifth generation iPod Nano, and the clip permits attachment of the case to the armband, which fits on a wearer's arm or directly on clothing.<sup>8</sup> The evidence indicates that the goods in issue are protective cases that allow individuals to carry and use an iPod Nano while exercising or performing other activities that require them to have their hands free.<sup>9</sup>

10. Rlogistics filed one physical exhibit, a second generation iPod Nano.<sup>10</sup> The CBSA filed one physical exhibit, a Belkin DualFit armband case.<sup>11</sup>

## 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 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 (WCO).<sup>12</sup> The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items. 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<sup>[13]</sup> and the Canadian Rules<sup>[14]</sup> 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.<sup>15</sup> Classification therefore begins with Rule 1, which provides as follows: "... for

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7. According to the evidence, an iPod Nano is an MP3 player that is used to play music in that format. *Transcript of Public Hearing*, 28 June 2011, at 5.

8. Tribunal Exhibit AP-2010-057-03A at paras. 2.6-2.9, tab 1; Tribunal Exhibit AP-2010-057-05A at para. 2, tab 1.

9. *Transcript of Public Hearing*, 28 June 2011, at 15-18.

10. Exhibit A-01.

11. Exhibit B-01. The Tribunal notes that, while it constitutes a similar product, this exhibit is not one of the goods in issue.

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

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

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

15. 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).

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<sup>[16]</sup> and the Explanatory Notes to the Harmonized Commodity Description and Coding System,<sup>[17]</sup> published by the Customs Co-operation Council (also known as the [WCO]), 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>18</sup>

16. Thus, the Tribunal must first determine in which heading 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*, having regard to any relevant *Explanatory Notes* and *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 heading the goods in issue should be classified. In this regard, of particular relevance in this appeal is Rule 3 (a), which may apply when goods are *prima facie* classifiable in two or more headings. Rule 3 (a) provides as follows: “The heading which provides the most specific description shall be preferred to headings providing a more general description. . . .”

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 Rule 1 of the *Canadian Rules* in the case of the latter.

18. The Tribunal notes that section 13 of the *Official Languages Act*<sup>19</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 and Explanatory Notes**

19. The relevant provisions of the *Customs Tariff*, which Rlogistics claims should apply to the goods in issue, provide as follows:

##### **Section XVI**

##### **MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT; PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES**

...

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

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

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

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

## Chapter 85

**ELECTRICAL MACHINERY AND EQUIPMENT AND PARTS THEREOF;  
SOUND RECORDERS AND REPRODUCERS,  
TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND  
PARTS AND ACCESSORIES OF SUCH ARTICLES**

...

**85.22**      **Parts and accessories suitable for use solely or principally with the apparatus of headings 85.19 to 85.21.**

...

**8522.90**    **-Other**

...

8522.90.90 -- -Other

20. There are no section or chapter notes to Section XVI or Chapter 85 that are relevant to this appeal.

21. The relevant *Explanatory Notes* to Chapter 85 provide as follows:

This Chapter covers:

...

(4) Instruments and appliances for recording or reproducing sound; video recorders or reproducers; parts and accessories for such instruments and appliances (headings 85.19 to 85.22).

22. The relevant *Explanatory Notes* to heading No. 85.22 provide as follows:

**Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), this heading covers parts and accessories suitable for use **solely or principally** with the apparatus of the three preceding headings.

The range of parts and accessories classified here includes:

(10) **Furniture**, specially designed and constructed for sound recording or reproducing apparatus.

...

(12) **Other specialised parts and accessories for magnetic sound recording or reproducing apparatus**, e.g., magnetic erasing heads and bars and erasing machines; magnetic needle-points; scales showing point reached in dictation.

(13) **Other specialised parts and accessories for video recording or reproducing apparatus**, e.g., video signal recording head drums; vacuum devices for maintaining the magnetic tape in contact with the recording heads or pick-ups; tape-winding devices; etc.

23. Since Rlogistics' position is that the goods in issue are classifiable in heading No. 85.22 because they are accessories for use solely or principally with the apparatus of heading No. 85.19, this heading is also relevant to this appeal. The terms of heading No. 85.19 provide as follows:

**85.19**      **Sound recording or reproducing apparatus.**

...

**-Other apparatus:**

**8519.81**    **- -Using magnetic, optical or semiconductor media**

...



-- -Other sound reproducing apparatus:

...

8519.81.29 --- -Other

24. The relevant *Explanatory Notes* to heading No. 85.19 provide as follows:

This heading covers apparatus for recording sound, apparatus for reproducing sound and apparatus that is capable of both recording and reproducing sound. Generally, sound is recorded onto or reproduced from an internal storage device or media (e.g., magnetic tape, optical media, semiconductor media or other media of heading 85.23).

**Sound recording apparatus** modify a recording medium so that **sound reproducing apparatus** can subsequently reproduce the original sound-wave (speech, music, etc.). This includes recording based on the receipt of a sound-wave or by other methods, e.g., by recording data sound files, downloaded from an Internet page or a compact disc by an automatic data processing machine, onto the internal memory (e.g., flash memory) of a digital audio device (e.g., MP3 player). Devices which record sound as digital code generally are not capable of reproducing sound unless they incorporate a means for converting the recording from digital code to an analogue signal.

...

#### (IV) OTHER APPARATUS USING MAGNETIC, OPTICAL OR SEMICONDUCTOR MEDIA

The apparatus of this group may be portable. They may also be equipped with, or designed to be attached to acoustic devices (loudspeakers, earphones, headphones) and an amplifier.

...

#### (C) Apparatus using semiconductor media

This group includes apparatus which use semiconductor (e.g., solid-state non-volatile) media. Sound is recorded as digital code converted from amplified currents of variable intensity (analogue signal) on the recording medium. Sound is reproduced by reading such medium. The semiconductor media may be permanently installed in the apparatus or may be in the form of removable solid-state non-volatile storage media. Examples include flash memory audio players (e.g., certain MP3 players) which are portable battery operated apparatus consisting essentially of a housing incorporating a flash memory (internal or removable), a microprocessor, an electronic system including an audio-frequency amplifier, an LCD screen and control buttons. The microprocessor is programmed to use MP3 or similar file formats. The apparatus can be connected to an automatic data processing machine for downloading MP3 or similar files.

