



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2013-060

Unitool Inc.

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Thursday, December 4, 2014*

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IN THE MATTER OF an appeal heard on August 26, 2014, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF decisions of the President of the Canada Border Services Agency, dated December 13, 2013, and January 22, 2014, with respect to a request for review of an advance ruling and a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**UNITOOL INC.**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is dismissed.

Jean Bédard  
Jean Bédard  
Presiding Member

Place of Hearing: Ottawa, Ontario  
Date of Hearing: August 26, 2014  
Tribunal Member: Jean Bédard, Presiding Member  
Counsel for the Tribunal: Anja Grabundzija  
Alexandra Pietrzak  
Registrar Officer: Alexis Chénier

**PARTICIPANTS:**

<b>Appellant</b>	<b>Counsel/Representative</b>
Unitool Inc.	Marco Ouellet
<b>Respondent</b>	<b>Counsel/Representative</b>
President of the Canada Border Services Agency	Lune Arpin

**WITNESS:**

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## STATEMENT OF REASONS

### BACKGROUND

1. This appeal was filed by Unitool Inc. (Unitool), pursuant to subsection 67(1) of the *Customs Act*,<sup>1</sup> from decisions dated December 13, 2013, and January 22, 2014, issued by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4). The decisions confirmed the deemed re-determinations of the tariff classification of certain goods imported by Unitool and affirmed an advance ruling concerning the tariff classification of the same or similar goods.

2. The issue in this appeal is whether certain goods imported by Unitool are properly classified under tariff item No. 9403.20.00 of the schedule to the *Customs Tariff*<sup>2</sup> as other metal furniture, as determined by the CBSA, or should be classified under tariff item No. 7326.90.90 as other articles of iron or steel, as claimed by Unitool.

### PROCEDURAL HISTORY

3. On May 21, August 5 and August 26, 2009, Unitool imported roller cabinets (the goods in issue), which were classified under tariff item No. 9403.20.00.

4. On February 18, 2013, Unitool submitted three requests for refunds pursuant to paragraph 74(4)(b) of the *Act* with respect to the duties paid on the goods in issue.

5. Between March 19 and 21, 2013, the CBSA issued three decisions rejecting the refund requests. Pursuant to paragraph 74(4)(b) of the *Act*, these decisions were deemed to be re-determinations under subsection 59(1). As a result of these deemed re-determinations, the subject goods remained classified under tariff item No. 9403.20.00.

6. On or about March 21, 2013, Unitool requested a further re-determination of these deemed re-determinations, pursuant to subsection 60(1) of the *Act*, submitting that the goods in issue should be classified under tariff item No. 7326.90.90.

7. On January 22, 2014, the CBSA issued a further re-determination pursuant to subsection 60(4) of the *Act*, in which it confirmed its earlier decision that the goods in issue were properly classified under tariff item No. 9403.20.00.

8. On November 15, 2012, Unitool requested an advance ruling pursuant to subsection 43.1(1) of the *Act* in respect of the tariff classification of goods which were identical or similar to the goods in issue.

9. On January 2, 2013, the CBSA issued its advance ruling in which it concluded that the identical or similar goods were properly classified under tariff item No. 9403.20.00.

10. On January 14, 2013, Unitool filed a request for review of the advance ruling, pursuant to subsection 60(2) of the *Act*. Unitool submitted that the identical or similar goods should be classified under tariff item No. 7326.90.90.

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

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

11. On December 13, 2013, the CBSA issued its decision under sub section 60(4) of the *Act*, in which it affirmed the advance ruling, thereby concluding that the identical or similar goods were properly classified under tariff item No. 9403.20.00.

12. On March 5, 2014, Unitool filed a notice of appeal pursuant to subsection 67(1) of the *Act* with respect to the CBSA's decisions under subsection 60(4).

13. The Canadian International Trade Tribunal (the Tribunal) held a public hearing on August 26, 2014, in Ottawa, Ontario.

14. Unitool called Mr. Hapet Jay Tutunjian, Vice-President, Sales & Marketing, Unitool, as a witness. The CBSA did not call any witnesses.

