



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2017-060

OVE Décors ULC

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, June 25, 2019*

*Corrigenda issued
Tuesday, July 2, 2019*

TABLE OF CONTENTS

DECISION.....	i
CORRIGENDA	ii
STATEMENT OF REASONS	1
INTRODUCTION	1
DESCRIPTION OF THE GOODS IN ISSUE	1
PROCEDURAL HISTORY	1
LEGAL FRAMEWORK	2
POSITIONS OF THE PARTIES	3
OVE.....	3
CBSA	4
ANALYSIS.....	4
Heading No. 76.10: Aluminum structures and parts of structures.....	6
Heading No. 70.07: Safety glass	9
Heading No. 70.20: Other articles of glass.....	9
Subheading and tariff item classification.....	11
DECISION	11
ANNEX.....	12
GENERAL RULES FOR THE INTERPRETATION OF THE HARMONIZED SYSTEM.....	12
RELEVANT TARIFF NOMENCLATURE AND NOTES	13

IN THE MATTER OF an appeal heard on March 28, 2019, 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 November 29, 2017, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

OVE DÉCORS ULC

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Peter Burn
Peter Burn
Presiding Member

IN THE MATTER OF an appeal heard on March 28, 2019, 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 November 29, 2017, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

OVE DÉCORS ULC

Appellant

AND

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

Respondent

CORRIGENDA

At paragraph 24, the reference in the quoted text to “[24]”, as well as the immediately preceding paragraph break, should be deleted.

References to “legal notes” and to “legal note” in paragraph 26, paragraph 41, footnote 27, and page 15 should be read as “explanatory notes” and “explanatory note”, respectively.

References to “Appellant’s Brief” in footnotes 19 and 20 should be read as “Exhibit AP-2017-060-03A, Vol.1”.

By order of the Tribunal,

Peter Burn

Peter Burn
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: March 28, 2019
Tribunal Panel: Peter Burn, Presiding Member
Support Staff: Laura Little, Counsel
Heidi Lee, Counsel

PARTICIPANTS:**Appellant**

OVE Décors ULC

Counsel/Representatives

Michael Kaylor
Marco Ouellet
Jeffrey Goernert

Respondent

President of the Canada Border Services Agency

Counsel/Representative

Rigers Alliu

Please address all communications to:

The Registrar
Secretariat to the Canadian International Trade Tribunal
333 Laurier Avenue West
15th Floor
Ottawa, Ontario K1A 0G7
Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

INTRODUCTION

1. OVE Décors ULC (OVE) filed this appeal with the Canadian International Trade Tribunal (the Tribunal), pursuant to subsection 67(1) of the *Customs Act*,¹ from a decision of the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4).

2. The issue in this appeal is whether certain aluminum-framed glass shower doors (the goods in issue) are properly classified under tariff item No. 7610.10.00 as aluminum structures (excluding prefabricated buildings of heading No. 94.06) and parts of structures (doors, windows and their frames and thresholds for doors), as determined by the CBSA, or under tariff item No. 7007.19.00 as other toughened (tempered) safety glass, as submitted by OVE.

DESCRIPTION OF THE GOODS IN ISSUE²

3. The goods in issue are sliding glass shower doors with an aluminum frame. They are to be installed in pre-existing shower stalls (or bathtub enclosures) and are designed to keep the water inside. The doors are made of clear tempered glass and are mounted on an aluminum rolling track that allows two of the three glass panel sections of the doors to slide open for access to the shower.

4. The goods were imported, by OVE, unassembled in retail packaging that included all components necessary to assemble and permanently install the goods on site. The goods in issue consist of frameless glass panels used as sliding doors, aluminum framing (aluminum wall tracks, wall jamb and covers, top and bottom metal tracks), multiple rolling tracks, mounting hardware (including wheels with threads), rubber seals and all necessary fasteners.

PROCEDURAL HISTORY

5. When OVE imported the goods in issue, on or about December 18, 2013, they were classified under tariff item No. 3922.90.00 as “Baths, shower-baths, sinks, wash-basins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware, of plastics -Other”.

6. On or about June 21, 2016, OVE requested that the goods in issue be reclassified under tariff item No. 7007.19.00 as “Safety glass, consisting of toughened (tempered) or laminated glass -Toughened (tempered) safety glass --Other”.

7. On August 8, 2016, the CBSA issued a re-determination pursuant to subsection 59(1) of the *Act*, denying OVE’s adjustment request and classifying the goods in issue under tariff item No. 7020.00.90 as “Other articles of glass ---Other”. OVE appealed that decision pursuant to subsection 60(1), claiming that the goods in issue should be classified under tariff item No. 7007.19.00.

8. On November 29, 2017, pursuant to subsection 60(4) of the *Act*, the CBSA denied the request and maintained that the goods are properly classified under tariff item No. 7610.10.00 as “Aluminum structures . . . and parts of structures . . . -Doors, windows and their frames and thresholds for doors”.

