



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2017-020

Le Groupe Bugatti Inc.

v.

President of the Canada Border
Services Agency

*Decision issued
Wednesday, June 13, 2018*

*Reasons issued
Wednesday, July 11, 2018*

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IN THE MATTER OF an appeal heard on February 6, 2018, pursuant to subsection 60(4) 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 15, 2017, with respect to a request for re-determination pursuant to section 67 of the *Customs Act*.

BETWEEN

LE GROUPE BUGATTI INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Serge Fréchette

Serge Fréchette
Presiding Member

The statement of reasons will be issued at a later date.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: February 6, 2018
Tribunal Panel: Serge Fréchette, Presiding Member
Support Staff: Laura Little, Counsel
Martin Goyette, Counsel
Michael Carfagnini, Student-at-Law

PARTICIPANTS:**Appellant**

Le Groupe Bugatti Inc.

Counsel/RepresentativesVincent Routhier
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President of the Canada Border Services Agency

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STATEMENT OF REASONS

INTRODUCTION

[1] This is an appeal filed by Le Groupe Bugatti Inc. (Bugatti) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ from a decision made on May 15, 2017, by the President of the Canada Border Services Agency (CBSA) pursuant to subsection 60(4).

[2] The issue in this appeal is whether the goods in issue – different models of writing cases – are properly classified under tariff item Nos. 4202.91.90 or 4202.92.90 of the schedule to the *Customs Tariff*² as other containers similar to the listed goods, with outer surface of leather, of composition leather, of sheeting of plastics or of textile materials as determined by the CBSA, or should be classified under tariff item No. 4820.10.00 as memorandum pads, letter pads and similar articles as submitted by Bugatti.³

GOODS IN ISSUE

[3] The goods in issue are 19 models⁴ of writing cases (or “padfolios”) with outer surface, completely or in part, of composition leather or textile materials.⁵ Among those 19 models, 17 close on three sides with zippers or magnetic press studs or a strap.⁶ Two models have a handle,⁷ whereas the other models do not.

[4] The interior of these writing cases comprise various pockets, compartments, slits and straps to hold different items, such as notepads, pencils or pens, envelopes, business cards and/or a calculator. At the time of importation, all of the models included a notepad, and five of the models also included a calculator.⁸ Four of the models had binder rings (removable in one model) to hold loose sheets of paper.⁹

PROCEDURAL HISTORY

[5] Bugatti imported the goods in issue, then classified in tariff item Nos. 4202.32.90 and 4202.91.90, in six transactions in 2014.

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1. R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].
 2. S.C. 1997, c. 36.
 3. The text of headings No. 42.02 and 48.20, and the subheadings and tariff item numbers referenced herein, are reproduced in the Annex to the present reasons.
 4. Models WRC506, WRC1000, WRC1001, WRC1010, WRC1206, WRC1500, WRC1501, WRC1502, WRC1503, WRC1504, WRC1505, WRC1506, WRC1507, WRC1508, WRC11768, RGB2000, RGB2001, RGB5023 and RGB5362. Bugatti filed physical exhibits of each of those models with the Tribunal (Exhibits AP-2017-020-A-01 to A-06, A-08 to A-17, A-19, B-01 and B-02).
 5. Appellant’s brief, Tab 4 (Exhibit AP-2017-020-07A at 202, Vol. 1); Respondent’s brief, Tab 1 (Exhibit AP-2017-020-11A at 50, Vol. 1A).
 6. Models WRC506 and WRC1000 have no closing mechanism.
 7. Models WRC1501 and RGB2000.
 8. Models WRC1001, WRC1206, WRC1503, RGB2000 and RGB5362. See the Appellant’s brief, Tab 3 (Exhibit AP-2017-020-07A at 194-195, Vol. 1); Exhibit AP-2017-020-A-04.
 9. Models RGB2000, RGB2001, RGB5023 and RGB5362. See the Appellant’s brief, Tab 3 (Exhibit AP-2017-020-07A at 194-195, Vol. 1).

[6] Between December 3 and 9, 2014, Bugatti applied for refunds of the duties paid on the goods in issue on the basis that they should have been classified in tariff item No. 4820.10.00.

[7] In January 2015, the CBSA re-determined the tariff classification the goods in issue pursuant to paragraph 59(1)(a) of the *Act* and granted the refund requested by Bugatti.

[8] On October 29, 2015, following a verification conducted pursuant to section 42.01 of the *Act*, the CBSA further re-determined the tariff classification of the goods in issue pursuant to paragraph 59(1)(b) of the *Act*. The CBSA determined that the goods in issue were classified in the following tariff item numbers depending on the outer surface of each model:

- 4202.11.00 as trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels and similar containers, with outer surface of leather or of composition leather; or
- 4202.12.90 as trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels and similar containers, with outer surface of plastics or of textile materials (with outer surface of textile materials containing less than 85% by weight of silk or silk waste).

[9] On January 26, 2016, Bugatti requested a re-determination of the tariff classification the goods in issue pursuant to subsection 60(1) of the *Act* maintaining that the goods in issue should be classified in tariff item No. 4820.10.00.

[10] On February 17, 2016, following Bugatti's request, the CBSA issued a preliminary determination classifying the goods in issue in tariff item No. 4202.12.10 as trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels and similar containers with outer surface of textile materials containing less than 85% by weight of silk or silk waste.

[11] On March 31, 2016, Bugatti communicated to the CBSA its disagreement with the preliminary determination and reiterated its position that the goods in issue should be classified in heading No. 48.20.

[12] On May 15, 2016, the CBSA issued its final determination pursuant to subsection 60(4) of the *Act* classifying the goods in issue in tariff item Nos. 4202.11.00 and 4202.12.90.

[13] On August 10, 2017, Bugatti appealed the CBSA's decision to the Tribunal.

[14] Bugatti filed two affidavits with its brief: the first by Mr. Andrew Hattem, Chief Executive Officer, Bugatti; the second by Ms. Stéphanie Beaudry, Director, Product Development, Men's Collection, Bugatti.

[15] In its brief, the CBSA submitted that the goods in issue should be classified in tariff item Nos. 4202.91.90 and 4202.92.90 as other similar containers to those listed, with outer surface of leather or of composition leather (4202.91.90) or with outer surface of sheeting of plastics or of textile materials (4202.92.90) instead of the tariff item numbers indicated in its final determination (4202.11.00 and 4202.12.90).

[16] The Tribunal granted Bugatti's request to file additional submissions concerning the new tariff item numbers indicated in the CBSA's brief. The CBSA had the opportunity to reply to these

additional submissions during the public hearing held by the Tribunal in Ottawa, Ontario, on February 6, 2018.

[17] At the hearing, Bugatti called Ms. Beaudry and M. Hattem as witnesses, and both parties presented oral arguments.

[18] During the hearing, the Tribunal directed the parties to file additional submissions concerning the interpretation of the French and English versions of an explanatory note to heading No. 48.20, which they did on February 13, 2018.

TRIBUNAL'S ANALYSIS

Introduction

[19] As mentioned above, the issue in this appeal is whether the goods in issue should be classified in heading No. 42.02 or in heading No. 48.20.¹⁰

[20] In appeals filed pursuant to section 67 of the *Act*, it is the appellant that bears the burden of demonstrating that the CBSA incorrectly classified the goods.¹¹ In this case, the onus is on Bugatti to demonstrate that the goods in issue were incorrectly classified in heading No. 42.02 and should be instead classified in heading No. 48.20.