### GOODS IN ISSUE

15. The goods in issue are various models of roller cabinets<sup>3</sup> designed to store different types of hand tools.<sup>4</sup> These models are all the bottom sections of a combination set comprised of a top chest (not in issue) and a bottom section (the roller cabinet).

16. The goods in issue are made of heavy gauge steel, covered with powder-coated paint. They have heavy-duty side handles and are mounted on 4 castors, 2 of which swivel to allow the goods in issue to be moved. They are equipped with 13 to 15 drawers each, depending on the model. While the goods in issue can have varying dimensions and weights, depending on their build, it is clear that they are sturdy, heavy-duty goods, capable of storing a significant load. Mr. Tutunjian testified, for example, that one of the models of the goods in issue can weigh up to 1,000 pounds when loaded with tools. Despite the heavy weight, the castors offer the possibility of rolling the goods in issue from one spot of a room to the other, for example, between different work stations in a mechanic's workshop.<sup>5</sup>

### LEGAL FRAMEWORK

17. 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 the approach prescribed by sections 10 and 11 of the *Customs Tariff*.

18. Subsection 10(1) of the *Customs Tariff* provides that the tariff classification of imported goods is to be determined in accordance with the *General Rules for the Interpretation of the Harmonized system*<sup>6</sup> and the *Canadian Rules*<sup>7</sup> set out in the schedule.

19. 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.

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3. The goods in issue are models TBUT811B, TBUT205B, TBUT403B, TBUT405B, TBUT406B, TBUT407B, TBUT507B, TBUT515B, TBUT607B and TBUT1012B.

4. Exhibit AP-2013-060-07A at para. 22, Vol. 1.

5. *Transcript of Public Hearing*, 26 August 2014, at 6, 19, 21-24.

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

7. S.C. 1997, c. 36.

20. 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*<sup>8</sup> and the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*,<sup>9</sup> published by the World Customs Organization. While the *Explanatory Notes* and *Classification Opinions* are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.<sup>10</sup>

21. The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the *General Rules* as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. If the goods in issue cannot be classified at the heading level through the application of Rule 1, then the Tribunal must consider the other rules.<sup>11</sup>

22. 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 use a similar approach to determine the proper subheading.<sup>12</sup> The final step is to determine the proper tariff item.<sup>13</sup>

## RELEVANT LEGISLATIVE PROVISIONS

23. Unitoil argued that the following provision of the schedule to the *Customs Tariff* should apply:

### Section XV

#### BASE METALS AND ARTICLES OF BASE METAL

...

#### Chapter 73

#### ARTICLES OF IRON OR STEEL

...

**73.26**      **Other articles of iron or steel.**

...

**7326.90**    **-Other**

...

**7326.90.90**    - - -Other

8. World Customs Organization, 5th ed., Brussels, 2012 [*Explanatory Notes*].

9. World Customs Organization, 2nd ed., Brussels, 2003 [*Classification Opinions*].

10. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) [*Suzuki*] at paras. 13, 17 where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that the *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 the *Classification Opinions*.

11. Rules 1 through 5 of the *General Rules* apply to classification at the heading level.

12. Rule 6 of the *General Rules* provides that "... 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 [i.e. Rules 1 through 5] ..." and that "... the relative Section and Chapter Notes also apply, unless the context otherwise requires."

13. Rule 1 of the *Canadian Rules* provides that "... the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the [*General Rules*] ..." and that "... the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires." The *Classification Opinions* and the *Explanatory Notes* do not apply to classification at the tariff item level.

24. The relevant notes to Section XV provide as follows:

1. This Section does not cover:

...

(k) Articles of Chapter 94 (for example, furniture, mattress supports, lamps and lighting fittings, illuminated signs, prefabricated buildings);

...

3. Throughout the Nomenclature, the expression “base metals” means: iron and steel, copper, nickel, aluminum, lead, zinc, tin, tungsten (wolfram), molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium.