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

2. Exhibit AP-2017-060-08A at 25, 27-28, 36-37 and 39-40, Vol. 1; Exhibit AP-2017-060-03A at para. 3, Vol. 1.

9. On February 9, 2018, OVE filed its notice of appeal with the Tribunal. Both parties filed case briefs and additional documents and authorities, in accordance with the timelines set out in rules 34 and 35 of the *Canadian International Trade Tribunal Rules*.³ On August 20, 2018, one day prior to the hearing, the CBSA filed a classification opinion to the Harmonized Commodity Description and Coding System (the Harmonized System) that had been published by the World Customs Organization (WCO) on June 28, 2018 (hereinafter, the “Classification Opinion”).⁴ The Classification Opinion indicated that a glass shower enclosure was properly classified in heading No. 70.20 as “other articles of glass”. OVE objected to the late filing of the Classification Opinion.

10. The Tribunal held a public hearing on August 21, 2018. OVE presented a lay witness, Mr. Pierre-Olivier Corcos, Chief Engineer and Asian Operations Manager for OVE. Following the witness testimony, the Tribunal adjourned the hearing to allow the parties to file additional written submissions in light of the Classification Opinion, which the Tribunal had accepted onto the record. The Tribunal also requested that the parties address, in their written submissions, Rule 2(a) of the *General Rules for the Interpretation of the Harmonized System*⁵ and its potential application in the present appeal.⁶ The Tribunal agreed, upon request by OVE and with the CBSA’s consent, to schedule a new hearing date for oral argument.

11. The parties filed additional submissions as follows:

- The CBSA and OVE filed additional written submissions relating to the Classification Opinion on November 2 and 27, 2018, respectively.
- On February 12, 2019, OVE requested, on consent, to make further written submissions concerning a recent decision by the Federal Court of Appeal, in *Canada (Attorney General) v. Best Buy Canada Inc.*⁷ The Tribunal granted the request and received OVE’s submissions on February 15, 2019. The CBSA did not file further written submissions.

12. The Tribunal held a public hearing on March 28, 2019, at which both parties made oral arguments.

LEGAL FRAMEWORK

13. 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 WCO.⁸ 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.

14. 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* and the *Canadian Rules*⁹ set out in the schedule.

3. SOR/91-499.

4. Exhibit AP-2017-060-17, Vol. 1A.

5. S.C. 1997, c. 36, schedule [*General Rules*]. See Annex.

6. *Transcript of Public Hearing* (28 August 2018) at 8.

7. 2019 FCA 20 (CanLII) [*Best Buy*].

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

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

15. 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.

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

17. The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the *General Rules* as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. It is only where applying Rule 1 alone does not settle the classification of a good that the other rules become relevant to the classification process.¹³ For example, where the goods are presented unassembled or disassembled (and where no heading specifically describes the unassembled or disassembled good as such), Rule 2(a) is applied in conjunction with Rule 1 to determine the *prima facie* classification of such goods.¹⁴ Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to use a similar approach to determine the proper subheading.¹⁵ The final step is to determine the proper tariff item.¹⁶

18. The *General Rules*, tariff nomenclature and explanatory notes of relevance to this appeal are set out in the Annex to these reasons.

POSITIONS OF THE PARTIES

OVE

19. OVE submitted that the goods in issue do not meet the terms of heading No. 76.10 as aluminum structures or parts of structures. Citing Tribunal jurisprudence,¹⁷ it argued that a “structure” must support something else and the goods in issue do not (nor are they, at the time of importation, part of a structure that

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

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

12. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII), at paras. 13, 17; *Best Buy*, *supra* note 7, at para. 4.

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

14. *Igloo Vikski* at para. 22.

15. 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.”

16. 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.

17. *Toys “R” Us (Canada) Ltd. v. President of the Canada Border Services Agency* (22 July 2016), AP-2015-024 (CIIT) [*Toys “R” Us*] at paras. 33-41.

supports something else).¹⁸ In addition, the goods in issue cannot be considered an *aluminum* structure of heading No. 76.10 because glass, and not aluminum, is the main component.

20. OVE's position is that the goods in issue are composite goods that are also put up for retail sale in sets.¹⁹ They consist of the following components that are *prima facie* classifiable under different headings:²⁰

- plastic rollers in heading No. 83.02 as “[b]ase metal mountings, fittings and similar articles suitable for furniture, doors . . .” or, alternatively, heading No. 39.26 as “[o]ther articles of plastics. . .”;
- glass panels in heading No. 70.07 as “[s]afety glass, consisting of toughened (tempered) or laminated glass”; and
- aluminum profiles in heading No. 76.16 as “[o]ther articles of aluminum”.

21. OVE submitted that no single heading describes the goods in issue and, therefore, they cannot be classified pursuant to Rules 1 or 2 of the *General Rules*. Since the goods are *prima facie* classifiable in two or more headings, OVE argued that they must be classified pursuant to Rule 3. In its view, Rule 3(a) resolves the classification of the goods in issue under heading No. 70.07 because it provides the most specific description. In the alternative, it argued that the application of Rule 3(b) would also result in the same classification because it is the glass component that gives the goods their essential character. OVE argued that the Classification Opinion regarding the classification of a shower enclosure in heading No. 70.20 (“other articles of glass”) should not be applied because those goods are different from the goods in issue and, moreover, the explanatory notes to that heading exclude goods covered by another heading.

