



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2015-012

Jakks Pacific Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, March 30, 2016*

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IN THE MATTER OF an appeal heard on January 21, 2016, 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 May 14, 2015, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

JAKKS PACIFIC INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 21, 2016
Tribunal Member: Stephen A. Leach, Presiding Member
Counsel for the Tribunal: Jidé Afolabi
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STATEMENT OF REASONS

SUMMARY

1. This is an appeal filed by Jakks Pacific Inc. (Jakks) 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 May 14, 2015, pursuant to subsection 60(4).

2. The issue in this appeal is whether a children's activity table set is properly classified under tariff item No. 9403.20.00 of the schedule to the *Customs Tariff*² as other metal furniture, as determined by the CBSA, or should be classified under tariff item No. 9503.00.90 as other toys, as contended by Jakks.

GOODS IN ISSUE

3. The good in issue is a Disney activity table set. The table and two chairs included in the set are made of metal. Each folding chair has vinyl padding. The table has a vinyl-covered top with printed images of Disney's "Doc McStuffins" character. It features an erasable surface that can be used with dry erase markers included in the packaging.³ The set has a weight limit of 100 lbs. and is recommended for children between the ages of three and seven. The dimensions of the table are 24"L x 20"H x 24"D. The chairs are 13"L x 21"H x 13.5"D.⁴

PROCEDURAL HISTORY

4. On September 8, 2014, Jakks requested an advance ruling of the good in issue pursuant to section 43.1 of the *Act*. Jakks submitted that the good in issue should be classified under tariff item No. 9503.00.90.

5. On January 26, 2015, the CBSA issued an advance ruling pursuant to paragraph 43.1(1)(c) of the *Act*, in which it determined that the good in issue was properly classified under tariff item No. 9403.20.00.

6. On February 3, 2015, Jakks requested a re-determination of the advance ruling.

7. On April 27, 2015, the CBSA informed Jakks of its preliminary decision to classify the good in issue under tariff item No. 9403.20.00.

8. On April 30, 2015, Jakks made additional submissions in response to the CBSA's preliminary determination.

9. On May 14, 2015, the CBSA issued a final determination, confirming the classification of the good in issue under tariff item No. 9403.20.00.

10. On July 27, 2015, Jakks filed this appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

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

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

3. Exhibit AP-2015-012-04A, Vol. 1.

4. *Ibid.*, tab 17.

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).⁵ 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*⁶ and the *Canadian Rules*⁷ 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*⁸ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,⁹ published by the WCO. While the *Classification Opinions* and *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.¹⁰

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.

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

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

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

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

9. World Customs Organization, 4th ed., Brussels, 2007 [*Explanatory Notes*].

10. 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*.

RELEVANT CLASSIFICATION PROVISIONS

17. Heading No. 94.03 provides as follows:

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.

18. Note 1(l) to Chapter 94 provides as follows:

1. This Chapter does not cover:

...

- (l) Toy furniture or toy lamps or lighting fittings (heading 95.03)

19. The explanatory notes to Chapter 94 provide as follows:

GENERAL

...

For the purposes of this Chapter, the term “furniture” means:

- (A) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, laboratories, hospitals, dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. . . .

...

Headings 94.01 to 94.03 cover articles of furniture **of any material** (wood, osier, bamboo, cane, plastics, base metals, glass, leather, stone, ceramics, etc.). Such furniture remains in these headings whether or not stuffed or covered, with worked or unworked surfaces, carved, inlaid, decoratively painted, fitted with mirrors or other glass fittings, or on castors, etc.

20. 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 furnitures 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).

21. Heading No. 95.03 provides as follows:

SECTION XX

MISCELLANEOUS MANUFACTURED ARTICLES

...

Chapter 95

**TOYS, GAMES AND SPORTS REQUISITES;
PARTS AND ACCESSORIES THEREOF**

...

95.03 Tricycles, scooters, pedal cards and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds.

22. Note 4 to Chapter 95 provides as follows:

4. Subject to the provisions of Note 1 above, heading 95.03 applies, *inter alia*, to articles of this heading combined with one or more items, which cannot be considered as sets under the terms of General Interpretative Rule 3 (b), and which, if presented separately, would be classified in other headings, provided the articles are put up together for retail sale and the combinations have the essential character of toys.

