



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2015-002

The Source (Bell) Electronics Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, January 20, 2016*

*Corrigendum issued
Tuesday, February 2, 2016*

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IN THE MATTER OF an appeal heard on October 27, 2015, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated January 30, 2015, with respect to a request for re-determination pursuant to section 60 of the *Customs Act*.

BETWEEN

THE SOURCE (BELL) ELECTRONICS INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Peter Burn
Peter Burn
Presiding Member

IN THE MATTER OF an appeal heard on October 27, 2015, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated January 30, 2015, with respect to a request for re-determination pursuant to section 60 of the *Customs Act*.

BETWEEN

THE SOURCE (BELL) ELECTRONICS INC.

Appellant

AND

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

Respondent

CORRIGENDUM

The heading number in paragraph 44 should read “heading No. 42.02”.

By order of the Tribunal,

Peter Burn
Peter Burn
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: October 27, 2015
Tribunal Member: Peter Burn, Presiding Member
Counsel for the Tribunal: Alexandra Pietrzak
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STATEMENT OF REASONS

SUMMARY

1. This is an appeal filed by The Source (Bell) Electronics Inc. (The Source) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ in response to a decision made by the President of the Canada Border Services Agency (CBSA) on January 30, 2015, pursuant to subsection 60(4).

2. The issue in this appeal is whether two models of Kindle Touch leather covers are properly classified under tariff item No. 4202.91.90 of the schedule to the *Customs Tariff*² as other containers with outer surface of leather or of composition leather, as determined by the CBSA, or should be classified under tariff item No. 4205.00.00 as other articles of leather or composition leather, as contended by The Source.

GOODS IN ISSUE

3. The goods in issue are two models of leather covers or cases³ designed for the Kindle Touch, which is a hand-held device on which electronic versions of books, newspapers, etc., can be read (also known as an e-reader).⁴ Both models of the goods in issue have interior plastic trays with cut-outs into which the Kindle Touch may be inserted. The first model is the “Kindle Touch Leather Cover”, model No. 8001916, and the second model is the “Kindle Leather Cover with Light”, model No. 2614176.⁵

4. The Source filed two physical exhibits of the goods in issue: Exhibit A-01, the “Kindle Touch Leather Cover”, and Exhibit A-02, the “Kindle Leather Cover with Light”.

PROCEDURAL HISTORY

5. On or about October 28, 2013, The Source requested an advance ruling of the goods in issue pursuant to section 43.1 of the *Act*. The Source submitted that the goods in issue should be classified under tariff item No. 4205.00.00.

6. On or about April 16, 2014, the CBSA issued an advance ruling pursuant to paragraph 43.1(1)(c) of the *Act*, in which it determined that the goods in issue were properly classified under tariff item No. 4202.91.90.

7. On or about June 10, 2014, The Source filed a request for review of the advance ruling, pursuant to subsection 60(2) of the *Act*.

8. On November 12, 2014, the CBSA issued a preliminary decision, in which it classified the goods in issue under tariff item No. 4202.91.90.

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

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

3. The goods in issue are referred to as covers by Bell and as cases by the CBSA. Exhibit AP-2015-002-04 at para. 7, Vol. 1; Exhibit AP-2015-002-08A at para. 1, Vol. 1.

4. Exhibit AP-2015-002-04 at para. 7, Vol. 1.

5. Exhibit AP-2015-002-08A, tab 3, Vol. 1.

9. On January 30, 2015, the CBSA issued a final decision, confirming the classification of the goods in issue under tariff item No. 4202.91.90.⁶

10. On April 14, 2015, The Source filed this appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

LEGISLATIVE FRAMEWORK

11. In appeals pursuant to section 67 of the *Act* concerning tariff classification matters, the Tribunal determines the proper tariff classification of the goods in issue in accordance with prescribed interpretive rules.

12. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (Harmonized System) developed by the World Customs Organization (WCO).⁷ The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items. Sections and chapters may include notes concerning their interpretation. Sections 10 and 11 of the *Customs Tariff* prescribe the approach that the Tribunal must follow when interpreting the schedule in order to arrive at the proper tariff classification of goods.

13. Subsection 10(1) of the *Customs Tariff* provides 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*⁸ and the *Canadian Rules*⁹ set out in the schedule.

14. The *General Rules* comprise six rules structured in sequence so that, if the classification of the goods cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, and so on, until classification is completed. Classification therefore begins with Rule 1, which provides that “. . . for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.”

15. Section 11 of the *Customs Tariff* requires the Tribunal, when interpreting the headings and subheadings, to consider the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*¹⁰ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,¹¹ published by the WCO. While the *Classification Opinions* and the *Explanatory Notes* are not binding on the Tribunal in its classification of imported goods, the Tribunal will apply them unless there is a sound reason to do otherwise.¹²

6. Exhibit AP-2015-002-08A, Vol. 1, Tab 2.

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

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

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

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

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

12. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13 and 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*.

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

RELEVANT CLASSIFICATION PROVISIONS

17. Both parties agree that the goods in issue fall under Chapter 42 of the *Customs Tariff* as follows:

SECTION VIII

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

...

Chapter 42

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

18. The CBSA submits that the goods in issue are properly classified under tariff item No. 4202.91.90, which provides as follows:

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

...

-Other:

4202.91 --With outer surface of leather or of composition leather

...

4202.91.90 ---Other

19. The relevant explanatory notes to heading No. 42.02 provide as follows:

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

...

The heading **does not cover**:

...

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

20. The explanatory notes to subheading Nos. 4202.11, 4202.21, 4202.31 and 4202.91 provide as follows:

For the purposes of these subheadings, the expression “with outer surface of leather” includes leather coated with a thin layer of plastics or synthetic rubber which is invisible to the naked eye (usually less than 0.15 mm in thickness), to protect the leather surface, no account being taken of a change in colour or shine.

21. The Source argues that the goods in issue should be classified under tariff item No. 4205.00.00, which provides as follows:

4205.00.00 Other articles of leather or of composition leather.

22. The relevant explanatory notes to heading No. 42.05 provide as follows:

This heading covers those articles of leather or composition leather which do not fall in the preceding headings of this Chapter or in other Chapters of the Nomenclature.

...

It also includes the following articles:

Luggage labels; razor strops; . . . reading-covers for books; blotting pads; leather or goatskin water bottles and other containers (including those wholly or mainly covered with leather or composition leather) not being similar to those specified in **heading 42.02**

23. In its additional materials, The Source also filed the French version of the above explanatory notes, which provide as follows:

La présente position englobe les articles en cuir naturel ou reconstitué qui ne relèvent pas des positions précédentes du présent Chapitre ou d'autres Chapitres de la Nomenclature.

...

Sont également inclus les articles suivants :

Les porte-adresses, les cuirs à rasoirs, . . . les liseuses et couvre-livres, les sous-main, les gourdes, les outres et autres contenant, y compris ceux gainés en totalité ou en majeure partie de cuir naturel ou reconstitué, non semblables à ceux repris au n^o 42.02

POSITIONS OF PARTIES

The Source

24. The Source submitted that the CBSA conceded that the goods in issue are leather covers. As such, The Source argued that the goods in issue are specifically excluded from heading No. 42.02 by virtue of the related explanatory notes which exclude “. . . book covers and reading jackets, file covers . . . etc. . . .” The Source therefore contended that the CBSA erred in finding that the goods in issue were properly classified in heading No. 42.02.