[21] Bugatti raised concerns about the fact that the CBSA refers in its brief to entirely different tariff item numbers than those indicated in its determination under appeal.¹² According to Bugatti, this type of change creates, for importers, an uneasiness regarding the basis of the CBSA's determinations.¹³ The Tribunal takes note of Bugatti's concerns and remarks that the CBSA should take the necessary measures to minimize the risks of ambiguity and confusion for importers regarding the classification of goods. Having said this, appeals pursuant to section 67 of the *Act* are *de novo* procedures, in which parties can file new evidence and present new arguments in support of their positions and, in turn, the Tribunal can base its determination on this new evidence or arguments.¹⁴ It is, nonetheless, the appellant that bears the burden of proof.¹⁵

[22] The legal framework for tariff classification is set out in the annex to these reasons. In this regard, the Tribunal notes that the Supreme Court of Canada has indicated that the *General Rules*

10. Even though the parties do not consider that the goods in issue should be classified in heading No. 84.70, this heading is also relevant to the tariff classification exercise of the five models of the goods in issue that include a calculator.

11. In appeals under section 67(1) of the *Act*, the burden of proof is well established pursuant to subsection 152(3) of the *Act*. See, for example, *Jakks Pacific Inc. v. President of the Canada Border Services Agency* (30 March 2016), AP-2015-012 (CITT) at para. 33; *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (23 May 2014), AP-2011-033 (CITT) at para. 25; *Canada (Border Services Agency) v. Miner*, 2012 FCA 81 (CanLII).

12. See paragraph [15] above.

13. *Transcript of Public Hearing*, 6 February 2018, at 6-9.

14. *D. Josefowich v. President of the Canada Border Services Agency* (9 May 2016), AP-2015-010 (CITT) at par. 29.

15. In this regard, as indicated above, the Tribunal gave Bugatti the opportunity to file additional representations in response to the new tariff item numbers put forward by the CBSA in its brief. See also *Transcript of Public Hearing*, 6 February 2018, at 14-15.

“are to be applied in a set order, [and] it is more helpful to understand that order as a function of a hierarchy rather than a cascade”.¹⁶

[23] The Tribunal must first examine the tariff classification of the goods in issue at the heading level. To do so, it must determine whether the goods in issue can be classified according to Rule 1 of the *General Rules* as per the terms of the heading and the relevant section or chapter notes of the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. It is only where Rule 1 does not conclusively determine the classification of the goods that the other general rules become relevant to the classification process.¹⁷ Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to determine the proper subheading and tariff item number.

[24] As mentioned above, at the time of importation, all of the models included a notepad, five of the models also included a calculator¹⁸ and four of the models had binder rings (removable in one model) to hold loose sheets of paper.¹⁹

Classification at the Heading Level: Rules 1 and 2 Do Not Apply

[25] The parties agree that the goods in issue are not specifically named in headings No. 42.02 or 48.20. They submit that the goods in issue should be classified in a residual category as “similar” goods to the goods listed in the relevant headings – heading No. 42.02 according to the CBSA and heading No. 48.20 according to Bugatti.

[26] The parties also agree that the tariff classification exercise in relation to the goods in issue must start with heading No. 42.02 on the grounds of note 2(h) to Chapter 48, which expressly excludes from this chapter items of heading No. 42.02.²⁰

[27] Bugatti submits that the goods in issue cannot be classified according to Rule 1 of the *General Rules* because neither heading No. 42.02 nor heading No. 48.20 covers all the components of the goods. According to Bugatti, even if the Tribunal were to accept that the writing case in itself is covered by the terms of heading No. 42.02, this heading refers to empty containers at the time of importation. Therefore, it cannot apply to the goods in issue, which include at the time of importation a notepad and, for certain models, a calculator.

[28] Bugatti submits that the notepads, on their own, would be covered by heading No. 48.20 as a “similar article” to “memorandum pads” and “letter pads”. In this regard, Bugatti refers to the explanatory notes to this heading, which indicate that goods covered by this heading “peuvent . . . être reliés en cuir, tissu ou autres matières et munis de dispositifs ou renforcement en métal, matières plastiques, etc.” (may be bound with leather, textile or other materials and have fittings or reinforcements of metal, plastics, etc.). Bugatti submits that the notepad is “relié au” (bound to) the leather, plastic or textile cover, which is reinforced with cardboard. However, Bugatti

16. *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) at paras. 7, 29.

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

18. Models WRC1001, WRC1206, WRC1503, RGB2000 and RGB5362. See the Appellant’s brief, Tab 3 (Exhibit AP-2017-020-07A at 194-195, Vol. 1); Exhibit AP-2017-020-A-04.

19. Models RGB2000, RGB2001, RGB5023 and RGB5362. See the Appellant’s brief, Tab 3 (Exhibit AP-2017-020-07A at 194-195, Vol. 1).

20. *Transcript of Public Hearing*, 6 February 2018, at 80-81, 126-127.

admits that the notepad is but one component of the goods in issue at the time of importation and, therefore, the subsequent rules to Rule 1 of the *General Rules* apply to the classification process of the goods.²¹

[29] The CBSA submits that the models of the goods in issue that only include a notepad at the moment of importation should be classified in heading No. 42.02 in accordance with Rule 1 of the *General Rules* considering the explanatory notes to that heading. More specifically, the CBSA submits that the goods as a whole, including the writing case and the notepad, fall within the meaning of the term “nécessaires de correspondance” (“writing cases” in the English version), which is listed in the explanatory notes of the heading as an example of a “similar container” as those listed in the second part of the heading. Therefore, the CBSA submits that if Rule 1 enables the goods in issue to be classified in heading No. 42.02, the classification process must stop there since, according to the aforementioned exclusion note to Chapter 48, the goods in issue can only be classified *prima facie* in one heading.

[30] The Tribunal finds, as discussed in more detail below, that Rule 1 does not enable the goods in issue to be classified in heading No. 42.02 as submitted by CBSA.

[31] Heading No. 42.02 covers, in its relevant part, “similar containers” to the goods listed, such as suitcases, vanity cases, handbags, wallets, purses, map cases, cigarette cases, tool bags, sport bags, bottle cases and jewellery boxes. These containers must be wholly or mainly covered with one of the listed materials, such as genuine leather, composition leather or textile materials.

[32] As noted by the CBSA, the explanatory notes to that heading indicate that the term “similar containers” encompasses “writing cases”. Moreover, the Tribunal has previously stated that the term “similar containers” in heading No. 42.02 “must be interpreted to encompass containers that are designed to accommodate a particular item”.²²

[33] The parties agree, and the evidence demonstrates, that for all models of the goods in issue the writing case has an outer surface (a cover) of composition leather or textile materials (including synthetic leather).²³ This criterion having been met, it remains to be determined if the goods in issue as “writing cases” are “similar containers” to the items listed in heading No. 42.02 as claimed by the CBSA.

[34] The term “nécessaires de correspondance” (“writing cases” in English) is not defined in the schedule to the *Customs Tariff* or the explanatory notes to heading No. 42.02.

[35] The parties made arguments concerning what they claim is a question of bilingual interpretation, namely, if the term “nécessaires de correspondance” in the French version of the explanatory notes has the same meaning as “writing cases” in the English version.

21. Whereas Bugatti relied on Rules 1, 3 and 5 in its brief, at the hearing Bugatti solely relied on Rules 3 and 5 to argue that the goods in issue should be classified in heading No. 48.20 and did not pursue its argument with respect to Rule 1. See *Transcript of Public Hearing*, 6 February 2018, at 83, 95-96, 101-102, 114-118.

22. *John Martens Company v. Deputy Minister of National Revenue for Customs and Excise* (10 May 1993), AP-92-022 (CITT) at 3.

23. Exhibits AP-2017-020-A-01 to A-06, A-08 to A-17, A-19, B-01 to B-02; Appellant’s brief, Tab 4 (Exhibit AP-2017-020-07A, Vol. 1 at 192-196; Respondent’s brief at paras. 91 à 94 (Exhibit AP-2017-020-11A, Vol. 1A at 30).

