



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal Nos. AP-2013-021,
AP-2013-022, AP-2013-023 and
AP-2013-024

Stylus Sofas Inc., Stylus Atlantic,
Stylus Ltd. and Terravest
(SF Subco) Limited Partnership

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, August 19, 2015*

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IN THE MATTER OF appeals heard on June 18 and 19, 2015, pursuant to subsection 67(1) 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 April 10 and March 6, 2013, with respect to requests for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

**STYLUS SOFAS INC., STYLUS ATLANTIC, STYLUS LTD. AND
TERRAVEST (SF SUBCO) LIMITED PARTNERSHIP**

Appellants

AND

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

Respondent

DECISION

The appeals are allowed.

Ann Penner
Ann Penner
Presiding Member

| | |
|---------------------------|------------------------------|
| Place of Hearing: | Ottawa, Ontario |
| Dates of Hearing: | June 18 and 19, 2015 |
| Tribunal Member: | Ann Penner, Presiding Member |
| Counsel for the Tribunal: | Alexandra Pietrzak |
| Registrar Officer: | Ekaterina Pavlova |

PARTICIPANTS:**Appellants**

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Stylus Atlantic
Stylus Ltd.
Terravest (SF Subco) Limited Partnership

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STATEMENT OF REASONS

1. This matter consists of appeals filed with the Canadian International Trade Tribunal (the Tribunal) by Stylus Sofas Inc., Stylus Atlantic, Stylus Ltd. and Terravest (SF Subco) Limited Partnership (together, Stylus), all of which were filed on June 5, 2013, pursuant to subsection 67(1) of the *Customs Act*.¹ Stylus appealed the determinations issued by the President of the Canada Border Services Agency (CBSA) on April 10, 2013 (respecting AP-2013-021, AP-2013-022, and AP-2013-023) and on March 6, 2013 (respecting AP-2013-024).

2. The issue in these appeals is whether certain styles of furniture (the goods in issue) are properly classified under tariff item Nos. 9401.61.10 and 9401.71.10 of the schedule to the *Customs Tariff*² as other upholstered seats, with wooden or metal frames, for domestic purposes, as determined by the CBSA, or should be classified under tariff item Nos. 9401.61.90 and 9401.71.90 as other upholstered seats, with wooden or metal frames, other than for domestic purposes, as claimed by Stylus.

3. Stylus also suggested that the Tribunal should consider the proper classification of certain parts of furniture. However, it withdrew this aspect of the appeals when the public hearing commenced on June 18, 2015.³

BACKGROUND

4. Between 2006 and 2011, Stylus imported various styles of furniture and parts thereof. At the time of importation, the goods were classified as being “for domestic purposes” under tariff item Nos. 9401.61.10 and 9401.71.10.

5. In or around February 2011, Stylus applied for refunds of duties paid on some of the goods in issue pursuant to subsection 74(1) of the *Act*. Stylus alleged that a certain percentage of the goods in issue were for non-domestic purposes and should therefore be re-classified under tariff item Nos. 9401.61.90 and 9401.71.90.

6. Between May 3 and July 27, 2011, the CBSA processed the refund requests and issued decisions which were treated as re-determinations under paragraph 59(1)(a) of the *Act*.

7. On July 27, 2011, Stylus informed the CBSA that it had incorrectly calculated the percentage of goods in issue that were for non-domestic purposes. Stylus therefore made further corrections to its declarations, pursuant to subsection 32.2(2) of the *Act*.

8. In or around August 2011, the CBSA issued corrections pursuant to subsection 32.2(3) of the *Act*, in which it classified *all* the goods in issue under tariff item Nos. 9401.61.10 and 9401.71.10 as other upholstered seats, with wooden or metal frames, for domestic purposes. These decisions were treated as further re-determinations under paragraph 59(1)(a).

9. On August 22, 2011, Stylus filed a request for further re-determinations under subsection 60(1) of the *Act*, in which it submitted that a certain percentage of the goods in issue should be classified as other upholstered seats, with wooden or metal frames, *other than* for domestic purposes under tariff item Nos. 9401.61.90 and 9401.71.90.

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

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

3. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 4.