25. There are no relevant notes to Chapter 73; however, the relevant explanatory notes to Chapter 73 provide as follows:

This Chapter covers a certain number of specific articles in headings 73.01 to 73.24, and in headings 73.25 and 73.26 a group of articles not specified or included in Chapter 82 or 83 and not falling in other Chapters of the Nomenclature, of iron (including cast iron as defined in Note 1 to this Chapter) or steel.

26. The explanatory notes to heading No. 73.26 provide as follows:

This heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating **other than** articles included in the preceding headings of this Chapter or covered by Note 1 to Section XV or included in Chapter 82 or 83 or more specifically covered elsewhere in the Nomenclature.

The heading includes:

...

(3) Certain boxes and cases, e.g., tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02); botanists', etc., collection or specimen cases, trinket boxes; cosmetic or powder boxes and cases; cigarette cases, tobacco boxes, cachou boxes etc., but **not including** containers of **heading 73.10**, household containers (**heading 73.23**), nor ornaments (**heading 83.06**).

...

The heading also excludes:

...

(f) Large scale shelving for permanent installation in shops, workshops, storehouses, etc. (**heading 73.08**) and shelved furniture of **heading 94.03**.

27. As referenced in the explanatory notes to heading No. 73.26, the explanatory notes to heading No. 42.02 provides as follows:

Subject to Notes 2 and 3 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.



28. By contrast, the CBSA asserted that they following provision of the schedule to the *Customs Tariff* should apply:

**Section XX**

**MISCELLANEOUS MANUFACTURED ARTICLES**

...

**Chapter 94**

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

...

**94.03**        **Other furniture and parts thereof.**

...

**9403.20.00**    **–Other metal furniture**

29. 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.

30. 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 characteristics that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, laboratories, hospitals, dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

31. The explanatory notes to heading No. 94.03 provide as follows:

This heading covers furniture and parts thereof, **not covered** by the previous headings. It includes furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing-desks, escritorios, book-cases, and other shelved furniture (including single shelves presented with supports for fixing them to the wall), etc.), and also furniture for special uses.

The heading includes furniture for:

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

...

- (5) **Shops, stores, workshops, etc.**, such as: counters; dress racks; shelving units; compartment or drawer cupboards; cupboards for tools, etc.; special furniture (with cases or drawers) for printing-works.
- (6) **Laboratories or technical offices**, such as: microscope tables; laboratory benches (whether or not with glass cases, gas nozzles and tap fittings, etc.); fume-cupboards; unequipped drawing tables.

This heading **does not include**:

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

## POSITIONS OF PARTIES

### Unitool

32. Unitool submitted that the goods in issue should be classified under tariff item No. 7326.90.90 as other articles of iron and steel, by application of Rule 1 of the *General Rules*.

33. In so arguing, Unitool stated that the goods in issue are manufactured, imported, marketed and sold as tool boxes, which are defined by the *Merriam-Webster* dictionary as “. . . [boxes] for storing or carrying tools”.<sup>14</sup> Unitool emphasized that the definition of “toolbox” does not contain any mention of the size of the object.<sup>15</sup>

34. Unitool pointed to the Tribunal’s previous decision in *Bauer Hockey Corporation v. President of the Canada Border Services Agency*<sup>16</sup> in which the Tribunal found the following:

... the design, best usage, marketing and distribution of the goods in issue are indicative of the proper tariff classification of the goods.<sup>17</sup>

Therefore, Unitool contended that the goods in issue, having been manufactured and sold as tool boxes, should be classified as tool boxes under tariff item No. 7326.90.90.

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14. Exhibit AP-2013-060-07A, tab 5, Vol. 1.

15. Exhibit AP-2013-060-07A at para. 32, Vol. 1.

16. (26 April 2012), AP-2011-011 (CITT) [*Bauer*].

17. *Bauer* at para. 43.