CBSA

22. The CBSA submitted that the goods in issue are not composite goods or items in a set put up for retail sale; rather, they are disassembled finished goods. Its position is that, on the basis of Rules 1 and 2(a) of the *General Rules*, the goods in issue are properly classified in heading No. 76.10 as aluminum structures. In particular, the CBSA argued that the goods in issue are structures because they meet the conditions for structures set out in the applicable explanatory notes, namely, (a) they are permanently fixed in place once installed in a bathroom shower stall, and (b) they are made up of shapes and sections (aluminum wall tracks, wall jamb, covers, and top and bottom metal tracks) fastened together by bolting. The relevant explanatory notes further provide that heading No. 76.10 includes “doors and windows” and “sliding doors”, and may “sometimes incorporate products of other headings”. The CBSA submitted that this implies aluminum structures of heading No. 76.10 may also contain glass.

ANALYSIS

23. It is well established in law that tariff classification is to be determined on the basis of an examination of the goods, as a whole, as presented at the time of their importation into Canada.²¹ The goods in issue were imported in an unassembled or disassembled state, and the parties agreed that no tariff heading specifically describes the goods as such. Accordingly, the classification of the goods in issue cannot be determined solely by application of Rule 1 of the *General Rules*. The next step, therefore, is to apply Rule 2.

18. *Transcript of Public Hearing* (28 March 2019) at 10, 12.

19. Appellant's Brief at para. 19.

20. Appellant's Brief at paras. 12, 15.

21. *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (17 September 2013), AP-2012-057 (CITT) at para. 16.

24. Rule 2(a) provides that complete or finished articles presented unassembled or disassembled are to be classified in the same heading as the assembled article. The Supreme Court of Canada, in *Igloo Vikski*, described Rule 2(a) as follows:²²

[23] Rule 2 is a deeming provision. Rule 2(a) deems unfinished goods to be finished goods, and directs that they be classified using Rule 1 as if they were goods in a complete or finished state. . . .

[24] . . . Rule 1 requires that the headings and Section or Chapter Notes are the first consideration in determining classification. . . . Rule 2(a) requires that incomplete goods are classified based on the headings and Section or Chapter Notes as if they were completed goods (assuming they are not classifiable under Rule 1 as falling within a heading that specifically describes unfinished goods).

25. Explanatory note VII to Rule 2(a) adds the condition that this rule applies to such goods *provided* that only assembly (and no further working) is required.²³ In the present case, the record shows that the goods in issue were imported with all components necessary to assemble and install them by means only of fixing devices without further working operation.²⁴ The goods in issue therefore meet the above condition with respect to assembly. Accordingly, on the basis of Rule 2(a), the Tribunal will consider whether the goods in issue, once assembled, are classifiable in heading No. 70.07 or 76.10 using Rule 1.²⁵ It is only if the classification of the goods in issue cannot be determined on this basis that the Tribunal would need to consider whether the goods are composite goods and/or items in a set put up for retail sale where different headings refer only to certain components or items (as argued by OVE), and apply Rule 3 to resolve the classification of the goods as a whole.

26. According to the legal notes to Chapter 70, which includes headings No. 70.07 and 70.20, it “covers glass in all forms and articles of glass . . . other than goods . . . covered *more specifically* by other headings” [emphasis added]. Therefore, the Tribunal considers it appropriate to begin its Rule 1 analysis with heading No. 76.10.²⁶ If the goods in issue are described more specifically by the terms of heading No. 76.10, then they are precluded from classification in the headings of Chapter 70 by virtue of the above legal note.²⁷

22. *Igloo Vikski*, *supra* note 13, at paras. 23-24.

23. Explanatory note VII to Rule 2(a) of the *General Rules* provides as follows: “For the purposes of this Rule, ‘articles presented unassembled or disassembled’ means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, **provided** only assembly operations are involved. No account is to be taken in that regard of the complexity of the assembly method. However, the components shall not be subjected to any further working operation for completion into the finished state.”

24. Exhibit AP-2017-060-08A at 25-45, Vol. 1; *Transcript of Public Hearing* (28 August 2018) at 30.

25. In this regard, the Tribunal accepts, on the basis of the parties’ submissions, that these two headings are the only headings of potential relevance to the classification of the goods in issue.

26. The Tribunal has previously held that, when there is a single relevant exclusionary note that precludes the *prima facie* classification of goods in both of the headings at issue in an appeal, the Tribunal should begin its analysis with the heading to which the exclusionary note does not apply. See *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency* (6 April 2011), AP-2010-005 (CITT) at para. 42; *Korhani Canada Inc. v. President of the Canada Border Services Agency* (18 November 2008), AP-2007-008 (CITT) at paras. 27-28.

27. The application of the “more specific description” test set out in the legal notes to Chapter 70 is part of the analysis under Rule 1 of the *General Rules*, and is not to be confused with the “more specific description” test under Rule 3(a) of the *General Rules*, which is only applicable *if* the tariff classification analysis proceeds to Rule 3. See *Agri-Pack v. Commissioner of the Canada Customs and Revenue Agency* (15 May 2006), AP-2003-010R (CITT) at paras. 11, 13-14.

