



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2017-025

Canadian Tire Corporation Ltd.

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Friday, August 24, 2018*

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IN THE MATTER OF an appeal heard on May 15, 2018, 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 June 15, 2017, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**CANADIAN TIRE CORPORATION LTD.**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is allowed.

Serge Fréchette  
Serge Fréchette  
Presiding Member

Place of Hearing: Ottawa, Ontario  
Date of Hearing: May 15, 2018  
  
Tribunal Panel: Serge Fréchette, Presiding Member  
  
Support Staff: Anja Grabundzija, Counsel  
Michael Carfagnini, Counsel

**PARTICIPANTS:****Appellant**

Canadian Tire Corporation Ltd.

**Counsel/Representatives**Michael Sherbo  
Andrew Simkins**Respondent**

President of the Canada Border Services Agency

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## STATEMENT OF REASONS

### BACKGROUND

1. This is an appeal filed on August 28, 2017, by Canadian Tire Corporation Ltd. (Canadian Tire) pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision rendered by the President of the Canada Border Services Agency (CBSA) dated June 15, 2017, pursuant to subsection 60(4), with respect to a request for an advance ruling on tariff classification.

2. The issue in this appeal is whether the X Rocker Sound Chair with Bluetooth (the chair), which the parties agree is classified under tariff item No. 9401.61.10 of the schedule to the *Customs Tariff*<sup>2</sup> as other upholstered seats with wooden frames for domestic purposes, can also be classified under tariff item No. 9948.00.00 as an article for use in automatic data processing machines (ADP machines), optical readers, video games used with a television receiver, other electronic games, or parts and accessories of such goods.

### PROCEDURAL HISTORY

3. On September 13, 2016, Canadian Tire filed a request pursuant to section 42.1 of the *Act* for an advance ruling on the tariff classification of the chair.

4. On December 6, 2016, the CBSA issued an advance ruling classifying the chair under tariff item No. 9401.61.10, but denying Canadian Tire's request for classification under tariff item No. 9948.00.00.

5. Following a request for a review submitted by Canadian Tire, the CBSA issued a decision pursuant to subsection 60(4) of the *Act* affirming the advance ruling on June 15, 2017.<sup>3</sup>

6. On August 28, 2017, Canadian Tire filed the present appeal with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Act*.

7. The Tribunal held a public hearing in Ottawa, Ontario, on May 15, 2018.

8. Canadian Tire called Mr. Robert McNae, CEO of Ace Casual Furniture, as a witness. Canadian Tire also called Mr. Peter Schuck, Technical Director at Paradigm Electronics, as an expert witness. After considering his qualifications and experience, the Tribunal qualified Mr. Schuck as an expert in sound engineering and the technical aspects of sound and music production and reproduction.<sup>4</sup>

9. The CBSA did not call any witnesses.

### DESCRIPTION OF THE GOODS IN ISSUE

10. The chair includes multimedia features making it suitable for gaming, watching movies or listening to music. It has two speakers, volume input jacks and a control panel on its side which, *inter alia*, allows for volume adjustment.<sup>5</sup> The chair connects to a variety of media devices, including DVD players, video game

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

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

3. Exhibit AP-2017-025-01 at 2, Vol. 1.

4. *Transcript of Public Hearing* at 21-23.

5. Canadian Tire's Brief, Exhibit AP-2017-025-04C at 14, Vol. 1.

consoles, MP3 or CD players. The speakers reproduce the sound from movies, video games or sound files played by those devices.

11. The product literature includes the following description: “Welcome to the world of interactive audio. With your new X Rocker you can now not only hear your music but actually FEEL it. Whether you are listening to music, watching a movie, or playing a game, you will become a part of it.”<sup>6</sup>

## LEGAL FRAMEWORK

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 (the Harmonized System) developed by the World Customs Organization (WCO).<sup>7</sup> 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.

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*<sup>8</sup> and the *Canadian Rules*<sup>9</sup> set out in the schedule.

14. 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.

15. 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*<sup>10</sup> and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,<sup>11</sup> 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.<sup>12</sup>

16. Chapter 99, which includes tariff item No. 9948.00.00, provides for special classification provisions adopted by Canada that generally allow certain goods to be imported duty-free. The provisions of this chapter are not standardized at the international level. As none of the headings of Chapter 99 are divided at the subheading or tariff item level, the Tribunal need only consider, as the circumstances may require, Rules 1 through 5 of the *General Rules* in determining whether goods may be classified in that chapter.