35. With respect to the CBSA's proposed classification,<sup>18</sup> Unitool argued that the language in the explanatory notes to Chapter 94 precludes the goods in issue from being classified in that heading. In particular, Unitool contended that the explanatory notes to Chapter 94 specifically state that furniture in heading No. 94.03 excludes movable articles which are covered under other more specific headings of the nomenclature. While Unitool acknowledged that "tool boxes" do not appear by name in any other heading, it noted that they are specifically named in Note 3 of the explanatory notes to heading No. 73.26, as well as in other explanatory notes. Thus, Unitool contended that the goods in issue cannot be classified as furniture in heading No. 94.03, since they are more specifically included in heading No. 73.26, by way of the relevant explanatory notes.

## CBSA

36. The CBSA submitted that, as a result of Note 1(k) to Section XV (which includes heading No. 73.26), which excludes from that section "[a]rticles of Chapter 94 (for example, furniture . . .)", the Tribunal must begin its analysis by determining whether the goods in issue are articles of Chapter 94. In doing so, the CBSA maintained that the goods in issue are properly classified under tariff item No. 9403.20.00 as "other metal furniture", by virtue of Rule 1 of the *General Rules*. Particularly, the CBSA maintained that the goods in issue are designed to be placed on the floor, as required by Note 2 to Chapter 94, and are movable articles with a utilitarian purpose, which are used to equip private dwellings (i.e. garages, sheds) and workshops (mechanics' garages, etc.).

37. With respect to the position taken by Unitool, the CBSA contended that the relevant explanatory notes to heading No. 73.26 do not proscribe the goods in issue from being classified as furniture in heading No. 94.03. While the explanatory notes to heading No. 73.26 refer to tool boxes, the CBSA referred to the dictionary definitions of the words "box" and "cases" to argue that boxes or cases are goods which are small and portable, and normally open at the top.<sup>19</sup> As stated by the CBSA, the goods in issue do not meet any of these descriptions.

38. Moreover, the CBSA maintained that the words "tool boxes or cases" in the explanatory notes to heading No. 73.26 must be understood in association with the other terms in the list in which they appear.<sup>20</sup> As these other terms all refer to items which are small in size and portable, the CBSA argued that this supported its position that the goods in issue may not be classified in heading No. 73.26.

## ANALYSIS

39. As acknowledged by both parties,<sup>21</sup> the Tribunal must begin its analysis by applying Rule 1 of the *General Rules*. Therefore, the Tribunal will begin by looking to the terms of the competing headings at issue, as well as any relevant section and chapter notes or explanatory notes.

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18. Unitool further argued that the CBSA had classified similar goods in heading No. 73.26 by virtue of an advance ruling. However, the CBSA clarified that the advance ruling was incorrectly transcribed on its Web site and did not in fact relate to the same types of goods as those at issue. See Exhibit AP-2013-060-13A at paras. 37-38, Vol. 1A. The Tribunal was informed at the hearing that the CBSA was in the process of removing the incorrectly transcribed advance ruling from its Web site.

19. Exhibit AP-2013-060-13A at para. 31, Vol. 1A.

20. The CBSA referred to the principle of *noscitur a sociis*, whereby a term or expression should be interpreted by taking into account its surrounding terms. See, for instance, *Opitz v. Wrzesnewskyj*, [2012] 3 S.C.R. 76, at paras. 40, 41.

21. Exhibit AP-2013-060-07A at para. 39, Vol. 1; Exhibit AP-2013-060-13A at para. 16, Vol. 1A.

40. Given that Note 1(k) to Section XV (which includes heading No. 73.26) excludes articles of Chapter 94 (which includes heading No. 94.03) and that there is no comparable exclusionary note applicable to heading No. 94.03, the Tribunal will first determine whether the goods in issue are properly classified as furniture of heading No. 94.03, more specifically as other metal furniture under tariff item No. 9403.20.00.<sup>22</sup>

### **Are the Goods in Issue “Furniture”?**

41. Note 1 of the explanatory notes to Chapter 94 state that the chapter covers “all furniture”. Further, the explanatory notes state that, in order to be considered furniture, goods must have the following traits:

- be movable articles;
- have the essential characteristic that they are constructed for placing on the floor or ground;
- have the essential characteristic that they are used mainly with a utilitarian purpose;
- are used to equip one or more of a long non-exhaustive list of places, including private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, laboratories, hospitals, dentists’ surgeries, etc.; and
- must not be included under another more specific heading of the nomenclature.