Heading No. 76.10: Aluminum structures and parts of structures

27. The terms of heading No. 76.10 cover “[a]luminum structures (excluding prefabricated buildings of heading 94.06) and parts of structures (for example, bridges and bridge-sections . . . doors and windows and their frames and thresholds for doors . . .); aluminum plates, rods, profiles, tubes and the like, prepared for use in structures.” On a plain reading, as previously recognized by the Federal Court of Appeal, the heading includes three categories of goods: (1) aluminum structures, (2) aluminum parts of structures²⁸, or (3) aluminum plates, rods, profiles, tubes and the like, prepared for use in structures.²⁹

28. Although the term “structure” is not defined in the schedule to the *Customs Tariff* or in the explanatory notes, the latter set out certain criteria for structures of heading No. 76.10. In particular, such structures are “characteri[z]ed by the fact that once they are put in position, they generally remain in that position” and “[t]hey are usually made up from bars, rods, tubes, angles, shapes, sections, sheets, plates, wide flats including so-called universal plates, hoop, strip, forgings or castings, by riveting, bolting, welding, etc.”³⁰ In addition, the explanatory notes provide that such structures may “sometimes incorporate products of other headings”.³¹ In *Toys “R” Us*, the Tribunal indicated that the above-mentioned explanatory notes provide a starting point from which to consider what constitutes a “structure”, and looked to dictionary definitions providing further guidance on the ordinary meaning of this term:³²

The *Shorter Oxford English Dictionary* defines a structure as follows:

4. That which is built or constructed; a building or edifice of any kind, esp. of considerable size and imposing appearance.

The *Dictionary of Architecture and Construction* defines a structure as follows:

1. A combination of units constructed and so interconnected, in an organized way, as to provide rigidity between its elements. 2. Any edifice.

Black’s Law Dictionary defines a structure as follows:

1. Any construction, production, or piece of work artificially built up or composed of parts purposefully joined together, <a building is a structure>.

The *Random House Unabridged Dictionary* defines a structure as follows:

1. Mode of building, construction or organization;
2. Something built or constructed, as a building, bridge or dam.

[Footnotes omitted]

29. In that case, the Tribunal also considered jurisprudence from the Supreme Court of Canada that sheds light on the scope of the term “structure”. In particular, the Supreme Court of Canada has referred to the following interpretation of the word “structure”:³³

28. The French version of heading No. 76.10 refers to “[c]onstructions et parties de constructions . . . en aluminium . . .”, which confirms that the second category of goods covered by this heading is *aluminum* parts of structures.

29. *Canada (Attorney General) v. RBP Imports Inc.*, 2018 FCA 167 (CanLII) [*RBP Imports (FCA)*] at para. 17.

30. See the explanatory notes to heading No. 73.08 (relating to structures and parts of structures of iron or steel), which apply, *mutatis mutandis*, to heading No. 76.10, as per the explanatory notes to heading No. 76.10.

31. *Ibid.*

32. *Toys “R” Us*, *supra* note 17, at paras. 33-34; see also *RBP Imports Inc. v. President of the Canada Border Services Agency* (11 February 2019), AP-2016-017R (CITT) [*RBP Imports (Remand)*] at paras. 18-20.

33. *Springman v. The Queen*, [1964] SCR 267, 1964 CanLII 69 (SCC) at 273. This definition was cited by the Tribunal in *Toys “R” Us*, *supra* note 17, at para. 38.

A structure is something which is constructed, but not everything which is constructed is a structure. A ship, for instance, is constructed, but it is not a structure. A *structure* is something of substantial size which is built up from component parts and intended to remain permanently on a permanent foundation, but it is still a structure even though some of its parts may be moveable, as, for instance, about a pivot. Thus, a windmill or a turntable is a structure. A thing which is not permanently in one place is not a *structure*, but it may be “in the nature of a structure” if it has a permanent site and has all the qualities of a structure, save that it is on occasion moved on or from its site.

30. On this basis, the Tribunal has considered the characteristics of a structure to include the following: it must be something of substantial size that is constructed or built up from component parts that are joined together; it must have a degree of permanency; and it must have the ability to support something else.³⁴ In *Toys “R” Us*, the Tribunal found that the goods in question – baby gates – lacked all of these characteristics. In *RBP Imports (Remand)*, it applied the same criteria from *Toys “R” Us* and determined that the railings in question met the permanency requirement but did not have the other characteristics of a structure.

