



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2010-069

Canadian Tire Corporation Ltd.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, November 23, 2011*

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IN THE MATTER OF an appeal heard on October 4, 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 January 10, 2011, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

CANADIAN TIRE CORPORATION LTD.

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Pasquale Michael Saroli
Pasquale Michael Saroli
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	October 4, 2011
Tribunal Member:	Pasquale Michael Saroli, Presiding Member
Counsel for the Tribunal:	Nick Covelli
Research Director:	Matthew Sreter
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PARTICIPANTS:**Appellant**

Canadian Tire Corporation Ltd.

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STATEMENT OF REASONS

1. This is an appeal filed with the Canadian International Tribunal (the Tribunal) by Canadian Tire Corporation Ltd. (Canadian Tire) on March 18, 2011, pursuant to subsection 67(1) of the *Customs Act*.¹
2. Canadian Tire is appealing a re-determination by the President of the Canada Border Services Agency (CBSA), dated January 10, 2011, made pursuant to subsection 60(4) of the *Act*, in respect of the tariff classification of quick-set camouflage hunting blinds (the goods in issue).
3. The goods in issue have three 29 in. x 87 in. connected textile panels, which provide three-sided concealment, are lightweight and portable, and collapse into an 11-in. diameter without disassembly.² They are intended for use in hunting and provide concealment outdoors. To this end, they have a die-cut leafy pattern to simulate foliage.³
4. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 6307.90.99 of the schedule to the *Customs Tariff*⁴ as other made-up articles, including dress patterns, of other textile materials, as determined by the CBSA, or should be classified under tariff item No. 9507.90.99 as other fishing rods, fish-hooks and other line fishing tackle, fish landing nets, butterfly nets and similar nets, decoy birds (other than those of heading No. 92.08 or 97.05) and similar hunting or shooting requisites, as claimed by Canadian Tire.
5. The Tribunal heard the appeal on October 4, 2011. The sole witness was Mr. Graeme Nesbitt, an expert in hunting and shooting,⁵ who testified on behalf of Canadian Tire.

STATUTORY FRAMEWORK

6. The Tribunal determines the proper tariff classification of goods in accordance with prescribed interpretative rules.
7. 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.⁶ 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.
8. Subsection 10(1) of the *Customs Tariff* provides that 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*⁷ and the *Canadian Rules*⁸ set out in the schedule.
9. The *General Rules* comprise six rules. Classification begins with Rule 1 of the *General Rules*, which provides as follows: “. . . classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes”

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

2. Tribunal Exhibit AP-2010-069-05A at para. 4, tab 2.

3. Tribunal Exhibit AP-2010-069-05A at para. 5; Tribunal Exhibit AP-2010-069-03A, tab 1.

4. S.C. 1997, c. 36.

5. Tribunal Exhibit AP-2010-069-08A; *Transcript of Public Hearing*, 4 October 2011, at 6.

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

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

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

10. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*.⁹ Although the *Explanatory Notes* are not binding on the Tribunal, they should be respected, unless there is a sound reason to do otherwise.¹⁰

11. Thus, having regard to the *Explanatory Notes*, the Tribunal must first determine whether the goods in issue can be classified according to the terms of the headings and the relevant section notes in the *Customs Tariff*. In the present appeal, there are no relevant chapter notes.

12. If the goods in issue can be classified at the heading level through the application of Rule 1 of the *General Rules*, then it becomes necessary to consider subsequent rules in sequence, i.e. Rule 2 and so on.

13. Once this approach has been used to determine the heading in which the goods in issue should be classified, the next step is to determine the proper subheading by applying Rule 6 of the *General Rules*.¹¹ The final step is to determine the tariff item by applying Rule 1 of the *Canadian Rules*.¹²

14. By way of section 13 of the *Official Languages Act*,¹³ the English and French versions of the schedule to the *Customs Tariff* are equally authoritative.

RELEVANT CLASSIFICATION PROVISIONS

15. The relevant terms of heading No. 63.07 provide as follows:

Section XI

TEXTILES AND TEXTILE ARTICLES

...

Chapter 63

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

...

I. -OTHER MADE UP TEXTILE ARTICLES

...

63.07 Other made up articles, including dress patterns.

...

9. World Customs Organization, 4th ed., Brussels, 2007 [*Explanatory Notes*]. It also refers to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*, but none of these opinions applies to the present appeal.

