



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2015-014

Costco Wholesale Canada Ltd.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Monday, July 31, 2017*

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IN THE MATTER OF an appeal heard on April 6, 2017, 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 20, 2015, with respect to a request for re-determination pursuant to section 60(4) of the *Customs Act*.

BETWEEN

COSTCO WHOLESALE CANADA LTD.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Peter Burn
Peter Burn
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: April 6, 2017

Tribunal Panel: Peter Burn, Presiding Member

Support Staff: Elysia Van Zeyl, Counsel
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STATEMENT OF REASONS

INTRODUCTION

1. This appeal was filed by Costco Wholesale Canada Ltd. (Costco) pursuant to subsection 67(1) of the *Customs Act*¹ from a decision made by the President of the Canada Border Services Agency (CBSA) dated May 20, 2015, pursuant to subsection 60(4).

2. The issue in this appeal is whether collapsible laundry bags (the goods in issue) are “other furniture” under tariff item No. 9403.89.19 or, alternatively, “other sacks and bags, including cones” under tariff item No. 4819.40.00 as argued by Costco, or “other made up articles of textile materials” under tariff item No. 6307.90.99 as determined by the CBSA.

PROCEDURAL HISTORY

3. In July 2014, Costco requested an advance ruling with respect to the tariff classification of the goods in issue.

4. On October 14, 2014, the CBSA issued an advance ruling in which it found that the goods in issue were classified under tariff item No. 6307.90.99 as “other made up articles” of “textile materials”.

5. In December 2014, Costco requested a re-determination pursuant to section 60 of the *Act*, contending that the goods ought to have been classified under tariff item No. 4819.40.00 as “other sacks and bags, including cones”.

6. On May 20, 2015, the CBSA issued a decision affirming its initial determination that the goods in issue are classified under tariff item No. 6307.90.99.

7. On August 12, 2015, Costco appealed the CBSA’s decision to the Canadian International Trade Tribunal (the Tribunal) pursuant to section 67 of the *Act*.

8. On April 6, 2017, the Tribunal held an oral hearing of this appeal. Both parties presented oral arguments during this hearing, but no witnesses testified.

DESCRIPTION OF THE GOODS IN ISSUE

9. The goods in issue are black collapsible laundry bags, measuring 40 cm by 30 cm by 53 cm. They are constructed of woven fabric, sewn together with strips of seam binding. The woven fabric, comprised of polyester, completely envelops the various structural features of the bags.² A rigid removable sheet of plastic placed in the bottom of the bag and four rectangular paperboard inserts placed in two sides and two top flaps (that can be held shut by magnets) provide structural support that enables the good to serve as a standing laundry hamper. The two top flaps can be positioned so the opening becomes a handle allowing the laundry bag to be carried.

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

2. Exhibit AP-2015-014-06A, Tab 1.

LEGAL FRAMEWORK

10. 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).³ 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.

11. 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*⁴ and the *Canadian Rules*⁵ set out in the schedule.

12. 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.

13. 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*⁶ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,⁷ 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.⁸

14. 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. It is only where Rule 1 does not conclusively determine the classification of the goods that the other general rules become relevant to the classification process.⁹

15. Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to determine the proper subheading. 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 [Rules 1 through 5] . . .” and that “the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

16. Finally, the Tribunal must determine the proper tariff item classification. 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*

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

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

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

6. World Customs Organization, 2nd ed., Brussels, 2003.

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

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

9. *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) [*Igloo Vikski*] at para. 21.

mutandis, to the [General Rules] . . .” and that “the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires.” Classification opinions and explanatory notes do not apply to classification at the tariff item level.

17. The terms of the relevant headings, section and chapter notes, and explanatory notes are set out in the Appendix.

ANALYSIS

Order of Analysis

18. As is clear from numerous Tribunal decisions, where two or more headings are potentially relevant to a particular good, but one contains an exclusionary note, the Tribunal will begin its analysis by considering whether the goods fall within the terms of the exclusionary note. If they do, that is generally the end of the heading-level analysis. If they do not, the Tribunal then considers the alternative heading(s), and potentially other general rules to determine the appropriate tariff classification.