17. Notes 3 and 4 to Chapter 99 are relevant. They provide as follows:

3. Goods may be classified under a tariff item in this Chapter and be entitled to the Most-Favoured-Nation Tariff or a preferential tariff rate of customs duty under this Chapter that applies to

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6. Canadian Tire’s Brief, Exhibit AP-2017-025-04C at 13, Vol. 1.

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

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

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

10. World Customs Organization, 4th ed., Brussels, 2017.

11. World Customs Organization, 6th ed., Brussels, 2017.

12. 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.

those goods according to the tariff treatment applicable to their country of origin only after classification under a tariff item in Chapters 1 to 97 has been determined and the conditions of any Chapter 99 provision and any applicable regulations or orders in relation thereto have been met.

4. The words and expressions used in this Chapter have the same meaning as in Chapters 1 to 97.

18. As the parties agree that the chair is classified under tariff item No. 9401.61.10, the condition of note 3 to Chapter 99 requiring that the good first be classified under a tariff item in Chapters 1 to 97 is met.

19. Canadian Tire argues that the chair meets the requirements of tariff item No. 9948.00.00, which provides as follows in relevant part:

9948.00.00 Articles for use in the following:

...

Automatic data processing machines and units thereof, magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data;

...

Video games used with a television receiver, and other electronic games;  
Parts and accessories of the foregoing.

20. Subsection 2(1) of the *Customs Tariff* defines “for use in” as follows:

*for use in*, wherever it appears in a tariff item, in respect of goods classified in the tariff item, means that the goods must be wrought or incorporated into, or attached to, other goods referred to in that tariff item.

21. With regard to the interpretation of the expression “automated data processing machines” (ADP machines) appearing in tariff item No. 9948.00.00, the following note to Chapter 84 is relevant:

5. (A) For the purpose of heading 84.71, the expression “automatic data processing machines” means machines capable of:

(i) Storing the processing program or programs and at least the data immediately necessary for the execution of the program;

(ii) Being freely programmed in accordance with the requirements of the user;

(iii) Performing arithmetical computations specified by the user; and

(iv) Executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run.

22. In sum, in order to qualify for tariff relief under tariff item No. 9948.00.00, the chair must be:

1) an “article”

2) “for use in”

3) ADP machines, optical readers, or video games used with a television receiver or other electronic games.<sup>13</sup>

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13. Federal Court of Appeal and Tribunal cases have also established that “for use in” as defined in s. 2 of the *Customs Tariff* requires some evidence that the good is *actually* used in the host goods (as opposed to being merely intended to be so used): *Entrelec Inc. v. Canada (Minister of National Revenue)*, 2000 CanLII 16268 (FCA) [*Entrelec*]; *Best Buy Canada Ltd., P&F USA Inc. and LG Electronics Canada* (27 February 2017), AP-2015-034, AP-2015-036 and AP-2016-001 (CITT) [*Best Buy*]. Both parties agreed that that criterion is not in issue in the present appeal.

## POSITIONS OF THE PARTIES

23. The parties agree that the first and third criteria are met: the chair is an “article” and the goods to which it connects (computers, video game consoles or DVD players) qualify as host goods of tariff item No. 9948.00.00. The parties’ positions on these issues are consistent with prior jurisprudence.<sup>14</sup> The Tribunal agrees.

24. As further set out below, the only question before the Tribunal is whether the chair is “for use in” the host goods by reason of being attached to those goods.<sup>15</sup>

### Canadian Tire

25. Canadian Tire submitted that the chair is “for use in” ADP machines, optical readers, video game consoles and other electronic games by reason of being “attached to” those goods. Canadian Tire submitted that the chair is not only physically attached to the host goods, but is also “functionally joined” to them, because it provides “a necessary or complementary audio (sound) output for the source devices.”<sup>16</sup> Essentially, it enhances the function of computers, DVD players and video game consoles to which it is connected by acting as a speaker.<sup>17</sup>

26. Canadian Tire submitted in the alternative that the chair is physically and functionally joined to a “part” (specifically, the audio output component) of the host goods listed in tariff item No. 9948.00.00, as allowed by that tariff item.

### CBSA

27. The CBSA submitted that the chair is not for use in the host goods of tariff item No. 9948.00.00. The CBSA’s position was that, while the chair could be physically attached, it was not “functionally joined” to those goods.

28. The CBSA submitted that, in order for goods to be functionally joined to other goods, they must enhance or complement the *specific function* for which the host goods are designed. The CBSA argued that computers, DVD players and game consoles are all ADP machines for the purposes of tariff item No. 9948.00.00 and that the specific functions of ADP machines are described in explanatory note 5(A) to Chapter 84. The CBSA submitted that the chair does not enhance or complement these specific functions, and, therefore, is not “functionally joined” to the host goods.