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

11. Rule 6 of the *General Rules* provides 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.”

12. Rule 1 of the *Canadian Rules* provides that the tariff item shall be identified according to the terms of the tariff item and any related supplementary notes and, *mutatis mutandis*, to the *General Rules*, for example, by reading the word “heading” in Rule 1 of the *General Rules* as “tariff item”.

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

6307.90 -Other

...

---Other:

...

6307.90.99 ----Of other textile materials

16. The relevant note to Section XI provides as follows:

1. This Section does not cover:

...

(t) Articles of Chapter 95 (for example, toys, games, sports requisites and nets);

...

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

GENERAL

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. . . .

...

SUB-CHAPTER I**OTHER MADE UP TEXTILE ARTICLES**

...

6307.90 - Other

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 tariff Nomenclature.

...

The heading **excludes** textile articles classified in more specific headings of this Chapter or of Chapters 56 to 62. It further **excludes**:

...

(o) Toys, games and entertainment articles, etc., of **Chapter 95**.

18. The relevant terms of heading No. 95.07, followed by the French version, which is instructive in this instance, provide as follows:

Section XX**MISCELLANEOUS MANUFACTURED ARTICLES****Chapter 95****TOYS, GAMES AND SPORTS REQUISITES; PARTS AND ACCESSORIES THEREOF**

...

95.07 Fishing rods, fish-hooks and other line fishing tackle; fish landing nets, butterfly nets and similar nets; decoy "birds" (other than those of heading 92.08 or 97.05) and similar hunting or shooting requisites.

...

9507.90 -Other

...

9507.90.99 - - - -Other

Section XX

MARCHANDISES ET PRODUITS DIVERS

Chapitre 95

JOUETS, JEUX, ARTICLES POUR DIVERTISSEMENTS OU POUR SPORTS; LEURS PARTIES ET ACCESSOIRES

...

95.07 *Cannes à pêche, hameçons et autres articles pour la pêche à la ligne; épuisettes pour tous usages; leurres (autres que ceux des n^{os} 92.08 ou 97.05) et articles de chasse similaires.*

...

9507.90 -Autres

...

9507.90.99 - - - -Autres

19. The relevant *Explanatory Notes* to heading No. 95.07 provide as follows:

This heading covers:

...

- (4) **Certain hunting or shooting requisites** such as decoy “birds” (but **not including** decoy calls of all kinds (**heading 92.08**) or stuffed birds of **heading 97.05**) and lark mirrors.

POSITIONS OF PARTIES

CBSA

20. The CBSA submitted that hunting blinds are not covered by heading No. 95.07 because they are (a) not hunting and shooting requisites and (b) not similar to decoy birds.¹⁴

21. The CBSA agreed that the goods in issue are used for hunting. However, it disagreed that they are hunting or shooting requisites. On the basis of dictionary definitions, which equate the term “requisite” with something that is “needed (for some purpose)” or “required by circumstances”, the CBSA submitted that it was possible to engage in hunting or shooting without the use of the goods in issue.¹⁵

22. The CBSA suggested that the phrase “. . . similar hunting or shooting requisites” was qualified by the phrase “decoy ‘birds’”. In particular, it submitted as follows: “The semi-colon is used to denote a full stop, thus differentiating between separate and distinct portions of the wording in the heading. Accordingly the condition ‘similar hunting and shooting requisites’ is qualified by the phrase ‘decoy “birds” (other than those of heading 92.08 or 97.05)’”¹⁶ [footnotes omitted]. The CBSA argued therefore that “. . . the goods at issue, not being a carved or otherwise constructed item representative of a bird, cannot be considered a hunting or shooting requisite *similar* to decoy birds.”¹⁷

14. Tribunal Exhibit AP-2010-069-05A at para. 28.

15. *Ibid.* at paras. 29-33.

16. *Ibid.* at paras. 34-35.

17. *Ibid.* at para. 35.

23. The CBSA noted that it has consistently classified hunting blinds in heading No. 63.06 as a textile tent or in heading No. 63.07 as textile articles of its constituent material, depending on the product.¹⁸

24. As for the goods in issue, the CBSA determined that, because they have only three sides and no roof, they do not fall within the description of a “tent” in heading No. 63.06.¹⁹

25. Noting that heading No. 63.07 covers “other made up articles” and that the *Explanatory Notes* to heading No. 63.07 state that “[t]his 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”, the CBSA submitted that the goods in issue meet the terms of heading No. 63.07 because they are neither specifically named nor more specifically described elsewhere in the *Customs Tariff*.²⁰