19. Costco has submitted arguments with respect to headings No. 42.02,¹⁰ 48.19, and 94.03. The CBSA’s arguments revolve around heading No. 63.07. The notes to Section XI (which includes Chapter 63) exclude products or articles of Chapter 48, and articles of Chapter 94.¹¹ Likewise, the notes to Chapter 94 exclude movable articles that are covered under more specific headings of the nomenclature.¹²

20. Given that articles of Chapter 48 are expressly excluded from Section XI, the Tribunal will begin its analysis with heading No. 48.19. The Tribunal will then consider whether the goods in issue are covered in heading No. 94.03, given that articles of Chapter 94 are also excluded from Section XI. Finally, the Tribunal will consider heading No. 63.07 if the tariff classification of the goods in issue cannot be resolved under the aforementioned headings. This method of analysis is not identical to, but is generally consistent with, the analysis that was followed in *HBC Imports c/o Zellers Inc.* wherein the Tribunal considered Chapter 94 prior to Chapter 63.¹³

Are the Goods in Issue “Other Sacks and Bags” of Heading No. 48.19?

21. Heading No. 48.19 covers, among other things, “[c]artons, boxes, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres”

22. With respect to heading No. 48.19, Costco argues that the goods must meet two requirements in order to fall within the terms of the heading, namely: (1) the goods must be cartons, boxes, cases, bags or other packing containers; and (2) the goods must be made of paperboard.

23. The parties agree that the goods can be accurately characterized as bags. The Tribunal is of the same opinion, noting, in particular, that goods are identified as laundry bags on the retail box and are described as such in marketing materials.¹⁴ Thus, the first requirement of heading No. 48.19 is satisfied.

10. It is unclear to the Tribunal why this heading was raised, as both parties concede that it does not apply in these circumstances. Thus, for reasons of judicial economy, the Tribunal will not consider this heading in its analysis.

11. Note 1(m) and (s) of Section XI.

12. General explanatory note (A) to Chapter 94.

13. *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency* (6 April 2011), AP-2010-019 (CITT) at para. 49.

14. Exhibit AP-2015-014-06A, Tabs 12, 14. The Tribunal also acknowledges that certain of the marketing materials characterize the goods in issue as “laundry bag/hamper”.

24. The parties, however, disagree on whether the goods in issue are made of paperboard. From Costco's point of view, the fact that the goods in issue contain paperboard is sufficient to conclude that the goods are made of paperboard for the purposes of heading No. 48.19. Its argument is based, in part, on the Tribunal's decision in *Home Depot of Canada Inc.*¹⁵

25. On the other hand, the CBSA's position is that *Home Depot* cannot be interpreted as meaning that if a bag contains paperboard, no matter the amount, it must be considered a paperboard bag and classified under heading No. 48.19. Instead, the CBSA argued in favour of a narrower interpretation of *Home Depot*, essentially suggesting that the Tribunal needs to consider the role of the paperboard in the context of the particular good in issue.

26. The Tribunal considers the more reasonable interpretation of *Home Depot* to be that proposed by the CBSA. In the Tribunal's view, interpreting heading No. 48.19 as allowing for goods to be considered "of paperboard" based simply on the fact that they contain paperboard is overly broad.

27. *Home Depot* must be considered in context. The goods in *Home Depot* differ in several important ways from the goods in issue in this appeal. Specifically, the goods in that case were drawers, with four sides and a bottom. All sides contained paperboard, covered with a textile, to form the shape of a container. The paperboard gave the drawers structure, similar to how it gives the goods in issue structure; however, in *Home Depot* the structure of the drawer was important to its functioning as a drawer. Essentially, without the shape and structure provided by the paperboard to the goods in *Home Depot*, which made the goods compatible with certain storage units, the goods would have been incapable of fulfilling their intended purpose.

28. The same cannot be said with respect to the goods in issue in this case. As indicated above, even in the absence of paperboard, the goods in issue can still be used to store and transport laundry. Indeed, part of the appeal of the goods in issue is that when picked up, the box-like structure essentially disappears to allow for easy over-the-shoulder carrying by the user.

29. Moreover, while the Tribunal correctly noted in *Home Depot* that there is no requirement in the terms of the heading, or in the section, chapter or explanatory notes, that paperboard be the "primary contributor" to the shape of the container, a reading which also takes into account the explanatory notes suggests that the role played by the paperboard must be more than trivial.