[36] The CBSA argues that the French and English versions have a shared meaning. Since there is no dictionary definition of the expression “nécessaire de correspondance”, the CBSA refers to dictionary definitions of the terms “nécessaire” (as a noun) and “correspondance”.²⁴ The term “nécessaire” is defined as “a box, a case containing the necessary implements (for washing and grooming oneself, for sewing . . .)”, a “set of materials and tools required for a particular job”, and a “bag, case containing various objects to be used for a specific purpose; kit: toiletries kit” [translations]. The term “correspondance” is defined as “written exchanges between two persons; exchange of letters” [translation].

[37] As for the term “writing case”, it is defined as “a portable case for holding writing materials and paper”.²⁵

[38] The CBSA argues that, according to these definitions, the ordinary meaning of the terms “nécessaire de correspondance” and “writing case” describe a case designed to contain materials and the necessary instruments to write.²⁶ The CBSA notes that, in accordance with the principles of bilingual interpretation, it is established in the Tribunal’s jurisprudence that the shared meaning of the French and English versions of a term, when there is one, is presumed to be the meaning intended by Parliament.

[39] The CBSA also relies on the allegedly interchangeable meaning of the terms “padfolio” and “writing case”, or in French “écritoire”, used by Bugatti to label and market the goods in issue. The CBSA emphasizes that the ordinary meaning of the term “écritoire” is a “kit (case, box, etc.) containing what is needed to write”²⁷ [translation]. Moreover, the CBSA argues that the use of the term “writing case” in the industry seems to have evolved to include notepads, as shown in the marketing materials for products that, according to the CBSA, are similar to the goods in issue.²⁸

[40] Bugatti argues that the term “writing case” is a more general term than “nécessaire de correspondance” and that the Tribunal should give preference to the French version because the term “nécessaire de correspondance” is more precise as to what such a case contains. According to Bugatti, a “nécessaire de correspondance” includes all materials necessary to exchange letters.²⁹

[41] With regard to the commercial use of the term “writing cases” to label the goods in issue, in addition to the terms “padfolios”, or “écritoires” in French, Bugatti states that these are all interchangeable terms that are used to market the goods in issue and are not relevant for the interpretation of the term “writing cases” found in the explanatory notes to heading No. 42.02.

[42] When faced with differences in the English and French versions of the *Customs Tariff*, it is the Tribunal’s duty to try to resolve any differences by applying the shared meaning rule, whereby the ordinary meaning that is shared by both versions is presumed to be the meaning intended by

24. Respondent’s brief at paras. 42 à 44 (Exhibit AP-2017-020-11A, Vol. 1A at 17-18 and Tab 18).

25. Respondent’s brief at para. 45 (Exhibit AP-2017-020-11B, Vol. 2 at 18 and Tab 18).

26. Respondent’s brief at para. 50 (Exhibit AP-2017-020-11A, Vol. 1A at 19).

27. Respondent’s brief at para. 46 (Exhibit AP-2017-020-11A, Vol. 1A at 18 and Tab 18).

28. Respondent’s brief at para. 53 (Exhibit AP-2017-020-11A, Vol. 1A at 20 and Tab 16).

29. *Transcript of Public Hearing*, 6 February 2018, at 91.

Parliament and is therefore the one that ought to be adopted.³⁰ The Tribunal also follows the courts' use of the modern contextual approach to statutory interpretation which provides that "the words of an Act are to be read in their *entire context* and in their *grammatical and ordinary sense* harmoniously with the *scheme* of the Act and the *intention* of Parliament"³¹ [emphasis added]. The Tribunal adopts the same principles to resolve any differences between two versions of the *Explanatory Notes* of the WCO, which are relevant for the interpretation of headings pursuant to section 11 of the *Customs Tariff*.

[43] The Tribunal considers that, in spite of certain discrepancies between the terms "nécessaires de correspondance" and "writing cases" in the French and English versions of the explanatory notes, there is a shared meaning between those two versions. This shared meaning becomes more obvious when the terms are interpreted in the general context of heading No. 42.02, which indicates that the covered goods are essentially various types of containers, such as cases, handbags or wallets. The Tribunal finds that both the French and English versions imply that the goods are cases designed to receive, protect and transport writing materials and instruments, such as those necessary for written correspondence.

[44] The Tribunal is of the view that the evidence on the record does not allow it to decisively conclude, by operation of Rule 1, that the goods in issue are "writing cases" (or in French, "un nécessaire de correspondance") within the meaning of heading No. 42.02. Indeed, the evidence on the record rather shows that the goods in issue are cases for the organization, transportation and protection of certain office supplies (notepad, pen, calculator, business cards, paper documents or USB key); an important purpose is to facilitate the taking of personal notes or, in certain cases, to make calculations using a calculator. In the Tribunal's opinion, the goods in issue, therefore, are not items that are *prima facie* used to write correspondence, whether in a personal or business context.

[45] Consequently, the Tribunal is incapable of classifying conclusively the goods in issue by operation of Rule 1 of the *General Rules*.

[46] Moreover, the Tribunal notes that Rule 2 of the *General Rules* does not apply either, and that the parties do not refer to this rule. Rule 2 only extends the application of Rule 1 to incomplete or unfinished articles and to composite articles, which is not the case here.

Remarks Concerning Rules 3, 4 and 5 of the *General Rules* and the "Essential Character" of the Goods

[47] The Tribunal will now examine the application of Rules 3, 4 and 5 of the *General Rules* to the goods in issue.

30. See, for example, *Cycles Lambert Inc. v. President of the Canada Border Services Agency* (10 July 2013), AP-2011-060 (CITT) at para. 77; *Great West Van Conversions Inc. v. President of the Canada Border Services Agency* (30 November 2011), AP-2010-037 (CITT) at para. 50.

31. Elmer A. Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983) at 87, cited in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 (SCC) at para. 21; *Canada Trustco Mortgage Co. v. Canada*, [2005] 2 SCR 601, 2005 SCC 54 (CanLII) at para. 10; *R. v. Steele*, 3 SCR 138, 2014 SCC 61 (CanLII) at para. 23; *Emco Electric International – Electrical Resource International c. President of the Canada Border Services Agency* (25 June 2009), AP-2008-010 (CITT) at para. 29.

[48] Bugatti submits that Rules 3(b) and 5 are relevant for the tariff classification of the goods in issue. Bugatti submits that the goods in issue, taken as a whole, should be classified in heading No. 48.20 by operation of Rule 3(b). According to Bugatti, the goods in issue are goods put up in sets for retail sale, and it is the notepad, and not the writing case, that gives the whole its essential character, which is to take notes and organize and protect the notepad. In this regard, Bugatti claims that the writing case is specifically designed to contain a notepad, and is used to organize and protect the notes handwritten on the notepad.

[49] Furthermore, Bugatti submits that Rule 5 is of the “utmost importance” [translation] for the tariff classification of the goods in issue, and directs their classification in heading No. 48.20. Bugatti submits that, in accordance with the criteria under Rule 5, the writing case is a container specially shaped to contain an article, the notepad, with which it is presented and sold, and that the notepad gives the goods in issue (the writing case, the notepad and, if included, the calculator) their essential character.

[50] The CBSA submits that the five models of the goods in issue that include a calculator are goods put up in sets for retail sale. It follows that these goods cannot be classified according to Rules 1, 2 or 3(a), and that Rule 3(b) must be applied to determine the classification of the goods as a whole. According to the CBSA, this exercise leads to classifying the goods in issue in heading No. 42.02 because it is the writing case, not the notepad, that gives the goods as a whole their essential character. In this regard, the CBSA submits that the main functions of the goods in issue are to contain, store and transport from one place to another various instruments used for writing.

[51] Likewise, since it is the “container” (the writing case) rather than the articles that it contains that gives the essential character to each of the goods in issue as a whole, the CBSA argues that the criteria of Rule 5 are not met in the present case.

[52] The Tribunal points out that the classification analysis of the goods in issue in accordance with Rules 3, 4 and 5 raises a common question. As indicated by the parties’ arguments, and addressed below in more detail, Rule 3(b) states, among other criteria, that the classification of goods made up of different articles in a set put up for retail sale is effected according to the one that gives them their “essential character”. Similarly, Rule 5 provides that certain types of cases are classified with the article they contain, as long as the case does not give the whole (container and content) its essential character.