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

### Section VIII

#### RAW HIDES AND SKINS, LEATHER, FURSKINS AND ARTICLES THEREOF; SADDLERY AND HARNESS; TRAVEL GOODS, HANDBAGS AND SIMILAR CONTAINERS; ARTICLES OF ANIMAL GUT (OTHER THAN SILK-WORM GUT)

#### Chapter 42

#### ARTICLES OF LEATHER; SADDLERY AND HARNESS; TRAVEL GOODS, HANDBAGS AND SIMILAR CONTAINERS; ARTICLES OF ANIMAL GUT (OTHER THAN SILK-WORM GUT)

...

**42.02** Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, insulated food or beverage bags, toilet bags, rucksacks, handbags, shopping bags, wallets, purses, map-cases, cigarette-cases, tobacco-pouches, tool bags, sports bags, bottle-cases, jewellery boxes, powder-boxes, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fibre or of paperboard, or wholly or mainly covered with such materials or with paper.

...

**-Other:**

...

4202.99.90 -- -Other

26. There are no section notes to Section VIII. There are no chapter notes to Chapter 42 that are relevant to this appeal.

27. The relevant *Explanatory Notes* to Chapter 42 provide as follows:

This Chapter principally covers articles of leather or composition leather; however, headings 42.01 and 42.02 also include certain articles characteristically of the leather trade but made from other materials. It further covers certain articles of gut, goldbeater's skin, bladders or tendons.

Certain leather articles, however, are classified in **other Chapters** and these are referred to in the Notes to the various headings below.

28. The relevant *Explanatory Notes* to heading No. 42.02 provide as follows:

This heading covers **only** the articles specifically named therein and similar containers.

These containers may be rigid or with a rigid foundation, or soft and without foundation.

Subject to Notes 1 and 2 to this Chapter, the articles covered by the first part of the heading may be of any material. The expression "similar containers" in the first part includes hat boxes, camera accessory cases, cartridge pouches, sheaths for hunting or camping knives, portable tool boxes or cases, specially shaped or internally fitted to contain particular tools with or without their accessories, etc.

...

The heading **does not cover:**

...

- (c) Articles which, although they may have the character of containers, are not similar to those enumerated in the heading, for example, book covers and reading jackets, file-covers, document-jackets, blotting pads, photo-frames, sweetmeat boxes, tobacco jars, ashtrays, flasks made of ceramics, glass, etc., and which are wholly or mainly covered with leather, sheeting of plastics, etc. Such articles fall in **heading 42.05** if made of (or covered with) leather or composition leather, and in **other Chapters** if made of (or covered with) other materials.

### Tariff Classification of the Goods in Issue

29. The Tribunal notes that Rlogistics' primary argument is that, pursuant to Rule 1 of the *General Rules*, the goods in issue should be classified in heading No. 85.22 and that the CBSA therefore erred in classifying them in heading No. 42.02. In the alternative, should the Tribunal determine that the goods in

issue are *prima facie* classifiable in both headings, Rlogistics argued that Rule 3 (a) would apply to determine the proper tariff classification of the goods in issue and that, on that basis, they should be classified in heading No. 85.22, since the terms of that heading provide the most specific description of the goods in issue.

30. For its part, the CBSA relies on the same provisions of the *General Rules*, but reaches a different conclusion. Its main argument is that, pursuant to Rule 1 of the *General Rules*, the goods in issue are properly classified in heading No. 42.02 and do not meet the terms of heading No. 85.22. In the alternative, should the Tribunal determine that the goods in issue are *prima facie* classifiable in both headings, the CBSA argued that, pursuant to Rule 3 (a), the terms of heading No. 42.02 provide a more specific description of the goods in issue than heading No. 85.22. Thus, the CBSA submitted that the goods in issue are properly classified in heading No. 42.02.

31. Consequently, the dispute between the parties concerns the legal interpretation of the terms of the only headings that appear relevant in this appeal, namely, heading Nos. 85.22 and 42.02. The parties appear to largely agree on the material facts.

32. The Tribunal notes that only one witness testified at the hearing, on behalf of Rlogistics. The Tribunal further notes that the testimony of the witness was largely uncontested. Indeed, the principal area of difference between the parties pertains to the witness's assertions concerning the extent to which the goods in issue enhance the efficiency of an iPod Nano. The Tribunal observes that the CBSA's challenge of Rlogistics' evidence in that respect was not made through the filing of contradictory evidence. Rather, the CBSA relied mostly on legal arguments to support its position that the goods in issue do not qualify as "accessories" within the meaning of heading No. 85.22. In the CBSA's view, while the evidence presented by Rlogistics indicates that an armband case is convenient for people who want to listen to music while being active, it does not establish that the goods in issue improve the effectiveness of an iPod Nano itself to constitute an accessory of this device within the meaning of heading No. 85.22.

33. The other evidence filed by the parties consisted of a second generation iPod Nano, a Belkin DualFit armband case and various marketing materials and other documentary evidence concerning the goods in issue and other goods. The parties also filed dictionary definitions of the term "accessories".

34. The Tribunal notes that Rlogistics recognizes that it bears the burden of proof to demonstrate that the CBSA erred in its classification of the goods in issue in heading No. 42.02. In view of the foregoing, the Tribunal will first determine whether the goods in issue are *prima facie* classifiable in heading No. 85.22 and/or heading No. 42.02 in accordance with Rule 1 of the *General Rules*. If necessary, it will then address the parties' alternative arguments rooted in the application of Rule 3 (a).

35. In this regard, the Tribunal emphasizes that it is only if the application of Rule 1 of the *General Rules* does not lead to the classification of the goods in issue in one, and only one, heading that subsequent rules may be considered. As Rule 2 does not apply in the circumstances of this case, the next rule to consider would be Rule 3 (a).<sup>20</sup>

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20. Rule 2 (a) of the *General Rules* pertains to the classification of incomplete or unfinished articles and to articles presented unassembled or disassembled. Rule 2 (b) provides guidance for the classification of mixed or composite goods (i.e. goods consisting of more than one material or substance). The parties have not argued that these rules are relevant in determining the tariff classification of the goods in issue. The Tribunal considers that they are not relevant.

Are the Goods in Issue Classifiable in Heading No. 85.22?

