



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2013-046

Tenth Siding Trading Co.
dba Rock Gear

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, September 23, 2014*

TABLE OF CONTENTS

DECISION.....	i
STATEMENT OF REASONS	1
INTRODUCTION	1
PROCEDURAL HISTORY	1
GOODS IN ISSUE.....	1
STATUTORY FRAMEWORK.....	2
TARIFF NOMENCLATURE.....	3
POSITIONS OF PARTIES.....	6
Rock Gear	6
CBSA	7
ANALYSIS.....	8
Order of Analysis	8
“Seats” of Heading No. 94.01.....	8
“Rucksacks” or “Similar Containers” of “Textile Materials” of Heading No. 42.02.....	11
DECISION	13

IN THE MATTER OF an appeal heard on June 17, 2014, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF two decisions of the President of the Canada Border Services Agency, dated August 29, 2013, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

TENTH SIDING TRADING CO. DBA ROCK GEAR

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Jason W. Downey
Jason W. Downey
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: June 17, 2014
Tribunal Member: Jason W. Downey, Presiding Member
Counsel for the Tribunal: Carrie Vanderveen
Catalin Tripon (student-at-law)
Registrar Officer: Ekaterina Pavlova
Registrar Support Officer: Alexis Chénier

PARTICIPANTS:**Appellant**

Tenth Siding Trading Co. dba Rock Gear

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President of the Canada Border Services Agency

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STATEMENT OF REASONS

INTRODUCTION

1. This appeal was filed by Tenth Siding Trading Co. dba Rock Gear (Rock Gear) on November 8, 2013, pursuant to subsection 67(1) of the *Customs Act*¹ from two re-determinations by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4).

2. The issue in this appeal is whether LittleLife Cross Country S2 child carriers and LittleLife Ultralight Convertible S2 child carriers (the goods in issue)² are properly classified under tariff item No. 6307.90.99 of the schedule to the *Customs Tariff*³ as other made up articles of textile materials, as determined by the CBSA, or should be classified under tariff item No. 9401.79.90 as other seats with metal frame, other than for domestic purposes, or, in the alternative, under tariff item No. 4202.92.20 as tool bags, haversacks, knapsacks, packsacks and rucksacks, as claimed by Rock Gear.

PROCEDURAL HISTORY

3. On February 17, 2012, Rock Gear imported LittleLife Cross Country S2 child carriers under tariff item No. 4202.92.90 and LittleLife Ultralight Convertible S2 child carriers under tariff item No. 5608.19.90. Rock Gear also imported both models on April 25, 2012, under tariff item No. 5608.19.90.⁴

4. On July 30, 2012, pursuant to subsection 32.2(2) of the *Act*, Rock Gear submitted a request to have the goods re-classified under tariff item No. 6307.90.99. The CBSA granted this request on August 22, 2012.⁵

5. On November 21, 2012, pursuant to subsection 60(1) of the *Act*, Rock Gear requested that the goods in issue be classified under tariff item No. 9401.79.90.⁶ The CBSA denied this request on August 29, 2013.⁷

6. On November 8, 2013, Rock Gear appealed the CBSA's decision.

7. The Canadian International Trade Tribunal (the Tribunal) held a public hearing in Ottawa, Ontario, on June 17, 2014. Rock Gear produced a single witness, Mr. David Snow, Sales Manager, Eastern Canada, Rock Gear Distribution.

8. In its appeal, Rock Gear argued that the goods in issue should be classified under tariff item No. 9401.79.90 or, alternately, under tariff item No. 4202.92.20. For its part, the CBSA argued that the goods in issue were properly classified under tariff item No. 6307.90.99.

GOODS IN ISSUE

9. The goods in issue were imported from Vietnam and are designed to help an adult carry a child on his/her back. The Ultralight Convertible S2 model has a maximum weight load of 15 kg. It contains two main zippered compartments: one for the child and the other for storage purposes. The Cross Country S2

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

2. Exhibit AP-2013-046-10A at para. 6, Vol. 1B.

3. S.C. 1997, c. 36.

4. Exhibit AP-2013-046-10A at para. 13, Vol. 1B.

5. *Ibid.* at para. 14; Exhibit AP-2013-046-06 at paras. 5-6, Vol. 1.