26. The CBSA further claimed that Canadian Tire did not meet the onus to demonstrate, on a *prima facie* basis, that the goods in issue are not properly classified in heading No. 63.07 and that they should be classified in heading No. 95.07.²¹

Canadian Tire

27. Noting that note 1(t) to Section XI, which includes Chapter 63, explicitly excludes from the ambit of that section articles of Chapter 95, Canadian Tire submitted that the Tribunal should begin its analysis with an examination of whether the goods in issue are classifiable in heading No. 95.07.²²

28. In support of its position that the goods in issue fall within heading No. 95.07, Canadian Tire began by noting that a “hunting blind” has been defined as “. . . a cover device for hunters, designed to reduce the chance of detection.”²³ Canadian Tire went on to cite excerpts from hunting literature to underscore the need for, and importance of blinds in the hunting of certain wildfowl.²⁴ For example, one Web site states that a hunting blind is the “. . . most important piece of equipment . . .” for hunting geese.²⁵

29. According to Canadian Tire, that the goods in issue should be classified in heading No. 95.07 is also indicated by their design, best usage, marketing and distribution, which are criteria specifically identified in prior Tribunal jurisprudence as being indicative of proper tariff classification.²⁶ In particular, the goods in issue were specifically designed for hunting (including such features as lightweight portability and camouflage),²⁷ are best used for hunting, are specifically marketed to hunters and are specifically distributed through specialty retailers that cater to the needs of hunters, and the hunting departments of large retailers.²⁸

18. *Ibid.* at para. 38.

19. *Ibid.* at paras. 38-40.

20. *Ibid.* at paras. 41-42.

21. *Ibid.* at para. 16.

22. Tribunal Exhibit AP-2010-069-03A at para. 19.

23. *Ibid.* at para. 16; tab 4 at 10.

24. *Ibid.* at para. 21.

25. *Ibid.* at para. 21; tab 1-3.

26. *Partylite Gifts Ltd. v. Commissioner of the Canada Customs and Revenue Agency* (16 February 2004), AP-2003-008 (CITT).

27. In particular, “[t]he good[s] at issue . . . have a die-cut leafy pattern to simulate real foliage.” Tribunal Exhibit AP-2010-069-05A at para. 5.

28. Tribunal Exhibit AP-2010-069-03A at paras. 24-27.

30. Finally, Canadian Tire claimed that its position is also supported by the French version of heading No. 95.07, which refers to “*articles de chasse*” (hunting articles), which a hunting blind clearly is.²⁹

31. On the basis of these considerations, Canadian Tire submitted that the CBSA erred in classifying the goods in issue in heading No. 63.07, which, by its own terms, operates as a residual heading. In this regard, Canadian Tire submitted that the CBSA failed to explain why the goods in issue were not *prima facie* classifiable in heading No. 95.07.³⁰

ANALYSIS

32. Rule 1 of the *General Rules* provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the provisions that follow.

33. The competing headings in this case are the following:

- a. heading No. 63.07: other made-up articles, including dress patterns; and
- b. heading No. 95.07: fishing rods, fish-hooks and other line fishing tackle; fish landing nets, butterfly nets and similar nets; *decoy “birds” (other than those of heading No. 92.08 or 97.05) and similar hunting or shooting requisites.*

34. In this regard, note 1(t) to Section XI, which includes Chapter 63, explicitly excludes articles of Chapter 95 from the ambit of that section and provides as follows:

Section XI

TEXTILES AND TEXTILE ARTICLES

Notes.

1. This Section does not cover:

...

- (t) *Articles of Chapter 95* (for example, toys, games, sports requisites and nets)

[Emphasis added]

35. Also of relevance is note (1) of the *Explanatory Notes* to Chapter 63, which explicitly excludes made-up textile articles more specifically described elsewhere in the nomenclature from the ambit of heading No. 63.07, and which provides as follows:

GENERAL

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.)

[Italics added for emphasis]

29. *Ibid.* at paras. 28-29.

30. *Ibid.* at paras. 31-34.

36. That heading No. 63.07 was intended to operate as a residual heading is affirmed in the *Explanatory Notes* to that heading, which 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.*

[Italics added for emphasis]

37. Finally, the *Explanatory Notes* to heading No. 63.07 essentially reiterate the substance of note 1(t) to Section XI on the exclusion of articles of Chapter 95 and provide as follows:

The heading . . . further **excludes**:

. . .