36. Rlogistics submitted that the goods in issue are accessories of an iPod Nano and are covered by the terms of heading No. 85.22. According to Rlogistics, the terms of heading No. 85.22 contain two conditions that must be met in order for goods to be classified in that heading: the goods must be (1) accessories and (2) suitable for use solely or principally with the apparatus of heading Nos. 85.19 to 85.22.

37. With respect to the second condition, Rlogistics submitted that an iPod Nano is a portable music device which is classified in heading No. 85.19 and is thus an apparatus of heading Nos. 85.19 to 85.22. In this regard, Rlogistics noted the testimony of Mr. Gordon, who described an iPod Nano as an MP3 player, and it referred to the *Explanatory Notes* to heading No. 85.19, which indicate that heading No. 85.19 covers sound reproducing apparatus and specifically name MP3 players as examples of goods of heading No. 85.19. Rlogistics also stated that the CBSA did not dispute that an iPod Nano is an MP3 player and is therefore classifiable in heading No. 85.19.

38. Rlogistics further submitted that the goods in issue are unequivocally for use solely or principally with an iPod Nano (an apparatus of heading Nos. 85.19 to 85.22) because they are specifically designed for its exact size and shape, with openings to enable access to the earphone jack, to the various buttons and switches and to the selector wheel, and have a transparent plastic window to see the LCD screen. Rlogistics noted that the fact that the goods in issue cannot be used with any other device and have no other purpose than to be used with an iPod Nano was not contested by the CBSA.

39. Given these undisputed facts, the focal point of Rlogistics' submissions was the issue of whether the goods in issue are "accessories" covered by heading No. 85.22. Rlogistics submitted that there is no definition of the term "accessory" in either the *Customs Act* or the *Customs Tariff* and submitted that the term should be given its plain and ordinary meaning. It argued that the goods in issue meet the plain and ordinary meaning of the term "accessory". To support its position it referred to the following definition of the word "accessory" in the *Online Merriam-Webster Dictionary*: "**2 a:** a thing of *secondary* or *subordinate* importance; . . . **b:** an object or device *not essential* in itself but adding to the beauty, *convenience*, or *effectiveness* of something else . . ." [emphasis added].<sup>21</sup> The *Oxford Dictionaries Online* defines "accessory" as follows: "**1** a thing which can be added to something else in order to make it *more useful*, *versatile*, or attractive; [e.g.] optional accessories include a battery charger and shoulder strap"<sup>22</sup> [underlining added for emphasis].

40. Rlogistics further submitted that the goods in issue meet the definition of "accessory" found in Memorandum D10-0-1,<sup>23</sup> which reads as follows: "...an article which performs a *secondary* or *subordinate* role, *not essential* to the function, which could improve the effectiveness of the host machine, equipment, apparatus or appliance" [emphasis added]. It argued that the goods in issue perform a subordinate role of holding, protecting and increasing the portability of an iPod Nano and are not essential to its function. Rlogistics submitted that the goods in issue allow for a more effective use of an iPod Nano while exercising, working or playing, and improve the portability and convenience of the device by not requiring the user to hold the iPod Nano, thus freeing the user's hands.

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21. Tribunal Exhibit AP-2010-057-03A at paras. 5.18, 5.19, tab 4.

22. *Ibid.*

23. "Classification of Parts and Accessories in the *Customs Tariff*" (24 January 1994).

41. Rlogistics submitted that the goods in issue are marketed and sold as accessories and are generally referred to as accessories of an iPod Nano in common parlance and in popular culture. In support of this argument, Rlogistics noted the following: (1) both Apple Inc. (the manufacturer of the iPod Nano) and a large electronics retail store advertise and describe the goods in issue on their Web sites as accessories; (2) Apple Inc.'s retail outlets (the Apple Store) display the goods in issue in their "Accessories" section; and (3) protective cases for iPods are described as accessories on the Wikipedia Web site.

42. Rlogistics also submitted that its position that the goods in issue are accessories is supported by the Tribunal's jurisprudence. In particular, Rlogistics referred to *Canadian Tire Corporation Limited v. President of the Canada Border Services Agency* in which the Tribunal stated that the goods in that appeal, i.e. support stands, were accessories of machine-tools because they performed "... a service that ... extends the range of operations ..."<sup>24</sup> Rlogistics argued that this finding is applicable in this appeal. It also referred to the Tribunal's decision in *Nokia Products Limited and Primecell Communications Inc. v. Commissioner of the Canada Customs and Revenue Agency*<sup>25</sup> in which the Tribunal agreed with the position advocated by the Canada Customs and Revenue Agency (now the CBSA) that leather carrying cases for cell phones were accessories of cell phones. Rlogistics submitted that the goods in issue are like cell phone carrying cases.

43. Rlogistics referred to the Tribunal's decision in *Sharp Electronics of Canada Ltd. v. Deputy M.N.R. v. Canon Canada Inc., Toshiba of Canada Limited and Ricoh Canada*.<sup>26</sup> Rlogistics noted that the Tribunal determined that the toner cartridges in that appeal were accessories of photocopiers because they were designed for specific models of photocopiers, their sole use was in conjunction with photocopiers, they played an effective role in preventing spillage of toner and they increased the efficiency of the machine. Following this line of reasoning, Rlogistics emphasized that the goods in issue are specifically designed to hold an iPod Nano, are used when an iPod Nano is operating, enhance the portability of an iPod Nano, reduce the risk of dropping the device and damaging it, and improve efficiency by reducing the chance of disconnecting the earphones from the device.

44. Finally, Rlogistics submitted that neither the terms of heading No. 85.22 nor those of any section or chapter notes specifically exclude cases, such as the goods in issue, from the scope of this heading. With respect to the *Explanatory Notes* to heading No. 85.22, Rlogistics submitted that they provide a non-exhaustive list of parts or accessories covered by the heading, as is made clear by the use of the verb "includes" in those explanatory notes. Thus, the fact that the goods in issue are not expressly listed therein does not mean that they are excluded from the scope of heading No. 85.22.

45. In response, the CBSA submitted that Rlogistics failed to distinguish the goods in issue from other types of carrying cases that are classifiable in heading No. 42.02. In the CBSA's view, enhancing the portability of a host product does not make a product an accessory, and the fact that a product is specifically designed to hold a particular item is not a relevant consideration in determining whether it is an accessory of another item since heading No. 42.02 includes containers that are designed to hold specific types of items or brands of goods.