42. Thus, in order to determine whether the goods in issue are properly classified in heading No. 94.03 as furniture and consequently excluded from the scope of heading No. 73.26, the Tribunal will examine whether the goods in issue meet each of the foregoing conditions.

#### Are the Goods in Issue Movable Articles?

43. With respect to whether or not the goods in issue are movable objects, the Tribunal notes that the relevant explanatory notes to Chapter 94 provide as follows:

... articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.<sup>23</sup>

44. In his testimony, Mr. Tutunjian confirmed that the goods in issue could be moved around, as they are on castors.<sup>24</sup> Additionally, neither party contested that the goods in issue are articles, insofar as they are finished or semi-finished products. Therefore, the Tribunal finds that the goods in issue are movable articles, as set out in the first condition above.

#### Are the Goods in Issue Constructed for Placing on the Ground?

45. The second condition necessary for the goods in issue to be considered furniture is that they be constructed for placing on the floor or ground. Again, the Tribunal notes that there was no contention that the goods in issue were not designed to be placed on the floor or ground and that, in his testimony,

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22. See, for example, *Maurice Pincoffs Canada Inc. v. President of the Canada Border Services Agency* (13 March 2014), AP-2013-027 (CITT) at para. 33; *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency* (6 April 2011), AP-2010-005 (CITT) [*Zellers*] at para. 42.

23. Tribunal jurisprudence has defined “article” as “any finished or semi-finished product, which is not considered to be a material”. See, for example, *Zellers* at para. 53; *Wolseley Canada Inc. v. President of the Canada Border Services Agency* (18 January 2011), AP-2009-004 (CITT).

24. *Transcript of Public Hearing*, 26 August 2014, at 17.

Mr. Tutunjian confirmed that the goods in issue were constructed to be placed on the floor and ground.<sup>25</sup> The second condition listed in the explanatory notes to Chapter 94 is therefore met, and the Tribunal finds accordingly.

Do the Goods in Issue Have the Essential Characteristic That They are Used Mainly With a Utilitarian Purpose?

46. In order to be considered furniture, it must also be established that the goods in issue are used mainly with a utilitarian purpose. To that end, the Tribunal notes the following definition that it adopted in *Zellers*: “. . . designed to be practically useful rather than attractive; functional . . . .”<sup>26</sup> Both the documentary evidence before the Tribunal<sup>27</sup> and the testimony of Mr. Tutunjian demonstrate that the goods in issue are designed to be practically useful rather than attractive.<sup>28</sup> Moreover, the evidence also shows that the goods in issue are used mainly to carry out the utilitarian purpose of storing tools.<sup>29</sup> Accordingly, the Tribunal finds that the goods in issue are used mainly with a utilitarian purpose and that the third condition is thus met.

Are the Goods in Issue Used to Equip One or More of a Long Non-exhaustive List of Places?

47. With respect to the fourth condition, in order to be considered furniture, it must be established that the goods in issue are used to equip one or more of a long non-exhaustive list of places. In particular, the explanatory notes to heading No. 94.03 state that the heading includes furniture for use in, among other places, “[s]hops, stores, workshops, etc.”. As the parties do not dispute that the goods in issue are for use in workshops,<sup>30</sup> the Tribunal finds that this condition is met.

Are the Goods in Issue Included Under Another More Specific Heading of the Nomenclature?

48. Finally, in order for the goods in issue to be considered furniture in heading No. 94.03, the Tribunal must be satisfied that they are not included in another more specific heading of the nomenclature. To this end, Unitool argued that the explanatory notes to heading No. 73.26 refer to “tool boxes” by name and that the fifth condition is therefore not met.

49. When reviewing the explanatory notes to Section XV (which includes Chapter 73), the Tribunal notes that the reference to tool boxes, in the explanatory notes to heading No. 73.26, specifically refers to heading No. 42.02 as follows:

The heading includes:

...