[53] The classification analysis of the goods in issue in accordance with Rules 3(b) and 5 therefore entails a determination as to which article of the goods in issue (the writing case, the notepad and, depending on the model, the calculator) gives the whole its “essential character”. This question is also relevant for the application of Rule 4.

[54] Ms. Beaudry and Mr. Hattem both stated that the goods in issue are designed, sold and used for organization and protection purposes. Ms. Beaudry stated that the writing cases in issue are mainly used by businesspersons and that they are “essentially a cover for the notepad” or a “tool that allows users to organize their notes” [translations].³² In this regard, she referred to the slit into which is inserted the cardboard back of a notepad to hold it in place,³³ the pocket that can contain other

32. *Transcript of Public Hearing*, 6 February 2018, at 27, 31.

33. *Ibid.* at 71, 74.

sheets of paper and notes of the same size as the notepad³⁴ and the ring binder used to organize the notes.³⁵ However, Ms. Beaudry also stated that the writing cases in issue include additional pockets and compartments of various sizes to store other office supplies.³⁶ She stated that, on certain models (for example, WRC1010), the zipper enclosure prevents the stored articles from falling out of the writing case.³⁷

[55] For his part, Mr. Hattem stated that the goods in issue are covers intended to protect and secure sheets of paper, that the product is aimed at consumers who want a notepad to take notes and that the additional characteristics are only “extras”³⁸ [translation]. According to Mr. Hattem, it is the notepad which is the main component of the goods in issue. He also stated that major retailers of office supplies sell the goods in issue in the same aisles as notepad refills and stationery.³⁹ Mr. Hattem attempted to make a distinction between the goods in issue and ring binders or briefcases given the fact that they are typically sold in different aisles of retail stores.⁴⁰

[56] Mr. Hattem and Ms. Beaudry both conceded that the writing cases may also contain articles other than notepads for transportation purposes, for example, when one leaves the office to attend a meeting.⁴¹ Mr. Hattem also conceded that the value of the writing case far exceeds that of the notepad.⁴²

[57] The term “essential character” is not defined in the *General Rules*. However, note VIII of the explanatory notes to Rule 3(b) indicates the following:

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.

[58] In the Tribunal’s opinion, the decisive factor in determining the “essential character” of goods is the relative importance of their various components considering their use and value in relation to the whole.

[59] The Tribunal is of the view that the main function of the goods in issue is storing and transporting writing materials or articles of everyday usage; in other words, they are used to contain,

34. *Ibid.* at 59.

35. *Ibid.* at 31. The Tribunal notes that only 4 of the 19 models of the goods in issue have ring binders to hold loose sheets of paper.

36. *Ibid.* at 29, 32-34, 58-59.

37. *Ibid.* at 61.

38. *Ibid.* at 39, 62, 67.

39. The Tribunal notes that these aisles or sections are sometimes identified as those for “padfolios and card holders”. Mr. Hattem’s affidavit (Exhibit AP-2017-020-07A, Vol. 1 at 44); *Transcript of Public Hearing*, 6 February 2018, at 43, 51.

40. *Ibid.* at 50.

41. *Transcript of Public Hearing*, 6 February 2018, at 60, 70-71.

42. *Ibid.* at 72-73.

organize and protect various articles in order to transport them from one place to another.⁴³ Even though the goods in issue can be used to take notes, the Tribunal finds that this function is secondary in relation to those of organizing, protecting and transporting the notes and other articles mentioned above.

[60] The essential character of the goods in issue stems from the fact that they are cases used to store, carry and protect documents and various articles, for the purposes of taking notes and, in certain cases, to make calculations using a calculator. It is unquestionably the writing case that gives the whole its essential character: the various pockets, slits and straps, zippers, magnets, snap fasteners, etc., are demonstrative, *prima facie*, of this organizing and protecting function.⁴⁴

[61] The relative value of each component of the whole also supports this conclusion. The value of the case is markedly greater than that of the notepad and, when included, the calculator. Indeed, the retail price of the goods in issue is primarily a function of the cost of the material used for the cover of the writing case (and of the inclusion of a ring binder, for some models); the notepad itself represents but a small fraction of the overall value of the goods in issue.⁴⁵

[62] The Tribunal will now proceed with the analysis of the classification of the goods in issue by applying Rules 3, 4 and 5. In the present case, the Tribunal considers it appropriate to examine the application of Rule 5 of the *General Rules* to the goods in issue before considering the application of Rules 3 and 4. Indeed, Rule 5 has precedence when its conditions are met.

Classification at the Heading Level: Rule 5 Does Not Apply

[63] Rule 5 provides that the tariff classification of certain goods – various types of cases, such as camera cases – is governed by the article that they contain, and not according to their own characteristics.

[64] The application of Rule 5 of the *General Rules* has rarely been examined by the Tribunal in appeals concerning tariff classification.⁴⁶ Rule 5 only applies to tariff classification of goods that are specified therein, as well as to “similar containers”. Moreover, Rule 5 only applies to the extent that all the listed conditions are met.

[65] The explanatory notes provide examples of containers presented with the articles for which they are intended and for which the classification is determined by operation of Rule 5, such as jewel boxes, electric shaver cases and musical instrument cases. Moreover, the explanatory notes give as examples containers that are not specifically mentioned in Rule 5, such as “silver caddy containing tea, or an ornamental ceramic bowl containing sweets.”

43. As the Tribunal has previously indicated, these articles can include materials and instruments for writing (notepads, pencils, pens, etc.) and other office supplies (for example, a calculator, a USB key, business cards) as long as they are relatively thin.

44. Appellant’s brief, Tab 3 (Exhibit AP-2017-020-07A, Vol. 1 at 192-196); Exhibits AP-2017-020-A-01 to A-06, A-08 to A-17, A-19, B-01 and B-02); Mr. Hattem’s affidavit (Exhibit AP-2017-020-07A, Vol. 1 at 47).

45. *Transcript of Public Hearing*, 6 February 2018, at 65, 72-73.

46. *The Source (Bell) Electronics v. President of the Canada Border Services Agency* (20 January 2016), AP-2015-002 (CITT) at para. 41-42; *Starkey Labs-Canada Co. v. President of the Canada Border Services Agency* (29 August 2012), AP-2011-061 (CITT) at para. 31. In each of these appeals, the Tribunal determined that Rule 5 did not apply to the tariff classification of the goods in issue.

[66] The explanatory notes to Rule 5 provide additional guidance relating to the containers that are to be classified according to this rule.⁴⁷ In this regard, note (I) sets out five criteria, which can be summarized as follows:

1. The container is specially shaped or fitted to contain a specific article or set of articles;
2. The container is suitable for long term use;
3. The container is presented with the articles for which it is intended, whether or not the articles are packed separately for convenience of transport;
4. The container is of a kind normally sold with such articles; and
5. The container does not give the whole its essential character.

[67] As mentioned previously, if a container meets the criteria listed above, the whole of the goods is to be classified according to the article for which the container is intended.

[68] Therefore, the Tribunal must first determine if Rule 5 applies to the goods in issue.

[69] A writing case can be generally described as a “case” or “container”.⁴⁸ However, this type of case is not included in the list of cases expressly enumerated in Rule 5, i.e. “camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases”.

[70] The Tribunal must therefore determine if a writing case, such as those in issue in this appeal, can be considered a “similar container” to those enumerated in Rule 5. In this regard, the Tribunal considers that the fifth criterion of the explanatory note to Rule 5 is not met. This criterion provides that Rule 5 applies when the content (the article or set of articles) gives the whole its essential character; it does not apply otherwise – when the container gives the whole its essential character.