46. The CBSA submitted that the goods in issue are distinguishable from those that were in issue in the Tribunal's decisions cited by Rlogistics. Referring to *Canadian Tire* in which the term "accessory" was interpreted to mean a product that performs a service that modifies the breadth and extends the range of operations of a host product, the CBSA argued that the goods that were in issue in the case law identified by Rlogistics all perform a function beyond that of containing the host product when compared to the goods in issue.

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24. (2 August 2006), AP-2004-057 (CITT) at para. 24 [*Canadian Tire*].

25. (5 August 2003), AP-2001-073, AP-2001-074 and AP-2001-084 (CITT) [*Nokia*].

26. (7 June 2000), AP-98-092 (CITT).

47. According to the CBSA, Rlogistics' position that the convenience and comfort procured by the goods in issue (by allowing users hands-free use of the iPod Nano) make them accessories of this device is without merit. The CBSA argued that accepting Rlogistics' arguments would mean that all carrying cases should be classified as accessories of other goods, which is not a legally possible outcome, since all cases and containers listed in heading No. 42.02 increase the portability of the item that they hold but are classified as goods of heading No. 42.02, not as accessories. In summary, the CBSA's position is that the convenience and comfort of the hands-free carrying of goods is not a relevant factor in determining whether goods are accessories.

48. The CBSA further submitted that the fact that the goods in issue are used when an iPod Nano is operating is not a persuasive argument and referred to the Tribunal's decision in *Nokia* to support its position in this regard. It argued that the Tribunal was not persuaded by the same argument with respect to cell phone cases and the cell phones that they contained. The CBSA submitted that an underwater camera case is another example of a case of heading No. 42.02 (i.e. a product which is not classified as an accessory of a camera) that is used while the camera is operating.

49. The CBSA submitted that popular perception is not a relevant consideration in determining the tariff classification of goods, and that Wikipedia, cited by Rlogistics, is not a reliable source of information. It also argued that the manner in which goods are marketed is only a factor which can be considered by the Tribunal and is not in itself determinative of the tariff classification of goods.

50. The CBSA referred to the list of goods described as accessories in the *Explanatory Notes* to heading No. 85.22 and argued that the goods in issue are not similar to those goods. Finally, the CBSA submitted that, contrary to Rlogistics' arguments, goods may be excluded from the scope of a tariff heading despite the absence of an explicit exclusionary note. On this issue, it referred to the terms of heading No. 92.09, which covers parts and accessories of musical instruments, and argued that cases for such goods are classified as containers or cases of heading No. 42.02, even if they are not specifically excluded from the scope of heading No. 92.02. On that basis, it submitted that the fact that the terms of heading No. 85.22 and those of any section or chapter notes do not expressly exclude the goods in issue from the scope of heading No. 85.22 does not mean that they are classifiable in that heading.

51. The Tribunal notes that, in order for the goods in issue to be classified in heading No. 85.22, they must meet the terms of heading No. 85.22, which, as noted above, provides as follows: "**Parts and accessories suitable for use solely or principally with the apparatus of headings 85.19 to 85.21.**" Thus, the goods in issue are classifiable in heading No. 85.22 if they are (1) parts or accessories and (2) suitable for use solely or principally with the apparatus of heading Nos. 85.19 to 85.21.

52. The Tribunal will first address the second condition of heading No. 85.22, which is that goods must be suitable for use solely or principally with the apparatus of heading Nos. 85.19 to 85.21. In this regard, the Tribunal accepts Rlogistics' submissions and finds that an iPod Nano is a portable sound reproducing device, which is an apparatus of heading No. 85.19. This finding is supported by the evidence, especially the testimony of Mr. Gordon who described an iPod Nano as an MP3 player. It is also consistent with the *Explanatory Notes* to heading No. 85.19, which indicate that this heading covers sound reproducing apparatus and refer to MP3 players as an example of such apparatus. Moreover, the Tribunal notes that the CBSA did not dispute the fact that an iPod Nano is an MP3 player and, therefore, meets the conditions to be classified as an apparatus of heading No. 85.19.

53. With respect to the issue of whether the goods in issue are suitable for use solely or principally with an iPod Nano (i.e. an apparatus of heading No. 85.19), the Tribunal also accepts Rlogistics' submissions and the testimony of Mr. Gordon that clearly establish that the goods in issue can only be used with an iPod Nano and have no other use or purpose. As a matter of fact, it is undeniable that the goods in issue are specifically designed for the exact size and shape of an iPod Nano, with openings to plug in the earphone and for the various buttons and switches of the device. The goods in issue also have a transparent plastic window to enable the user to see the screen of an iPod Nano and access the other features of this device.<sup>27</sup> It is beyond dispute that no other devices would fit in the goods in issue. The Tribunal also notes that the CBSA did not dispute Rlogistics' argument that the goods in issue are for use solely or principally with an iPod Nano. Thus, the Tribunal concludes that the goods in issue are suitable for use solely or principally with an apparatus of heading No. 85.19.

54. The remaining issue to be addressed by the Tribunal is whether the goods in issue meet the first condition of heading No. 85.22, which is that goods must be parts or accessories. Since neither party argued that the goods in issue are parts, the Tribunal will limit its analysis to whether the goods in issue are accessories for classification purposes.

55. The Tribunal observes that there is no applicable definition of the word "accessory" in the *Customs Act*, the *Customs Tariff* or the *Explanatory Notes*. Thus, in order to determine the ordinary meaning of this term, recourse may be had to dictionary definitions.

56. According to the *Webster's Third New International Dictionary*, the word "accessory" means "... **1 a**: a thing of secondary or subordinate importance ... **b (1)**: an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else ..." and "... **1 of a thing a**: aiding or contributing in a secondary or subordinate way ... supplementary or secondary to something of greater or primary importance ...".<sup>28</sup> On the basis of this definition, it is clear that the term "accessory" refers to something that has a subordinate relationship with another product, that is not essential to the use or function of that other product or that adds beauty, convenience or effectiveness to that other product.

