



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2018-013

ZUO Moderne Canada Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Thursday, April 4, 2019*

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IN THE MATTER OF an appeal heard on December 13, 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 May 3, 2018, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

ZUO MODERNE CANADA INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Ann Penner
Presiding Member

Place of Hearing: Ottawa, Ontario
Dates of Hearing: December 13, 2018
Tribunal Panel: Ann Penner, Presiding Member
Support Staff: Courtney Fitzpatrick, Counsel
Heidi Lee, Counsel

PARTICIPANTS:**Appellant**

Zuo Moderne Canada Inc.

Counsel/Representative

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Respondent

President of the Canada Border Services Agency

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WITNESSES:

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Zuo Moderne Canada Inc.

Maurice Gingras
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STATEMENT OF REASONS

BACKGROUND

[1] This is an appeal filed on June 11, 2018, by ZUO Moderne Canada Inc. (ZMC) pursuant to subsection 67(1) of the *Customs Act*¹ from a decision rendered by the President of the Canada Border Services Agency (CBSA) dated May 3, 2018, pursuant to subsection 60(4).

[2] The issue in this appeal is whether the Christabel square table (model No. 700600) and the Christabel round table (model No. 700601) (together the “goods in issue”) are properly classified under subheading No. 9403.20 of the schedule to the *Customs Tariff*² as other metal furniture, as determined by the CBSA, or should be classified under subheading No. 9403.30 as wooden furniture of a kind used in offices, as claimed by ZMC.³ In the alternative, ZMC claims that the goods in issue should be classified under subheading No. 9403.60 as other wooden furniture or, in the further alternative, under subheading No. 9403.10 as metal furniture of a kind used in offices.

PROCEDURAL HISTORY

[3] On June 12, 2014, ZMC imported the goods in issue under tariff item No. 9403.10.00 as metal furniture of a kind used in offices.

[4] ZMC then filed a correction to its initial declaration pursuant to section 32.2 of the *Act*, classifying the goods in issue under tariff item No. 9403.89.90 as furniture of other materials, other than for domestic purposes. ZMC’s correction was treated as a re-determination in accordance with paragraph 59(1)(a).

[5] On November 28, 2016, the CBSA re-determined the goods in issue to fall under tariff item No. 9403.20.00 as other metal furniture.

[6] Following a request for review by ZMC, on May 3, 2018, the CBSA issued a further re-determination maintaining that the goods were properly classified under tariff item No. 9403.20.00.

[7] On June 11, 2018, ZMC filed the present appeal with the Canadian International Trade Tribunal.

[8] The Tribunal held a public hearing in Ottawa, Ontario, on December 13, 2018.

[9] ZMC called Mr. Benjamin Revah, Chief Operating Officer of ZMC, and Mr. Maurice Gingras, Owner of Intersol Marketing Inc. (Intersol), as witnesses. The CBSA did not call any witnesses.

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

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

3. The parties agree that the goods are properly classified under heading No. 94.03 as other furniture and parts thereof and, accordingly, that this dispute concerns the subheading level only.

DESCRIPTION OF THE GOODS IN ISSUE

[10] The goods in issue are two tables from the Christabel series. Model No. 700600 has a square top and model No. 700601 has a round top. Both tables are composed of a medium-density fibreboard (MDF) tabletop wrapped with aluminum on the top and sides, with an aluminum base and an aluminum tube connecting the tabletop and the base. The aluminum renders the components “weather resistant”.⁴ The goods in issue require assembly after importation.⁵

LEGAL FRAMEWORK

[11] The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform with the Harmonized Commodity Description and Coding System (the Harmonized System) 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.

[12] 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.

[13] 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.

[14] 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

[15] 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 any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification

4. Exhibit AP-2018-013-07A, Vol. 1 at Annex 8.

5. *Transcript of Public Hearing* at 10-11; Exhibit AP-2018-013-07A, Vol. 1 at Annex 6.

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.

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

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

11. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, and *Canada (Attorney General) v. Best Buy Canada Ltd.*, 2019 FCA 20.

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.¹²

[16] Once the Tribunal has determined 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

[17] The tariff classification provisions at issue in this appeal are as follows:

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.