(o) Toys, games and entertainment articles, etc., *of Chapter 95.*

[Italics added for emphasis]

38. Given that made-up textile articles are not classifiable in heading No. 63.07 if more specifically described elsewhere in the nomenclature, with note 1(t) to Section XI explicitly excluding articles of Chapter 95 from the ambit of that section, the Tribunal considers it appropriate to take, as its analytical point of departure, a consideration of whether the goods in issue are classifiable in heading No. 95.07.

39. In this regard, if it is found that the goods in issue are not classifiable in heading No. 95.07, the Tribunal will then proceed to a determination of whether the goods in issue are classifiable elsewhere in the nomenclature or in residual heading No. 63.07.

40. The Tribunal accepts the CBSA's grammatical construction of heading No. 95.07 and its resulting conclusion that the phrase "... similar hunting or shooting requisites" is qualified by the prior reference to "... decoy 'birds' (other than those of heading 92.08 or 97.05) . . ."³¹ More specifically, the Tribunal is of the view that the reference to "decoy birds" requires that the goods in issue (a) be hunting or shooting requisites in the same sense as decoy birds and (b) be similar to decoy birds. The Tribunal will therefore examine the goods in issue against each of these conditions of heading No. 95.07.

Are the Goods in Issue Hunting or Shooting Requisites in the Same Sense as Decoy Birds?

41. In the Tribunal's view, the CBSA's submission that the goods in issue cannot be considered requisites because it is possible to engage in hunting or shooting without the use of a hunting blind reflects an improper contextual interpretation of the term "requisites" in heading No. 95.07.

42. Indeed, the manner in which the CBSA interpreted this condition of heading No. 95.07 in the case of the goods in issue would have precluded decoy birds themselves from being considered "hunting or shooting requisites", this notwithstanding their characterization as such in that heading. In this regard, while the use of decoy birds is typical in the hunting of wildfowl, such an activity can occur by other modes that do not involve the use of decoys, as indicated in the following exchange:

Presiding Member: Is there a type of hunting . . . where you just target the birds in flight?

Mr. Nesbitt: Yes, if you know where their flight pattern is.³²

31. Specifically, the CBSA submits the following: "The semi-colon is used [in heading No. 95.07] to denote a full stop, thus differentiating between separate and distinct portions of the wording in the heading. Accordingly the condition 'similar hunting or shooting requisites' is qualified by the phrase 'decoy "birds"' (other than those of heading 92.08 or 97.05)" [footnotes omitted]. Tribunal Exhibit AP-2010-069-05A at para. 35.

32. *Transcript of Public Hearing*, 4 October 2011, at 23.

43. Reference was also made to the “jump shooting” of ducks, which does not involve the use of decoy birds, and which the expert witness described in the following exchange:

Presiding Member: [What is] [j]ump shooting?

Mr. Nesbitt: . . . you paddle a canoe through a swamp and you would flush [the ducks] up³³

44. The Tribunal notes that the dictionary definition of “requisite” includes something that is “required by circumstances”³⁴ or “needed (for some purpose)”.³⁵ It is the Tribunal’s view that the term “requisite”, in the context of its use in heading No. 95.07, includes within its ambit not only those items considered absolutely indispensable to wildfowl hunting but also those specific articles needed for a particular purpose relating to exigencies that can arise from the circumstances in which such a hunting activity typically occurs.

45. In this regard, the evidence indicates that “. . . [among the] items used by almost all waterfowl hunters [are] . . . a hunting blind [and] decoys . . .”,³⁶ with “[d]ecoys . . . [being] one of the most important pieces of equipment for the waterfowler”³⁷ and their usage being especially important in late-season hunting. In particular, “. . . since gun-shy late-season birds have been hunted hard, . . . strategies for decoy layout—and blind placement—become critical.”³⁸

46. From the evidence on the record, the Tribunal concludes that, while decoys are almost always used by waterfowl hunters, hunting can and does occur without the use of such props. Nevertheless, they remain hunting requisites in that their use is, as a practical matter, required in circumstances where wary birds must be coaxed into shooting range. Similarly, a hunting blind can be considered a hunting requisite in that its use is, as a practical matter, necessary in circumstances where the environment, in which the hunting activity is taking place, does not afford the hunter adequate natural camouflage.³⁹

47. In short, while neither decoy birds nor blinds can be considered a *sine qua non* to the hunting of wildfowl, since such a hunting activity can and does take place without the use of either one, their practical indispensability in specific circumstances associated with wildfowl hunting renders both of them hunting “requisites” in the broader sense of that term.