23. The explanatory notes to Chapter 95 provide as follows:

This Chapter covers toys of all kinds whether designed for the amusement of children or adults. . . .

...

The articles of this Chapter may, in general, be made of any material

24. The explanatory notes to heading No. 95.03 provide as follows:

This heading covers:

...

(D) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults). . . . This group includes:

All toys **not included** in (A) to (C). . . .

These include:

...

(x) Toy tools and implements; children's wheelbarrows.

...

(xiii) Dolls' houses and furniture, including bedding.

...

- (xvi) Toy sewing machines.

...

Certain of the above articles (toy arms, tools, gardening sets, tin soldiers, etc.) are often put up in sets.

Certain toys (e.g. electric irons, sewing machines, musical instruments etc.) may be capable of a limited “use”; but they are generally distinguishable by their size and limited capacity from real sewing machines etc.

...

PARTS AND ACCESSORIES

...

This heading also **excludes**:

- (a) Paints put up for children’s use (**heading 32.13**).
- (b) Modelling pastes put up for children’s amusement (**heading 34.07**).
- (c) Children’s picture, drawing or colouring books of **heading 49.03**.
- ...
- (ij) Crayons and pastels for children’s use, of **heading 96.09**.

POSITIONS OF PARTIES

Jakks

25. Jakks submitted that the good in issue should be classified under tariff item No. 9503.00.90 as other toys in accordance with the explanatory notes to Chapter 95, which provide that toys are items that are “. . . designed for the amusement of children or adults.” In support of its position, Jakks argued that children derive amusement from the act of drawing or colouring, as well as from the object on which the drawing or colouring is done. In this appeal, according to Jakks, that object is the table.

26. Jakks contended that the table’s erasable surface, as well as the dry erase markers included in the set, is indicative of a good manufactured for children to utilize interactively with regard to creative play. Moreover, Jakks noted that, although the good in issue provides a utilitarian function, this should not preclude it from being classified as a toy in heading No. 95.03 on the basis of its amusement value.

27. Jakks stated that, by virtue of Note 1(l) to Chapter 94, the good in issue cannot be classified in heading No. 94.03. Note 1(l) to Chapter 94 provides that the chapter does not cover toy furniture. Jakks’ contention is that the good in issue is toy furniture. Further, noting that the explanatory notes to Chapter 94 provide that the chapter is limited to movable articles not included in other more specific headings of the nomenclature, Jakks maintained that the chapter is inappropriate for the classification of the good in issue, as it is more specifically described in heading No. 95.03.

CBSA

28. The CBSA contended that the good in issue is furniture within the meaning of Chapter 94, as it functions as a table and chair set, and is thus not a toy. According to the CBSA, the good in issue shares the same characteristics and end uses as a table that is not marketed to children.

29. Additionally, the CBSA argued that “toy furniture” as referenced in the explanatory notes to Chapter 94 does not include children’s furniture that retains its utilitarian purpose. Instead, according to the CBSA, toy furniture refers to miniature furniture. The assertion is that, in line with the reference made to “[d]olls’ houses and furniture” in Note (D)(xiii) of the explanatory notes to heading No. 95.03, toy versions of goods are distinguishable from the actual goods that they represent because they do not have the full capacity of the actual goods. Thus, according to the CBSA, the fact that the good in issue is designed for children, and is of a smaller size than similar goods for adults, does not change its utilitarian purpose.

30. The CBSA conceded that the good in issue can, and does, amuse children to a certain degree.¹¹ However, the CBSA submitted that the mere fact that a good provides amusement does not suffice with regard to its possible classification as a toy. Further, the CBSA argued that the amusement value is secondary to the utilitarian value of the good in issue, which is tied to its function as a table and chair set. In essence, from the CBSA’s perspective, the good in issue is furniture because it is a movable article with a utilitarian purpose that is intended to be placed on the floor in a private dwelling.

31. The CBSA noted that, although dry erase markers can be used on the vinyl surface of the table, the vinyl surface is marketed as much for ease of cleaning as for drawing. Further, with regard to marketing, the CBSA pointed out that the good in issue is marketed and sold as children’s and playroom furniture.