6. Exhibit AP-2013-046-06 at para. 7, Vol. 1; Exhibit AP-2013-046-10A at para. 15, Vol. 1B.

7. Exhibit AP-2013-046-06 at para. 8, Vol. 1.

model has a maximum weight load of 20 kg and has an open seating area, two storage pockets and a detachable metal framed hood for protection against the weather.⁸

10. Each model consists of an aluminum frame, an anatomically shaped textile seat (which is attached to the frame), padded shoulder straps and hip belt, an anchor point (a cavity at the base of the carrier in which the customer can put his/her foot to immobilize the carrier when loading/unloading the child), safety harnesses, a detachable face pad, handles and various compartments to hold items necessary for the child.

STATUTORY FRAMEWORK

11. 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).⁹ 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.

12. Subsection 10(1) of the *Customs Tariff* provides that the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*¹⁰ and the *Canadian Rules*¹¹ set out in the schedule.

13. The *General Rules* comprise six rules. Classification begins with Rule 1, which 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 other rules.

14. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*¹² and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*¹³ published by the WCO. While classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.¹⁴

15. Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to determine the proper subheading and tariff item, applying Rule 6 of the *General Rules* in the case of the former and the *Canadian Rules* in the case of the latter.

8. Exhibit AP-2013-046-10A at paras. 7-11, Vol. 1B; Exhibit AP-2013-046-06, tab 2, Vol. 1.

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

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

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

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

13. World Customs Organization, 5th ed., Brussels, 2012.

14. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17 where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that explanatory notes be respected unless there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to classification opinions.

TARIFF NOMENCLATURE

16. The tariff classifications relevant to this appeal provide as follows:

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.

-Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels and similar containers:

...

- 4202.92** - -With outer surface of sheeting of plastics or of textile materials

...

- 4202.92.20 -.-Tool bags, haversacks, knapsacks, packsacks and rucksacks

...

Chapter 63**OTHER MADE UP TEXTILE ARTICLES; SETS;
WORN CLOTHING AND WORN TEXTILE ARTICLES; RAGS**

...

- 63.07** Other made up articles, including dress patterns.

...

- 6307.90** -Other

...

- 6397.90.99 - - - -Of other textile materials

...

Chapter 94**FURNITURE; BEDDING, MATTRESSES, MATTRESS SUPPORTS, CUSHIONS AND SIMILAR
STUFFED FURNISHINGS; LAMPS AND LIGHTING FITTINGS, NOT ELSEWHERE
SPECIFIED OR INCLUDED; ILLUMINATED SIGNS, ILLUMINATED
NAME-PLATES AND THE LIKE; PREFABRICATED BUILDINGS**

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

...

-Other seats, with metal frames

...

9401.79 --Other

...

9401.79.90 ---Other

17. There are no notes to Section VIII (which includes Chapter 42). The relevant notes to Chapter 42 provide as follows:

2. This Chapter does not cover:

...

(k) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings);

...

18. The relevant portions of the explanatory notes to heading No. 42.02 provide as follows:

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

...

The articles covered by the second part of the heading must, however, be only of the materials specified therein or must be wholly or mainly covered with such materials or with paper (the foundation may be of wood, metal, etc.). . . . The expression “similar containers” in this second part includes note-cases, writing-cases, pen-cases, ticket-cases, needle-cases, key-cases, cigar-cases, pipe-cases, tool and jewellery rolls, shoe-cases, brush-cases, 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.,

19. The relevant notes to Section XI (which includes Chapter 63) provide as follows:

1. This Section does not cover:

...

(l) Articles of textile materials of heading 42.01 or 42.02;

...

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

...

7. For the purpose of this Section, the expression “made up” means:

...

(e) Cut to size and having undergone a process of drawn thread work;

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

...