9403.10.00 -Metal furniture of a kind used in offices

...

9403.20.00 -Other metal furniture

...

9403.30.00 -Wooden furniture of a kind used in offices

...

9403.60 -Other wooden furniture

...

9403.60.90 -Other

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

13. Rules 1 through 5 of the *General Rules* apply to classification at the heading level. 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.”

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.

[18] The relevant legal and explanatory notes are produced in Appendix I of these reasons.

POSITIONS OF THE PARTIES

ZMC

[19] ZMC submitted that the goods in issue should be classified under subheading No. 9403.30 as wooden furniture of a kind used in offices.

[20] As the goods in issue consist of both MDF and aluminum, ZMC argued that they can be *prima facie* classified under two or more subheadings, as provided by Rule 2(b) of the *General Rules*. ZMC submitted that as a result of the application of Rule 2(b), Rule 3 should be applied, and that in this case Rule 3(b) is dispositive.

[21] Applying Rule 3(b), ZMC submitted that the essential character of the goods in issue is derived from the MDF tabletop and that the goods in issue should be classified as wooden furniture. ZMC submitted the tabletop is the functional component of any table, including the goods in issue. ZMC further submitted that the MDF tabletop provides sturdiness and stability, but is also lighter than metal, thus contributing to the balance of the table. At the hearing, ZMC added that the MDF tabletop allows the goods in issue to be assembled.

[22] ZMC also submitted that the goods in issue are of a kind used in offices. ZMC argued that to be “of a kind used in offices”, which, in ZMC’s submission, is a different test than “for use in office”, the goods must be primarily used for work purposes. ZMC also submitted that the term “office” should be given a broad interpretation and should include furniture for any workplace, i.e. furniture used in order to earn a living and provide a service, such as tables used in a cafeteria, but also furniture found in the workplace even if no work is done on or with the furniture.

[23] In the alternative, ZMC submitted that the goods in issue should be classified under subheading No. 9403.60 as other wooden furniture or, in the further alternative, under subheading No. 9403.10 as metal furniture of a kind used in offices.

CBSA

[24] The CBSA submitted that the goods in issue are classified under subheading No. 9403.20 as other metal furniture.

[25] The CBSA submitted that Rule 2(a) applies as the goods in issue are imported in an unassembled state. By application of Rules 1, 2(a) and 6, the CBSA submitted that the goods in issue are tables made of aluminum for outdoor use and, as such, are properly classified as other metal furniture.

[26] In the alternative, the CBSA submitted that if the presence of MDF prevents classification by application of Rules 1, 2(a) and 6, Rule 2(b) is dispositive. Relying on explanatory note XII to Rule 2(b), the CBSA submitted that the goods in issue cannot be classified as wooden furniture because the presence of the aluminum deprives them of the character of wooden furniture. Further, the CBSA submitted that the addition of MDF does not deprive the goods in issue of the character of metal furniture and, therefore, the goods in issue can be classified under tariff item No. 9403.20.00 without applying Rule 3.

[27] The CBSA also submitted that the goods in issue are suitable for various non-office-related uses and, as such, are not of a kind used in offices. At the hearing, the CBSA acknowledged that a broad interpretation of the word “offices” may be appropriate. However, it submitted that ZMC’s proposed interpretation is too broad.

ANALYSIS

[28] The issue before the Tribunal is whether the goods in issue are properly classified in subheadings No. 9403.10, 9403.20, 9403.30 or 9403.60.¹⁵ To decide that issue, the Tribunal must determine whether the goods are: (1) of a kind used in offices; and (2) metal or wooden furniture.

[29] The parties disagree as to which Rules are applicable in resolving these questions. Both parties submitted, and the Tribunal agrees, that classification cannot be determined according to Rule 1 alone. In such cases the analysis moves on to Rule 2. The parties also agree that the goods in issue are presented disassembled and, as such, Rule 2(a) applies.¹⁶ However, due to the composite nature of the goods in issue, the Tribunal finds that Rule 2(a) is not determinative, and the analysis must move on to Rule 2(b). This is particularly relevant to the Tribunal’s analysis of whether the goods in issue are wooden or metal furniture. As noted above, ZMC submits that Rule 3 is also relevant. As will be explained further below, the Tribunal disagrees and finds that this appeal can be resolved by application of Rules 1 and 2 of the *General Rules*.