32. The CBSA agreed that the good in issue cannot be classified in heading No. 94.03 as furniture if it is more specifically described elsewhere in the nomenclature; however, it argued that the good in issue cannot be said to be more specifically described in heading No. 95.03 as other toys because, when examined as a whole, it does not qualify as a toy and is instead metal furniture for children.¹²

ANALYSIS

33. In appeals under section 67 of the *Act*, the appellant, by operation of law, bears the burden of demonstrating that the respondent incorrectly classified goods.¹³ In this case, the onus of demonstrating that the good in issue was incorrectly classified in heading No. 94.03 and should be classified in heading No. 95.03 resides with Jakks.

34. The explanatory notes to Chapter 94 provide that the chapter is limited to movable articles not included in other more specific headings of the nomenclature. Accordingly, if the good in issue is an article included in a heading that is more specific, it cannot be classified in heading No. 94.03. Further to that provision, and commencing with Rule 1 of the *General Rules*, the Tribunal will begin its analysis by determining whether the good in issue can be classified in heading No. 95.03 as other toys. If so, the Tribunal will not go any further in its analysis, as it will be clear that heading No. 95.03 provides a more specific description of the good in issue than heading No. 94.03. If not, the Tribunal will consider the applicability of heading No. 94.03.

11. *Transcript of Public Hearing*, 21 January 2016, at 44.

12. *Ibid.* at 26-27.

13. In this regard, subsection 152(3) of the *Act* provides as follows: “. . . in any proceeding under this Act, the burden of proof in any question relating to . . . (c) the payment of duties on any goods . . . lies on the person, other than Her Majesty, who is a party to the proceeding . . .” The present appeal is a proceeding under subsection 67(1). Since duty liability on imported goods depends upon their tariff classification, tariff classification is a question “relating to” the payment of duties on goods, within the meaning of paragraph 152(3)(c). With the conditions of paragraph 152(3)(c) thus met, the burden of proof resides with Jakks. See, for example, *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (23 May 2014), AP-2011-033 (CITT) [*Costco*] at para. 25; *Canada (Border Services Agency) v. Miner*, 2012 FCA 81 (CanLII).

Test Regarding Other Toys of Heading No. 95.03

35. The Tribunal notes that the nomenclature does not define the term “toy”. However, the Tribunal has consistently interpreted the term “toy” broadly to encompass a wide range of articles that provide amusement or play value in accordance with the explanatory notes to Chapter 95, as well as note (D) of the explanatory notes to heading No. 95.03.¹⁴ It has previously held that heading No. 95.03 “. . . covers objects that children . . . play with.”¹⁵ The play value is viewed as “. . . an identifying aspect of . . . a toy.”¹⁶

36. The Tribunal has also been consistent that the determination of whether a good is a toy of heading No. 95.03 is a mixed question of fact and law, which should be made on the basis of an interpretation of the word “toy” in the context of heading No. 95.03, as well as on the basis of the characteristics of the good in issue.¹⁷ To that end, both the actual and intended uses of the good in issue should be considered, including the manner in which it is marketed, packaged and advertised.¹⁸ With respect to intended uses, the Tribunal has found that “. . . the term ‘designed for’ relates to a deliberate intention in the mind of the manufacturer of the system (or goods) as to the nature of its ultimate use or ultimate function.”¹⁹

37. Thus, in determining whether the good in issue can be classified as a toy of heading No. 95.03, the Tribunal will begin by considering the amusement value of the good in issue, following which the Tribunal will turn its mind to the actual and intended uses of the good in issue, inclusive of the manner in which it is marketed, packaged and advertised.

Can the Good in Issue Amuse Children?

38. *Merriam-Webster’s Collegiate Dictionary* defines “amuse” as follows: “. . . to divert the attention . . . to occupy the attention . . . DISTRACT . . . to entertain or occupy in a light, playful, or pleasant manner . . .”²⁰ The *Canadian Oxford Dictionary* defines “amuse” as follows: “. . . cause (a person) to laugh or smile . . . interest or occupy; keep (a person) entertained.”²¹

39. The parties have agreed, and the Tribunal accepts, that the table and chair set provides amusement value, as it entertains and occupies in a playful manner by allowing children to draw on the surface of the table.²²

14. *Zellers Inc. v. Deputy M.N.R.* (29 July 1998), AP-97-057 (CITT); *Regal Confections Inc. v. Deputy M.N.R.* (25 June 1999), AP-98-043, AP-98-044 and AP-98-051 (CITT) [*Regal*]; *Franklin Mint Inc. v. President of the Canada Border Services Agency* (13 June 2006), AP-2004-061 (CITT) [*Franklin*]; *Canadian Tire Corporation Limited v. President of the Canada Border Services Agency* (12 April 2012), AP-2011-020 (CITT) [*Canadian Tire*].

