



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2017-003

Costco Wholesale Canada Ltd.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Friday, January 12, 2018*

TABLE OF CONTENTS

| | |
|--|----|
| DECISION..... | i |
| STATEMENT OF REASONS | 1 |
| INTRODUCTION | 1 |
| PROCEDURAL HISTORY | 1 |
| DESCRIPTION OF THE GOODS IN ISSUE | 1 |
| LEGAL FRAMEWORK | 1 |
| TRIBUNAL ANALYSIS..... | 3 |
| Are the Goods in Issue “Festive, Carnival or Other Entertainment Articles” of Heading No. 95.05? | 3 |
| Classification at the Subheading and Tariff Item Levels | 8 |
| DECISION | 9 |
| APPENDIX | 10 |
| TERMS OF RELEVANT HEADINGS AND RELEVANT LEGAL AND EXPLANATORY NOTES | 10 |
| Heading No. 63.07 | 10 |
| Heading No. 95.05 | 11 |

IN THE MATTER OF an appeal heard on October 12, 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 February 16, 2017, with respect to a request for review of an advance ruling on tariff classification pursuant to subsection 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 allowed.

Peter Burn
Peter Burn
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: October 12, 2017
Tribunal Panel: Peter Burn, Presiding Member
Support Staff: Kalyn Eadie, Counsel
Michael Carfagnini, Student-at-Law

PARTICIPANTS:**Appellant**

Costco Wholesale Canada Ltd.

Counsel/RepresentativesMichael Sherbo
Andrew Simkins**Respondent**

President of the Canada Border Services Agency

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Jennifer Bond

WITNESS:Azmina Virani
Vice President and
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STATEMENT OF REASONS

INTRODUCTION

1. This is an appeal filed by Costco Wholesale Canada Ltd. (Costco) on April 12, 2017, 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 February 16, 2017, made pursuant to subsection 60(4).

2. The issue in this appeal is whether the 2pk Large Mop Snowman (the goods in issue) should be classified in tariff item No. 9505.10.00 of the schedule to the *Customs Tariff*² as articles for Christmas festivities, as claimed by Costco, or in tariff item No. 6307.90.99 as other made-up articles of other textile materials, as determined by the CBSA.

PROCEDURAL HISTORY

3. On April 11, 2016, Costco requested an advance ruling regarding the goods in issue and requested classification under tariff item No. 9505.10.00.

4. On July 25, 2016, the CBSA issued an advance ruling finding that the goods in issue should be classified under tariff item No. 6307.90.99.³

5. On October 5, 2016, Costco applied for a review of the advance ruling decision under section 60 of the *Act*.

6. On February 16, 2017, the President of the CBSA confirmed the advance ruling decision pursuant to subsection 60(4) of the *Act*.⁴

7. On April 12, 2017, Costco filed this appeal of the advance ruling decision to the Canadian International Trade Tribunal (the Tribunal).

DESCRIPTION OF THE GOODS IN ISSUE

8. The goods in issue consist of two decorative snowmen packaged together for retail sale. Each one is constructed from a 100% polyester textile body and head, and is filled with 69% plastic pellets and 31% polyester for support. Each has textile arms resembling branches as well as eyes, a nose and a scarf, also made of textile. Snowman A has textile earmuffs while Snowman B has a textile hat with faux fur trim. They are intended to rest on a shelf or table as decorations.⁵

LEGAL FRAMEWORK

9. 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)

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

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

3. Exhibit AP-2017-003-04 at 22, Vol. 1.

4. *Ibid.* at 16.

5. *Ibid.* at para. 8.

developed by the World Customs Organization (WCO).⁶ 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.

10. 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*⁷ and the *Canadian Rules*⁸ set out in the schedule.

11. 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.

12. 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*⁹ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,¹⁰ 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.¹¹

13. 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. As the Supreme Court of Canada indicated in *Igloo Vikski*, it is “only where Rule 1 does not conclusively determine the classification of the good that the other General Rules become relevant to the classification process.”¹²

14. Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to use a similar approach to determine the proper subheading.¹³ The final step is to determine the proper tariff item.¹⁴

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

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

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

9. World Customs Organization, 2d ed., Brussels, 2003.

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

11. 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.