- (3) Certain boxes and cases, e.g., tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02); . . . .

50. Thus, when considering what is meant by tool boxes as listed in the explanatory notes to Section XV, the Tribunal must direct its attention to the explanatory notes to heading No. 42.02.

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25. *Ibid.* at 18.

26. *Zellers* at para. 55.

27. Exhibit AP-2013-060-07A at paras. 20-22, Vol. 1.

28. *Transcript of Public Hearing*, 26 August 2014, at 5, 7.

29. *Ibid.* at 5.

30. *Ibid.* at 6, 21, 41.

51. By way of reference, heading No. 42.02 provides 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.

52. In its enumeration of “similar containers”, the explanatory notes to heading No. 42.02 refer to the following:

... portable tool boxes or cases, specially shaped or internally fitted to contain particular tools with or without their accessories ...

53. The Tribunal also notes that the explanatory notes to heading No. 42.02 specifically *exclude* the following:

... [t]ool 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**).

[Emphasis added]

54. Notably, the word “portable” is not repeated in the description of tool boxes excluded from heading No. 42.02. One possible explanation would be that, by omitting the word “portable”, the explanatory notes indicate that all tool boxes which are not specially shaped or internally fitted, regardless of size, are covered by heading No. 73.26 (if made of iron or steel). When read in context, however,<sup>31</sup> the explanatory notes convey a different meaning.

55. As discussed above, the reference to heading No. 42.02 in the explanatory notes to heading No. 73.26 sends one back to the substance of heading No. 42.02 and its attendant explanatory notes. Therefore, the explanatory notes to heading No. 73.26 must be interpreted in the context of the explanatory notes to heading No. 42.02 and taking its substance into account. To do otherwise would render the reference to heading No. 42.02 meaningless.

56. In particular, the exclusionary explanatory notes to heading No. 42.02 refer to those tool boxes that are *not* specially shaped or internally fitted to contain particular tools with or without their accessories. When those explanatory notes are read together with the explanatory notes to heading No. 73.26, the distinction becomes clear: tool boxes, which are *not* specially shaped or internally fitted to contain particular tools with or without their accessories, being excluded from heading No. 42.02, fall under heading No. 73.26 (if made of iron or steel). At the same time, those tool boxes which *are* specially shaped or internally fitted to contain particular tools with or without their accessories remain covered under heading No. 42.02.

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31. *Cycles Lambert Inc. v. President of the Canada Border Services Agency* (28 November 2013), AP-2012-060 (CIIT) at para. 36; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21.

57. The fact that the word “portable” has not been repeated in the exclusionary explanatory notes to heading No. 42.02 does not create a new class of tool boxes. Rather, the distinction in the exclusionary explanatory notes relates to the shaping or internal fitting of the tool boxes. The only tool boxes referred to in the explanatory notes to heading No. 42.02, including the exclusionary explanatory notes, are *portable* tool boxes or cases. By extension, the tool boxes referred to in the explanatory notes to heading No. 73.26 are the portable tool boxes which are excluded from heading No. 42.02 by virtue of the exclusionary explanatory notes, namely, *portable* tool boxes which are *not* specially shaped or internally fitted to contain particular tools with or without their accessories.

58. Given that the Tribunal has determined that tool boxes must be portable in order to be classified in heading No. 73.26, the Tribunal must now turn its attention to what is meant by “portable” in this context. In its submissions, Unitool put forward the following dictionary definition of “portable”:

... capable of being carried or moved about ...<sup>32</sup>

59. Unitool argued that the goods in issue meet the definition of “portable” since they are capable of being moved around by way of the attached castors. In interpreting the adjective “portable” and the reference to portable tool boxes or cases, it is helpful to consider the French version of the same word. The French version of the explanatory notes to heading No. 42.02 refer to “... *les boîtes ou coffrets à outils portatifs* ...” (portable tool boxes or cases). Unitool put forward the following dictionary definition of the word “*portatif*”:

... *Se dit d'un objet de taille et de poids réduits, conçu pour être facilement porté avec soi* [refers to an object of limited size and weight, designed for one to easily carry].<sup>33</sup>

60. The French version of the explanatory notes to heading No. 42.02 thus specifically refer to tool boxes or cases that can be qualified as objects of limited size and weight, designed for one to easily carry.