29. The CBSA also submitted that the main function of the chair, as well as its tariff classification, is as a seat. It submitted that the chair should not therefore be treated as a speaker in determining whether it is an article for use in host goods of tariff item No. 9948.00.00. The CBSA also submitted that another relevant consideration was that the chair and the host goods can function independently of each other.

30. The CBSA submitted, for similar reasons, that the chair was not for use in parts or accessories of the host goods listed in tariff item No. 9948.00.00.

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14. See, in particular, the Tribunal’s findings in *Best Buy* at paras. 69 and 73.

15. It was not argued that the goods in issue could be considered “for use in” the host goods by being “wrought or incorporated into” those goods within the meaning of subsection 2(1) of the *Customs Tariff*.

16. Exhibit AP-2017-025-04C at para. 30, Vol. 1.

17. *Transcript of Public Hearing* at 51.



## ANALYSIS

31. The Tribunal must determine whether the chair is “for use in” the host goods of tariff item No. 9948.00.00 by reason of being “attached to” those goods within the meaning of subsection 2(1) of the *Customs Tariff*.

32. The Tribunal has long applied a test with two requirements in this regard: first, the goods in issue must be physically connected to the host goods; second, the goods in issue must be functionally joined to the host goods. This has been understood to mean that the goods in issue must enhance or complement the function of the host goods, by helping the host goods to execute their functions or allowing them to acquire additional capabilities.<sup>18</sup>

33. In this case, the evidence indicates that the chair is both physically attached and functionally joined to the computers, DVD players or game consoles to which it connects.

34. Mr. McNae, CEO of Ace Casual, which produces the X Rocker Chair, testified that, although it was originally developed to be used primarily with video game consoles, the chair is more generally designed to be used as an add-on to a media device, including a music or mobile device, a DVD player, a computer or a television, to enhance the user’s experience of gaming, listening to music or watching videos. He testified that the chair is sold with cables enabling it to connect to such media devices. It also has Bluetooth functionality allowing it to connect to any Bluetooth-enabled device.<sup>19</sup>

35. Mr. McNae testified that “the X Rocker immerses the user into the game, into the music, into the show, into whatever they’re using it. . . . When you sit down, those speakers are right by you and it enables you to really enjoy that sound, feel it. You can feel the vibration of the subwoofer . . . and the vibration of the speakers, and it really just helps you enjoy that sound, that music, that movie, that game.”<sup>20</sup> Mr. McNae stated that “[t]he very essence of the design of the chair is to be hooked up and to immerse the user into the gaming experience. It is an accessory to gaming or movies, et cetera.”<sup>21</sup>

36. For his part, Mr. Schuck explained that the purpose shared by the host goods – CD players, DVD players, video game consoles – is to allow users to play recorded audio (as well as video, in some cases). All of the host goods “read” audio signal from the medium on which it is stored and transmit it to technology, such as a receiver, amplifier or speaker, which renders the signal as sound that the user can hear.<sup>22</sup> Mr. Schuck clarified that if the audio signal does not end up in a speaker somewhere, the user cannot hear it, and “you lose the point of the audio.”<sup>23</sup>

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18. See e.g. *Andritz Hydro Canada Inc. and VA Tech Hydro Canada Inc. v. President of the Canada Border Services Agency* (21 June 2013), AP-2012-022 (CITT) at para. 36; *Ubisoft Canada Inc. v. President of the Canada Border Services Agency* (28 January 2014), AP-2013-004 (CITT) at para. 59, aff’d *Ubisoft Canada Inc. v. Canada (Border Services Agency)*, 2014 FCA 254 (CanLII); *Curve Distribution Services Inc. v. President of the Canada Border Services Agency* (15 June 2012), AP-2011-023 (CITT) at para. 65; *Kverneland Group North America Inc. v. President of the Canada Border Services Agency* (30 April 2010), AP-2009-013 (CITT) at para. 50-51; *Jam Industries Ltd. v. President of the Canada Border Services Agency* (20 March 2006), AP-2005-006 (CITT) at para. 42, aff’d *Jam Industries Ltd. v. Canada (Border Services Agency)*, 2007 FCA 210 (CanLII); *Sonos Inc. v. President of the Canada Border Services Agency* (24 October 2017), AP-2016-020 (CITT) [*Sonos*] at para. 63.

19. *Transcript of Public Hearing* at 6-9.

20. *Ibid.* at 13.

21. *Ibid.* at 15.

22. *Ibid.* at 24-26.

23. *Ibid.* at 26, 39.