[71] As the Tribunal has explained above, in the present case, the essential character of the goods in issue is given by the writing case (the container) and not the content. Since the fifth criterion of Rule 5 for “similar containers” is not met, it is not necessary to consider the application of the other criteria concerning this rule, and the Tribunal finds that the goods in issue cannot be classified according to Rule 5.

Classification at the Heading Level According to Rule 3

[72] The Tribunal will now examine whether the goods in issue can be classified by operation of Rule 3. Rule 3 applies “[w]hen by application of Rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings”

[73] Paragraph (a) of Rule 3 provides that “[t]he 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 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

47. See the Annex for a copy of the explanatory notes concerning Rule 5(a).

48. Respondent’s brief at para. 57 (Exhibit AP-2017-020-11A, Vol. 1A).

complete or precise description of the goods” [emphasis added]. In this instance, the classification of the goods is determined by operation of Rule 3(b).

[74] The goods in issue cannot be classified according to Rule 3(a) because they consist of two or (depending on the model) three articles which seem to come under different headings, namely, headings No. 42.02 (writing case), 48.20 (notepad)⁴⁹ and, when applicable, 84.70 (calculator).⁵⁰ Those three headings are equally specific: therefore, the goods in issue cannot be classified according to Rule 3(a).

[75] As for Rule 3(b), it concerns, *inter alia*, “goods put up in sets for retail sale”; in this instance, goods are classified according to the article that gives the whole its essential character. Thus, Rule 3(b) specifically applies to circumstances such as those in the present case, in which two or more headings each relate to only certain of the articles put up in sets for retail sale, and where the classification of the goods cannot be determined according to Rules 1 or 2 because no heading seems to encompass the entire “set” of the goods in issue.

[76] Note (X) of the explanatory notes to Rule 3(b) provides several criteria to determine if the goods are “put up in sets for retail sale” for the purpose of this rule. These criteria can be summarized as follows – the sets must be:

1. goods which consist of at least two different articles which are, *prima facie*, classifiable in different headings;
2. goods which consist of articles presented together to meet a particular need or carry out a specific activity; and
3. goods which are presented in a manner suitable for retail sale directly to end users without repacking (e.g., in boxes or cases or on boards).⁵¹

[77] The three criteria are met in the present case.

[78] The Tribunal is not convinced by the CBSA’s argument that exclusion note 2(h) of Chapter 48 prevents the application of Rule 3 to determine whether the goods are classifiable in headings No. 42.02 (as writing cases) or 48.20 (notepads). The Tribunal is of the view that this exclusionary note would only be applicable when considering whether goods *as a whole* are, *prima facie*, classifiable under two competing headings.

[79] When this is not the case, for example when goods are put up in sets for retail sale, these goods are not, *prima facie*, described in their entirety in the schedule to the *Customs Tariff*. Here, the

49. It is uncontested that the notepad, on its own, is *prima facie* described by the terms of heading No. 48.20 and the related explanatory notes, which cover articles of paper or paper board, such as “memorandum pads and letter pads” and “similar articles”.

50. In regard to the five models of the goods in issue which include a calculator, the CBSA submits that the heading which applies solely to the calculator is heading No. 84.70. The Tribunal agrees, and notes that Bugatti does not object to this argument. Heading No. 84.70 covers “[c]alculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers.”

51. See excerpts of explanatory note (X) to Rule 3(b) cited in the Annex to these reasons.

goods in issue are a set composed of two or several different articles that, *prima facie*, can each come under different headings. Rule 3(b) of the *General Rules* is, therefore, applicable.

[80] The Tribunal has already determined that the essential character of the goods in issue stems from the fact that (i) the goods in issue are cases used to organize, transport and protect certain office supplies and (ii) that an important purpose of the goods in issue is to facilitate the taking of personal notes or, in certain cases, to make calculations using a calculator. The Tribunal has also determined above that it is the writing case that gives the whole its essential character. Because the writing case is classifiable in heading No. 42.02, the goods in issue are also classified in that heading.

[81] In light of the above, the goods in issue are properly classified in heading No. 42.02 as other similar containers to the goods listed in the second part of the heading according to the article that gives them their essential character, pursuant to Rule 3(b).

Classification at the Heading Level According to Rule 4

[82] Even though applying Rule 3 suffices to rule on the present appeal, the Tribunal wishes to add the following comments concerning the application of Rule 4 of the *General Rules* to the goods in issue. Rule 4 provides that goods that cannot be classified according to Rules 1 through 3 must be classified in “the heading appropriate to the goods to which they are most akin”. The Tribunal is of the opinion that the goods in issue are more akin⁵² to writing cases (“similar containers”) of heading No. 42.02 than to memorandum pads and “similar articles” of heading No. 48.20 or to calculators of heading No. 84.70. Once again, it is the essential character of the goods in issue that motivate this conclusion. The writing case in itself plays a central role in the design, marketing, functioning and utilization of the goods in issue and these characteristics render the goods in issue more akin to cases of heading No. 42.02 than to articles of any other heading. Thus, the application of Rule 4 confirms the Tribunal’s conclusion that the goods in issue are properly classified in heading No. 42.02.

Classification at the Subheading and Tariff Item Levels

[83] Having determined in which heading the goods in issue are properly classified, the Tribunal must now determine the appropriate subheading. In this regard, 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.”

[84] The Tribunal must also determine the appropriate classification at the tariff item level. In this respect, 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.

[85] The CBSA argues that, at the subheading level, the goods in issue should be classified in the residual categories (“other”) according to the outer surface material of the writing case, which varies

52. Explanatory note (III) to Rule 4 indicates that “[k]inship can, of course, depend on many factors, such as description, character, purpose.”

according to the model.⁵³ In this regard, the CBSA submits that subheading No. 4202.91 applies to the seven models which have an outer surface of bonded leather,⁵⁴ whereas subheading No. 4202.92 applies to the 12 models which have an outer surface of textile materials, including those made of synthetic leather.⁵⁵

[86] Moreover, the CBSA argues that, at the tariff item level, the goods in issue should be classified in the category “other”, that is, No. 4202.91.90 for models with an outer surface of genuine leather or bonded leather, and No. 4202.92.90 for models with an outer surface of textile materials.

[87] Bugatti did not make any submissions on classification at the subheading and tariff item levels.

[88] Rule 6 of the *General Rules* provides that the classification of the goods in issue at the subheading level shall be determined according to Rules 1 to 5. In the present case, for the same reasons as those concerning classification at the heading level, the application of Rules 1 and 2 does not suffice. On the basis of Rules 3 and 6 of the *General Rules* and of Rule 1 of the *Canadian Rules*, the Tribunal finds that the goods in issue can be classified in subheadings No. 4202.91 or 4202.92 according to the outer surface of the writing case. Since these are two residual subheadings that fall under the category “similar containers” of the second part of heading No. 42.02, the classification analysis at the subheading level is identical to the one above, except for the fact that those two subheadings make a distinction on the basis of the outer surface material. To this end, the Tribunal finds that the documentary evidence and the physical exhibits filed by Bugatti support the CBSA’s claims in respect of the outer surface material of each model of writing case.⁵⁶

[89] Subheadings No. 4202.91 and 4202.92 each include the same three subcategories at the tariff item level: “Fitted cases for church bells; Golfbags” (4202.91.10 and 4202.92.10); “Tool bags, haversacks, knapsacks, packsacks and rucksacks” (4202.91.20 and 4202.92.20); and “Other” (4202.91.90 and 4202.92.90). There is no doubt that the goods in issue are not covered by the first two categories. Therefore, the Tribunal considers that then residual category “other” is appropriate.

[90] In light of the above, the models of the goods in issue with an outer surface of bonded leather are properly classified in tariff item No. 4202.91.90, and those with an outer surface of textile materials are properly classified in tariff item No. 4202.92.90.

DECISION

[91] For the foregoing reasons, the appeal is dismissed.