30. In particular, the explanatory notes to heading No. 48.19 list several examples of products that are considered bags of paper or of paperboard, including bags for vacuum cleaners, bags for travel sickness, and record boxes and sleeves. Although this list is not exhaustive, the examples provided suggest that paper bags are comprised largely of paper or paperboard. Such is not the case with respect to the goods in issue. As indicated above, the goods in issue are undoubtedly bags, yet it would be a stretch to consider them bags of paperboard. The paperboard gives the bag some structure, but the bag would still function as such even in the absence of the paperboard. Moreover, as the CBSA rightly points out, it is the textile component that allows for the containment of laundry for both carriage and storage.

31. For the reasons above, the goods in issue are not classifiable under heading No. 48.19.

15. *Home Depot of Canada Inc. v. President of the Canada Border Services Agency* (28 April 2014), AP-2013-032 (CIIT) [*Home Depot*].

Are the Goods in Issue Articles of Furniture Under Heading No. 94.03?

32. Among other things, heading No. 94.03 covers “furniture”. The term “furniture” is defined in the explanatory notes to Chapter 94 as goods having the following characteristics: (i) they must be movable; (ii) they must be articles; (iii) they must have the essential characteristic of being constructed for placing on the floor or ground; (iv) they must be used mainly with a utilitarian purpose; and (v) they must be used to equip private dwellings. The parties do not dispute that the goods in issue satisfy these five criteria.¹⁶

33. However, the explanatory notes exclude movable articles that are covered more specifically under any other heading of the nomenclature. Thus, notwithstanding that the goods in issue meet the criteria for furniture, the Tribunal cannot classify them under heading No. 94.03 if they are classified more specifically elsewhere. Both parties argued that the goods are covered more specifically elsewhere: Costco argued under heading No. 48.19 and the CBSA argued under heading No. 63.07.

34. For the reasons above, the Tribunal rejects Costco’s argument that the goods in issue are covered under heading No. 48.19. Before it can conclude whether the goods fall under heading No. 94.03, the Tribunal must next consider whether they might be covered more specifically under heading No. 63.07.

Are the Goods in Issue “Other Made[-]Up Articles” of Heading No. 63.07?

35. Note 1 to Chapter 63 states that Subchapter 1 (which includes heading No. 63.07) covers made-up articles of any textile fabric. The terms of heading No. 63.07 and the related chapter note and explanatory notes indicate to the Tribunal that, in order for the goods in issue to be classified in heading No. 63.07, they must meet the following conditions: (i) they must be articles; (ii) they must be made-up; (iii) they must be composed of a textile fabric; and (iv) they must not be more specifically described in other chapters of Section XI or elsewhere in the nomenclature. In addition, note 5 of the explanatory notes to heading No. 63.07 is particularly relevant, as it provides that heading No. 63.07 includes “[d]omestic laundry or shoe bags . . . and similar articles.”

36. With respect to the first requirement, the parties agree that the goods are articles, relying on how this term has been defined in previous Tribunal jurisprudence.¹⁷

37. With respect to whether the goods are considered “made-up”, note 7 to Section XI provides six possible definitions for the phrase “made-up”. The goods in issue must satisfy only one of these definitions in order to be considered “made-up”. For the purposes of this appeal, the most relevant is note 7(e), which reads as follows:

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

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

38. The goods in issue are, in the Tribunal’s view, “made-up”. They are finished products assembled by sewing fabric together, as is apparent from the CBSA’s laboratory report,¹⁸ as well as from the Tribunal’s physical inspection of the goods in issue.

16. *Transcript of Public Hearing*, 6 April 2017, at 17-18; Exhibit AP-2015-014-06A, Vol. 1A at para. 30.

17. *Transcript of Public Hearing*, 6 April 2017, at 17, 44.