48. Indeed, the fact that the French version of heading No. 95.07 does not use the French equivalent of the word “requisites”, but rather, the word “*articles*” (i.e. “*articles de chasse similaires*”), supports the view that classification in heading No. 95.07 should not turn upon an unnecessarily narrow interpretation of that word in the English version.

49. The Tribunal is therefore satisfied that hunting blinds are hunting “requisites” in the same sense as decoy birds.

33. *Ibid.* at 24.

34. Tribunal Exhibit AP-2010-069-05A at para. 31.

35. *Ibid.*

36. Tribunal Exhibit AP-2010-069-03A, tab 1 at 6.

37. *Ibid.*, tab 1 at 9.

38. *Ibid.*, tab 1 at 10.

39. Mr. Nesbitt testified that this is especially the case in the hunting of wild turkeys, which are intelligent birds with keen eyesight. *Transcript of Public Hearing*, 4 October 2011, at 7, 9, 28-29.

Are the Goods in Issue Similar to Decoy Birds?

50. The Tribunal does not accept the CBSA's contention that "... the goods at issue, not being a carved or otherwise constructed item representative of a bird, cannot be considered a hunting or shooting requisite *similar to decoy birds*".⁴⁰

51. While the Tribunal agrees with the CBSA that the prior reference in heading No. 95.07 to "decoy 'birds' (other than those of heading 92.08 or 97.05)" indeed qualifies the meaning of the subsequent phrase "... similar hunting or shooting requisites", it is the Tribunal's view that the required similarity of the latter to the former is not as to avian physical likeness. Indeed, restricting the meaning of the word "similar", as it relates to the phrase "... hunting or shooting requisites", in the manner proposed by the CBSA would render that phrase redundant and devoid of independent meaning or purpose insofar as carved or otherwise constructed hunting articles representative of birds would already be subsumed in the specific reference in that heading to "decoy 'birds'".

52. Nor, in the Tribunal's view, can hunting or shooting requisites similar to decoy birds be confined to other types of hunting decoys,⁴¹ since, if that were indeed the intent of heading No. 95.07, as suggested by the CBSA in the clarification of its original position,⁴² the entire phrase "... decoy 'birds' (other than those of heading 92.08 or 97.05) and similar hunting or shooting requisites" in heading No. 95.07 could have been reduced to a simple reference to "decoy birds (other than those of heading 92.08 or 97.05) and similar decoys", in the same manner as the immediately preceding reference in the same heading to "... fish landing nets, butterfly nets and similar nets...".⁴³ In the Tribunal's view, the reference to "... similar... requisites" instead of to "similar decoys" in heading No. 95.07 is deliberate and evinces a clear intention to broaden the range of similar hunting and shooting articles beyond other types of hunting decoys.

53. Indeed, to restrict the scope of similar goods to other types of hunting decoys would result in the English version of heading No. 95.07 being ascribed a narrower reach than the French version of same, which extends beyond hunting decoys generally, to also capture hunting articles of a similar nature. The French version of heading No. 95.07 provides as follows:

*Cannes à pêche, hameçons et autres articles pour la pêche à la ligne; épuisettes pour tous usages; **leurre**s (autres que ceux des n^{os} 92.08 ou 97.05) **et articles de chasse similaires**.*

[Bold added for emphasis]

54. Finally, and although the disposition of this appeal does not require the Tribunal to delve into the matter in any detail, the inclusion in heading No. 95.07 of the reference to "... similar... shooting [as distinct from hunting] requisites" implies that the range of articles considered "similar" to decoy birds would necessarily extend beyond other hunting decoys to also capture certain articles required in a shooting activity. Suffice it to say that the Tribunal accepts as reasonable the following observation made by

40. Tribunal Exhibit AP-2010-069-5A at para. 35.

41. In this regard, Mr. Nesbitt indicated in his expert testimony that "[t]here's pretty well decoys for everything. You can get deer or antelope or coyote decoys. There's all sorts of decoys." *Transcript of Public Hearing*, 4 October 2011, at 25.

42. *Transcript of Public Hearing*, 4 October 2011, at 81.

43. Indeed, the Tribunal is inclined to agree with the following observation made by Canadian Tire: "If that was all [that heading No.] 95.07 covered, it just would have said decoys. It wouldn't have had to go any further." *Transcript of Public Hearing*, 4 October 2011, at 87-88.