20. The relevant explanatory notes to Chapter 63 provide as follows:

This Chapter includes:

- (1) Under headings 63.01 to 63.07 (sub-Chapter I) made up textile articles of any textile fabric (woven or knitted fabric, felt, nonwovens, etc.) which are **not** more specifically described in other Chapters of Section XI or elsewhere in the Nomenclature. . . .

...

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

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

21. The explanatory notes to heading No. 63.07 provide as follows:

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

It includes, in particular:

...

- (16) Carry cots, portable cradles and similar carriers for children.

Infants' seats of the type intended to be hooked, for example, over the backs of car seats are **excluded (heading 94.01)**.

22. The relevant notes to Chapter 94 provide as follows:

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

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

- (a) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture;
- (b) Seats and beds.

23. The relevant explanatory notes to Chapter 94 provide as follows:

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

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

...

For the purposes of this Chapter, the term "furniture" means:

- (A) Any "movable" articles (**not included** under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing

on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices . . . or ships, aircraft, . . . motor vehicles, . . . or similar means of transport. . . . Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

(B) The following:

. . .

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

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

24. The relevant explanatory notes to heading No. 94.01 provide as follows:

Subject to the exclusions mentioned below, this heading covers all seats (including those for vehicles, provided that they comply with the conditions prescribed in Note 2 to this Chapter), for example:

Lounge chairs, arm-chairs, folding chairs, deck chairs, infants’ high chairs and children’s seats designed to be hung on the back of other seats (including vehicle seats), grandfather chairs, benches,

POSITIONS OF PARTIES

Rock Gear

25. Rock Gear primarily argued that the goods in issue should be classified under tariff item 9401.79.90 pursuant to Rule 1 or Rule 3 (c) of the *General Rules*.¹⁵ In this regard, it pointed to Note 2 to Chapter 94, which specifically includes seats designed to be hung. Rock Gear argued that the goods in issue were seats effectively designed to be “hung” on the back of the wearer’s shoulders and that heading No. 94.01 made no specific distinction as to how and where these seats were meant to be “hung”.¹⁶

26. Rock Gear pointed to similarities with the Tribunal’s finding in *Evenflo Canada Inc. v. President of the Canada Border Services Agency*,¹⁷ where car safety seats not designed to be placed on the floor or the ground (notwithstanding the provision of “. . . only if they are designed for placing on the floor or ground” of Note 2 to Chapter 94) were still classified in heading No. 94.01 as other seats.¹⁸

27. Rock Gear submitted that the goods in issue qualify as seats since they meet the dictionary definitions of the word “seat” and are designed to be sat on by children who are old enough to sit independently, and the advertising material and instruction manuals refer to “seats” when listing the features of the goods. In addition, people familiar with the industry do not call child carriers “slings” or “carrycots” because the goods have the specific function of carrying a child while he/she is sitting in it.¹⁹

15. Exhibit AP-2013-046-06 at paras. 3, 98, 121, Vol. 1.

16. *Ibid.* at paras. 37-38, 40; *Transcript of Public Hearing*, 17 June 2014, at 23-24.

17. (19 May 2010), AP-2009-049 (CITT) [*Evenflo*].

18. Exhibit AP-2013-046-06 at para. 43, Vol. 1.

19. *Ibid.* at paras. 49-62; *Transcript of Public Hearing*, 17 June 2014, at 31-32.

28. In the alternative, Rock Gear argued that the goods in issue are *prima facie* classifiable in heading No. 42.02, as they are similar to rucksacks in that they are designed to carry a load.²⁰ Rock Gear submitted that what was contained in the load, whether goods or a child, was not limited by the dictionary definitions of “rucksack” or “backpack”.²¹

29. With respect to the CBSA’s position, Rock Gear argued that the goods in issue do not fall in heading No. 63.07,²² as they do not meet the relevant definition of “made up” found in Note 7 to Section XI and they are more specifically listed in Chapter 94 or 42.²³ Moreover, the goods in issue are not carrycots or portable cradles included in paragraph 17 of the explanatory notes to heading No. 63.07, as they, unlike the items in paragraph 17, are designed for an infant or child to sit in.²⁴