37. Questioned on the way in which the chair reproduces sound, Mr. Schuck testified that the process starts with a computer, DVD player or game console translating audio from digital sources (such as a CD, DVD, or computer memory) into format suitable to be converted into either analogue signal or a further digital signal. The analogue signal can then be transmitted to the chair via a wired connection with the host good; the digital signal can be transmitted to the chair via a Bluetooth connection.<sup>24</sup> In the case of analogue signal, a digital audio converter is permanently connected to the output jack. In the case of Bluetooth, the host good is sold with Bluetooth software-enabled components already installed.<sup>25</sup>

38. Mr. Schuck further explained that, in the case of Bluetooth connection between the chair and the host good, the Bluetooth components in both goods must be “paired” by establishing a digital connection before the audio signal can be transmitted to the chair. This process involves digital information being sent from the chair to the host good and vice versa, in order to establish and maintain the wireless connection and to monitor the quality of the audio being transmitted and reproduced.<sup>26</sup> In the case of an analogue (“wired”) connection, the host good possesses a digital audio converter which is connected to the output jack, so that the analogue cable simply needs to be physically connected to the host good in order to transmit the signal to the chair.<sup>27</sup>

39. Mr. Schuck explained that the amplifier in the chair then amplifies the analogue or digital audio signal received from the host good into a higher voltage audio signal. Following this, a transformer in the loud speakers of the chair transforms the electrical current into a magnetic field, which causes the magnets in the speaker to move a diaphragm and create sound.<sup>28</sup>

40. Mr. Schuck compared the function of the chair to that of speakers or headphones in a sound system. Due to its powerful amplifier, the chair allows the user to “feel the sound a bit more.”<sup>29</sup> Mr. Schuck stated that this amplification provided by the chair is designed to enhance the audiovisual experience of the user, similarly to how the large speakers and subwoofers at a movie theatre add to the mood and emotion of that experience.<sup>30</sup> Mr. Schuck also noted that not all host goods with which the chair can connect are capable of reproducing sound on their own. This would be the case of DVD players and some desktop computers that are not equipped with speakers.<sup>31</sup>

41. Finally, Mr. Schuck testified that, in his opinion, the purpose of the chair is to play audio and that “[i]f you wanted a chair that didn’t have speakers in it, you’d buy a chair that didn’t have speakers in it.”<sup>32</sup>

42. In sum, the witnesses’ evidence indicates that the function of the host goods (e.g. computer, DVD player or video game console) relevant to this appeal is to read the movie, video game or music file saved on a disk or computer memory, and that the chair reproduces and amplifies the sound signal it receives from the host good. Thus, the chair, through its built-in speakers, allows the host good to render audio files in a way that the ear can hear, and does so in a manner that delivers an increased sensory experience to the user.

43. In light of the evidence, the Tribunal finds that, as submitted by Canadian Tire, the chair, through its built-in speakers and subwoofers, enhances the function of the host goods by providing a necessary or

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24. *Transcript of Public Hearing* at 23-28.

25. *Ibid.* at 29-32.

26. *Ibid.* at 32-34.

27. *Ibid.* at 29-30.

28. *Ibid.* at 26-28.

29. *Ibid.* at 28, 43.

30. *Ibid.* at 42-44.

31. *Ibid.* at 41-42.

32. *Ibid.*

complementary sound output for those goods. Being both physically connected and functionally joined to the host goods, the chair is attached to the host goods and “for use in” those goods within the meaning of subsection 2(1) of the *Customs Tariff*.

44. The Tribunal’s conclusion is consistent with previous findings. In *Best Buy*, the Tribunal found that televisions connected to ADP machines were functionally joined because they “enhance and complement the function of those devices by providing a necessary or complementary visual display as well as sound output for the source devices.”<sup>33</sup> Similarly, in *Sonos*, the Tribunal determined that wireless speakers were functionally joined to ADP machines to which they connected.<sup>34</sup>

45. With regard to the CBSA’s argument that the chair does not enhance the functions of ADP machines described in explanatory note 5(A) to Chapter 84, the narrow focus on these particular functions is not warranted by the language of tariff item No. 9948.00.00 or the definition of “for use in” in subsection 2(1) of the *Customs Tariff*. By way of note 4 to Chapter 99, note 5(A) to Chapter 84 is relevant to interpreting the expression “ADP machine” found in tariff item No. 9948.00.00. However, while note 5(A) establishes the capabilities that a machine must have in order to qualify as an ADP machine of tariff item No. 9948.00.00, this does not mean that the capabilities listed in note 5(A) to Chapter 84 comprise the *only* relevant functions of any given ADP machine when determining whether an imported good is “for use in” that ADP machine.