18. Exhibit AP-2015-014-06A, Tab 1, Vol. 1A.

39. With respect to the third condition, the Tribunal notes that the terms “textile” and “fabric” are not defined in the *Customs Tariff*. The explanatory notes to Section XI state that the section covers raw materials of the textile industry (silk, wool, cotton, man-made fibres, etc.). The explanatory notes to Chapter 63 also state that the chapter covers made-up textile articles of any textile fabric (woven or knitted fabric, felt, nonwovens, etc.). With respect to the goods in issue, the marketing materials make it clear that they are comprised of fabric.¹⁹ Further, Costco’s submissions confirm that the goods in issue are comprised of a textile fabric, in particular, polyester.²⁰

40. That said, Costco argued that because the goods in issue contain components other than fabric, they cannot be classified under heading No. 63.07. The Tribunal disagrees.

41. Articles containing materials other than textiles (in this case, paperboard) are not precluded from classification in Chapter 63 by virtue of the fact that they are not comprised entirely or exclusively of textiles. The explanatory notes to Chapter 63 recognize that where such articles consist of materials that are more than minor trimmings or accessories, classification shall be “determined according to the terms of the headings and any relative Section or Chapter Notes . . .” as contemplated by Rule 1 of the *General Rules*, or in accordance with other rules if applicable.

42. In an approach that was affirmed by the Federal Court of Appeal, the Tribunal held in *Canadian Tire Corporation Limited* that this explanatory note does not mean that classification under Chapter 63 is precluded when a good contains non-textile materials constituting more than minor trimmings or accessories.²¹ Instead, the Tribunal in that case found that certain life jackets could be classified under heading No. 63.07, notwithstanding the inclusion of non-textile materials and notwithstanding that the non-textile components (namely, plastic, which allowed the goods to float in water) had an important role to play in the proper functioning of the goods. The Federal Court of Appeal, in upholding the Tribunal’s decision, observed that “[t]he explanatory notes only require that when plastic or other materials are present as more than mere trimming or accessories, that presence must be taken into account when the goods are classified.”²²

43. An identical approach was followed by the Tribunal in *Rui Royal International Corp.* wherein it found that certain metal hooks, attached to textile straps, were more than minor trimmings or accessories, but classified the goods in issue in that case under heading No. 63.07.²³ This decision was based, in part, on language in the explanatory notes which expressly included the goods in issue (i.e., webbing carrier straps and similar articles).²⁴

44. The Tribunal has reached a similar conclusion in this case. Consistent with the Tribunal’s interpretation of the explanatory note in *Canadian Tire* and *Rui Royal*, the Tribunal is of the view that the explanatory note does not prevent it from classifying the goods in issue in Chapter 63 even when the goods in issue contain non-textile materials that are considered more than mere trimming or accessories. In this case, the paperboard material of the goods in issue is not trimming or an accessory, but the role played by the paperboard in the context of the good as a whole, particularly when it is being used as a laundry bag for transporting laundry, is not essential. While the paperboard, together with the other non-textile materials,

19. Exhibit AP-2015-014-06A, Tab 14, Vol. 1A.

20. Exhibit AP-2015-014-04A at para. 8, Vol. 1.

21. *Canadian Tire Corporation Limited v. Canada (Border Services Agency)*, 2011 FCA 242 [*Canadian Tire*].

22. *Canadian Tire* at 14.

23. *Rui Royal International Corp. v. President of the Canada Border Services Agency* (30 March 2011), AP-2010-003 (CITT) [*Rui Royal*] at 67-70.

24. *Rui Royal* at 74.

impacts the ability of the goods in issue to stand independently, it is the fabric that enables the good to be used for the storage and transport of laundry.

45. Moreover, the Tribunal sees no justification for disregarding or ignoring the clear language in the explanatory note which expressly references domestic laundry bags. The Tribunal is unwilling to read in a restriction based on the composition of the laundry bags, such that some would be included but others would not be, depending on relatively minor constituent materials.

46. This case can be decided on the basis of Rule 1 alone, given the text of the explanatory notes which clearly brings the goods in issue within the scope of heading No. 63.07, notwithstanding the inclusion of non-textile materials.

47. However, even if the explanatory notes had been unclear about whether goods incorporating non-textile materials could be included in heading No. 63.07, the Supreme Court of Canada's ruling in *Igloo Vikski* clarified that Rule 2(b) may be applied in conjunction with Rule 1 to determine the *prima facie* classification of the goods.²⁵ The Supreme Court held that Rule 2(b) deems the reference in a heading to a material or substance to be a reference to a combination of that material or substance with other materials or substances, subject to the caveat that Rule 2(b) does not extend or widen a heading so as to cover goods that cannot be regarded as answering the description in that heading. On this basis, the mixed or composite good may still be considered as "described" in the heading, so long as the other material or substance does not deprive the good of the character of the goods described in the heading.