CBSA

30. The CBSA argued that the goods in issue are properly classified in heading No. 63.07, as they are (1) articles (2) made up (3) of any textile and (4) not more specifically described elsewhere.²⁵ The goods in issue are “articles”, as they are finished products packaged for retail sale.²⁶ They are “made up” and “of any textile” as they consist of various textile components that are assembled by sewing together the materials and inserting a metal tube.²⁷

31. Although it recognized that the metal component of the goods in issue is more than a mere trimming, the CBSA argued that the goods in issue could still be classified in heading No. 63.07 pursuant to Rule 1 of the *General Rules* as they are similar to the goods described in paragraph 17 of the explanatory notes to heading No. 63.07,²⁸ which includes carry cots, portable cradles and similar carriers for children. The CBSA submitted that the goods in issue are similar to these items, as they can be described as “carriers”, are portable items designed to carry children and are marketed as such. Moreover, like carry cots, they have features that seek to maximize the comfort and safety of the child being carried.²⁹

32. In response to Rock Gear’s position regarding heading No. 94.01, the CBSA argued that the goods in issue do not fall in this heading, as they are not designed to be placed on the ground or hung and are not used to equip private dwellings.³⁰

20. *Transcript of Public Hearing*, 17 June 2014, at 38-39.

21. *Ibid.* at 38.

22. The Tribunal finds it unusual for Rock Gear to argue *against* heading No. 63.07 given that it had initially requested to have the goods in issue reclassified under this heading in July 2012, to which the CBSA had agreed. The Tribunal does however note that Rock Gear did ask the CBSA to further reclassify the goods in heading No. 94.01 *before* the appeal. Its position during the appeal is therefore not inconsistent with its last position before the appeal (except for its alternative position during the appeal regarding heading No. 42.02). The CBSA did not invoke a limitation within the *Act* preventing the appellant to proceed in this way and the Tribunal effectively proceeded *de novo*.

23. Exhibit AP-2013-046-06 at paras. 80-82, Vol. 1; *Transcript of Public Hearing*, 17 June 2014, at 37.

24. Exhibit AP-2013-046-06 at paras. 88-93, Vol. 1.

25. Exhibit AP-2013-046-10A at para. 39, Vol. 1B.

26. *Ibid.* at para. 43; *Transcript of Public Hearing*, 17 June 2014, at 45.

27. Exhibit AP-2013-046-10A at para. 45, Vol. 1B; *Transcript of Public Hearing*, 17 June 2014, at 45.

28. Exhibit AP-2013-046-10A at paras. 58-62, Vol. 1B; *Transcript of Public Hearing*, 17 June 2014, at 46-47.

29. Exhibit AP-2013-046-10A at paras. 65-72, 76, Vol. 1B.

30. *Ibid.* at paras. 92-93; *Transcript of Public Hearing*, 17 June 2014, at 50-51.

33. The CBSA also argued that the goods in issue are not similar to “rucksacks” of heading No. 42.02 as they are specifically designed to carry children rather than goods³¹ and any compartments that they may have for carrying smaller items are incidental to their nature as child carriers.³² In addition, they have features not shared with “rucksacks”, such as an anchor point and a child restraint system.³³

ANALYSIS

Order of Analysis

34. The Tribunal has previously held that goods are not *prima facie* classifiable in two headings if, by virtue of a relevant section or chapter note, the terms of one heading are expressly excluded from the other.³⁴ The Tribunal has also held that, if there is such a relevant exclusionary note, the Tribunal should therefore begin its analysis with the heading to which the exclusionary note does not apply.³⁵

35. Note 1(s) to Section XI (which includes Chapter 63) and Note 2(k) to Chapter 42 explicitly exclude articles of Chapter 94. The Tribunal will therefore begin its analysis with whether the goods in issue are *prima facie* classifiable as *articles* of Chapter 94.