Are the goods in issue “of a kind used in offices”?

[30] The Tribunal will begin by considering whether the goods in issue are “of a kind used in offices”. To do that, it will employ the test set out in *Curry’s Art Stores*:

[T]he requirement in subheading No. 9403.10 that furniture be “of a kind used” in offices indicates that the included furniture must be “primarily” used for that purpose. This is consistent with the Tribunal’s jurisprudence. For example, in *Rona*, the Tribunal interpreted the words “of a kind used for domestic purposes” to require that the goods be used “primarily” in or around the home. As such, while there is no need to demonstrate that the goods in issue will *actually* be used in offices, the words “of a kind used in offices” require that, by their design, nature or character, the goods in issue be of the *type* primarily used in offices.

...

The mere fact that the goods in issue may be suitable for studio use, in addition to being suitable for other uses, cannot meet the requirement of subheading No. 9403.10 that the furniture be “of a kind used in offices”. If mere suitability for use in offices were the test,

15. As there are no relevant exclusionary notes, the Tribunal need not begin its consideration of the competing subheadings in any particular order.

16. *Transcript of Public Hearing* at 10-11; Exhibit AP-2018-013-07A, Vol. 1 at para. 10.

subheading No. 9403.10 would serve little purpose; practically any furniture could, in some circumstance, be suitable for use in offices.¹⁷

[Emphasis in original]

[31] This test requires that any furniture “of a kind used in offices” must, by their design, nature or character, be the type of goods that would be *primarily* used in offices, as opposed to goods which could be used in offices. Applying this test requires the Tribunal to make findings of fact about the design, nature and/or character of the goods in issue. The evidence in this case does not support a finding that the goods in issue are primarily used in offices, on the factual basis of their design, nature and/or character.

[32] Mr. Benjamin Revah, Chief Operating Officer of ZMC, testified that the design of the goods – that is, their water resistance, easy assembly and disassembly, and base, which is a solid piece of aluminum designed to avoid the structural weaknesses of welding points – make it a popular choice for event rental companies and high-traffic cafeterias.¹⁸

[33] Mr. Revah also testified that ZMC’s business model is to sell to other businesses, such as hotels, restaurants, event-rental companies, universities and so forth.¹⁹ For example, he explained that ZMC’s website does not include pricing information, nor does it allow a customer to directly place an order online. Customers need to set up an account and be approved by a ZMC sales representative.²⁰ Mr. Revah also explained that ZMC has showrooms in Montreal and Toronto, which are closed to the public and accessible by appointment only (typically by designers).²¹

[34] Furthermore, Mr. Revah testified that ZMC’s two largest customers are event-rental companies.²² He also testified that any retail sales of ZMC’s products are incidental to ZMC’s business and the related marketing is largely controlled by the selling retailers.²³

[35] On the basis of the foregoing, the Tribunal is satisfied that the goods in issue are primarily used for various commercial uses.

[36] ZMC urged the Tribunal to adopt an expansive view of the term “office”, suggesting that a wide range of commercial, or work-related, settings could fall within the term. In its view, the term “office” applies to any place where people do work-related activities and provide work-related services. It submitted the following definition of “office” from the Canadian Oxford Dictionary to support this view:

17. *Curry’s Art Stores v. President of the Canada Border Services Agency* (29 April 2013), AP-2012-031 (CITT) at paras. 42, 46.

18. *Transcript of Public Hearing* at 17, 23, 25.

19. *Transcript of Public Hearing* at 7.

20. *Ibid.* at 10.

21. *Ibid.* at 37.

22. *Ibid.* at 19.

23. *Ibid.* at 39-41, 56, 58.

Office *noun* **1 a** a room or building used as a place of business, esp. for clerical or administrative work. **b** the employees who work in such a place of business (*called the office together to make an announcement*). **2** a room or department or building for a particular kind of business (*ticket office, post office*). **3** the local center of a large business (*our London office*). **4 N Amer.** **a** a suite of rooms in which a doctor, dentist, etc. treats patients. **b** the staff of this. . . .²⁴

[37] ZMC also referred to the explanatory notes to heading No. 94.03, which include a non-exhaustive list of furniture covered by that heading, including furniture for private dwellings; offices; schools; churches; shops; stores; workshops; and laboratories or technical offices.