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

13. Rule 6 of the *General Rules* provides that “. . . the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, mutatis mutandis, to the above Rules [i.e. Rules 1 through 5] . . .” and that “. . . the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

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

TRIBUNAL ANALYSIS

15. The parties agreed that Note 1(t) to Section XI, which includes heading No. 63.07, precludes classification in that heading if the goods in issue are *prima facie* classified in Chapter 95, which includes heading No. 95.05. Accordingly, both parties submitted that the Tribunal's tariff classification analysis should begin with heading No. 95.05. If the goods are classified in heading No. 95.05, then it will be unnecessary for the Tribunal to consider whether they could fall in heading No. 63.07.

Are the Goods in Issue “Festive, Carnival or Other Entertainment Articles” of Heading No. 95.05?

16. The explanatory note to heading No. 95.05 provides as follows:

This heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include :

(1) Festive decorations used to decorate rooms, tables, etc. . . .

17. The parties agreed that the goods are “articles” in accordance with the definition set out in *Loblaws Companies Limited*, which is “. . . any finished or semi-finished product, which is not considered to be a material.”¹⁵ The Tribunal accepts that the goods in issue are “articles”.

18. The parties also agreed that the goods in issue conform to the terms of the above explanatory note insofar as they are intended to rest on a shelf or table as decorations.¹⁶

19. The parties differed on the question of whether the goods in issue are “festive”.

20. Costco submitted that the goods in issue fall within the scope of the term “festive” for three reasons:

- the goods are purchased, marketed and sold as Christmas decorations;
- snowmen are associated with the festive occasion of Christmas; and
- the goods are festive in that they are winter-themed decorations.

21. With respect to the first of these reasons, Costco submitted that, in accordance with the Tribunal's decision in *PartyLite Gifts Ltd.*,¹⁷ the way that the goods in issue are purchased, marketed and sold should be considered when determining whether they are classifiable in heading No. 95.05, i.e. whether they are “festive” and/or whether they are associated with Christmas. Costco also submitted that industry and commercial trade have had a significant influence over what is sold as Christmas decorations, as recognized by the CBSA in Customs Notice N-179, which provides that “the modern celebration of Christmas has been strongly influenced by the commercial trade with the use of different types of goods as decorations and the discontinuance of others.” According to Costco, this supports its contention that the goods in issue should be classified primarily with regard to how they are purchased, marketed and sold.

15. *Loblaws Companies Limited v. the President of the Canada Border Services Agency* (3 August 2011), AP-2010-022 (CITT) at para. 75.

16. Exhibit AP-2017-003-04, tab 2, Vol. 1; *Transcript of Public Hearing*, 12 October 2017 at 46-7.

17. *PartyLite Gifts Ltd. v. the Commissioner of the Canada Customs and Revenue Agency* (16 February 2004), AP-2003-008 (CITT) [*PartyLite Gifts Ltd.*] at 5, 8.

22. With respect to the second reason, Costco pointed to associations between snowmen and Christmas in popular culture, such as the story of Frosty the Snowman and the appearance of snowmen on Christmas cards.¹⁸

23. With respect to the third reason, Costco argued that Christmas is both a religious and a secular holiday, and that non-religious Christmas decorations in Canada tend to have winter themes. Accordingly, Costco submitted that, in confirming its advance ruling, the CBSA erred in finding that the fact that the goods in issue could be displayed throughout the winter season prevents them from being considered as “festive” articles. Costco submitted that the CBSA’s own policy recognizes that winter-themed items such as snowmen are associated with Christmas “in northern latitudes”,¹⁹ which would include Canada, and that the CBSA erroneously disregarded this policy.