36. If the Tribunal considers that the goods in issue do not fall in Chapter 94, it will then consider whether the goods are “[a]rticles of textile materials of heading . . . 42.02” [emphasis added], given that Note 1(l) to Section XI specifically excludes these goods from Chapter 63. If the goods in issue are not classifiable in heading No. 42.02, the Tribunal will then consider whether they are classifiable in heading No. 63.07.

37. However, if the Tribunal concludes that the goods in issue are *prima facie* classifiable in a previous heading, it will not consider whether the goods in issue are also classifiable in a remaining heading, due to the operation of the exclusionary notes.

38. Furthermore, the exclusionary notes prevent the goods in issue from being *prima facie* classifiable in two or more of the identified headings. Therefore, the Tribunal considers it possible to classify the goods in issue using Rule 1 of the *General Rules* alone and, hence, it does not need to consider Rock Gear’s argument regarding Rule 3 (c).

“Seats” of Heading No. 94.01

39. Neither heading No. 94.01 nor the relevant chapter or explanatory notes defines the term “seat”. The Tribunal may therefore have recourse to its ordinary meaning. The *Canadian Oxford Dictionary* defines “seat” as “**1a**: a thing made or used for sitting on, such as a chair, stool, bench, etc. **1b**: the part of a

31. Exhibit AP-2013-046-10A at paras. 114, 117, Vol. 1B; *Transcript of Public Hearing*, 17 June 2014, at 49-50, 52.

32. Exhibit AP-2013-046-10A at para. 111, Vol. 1B; *Transcript of Public Hearing*, 17 June 2014, at 52-53.

33. Exhibit AP-2013-046-10A at para. 111, Vol. 1B; *Transcript of Public Hearing*, 17 June 2014, at 53.

34. *Sanus Systems v. President of the Canada Border Services Agency* (8 July 2010), AP-2009-007 (CITT) at para. 35; *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency* (6 April 2011), AP-2010-019 (CITT) [*Zellers*] at para. 49.

35. *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (29 July 2013), AP-2012-041 and AP-2012-042 (CITT) at para. 46.

chair etc. on which one actually sits. . . .”³⁶ The *Merriam-Webster’s Collegiate Dictionary* defines “seat” as “. . . a chair, stool, or bench intended to be sat in or on”³⁷

40. Note 2 to Chapter 94 further describes the types of seats referred to in heading Nos. 94.01 to 94.03 as being “. . . designed for placing on the floor or ground” or “. . . designed to be hung, to be fixed to the wall or to stand one on the other”.

41. Thus, a seat is a thing made or used for sitting on that is designed for placing on the floor or ground, to be hung, fixed to the wall or to stand one on the other.

42. Rock Gear argued that the goods in issue can be classified as seats since the seat in the child carrier is the most important component.³⁸ Rock Gear submitted that the goods in issue meet the description found in Note 2 to Chapter 94, as they are designed to be hung on the back of a person.³⁹

43. As will be discussed further below, the Tribunal does not agree with Rock Gear’s position. The Tribunal had the occasion to closely examine the goods in issue, to manipulate them and to get an understanding for their intended use. The Tribunal observed that the goods in issue are composed of an aluminum frame, textile body components, a textile seat, textile storage pockets, a child restraint system, a detachable pillow, and waist and shoulder straps for the wearer.

44. In the Tribunal’s view, many of these components are equally important to the single seat unit for the proper functioning of the goods in issue. For example, the witness for Rock Gear, Mr. Snow, testified that the goods in issue cannot be used without the frame.⁴⁰ Likewise, the Tribunal considers that the goods in issue cannot be used without the waist and shoulder straps, which are designed to effectively distribute the weight of the child being carried. The Tribunal understands that these components are at least equally important to the seat for the overall functioning of the goods in issue. As such, the Tribunal does not consider that the seat alone stands out as the defining feature which negates or obscures all others.

45. Furthermore, Rock Gear argued that the “. . . main characteristic and essential function . . .” of the goods in issue is to transport a child.⁴¹ Mr. Snow specified that the goods in issue were designed to allow an adult to carry a child six months and older while doing a variety of activities, particularly hiking, when out for an extended period of time.⁴² This indicates to the Tribunal that the goods in issue were primarily designed as *carriers* rather than actual *seats* for a child.