[38] The CBSA agreed with the dictionary definition of “office” that was filed by ZMC. It submitted that the definition of “office” does not extend so far as to include everything that is commercial.

[39] The Tribunal finds that this appeal can be resolved without setting out an exhaustive definition of “office”. The Tribunal accepts that the term “office” can be given a liberal interpretation and could include any number of configurations, particularly as workplaces evolve and modernize. However, the Tribunal is not prepared to extend the definition of office to include any and all commercial or work-related settings, as ZMC would have it do. Indeed, the explanatory notes to heading No. 94.03 explicitly distinguish between offices and other places of business, such as hotels, schools, shops, stores, etc. Applying ZMC’s broad definition of the term “office” would essentially render these portions of the explanatory notes redundant.

[40] ZMC’s evidence demonstrates that the goods in issue may be *suitable* for use in offices. At the hearing, Mr. Revah acknowledged that ZMC furniture may be found in reception areas and in professional offices.²⁵ Mr. Gingras of Intersol also indicated that he makes sales and inquiries to office supply stores such as Staples and Office Pro.²⁶ However, as noted above, mere suitability for office use is not sufficient to establish that the goods in issue are of a kind used in offices. Moreover, this testimony related to ZMC furniture in general and was not specific to the goods in issue.

[41] In his testimony, Mr. Revah stressed the versatility of the goods in issue, noting that their ability to be used indoors and outdoors is a feature that ZMC’s customers look for.²⁷ There is also evidence that the goods in issue are suitable, and designed for, a wide range of commercial and outdoor settings, such as for use at special events, outdoor cafes, and in cafeterias.²⁸ Having regard to the dictionary definition of “office” as well as the relevant explanatory notes, the Tribunal finds that these settings, while commercial in nature, do not constitute offices.

[42] On the basis of the foregoing, the Tribunal finds that while the goods in issue have been proven to be for commercial use, there is no evidence that they are of the type *primarily used in offices*. Accordingly, the goods in issue are not “of a kind used in offices”.

24. Exhibit AP-2018-013-05A, Vol. 1 at para. 55.

25. *Transcript of Public Hearing* at 45.

26. *Ibid.* at 79.

27. *Ibid.* at 18-19.

28. *Ibid.* at 17, 19, 23, 25, 39, 80, 82-83; Exhibit AP-2018-013-07A, Vol. 1 at 76 and 77.

Are the goods in issue wooden furniture?

[43] The Tribunal will now consider whether the goods in issue are wooden furniture. It will do so by considering whether the goods in issue are *prima facie* classifiable in subheadings No. 9403.60 and 9403.20. As noted above, due to the composite nature of the goods in issue, Rule 2(b) is relevant to this analysis.

[44] Rule 2(b) of the *General Rules* provides as follows: “Any reference in a heading to a material or substance shall be taken to include a reference to mixtures of combinations of that material or substance with other materials or substances.” The primary effect of Rule 2(b) is to extend any subheading²⁹ referring to goods of a given material or substance to include goods consisting partly of that material or substance. On that basis, the application of Rule 2(b) means that a subheading covering metal furniture may be broadened to include furniture consisting partly of metal and partly of other materials, and a subheading covering wooden furniture may be broadened to include furniture consisting of partly of wood and partly of other materials.

[45] ZMC argued that because of the composite nature of the goods in issue, the application of Rule 2(b) means that the goods in issue are *prima facie* classifiable under two or more headings, and, as such, Rule 3 should also be applied. However, as argued by the CBSA, and confirmed by the Supreme Court of Canada in *Igloo Vikski*, explanatory note XII to Rule 2(b) must be considered before moving on to Rule 3.³⁰ Explanatory note XII explains that Rule 2(b) does not widen a subheading so as to cover goods which cannot be regarded, as required under Rule 1, as answering the description in the subheading and specifies that this occurs where the addition of another material or substance deprives the goods of the character of the goods of the kind mentioned in the heading.