24. The CBSA submitted that the goods in issue are not “festive”, in that they do not satisfy the definition of that term as interpreted by the Tribunal in past cases. Although the term “festive” is not defined in the *Customs Tariff*, according to the CBSA, the Tribunal has previously defined it as “for a feast, festival or holiday; gay; joyous; merry”.²⁰

25. The CBSA also submitted that a review of the Tribunal’s jurisprudence reveals that in each case, the “festive” articles in question were used specifically and exclusively for their respective festivities, and not outside of that festive occasion. For example:

- A wedding or anniversary is a “festivity”, and cake top ornaments for wedding and anniversary cakes are festive articles of heading No. 95.05, as they would only be used for those occasions and would not be used more than once;²¹
- Candles for birthday cakes were also considered “festive articles” of heading 95.05;²²
- Kits for creating Christmas decorations were considered “articles for Christmas festivities” of tariff item No. 9505.10.00;²³
- Tablecloths, runners, placemats and napkins with a Christmas motif were considered “articles for Christmas festivities” of tariff item No. 9505.10.00.²⁴

26. According to the CBSA, snowmen are not specifically and exclusively associated with the celebration or observation of Christmas, and therefore cannot be considered festive articles of heading No. 95.05.

27. The CBSA noted that dictionary definitions of the term “snowman” do not make any reference to Christmas.²⁵ As well, references to snowmen in popular culture are not confined to associations with

18. Exhibit AP-2017-003-04 at para. 30, Vol. 1.

19. Customs Notice N-179, “The Administration of Heading 95.05” (3 November 1997), Exhibit AP-2017-003-04, tab 4, Vol. 1 [Customs Notice N-179].

20. *Nicholson Equipment Ltd. v. The Deputy Minister of National Revenue* (25 April 1997), AP-96-080 (CITT) at 3.

21. *Ibid.*

22. *Wilton Industries Canada Limited v. the Commissioner of the Canada Customs and Revenue Agency* (24 September 2002), AP-2001-081 (CITT).

23. *Zellers Ltd. v. the Deputy Minister of National Revenue* (8 February 1999), AP-97-062 (CITT) [*Zellers*].

24. *Decolin Inc. v. the President of the Canada Border Services Agency* (13 September 2005), AP-2004-011 (CITT) [*Decolin*] at para. 27.

25. Exhibit AP-2017-003-06A, tab 13, Vol. 1A.

Christmas (e.g. the movie *Frozen*, the *Bonhomme Carnaval*).²⁶ According to the CBSA, the idea of the snowman is associated with the winter season as a whole, and snowmen, in and of themselves, are not solely reserved for the celebration of Christmas.

28. As a result, the CBSA submitted that the goods in issue cannot be classified in heading No. 95.05 and that they are properly classified in heading No. 63.07.

29. In reply, Costco argued that the only restriction the Tribunal has put on the meaning of the term “festive” in this regard is that the goods cannot be suitable for year-round display,²⁷ and that the CBSA has acknowledged that the goods in issue are not suitable for year-round display as they are related to the winter season. Costco argued that, by requiring that festive articles be specifically and exclusively associated with a particular festive occasion, the CBSA was impermissibly reading in conditions to the terms of the nomenclature.

30. The Tribunal has repeatedly held that Christmas is a festive occasion and that Christmas decorations are “festive articles” of heading No. 95.05. The issue in this case is whether the goods in issue are in fact “Christmas” decorations.

31. The Tribunal notes the definition of “Christmas” from the *Concise Oxford Dictionary* cited in the CBSA’s Customs Notice N-179, as “the annual festival of Christ’s birth *and the season in which this occurs*”²⁸ [emphasis added].