61. Although the same specificity is not found in the dictionary definition of the English word “portable”, the context in which the expression “portable tool boxes or cases” is found makes clear that “portable” has the same meaning as its French counterpart and designates objects with the same characteristics. This is evident from the fact that the common characteristics of the other containers listed in the terms of heading No. 42.02 and the related explanatory notes are their limited size and weight, which are such that it is easy for a person to hold and carry them.<sup>34</sup> In order to constitute “similar containers”, the portable tool boxes or cases referred to in the explanatory notes to heading No. 42.02 must present similar characteristics, i.e. be of a relatively small size and weight to allow them to be easily carried. It is

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32. Exhibit AP-2013-060-21A, tab 1 at 5, Vol. 1B.

33. *Ibid.* at 16.

34. The explanatory notes to heading No. 42.02 provide that “similar containers” in the first part of the heading (i.e. cases) include “... 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.” Furthermore, these explanatory notes provide that, in the second part of the heading (which covers only articles of specified materials), the expression “similar containers” 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.”.

noteworthy that the same characteristics are again present in the objects listed alongside tool boxes or cases in Note 3 of the explanatory notes to heading No. 73.26.<sup>35</sup>

62. Furthermore, the Tribunal notes that the general principle of bilingual statutory interpretation is that differences between the two official enactments of the same provision must usually be reconciled by deriving a common or shared meaning.<sup>36</sup> Accordingly, even if the context left any ambiguity as to the intended scope of the English version of the explanatory notes to heading No. 42.02, such ambiguity should have been resolved by reference to the narrower wording of the French text, which, in this case, constitutes the shared meaning. In this regard, while the principles of statutory interpretation may not strictly apply to explanatory notes, which are not legislation passed by Parliament,<sup>37</sup> they can nevertheless provide guidance, absent any inconsistency with the nomenclature or the explanatory notes, in reconciling diverging versions of the explanatory notes and, thus, ensuring a consistent application of the nomenclature regardless of the language in which it is read.

63. In sum, the Tribunal therefore finds that the word “portable” in the expression “portable tool boxes or cases” describes relatively small containers that, in their ordinary use, allow a person to carry other objects (i.e. tools) from location to location. The Tribunal finds that Exhibit B-01 submitted by the CBSA is representative of the type of “tool box” referred to in the explanatory notes to heading Nos. 42.02 and 73.26.

64. The Tribunal notes that Unitool dedicated significant portions of its argument to asserting that the goods in issue are “. . . manufactured, imported, marketed and sold as tool boxes per the catalogue attached.”<sup>38</sup> Moreover, Unitool pointed the Tribunal to its previous decisions in *Bauer* and *PartyLite Gifts Ltd. v. Commissioner of the Canada Customs and Revenue Agency*<sup>39</sup> as support for the proposition that the goods in issue, having been manufactured and sold as tool boxes, should be classified as such. In both the documentary submissions of Unitool and the testimony of Mr. Tutunjian, it was repeatedly argued that the goods in issue are consistently marketed and sold as tool boxes.<sup>40</sup>

65. In its decision in *Regal Confections Inc. v. Deputy M.N.R.*<sup>41</sup> quoted in *PartyLite*, the Tribunal stated as follows:

The appearance, design, best use, marketing and distribution referred to by counsel for the respondent *are not tests per se*, but individual *factors that may be useful to consider, from time to time, in classifying goods*. In the Tribunal’s view, however, none of these factors are decisive and the importance of each will vary according to the product in issue.<sup>42</sup>

[Emphasis added]

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35. Note 3 of the explanatory notes to heading No. 73.26 indicate that the heading includes, in addition to tool boxes or cases, items such as “. . . botanists’, etc., collection or specimen cases, trinket boxes; cosmetic or powder boxes and cases; cigarette cases, tobacco boxes, cachou boxes etc. . . .”