46. This conclusion is confirmed by the warning label on the goods in issue. This label warns against leaving a child unattended in the carrier.⁴³ Mr. Snow explained that the main reason for this warning was that the goods in issue were not designed as a cot, but rather specifically as a carrier;⁴⁴ that the child sits in the goods in issue is therefore incidental to their primary function as carriers.

36. Second ed., s.v. “seat”.

37. Eleventh ed., s.v. “seat”.

38. Exhibit AP-2013-046-06 at para. 65, Vol. 1.

39. *Ibid.* at para. 40.

40. *Transcript of Public Hearing*, 17 June 2014, at 10.

41. Exhibit AP-2013-046-06 at para. 64, Vol. 1.

42. *Transcript of Public Hearing*, 17 June 2014, at 5.

43. Exhibit AP-2013-046-06, tab 2, Vol. 1; *Transcript of Public Hearing*, 17 June 2014, at 8-9.

44. *Transcript of Public Hearing*, 17 June 2014, at 9.

47. Moreover, the marketing material for the goods in issue regularly refers to the goods in issue as “carriers” rather than seats.⁴⁵ It was also revealing to hear both the counsel and the witness for Rock Gear refer, on numerous occasions, to the goods in issue as carriers.⁴⁶

48. Indeed, Mr. Snow testified that *child carrier* was the standard term used to refer to the goods in issue⁴⁷ and Rock Gear admitted that the marketing material did not refer to the goods in issue as child seats.⁴⁸ This too supports the Tribunal’s conclusion that the goods in issue are primarily both used and known as *carriers* rather than *seats*.

49. With regard to Rock Gear’s argument that the goods in issue meet the requirement of being “designed to be hung”, notwithstanding the fact that this occurs on the back of a person, the Tribunal considers that the scope of this requirement must be considered within the context provided by Chapter 94.

50. The explanatory notes to Chapter 94 describe the chapter as covering furniture, mattresses, lamps and prefabricated buildings. Given that seats fall in heading No. 94.01, which the explanatory notes describe as “furniture”, the Tribunal considers that the scope of what is considered a *seat* of heading No. 94.01 must be informed by what is considered furniture. To define the term “seat” otherwise would detract from the nature of Chapter 94.

51. The explanatory notes to Chapter 94 define “furniture” as follows:

- (A) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices . . . or ships, aircraft, . . . motor vehicles, . . . or similar means of transport. . . . Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.
- (B) The following:
 - ...
 - (ii) Seats or beds designed to be hung or to be fixed to the wall.

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

52. In a number of previous cases, the Tribunal has developed five criteria that goods must meet in order to be considered “furniture”.⁴⁹ In this case, the Tribunal considers that the goods in issue must meet the following criteria: (1) movable; (2) articles; (3) constructed for placing on the floor or ground, or designed to be hung or to be fixed to the wall; (4) mainly used with a utilitarian purpose; and (5) used to equip private dwellings.

45. Exhibit AP-2013-046-06 at para. 17, Vol. 1; Exhibit AP-2013-046-06, tab 2, Vol. 1.

46. See for example, Exhibit AP-2013-046-06 at paras. 17, 32, Vol. 1; *Transcript of Public Hearing*, 17 June 2014, at 4, 6, 11, 14, 32.

47. *Transcript of Public Hearing*, 17 June 2014, at 12.

48. *Ibid.* at 33.

49. *Krueger International Canada Inc. v. Deputy M.N.R.* (14 February 1996), AP-94-357 (CITT); *Wal-Mart Canada Corporation v. President of the Canada Border Services Agency* (13 June 2011), AP-2010-035 (CITT) at para. 43; *Zellers* at para. 55; *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency* (6 April 2011), AP-2010-005 (CITT) at para. 51, which also includes that “. . . the goods must not be included under another more specific heading of the nomenclature.”