32. Customs Notice N-179 goes on to state the following:

Today, the celebration of Christmas varies with different segments of the population. For some, it is a religious holiday with themes relating to the birth of Christ such as the nativity, the star, and the wise men. For others, it is a secular holiday with themes relating to mythology, e.g., Santa Claus, Mrs. Claus, and the reindeers [*sic*] . . . In northern latitudes, some associate the festivity with *seasonal themes of winter such as snowmen, sleighs, and winter scenes.*²⁹

[Emphasis added]

33. Although neither the Tribunal nor the CBSA are bound by the CBSA’s administrative policy statements, the Tribunal nevertheless notes that, for the past ten years, the CBSA has recognized that Christmas involves a secular element and that the secular celebration of Christmas can involve seasonal, i.e. winter, themes. At the hearing, the CBSA agreed with the definition of “Christmas” cited above and also agreed that there have been “festivities” around the date of Christmas that have evolved into a secular holiday.³⁰

34. The existence of a “Christmas season” that is not necessarily confined to the celebration of the religious holiday is supported by other dictionary definitions of “Christmas”. For example, the *Oxford English Dictionary* defines “Christmas” as “*sb.* **1.a.** The festival of the nativity of Christ, kept on the 25th of December. Usually extended more or less vaguely to the season immediately preceding and following this

26. *Ibid.*, tabs 15 and 16.

27. *N.C. Cameron & Sons, Ltd. v. the Deputy Minister of National Revenue* (11 February 2000), AP-98-047 (CITT) at 6.

28. Exhibit AP-2017-003-04, tab 4, Vol. 1.

29. *Ibid.* at 128-129.

30. *Transcript of Public Hearing*, 12 October 2017, at 48.

day, commonly observed as a time of festivity and rejoicing.”³¹ The *Canadian Oxford Dictionary* defines Christmas as “*n.* **1.** The annual festival of Christ’s birth, celebrated by western churches on 25 December, and by most eastern churches on 7 January. **2.** the season in which this occurs; the time immediately before and after 25 December.”³² Finally, *Merriam-Webster’s Collegiate Dictionary* defines Christmas as “*n.* **1.** A Christian feast on December 25 or among some Eastern Orthodox Christians on January 7 that commemorates the birth of Christ and is usually observed as a legal holiday, **2.** Christmastide.”³³ *Merriam-Webster* further defines “Christmastide” as “*n.* the festival season from Christmas Eve till after New Year’s Day or especially in England till Epiphany.”³⁴

35. In addition, the Tribunal heard testimony from Ms. Azmina Virani, Vice President and Senior General Merchandising Manager for Costco, regarding the increasingly secular nature of Christmas celebrations in Canada.

36. Ms. Virani stated that over the past two decades Costco has moved from focusing heavily on religious-themed Christmas décor (e.g. nativity sets) to non-religious ones in order to appeal to Canada’s increasingly diverse population.³⁵ For example, following customer requests, Costco moved from selling Christmas greeting cards which exclusively read “Merry Christmas”, to offering packs of holiday greeting cards that say “Happy Holidays”. Ms. Virani testified that Costco therefore markets to people “celebrating the festive occasion” rather than the religious holiday, stating that “the world is becoming a place where we have to find a way to make it work for everybody”.³⁶ Ms. Virani also testified that items such as the goods in issue are what its members are telling them that they are looking for.³⁷

37. On the whole, the Tribunal is satisfied that there is a “festive” season that occurs before and after the calendar date of the Christmas holiday itself; that this is a secular, as well as religious, occasion; and that the items associated with the secular celebrations can include items associated with winter, such as snowmen.

38. The CBSA cautioned against finding that all snowmen or all winter-themed articles are “festive” in that they relate to the celebration of Christmas, as this could potentially lead to the absurd result that every item with a depiction of a snowflake or evergreen tree, or items such as decorative skis to hang on the wall, would fall under heading No. 95.05. The CBSA submitted that the proper approach is to look at an item in context to see if it is “specifically and exclusively” associated with Christmas.

39. The CBSA argued that “in order for a snowman to be associated with Christmas, it would have to be placed in a Christmas-type context,” referring to “the manner in which they are packaged, or the context in which they are placed” as elements that could indicate that goods were Christmas decorations.³⁸ With respect to the goods in issue, the CBSA noted that there was nothing on the packaging that referred to Christmas or related the goods in issue to other, specifically Christmas-related snowmen such as Frosty. The CBSA also argued that the fact that Costco had named the product “Mop Christmas Decorations” in its

31. *Oxford English Dictionary*, 2nd ed., s.v. “Christmas”.