25. In arguing that the goods in issue are covers for e-readers, The Source submitted that the CBSA was incorrect to conclude that Note (c) of the explanatory notes to heading No. 42.02 only exclude book covers. The Source argued that Note (c) does not provide an exhaustive list and pointed to the use of words “for example” and “etc.” as denoting that the list is not limited to only book covers.¹³ Moreover, The Source

13. Exhibit AP-2015-002-04 at para. 30, Vol. 1.

maintained that, if the language of the tariff is interpreted to account for its ordinary meaning and for the way in which it has developed over time, it is clear that an e-reader is in fact a book. Thus, The Source argued that the CBSA erred in not considering an e-reader a book and, therefore, in finding that covers for e-readers were not akin to book covers and not excluded from heading No. 42.02.

26. At the hearing, The Source also contended that the French version of the explanatory notes to heading No. 42.02 supports its position that the goods in issue should be classified in heading No. 42.05. In particular, The Source argued that the words “*les liseuses et couvre-livres*” (“reading-covers for books” in the English version), which are included in the list of items which are covered in heading No. 42.05, should read “e-readers and book covers” in the English version. As such, The Source maintained that the goods in issue are specifically listed in heading No. 42.05.

27. The Source stated that the goods in issue cannot be classified in heading No. 42.02, as they are covers, *not* containers, and therefore not included in the phrase “other similar containers” found in heading No. 42.02. In support of this position, The Source pointed to the marketing literature for the goods in issue, which described them as “covers”. In addition, The Source referred to the decision in *Home Depot of Canada Inc. v. President of the Canada Border Services Agency*,¹⁴ in which the Tribunal found that the common characteristic of the goods of heading No. 42.02 was that “. . . they are designed to carry or transport objects.”¹⁵ As the goods in issue are not, in The Source’s submission, designed in any way to carry or transport e-readers, it concluded that the goods in issue cannot be classified in heading No. 42.02.

28. Finally, The Source argued that Rule 5 of the *General Rules* lists the same types of goods as those found in heading No. 42.02 (i.e. camera cases, musical instruments cases, gun cases) and is therefore applicable to heading No. 42.02. The Source asserted that the types of cases listed in Rule 5 do not physically stay on the goods for which they are designed while they are in use, but are simply designed for storing the goods when they are *not* in use. The Source submitted that the goods in issue could not be classified in heading No. 42.02, since they are designed to remain *on* the e-reader while the e-reader is in use.

CBSA

29. The CBSA submitted that The Source bears the onus of proving that the CBSA’s tariff classification is incorrect and that The Source had failed to discharge its burden in this case.

30. The CBSA argued that the goods in issue are *prima facie* classifiable in heading No. 42.02, as they are a “similar container” which is “. . . specifically shaped or internally fitted to contain a particular good . . . and are used to hold, protect and carry that good”.¹⁶ In particular, the CBSA contended that the goods in issue are sized and fitted to secure a Kindle Touch and used to protect and transport that device. In support of this position, the CBSA referred to The Source’s Web site, which alternately referred to the goods in issue as covers and cases, and described the goods in issue as being perfect to “. . . protect your favorite E-Reader . . .” and being “. . . perfect for reading on the go . . .”¹⁷

31. The CBSA submitted that the Tribunal has previously held that the common features of the goods listed in heading No. 42.02 are that they are specifically designed and internally fitted to hold, carry and

14. (28 April 014), AP-2013-032 (CITT).

15. *Ibid.* at para. 50.

16. Exhibit AP-2015-002-08A at para. 26, Vol. 1, citing *Curve Distribution Services Inc. v. President of the Canada Borders Services Agency* (15 June 2012), AP-2011-023 (CITT) [*Curve*] at para. 35.

17. Exhibit AP-2015-002-08A at para. 36, Vol. 1.

protect specific objects. The CBSA contended that whether or not an article is a “similar container” is not a strict test and that the goods in issue nonetheless meet the criteria, as they are specifically designed to fit and secure the Kindle Touch and to protect it while “on the go”.¹⁸

32. In response to The Source’s position, the CBSA maintained that heading No. 42.05 cannot apply, as the term “covers” does not fully describe the goods in issue. While a cover is defined as “. . . something that covers or protects . . .”, the CBSA submitted that the fact that the goods in issue are specifically shaped and internally fitted to hold a Kindle Touch is not a characteristic of a cover.¹⁹ Rather, the CBSA argued that such a feature is specific to cases of heading No. 42.02.