15. *Korhani Canada Inc. v. President of the Canada Border Services Agency* (18 November 2008), AP-2007-008 (CITT) [*Korhani*] at para. 32.

16. *Havi Global Solutions (Canada) Limited Partnership v. President of the Canada Border Services Agency* (10 October 2008), AP-2007-014 (CITT) at para. 30.

17. *HBC Imports (Zellers Inc.) v. Canada (Border Services Agency)*, 2013 FCA 167 (CanLII) [*HBC Imports (FCA)*] at para. 4; *Costco* at para. 29, aff’d in *Costco Wholesale Canada Ltd. v. Canada (Border Services Agency)*, 2015 FCA 110 (CanLII); *Mattel Canada Inc. v. President of the Canada Border Services Agency* (10 July 2014), AP-2013-034 and AP-2013-040 [*Mattel*] at paras. 39-41.

18. *Korhani* at para. 33.

19. *Union Tractor Ltd. v. M.N.R.* (8 September 1993), AP-92-213 (CITT) at 3.

20. Eleventh ed., s.v. “amuse”.

21. Second ed., s.v. “amuse”.

22. *Transcript of Public Hearing*, 21 January 2016, at 44.

40. However, as previously explained by the Tribunal, while play value is viewed as an identifying feature of a toy, the provision of amusement does not, in and of itself, make an object a “toy” for the purpose of tariff classification.²³ Indeed, the majority in *HBC Imports (FCA)* noted that “. . . not every object which might otherwise be considered to be a ‘toy’ will be included [in heading No. 95.03] as ‘other toys’.”²⁴ It also recognized that the contextual meaning of the expression “other toys” in heading No. 95.03 was somewhat narrower than the ordinary meaning of that term.

Was the Good in Issue Intentionally Designed to Amuse Children?

41. The evidence presented in this case does not lead the Tribunal to accept that the good in issue was specifically designed or intended to amuse children and offer play value.

42. Jakks did not present evidence that would support a finding that the activity table set is first and foremost a toy.²⁵ More specifically, Jakks did not indicate linkages between the abilities and interests of children and the ways in which the good in issue was designed.

43. While the erasable surface provides amusement value for children, the good in issue maintains a predominantly utilitarian function as an activity table set. Any amusement that can be derived from the activity table set is incidental to its primary function as a place for “. . . eating, playing and endless activities”²⁶

Is the Good in Issue Marketed, Packaged and Advertised as a Toy that Amuses Children?

44. Likewise, the Tribunal finds that the good in issue is not marketed, packaged and advertised as a toy that amuses and provides play value. Major retailers’ Web sites indicate that the good in issue is generally sold in the playroom furniture or kids’ furniture sections.²⁷

45. The good in issue is described by retailers as being suitable for “. . . eating, playing and endless activities for your child . . .”,²⁸ as well as for “. . . drawing, eating and playing.”²⁹ Although drawing is mentioned in one retailer’s description, it is not emphasized as a dominant feature of the good in issue; further, eating is repeatedly mentioned as a suitable use of the good in issue. In addition, the product literature for the good in issue makes no mention of drawing on the erasable surface and highlights only that the table and chair set will provide “. . . endless hours of fun and enjoyment”.³⁰

46. Customer reviews of the good in issue highlight that it functions primarily as a table and chair set for sitting, eating and playing and less as a toy from which children derive amusement. Some reviews on retailers’ Web sites stated as follows: “. . . I . . . got this for her [my toddler] to eat at . . .” and “. . . to top it

23. *Regal* at 8; *Franklin* at para. 15; *N.C. Cameron & Sons Ltd. v. President of the Canada Border Services Agency* (14 June 2007), AP-2006-022 (CITT) at para. 15; *Canadian Tire* at para. 10.

24. *HBC Imports (FCA)* at para. 16.

25. For example, in *Mattel* at paras. 48-51, the appellant introduced expert witnesses to testify to the intentional design of the goods and linkages between the goods and the activities and interests of children.