32. *Canadian Oxford Dictionary*, 2nd ed., s.v. “Christmas”.

33. *Merriam-Webster’s Collegiate Dictionary*, 11th ed., s.v. “Christmas”.

34. *Merriam-Webster’s Collegiate Dictionary*, 11th ed., s.v. “Christmastide”.

35. *Transcript of Public Hearing*, 12 October 2017, at 12, 14-15.

36. *Ibid.* at 23-24.

37. *Ibid.* at 15.

38. Exhibit AP-2017-003-06A at para 40-41, Vol. 1A.

catalogue could not be considered determinative as this name was specific to Costco and, as Ms. Virani confirmed, other importers could give the product different names.³⁹

40. The Tribunal agrees with the CBSA that a contextual analysis of the goods in issue is important in order to establish whether it is associated with a particular festivity. However, the Tribunal's task in appeals under section 67 of the *Act* is to arrive at the proper tariff classification of particular goods in issue, and not to deal with hypothetical situations involving future importations of different types of goods. Therefore, the Tribunal considers that this contextual analysis should be limited to an examination of the particular goods in issue, and, accordingly, it will not address the issue of whether snowmen, in general, or all winter-themed articles, are associated with Christmas.

41. Furthermore, the Tribunal does not necessarily agree that this contextual analysis must establish that goods must be "specifically and exclusively" associated with a particular festivity in order to be classified under heading No. 95.05. Although, based on the evidence set out below, the goods in issue meet this standard, the Tribunal does not agree that the terms of the tariff or its own past jurisprudence require that such a stringent standard should be applied in all cases. For example, in *Danson Décor*, the Tribunal recognized that the gift bows in issue in that case could be used for "other holiday or joyous occasions",⁴⁰ although they were sold primarily for use during the Christmas season and were ultimately classified under tariff item No. 9505.10.00 as "articles for Christmas festivities".

42. Finally, the Tribunal finds that this contextual analysis can include an examination of the design, best usage, marketing and distribution of the goods in issue. As argued by Costco, the Tribunal has examined these contextual factors as guidance in the classification exercise in several previous decisions, particularly the Tribunal's decision in *PartyLite Gifts Ltd.*⁴¹

43. Of particular relevance to this case is the Tribunal's decision in *Danson Décor*, where the Tribunal relied on witness testimony to the effect that the gift bows in issue in that case were sold and marketed specifically during the Christmas period in November and December, and that this accounted for 95 per cent of the appellant's business, to establish that the gift bows in issue were properly classified as "festive articles" of heading No. 95.05.⁴²

44. In this instance, the Tribunal heard persuasive testimony from Ms. Virani that the goods in issue are marketed, and indeed designed, for sale as Christmas-themed decorations in the months leading up to Christmas.

45. Ms. Virani testified that Costco has a designated buyer who purchases its festive articles for Christmas, and that the goods in issue were designed by this buyer in conjunction with the vendor to "fit into the Christmas aisle for the time period from September through December."⁴³ Ms. Virani emphasized the importance to Costco of conforming to customer expectations regarding floor layout, repeatedly noting that the goods in issue are designed and marketed to fit into this "Christmas décor aisle."⁴⁴ For example, Ms. Virani testified that the red and green colour scheme of the snowman's hat, earmuff and scarf accessories were "absolutely" designed to reflect "Christmas colours."⁴⁵ Further, according to Ms. Virani,

39. *Transcript of Public Hearing*, 12 October 2017, at 68.

40. *Danson Décor* at para. 43.

41. *PartyLite Gifts Ltd.* at 8.

42. *Danson Décor* at para. 43.

43. *Transcript of Public Hearing*, 12 October 2017, at 5-7.

44. *Ibid.* at 5-6, 11-2, 25-26.