10. On November 30, 2012, and December 31, 2013, the CBSA issued a preliminary decision classifying all the goods in issue as being for domestic purposes.
11. On January 9 and 10, 2013, Stylus submitted its reply to the CBSA's preliminary decision, arguing that *all* the goods in issue, and not only a percentage, should be classified as being "other than" for domestic use.
12. On April 10 and March 6, 2013, the CBSA issued further re-determinations under subsection 60(4) of the *Act*, in which it held that the goods in issue were properly classified under tariff item Nos. 9401.61.10 and 9401.71.10 as other upholstered seats, with wooden or metal frames, for domestic purposes.
13. On June 5, 2013, Stylus filed appeals of the CBSA's re-determinations with the Tribunal.
14. On June 7, 2013, the Tribunal informed the parties that the appeals would be heard together.
15. Over the next year, there was uncertainty regarding the nature of the goods in issue in terms of what they were and how they should be classified. Furthermore, there was uncertainty about whether and how imported parts fit into the appeals. To this end, the parties made numerous additional submissions, all of which caused the Tribunal to postpone the hearing and to request the filing of further submissions in fairness to all concerned.
16. On June 16, 2014, the CBSA filed its brief.
17. On August 18, 2014, Stylus wrote to inform the Tribunal that "sofa sleepers (sofa beds)" were not at issue in these appeals.
18. On September 5, 2014, Stylus filed a book of supplemental documents and authorities.
19. On September 8, 2014, the CBSA filed book of supplemental documents and authorities. The CBSA also objected to the filing of Stylus's book of supplemental documents on the grounds that the documents were available at the time of the filing of Stylus's brief and, therefore, should have been filed at that time.
20. On September 8, 2014, the Tribunal wrote to the parties to seek confirmation of the tariff classifications at issue.
21. On September 11, 2014, both Stylus and the CBSA provided submissions regarding the tariff classifications at issue.
22. On October 21, 2014, the Tribunal held a pre-hearing teleconference with the parties, as set out in its letter of October 7, 2014. The purpose of the teleconference was to clarify the specific goods and proposed tariff classifications at issue.
23. On the basis of the teleconference, the Tribunal wrote to the parties on November 6, 2014, to inform them that it was satisfied that tariff item Nos. 9401.61.90, 9401.71.90, 9401.61.10 and 9401.71.10 were all at issue in these appeals. The Tribunal directed the parties to provide further submissions regarding the issue of parts of furniture.
24. On February 11, 2015, Stylus wrote to request that a two-day hearing be held for these appeals and provided dates on which counsel would be available.

25. On February 16, 2015, the Tribunal informed the parties that a two-day hearing for these appeals would be held on June 18 and 19, 2015. The Tribunal also confirmed that the hearing would include submissions and argument regarding whether certain furniture parts are properly classified under tariff item No. 9401.90.19 as parts of seats for domestic purposes or should be classified under tariff item No. 9401.90.90 as parts of other seats.

26. On May 26, 2015, Stylus filed the expert witness report of Ms. Priscilla L. Nesbitt, Director, Supply & Studio Design, Best Western International, Inc. (Best Western) and requested that Ms. Nesbitt be qualified as an expert in "... the standards (quality) of furniture required to comply with Best Western International's needs."⁴ Stylus also filed an additional book of documents and physical exhibits of the goods in issue.

27. On May 29, 2015, the CBSA filed the expert witness reports of Ms. Dana Tapak, Professor, and Mr. Alfred H. Baucom, Professor, Interior Design, both at Algonquin College, and requested that they be qualified as expert witnesses in "... the design, standards and construction methods of non-residential and residential furniture, in the planning of non-residential interior space, and in the purchase and delivery of non-residential furniture."⁵

28. On June 2, 2015, the Tribunal directed the parties to provide their positions regarding the qualification of the proposed expert witnesses. The Tribunal also directed Stylus to file submissions setting out the reasons for which the content of its additional book of documents could not have been filed earlier with the Tribunal, in accordance with subrules 34(3) and 35(3) of the *Canadian International Trade Tribunal Rules*,⁶ and as set out in the Tribunal's letter of February 12, 2015.

29. On June 4, 2015, the CBSA wrote to object to Ms. Nesbitt being qualified as an expert witness.

30. On June 4, 2015, Stylus wrote to withdraw its previously filed additional book of documents. In its place, Stylus submitted a supplementary book of documents which contained documents produced in response to statements made in Ms. Tapak's and Mr. Baucom's expert witness reports, and previous Tribunal decisions to which the CBSA either did not object being admitted on the record or on which the CBSA took no position. In addition, Stylus withdrew its request that Ms. Nesbitt be qualified as an expert witness and, instead, notified the Tribunal that Stylus intended to present her as a lay witness. Finally, Stylus consented to Ms. Tapak and Mr. Baucom being qualified as expert witnesses.

31. On June 11, 2015, the Tribunal wrote to the parties to inform them that, after reviewing the submissions of the parties together with the *curricula vitae* and expert reports of the proposed witnesses, the Tribunal had decided to qualify Mr. Baucom and Ms. Tapak as expert witnesses. In addition, the Tribunal noted Stylus's withdrawal of its previously filed additional book of documents and accepted onto the record Stylus's supplementary book of documents, as well as the documents produced in response to statements made in the expert reports.

32. The Tribunal held a public hearing on June 18 and 19, 2015, in Ottawa, Ontario. Mr. Dennis Ripoli, Co-owner, and Vice-President of Sales and Marketing (Residential and Hospitality), Stylus Sofas Inc., and Ms. Nesbitt testified for Stylus. Mr. Baucom was called as an expert witness by the CBSA.