48. In *Igloo Vikski*, the Supreme Court also held that if, having applied Rules 1 and 2(b), the good is *prima facie* classifiable under only one heading, then the inquiry ends and the good is classified under that heading. It is only where the good is *prima facie* classifiable under two or more headings by applying Rules 1 and 2 together, that it is necessary to consider Rule 3 to resolve the classification dispute.²⁶

49. In this case, there is no question that the goods in issue continue to answer the description of heading No. 63.07. As discussed above, the goods are considered made-up articles of textiles, regardless of their incorporation of non-textile components. Further, irrespective of their inclusion of paperboard, magnets and plastic rods, the goods in issue are appropriately characterized as domestic laundry bags. They are marketed and sold as domestic laundry bags and, as demonstrated in the CBSA's materials,²⁷ can be carried and transported like laundry bags.

Specificity Analysis

50. This brings the Tribunal to the question of whether the goods are covered more specifically by any other chapters of Section XI or elsewhere in the nomenclature. Recalling that heading No. 94.03 contains similar wording in its explanatory note and that the goods meet the other requirements of heading No. 94.03, the Tribunal must decide which of headings No. 63.07 or 94.03 more specifically cover the goods in issue.

51. The Tribunal finds that heading No. 63.07 more specifically covers the goods in issue. The Tribunal is of the view that the goods in issue are more specifically included in heading No. 63.07 as "domestic laundry . . . bags", as they are specifically referenced in the list of articles found in the explanatory notes to heading No. 63.07. As was the case in *HBC Imports c/o Zellers Inc.*, the Tribunal finds that note 1 to

25. *Igloo Vikski* at para. 26.

26. *Igloo Vikski* at para. 27.

27. Exhibit AP-2015-014-06A, Tab 12.

Chapter 63 specifically describes the textile composition of the goods in issue and that the explanatory notes describe their primary use and true purpose, which is to contain and store domestic laundry.²⁸

52. The Tribunal is of the view that this heading more precisely identifies the goods in issue than heading No. 94.03, which refers to a general category of goods, “other furniture and parts thereof”, but not to a specific identifiable good (e.g., laundry bags).

53. Although the goods in issue have the characteristics to meet some parts of the definition of “furniture” found in the explanatory notes to Chapter 94, the determination that heading No. 63.07 more specifically includes the goods in issue means that the goods in issue do not meet the proviso included in the definition of furniture of Chapter 94 that the goods in issue are “not included under other more specific headings of the Nomenclature”. Since the goods do not meet all of the requirements of the definition of furniture included in note 1(A) of the explanatory notes to Chapter 94, they are not classifiable under heading No. 94.03.

54. On the basis of the foregoing analysis, the Tribunal concludes that the goods in issue are made-up articles of textile fabric and are classified under heading No. 63.07.

55. Pursuant to Rule 6 of the *General Rules* and Rule 1 of the *Canadian Rules*, it follows that the goods in issue are properly classified under tariff item No. 6307.90.99.

DECISION

56. For the foregoing reasons, the goods in issue are classified under tariff item No. 6307.90.99 as “other made[-]up articles”.

57. The appeal is dismissed.

Peter Burn
Peter Burn
Presiding Member

28. *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency* (6 April 2011), AP-2010-005 (CIIT) at para. 83.

APPENDIX

TERMS OF RELATIVE HEADINGS AND LEGAL AND EXPLANATORY NOTES

Heading No. 48.19

Section X

PULP OF WOOD OR OF OTHER FIBROUS CELLULOSIC MATERIAL; RECOVERED (WASTE AND SCRAP) PAPER OR PAPERBOARD; PAPER AND PAPERBOARD AND ARTICLES THEREOF

Chapter 48

PAPER AND PAPERBOARD; ARTICLES OF PAPER PULP, OF PAPER OR OF PAPERBOARD

48.19 **Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like.**

4819.40.00 -Other sacks and bags, including cones

There are no section or chapter notes that are relevant to this appeal.