26. Exhibit AP-2015-012-04A, tab 17, Vol. 1.

27. *Ibid.*

28. *Ibid.*

29. *Ibid.*

30. Exhibit AP-2015-012-04A at para. 48, Vol. 1.

off, she can draw all over it . . .”³¹, indicating that the good in issue was purchased for its use as furniture and that any amusement derived was secondary to its primary purpose.

47. Therefore, in a manner consistent with past Tribunal jurisprudence and on the basis of the evidence before it, the Tribunal concludes that the good in issue cannot be classified in heading No. 95.03 as other toys because it is composed primarily of articles of furniture. Although the good in issue can amuse children, it was not intentionally designed for this purpose and is not marketed, packaged and advertised as such.

Classification of the Good in Issue in Heading No. 94.03

48. Heading No. 94.03 covers “[o]ther furniture and parts thereof.” The Tribunal notes that the good in issue, in addition to including a table, contains two chairs, dry erase markers and a hex key. Thus, heading No. 94.03 does not describe all the components of the good in issue, with the result that the Tribunal is unable to conclusively classify the good in issue on the basis of Rule 1 of the *General Rules*.

49. Further, as Rule 2 of the *General Rules* simply extends the application of Rule 1 to unfinished and unassembled goods, as well as to goods made up of mixed substances, the good in issue also cannot be conclusively classified on the basis of that rule.

50. Rule 3 (a) of the *General Rules* is equally inconclusive with regard to the classification of the good in issue, as the headings applicable to the table, chairs, dry erase markers and hex key will refer to “part only” of the set comprising the good in issue, with the result that those headings have to be regarded as “equally specific”.

51. Rule 3 (b) of the *General Rules* applies to “. . . goods put up in sets for retail sale . . .” Pursuant to Rule 3 (b), goods are classified on the basis of the component which gives the set its “essential character”. The explanatory notes to Rule 3 (b) provide that, for the purposes of the rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which (a) consist of at least two different articles which are *prima facie* classifiable in different headings, (b) consist of products or articles put up together to meet a particular need or carry out a specific activity and (c) are put up in a manner suitable for sale directly to users without repacking.³²

52. Rule 3 (b) of the *General Rules* is compelling with regard to the classification of the good in issue because it consists of various articles classifiable in different headings, which are sold as a set for a particular need or activity and which are packaged in a manner suitable for sale directly to users without repacking.

53. Concerning essential character, the explanatory notes to Rule 3 (b) of the *General Rules* further provide that “. . . [t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.”

54. The CBSA submitted, and the Tribunal agrees, that the table gives the good in issue its essential character because of its role in relation to the use of the good in issue. The marketed uses for the good in

31. Exhibit AP-2015-012-04A, tab 17, Vol. 1.

32. *S.C. Johnson & Son, Limited v. President of the Canada Border Services Agency* (19 July 2006), AP-2005-015 (CIIT) at para. 32.

issue are eating, drawing, reading, playing and various other activities. All such uses require the surface of the table. Moreover, the table is the largest component of the set.

55. As a result, the Tribunal concludes that the good in issue is, pursuant to Rule 3 (b) of the *General Rules*, properly classified in heading No. 94.03 as other furniture, with the table giving the set its essential character.

Classification at the Subheading and Tariff Item Levels

56. Jakks did not submit any arguments regarding classification at the subheading and tariff item levels within Chapter 94. For its part, the CBSA noted that heading No. 94.03 is separated into various subheadings based on the furniture's material and that there are two subheadings for metal—9403.10 (“[m]etal furniture of a kind used in offices”) and 9403.20 (“[o]ther metal furniture”). Noting that the good in issue is not intended for use in an office, the CBSA argued for classification in subheading No. 9403.20.

57. Pursuant to Rule 6 of the *General Rules*, the good in issue must be classified at the subheading level in a manner enabling sequential regard to Rules 1 to 5. In this instance, the Tribunal agrees with the CBSA and concludes that Rule 1 suffices for the purpose of classification at the subheading level. The good in issue is properly classified in subheading No. 9403.20 as other metal furniture.

58. Lastly, by application of Rule 1 of the *Canadian Rules*, the Tribunal can readily conclude that the good in issue is properly classified under tariff item No. 9403.20.00, as it is the sole tariff item in contention.

DECISION

59. The Tribunal finds that the good in issue is properly classified under tariff item No. 9403.20.00 as other metal furniture. The appeal is dismissed.

Stephen A. Leach
Stephen A. Leach
Presiding Member