4. Exhibit AP-2013-021-75B, Vol. 1H.

5. Exhibit AP-2013-021-79C, Vol. 1H.

6. S.O.R./91-499.

33. After reviewing Mr. Baucom's qualifications and experience, and noting the consent of both parties, the Tribunal accepted Mr. Baucom as an expert witness in the design, standards and construction methods of non-residential and residential furniture, in the planning of non-residential interior space, and in the purchase and delivery of non-residential furniture.⁷

34. While Ms. Tapak had been duly recognized by the Tribunal as an expert witness, she was not called by the CBSA to testify at the hearing.

GOODS IN ISSUE

35. The goods in issue are a variety of styles of high-end furniture, including sofas, accent chairs, dining chairs/stools and ottomans, with wooden or metal frames.

STATUTORY FRAMEWORK

36. In appeals pursuant to section 67 of the *Act* concerning tariff classification matters, the Tribunal determines the proper tariff classification of the goods in issue in accordance with the approach prescribed by sections 10 and 11 of the *Customs Tariff*.

37. 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).⁸ 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.

38. 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*⁹ and the *Canadian Rules*¹⁰ set out in the schedule.

39. 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.

40. 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*¹¹ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,¹² 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.¹³

7. Exhibit AP-2013-021-84, Vol. 1I; *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 136.

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

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

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

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

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

13. 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 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 *Classification Opinions*.

41. 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.¹⁴

42. 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.¹⁵ The final step is to determine the proper tariff item.¹⁶

RELEVANT CLASSIFICATION PROVISIONS

43. The parties agreed, and the Tribunal accepts, that the goods in issue are properly classified in the following heading:

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

44. The parties disagreed however on the appropriate tariff item. The CBSA argued that the goods in issue with wooden frames are properly classified as follows:

-Other seats, with wooden frames:

9401.61 - -Upholstered

9401.61.10 - - -For domestic purposes

45. For the goods in issue with metal frames, the CBSA submitted that they are properly classified as follows:

-Other seats, with metal frames:

9401.71 - -Upholstered

9401.71.10 - - -For domestic purposes

46. By contrast, Stylus argued that the goods in issue with wooden frames should be classified as follows:

-Other seats, with wooden frames:

9401.61 - -Upholstered

...

9401.61.90 - - -Other

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

15. 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."

16. 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.

47. For the goods in issue with metal frames, Stylus submitted that they should be classified as follows:

-Other seats, with metal frames:

9401.71 - -Upholstered

. . .

9401.71.90 - - -Other

48. Given that this dispute centres on the correct classification at the tariff item level, section 11 of the *Customs Tariff* is not applicable; therefore, no regard need be had to the *WCO Classification Opinions* or *Explanatory Notes*.

POSITIONS OF PARTIES

Stylus

49. Stylus contended that the wording of tariff item Nos. 9401.61.10 and 9401.71.10, “for domestic purposes”, creates an end-use provision. It highlighted the Tribunal’s decision in *6572243 Canada Ltd o/a Kwalita Imports*¹⁷ to argue that the Tribunal must therefore look to the intended use of the goods in issue rather than the actual use of the goods. This, Stylus asserted, requires a “positive test”, wherein Stylus must demonstrate that the goods are intended for other (i.e. commercial) use. In so doing, Stylus argued that the fact that the goods may also be used in a domestic setting does not contradict their primary intended purpose.

50. Stylus insisted that the goods in issue are not intended “for domestic use”, since they are “contract furniture”. It defined “contract furniture” as follows:

furniture designed and manufactured for commercial installation, as in offices, waiting rooms, or lobbies.¹⁸

Applying this definition to the goods in issue, Stylus maintained that they were “contract furniture” for use in the hospitality industry.

51. As such, Stylus argued that the goods in issue are more robust and have greater durability than is typically found in furniture for a domestic setting. In support of this argument, Stylus relied on the requirements set out by the Association for Contract Textiles (ACT) for items to be considered of “contract furniture” grade.¹⁹

52. When examining the goods in issue, Stylus argued that it is not sufficient to simply determine whether they meet the definition of furniture designed for domestic purposes. Since contract furniture can be differentiated from domestic furniture by its increased durability, Stylus argued that contract furniture will always meet the less rigorous requirements of domestic furniture. What is determinative, Stylus contended, is that the goods in issue were primarily intended and marketed for the contract furniture market and were designed and built with materials suitable for the more demanding contract furniture market as a result.

17. *6572243 Canada Ltd. o/a Kwalita Imports v. President of the Canada Border Services Agency* (3 August 2012), AP-2010-068 (CITT) [*Kwalita*].