53. Respondent’s brief at paras. 91 à 94 (Exhibit AP-2017-020-11A, Vol. 2 at. 30).

54. Models WRC506, WRC1206, WRC1505, WRC1506, WRC11768, RGB5023 and RGB5362.

55. Models WRC1000, WRC1001, WRC1010, WRC1500, WRC1501, WRC1502, WRC1503, WRC1504, WRC1507, WRC1508, RGB2000 and RGB2001. See also *Transcript of Public Hearing*, 6 February 2018, at 140-141.

56. Exhibits AP-2017-020-A-01 to A-06, A-08 to A-17, A-19, B-01 to B-02; Appellant’s brief, Tab 4 (Exhibit AP-2017-020-07A, Vol. 1, at 192-196).

Serge Fréchette

Serge Fréchette
Presiding Member

ANNEX

Legal Framework

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).⁵⁷ 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.

Subsection 10(1) of the *Customs Tariff* provides that, subject to subsection 10(2), the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*⁵⁸ and the *Canadian Rules*⁵⁹ set out in the schedule.

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.

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*⁶⁰ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,⁶¹ 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.⁶²

Relevant Tariff Nomenclature and Notes

The relevant tariff nomenclature and notes to headings No. 42.02, 48.20 and 84.70 read as follows:

<p>Section VIII</p> <p>RAW HIDES AND SKINS, LEATHER, FURSKINS AND ARTICLES THEREOF; SADDLERY AND HARNESS; TRAVEL GOODS, HANDBAGS AND SIMILAR CONTAINERS; ARTICLES OF ANIMAL GUT (OTHER THAN SILK-WORM GUT)</p> <p>...</p> <p>Chapter 42</p> <p>ARTICLES OF LEATHER; SADDLERY AND HARNESS; TRAVEL GOODS, HANDBAGS AND SIMILAR CONTAINERS; ARTICLES OF</p>	<p>Section VIII</p> <p>PEAUX, CUIRS, PELLETERIES ET OUVRAGES EN CES MATIÈRES; ARTICLES DE BOURRELLERIE OU DE SELLERIE; ARTICLES DE VOYAGE, SACS À MAIN ET CONTENANTS SIMILAIRES; OUVRAGES EN BOYAUX</p> <p>[...]</p> <p>Chapitre 42</p> <p>OUVRAGES EN CUIR; ARTICLES DE BOURRELLERIE OU DE SELLERIE; ARTICLES DE VOYAGE, SACS À MAIN ET</p>
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57. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.

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

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

60. World Customs Organization, 4th ed., Brussels, 2017 [*Classification Opinions*].

61. World Customs Organization, 6th ed., Brussels, 2017 [*Notes explicatives*].

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

ANIMAL GUT (OTHER THAN SILK-WORM GUT)	CONTENANTS SIMILAIRES; OUVRAGES EN BOYAUX
...	[...]
42.02	42.02
Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, insulated food or beverage bags, toilet bags, rucksacks, handbags, shopping bags, wallets, purses, map-cases, cigarette-cases, tobacco-pouches, tool bags, sports bags, bottle-cases, jewellery boxes, powder-boxes, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fibre or of paperboard, or wholly or mainly covered with such materials or with paper.	Malles, valises et mallettes, y compris les mallettes de toilette et les mallettes porte-documents, serviettes, cartables, étuis à lunettes, étuis pour jumelles, appareils photographiques, caméras, instruments de musique ou armes et contenants similaires; sacs de voyage, sacs isolants pour produits alimentaires et boissons, trousse de toilette, sacs à dos, sacs à main, sacs à provisions, portefeuilles, portemonnaie, porte-cartes, étuis à cigarettes, blagues à tabac, trousse à outils, sacs pour articles de sport, boîtes pour flacons ou bijoux, boîtes à poudre, écrins pour orfèvrerie et contenants similaires, en cuir naturel ou reconstitué, en feuilles de matières plastiques, en matières textiles, en fibre vulcanisée ou en carton, ou recouverts, en totalité ou en majeure partie, de ces mêmes matières ou de papier.
-Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels and similar containers:	-Malles, valises et mallettes, y compris les mallettes de toilette et mallettes porte-documents, serviettes, cartables et contenants similaires :
4202.11.00	4202.11.00
--With outer surface of leather or of composition leather	--À surface extérieure en cuir naturel ou en cuir reconstitué
4202.12	4202.12
--With outer surface of plastics or of textile materials	--À surface extérieure en matières plastiques ou en matières textiles
4202.12.10 00	4202.12.10 00
-- -With outer surface of textile materials, containing less than 85% by weight of silk or silk waste	-- -À surface extérieure en matières textiles, contenant moins de 85 % en poids de soie ou de déchets de soie
4202.12.90	4202.12.90
-- -Other	-- -Autres
...	...
-Other:	-Autres:
4202.91	4202.91
--With outer surface of leather or of composition leather	--À surface extérieure en cuir naturel ou en cuir reconstitué
...	

<p>4202.91.90</p> <p>---Other</p> <p>4202.92</p> <p>---With outer surface of sheeting of plastics or of textile materials</p> <p>...</p> <p>4202.92.90</p> <p>---Other</p>	<p>...</p> <p>4202.91.90</p> <p>---Autres</p> <p>4202.92</p> <p>---À surface extérieure en feuilles de matières plastiques ou en matières textiles</p> <p>...</p> <p>4202.92.90</p> <p>---Autres</p>
<p>Section X</p> <p>PULP OF WOOD OR OF OTHER FIBROUS CELLULOSIC MATERIAL; RECOVERED (WASTE AND SCRAP) PAPER OR PAPERBOARD; PAPER AND PAPERBOARD AND ARTICLES THEREOF</p> <p>...</p> <p>Chapter 48</p> <p>PAPER AND PAPERBOARD; ARTICLES OF PAPER PULP, OF PAPER OR OF PAPERBOARD</p> <p>...</p> <p>48.20</p> <p>Registers, account books, note books, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting-pads, binders (loose-leaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers, of paper or paperboard.</p> <p>4820.10.00</p> <p>-Registers, account books, note books, order books, receipt books, letter pads, memorandum pads, diaries and similar articles</p>	<p>Section X</p> <p>PÂTES DE BOIS OU D'AUTRES MATIÈRES FIBREUSES CELLULOSIQUES; PAPIER OU CARTON À RECYCLER</p> <p>[...]</p> <p>Chapitre 48</p> <p>PAPIERS ET CARTONS; OUVRAGES EN PÂTE DE CELLULOSE, EN PAPIER OU EN CARTON</p> <p>[...]</p> <p>48.20</p> <p>Registres, livres comptables, carnets (de notes, de commandes, de quittances), agendas, blocs-mémorandums, blocs de papier à lettres et ouvrages similaires, cahiers, sous-main, classeurs, reliures (à feuillets mobiles ou autres), chemises et couvertures à dossiers et autres articles scolaires, de bureau ou de papeterie, y compris les liasses et carnets manifold, même comportant des feuilles de papier carbone, en papier ou carton; albums pour échantillonnages ou pour collections et couvertures pour livres, en papier ou carton.</p> <p>4820.10.00</p> <p>-Registres, livres comptables, carnets (de notes, de commandes, de quittances), blocs-mémorandums, blocs de papier à lettres, agendas et ouvrages similaires</p>
<p>Section XVI</p> <p>MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT; PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES</p> <p>...</p>	<p>Section XVI</p> <p>MACHINES ET APPAREILS, MATÉRIEL ÉLECTRIQUE ET LEURS PARTIES; APPAREILS D'ENREGISTREMENT OU DE REPRODUCTION DU SON, APPAREILS D'ENREGISTREMENT OU DE REPRODUCTION DES IMAGES ET DU SON EN TÉLÉVISION, ET PARTIES ET ACCESSOIRES DE CES APPAREILS</p> <p>[...]</p>

Chapter 84	Chapitre 84
NUCLEAR REACTORS, BOILERS, MACHINERY AND MECHANICAL APPLIANCES; PARTS THEREOF	RÉACTEURS NUCLÉAIRES, CHAUDIÈRES, MACHINES, APPAREILS ET ENGINES MÉCANIQUES; PARTIES DE CES MACHINES OU APPAREILS
...	[...]
84.70	84.70
Calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers.	Machines à calculer et machines de poche permettant d'enregistrer, de reproduire et d'afficher des informations, comportant une fonction de calcul; machines comptables, machines à affranchir, à établir les tickets et machines similaires, comportant un dispositif de calcul; caisses enregistreuses.