[46] In other words, metal furniture consisting partly of wood can still be classified as metal furniture of subheading No. 9403.20 unless the addition of the wood deprives the goods in issue of the character of metal furniture, in which case the goods in issue could not be regarded as answering the description in the subheading. Conversely, wooden furniture consisting partly of metal can still be classified as wooden furniture of subheading No. 9403.60 unless the addition of the metal deprives the goods in issue of the character of wooden furniture. It is only where both subheadings are *prima facie* applicable that the analysis will move on to Rule 3. This is confirmed by explanatory note XIII to Rule 2(b), which provides that goods consisting of more than one material or substance, *if prima facie classifiable under two or more headings*, must be classified according to Rule 3.

[47] Therefore, the application of Rule 2(b) in this case requires the Tribunal to determine whether the presence of MDF deprives the goods in issue of the character of metal furniture, resulting in them no longer answering the description of “other metal furniture”, or *vice versa*.

[48] The Tribunal will first consider the application of subheading No. 9403.20, i.e. other metal furniture. As discussed above, the goods in issue consist of an aluminum base, an MDF tabletop that is wrapped with polished aluminum to which a metal bracket is affixed, a hollow aluminum pole that connects the tabletop to the base, a steel rod that threads through the pole and which screws the

29. As is the case in this appeal, by application of Rule 6.

30. *Igloo Vikski supra* note 12 at paras. 26-27.

tabletop and base together, and four plastic leg “levelers”.³¹ Thus, the goods in issue consist of a significant number of metal components and answer the description in subheading No. 9403.20.

[49] The Tribunal also finds that the presence of the MDF tabletop does not deprive the goods in issue of the character of metal furniture. As noted above, the MDF tabletop is the only wooden component among a number of metal components. In addition, the MDF tabletop is almost entirely covered in aluminum. The evidence establishes that the top, sides and edge of the underside of the table are covered with a sheet of aluminum.³² This means that when the goods in issue are assembled, only the aluminum is visible, unless the tabletop is viewed from underneath.

[50] Turning next to subheading No. 9403.60 (other wooden furniture), the Tribunal finds that the presence of the metal components deprives the goods in issue of the character of wooden furniture and, as such, they cannot be regarded as answering the description of this subheading through application of Rule 2(b).

[51] First, the metal components of the goods in issue cover the vast majority of the outer surface of the goods in issue. As noted above, the MDF component is almost entirely covered in aluminum, and the rest of the goods in issue is made up of metal components. On this basis, the Tribunal finds that the presence of the aluminum deprives the goods in issue of the *appearance* of wooden furniture.

[52] Second, the metal components ensure that the goods in issue are rust-proof, stain-resistant and water-resistant, which are important features of the goods.³³ Mr. Revah explained that water resistance is extremely important to ensure that the tables stand the test of time, can be easily cleaned, and are stain-resistant.³⁴ The importance of water resistance as a feature of the goods in issue is confirmed by ZMC’s decision to update the design to enhance water resistance.³⁵ Mr. Gingras also confirmed that these are features for which his customers look when purchasing tables for outdoor use.³⁶

[53] Weather, stain, and water resistance are not features that would typically be associated with wooden furniture. In response to questions from the Tribunal, Mr. Revah confirmed that ZMC uses aluminum in place of MDF or melamine in all of its outdoor furniture because of its weather resistance. He went on to explain that aluminum is chosen for its rust-proofing qualities, noting that in high-traffic dining areas the goods in issue will be prone to spillage.³⁷ The Tribunal finds that the importance of these design features, which the evidence establishes are unique to metal furniture, further deprives the goods in issue of the character of wooden furniture. The goods in issue are also clearly marketed and sold as aluminum furniture.³⁸

31. *Transcript of Public Hearing* at 22-24; Exhibit AP-2018-013-05A at 19-29.

32. *Transcript of Public Hearing* at 28-29; Exhibit AP-2018-013-05A at 28.

33. *Transcript of Public Hearing* at 28, 63.

34. *Ibid.* at 17.

35. *Ibid.* at 28-29.

36. *Ibid.* at 84-85.

37. *Ibid.* at 63.

38. Exhibit AP-2018-013-07A at 76-99.

[54] For these reasons, the Tribunal finds that the presence of the metal components deprives the goods in issue of the character of wooden furniture.