57. The Tribunal notes that these definitions are generally consistent with the CBSA's interpretation of the term "accessory", which is set out in Memorandum D10-0-1. That memorandum defines "accessory" as an "... article which performs a secondary or subordinate role, not essential to the function, which could improve the effectiveness of the host machine, equipment, apparatus or appliance".<sup>29</sup>

58. Considering the plain meaning of the term "accessory" and upon review of the evidence before it, the Tribunal finds that the goods in issue are accessories of an iPod Nano. The Tribunal notes that there was uncontradicted testimony that the primary function of an iPod Nano is to play music and that the functions of the goods in issue are to protect, house and transport an iPod Nano.<sup>30</sup> The Tribunal also notes that there was uncontradicted testimony that an iPod Nano can be carried or used without insertion into the goods in issue.<sup>31</sup> This evidence demonstrates that the goods in issue are not essential for the use of an iPod Nano, but can perform a secondary or subordinate role while such a device is used.

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27. Tribunal Exhibit AP-2010-057-03A at paras 5.15, 5.16; *Transcript of Public Hearing*, 28 June 2011, at 22.

28. 1986, s.v. "accessory".

29. Tribunal Exhibit AP-2010-057-03A, tab 4.

30. *Transcript of Public Hearing*, 28 June 2011, at 5-8.

31. *Ibid.* at 16.

59. The Tribunal further notes that Mr. Gordon testified that the use of the goods in issue with an iPod Nano improved the convenience and effectiveness of this device by providing hands-free enjoyment while working or exercising. Mr. Gordon testified that, in such circumstances, it would be more difficult or even impossible to listen to music with an iPod Nano without using the goods in issue.<sup>32</sup> Although the CBSA contested those points, the Tribunal notes that there was no contradictory testimony provided as evidence to support the CBSA's position. On balance, the Tribunal finds that the evidence establishes that, by utilizing the goods in issue, a person is able to use an iPod Nano in circumstances where it may otherwise be difficult or perhaps even impossible. In the Tribunal's opinion, this is sufficient to find that the goods in issue are accessories of an iPod Nano. Contrary to the CBSA's arguments, the Tribunal is of the opinion that there is no additional requirement that needs to be met to conclude that the goods in issue are accessories of an iPod Nano.

60. In summary, the Tribunal agrees with Rlogistics that the goods in issue add to the portability and range of use of an iPod Nano in certain circumstances and, in that sense, add to the convenience or effectiveness of this device, within the meaning of the word "accessory".<sup>33</sup> The Tribunal considers that, although it is not impossible to use an iPod Nano without the goods in issue, it is a matter of common knowledge that the goods in issue facilitate and improve the use of an iPod Nano while performing certain activities.

61. Although not determinative of the tariff classification of the goods in issue, the Tribunal also notes that the description and marketing of the goods in issue as accessories of an iPod Nano constitute corroborating evidence on this issue. Indeed, Mr. Gordon testified that the goods in issue are described and marketed in the literature, on Apple Inc.'s and retailers' Web sites and in the Apple Store, as accessories.<sup>34</sup> The Tribunal considers that, although this evidence is anecdotal, it was uncontradicted by the CBSA and provides additional support for Rlogistics' position. In previous decisions, the Tribunal has recognized that, while it is not determinative, evidence of this sort may be indicative of the classification of goods.<sup>35</sup>

62. For the foregoing reasons, the Tribunal concludes that the goods in issue are accessories suitable for use solely or principally with an iPod Nano, that is, an apparatus of heading No. 85.19, and are therefore *prima facie* classifiable in heading No. 85.22.

Are the Goods in Issue Classifiable in Heading No. 42.02?

63. Given that the Tribunal has determined that the goods in issue are *prima facie* classifiable in heading No. 85.19, the issue becomes whether they are also *prima facie* classifiable in heading No. 42.02. To the extent that they are, the classification will have to be effected by reference to Rule 3 of the *General Rules*.

64. The CBSA submitted that the goods in issue meet the terms of heading No. 42.02, as they are containers similar to spectacle cases, binocular cases, camera cases, musical instrument cases and gun cases. In this regard, it referred to the Tribunal's interpretation of the term "similar" in *Rui Royal International Corp. v. President of the Canada Border Services Agency*, in which the Tribunal stated that "... similar goods had to share important characteristics and have common features but that 'similar' did not mean

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32. *Ibid.* at 11-12.

33. *Ibid.* at 30.

34. *Ibid.* at 5-8, 12-13; Tribunal Exhibit AP-2010-057-03A, tab 1; Tribunal Exhibit AP-2010-057-11A, tab 2.

35. *Regal Confections Inc. v. Deputy M.N.R.* (25 June 1999), AP-98-043, AP-98-044 and AP-98-051 (CITT); *Partylite Gifts Ltd. v. Commissioner of the Canada Customs and Revenue Agency* (16 February 2004), AP-2003-008 (CITT).



‘identical’.”<sup>36</sup> The CBSA argued that the goods in issue possess the same characteristics as the cases or containers listed in heading No. 42.02. It also invoked the Tribunal’s decision in *Nokia* to support its position. The CBSA argued that the goods in issue, like the cell phone cases that were determined to be goods of heading No. 42.02 in *Nokia*, are small portable containers, which are fitted to hold a specific item, and used to protect and carry the item.

65. The CBSA submitted that heading No. 42.02 covers cases specifically designed to hold particular goods and that, for that reason, they are not generic, as argued by Rlogistics. It referred to the *Classification Opinions*, the exclusions listed in the *Explanatory Notes* to heading No. 42.02 and to the Tribunal’s decision in *John Martens Company v. Deputy M.N.R.C.E.*<sup>37</sup> to support its position. The CBSA submitted that the *Classification Opinions* contains an opinion that classifies a tool case that is specially shaped to accommodate the tool and its accessories in heading No. 42.02. The CBSA submitted that the exclusion in the *Explanatory Notes* to heading No. 42.02, which provides that “[t]he heading **does not cover** . . . (f) Tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (generally, **heading** 39.26 or 73.26)”, means that specially shaped tool boxes are classified in heading No. 42.02. The CBSA referred to *Martens*, in which the Tribunal stated that “. . . the expression ‘similar containers’ . . . must be interpreted to encompass containers that are designed to accommodate a particular item.”<sup>38</sup>

66. The CBSA submitted that heading No. 42.02 covers various “cases” and “containers” made of a variety of materials and that the goods in issue are containers or cases within the ordinary meaning of these terms. The CBSA referred to dictionary definitions of both words to support its position. The *Canadian Oxford Dictionary* defines “container” as “. . . a vessel, box, etc., for holding particular things”<sup>39</sup> and a “case” as “. . . a container or covering serving to enclose, hold or contain.”<sup>40</sup> The CBSA argued that the goods in issue constitute vessels that enclose and hold particular things. With respect to the composition of the goods in issue, the CBSA submitted that containers made of plastic and neoprene, such as the goods in issue, are covered by heading No. 42.02 and, more specifically, by subheading No. 4202.99.