53. The Tribunal notes that the requirement to be “designed to be hung” is found both for seats and for furniture. In the Tribunal’s view, this requirement must be interpreted within the context provided by the requirement that goods be used “to equip private dwellings”. This context indicates that, to be seats or furniture, goods must be designed to be hung within the buildings or specific modes of transportation mentioned in the definition of “furniture”. As such, the phrase “designed to be hung” cannot be interpreted as designed to be hung on a person’s back, as argued by Rock Gear.⁵⁰

54. This conclusion is supported by the exception in the definition of “furniture” which specifically refers to furniture being “. . . designed . . . for hanging *on walls or from the ceiling*” [emphasis added].

55. Moreover, the Tribunal considers that the goods in issue are not designed “to equip private dwellings”. As mentioned above, Mr. Snow testified that the goods in issue are primarily intended for hiking and other activities conducted outside of the house.⁵¹ This is confirmed by the marketing material for the goods in issue, which picture them being used outdoors and describe them as being “. . . perfect for days in the country or [for] city excursions.”⁵² On the basis of this evidence, the Tribunal concludes that the goods in issue have very limited, if any, purposes in equipping private dwellings.

56. Therefore, even if the goods in issue do meet the other requirements for “furniture”, the Tribunal considers that they cannot be considered furniture or seats. They are therefore not classifiable in heading No. 94.01 as seats.

57. In reaching its conclusions, the Tribunal attentively considered *Evenflo* and finds that the facts in the present case do not support an equivalent finding, as argued by Rock Gear. Different goods are at issue in both cases and different headings are being disputed. Moreover, even though the Tribunal reached similar conclusions regarding the roles played by the various components of the goods in each case, the Tribunal, in *Evenflo*, ultimately determined that the goods in that case were classifiable in heading No. 94.01 using Rule 3 (c) of the *General Rules*. As mentioned above, the Tribunal cannot make the same decision here; due to the operation of exclusionary notes, the goods in issue cannot be *prima facie* classifiable in more than a single heading put forward by the parties.

“Rucksacks” or “Similar Containers” of “Textile Materials” of Heading No. 42.02

58. In order for the goods in issue to be classified in heading No. 42.02, they must be (1) specifically named/similar containers and (2) of textile materials.

Textile Materials

59. The parties agree that the goods in issue are made of textile materials.⁵³ The Tribunal finds no reason to disagree.

Specifically Named/Similar Containers

60. Of the large number of items listed in heading No. 42.02, Rock Gear identified rucksacks as being relevant to the goods in issue. The Tribunal will therefore consider whether the goods in issue are, or are similar to, rucksacks.

50. Exhibit AP-2013-046-06 at para. 40, Vol. 1.

51. *Transcript of Public Hearing*, 17 June 2014, at 5.

52. Exhibit AP-2013-046-10A, tab 1, Vol. 1B.

53. Exhibit AP-2013-046-06 at paras. 22, 80, Vol. 1; Exhibit AP-2013-046-10A at para. 49, Vol. 1B.

61. The term “rucksack” is not defined in Chapter 42 or in the notes and explanatory notes to Chapter 42. The *Canadian Oxford Dictionary* defines “rucksack” as a backpack. It further defines “backpack” as a knapsack and “knapsack” as “. . . a bag of canvas, nylon, or other weatherproof material, carried strapped on the back by hikers, students, soldiers, etc.”⁵⁴

62. Similarly, the *Merriam-Webster’s Collegiate Dictionary* defines “rucksack” as a knapsack and “knapsack” as “. . . a bag (as of canvas or nylon) strapped on the back and used for carrying supplies or personal belongings”⁵⁵ Finally, it defines “backpack” as “. . . a load carried on the back” and as “. . . a camping pack (as of canvas or nylon) supported by a usually aluminum frame and carried on the back”⁵⁶

63. These definitions therefore indicate that a rucksack is a bag that is held onto the back by straps and is used to carry items, such as gear or personal belongings.