45. *Ibid.* at 9.

“[she] could not, in all fairness, put that item on the floor in January, February, March, April, any other time and expect that [they] were going to sell anything at all.”⁴⁶ Taken together, these facts strongly suggest that the goods in issue were specifically designed to be Christmas decorations and not decorations for winter in general.

46. With regard to timing, Ms. Virani testified that the goods in issue are put on sale in early to mid-September and are intended to be entirely sold by December 24 at the latest because “you can’t give this stuff away after Christmas is done.”⁴⁷ Instead of keeping these goods on store shelves after Christmas, the store becomes concerned and marks down Christmas festive items remaining after December 15. Accordingly, the goods in issue would therefore be very unlikely to remain unsold in the days leading up to Christmas, which are the busiest for the store all year.⁴⁸

47. The Tribunal is satisfied that the design, marketing, sale, and placement of the goods in issue indicate sufficient connection to Christmas. The goods in issue are marketed and sold during the period when Costco sells Christmas decorations, in the area of the store reserved for Christmas decorations at this time, and where Costco’s customers expect to find Christmas decorations.

48. The Tribunal agrees with the CBSA that the way in which an importer chooses to display and sell an item cannot be the sole determinative factor in how it is classified under the tariff. However, in this case, the Tribunal notes that Costco is not merely an importer making decisions about how to display and sell an item purchased from an arm’s length vendor in its store. According to Ms. Virani, Costco had a significant role in the design of the goods in issue — as a buyer with considerable purchasing power, “vendors are very willing to work with [Costco’s buyers] to set the theme”, and design and marketing decisions are made with Costco’s needs regarding display and sale (i.e. the “Christmas aisle”) in mind.⁴⁹ Therefore, the way in which the goods in issue are displayed and sold is not being considered determinative in this case; rather, it is these factors considered together with the evidence regarding the design, best use and marketing of the goods in issue that support classification in heading No. 95.05.

49. In light of the above, the Tribunal finds that the goods in issue are “festive articles” of heading No. 95.05. In accordance with Note 1(t) to Section XI, the Tribunal therefore need not consider whether the goods in issue are also classifiable under heading No. 63.07.

Classification at the Subheading and Tariff Item Levels

50. Having determined in accordance with Rule 1 of the *General Rules* that the goods in issue should be classified in heading No. 95.05 as festive articles, the Tribunal must next determine the proper classification at the subheading and tariff items levels.

51. Heading No. 95.05 has a specific subheading and tariff item pertaining to articles for Christmas festivities, tariff item No. 9505.10.00. The analysis set out above establishes that the goods in issue meet the terms of this tariff item.

52. Pursuant to Rule 6 of the *General Rules* and Rule 1 of the *Canadian Rules*, it follows that the goods in issue should be classified under tariff item No. 9505.10.00 as articles for Christmas festivities.

46. *Ibid.* at 13.

47. *Ibid.* at 11.

48. *Ibid.* at 24-25.

49. *Ibid.* at 7, 9.

DECISION

53. For the foregoing reasons, the Tribunal finds that the goods in issue are properly classified under tariff item No. 9505.10.00. The appeal is allowed.

Peter Burn _____
Peter Burn
Presiding Member

APPENDIX

TERMS OF RELEVANT HEADINGS AND RELEVANT LEGAL AND EXPLANATORY NOTES

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

I. -OTHER MADE UP TEXTILE ARTICLES

...