[55] In the context of its arguments on Rule 3, ZMC stressed the importance of the MDF tabletop in contributing to the essential character of the goods in issue, noting that it was chosen for its weight and cost-effectiveness.³⁹ ZMC also argued that the essential function of the goods, i.e. holding items on a surface, is derived from the MDF tabletop.

[56] The Tribunal does not accept that the material of the tabletop should dictate the classification of the goods in issue in this case. While the tabletop is an important feature of any table, Mr. Revah's testimony confirms that the goods in issue achieve their stability from a combination of the wooden top and the metal base.⁴⁰ Moreover, notwithstanding Mr. Revah's testimony that, if the MDF component were removed, the remaining thin sheet of aluminum would not be able to support anything, the Tribunal heard that the MDF component could, in theory, be replaced with something else.⁴¹ This indicates to the Tribunal that the MDF component does not contribute to the character of the goods in issue to the same extent as the aluminum.

[57] Accordingly the Tribunal finds, by application of Rule 2(b), that the goods in issue cannot be classified in subheading No. 9403.60 as other wooden furniture and are, therefore, properly classified under subheading No. 9403.20 as other metal furniture.

[58] For the sake of completeness, the Tribunal notes that had it found that the addition of metal did not deprive the goods of their character as wooden furniture and continued the analysis under Rule 3, the Tribunal would have found, for substantially the same reasons, that the aluminum is the material or component which gives the goods in issue their essential character. Therefore, the Tribunal would have arrived at the same conclusion on application of Rule 3(b) and classified the goods under subheading No. 9403.20.⁴²

Classification at the tariff item level

[59] As subheading No. 9403.20 is not divided at the tariff item level, the Tribunal need not consider Rule 1 of the *Canadian Rules* to determine classification at the tariff item level. Thus the goods in issue are properly classified under tariff item No. 9403.20.00.

CONCLUSION

[60] The goods in issue were properly classified by the CBSA under tariff item No. 9403.20.00 as other metal furniture.

39. *Transcript of Public Hearing* at 64.

40. *Ibid.* at 63-64.

41. *Ibid.* at 64.

42. Explanatory note V to Rule 3(a) provides that where two or more headings each refer to part only of the materials or substances contained in mixed or composite goods . . . those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description than the others. In such cases, the classification of the goods shall be determined by Rule 3(b) or 3(c). As such, had the Tribunal continued its analysis under Rule 3 in this case, Rule 3(a) would not apply.

DECISION

[61] The appeal is dismissed.

Ann Penner
Presiding Member

APPENDIX I

The relevant explanatory notes to heading No. 94.03 provide as follows:

This heading covers furniture and parts thereof, **not covered** by the previous headings. It includes furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing-desks, 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.

The heading includes furniture for:

- (1) **Private dwellings, hotels etc.**, such as: cabinets, linen chests, bread chests, log chests; chests of drawers, tallboys; pedestals, plant stands; dressing-tables; pedestal tables; wardrobes, linen presses; hall stands, umbrella stands; side-boards, dressers, cupboards; food-safes; beside tables; beds (including wardrobe beds, camp-beds, folding beds, cots, etc.); needlework tables; foot-stools, fire screens; draught-screens, pedestal ashtrays; music cabinets, music stands or desks; play-pens; serving trolleys (whether or not fitted with a hot plate).
- (2) **Offices**, such as: clothes lockers, filing cabinets, filing trolleys, card index files, etc.
- (3) **Schools**, such as: school-desks, lecturers' desks, easels (for blackboards, etc.).
- (4) **Churches**, such as: altars, confessional boxes, pulpits, communion benches, lecterns, etc.
- (5) **Shops, stores, workshops, etc.**, such as: counters; dress racks; shelving units; compartment or drawer cupboards; cupboards for tools, etc.; special furniture (with cases or drawers) for printing-works.
- (6) **Laboratories or technical offices**, such as: microscope tables, laboratory benches (whether or not with glass cases, gas nozzles and tap fittings, etc.); fume-cupboards; unequipped drawing tables.