31. The Tribunal accepts the CBSA’s argument that the goods in issue meet the criteria for structures provided in the explanatory notes. The tempered glass and plastic wheels are non-aluminum components that would, if imported separately, be classifiable in different headings; however, that is not the case here as they are incorporated into the aluminum shower frame of the assembled goods in issue. The Installation Guide for the goods in issue describes in detail how the aluminum rolling tracks and the fixed glass panel are assembled into the “shower frame”, which is then screwed into the shower enclosure and the other two glass panels (the sliding glass doors with plastic wheels attached) are installed onto the rolling track.³⁵ Mr. Corcos testified that the “frame holds the glass panels and allows the rolling of the door.”³⁶ The evidence also shows that the goods in issue generally remain in place once installed, and they are made up of shapes and sections (wall tracks, wall jamb, covers, and top and bottom metal tracks) that are clamped together.³⁷

32. However, it is the Tribunal’s view that the goods do not meet the criteria of a structure laid out in Tribunal jurisprudence. While the assembled goods in issue, once installed, meet the permanency requirement, the shower doors are not built in the nature of a structure, in and of themselves, because they must be joined together with other components in order to function. Furthermore, they need to be attached to the walls of the shower stall or enclosure, and the walls support the shower doors.³⁸

33. With respect to the criteria that a structure must have the ability to support something else, this jurisprudence should be placed in its proper context. The idea that a structure must support something else arose from the acceptance of one definition of structure put forward by the appellant in a 1996 case. A close reading of that case makes it clear that case involved a “supporting structure” (like a frame) which holds up or provides a foundation, or gives an artifact its shape. While all supporting structures are structures, it does not follow that all structures (i.e. objects constructed from several parts) are supporting structures. Indeed, as noted earlier, the relevant explanatory notes are silent as to whether a structure must support something else (or itself for that matter). Furthermore, it is well known that structures can be self-supporting – witness

34. *Toys “R” Us*, *supra* note 17, at paras. 40-42, citing *Krueger International Canada Inc. v. The Deputy Minister of National Revenue* (14 February 1996), AP-94-357 (CITT) at 5; see also *RBP Imports (Remand)*, *supra* note 32, at para. 22.

35. Exhibit AP-2017-060-08A at 33-42, Vol. 1.

36. *Transcript of Public Hearing* (28 August 2018) at 30.

37. Exhibit AP-2017-060-08A at 27-32, 36-40, Vol. 1; Exhibit AP-2017-060-03A at 17-18, Vol. 1; *Transcript of Public Hearing* (28 August 2018) at 14, 23-24, 30.

38. *Transcript of Public Hearing* (28 August 2018) at 23.

Leonardo da Vinci's famous design of a self-supporting bridge. It follows that whether an article supports something else can be a factor, but should not be a determinative factor in considering whether the article fits within the definition of a "structure".

34. In any event, this case does not turn on the definition of a "structure". Similar to an aluminum-framed glass window that is part of a building or some other structure, the goods in issue are aluminum-framed sliding shower doors that must be incorporated into a shower stall or bathtub enclosure in order to be used. Accordingly, the Tribunal finds that the goods in issue fall within the meaning of the terms "parts of structures (for example . . . doors, windows and their frames)" [emphasis added] under the terms of heading No. 76.10. In this regard, it is notable that the explanatory notes to heading No. 73.08, which apply equally to heading No. 76.10, expressly refer to "sliding doors" as an example of goods covered under the first two categories of heading No. 76.10 (i.e. aluminum structures and parts of structures).³⁹

35. In its analysis of the goods in issue, the Tribunal also referred to the following factors from prior cases involving the analysis of "parts" of structures:⁴⁰

- 1) Whether the goods in issue are incorporated into a structure;
- 2) Whether the goods in issue are necessary and integral to that structure; and
- 3) Common trade usage and practice.

36. While these factors may provide an indication of whether a particular good is part of a structure, the Tribunal has also previously recognized that there is no universal test to determine whether one product is a part of another, and that each case must be determined on its own merits.⁴¹

37. In the present case, the goods in issue meet the above factors for "parts of structures". First, the Installation Guide provides instructions for the installation of the goods in issue, once assembled, into a shower stall or a bathtub enclosure with a shower.⁴² In the case of a shower stall, Mr. Corcos testified that the goods in issue can be installed on an acrylic base (sold separately) or directly onto a "flat floor of any type" including a cement floor.⁴³ The Tribunal is therefore satisfied that the goods in issue are designed to be permanently installed, and incorporated into, a structure – whether it is a shower stall or a bathtub enclosure. Both are constructions made up of various components that are purposefully joined together and then remain in place. Furthermore, Mr. Corcos testified that the walls to which the goods in issue are attached support them.⁴⁴ It should also be noted that nothing in the terms of heading No. 76.10 or the relevant explanatory notes preclude the classification of aluminum parts of structures, even if the structure itself is not aluminum.

38. Second, the goods in issue are shower doors that are integral to the "shower structure" in the sense they prevent water from spraying beyond the enclosure. Mr. Corcos testified that the function of the goods in issue is to "keep the water inside the shower while you take your shower, and also to do so safely", i.e. by virtue of the tempered glass panels.⁴⁵ He further stated that an alternative option would be to install a shower

39. *RBP Imports (FCA)*, *supra* note 329, at paras. 17-18.

40. *Toys "R" Us*, *supra* note 17, at para. 43; *Les Industries et Équipements Laliberté Ltée v. The Deputy Minister of National Revenue* (23 December 1998), AP-97-070 (CITT) [*Laliberté*] at 4.

41. *Toys "R" Us*, *supra* note 17, at para. 45; *Laliberté*, *supra* note 40, at 4.