67. Rlogistics submitted that the goods in issue are not specifically named or provided for by the terms of heading No. 42.02. It argued that an inclusive heading or inclusive explanatory notes would have read “This heading covers all cases”, which is not the case for heading No. 42.02. In this regard, Rlogistics underscored that the relevant explanatory notes state that heading No. 42.02 “. . . covers **only** the articles specifically named therein and similar containers.” It also argued that the goods in issue are not covered by the expression “similar containers”, an expression which is given an overly broad meaning by the CBSA, according to Rlogistics.

68. Rlogistics submitted that the goods in issue are not classifiable in heading No. 42.02 because they are not similar to the containers listed in that heading. It argued that, unlike those containers, the goods in issue enhance the use of an iPod Nano, in that their design and features allow a person to conveniently use an iPod Nano without removing it from the goods in issue. In contrast, Rlogistics argued that heading No. 42.02 covers containers that are used solely for the transportation or carrying of other goods and that do not contribute, facilitate, extend or simplify the use of those other goods. For example, it noted that goods such as spectacles, binoculars, cameras, musical instruments or firearms are only used when removed from their cases, whereas the goods in issue are designed to allow a person to use an iPod Nano, for example, while jogging or exercising, which would not be possible without cases such as the goods in issue.

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36. (30 March 2011), AP-2010-003 (CITT) [*Rui Royal*] at para. 82.

37. (10 May 1993), AP-92-022 (CITT) [*Martens*].

38. *Martens* at 3.

39. Second ed., s.v. “container”.

40. *Ibid.*, s.v. “case”.

69. Rlogistics further submitted that the term “similar” means something that very closely resembles other goods and that, due to their design and function, the goods in issue are dissimilar to any of the goods listed in heading No. 42.02. It argued that, if the only condition to constitute a “similar container” covered by heading No. 42.02 were that goods be cases or containers used for carrying other goods, heading No. 42.02 would therefore cover all cases, a result which would be legally incorrect, since the relevant explanatory notes clearly indicate that heading No. 42.02 does not include all types of cases.

70. Pursuant to Rule 1 of the *General Rules*, the Tribunal will start by examining the terms of heading No. 42.02, which provide as follows:

**Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, insulated food or beverage bags, toilet bags, rucksacks, handbags, shopping bags, wallets, purses, map-cases, cigarette-cases, tobacco-pouches, tool bags, sports bags, bottle-cases, jewellery boxes, powder-boxes, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fibre or of paperboard, or wholly or mainly covered with such materials or with paper.**

71. The Tribunal notes that this heading can be divided into two distinct parts. The first part precedes the semi-colon and ends with the terms “similar containers”. The second part follows the semi-colon and consists of a list of specific goods of various compositions that evidently do not include the goods in issue. Indeed, armband cases for an iPod Nano are not specifically named in heading No. 42.02. For the purpose of this appeal, only the following first part of heading No. 42.02 is relevant, since it provides that goods other than those specifically listed are covered by heading No. 42.02:

**Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and *similar containers*; . . . .**

[Emphasis added]

72. The Tribunal notes that the first part of heading No. 42.02 contains a list of cases that are intended to be specifically covered by the heading. However, the presence of the last words “and similar containers” clearly indicates that this heading also covers other containers. While the list of covered containers is not closed, there is a limit as to the type of containers that are to be classified in heading No. 42.02. Only containers that are similar to those that are specifically named fall within the ambit of heading No. 42.02.

73. This interpretation is confirmed by the *Explanatory Notes* to heading No. 42.02, which provide as follows:

This heading covers **only** the articles specifically named therein and similar containers.

. . .

Subject to Notes 1 and 2 to this Chapter, the articles covered by the first part of the heading may be of any material. The expression “similar containers” in the first part includes hat boxes, camera accessory cases, cartridge pouches, sheaths for hunting or camping knives, portable tool boxes or cases, specially shaped or internally fitted to contain particular tools with or without their accessories, etc.

74. It is common ground between the parties that the goods in issue are containers. It is also beyond dispute that the goods in issue are not included in the list of items specifically named in the first part of heading No. 42.02. Therefore, the only issue to address for purposes of determining if the goods in issue are *prima facie* classifiable in heading No. 42.02 is whether they are “similar” to the containers listed in the first

part of that heading, that is, whether they are one of the “similar containers” to which this provision refers. Obviously, in order to make this determination, the Tribunal must give meaning to the term “similar containers” when used in conjunction with a list of specific items.

75. The Tribunal interprets the phrase “similar containers” in heading No. 42.02 to mean containers that possess “similar” characteristics to those that are specifically named in heading No. 42.02. The Tribunal reaches this conclusion on the basis of a straightforward interpretation of that phrase, taking into account its immediate context.

76. The *Canadian Oxford Dictionary* defines “similar” as “1 of the same nature or kind; alike. 2 . . . having a resemblance . . . .”<sup>41</sup> In *Rui Royal*, the Tribunal interpreted the phrase “similar article” to mean that similar goods “. . . had to share important characteristics and have common features but that ‘similar’ did not mean ‘identical’.”<sup>42</sup> The Tribunal sees no reason to disagree with this interpretation in the context of this appeal. Therefore, the Tribunal must determine whether the goods in issue share important characteristics and have common features with the containers specifically listed in the terms of heading No. 42.02. However, the characteristics of the goods in issue do not have to be identical to those of the specifically named goods. What matters is that the goods in issue and those specifically named in heading No. 42.02 have significant common features.