18. Exhibit AP-2013-021-09 at para. 77, Vol. 1.

19. Exhibit AP-2013-021-09, tab 12, Vol. 1.

CBSA

53. Contrary to the position advocated by Stylus, the CBSA insisted that, since the wording of the two tariff items at issue are “for domestic purposes” and “other”, there is an automatic presumption that the goods in issue should fall within definition of being “for domestic purposes”. The CBSA argued that the category of “other” is a residual tariff item, reserved for goods that cannot be classified elsewhere in the nomenclature. As such, the CBSA stated that Stylus must provide evidence to rebut the presumption that the goods in issue are for domestic purposes.

54. The CBSA agreed with Stylus’s position that the relevant factors to be considered are the characteristics, design, pricing and marketing of the goods in issue. However, the CBSA contended that Stylus provided very limited evidence, if any, on this point and that the evidence which was provided demonstrated that the goods in issue were actually marketed and designed for the domestic furniture market. In addition, the CBSA pointed to the fact that Stylus had not provided any records regarding its commercial sales of the goods in issue to support the contention that they were intended for anything “other” than domestic purposes alone.

ANALYSIS

CBSA’s Argument about Hotels as Domestic Settings

55. As the procedural history of these appeals demonstrates, the Tribunal spent considerable effort prior to the hearing attempting to narrow and focus the matters at issue. As a result of these efforts, the Tribunal confirmed its understanding in several written letters to the parties that the only matter at issue was whether the goods in issue were “for domestic purposes”, classifiable under tariff item Nos. 9401.61.10 and 9401.71.10, or whether they were for “other” purposes, classifiable under tariff item Nos. 9401.61.90 and 9401.71.90.

56. Notwithstanding the Tribunal’s efforts to focus on the issue in these appeals, the CBSA advanced a new argument during its closing argument at the hearing. Specifically, the CBSA asserted that a hotel was actually a domestic setting and that, therefore, any goods intended for use in hotels were properly classified as being “for domestic purposes” under tariff item Nos. 9401.61.10 and 9401.71.10. The CBSA maintained the following:

A hotel room is a home away from home. It’s somewhere you go to sleep. It’s somewhere you go for a shorter period of time, yes, but it’s still fundamentally a home or a domestic environment.²⁰

In so saying, the CBSA argued that a couch or chair cannot be separated from its domestic purposes regardless of where it is found; at their core, couches or chairs are designed for sitting or sleeping, both of which are fundamentally domestic activities.²¹

57. At the outset, the Tribunal wishes to note the problematic timing of this argument. Specifically, the Tribunal notes that Stylus was not alerted to this potential line of argument prior to closing argument and, therefore, did not have an opportunity to tender any evidence in response. By introducing a new argument at such a late point in the proceedings, the CBSA denied Stylus of the opportunity to be fully informed of the case to be met. Therefore, the Tribunal finds that it would be procedurally unfair to consider such an argument in its decision.

20. *Transcript of Public Hearing*, Vol. 2, 19 June 2015, at 276.

21. *Transcript of Public Hearing*, Vol. 2, 19 June 2015, at 276.

58. However, even if the Tribunal were inclined to consider this argument by the CBSA, it would nonetheless not be convinced. Stylus pointed out the following in its oral rebuttal argument:

... if all chairs and all seats are used for seating, which we know they are, and seating is a domestic purpose, then that robs the other than domestic purposes tariff of any meaning whatsoever ...²²

While this observation does not conclusively show that hotels must fall under the “other” rather than the “domestic” purposes tariff item, the Tribunal agrees that, simply because a couch or chair is used for sitting, it does not follow that it is necessarily for a domestic purpose alone.

59. The term “domestic purposes” is not defined in the chapter notes or explanatory notes to heading No. 94.01. However, the *Merriam-Webster* dictionary defines domestic in relevant part as “. . . of or relating to the household or the family . . .”²³ Furthermore, the term “residential”, which was used repeatedly by the CBSA to describe the domestic nature of the goods in issue, is defined as follows:

: containing mostly homes instead of stores, businesses, etc.

: used as a place to live

: of or relating to the places where people live.²⁴

Consistent in both these definitions is a connection with a house or household.

60. This, in turn, is consistent with the Tribunal’s previous finding that:

... the term “domestic” found in the tariff item should be given a wide enough interpretation to include goods that can be found outside of the house, but which have, as a primary purpose, use by individuals in a domestic setting.²⁵

Therefore, while “domestic” need not be limited to the “four walls” of a home, there is nothing to suggest that its use should be applied to situations or settings which are clearly *outside* a household or domestic setting, including that of a hotel.

61. Based on the limited evidence before the Tribunal, there is nothing to suggest that a hotel is akin to a household or family setting.²⁶ While families may utilize hotel rooms and their attendant facilities, the fact remains that they are businesses as opposed to households or homes in which people reside. Thus, notwithstanding the issues of procedural fairness related to the raising of this argument, the facts presented do not support the CBSA’s contention that a hotel should be included in the scope of “domestic purposes” within the meaning of tariff item Nos. 9401.61.10 and 9401.71.10.