42. Exhibit AP-2017-060-08A at 31, 40, Vol. 1.

43. *Transcript of Public Hearing* (28 August 2018) at 12-13; Exhibit AP-2017-060-08A at 32, Vol. 1.

44. *Transcript of Public Hearing* (28 August 2018) at 23.

45. *Transcript of Public Hearing* (28 August 2018) at 17.

curtain and rod to serve a similar function. In the Tribunal's view, the possibility of using a shower curtain instead of sliding shower doors does not negate that the goods in issue make an essential contribution to the functionality of the shower structure as a whole, that is, to allow persons to bathe *while keeping water inside the shower or bath*. This functionality is distinct from that of the baby gates in *Toys "R" Us*, which the Tribunal determined were not necessary or integral to the structure (i.e. the wall or baluster) because "although parents or guardians may consider the goods in issue helpful in safeguarding their children from potential injury . . . the goods in issue do not make a contribution to the function of a staircase, baluster or the house as a whole."⁴⁶

39. Third, as indicated above, the evidence indicates that the goods in issue are designed and marketed for use as sliding shower doors in shower stalls or bathtub enclosures.⁴⁷ There is no indication on the record that they are used for any other purpose in practice. Therefore, the Tribunal is satisfied that the common trade usage and practice of the goods in issue supports that they are "parts of" the shower or bathtub structure.

40. In light of the above, the Tribunal finds that the goods in issue are *prima facie* classifiable in heading No. 76.10 as aluminum parts of structures, pursuant to Rules 1 and 2(a) of the *General Rules*.

Heading No. 70.07: Safety glass

41. The Tribunal will next consider whether the goods in issue are *prima facie* classifiable in heading No. 70.07 and, if so, whether this heading provides a more specific description of the goods than heading No. 76.10. As indicated above, the legal notes to Chapter 70 exclude goods made of glass that are covered more specifically by other headings of the tariff nomenclature.

42. Heading No. 70.07 covers "[s]afety glass, consisting of toughened (tempered) or laminated glass." The undisputed evidence is that the goods in issue are made of tempered glass.⁴⁸ However, glass is only one component of the goods in issue; as discussed above, the other components are made of aluminum (the frame and rolling tracks) and plastic (the wheels for the sliding doors). Accordingly, the terms of heading No. 70.07 do not describe the goods in issue as a whole.⁴⁹

43. Indeed, OVE did not argue that the goods in issue, as a whole, are *prima facie* classifiable in heading No. 70.07. As indicated above, its position is that Rule 3 of the *General Rules* must be applied because these are composite goods made up of components that are *prima facie* classifiable under different headings. However, given the Tribunal's finding that the classification of the goods in issue can be resolved under Rules 1 and 2(a) of the *General Rules* (i.e. in heading No. 76.10), there is no need to proceed to Rule 3 in this case.

Heading No. 70.20: Other articles of glass

44. Heading No. 70.20 covers "other articles of glass". According to the explanatory notes to that heading, it covers glass articles (including glass parts of articles) not covered by other headings of Chapter 70 or any other chapter. In other words, it is a residual heading. The explanatory notes further state that glass

46. *Toys "R" Us*, *supra* note 17, at paras. 52-53.

47. *Transcript of Public Hearing* (28 August 2018) at 11.

48. *Transcript of Public Hearing* (28 August 2018) at 12; Exhibit AP-2017-060-08A at 30, Vol. 1.

49. Nor do the explanatory notes provide for coverage under heading No. 70.07 of articles that comprise both glass and non-materials, unlike the express provision in the explanatory notes to heading No. 73.08 (which apply equally to heading No. 76.10) that the goods sometimes incorporate products of other headings.

articles of heading No. 70.20 may be combined with materials other than glass, provided they retain the essential character of glass articles.

45. Neither party argued that heading No. 70.20 applies to the goods in issue. Nevertheless, the CBSA filed the Classification Opinion, in which a glass shower enclosure was classified in heading No. 70.20, for the Tribunal's consideration given that there appeared to be some similarities to the goods in issue. The Classification Opinion provides a brief description of the shower enclosure in question, as follows:⁵⁰

7020.00 Glass shower enclosure, with side entry door, made up of four panels of 4 mm-thick tempered safety glass, and the following assembly components: two aluminum frame sections, two top and bottom rails, seals, wheels and two small metal handles. Once assembled, the panels form an aluminium semi-framed shower enclosure, with a sliding door and a footprint size of: 885 mm x. 885 mm, height: 1850 mm.

The model is presented without a shower tray.

Application of [General Rules] 1 and 3(b).