77. The Tribunal observes that neither the terms of heading No. 42.02 nor the relevant explanatory notes describe the specific characteristics of containers covered by the first part of the heading other than the material of composition (“of any material”). However, the Tribunal finds that the immediate context in which the phrase “similar containers” is used is informative in that respect. The Tribunal notes that the specific goods listed in the first part of heading No. 42.02 are all “containers”, precisely because of the use of the words “and similar containers” that immediately follows the list. In this way, the terms of heading No. 42.02 confirm that all the goods that are specifically named can be generically described as “containers”. Thus, the Tribunal considers that, in order to assess whether the goods in issue are covered by heading No. 42.02, it must determine whether they share important characteristics with these containers. On this issue, the Tribunal finds that the listed goods and any “similar containers” must share the characteristic of holding particular things or goods.

78. Indeed, the Tribunal considers that the fundamental characteristic of any container in terms of use or function is to hold goods. The *Canadian Oxford Dictionary* defines “container” as “. . . a vessel, box, etc., for holding particular things.”<sup>43</sup> Furthermore, the Tribunal notes that taking the containers listed in the terms of heading No. 42.02 as a group, the other characteristic common among them is that they are all designed for the transportation of the things or goods that they hold or contain, regardless of size. Specifically, the Tribunal notes that the containers specifically listed carry such goods as spectacles, binoculars, cameras, guns, etc.

79. Taking the above considerations into account, the Tribunal concludes that the goods in issue are “similar containers” to those that are specifically listed in the first part of the terms of heading No. 42.02, primarily because the evidence establishes that they are specifically designed and used for holding and carrying a specific item, namely, an iPod Nano. The Tribunal heard testimony from Mr. Gordon who clearly described the goods in issue as specifically designed to hold and transport iPod Nanos. Indeed, Mr. Gordon testified that the goods in issue serve no other purpose than to hold an iPod Nano.<sup>44</sup>

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41. *Ibid.*, s.v. “similar”.

42. *Rui Royal* at para. 82.

43. Second ed., s.v. “container”.

44. *Transcript of Public Hearing*, 28 June 2011, at 12.

80. With respect to Rlogistics' arguments that the goods in issue have, as a matter of fact, additional characteristics that are not common with those of the other goods listed in the first part of heading No. 42.02, the Tribunal is of the view that these features are not sufficient to find that the goods in issue are dissimilar containers. The Tribunal considers that any characteristics of the goods in issue that differentiate them from the containers specifically listed in the terms of heading No. 42.02 do not negate the fact that the goods in issue have important common features and closely resemble the types of cases that are specifically listed in the first part of heading No. 42.02. As the Tribunal found in *Rui Royal*, goods that are similar need not be identical. Consequently, the Tribunal is unable to accept Rlogistics' argument that the goods in issue have sufficient features that distinguish them from the containers that are specifically named in heading No. 42.02, such that they should be excluded from the scope of heading No. 42.02.

81. In view of the foregoing, the Tribunal concludes that the goods in issue are also *prima facie* classifiable in heading No. 42.02. Having determined that the goods in issue are *prima facie* classifiable in both heading Nos. 85.22 and 42.02, the Tribunal must, as discussed above, proceed to apply subsequent rules of the *General Rules* in consecutive order, starting with Rule 3 (a), in order to determine in which tariff heading the goods in issue are to be classified.

#### Application of Rule 3 (a) of the General Rules

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

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

83. The Tribunal notes that the second sentence of Rule 3 (a) of the *General Rules* is not relevant in this appeal, since the competing headings do not refer to part only of materials or substances contained in mixed or composite goods or to part only of items in a set put up for retail sale. Thus, the Tribunal will examine which of heading No. 85.22 or heading No. 42.02 provides a more specific description of the goods in issue. If it determines that one description is more specific than the other, then the Tribunal could resort to Rule 3 (a), without having to consider subsequent rules, in order to resolve this matter.

84. Rlogistics submitted that, although not binding on the Tribunal, decisions by the United States Federal Court of Appeals may provide useful guidance in the interpretation and application of Rule 3 (a) of the *General Rules*, especially if they set out principles that appear reasonable. In particular, Rlogistics submitted that, in deciding the specificity of headings according to Rule 3 (a), the Tribunal should apply the principle that an end-use provision is more specific than a naming provision and referred to the decision by the United States Court of Appeals for the Federal Circuit in *Orlando Food Corp. v. United States*<sup>45</sup> to support its position. In that case, the court determined that the terms of heading No. 21.03, which provides for "Sauces and preparations therefor", are more specific than the terms of heading No. 20.02, which provides for "Tomatoes prepared or preserved", because the former is an end-use provision whereas the latter is a naming provision.

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45. 140 F.3d 1437 (Fed. Cir. 1998).

85. Applying this principle in the present appeal, Rlogistics submitted that heading No. 85.22, which covers "... accessories suitable for use solely or principally with the apparatus of headings 85.19 to 85.21", is an end-use provision, whereas heading No. 42.02 is a naming provision, and that, for this reason, heading No. 85.22 provides the most specific description of the goods in issue.

86. Rlogistics submitted that, according to Rule 3 (a) of the *General Rules*, the classification of the goods in issue must be determined on the basis of the terms of the relevant headings (not the subheadings or tariff items). It referred to the decision by the United States Court of Appeals for the Federal Circuit in *Archer Daniels Midland Company v. United States*<sup>46</sup> to support its position regarding the primacy of headings.

87. Rlogistics also relied on the decision by the United States Court of Appeals for the Federal Circuit in *Bauer Nike Hockey USA, Inc. v. United States*,<sup>47</sup> in which the court determined that, under Rule 3 (a) of the *General Rules*, "... a court look[s] to the provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty"<sup>48</sup> and argued that, by comparing the relevant terms of each heading under consideration, the terms of heading No. 85.22 are more difficult to satisfy and describe the goods in issue more accurately.

88. Thus, Rlogistics submitted that the terms of heading No. 85.22 are much narrower and more specific than the terms of heading No. 42.02, which are broad and cover a range of containers.

89. The CBSA submitted that, should the Tribunal determine that the goods in issue are *prima facie* classifiable in two or more headings, pursuant to Rule 3 (a) of the *General Rules*, the goods in issue are still classifiable in heading No. 42.02, because, in its view, heading No. 42.02 provides a more specific description of the goods in issue as "cases" than heading No. 85.22 that refers to a generic term, "accessories".