22. *Transcript of Public Hearing*, Vol. 2, 19 June 2015, at 308.

23. www.merriam-webster.com, s.v. “domestic”.

24. www.merriam-webster.com, s.v. “residential”.

25. *Costco Canada Inc. v. Commissioner of the Canada Customs and Revenue Agency* (11 January 2001), AP-2000-015 (CITT) at 4.

26. The Tribunal notes that the testimony of the CBSA’s own expert witness recognized residential and hospitality design as two distinct areas of specialization and study. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 137-38.

Burden of Proof

62. In order to properly classify the goods in issue, the first issue to be determined is what Stylus is required to prove in order to be successful in these appeals. The Tribunal agrees with the CBSA insofar as the onus is on Stylus to demonstrate that the classification determined by the CBSA is incorrect.²⁷

63. The Tribunal's recent statement in *Ikea Supply AG v. President of the Canada Border Services Agency*²⁸ sets out that an appellant may discharge this burden in one of two ways:

- by establishing that the goods in issue were equally intended for domestic and other purposes; or
- by establishing that they were primarily intended for non-domestic purposes (e.g. business purposes).²⁹

64. In so doing, the Tribunal notes that the test to be applied is the *intended* use of the goods in issue, as opposed to their *actual* use.³⁰

65. In order to determine the intended use, the Tribunal will consider factors such as the design, characteristics, marketing and pricing of the goods in issue, as it has in the past.³¹ This will enable the Tribunal to apply Rule 1 of the *General Rules* and conclude whether the goods are classifiable under tariff item Nos. 9401.61.10 and 9401.71.10 as being "for domestic purposes".

Design and Characteristics

66. Mr. Ripoli testified that, initially, Stylus's business was focused on residential furniture. However, in 2003, Stylus expanded its business to include selling imported furniture to the hospitality market.³² In order to accomplish this goal, Stylus met with representatives of hospitality clients, including Best Western,³³ to determine their needs. Stylus also worked with some outside interior designers and other players in the hospitality industry to develop a line of furniture to target the mid- to low-end segment of the hospitality market.³⁴

67. While Stylus conceded that the goods in issue were also sold to retailers that, in turn, sold to residential customers, it argued that each piece was primarily and intentionally designed to meet various standards required by its hospitality clients.³⁵

68. The CBSA suggested that there is no functional distinction between the standards for furniture to be used in a hospitality setting and the standards for furniture intended to be used in a residential setting.³⁶ The

27. *Kwality* at para. 39.

28. (18 September 2014), AP-2013-053 (CITT) [*Ikea*].

29. *Ikea* at para. 20; *Alliance Ro-Na Home Inc. v. Commissioner of the Canada Customs and Revenue Agency* (25 May 2004), AP-2003-020 (CITT) at para. 10.

30. *Kwality* at para. 47.

31. *Ikea* at para. 19; *Kwality* at para. 47; *Curry's Art Stores v. President of the Canada Border Services Agency* (29 April 2013), AP-2012-031 (CITT) at para. 42.

32. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 13, 66, 68.

33. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 129.

34. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 14.

35. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 12-13, 77, 94.

36. *Transcript of Public Hearing*, Vol. 2, 19 June 2015, at 287.

Tribunal disagrees. Both Mr. Ripoli and Mr. Baucom testified that, while there is no mandatory set of regulations for hospitality-grade furniture, there are nonetheless generally understood industry standards with respect to durability.³⁷ Both witnesses confirmed that hospitality furniture must have certain standard features, such as a minimum double-rub count for fabric, which consumers of residential furniture not only would not require but also "... would never specify ...".³⁸

69. The Tribunal recognizes that hospitality standards operate across a spectrum, depending on the needs or market range of a particular hospitality client. Moreover, the Tribunal notes that, within the hospitality market, there are several grades of clients: low end, medium price and high end.³⁹ Therefore, the Tribunal accepts that different clients within the hospitality industry have different needs. For instance, Ms. Nesbitt testified that, as a lower- to mid-market hotel, Best Western's standards were "... very, very simple ...".⁴⁰ On the other hand, Mr. Baucom's higher-end clients might have different expectations for contract furniture to meet their specific needs. As he testified, "... some hotels, some hospitalities, are going to have a higher standard than others."⁴¹

70. On the basis of their needs or position in the market, the Tribunal finds that hospitality clients typically demand furniture that is durable and strong so that it will "... look newer longer ...", in contrast to retail customers who tend to look at furniture in terms of its appearance (i.e. colour, style) and whether it "... sits well ..." (i.e. comfort).⁴² To meet these demands, both Mr. Ripoli and Mr. Baucom testified that furniture for hospitality clients must have certain characteristics, such as hardwood frame construction and corner blocks, special frame glue, and durable coverings in either fabric or leather.⁴³ Mr. Baucom went on to state that, while he "prefers" joints to be dowelled, furniture to be screwed rather than stapled, and a high-density foam mattress with a minimum thickness of 2.5 inches, those features were his own personal standards as opposed to industry ones.⁴⁴ Thus, while the Tribunal recognizes that traits such as dowelling or 2.5-inch-thick cushions may be desirable in some higher-end hospitality applications, they are not required for furniture geared towards the low- to mid-level hospitality use.