46. Ultimately, both parties argued that the Classification Opinion should be disregarded in the present case. The CBSA submitted that the goods in issue are different from the goods described in the Classification Opinion. Specifically, the CBSA argued that the Classification Opinion does “not refer to a shower door but rather to a glass shower enclosure.”⁵¹ It further noted that “doors” are specifically provided for in heading No. 76.10 as an example of “aluminium structures or parts of structures”, and thus is distinguishable from the enclosures described in the Classification Opinion, for which there is no similar express provision in the explanatory notes. Meanwhile, OVE maintained that the goods are more specifically described in heading 70.07.⁵² OVE also submitted that the absence of any analysis as to how the subject goods were classified in heading 70.20 is sufficient reason to depart from the Classification Opinion.⁵³

47. As indicated above, the Tribunal will respect WCO classification opinions unless there is a sound reason to do otherwise.⁵⁴ In the present case, the Tribunal finds that there are sound reasons to not apply the Classification Opinion in question to the classification of the goods in issue. In this regard, it accepts the CBSA's submission that despite some apparent similarities in the components that make up both goods, a key distinction is that the goods in issue are sliding shower *doors*, whereas the Classification Opinion describes a shower enclosure. More importantly, however, is that the Classification Opinion does not provide reasons for the conclusion that heading No. 70.20 applies pursuant to Rule 3(b) of the *General Rules*. In the Tribunal's view, this is significant, given that the explanatory notes to that heading provide that it only applies if the goods are *not* included in another heading of Chapter 70 or another chapter of the nomenclature. Without reasons, it is unclear what other headings were considered as part of the WCO's analysis; for example, there is no indication of whether or how heading No. 76.10 was addressed in the classification analysis. Furthermore, the Classification Opinion provides no explanation as to how it was determined that classification could not be resolved pursuant to Rules 1, 2 or 3(a), before proceeding to the application of Rule 3(b).

50. Exhibit AP-2017-060-17, Vol. 1A.

51. Exhibit AP-2017-060-22 at 3, Vol. 1A.

52. *Transcript of Public Hearing* (28 March 2019) at 20-21.

53. Exhibit AP-2017-060-23 at paras. 12-17, Vol. 1A.

54. See paragraph 16. During these proceedings, the Federal Court of Appeal issued its decision in *Best Buy*, *supra* note 7, which affirmed (at para. 4) that the Tribunal should respect WCO opinions unless there is “sound reason” to do otherwise.

48. Accordingly, the Tribunal maintains its conclusion, on the basis of the preceding analysis, that the goods in issue can be classified in heading No. 76.10 pursuant to Rules 1 and 2(a), making resort to Rule 3 unnecessary. Pursuant to Rules 1 and 2(a), the assembled goods in issue could potentially meet the terms of residual heading No. 70.20 to the extent that they are articles made of glass, but they are nevertheless *prima facie* excluded from the heading by virtue of its explanatory notes because they are specifically covered by a heading of another chapter, namely, heading No. 76.10. In this regard, the residual (or catch-all, as it is sometimes called) and general nature of the terms of heading No. 70.20 can be distinguished from the terms “aluminum structures . . . and parts of structures (for example . . . doors and windows and their frames)” of heading No. 76.10, which are more specific.⁵⁵ Therefore, the goods in issue are not *prima facie* classifiable in heading No. 70.20.

Subheading and tariff item classification

49. Pursuant to Rule 6 of the *General Rules* and Rule 1 of the *Canadian Rules*, it follows that the goods in issue are properly classified under tariff item No. 7610.10.00 as aluminum structures (excluding prefabricated buildings of heading No. 94.06) and parts of structures (doors, windows and their frames, and thresholds for doors).

DECISION

50. The appeal is dismissed.

Peter Burn
Peter Burn
Presiding Member

55. The fact that the goods in issue might also, at the tariff item level, be classified under a residual tariff item (7610.10.00) does not render heading No. 76.10 less specific.

ANNEX

GENERAL RULES FOR THE INTERPRETATION OF THE HARMONIZED SYSTEM

Classification of goods in the Nomenclature shall be governed by the following principles:	Le classement des marchandises dans la Nomenclature est effectué conformément aux principes ci-après :
<p style="text-align: center;">RULE 1</p> <p>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.</p>	<p style="text-align: center;">RÈGLE 1</p> <p>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.</p>
<p style="text-align: center;">RULE 2</p> <p>(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.</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 2</p> <p>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 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 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</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</p>

<p>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>	<p>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 considération.</p>
...	...

RELEVANT TARIFF NOMENCLATURE AND NOTES

The schedule to the *Customs Tariff* (2013) sets out tariff item No. 7610.10.00 as follows:

<p style="text-align: center;">Section XV BASE METALS AND ARTICLES OF BASE METAL ... Chapter 76 ALUMINUM AND ARTICLES THEREOF ...</p> <p>76.10 Aluminum structures (excluding prefabricated buildings of heading 94.06) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); aluminum plates, rods, profiles, tubes and the like, prepared for use in structures.</p> <p>7610.10.00 -Doors, windows and their frames and thresholds for doors</p> <p>7610.90 -Other</p> <p>7610.90.10 --For use in Canadian manufactures</p> <p>7610.90.90 --Other</p>	<p style="text-align: center;">Section XV MÉTAUX COMMUNS ET OUVRAGES EN CES MÉTAUX ... Chapitre 76 ALUMINIUM ET OUVRAGES EN ALUMINIUM ...</p> <p>76.10 Constructions et parties de constructions (ponts et éléments de ponts, tours, pylônes, piliers, colonnes, charpentes, toitures, portes et fenêtres et leurs cadres, chambranles et seuils, balustrades, par exemple), en aluminium, à l'exception des constructions préfabriquées du n° 94.06; tôles, barres, profilés, tubes et similaires, en aluminium, préparés en vue de leur utilisation dans la construction.</p> <p>76.10.10 -Portes, fenêtres et leurs cadres, chambranles et seuils</p> <p>7610.90 -Autres</p> <p>7610.90.10 --Devant servir à la fabrication de produits canadiens</p> <p>7610.90.90 --Autres</p>
--	---

There are no relevant section or chapter notes. The relevant explanatory notes to heading No. 76.10 provide as follows:

The provisions of the Explanatory Notes to heading 73.08 apply, *mutatis mutandis*, to this heading.