Heading No. 48.19 Explanatory Notes

The relevant explanatory notes to heading No. 48.19 are as follows:

(A) Cartons, boxes, cases, bags and other packing containers.

This group covers containers of various kinds and sizes generally used for the packing, transport, storage or sale of merchandise, whether or not also having a decorative value.

The heading includes cartons, boxes, cases, bags, cones, packets, sacks, paperboard drums (containers), whether manufactured by rolling or by any other method, and whether or not fitted with reinforcing circular bands of other materials, tubular containers for posting documents, protective garment bags, jars, pots and the like (e.g., for milk or cream), whether or not waxed. The heading also covers special purpose paper bags such as bags for vacuum cleaners, bags for travel sickness, and record boxes and sleeves.

The heading includes folding cartons, boxes and cases. These are:

- cartons, boxes and cases in the flat in one piece, for assembly by folding and slotting (e.g., cake boxes);

and

- containers assembled or intended to be assembled by means of glue, staples, etc., on one side only, the construction of the container itself providing the means of forming the other sides, although, where appropriate, additional means of fastening, such as adhesive tape or staples may be used to secure the bottom or lid.

The articles of this group may be printed, e.g., with the name of the merchant, directions for use, illustrations. Thus, seed packets with pictures of the products and sowing directions, in addition to the name of the firm, or chocolate or cereal packets with pictures for the amusement of children remain classified in this heading.

The articles of this heading may also have reinforcements or accessories of materials other than paper (e.g., textile backings, wooden supports, string handles, corners of metal or plastics).

Heading No. 63.07**Section XI****TEXTILES AND TEXTILE ARTICLES****Chapter 63****OTHER MADE UP TEXTILE ARTICLES; SETS;
WORN CLOTHING AND WORN TEXTILE ARTICLES; RAGS**

63.07 Other made up articles, including dress patterns.

6307.90 -Other

6307.90.99 - - Of other textile materials

Section XI Notes

The relevant Section XI note to this appeal is as follows:

1. This Section does not cover:
 - (m) Products or articles of Chapter 48 (for example, cellulose wadding);
 - (s) Articles of Chapter 94 (for example, furniture, bedding, lamps and lighting fittings);

The relevant explanatory note to Section XI states as follows:

- 7.- For the purpose of this Section, the expression “made up” means:
 - (f) Assembled by sewing, gumming or otherwise (other than piece goods consistent of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded);

Chapter 63 Notes

The relevant chapter note is as follows:

- 1.- Sub-Chapter I applies only to made up articles, of any textile fabric.

The relevant explanatory notes to Chapter 63 state as follows:

This Chapter includes:

- (1) Under headings 63.01 to 63.07 (sub-Chapter I) made up textile articles of any textile fabric (woven or knitted fabric, felt, nonwovens, etc.) which are **not** more specifically described in other Chapters of Section XI or elsewhere in the Nomenclature. (The expression “made up textile articles” means articles made up in the sense defined in Note 7 to Section XI (see also Part (II) of the General Explanatory Note to Section XI.)

This sub-Chapter includes articles of tulles or other net fabrics, lace or embroidery, whether made directly to shape or made up from the tulles or other net fabrics, lace or embroidered fabrics of heading 58.04 or 58.10.

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

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

Heading No. 63.07 Explanatory Notes

The relevant explanatory notes to heading No. 63.07 are as follows:

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

It includes, in particular:

- (5) Domestic laundry or shoe bags, stocking, handkerchief or slipper sachets, pyjama or nightdress cases and similar articles.

Heading No. 94.03

Section XX

MISCELLANEOUS MANUFACTURED ARTICLES

Chapter 94

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

94.03 Other furniture and parts thereof.

9403.89 - -Other

9403.89.19 - - - -Other

Section XX Notes

There are no section notes to Section XX.

Chapter 94 Notes

There are no relevant chapter notes for Chapter 94 in this appeal.

The relevant explanatory notes for Chapter 94 are as follows:

GENERAL

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

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

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

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

vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

Heading No. 94.03 Explanatory Notes

The relevant explanatory notes for heading No. 94.03 are the following:

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, escritoirs, 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.