71. Turning to the characteristics of the goods in issue, Stylus provided physical examples of the Otis chair,⁴⁵ the Trent chair⁴⁶ and the Graham chair,⁴⁷ the latter two of which were cut away to reveal their construction. In discussing the three chairs at the hearing, Mr. Ripoli pointed to the solid hardwood frame construction, hardwood corner blocks and the use of specialized frame glue in addition to the screws or high-pressurized staples.⁴⁸ In addition, Mr. Ripoli noted the use of sinuous string or elastic webbing spring systems, 2- to 2.25-pound foam cushions and protective foam padding, all of which were utilized to prolong the life of the chairs and to ensure that they would retain their shapes longer.⁴⁹ During his testimony,

37. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 14, 17-18, 46, 148.

38. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 165.

39. Exhibit AP-2013-021-79B, tab 1, Vol. 1H.

40. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 128.

41. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 164.

42. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 16-17, 25-26, 153-54, 161.

43. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 17-18, 20, 154.

44. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 155, 159-60, 178, 186.

45. Exhibit AP-2013-021-A-03.

46. Exhibit AP-2013-021-A-06.

47. Exhibit AP-2013-021-A-07.

48. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 19-31, 104. While Mr. Baucom expressed concerns with the use of staples, the Tribunal notes that he stated that they did not meet his *own* standard. As such, the Tribunal concludes that this is another example of his personal preference, rather than an industry-wide standard.

49. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 19-31.

Mr. Baucom acknowledged that some elements of the physical exhibits could be considered acceptable for commercial-grade furniture, even though other elements were not to his own personal preferences or standards.⁵⁰

72. In addition, Stylus provided a “Stylus Import Model Explanation Form”, which featured a table setting out the models of furniture included in the scope of the goods in issue, as well as a description of the characteristics of those goods (the Table).⁵¹ Among the characteristics listed are the following:

Contract cover/Hardwood-Plywood Frame/Staples-Glue/Web-Sinuuous Spring/2lb foam/Darcon
Wrap/Fully Padded⁵²

In cross-examination, Mr. Ripoli acknowledged that the Table did not provide an exhaustive summary of the characteristics of the goods in issue.⁵³ However, the Table demonstrates that the goods in issue were intentionally designed to feature characteristics that are not typically required in furniture intended for domestic purposes. Furthermore, the Table reveals that the goods in issue were, in fact, designed to fulfill the higher standards expected by Stylus’s clients for hospitality furniture.

73. Both parties acknowledged that there was no specific requirement or expectation regarding the degree of durability for fabrics used in residential furniture.⁵⁴ By contrast, both Mr. Ripoli and Mr. Baucom pointed to the voluntary guidelines set by the ACT regarding the appropriate durability of fabrics for hospitality furniture.⁵⁵ Furthermore, both Mr. Ripoli and Mr. Baucom noted that 15,000 double-rubs was the minimum standard for fabric for hospitality furniture, though Mr. Baucom acknowledged that it could be even less if the client so desired.⁵⁶

74. During the hearing, Mr. Ripoli spent considerable time explaining how the fabrics used in the goods in issue met, and often exceeded, this minimum standard.⁵⁷ On cross-examination, Mr. Baucom agreed that all but one or two of the goods in issue featured fabrics of more than 15,000 double rubs.⁵⁸ Therefore, as with the construction of the frame of the goods in issue, the Tribunal finds that the goods in issue were specifically designed not for residential customers but to meet the enhanced standards of hospitality furniture.

75. In addition, witnesses testified that flammability is another consideration for fabric coverings and one that is key when purchasing hospitality-grade furniture. They referred to ACT standards to note that, while these standards are not mandatory, most hospitality clients prefer fabrics that meet the standard set in California Technical Bulletin 117 (CAL 117). While the CBSA seemed to suggest that a designer would

50. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 186, 191. While Mr. Baucom also pointed to issues in the construction of the chairs, he later conceded that these could have been a result of the samples being cut in half and then shipped from Vancouver, British Columbia, to Montréal, Quebec, before being driven to Ottawa. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 200-201.

51. Exhibit AP-2013-021-039A, tab 1, Vol. 1D.

52. Exhibit AP-2013-021-039A, tab 1, Vol. 1D.

53. In fact, Mr. Ripoli testified that the Table demonstrated the minimum standards to which the goods in issue were constructed but that some goods may actually be built to a higher standard (i.e. screws may have been used in place of staples and glue in some instances). *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 107-108.

54. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 124, 165.

55. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 35, 164.

56. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 38, 161, 163.

57. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 40-44. This evidence was confirmed by Ms. Nesbitt. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 129.

58. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 213.

“expect to see” a certificate of compliance with CAL 117,⁵⁹ Mr. Baucom testified that such a certificate would be “on file” or accessible only if and/or when requested.⁶⁰ Moreover, Mr. Baucom stated that he would expect the supplier to mention the fabric’s compliance with CAL 117 “...in their product specifications . . .” as opposed to a stand-alone certificate.⁶¹

76. Upon examining the 10 examples of product specifications submitted by Stylus, the Tribunal notes that each one clearly states that the fabric complied with CAL 117.⁶² On the basis of these documents, combined with the testimony of Mr. Ripoli,⁶³ the Tribunal is satisfied that the goods in issue were designed to meet the standards of CAL 117. It therefore finds that the fabrics used were intentionally chosen to meet the needs of its hospitality clients, over and above residential customers alone.

77. With respect to leather coverings, Mr. Baucom initially asserted in his expert report that the goods in issue should meet the Joint Industries Standards and Guidelines for Upholstery Leather (Guidelines for Leather).⁶⁴ However, during cross-examination, Mr. Baucom conceded that the Guidelines for Leather did not actually contain any different standards for leather for use in residential applications and leather for use in hospitality furniture.⁶⁵ Moreover, both Ms. Nesbitt and Mr. Ripoli stated that there was no specific standard for leather in the hospitality context.⁶⁶ Therefore, the Tribunal finds that the Guidelines for Leather are not applicable in determining the appropriate standards for leather used in hospitality furniture.

78. As with fabric coverings, the evidence demonstrates that the leather selected for the goods in issue was specifically used because of its durability.⁶⁷ Whereas leather used in residential applications is more likely to focus on comfort and style,⁶⁸ Mr. Ripoli testified that Stylus specifically designed and made the goods in issue with bycast leather to ensure that it met the demands of its hospitality clients. In particular, both Mr. Ripoli and Ms. Nesbitt testified that the bycast leather used in the goods in issue was ideal for hospitality use, since it was durable, easy to clean and affordable.⁶⁹

79. In support of this argument, Stylus filed nine purchase orders by hospitality clients that were dated within the time of importation, all of which specified that bycast leather was used in the products purchased.⁷⁰ The Tribunal examined these purchase orders in order to ascertain whether hospitality clients preferred bycast leather, not to establish the actual use of the goods in issue.⁷¹

59. *Transcript of Public Hearing*, Vol. 2, 19 June 2015, at 289.

60. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 153.

61. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 152.

62. Exhibit AP-2013-021-45A, tabs 2, 28-29, 31-34, 36, 38-39, 41, Vol. 1F.

63. *Transcript of Public Hearing*, Vol. 1, 18 June 2014, 39-44.

64. Exhibit AP-2013-021-79B, tab 1, Vol. 1H.

65. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 216.

66. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 47, 129.

67. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 16, 18, 30, 130.

68. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 30, 79.

69. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 30, 47, 130.

70. Exhibit AP-2013-021-045A, tab 23 at 204-205, 207-210, 223-24, 236, Vol. 1F.

71. In addition to Best Western, these hospitality clients include the Terminal City Hotel Project, Garibaldi Springs Hotel Resort, Playa del Sol Vacation Properties and Revelstoke Mountain Resort. Exhibit AP-2013-021-045A at 204-205, 207-210, 223-24, 236, Vol. 1F.

80. When asked whether, on the basis of these purchase orders, Mr. Baucom believed that bycast leather was a suitable form of covering for certain customers within the hospitality market, he responded that he personally could not say that, on the basis of what other people have ordered.⁷²

81. Respectfully, the Tribunal has difficulty reconciling Mr. Baucom's testimony with the uncontroverted evidence on the record. While bycast leather may not be the preferred covering for some hospitality clients, the Tribunal finds that the evidence clearly establishes that Stylus expressly used bycast leather for some of the goods in issue in order to meet the standards and demands of certain segments of the hospitality industry. Thus, it is evident that the design choice made by Stylus was not to utilize a leather geared to the style and comfort considerations of residential furniture but, rather, was specifically made to meet the needs of its hospitality clients.

82. Taken together, the Tribunal finds that the evidence demonstrates that Stylus intentionally designed the goods in issue not for domestic purposes but to meet the needs of its hospitality clients. The Tribunal recognizes that, while the goods in issue can be, and often are, purchased by residential retailers, they are not primarily intended for domestic use. In fact, the Tribunal accepts that the opposite is true. As discussed above, the evidence shows that Stylus intentionally created an import business in order to source products to fit the needs, expectations and budget of a segment of the hospitality industry.⁷³ The fact that residential consumers might also choose to purchase these products does not mean that they were *intended* for domestic use.

83. In light of the above, the Tribunal finds that the design and characteristics of the goods in issue indicate that the goods in issue were primarily intended for hospitality purposes, as set out by the test in *Ikea*.