In the case of aluminium, structural parts are sometimes bonded together with synthetic resins or rubber compounds instead of being fixed by the ordinary methods of riveting, bolting, etc.

In view of their lightness, aluminum and its alloys are sometimes used instead of iron or steel in the manufacture of structural frameworks, ships' superstructures, bridges, sliding doors, electric grid or radio pylons, telescopic pit props, door or window frames, railings, etc.

The explanatory notes to heading No. 73.08 provide in relevant part as follows:

This heading covers complete or incomplete metal structures, as well as parts of structures. For the purpose of this heading, these structures are characterised by the fact that once they are put in position, they generally remain in that position. They are usually made up from bars, rods, tubes, angles, shapes, sections, sheets, plates, wide flats including so-called universal plates, hoop, strip, forgings or castings, by riveting, bolting, welding, etc. Such structures sometimes incorporate products of other headings such as panels of woven wire or expanded metal of heading 73.14. Parts of structures include clamps and other devices specially designed for assembling metal structural elements of round cross-section (tubular or other). These devices usually have protuberances with tapped holes in which screws are inserted, at the time of assembly, to fix the clamps to the tubing.

Apart from the structures and parts of structures mentioned in the heading, the heading also includes products such as:

Pit head frames and superstructures; ... shutters, gates, sliding doors; assembled railings and fencing

The schedule to the *Customs Tariff* (2013) sets out the relevant tariff items under Chapter 70 as follows:

Section XIII ARTICLES OF STONE, PLASTER, CEMENT, ASBESTOS, MICA OR SIMILAR MATERIALS; CERAMIC PRODUCTS; GLASS AND GLASSWARE . . . Chapter 70 GLASS AND GLASSWARE . . .	Section XIII OUVRAGES EN PIERRES, PLÂTRE, CIMENT, AMIANTE, MICA OU MATIÈRES ANALOGUES; PRODUITS CÉRAMIQUES; VERRE ET OUVRAGES EN VERRE . . . Chapitre 70 VERRE ET OUVRAGES EN VERRE . . .
70.07 Safety glass, consisting of toughened (tempered) or laminated glass. -Toughened (tempered) safety glass:	70.07 Verre de sécurité, consistant en verres trempés ou formés de feuilles contre-collées. -Verres trempés :
7007.11.00 - -Of size and shape suitable for incorporation in vehicles, aircraft, spacecraft or vessels	7007.11.00 - -De dimensions et formats permettant leur emploi dans les automobiles, véhicules aériens, bateaux ou autres véhicules
7007.19.00 - -Other	7007.19.00 - -Autres
. . . 70.20 Other articles of glass	. . . 70.20 Autres ouvrages en verre

<p>7020.00.10 -For use in the manufacture of cut or decorated glassware; Glassware having a linear coefficient of expansion not exceeding 5×10^{-6} per Kelvin within a temperature range of 0°C to 300°C; Glass inners for vacuum flasks or for other vacuum vessels</p> <p>7020.00.90 -Other</p>	<p>7020.00.10 -Devant servir à la fabrication d'articles en verre taillé ou décoratif; Verrerie ayant un coefficient de dilatation linéaire n'excédant pas 5×10^{-6} par Kelvin entre 0 °C et 300 °C; Ampoules en verre pour bouteilles isolantes ou pour autres récipients isothermiques, dont l'isolation est assurée par le vide</p> <p>7020.00.90 -Autres</p>
--	---

There are no notes to Section XIII. The relevant legal notes to Chapter 70 read as follows:

This Chapter covers glass in all forms and articles of glass (**other than** goods excluded by Note 1 to this Chapter or covered more specifically by other headings of the Nomenclature).

The relevant explanatory notes to heading No. 70.07 read as follows:

A characteristic of toughened safety glass is that under the effect of shock it breaks into small pieces without sharp edges or even disintegrates, thus reducing the danger of injury from flying fragments. . . .

Because of these qualities these types of glass are used in motor car windscreens and windows, in doors, in ships' portholes, in protective goggles for industrial workers or drivers, and for eyepieces for gas masks or divers' helmets.

The relevant explanatory notes to heading No. 70.20 read as follows:

This heading covers glass articles (including glass parts of articles) **not covered** by other headings of this Chapter or of other Chapters of the Nomenclature.

These articles remain here even if combined with materials other than glass, **provided** they retain the essential character of glass articles.