In the present case, there are no relevant section or chapter notes to heading No. 42.02. The relevant explanatory notes to heading No. 42.02 provide as follows:

This heading covers **only** the articles specifically named therein and similar containers.

These containers may be rigid or with a rigid foundation, or soft and without foundation.

...

The articles covered by the second part of the heading must, however, be only of the materials specified therein or must be wholly or mainly covered with such materials or with paper (the foundation may be of wood, metal, etc.). The term "leather" includes chamois (including combination chamois) leather, patent leather, patent laminated leather and metallised leather (see Note 1 to this Chapter). The expression "similar containers" in this second part includes note-cases, *writing-cases*, pen-cases, ticket-cases, needle-cases, key-cases, cigar-cases, pipe-cases, tool and jewellery rolls, shoe-cases, brush-cases, etc.

...

The heading **does not cover**:

...

(c) Articles which, although they may have the character of containers, are not similar to those enumerated in the heading, for example, book covers and reading jackets, file-covers, document-jackets, blotting pads, photo-frames, sweetmeat boxes, tobacco jars, ashtrays, flasks made of ceramics, glass, etc., and which are wholly or mainly covered with leather, sheeting of plastics, etc. . . .

[Emphasis added]

There are no relevant section notes to heading No. 48.20. Note 2 to Chapter 48 provides as follows:

This Chapter does not cover:

...

(h) Articles of heading 42.02 (for example, travel goods);

The relevant explanatory notes to heading No. 48.20 provide as follows:

This heading covers various articles of stationery, **other than** correspondence goods of **heading 48.17** and the goods referred to in Note 10 to this Chapter. It includes:

(1) Registers, account books, note books of all kinds, order books, receipt books, copy books, diaries, letter pads, memorandum pads, engagement books, address books and books, pads, etc., for entering telephone numbers.

...

(3) Binders designed for holding loose sheets, magazines, or the like (e.g., clip binders, spring binders, screw binders, ring binders), and folders, file covers, files (other than box files) and portfolios.

...

The goods of this heading may be bound with materials other than paper (e.g., leather, plastics or textile material) and have reinforcements or fittings of metal, plastics, etc.

[Emphasis added]

There are no relevant section or chapter notes to heading No. 84.70.

General Rules for the Interpretation of the Harmonized System

Le classement des marchandises dans la Nomenclature est effectué conformément aux principes ci-après :	Classification of goods in the Nomenclature shall be governed by the following principles:
RÈGLE 1	RULE 1
Le libellé des titres de Sections, de Chapitres ou de Sous-Chapitres est considéré comme n'ayant qu'une valeur indicative, le classement étant déterminé légalement d'après les termes des positions et des Notes de Sections ou de Chapitres et, lorsqu'elles ne sont pas contraires aux termes desdites positions et Notes, d'après les Règles suivantes.	The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.
RÈGLE 2	RULE 2
a) Toute référence à un article dans une position déterminée couvre cet article même incomplet ou non fini à la condition qu'il présente, en l'état, les caractéristiques essentielles de l'article complet ou fini. Elle couvre également l'article complet ou fini, ou à considérer comme tel en vertu des dispositions qui précèdent, lorsqu'il est présenté à l'état démonté	(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),

<p>ou non monté.</p> <p>b) Toute mention d'une matière dans une position déterminée se rapporte à cette matière soit à l'état pur, soit mélangée ou bien associée à d'autres matières. De même, toute mention d'ouvrages en une matière déterminée se rapporte aux ouvrages constitués entièrement ou partiellement de cette matière. Le classement de ces produits mélangés ou articles composites est effectué suivant les principes énoncés dans la Règle 3.</p>	<p>presented unassembled or disassembled.</p> <p>(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.</p>
<p style="text-align: center;">RÈGLE 3</p> <p>Lorsque des marchandises paraissent devoir être classées sous deux ou plusieurs positions par application de la Règle 2 b) ou dans tout autre cas, le classement s'opère comme suit :</p> <p>a) La position la plus spécifique doit avoir la priorité sur les positions d'une portée plus générale. Toutefois, lorsque deux ou plusieurs positions se rapportent chacune à une partie seulement des matières constituant un produit mélangé ou un article composite ou à une partie seulement des articles dans le cas de marchandises présentées en assortiments conditionnés pour la vente au détail, ces positions sont à considérer, au regard de ce produit ou de cet article, comme également spécifiques même si l'une d'elles en donne par ailleurs une description plus précise ou plus complète.</p> <p>b) Les produits mélangés, les ouvrages composés de matières différentes ou constitués par l'assemblage d'articles différents et les marchandises présentées en assortiments conditionnés pour la vente au détail, dont le classement ne peut être effectué en application de la Règle 3 a), sont classés d'après la matière ou l'article qui leur confère leur caractère essentiel lorsqu'il est possible d'opérer cette détermination.</p> <p>c) Dans les cas où les Règles 3 a) et 3 b) ne permettent pas d'effectuer le classement, la marchandise est classée dans la position placée la dernière par ordre de numérotation parmi celles susceptibles d'être valablement prises en</p>	<p style="text-align: center;">RULE 3</p> <p>When by application of Rule 2 (b) or for any other reason, goods are, <i>prima facie</i>, classifiable under two or more headings, classification shall be effected as follows:</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>

considération.	
<p style="text-align: center;">RÈGLE 4</p> <p>Les marchandises qui ne peuvent pas être classées en vertu des Règles visées ci-dessus sont classées dans la position afférente aux articles les plus analogues.</p>	<p style="text-align: center;">RULE 4</p> <p>Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.</p>
<p style="text-align: center;">RÈGLE 5</p> <p>Outre les dispositions qui précèdent, les Règles suivantes <i>sont applicables</i> aux marchandises reprises ci-après :</p> <p>a) Les étuis pour appareils photographiques, pour instruments de musique, pour armes, pour instruments de dessin, les écrins <i>et les contenants similaires</i>, spécialement aménagés pour recevoir un article déterminé ou un assortiment, susceptibles d'un usage prolongé et présentés avec les articles auxquels ils sont destinés, <i>sont classés avec ces articles lorsqu'ils sont du type normalement vendu avec ceux-ci</i>. Cette Règle ne concerne pas, toutefois, les contenants qui confèrent à l'ensemble son caractère essentiel.</p> <p>b) Sous réserve des dispositions de la Règle 5 a) ci-dessus, les emballages contenant des marchandises sont classés avec ces dernières lorsqu'ils sont du type normalement utilisé pour ce genre de marchandises. Toutefois, cette disposition n'est pas obligatoire lorsque les emballages sont susceptibles d'être utilisés valablement d'une façon répétée.</p>	<p style="text-align: center;">RULE 5</p> <p>In addition to the foregoing provisions, the following Rules <i>shall apply</i> in respect of the goods referred to therein:</p> <p>(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases <i>and similar containers</i>, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, <i>shall be classified with such articles when of a kind normally sold therewith</i>. This Rule does not, however, apply to containers which give the whole its essential character.</p> <p>(b) Subject to the provisions of Rule 5 (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.</p>
<p style="text-align: center;">RÈGLE 6</p> <p>Le classement des marchandises dans les sous-positions d'une même position est déterminé légalement d'après les termes de ces sous-positions et des Notes de sous-positions ainsi que, <i>mutatis mutandis</i>, d'après les Règles ci-dessus, étant entendu que ne peuvent être comparées que les sous-positions de même niveau. Aux fins de cette Règle, les Notes de Sections et de Chapitres sont également applicables sauf dispositions contraires.</p>	<p style="text-align: center;">RULE 6</p> <p>For legal purposes, 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, <i>mutatis mutandis</i>, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.</p>