64. On a visual inspection, the goods in issue have many characteristics of a rucksack or backpack. They have waist and shoulder straps. They have multiple pockets for carrying gear and accessories, such as diapers, food and toys. Moreover, the Ultralight Convertible S2 child carrier, as first presented to the Tribunal, visually presents itself as backpack rather than as a child carrier; only once uniquely deployed does it reveal its child carrying capabilities. The seat or carrier is ingeniously nestled inside the main bag compartment and can only be discovered once the bag is unzipped.

65. However, the Tribunal recognizes that the goods in issue are not identical to rucksacks or backpacks. Mr. Snow testified that, although the LittleLife Ultralight Convertible S2 child carrier offered “. . . the unique ability to store like a backpack”,⁵⁷ it was not in fact a backpack and could not be used as such. Rather, it was designed specifically for a seated child.⁵⁸ The same could be said for the LittleLife Cross Country S2 child carrier.

66. The Tribunal must consider whether the goods in issue are containers similar to those identified in the second part of heading No. 42.02, which includes rucksacks.

67. In previous decisions, the Tribunal has stated that, in order to be similar to items identified in heading No. 42.02, goods must share “important characteristics” and have “significant common features”, but, at the same time, recognized that they need not be identical.⁵⁹

68. For the reasons indicated above, the Tribunal considers that the goods in issue are similar to rucksacks. They share many of the same physical characteristics and generally share the same function, namely, to carry something on a person’s back.

69. As such, the Tribunal rejects the CBSA’s argument that the goods in issue cannot be considered similar containers because they are designed to carry children rather than goods. In this regard, the CBSA

54. Second ed., s.v. “rucksack”, “backpack”, “knapsack”.

55. Eleventh ed., s.v. “rucksack”, “knapsack”.

56. Eleventh ed., s.v. “backpack”.

57. *Transcript of Public Hearing*, 17 June 2014, at 6.

58. *Ibid.* at 6.

59. *Rui Royal International Corp. v. President of the Canada Border Services Agency* (30 March 2011), AP-2010-003 (CITT) at para. 82; *Rlogistics Limited Partnership v. President of the Canada Border Services Agency* (25 October 2011), AP-2010-057 (CITT) [*Rlogistics*] at para. 76.

pointed to the Tribunal's decision in *Rlogistics* which found that "... the fundamental characteristic of any container in terms of use or function is to hold goods."⁶⁰

70. In the Tribunal's view, this statement cannot be read so selectively with a literal adherence to a singled out word. Rather, it must be read in the context of the other statements made in that case.

71. In *Rlogistics*, the Tribunal stated that "... the listed goods and any 'similar containers' must share the characteristic of *holding particular things or goods*"⁶¹ [emphasis added] and that "... the other characteristic common among [the containers listed in heading No. 42.02] is that they are all *designed for the transportation of the things or goods that they hold or contain*..."⁶² [emphasis added]. Read together, these statements indicate that the focus of the analysis with regard to similar containers is on their function (i.e. *whether* they are designed to *hold and transport*) and not on *what* they were designed to hold or transport.

72. The Tribunal therefore considers that the term "similar containers" is not limited to only those containers that carry inanimate objects. As such, goods which carry children, such as the goods in issue, may also be considered similar containers.

73. For these reasons, the Tribunal finds that the goods in issue, although not identical to rucksacks, are similar containers as they share important characteristics or significant common physical features and functions. It therefore finds that the goods in issue are *prima facie* classifiable in heading No. 42.02 and under tariff item No. 4202.92.20 as "tool bags, haversacks, knapsacks, packsacks and rucksacks". In light of Note 1(l) to Section XI, the Tribunal need not consider whether the goods in issue are also classifiable in heading No. 63.07.

DECISION

74. The Tribunal finds that the goods in issue should be classified under tariff item No. 4202.92.20 as "tool bags, haversacks, knapsacks, packsacks and rucksacks".

75. The appeal is therefore allowed.

Jason W. Downey

Jason W. Downey
Presiding Member

60. *Rlogistics* at para. 78.

61. *Rlogistics* at para. 77.

62. *Rlogistics* at para. 78.