Marketing

84. The CBSA pointed to the purported similarities between Stylus's retail Web site⁷⁴ and its Web site aimed at hospitality clients⁷⁵ to support its view that the goods in issue are intended for domestic purposes.⁷⁶ In particular, the CBSA contended that, of the 232 styles of furniture comprising the goods in issue, 63 models were advertised on Stylus's retail Web site, while only 20 were listed on the contract furniture Web site.⁷⁷ In so saying, the CBSA concluded that the goods in issue were primarily marketed to retail, rather than hospitality, clients.

85. However, as explained by Mr. Ripoli, Stylus's contract furniture Web site did not exist when the goods in issue were imported.⁷⁸ It was later developed by Stylus to be a platform to show hospitality clients new pieces that Stylus had added to its furniture collection. In that sense, Mr. Ripoli argued that the Web site was not constructed to be a sales tool.⁷⁹

86. Moreover, Mr. Ripoli testified that, unlike its hospitality clients, Stylus does not sell directly to residential clients and does not have any residential stores. While retailers do purchase the goods in issue from Stylus, and may sell these goods to residential clients, this does not change the Tribunal's view that,

72. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 222.

73. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 14.

74. www.stylussofas.com.

75. www.styluscontract.com.

76. Exhibit AP-2013-021-39A at para. 50, Vol. 1D.

77. Exhibit AP-2013-021-39A at para. 52, Vol. 1D.

78. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 80.

79. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 96.

based on the preponderance of evidence, the marketing of the goods in issue demonstrates that they were intended to be used for hospitality purposes.⁸⁰

87. As Mr. Ripoli testified, Stylus marketed, and continues to market, the goods in issue directly to hospitality clients by establishing relationships with hospitality buyers, interior designers and hotel owners.⁸¹ He noted that, in most cases, Stylus markets the goods in issue by meeting with hospitality buyers, attending trade shows and responding to specification packages sent by potential clients.⁸² Mr. Ripoli's testimony was substantiated by Mr. Baucom: he noted that personal relationships are the standard by which most sales are made in the hospitality industry.⁸³

88. While actual sales of the goods in issue are not determinative of the purpose or intended use of those goods, it is nonetheless worthy noting that Stylus provided numerous specification packages and purchase orders received from hospitality clients.⁸⁴ While some of these documents are dated outside the years in which the goods in issue were imported, the Tribunal nevertheless finds that they represent a manifestation of Stylus's intent in marketing the goods in issue.

89. On the basis of the foregoing, the Tribunal finds that the goods in issue were not marketed as being for domestic purposes but, rather, were purposefully promoted to the contract furniture market for use in the hospitality industry.

Pricing

90. Both parties conceded that, in this particular case, pricing was not a determinative criterion.⁸⁵ While the CBSA contended that there was simply a lack of evidence regarding pricing,⁸⁶ the Tribunal notes that it was repeatedly stated that the goods in issue were intended for sale in the low- to mid-range hospitality market. Given that, the evidence suggested that budgetary constraints were a significant consideration and that the goods in issue had to meet a certain price point.⁸⁷ Stylus specifically selected import sources and certain construction materials to meet these price points.⁸⁸ Therefore, the Tribunal finds that the pricing of the goods in issue is reflective of the quality of the furnishings rather than a determining factor of their intended purpose.

Summary

91. In summary, the Tribunal finds that Stylus has discharged its burden of establishing that the CBSA incorrectly classified the goods in issue under tariff item Nos. 9401.61.10 and 9401.71.10 as other upholstered seats, with wooden or metal frames, for domestic purposes. The intentional design and characteristics, as well as the marketing of the goods, demonstrate that Stylus did not intend the goods in issue to be used primarily for domestic purposes. While Stylus acknowledges that they can, and are, also used for domestic purposes, the evidence shows that the goods in issue were designed to be for contract furniture (i.e. hospitality) use and to meet the demands and specifications of its hospitality clients.

80. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 69-71.

81. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 59, 80, 143.

82. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 59, 80.

83. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 143.

84. Exhibit AP-2013-021-045A, tab 23, Vol. 1F.

85. *Transcript of Public Hearing*, Vol. 2, 19 June 2015, at 249-50, 303-304.

86. *Transcript of Public Hearing*, Vol. 2, 19 June 2015, at 249-50, 303-304.

87. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 12-13, 132, 139.

88. *Transcript of Public Hearing*, Vol. 1, 18 June 2015, at 13-14, 47, 130.

DECISION

92. For the foregoing reasons, pursuant to Rule 1 of the *General Rules*, the Tribunal concludes that the goods in issue should be classified under tariff item Nos. 9401.61.90 and 9401.71.90 as other upholstered seats, with wooden or metal frames, other than for domestic purposes.

93. The appeals are allowed.

Ann Penner

Ann Penner
Presiding Member