Explanatory Notes to Rules 3(b) and 5(a)

RÈGLE 3 b)	RULE 3 (b)
<p>[...]</p> <p>X) Pour l'application de la présente Règle, les marchandises remplissant simultanément les conditions suivantes sont à considérer comme « présentées en assortiment conditionnées pour la vente au détail » :</p> <p>a) être composées d'au moins deux articles différents qui, à première vue, seraient susceptibles de relever de positions différentes. Ne seraient donc pas considérées comme un assortiment, au sens de la présente Règle, six fourchettes à fondue, par exemple,</p> <p>b) être composées de produits ou d'articles présentés ensemble pour la satisfaction d'un besoin spécifique ou l'exercice d'une activité déterminée,</p> <p>c) être conditionnées de façon à pouvoir être vendues directement aux utilisateurs finaux sans reconditionnement (en boîtes, coffrets, panoplies, par exemple).</p> <p>L'expression « vente au détail » ne comprend pas les ventes de marchandises destinées à être revendues après fabrication, préparation ou reconditionnement ultérieurs ou après incorporation ultérieure avec ou dans d'autres marchandises.</p> <p>En conséquence, l'expression « marchandises en assortiments conditionnées pour la vente au détail » désigne uniquement les assortiments consistant en marchandises destinées à être vendues à l'utilisateur final et à être utilisées ensemble. Par exemple, divers produits alimentaires destinés à être utilisés ensemble pour la confection d'un plat cuisiné, conditionnés ensemble et destinés à être consommés par leur acheteur constituent un « assortiment conditionné pour la vente au détail ».</p> <p>[...]</p>	<p>...</p> <p>(X) For the purposes of this Rule, the term « goods put up in sets for retail sale» shall be taken to mean goods which:</p> <p>(a) consist of at least two different articles which are, prima facie, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;</p> <p>(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and</p> <p>(c) are put up in a manner suitable for sale directly to end users without repacking (e.g., in boxes or cases or on boards).</p> <p>“Retail sale” does not include sales of products which are intended to be re-sold after further manufacture, preparation, repacking or incorporation with or into other goods.</p> <p>The term “goods put up in sets for retail sale” therefore only covers sets consisting of goods which are intended to be sold to the end user where the individual goods are intended to be used together. For example, different foodstuffs intended to be used together in the preparation of a ready-to-eat dish or meal, packaged together and intended for consumption by the purchaser would be a “set put up for retail sale”.</p> <p>...</p>
RÈGLE 5 a)	RULE 5 a)

(Étuis, écrins et contenants similaires)	(Cases, boxes and similar containers)
<p>I) La présente Règle doit être interprétée comme s'appliquant exclusivement aux contenants qui, à la fois :</p> <ol style="list-style-type: none"> 1) sont spécialement aménagés pour recevoir un article déterminé ou un assortiment, c'est-à-dire qu'ils sont agencés de telle manière que l'article contenu y trouve exactement sa place, certain contenants pouvant, en outre, avoir la forme de l'article qu'ils doivent contenir; 2) sont susceptibles d'un usage prolongé, c'est-à-dire qu'ils sont conçus, notamment au plan de la résistance ou de la finition pour avoir une durée d'utilisation en rapport avec celle du contenu. Ces contenants servent le plus souvent à protéger l'article auquel ils se rapportent hors des moments d'utilisation de celui-ci (transport, rangement, par exemple). Ces critères permettent notamment de les différencier des simples emballages; 3) sont présentés avec les articles auxquels ils se rapportent, que ceux-ci soient ou non emballés séparément pour faciliter le transport. Présentés isolément les contenants suivent leur régime propre; 4) sont d'une espèce normalement vendue avec lesdits articles; 5) ne confèrent pas à l'ensemble son caractère essentiel. <p>II) Comme exemples de contenants présentés avec les articles auxquels ils sont destinés et dont le classement est déterminé par application de la présente Règle, on peut citer :</p> <ol style="list-style-type: none"> 1) Les écrins à bijoux (n° 71.13); 2) Les étuis pour rasoirs électriques (n° 85.10); 3) Les étuis à jumelles, les étuis pour lunettes de visée (n° 90.05); 4) Les boîtes et étuis pour instruments de 	<p>(I) This Rule shall be taken to cover only those containers which :</p> <ol style="list-style-type: none"> (1) are specially shaped or fitted to contain a specific article or set of articles, i.e., they are designed specifically to accommodate the article for which they are intended. Some containers are shaped in the form of the article they contain; (2) are suitable for long-term use, i.e., they are designed to have a durability comparable to that of the articles for which they are intended. These containers also serve to protect the article when not in use (during transport or storage, for example). These criteria enable them to be distinguished from simple packings; (3) are presented with the articles for which they are intended, whether or not the articles are packed separately for convenience of transport. Presented separately the containers are classified in their appropriate headings; (4) are of a kind normally sold with such articles; and (5) do not give the whole its essential character. <p>(II) Examples of containers, presented with the articles for which they are intended, which are to be classified by reference to this Rule are:</p> <ol style="list-style-type: none"> (1) Jewellery boxes and cases (heading 71.13); (2) Electric shaver cases (heading 85.10); (3) Binocular cases, telescope cases (heading 90.05); (4) Musical instrument cases, boxes and bags (e.g., heading 92.02); (5) Gun cases (e.g., heading 93.03). <p>(II) Examples of containers not covered by this Rule are containers such as a silver caddy containing tea,</p>

<p>musiques (n° 92.02, par exemple);</p> <p>5) Les étuis pour fusils (n° 93.03, par exemple).</p> <p>III) Par contre, comme exemples de contenant n'entrant pas dans le champ d'application de cette Règle, on peut citer les contenants tels que les boîtes à thé en argent contenant du thé ou les coupes décoratives en céramique, contenant des sucreries.</p>	<p>or an ornamental ceramic bowl containing sweets.</p>
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Canadian Rules

<p style="text-align: center;">RÈGLE 1</p> <p>Le classement des marchandises dans les numéros tarifaires d'une sous-position ou d'une position est déterminé légalement d'après les termes de ces numéros tarifaires et des Notes supplémentaires ainsi que, <i>mutatis mutandis</i>, d'après les Règles générales pour l'interprétation du Système harmonisé, étant entendu que ne peuvent être comparés que les numéros tarifaires de même niveau. Aux fins de cette Règle, les Notes de Sections, de Chapitres et de sous-positions sont également applicables sauf dispositions contraires.</p>	<p style="text-align: center;">RULE 1</p> <p>For legal purposes, 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, <i>mutatis mutandis</i>, to the General Rules for the Interpretation of the Harmonized System, on the understanding that only tariff items at the same level are comparable. For the purpose of this Rule the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires.</p>
<p style="text-align: center;">RÈGLE 2</p> <p>Lorsqu'un terme canadien et un terme international apparaissent tous deux dans cette Nomenclature, la signification et la portée du terme international auront la préséance.</p>	<p style="text-align: center;">RULE 2</p> <p>Where both a Canadian term and an international term are presented in this Nomenclature, the commonly accepted meaning and scope of the international term shall take precedence.</p>
<p style="text-align: center;">RÈGLE 3</p> <p>Au sens de la Règle 5 b) pour l'interprétation du Système Harmonisé, les emballages susceptibles d'être utilisés valablement d'une façon répétée sont classés dans leurs positions respectives.</p>	<p style="text-align: center;">RULE 3</p> <p>For the purpose of Rule 5 (b) of the General Rules for the Interpretation of the Harmonized System, packing materials or packing containers clearly suitable for repetitive use shall be classified under their respective headings.</p>