Canadian Tire : “. . . in the activity of shooting, there is no application for [a] decoy. . . . [B]eyond just the hunting provision[,] there is a shooting provision here, and clearly the provision cannot just cover decoys. . . . It has to go beyond that.”⁴⁴

55. The Tribunal most recently had the occasion to consider the issue of similar articles in *Rui Royal International Corp. v. President of the Canada Border Services Agency*.⁴⁵ In that case, the Tribunal, after surveying the jurisprudence, agreed that “. . . the test for determining a ‘similar article’ is not a strict one”,⁴⁶ that, while “. . . similar goods had to share important characteristics and have common features . . . ‘similar’ did not mean ‘identical’”⁴⁷ and that similar goods had to possess “. . . the same general attributes”,⁴⁸ with this similarity of characteristics relating to both “. . . make and functionality . . .”⁴⁹ These observations, albeit relevant, were made in a somewhat different context from the present one.⁵⁰

56. For the reasons outlined above, it is the Tribunal’s view that a contextual reading of heading No. 95.07 requires the similarity of the goods in issue to decoy birds to be assessed on the basis of a standard that is less stringent than that advocated by the CBSA and which would allow for a finding of similarity on the basis of shared general physical and functional characteristics.

57. In this regard, the Tribunal finds that both the goods in issue and decoy birds are:

- physically similar in the sense of each being physically designed to simulate a particular aspect of the natural environment in which a wildfowl hunting activity takes place, i.e. the foliage⁵¹ and the birds themselves;
- functionally similar in the sense of each having, as their broader functional purpose, the creation of an illusory “bird-friendly” environment (with these articles commonly being used in tandem to achieve this specific purpose).⁵²

58. In addition to these shared general characteristics, the evidence also indicates that the goods in issue and decoy birds share more specific physical attributes. Specifically, both are lightweight, portable⁵³ and easily assembled and disassembled⁵⁴ to allow the hunter to quickly adopt a different position in accordance with the movement patterns of the targeted birds.

44. *Transcript of Public Hearing*, 4 October 2011, at 88-89.

45. (30 March 2011), AP-2010-003 (CITT).

46. *Ibid.* at para. 82.

47. *Ibid.*

48. *Ibid.*

49. *Ibid.* at para. 83.

50. At issue in that case was whether certain textile articles (i.e. certain emergency tow straps) were similar to webbing carrier straps. The *Explanatory Notes* to heading No. 63.07 explicitly included “. . . webbing carrier straps and similar articles” in that heading’s reference to “[o]ther made up articles, including dress patterns.” In this regard, the Tribunal, after considering the key constituent elements (i.e. “webbing”, “carrier” and “strap”) of the generic description by reference to which similarity was to be determined, found the tow straps to be sufficiently similar to webbing carrier straps to constitute similar articles for purposes of the *Explanatory Notes* and, by extension, classification in heading No. 63.07.

51. Tribunal Exhibit AP-2010-069-5A at para. 5 indicates that the goods in issue have “. . . a die-cut leafy pattern to simulate real foliage.”

52. In this regard, the evidence indicates that hunting blinds and decoy birds require strategic placement both in relation to the birds and to each other. Tribunal Exhibit AP-2010-069-03A, tab 1 at 10; *Transcript of Public Hearing*, 4 October 2011, at 27-28.

53. Tribunal Exhibit AP-2010-069-03A at para. 7.

54. *Transcript of Public Hearing*, 4 October 2011, at 92.

59. On the basis of these shared general characteristics and specific attributes, the Tribunal is satisfied that the goods in issue are “similar” to decoy birds within the broader meaning of that term in the specific context of heading No. 95.07.

60. Consequently, the Tribunal finds that the goods in issue are classifiable in heading No. 95.07.

61. That being the case, the goods in issue are not classifiable in heading No. 63.07 by virtue of note 1(t) to Section XI.

62. Therefore, pursuant to Rule 1 of the *General Rules*, the Tribunal finds that the goods in issue should be classified in heading No. 95.07.

63. Within that heading, the subheadings refer to fishing equipment and to “Other”. As the goods in issue are used in hunting rather than fishing, they constitute “Other”. Therefore, pursuant to Rule 6 of the *General Rules*, the goods in issue should be classified in subheading No. 9507.90.

64. Considering the terms of the tariff items within that subheading, and applying the same logic, the Tribunal finds, pursuant to Rule 1 of the *Canadian Rules*, that the goods in issue should be classified under tariff item No. 9507.90.99.

DECISION

65. The appeal is allowed.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member