ANALYSIS

Preliminary Issue

33. At the hearing, The Source took issue with the CBSA’s oral argument that the Kindle Touch is not a book. The Source claimed that the CBSA did not make this argument in its brief and that it therefore was hampered in its ability to know the case to be met at the hearing. The Source argued that it was procedurally unfair for the CBSA to raise this new argument at the hearing.

34. The Tribunal notes that the CBSA stated this position in its written decision of November 12, 2014.²⁰ Moreover, this statement was never retracted by the CBSA. Given this, the Tribunal finds that it was reasonable to anticipate that the CBSA would maintain its position and that it would make this argument at the hearing. Accordingly, the Tribunal finds that there was no procedural unfairness in the CBSA contending that the Kindle Touch was not properly considered a book.

Tariff Classification

35. As noted by both parties, heading No. 42.05 is a residual heading. The Tribunal therefore agrees that it must first determine whether or not the goods in issue may be classified in heading No. 42.02.²¹ It is only if the Tribunal is satisfied that the goods in issue are *not* properly classified in heading No. 42.02 that it will proceed to examine whether or not they should be classified in heading No. 42.05.

36. The terms of heading No. 42.02 and the explanatory notes thereto make it clear that the heading covers only the articles specifically named therein and “similar containers”. As the goods in issue are not specifically named in heading No. 42.02, they can only be classified therein if they are held to be “containers” that are “similar” to the articles specifically named in the heading.

37. As the Tribunal has previously held, the test to determine similarity is not a strict one. Rather, in order to be considered similar, the goods must share important characteristics and have common features, though the requirement for similarity should not be mistaken for a requirement that the goods be identical.²² The Tribunal must first establish the common features of the containers listed in heading No. 42.02 and then examine whether the goods in issue also share those common features.

18. *Transcript of Public Hearing*, 27 October 2015, at 49.

19. Exhibit AP-2015-002-08A at para. 60, Vol. 1.

20. Exhibit AP-2015-002-04, tab 2 at 16, Vol. 1.

21. *Ibid.* at para. 16; Exhibit AP-2015-002-08A at para. 17, Vol. 1.

22. *Ivan Hoza v. President of the Canada Border Services Agency* (6 January 2010), AP-2009-002 (CITT) at 5; *Rui Royal International Corp. v. President of the Canada Border Services Agency* (30 March 2011), AP-2010-003 (CITT) at para. 82.

38. As noted by the parties at the hearing, heading No. 42.02 is divided into two distinct parts by a semi-colon.²³ The Tribunal has previously found that the presence of the semi-colon in fact denotes two separate lists within heading No. 42.02.²⁴ As long as the goods in issue are found to be similar to articles specifically named in either the first or second part of the heading, they will be classifiable in heading No. 42.02. Specifically, the CBSA argued that the goods in issue are similar to the first part of the heading, which lists “[t]runks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters”

39. While The Source further submitted that a characteristic was that the listed goods all had handles for transportation, the Tribunal finds that this is not a characteristic of all the goods. Specifically, spectacle cases do not meet this description, as they are not goods which are normally equipped with handles for transportation. Therefore, the Tribunal finds that handles for transportation are not a characteristic common to all the goods listed in the first part of heading No. 42.02.

40. The Source further submitted that Rule 5 of the *General Rules*, read in conjunction with heading No. 42.02, leads to the conclusion that another characteristic is that the goods are for storage purposes when the goods that they cover or contain are not in use. However, Rule 5 provides as follows:

In addition to the foregoing provisions, the following Rules shall apply in respect of the goods referred to therein:

- (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and *presented with the articles for which they are intended*, shall be classified with such articles when of a kind *normally sold therewith*. This Rule does not, however, apply to containers which give the whole its essential character.