36. See, for example, *R. v. Daoust*, [2004] 1 S.C.R. 217, 2004 SCC 6 (CanLII) at para. 26, citing Professor Côté in *The Interpretation of Legislation in Canada* (3rd ed. 2000) at 324; *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339, 2009 SCC 12 (CanLII) at para. 39.

37. See section 11 of the *Customs Tariff* and *Suzuki* at paras. 13, 17.

38. Exhibit AP-2013-060-07A at para. 35, Vol. 1.

39. (16 February 2004), AP-2003-008 (CITT) [*PartyLite*].

40. See Exhibit AP-2013-060-07A at para. 35, Vol. 1; *Transcript of Public Hearing*, 26 August 2014, at 12.

41. (25 June 1999), AP-98-043, AP-98-044 and AP-98-051 (CITI) [*Regal*].

42. *Regal* at 8.



66. The marketing and distribution of the goods in issue may, in certain circumstances, assist the Tribunal in its analysis. However, they cannot drive the process.

67. While the Tribunal considered Unitool's evidence in this respect, it notes that there were several issues with Unitool's position. To begin, as was brought to light in cross-examination of Mr. Tutunjian, Unitool's marketing material was not always consistent in what it characterized as a tool box. For instance, Mr. Tutunjian conceded that a seat, although listed under the category of tool boxes in the marketing material, was not actually a tool box.<sup>43</sup> Further, Mr. Tutunjian explained this inconsistency by noting that the marketing material is a selling tool, which is designed to attract and direct a customer's attention.<sup>44</sup>

68. Furthermore, while the Tribunal acknowledges the purpose which marketing materials are designed to serve, their use as a selling tool underscores the need to go beyond the marketing and distribution of the goods in issue when analyzing their proper classification. As the Tribunal found in *Regal*, while the manner in which the goods in issue are marketed and distributed may be helpful when determining the proper classification, it is not determinative. Rather, the Tribunal must look to the actual physical characteristics of the goods in issue.

69. Turning to the goods in issue, the Tribunal finds nothing in the evidence to indicate that the goods in issue are of a sufficiently reduced size or weight to allow them to be easily held, carried or taken along by a person. On the contrary, the goods in issue are sizable and heavy; Mr. Tutunjian specifically testified that they cannot be carried. Indeed, according to the evidence, the typical use of the goods in issue is that they are rolled from one work station to another within the confines of a workshop, as required. Thus, regardless of whether the goods in issue are marketed and distributed at tool boxes, an examination of their physical characteristics reveals that they are not *portable* ("*portatifs*").

70. As such, the Tribunal finds that the goods in issue are not *portable* tool boxes or cases within the meaning of the explanatory notes to heading No. 42.02, nor are they "similar containers" in respect of the containers listed in the terms of that heading and its explanatory notes. As such, the Tribunal finds that the goods in issue are not *portable* tool boxes which are *not* specially shaped or internally fitted to contain particular tools, as referred to in the explanatory notes to heading No. 73.26.

71. Accordingly, the fifth trait of "furniture" as set out in the explanatory notes to Chapter 94 is met since the goods at issue, for the reasons discussed above, are not included under another more specific heading of the nomenclature.

## CLASSIFICATION

72. In light of the above, the Tribunal agrees with the CBSA's position that the goods in issue are, pursuant to Rule 1 of the *General Rules*, properly classified in heading No. 94.03, as they are other furniture covered by the terms of that heading. Turning to the classification at the subheading and tariff item levels, applying Rules 1 and 6 of the *General Rules* and Rule 1 of the *Canadian Rules*, the Tribunal concludes that the goods in issue are properly classified under tariff item No. 9403.20.00 as other metal furniture.

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43. *Transcript of Public Hearing*, 26 August 2014, at 12.

44. *Ibid.*

**DECISION**

73. For the foregoing reasons, the appeal is dismissed.

Jean Bédard  
Jean Bédard  
Presiding Member