90. The Tribunal agrees with Rlogistics that, for the purposes of determining which of the relevant headings provides the most specific description pursuant to Rule 3 (a) of the *General Rules*, the Tribunal must identify and compare the specific terms of each of the headings under review. In other words, the focus of the analysis must be on the relevant part of the competing headings for purposes of determining which heading provides the most specific description, if any.

91. For the purposes of Rule 3 (a) of the *General Rules*, the Tribunal must determine whether the terms of heading No. 85.22, "... accessories suitable for use solely or principally with the apparatus of headings 85.19 to 85.21", provide a more specific description than the terms of heading No. 42.02, "... similar containers ...".

92. The Tribunal deems it necessary to examine the *Explanatory Notes* to Rule 3 (a) of the *General Rules* for assistance in its interpretation and application of that rule in this appeal. The *Explanatory Notes* to Rule 3 (a) provide as follows:

- (III) The first method of classification is provided in Rule 3 (a), under which the heading which provides the most specific description of the goods is to be preferred to a heading which provides a more general description.
- (IV) It is not practicable to lay down hard and fast rules by which to determine whether one heading more specifically describes the goods than another, but in general it may be said that:
  - (a) A description by name is more specific than a description by class . . . .
  - (b) If the goods answer to a description which more clearly identifies them, that description is more specific than one where identification is less complete.

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46. 561 F.3d 1308 (Fed. Cir. 2009).

47. 393 F.3d 1246 (Fed. Cir. 2004).

48. *Ibid.* at 8.

93. Since there are no “hard and fast rules” for determining whether one heading provides a more specific description of goods than another, the Tribunal is of the view that reason and common sense must ultimately guide its analysis.

94. In the Tribunal’s opinion, goods may be ordinarily described in one or a combination of the following three ways: (i) by a specific or generic name; (ii) by reference to the physical appearance or material of composition of the goods; and/or (iii) by reference to the use or function of the goods. The Tribunal finds that the combination of two or more methods of description adds more precision to the analysis and, hence, more specificity to the description.

95. The Tribunal considers that neither heading No. 85.22 nor heading No. 42.02 describes the goods in issue by its specific name, that is, an armband case for an iPod Nano or MP3 player. Rather, in their respective relevant part, each of the competing headings describes the goods in issue somewhat generically, i.e. “similar containers” and “accessories suitable for . . . .”

96. Continuing with an analysis based on reason and common sense, the Tribunal examined how those generic descriptions of the goods in issue correspond, either directly or indirectly, to their physical appearance or material of composition, or to their use or function. In other words, the Tribunal considered whether one of the descriptions in issue provided a higher degree of precision by including references to the physical characteristics of the goods in issue or their use or function.

97. By a combination of two of the above-mentioned methods of description, and for the following reasons, the Tribunal concludes that the relevant terms of heading No. 85.22 provide the most specific description of the goods in issue compared to the relevant terms of heading No. 42.02.

98. The Tribunal considers that the descriptions of the goods in issue provided by the terms of heading No. 85.22 or 42.02 do not refer directly or indirectly to the physical appearance or material of composition of the goods in issue. The terms of the relevant headings merely suggest that those headings may cover goods that can be held or transported by hand. They do not provide a clear indication regarding the size or composition of the goods that they cover.

99. However, the Tribunal considers that there is a connection between the generic descriptions of the goods in issue by the terms of heading No. 85.22 or 42.02 and the use or function of the goods in issue. The Tribunal has already determined that the term “accessories” describes goods that are related in a secondary or subordinate way to a host product, are not essential to the host product and improve the convenience or effectiveness of the host product. The Tribunal has also determined that the term “container” refers to a thing that contains and is used to hold something for storage or transport.

100. The Tribunal heard evidence that establishes quite clearly that the purpose of the goods in issue is to hold and carry an iPod Nano in a manner that permits and enhances the ability of the device to perform its intended function, which is to provide music to a listener, in certain circumstances.<sup>49</sup>

101. The Tribunal notes that the word “containers” in the phrase “similar containers” describes the holding and transport use or functional characteristic of a product in relation to any other product that may be held by a container. In that sense, the phrase “similar containers” covers one aspect of the use or function of the goods in issue.

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49. *Transcript of Public Hearing*, 28 June 2011, at 10-16.

102. On the other hand, the Tribunal notes that the word “accessories” in the phrase “accessories suitable for use solely or principally with the apparatus of headings 85.19 to 85.21” describes goods that possess a secondary or subordinate relationship to a host product of heading No. 85.19—in this case, an iPod Nano—that is not essential to the host product and that improves the convenience and effectiveness of the host product (an iPod Nano) in certain circumstances.

103. The Tribunal is of the view that, in terms of the use or functional characteristic of the goods in issue, the relevant terms of heading No. 85.22 provide a more complete and precise description of these goods. Those terms not only capture the protection, holding and transportation functions of the goods in issue as one aspect of their secondary or subordinate relationship with an iPod Nano but also capture what, in the Tribunal’s opinion, constitutes their more fundamental function, which is to improve or extend the performance of an iPod Nano. In that sense, those terms better describe the goods in issue and identify them more clearly. The Tribunal considers that the terms “similar containers” are more general and do not describe the goods in issue with the same degree of precision. Thus, the Tribunal finds that the terms of heading No. 85.22 more specifically describe the goods in issue than those of heading No. 42.02.

104. Accordingly, the Tribunal concludes that, pursuant to Rule 3 (a) of the *General Rules*, the relevant terms of heading No. 85.22, “accessories suitable for use solely or principally with the apparatus of headings 85.19 to 85.21”, provide the most specific description of the goods in issue.

105. On the basis of the foregoing analysis, the Tribunal finds that the goods in issue should be classified in heading No. 85.22.

#### Classification in a Subheading and Under a Tariff Item

106. Pursuant to Rule 6 of the *General Rules* and Rule 1 of the *Canadian Rules*, the goods in issue should be classified in subheading No. 8522.90 and under tariff item No. 8522.90.90 as other accessories suitable for use solely or principally with the apparatus of heading No. 85.19. In this regard, the Tribunal notes that there are no other potentially applicable subheadings and tariff items.

## **DECISION**

107. For the foregoing reasons, the appeal is allowed.

Serge Fréchette  
Serge Fréchette  
Presiding Member