[Emphasis added]

41. As described above, Rule 5 of the *General Rules* applies to cases and containers that are *presented and sold with* the articles that they contain. It is not a rule to be applied to any and all containers generally.

42. The Source conceded that the goods in issue are both presented and sold independently of the e-reader that they cover or contain.²⁵ As such, the Tribunal finds that they do not fall within the scope of Rule 5 of the *General Rules*; therefore, Rule 5 may not be properly applied when classifying the goods in issue.

43. In *Curve*, the Tribunal found that an important characteristic of spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases and holsters specifically named in the first part of heading No. 42.02 was that they were all fitted or internally shaped to the article that they were intended to contain and carry.²⁶ Given the finding in *Curve*, together with a consideration of the goods listed in heading No. 42.02, the Tribunal is of the view that these goods all share the important features and characteristics of being specifically shaped or internally fitted to contain particular goods (e.g. cameras, musical instruments) and are used to hold, protect and carry those goods.

23. *Transcript of Public Hearing*, 27 October 2015, at 18, 37.

24. *Curve* at para. 32.

25. *Transcript of Public Hearing*, 27 October 2015, at 67.

26. *Curve* at para. 35.

44. In this case, the parties agree that the goods in issue are designed to fit the Kindle Touch, whether as a cover or a case.²⁷ Both the product literature and a physical examination of the goods in issue confirm this fact.²⁸ The Tribunal therefore finds that the goods in issue are specifically shaped or internally fitted to hold particular goods, namely, Kindle Touch e-readers, as required by heading No. 42.04.

45. Similarly, the product literature describes the goods in issue as “. . . perfect for protecting your Kindle Touch *on you go*”²⁹ [*emphasis added*] and as protecting the Kindle Touch “. . . from bumps, nicks, and the contents of your briefcase, purse, or bag”³⁰ The Tribunal is satisfied that the product literature, in conjunction with a physical examination of the goods in issue, demonstrates that the goods in issue are designed not only to hold and protect the Kindle Touch but also to carry it. That is, the goods in issue are designed to hold and protect the Kindle Touch, but in a way that facilitates it being within another case or bag. Accordingly, the Tribunal finds that the goods in issue share important characteristics and have common features with the goods listed in the first part of heading No. 42.02.

46. The Tribunal also finds that the exclusion contained in the explanatory notes to heading No. 42.02 do not apply, as the goods in issue are not “book covers”. The *Canadian Oxford Dictionary* defines “book” as “[a] written or printed work consisting of pages glued or sewn together along one side and bound in covers”.³¹ By contrast, the term “e-book” is defined as “[a]n electronic version of a printed book which can be read on a computer or a specifically designed handheld device.”³²

47. As the above definitions demonstrate, while a book and an e-book may perform the same functional task of allowing a person to read written content, they are nonetheless two different objects. In particular, there is no suggestion that an e-book, as an electronic device, consists of pages which are glued or sewn together. Similarly, while the *content* of a book may be read on an electronic device, the physical manifestation of a book remains a distinct object from a handheld electronic reading device.

48. Given that a Kindle Touch is not properly defined as a book, the goods in issue, being cases or covers for a Kindle Touch, cannot be considered to be book covers. As such, the exclusionary provision in the explanatory notes to heading No. 42.02 does not apply.

49. In light of the foregoing, the Tribunal finds that the goods in issue are specifically described in heading No. 42.02 and are therefore properly classified in that heading by operation of Rule 1 of the *General Rules*.

Subheading 4202.91 Applies

50. The Tribunal must next determine the subheading that applies to the goods in issue. Heading No. 42.02 contains the following four first-level (1-dash) subheadings:

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

...