| | |
|----------------|---|
| 63.07 | Other made up articles, including dress patterns. |
| 6307.10 | -Floor-cloths, dish-cloths, dusters and similar cleaning cloths |
| ... | |
| 6307.20 | -Life-jackets and life-belts |
| 6307.90 | -Other |
| 6307.90.10 | - - -Burial shrouds; Climbing harnesses, for climbing or mountaineering, manufactured to the standards of the Union Internationale des Associations d'Alpinisme; Marine evacuation chutes, for use in the manufacture of marine evacuation systems; Respirators, NIOSH approved or equivalent, consisting of several layers of nonwovens of man-made fibres, whether or not treated with activated carbon, with or without an exhalation valve, to be employed in a noxious atmosphere; Sample books of textile wall coverings of subheading 5905.00; Tubular webbing, for climbing or mountaineering; Wire-edged ribbon for use in the manufacture of articles put up for retail sale as festive articles of heading 95.05 |
| 6307.90.20 | - - -Furnishing articles for decorating religious buildings |
| 6307.90.30 | - - -Belts for occupational use |
| 6307.90.40 | - - -Furniture moving pads |
| 6307.90.50 | - - -Shells for use in the manufacture of articles of subheading 9404.90 |
| | - - -Other: |
| 6307.90.91 | - - - -Solely of jute |
| 6307.90.92 | - - - -Of silk |
| 6307.90.93 | - - - -Of cotton or other vegetable textile fibres, except solely of jute |
| 6307.90.99 | - - - -Of other textile materials |

Legal note 1 to Section XI provides as follows:

This Section does not cover:

...

- (t) Articles of Chapter 95 (for example, toys, games, sports requisites and nets);

Legal note 7 to Section XI provides 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 consisting 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);

The general explanatory note to Chapter 63 provides as follows:

GENERAL

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.)

...

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.

The explanatory notes to heading No. 63.07 provide 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.

...

The heading **excludes** textile articles classified in more specific headings of this Chapter or of Chapters 56 to 62. It further **excludes** :

...

- (o) Toys, games and entertainment articles, etc., of Chapter 95.

Heading No. 95.05

Heading No. 95.05 reads as follows:

Section XX

MISCELLANEOUS MANUFACTURED ARTICLES

...

Chapter 95

TOYS, GAMES AND SPORTS REQUISITES; PARTS AND ACCESSORIES THEREOF

...

| | |
|-------------------|---|
| 95.05 | Festive, carnival or other entertainment articles, including conjuring tricks and novelty jokes. |
| 9505.10.00 | -Articles for Christmas festivities |
| ... | |
| 9505.90.00 | -Other |

There are no relevant legal notes.

There are no relevant explanatory notes to Chapter 95. The explanatory notes to heading No. 95.05 provide as follows:

This heading covers:

(A) **Festive, carnival or other entertainment articles**, which in view of their intended use are generally made of non-durable material. They include :

- (1) Festive decorations used to decorate rooms, tables, etc. (such as garlands, lanterns, etc.); decorative articles for Christmas trees (tinsel, coloured balls, animals and other figures, etc); cake decorations which are traditionally associated with a particular festival (e.g., animals, flags).
- (2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees, nativity scenes, nativity figures and animals, angels, Christmas crackers, Christmas stockings, imitation yule logs, Father Christmases.
- (3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (**not being** articles of postiche - **heading** 67.04), and paper hats. However, the heading **excludes** fancy dress of textile materials, of Chapter 61 or 62.
- (4) Throw-balls of paper or cotton-wool, paper streamers (carnival tape), cardboard trumpets, “blow-outs”, confetti, carnival umbrellas, etc.

The heading **excludes** statuettes, statues and the like of a kind used for decorating places of worship.

The heading also **excludes** articles that contain a festive design, decoration, emblem or motif and have a utilitarian function, e.g., tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen.

(B) **Conjuring tricks and novelty jokes**, e.g., packs of cards, tables, screens and containers, specially designed for the performance of conjuring tricks; novelty jokes such as sneezing powder, surprise sweets, water-jet button-holes and “Japanese flowers”.

This heading also **excludes** :

- (a) Natural Christmas trees (Chapter 6).
- (b) Candles (**heading** 34.06).
- (c) Packagings of plastics or of paper, used during festivals (classified according to constituent material, for example, Chapter 39 or 48).
- (d) Christmas tree stands (classified according to constituent material).
- (e) Textile flags or bunting of **heading** 63.07.
- (f) Electric garlands of all kinds (**heading** 94.05).