46. In any event, the relevant host goods in this case also include optical readers, video games and other electronic games. These are additional host goods listed in tariff item No. 9948.00.00 independently from ADP machines.<sup>35</sup> While these host devices may have the technical capabilities of ADP machines, contrary to the CBSA’s argument, nothing indicates that the specific and relevant functions of such goods are the ADP functions described in explanatory note 5(A) to Chapter 84. That proposition is also not supported by the evidence in this case.

47. In respect of the CBSA’s arguments that the chair can function on its own (without being connected to the host goods), that it is classified under Chapter 94 as a chair rather than a speaker, and that its primary function is that of a seat, those considerations are irrelevant to the question whether the chair, when connected to the host goods of tariff item No. 9948.00.00, enhances or complements their function. The “for use in” criterion does not require a good to be *solely* or *primarily* for use in the relevant host good.<sup>36</sup> The

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33. *Best Buy* at para. 79.

34. *Sonos* at paras. 65-66.

35. The Tribunal notes the CBSA’s position in this case that all of the relevant host goods, including DVD players, CD players and video game consoles, should be considered as ADP machines for the purposes of the analysis under tariff item No. 9948.00.00. See Exhibit AP-2017-025-06A at paras. 18 and 25, Vol. 1A. While the CBSA relied on the Tribunal’s finding in *Best Buy*, at paras. 69 and 73, in that case, the Tribunal specifically found that, while DVD and CD players and video game consoles can be considered ADP machines for the purposes of tariff item No. 9948.00.00, because they possess the fundamental characteristics of ADP machines identified in note 5(A) to Chapter 84, these goods can alternatively be considered as other host goods of tariff item No. 9948.00.00. Namely, video games used with television receivers are listed *per se* in tariff item No. 9948.00.00, and DVD and CD players are optical readers, which are also separately listed in tariff item No. 9948.00.00. The CBSA provided no reason to disregard the fact that these source devices also qualify as other host goods of tariff item No. 9948.00.00.

36. *Entrelec* at para. 7: “duality of applications or uses does not prevent the goods from qualifying under Code 2101 as long as evidence of use in conformity with the requirements of that provision is adduced”; *Tri-Ed Ltd. v. President of the Canada Border Services Agency* (27 February 2017), AP-2014-041 (CITT) at para. 87; *Beckman Coulter Canada Inc. v. President of the Canada Border Services Agency* (17 January 2012), AP-2010-065 (CITT) at paras. 26-28; *Sony of Canada Ltd. v. The Commissioner of the Canada Customs and Revenue Agency* (3 February 2004), AP-2001-097 (CITT) at 12; *Agri-Pack v. Commissioner of the Canada Customs and Revenue Agency* (2 November 2004), AP-2003-010 (CITT) at para. 34; *PHD Canada Distributing Ltd. v. The Commissioner of Customs and Revenue* (25 November 2002), AP-99-116 (CITT) at 10-11.

CBSA's reference to *Wal-Mart* in this regard, where the Tribunal found that a similar chair could not be classified as an item suitable for use principally with video games of Chapter 95,<sup>37</sup> is inapposite. The Tribunal in that case rejected classification in Chapter 95 because note 3 to that chapter required the goods in issue to be *solely or principally used* with goods of Chapter 95 in order to be classified with those articles.<sup>38</sup> No such language appears in the text of tariff item No. 9948.00.00. The CBSA's argument that the chair as a whole, rather than a part of the chair, must enhance or complement the host goods similarly finds no basis in tariff item No. 9948.00.00 or the definition of "for use in".

48. As the Tribunal recently reiterated in *Apple Canada*, "[t]he concept of 'functionally joined' simply means that the goods 'for use in' the host goods have a functional relationship (be it active or passive) with the host goods."<sup>39</sup> That functional relationship is established on the evidence in this case.

## CONCLUSION

49. For the foregoing reasons, the Tribunal finds that the goods in issue are articles for use in ADP machines, optical readers, video games used with a television receiver, or other electronic games. For the reasons above, the Tribunal finds that the chair meets the requirements of tariff item No. 9948.00.00.

## DECISION

50. The appeal is allowed.

Serge Fréchette  
Serge Fréchette  
Presiding Member

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37. *Wal-Mart Canada Corporation v. President of the Canada Border Services Agency* (13 June 2011), AP-2010-035 (CITT) at para. 73.

38. *Ibid.* at paras. 60, 66-73.

39. *Apple Canada Inc. v. President of the Canada Border Services Agency* (10 January 2018), AP-2017-013 (CITT) at para. 29.