The *General Rules* and the explanatory notes to the *General Rules* are also relevant in this appeal, in particular the notes to Rule 2(b). They provide as follows in relevant part:

RULE 2

- (a) **Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.**
- (b) **Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or**

substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

EXPLANATORY NOTE

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RULE 2 (b)

(Mixtures and combinations of materials or substances)

(X) Rule 2 (b) concerns mixtures and combinations of materials or substances, and goods consisting of two or more materials or substances. The headings to which it refers are headings in which there is a reference to a material or substance (e.g., heading 05.07 - ivory), and headings in which there is a reference to goods of a given material or substance (e.g., heading 45.03 -articles of natural cork). It will be noted that the Rule applies only if the headings or the Section or Chapter Notes do not otherwise require (e.g., heading 15.03 -lard oil, not . . . mixed).

Mixtures being preparations described as such in a Section or Chapter Note or in a heading text are to be classified under the provisions of Rule 1.

(XI) The effect of the Rule is to extend any heading referring to a material or substance to include mixtures or combinations of that material or substance with other materials or substances. The effect of the Rule is also to extend any heading referring to goods of a given material or substance to include goods consisting partly of that material or substance.

(XII) It does not, however, widen the heading so as to cover goods which cannot be regarded, as required under Rule 1, as answering the description in the heading; this occurs where the addition of another material or substance deprives the goods of the character of goods of the kind mentioned in the heading.

(XIII) As a consequence of this Rule, mixtures and combinations of materials or substances, and goods consisting of more than one material or substance, if *prima facie* classifiable under two or more headings, must therefore be classified according to the principles of Rule 3.

RULE 3

When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) **The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.**

(b) **Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified**

by reference to Rule 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to Rule 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

EXPLANATORY NOTE

(I) This Rule provides three methods of classifying goods which, *prima facie*, fall under two or more headings, either under the terms of Rule 2 (b) or for any other reason. These methods operate in the order in which they are set out in the Rule. Thus Rule 3 (b) operates only if Rule 3 (a) fails in classification, and if both Rules 3 (a) and (b) fail, Rule 3 (c) will apply. The order of priority is therefore (a) specific description; (b) essential character; (c) heading which occurs last in numerical order.

(II) The Rule can only take effect provided the terms of headings or Section or Chapter Notes do not otherwise require. For instance, Note 4 (B) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4 (B) to Chapter 97 and not according to this Rule.

RULE 3 (a)

(III) The first method of classification is provided in Rule 3 (a), under which the heading which provides the most specific description of the good is to be preferred to a heading which provides a more general description.

(IV) It is not practicable to lay down hard and fast rules by which to determine whether one heading more specifically describes the goods than another, but in general it may be said that :

(a) A description by name is more specific than a description by class (e.g. shavers and hair clippers, with self-contained electric motor, are classified in heading 85.10 and not in heading 84.67 as tools for working in the hand with self-contained electric motor or in heading 85.099 as electro-mechanical domestic appliances with self-contained electric motor).

(b) If the goods answer to a description which more clearly identifies them, that description is more specific than one where identification is less complete.

Examples of the latter category of goods are :

(1) Tufted textile carpets, identifiable for use in motor cars, which are to be classified not as accessories of motor cars in heading 87.08 but in heading 57.03, where they are more specifically described as carpets.

(2) Unframed safety glass consisting of toughened or laminated glass, shaped and identifiable for use in aeroplanes, which is to be classified not in

heading 88.03 as parts of goods of heading 88.01 or 88.02 but in heading 70.07, where it is more specifically described as safety glass.

(V) However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description than the others. In such cases, the classification of the goods shall be determined by Rule 3 (b) or 3 (c).

RULE 3 (b)

(VI) This second method relates only to :

- (i) Mixtures.
- (ii) Composite goods consisting of different materials.
- (iii) Composite goods consisting of different components.
- (iv) Goods put up in sets for retail sales.

It applies only if Rule 3 (a) fails.

(VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.

(VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

(IX) For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

Examples of the latter category of goods are :

- (1) Ashtrays consisting of a stand incorporating a removable ash bowl.
- (2) Household spice racks consisting of a specially designed frame (usually of wood) and an appropriate number of empty spice jars of suitable shape and size.

As a general rule, the components of these composite goods are put up in a common packing.

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