-Handbags, whether or not with shoulder strap, including those without handle:

27. Exhibit AP-2015-002-04 at para. 7, Vol. 1; Exhibit AP-2015-002-08A at paras. 4-5, Vol. 1.

28. Exhibit AP-2015-002-04 at 12, Vol. 1.

29. *Ibid.*

30. *Ibid.* at 13.

31. *Canadian Oxford Dictionary*, 2nd ed., s.v. “book”.

32. *Ibid.*, s.v. “e-book”.

...

-Articles of a kind normally carried in the pocket or in the handbag:

...

-Other:

51. The articles specifically named in the first of the four first-level subheadings do not appear to be specially shaped or internally fitted to contain particular or specific goods like the goods in issue. Rather, they appear to be designed to contain varying quantities or sizes of items, such as clothes, binders and documents. As such, the Tribunal is of the view that the goods in issue cannot be classified in the first of the four first-level subheadings, as they are neither named in the list of articles nor similar to those articles.

52. The goods in issue are not handbags and therefore cannot be classified in the second of the four first-level subheadings.

53. With respect to the third of the four first-level subheadings, the term “kind” is defined as “. . . a class or type of people or things having similar characteristics . . .”³³ and “normally” is defined as “. . . in a normal manner; in the usual way. **2** as a rule . . .”³⁴ With the exception of a suit pocket, it is unlikely that the goods would be carried in a pocket, due to their size. Additionally, as confirmed by both the product description and a physical inspection of the goods in issue, while they could be carried in a handbag, they are not limited to being carried as such. Rather, the goods in issue are designed to be carried in handbags, briefcases and other bags.³⁵ As such, the Tribunal finds that the third first-level subheading is too restrictive to describe the goods in issue.

54. “Other” is a residual first-level subheading that contains three second-level (i.e. 2-dash) subheadings, those being 4202.91, 4202.92 and 4202.93. In order to be classified in the first of the second-level subheadings (4202.91), the goods must be “[w]ith outer surface of leather or of composition leather”. The explanatory notes to heading No. 42.02 suggest that, as long as the goods have an outer surface of leather, regardless of whether or not the leather of the goods is coated or treated with plastics or synthetic rubber etc., they meet the terms of subheading No. 4202.91.³⁶ The exterior of the goods in issue is composed of leather; accordingly, they meet the terms “[w]ith outer surface of leather or of composition leather”. Therefore, the Tribunal finds that the goods in issue are properly classified in subheading No. 4202.91.

Tariff Item No. 4202.91.90 Applies

55. Subheading No. 4202.91 contains three tariff items: 4202.91.10, 4202.91.20 and 4202.91.90. The goods are not classifiable under tariff item No. 4202.91.10, as they are not fitted cases for church bells or golf bags. Additionally, the goods in issue are not classifiable under tariff item No. 4202.91.20 since they are not tool bags, haversacks, knapsacks, packsacks and rucksacks. As the goods in issue are not classifiable under the first two tariff items, they are classified under tariff item No. 4202.91.90 as other containers, with outer surface of leather or of composition leather.

33. *Concise Oxford Dictionary*, 10th ed., s.v. “kind”.

34. *Ibid.*, 10th ed., s.v. “normally”.

35. Exhibit AP-2015-002-04 at 13, Vol. 1.

36. The explanatory notes to subheading Nos. 4202.11, 4202.21, 4202.31 and 4202.91 provide as follows:

For the purposes of these subheadings, the expression “with outer surface of leather” includes leather coated with a thin layer of plastics or synthetic rubber which is invisible to the naked eye (usually less than 0.15 mm in thickness), to protect the leather surface, no account being taken of a change in colour or shine.

56. The Tribunal finds that, because the goods in issue are properly classified in heading No. 42.02, they are excluded from heading No. 42.05.

CONCLUSION

57. For the foregoing reasons, the Tribunal finds that the goods in issue are properly classified under tariff item No. 4202.91.90 as other containers, with an outer surface of leather or composition leather.

DECISION

58. The appeal is dismissed.

Peter Burn

Peter Burn

Presiding Member