Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2019-006

Ratana International Ltd.

v.

President of the Canada Border Services Agency

Decision and reasons issued Wednesday, March 18, 2020

Canada

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IN THE MATTER OF an appeal heard on November 26, 2019, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF two decisions of the Canada Border Services Agency, dated February 26, 2019, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

RATANA INTERNATIONAL LTD. **Appellant**

AND

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

DECISION

The appeal is allowed.

Georges Bujold

Georges Bujold
Presiding Member

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	November 26, 2019
Tribunal Panel:	Georges Bujold, Presiding Member
Support Staff:	Sarah Perlman, Counsel

PARTICIPANTS:

Appellant	**Counsel/Representatives**
Ratana International Ltd.	Marco Ouellet Jeffrey Goernert
Respondent	**Counsel/Representative**
President of the Canada Border Services Agency	Jennifer Bond

WITNESSES:

Joanna Leung Vice President, Business Development Ratana International Ltd.	Steven Ngai Marketing Director Ratana International Ltd.

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] This is an appeal filed by Ratana International Ltd. (Ratana) under subsection 67(1) of the *Customs Act*[1] from two decisions made by the President of the Canada Border Services Agency (CBSA) on February 26, 2019, pursuant to subsection 60(4) of the *Act*.

[2] The appeal relates to advance rulings regarding the tariff classification of various models of chairs and ottomans (the goods in issue).

[3] The issue in this appeal is whether the goods in issue are classifiable under tariff item Nos. 9401.71.10 and 9401.79.10 of the schedule to the *Customs Tariff*[2] as other seats with metal frames, upholstered or other, for domestic purposes, as determined by the CBSA, or under tariff item Nos. 9401.71.90 and 9401.79.90 as other seats with metal frames, upholstered or other, for other purposes, as claimed by Ratana.

PROCEDURAL HISTORY

[4] Ratana filed two requests for advance ruling on the tariff classification of the goods in issue with the CBSA. The CBSA subsequently issued advance rulings pursuant to paragraph 43.1(1)(c) of the *Act*, classifying the goods in issue under tariff item Nos. 9401.71.10 and 9401.79.10.

[5] On August 10, 2018, Ratana requested a review of the advance rulings under subsection 60(2) of the *Act*. The CBSA confirmed the original advance rulings on February 26, 2019.

[6] On May 3, 2019, Ratana filed this appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

[7] On November 26, 2019, the Tribunal held a public hearing in Ottawa, Ontario. Ratana called Ms. Joanna Leung, Vice President of Business Development for Ratana, and Mr. Steven Ngai, Marketing Director for Ratana, as lay witnesses. The CBSA called no witnesses.

DESCRIPTION OF THE GOODS IN ISSUE

[8] The goods in issue are Alassio Collection seats, which include corner seats, two-seaters with extended table tops, club chairs, chairs without arms, seater left-arm chairs, seater right-arm chairs, and ottomans.

[9] At the time of importation, the goods in issue consist of a powder-coated extruded aluminum frame with four legs, as well as backrests and armrests for specific models. The backrests and armrests are covered by a layer of foam and a waterproof nylon fabric. In Canada, the backrests and armrests are covered with fabric of the consumer's choice, and cushions are added to the goods in issue.

LEGAL FRAMEWORK

[10] 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

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1 R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].
2 S.C. 1997, c. 36.

Harmonized System) developed by the World Customs Organization (WCO).[3] 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.

[11] Subsection 10(1) of the *Customs Tariff* provides that the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*[4] and the *Canadian Rules*[5] set out in the schedule.

[12] 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.

[13] 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*[6] and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,[7] published by the WCO. While the classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.[8]

[14] The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the *General Rules* as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. As the Supreme Court of Canada indicated in *Igloo Vikski*, it is "only where Rule 1 does not conclusively determine the classification of the good that the other General Rules become relevant to the classification process."[9]

[15] 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.[10] The final step is to determine the proper tariff item.[11]

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

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

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

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

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

8 See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, and *Canada (Attorney General) v. Best Buy Canada Inc.*, 2019 FCA 20 (CanLII) at para. 4.

9 *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38, [2016] 2 RCS 80 [*Igloo Vikski*] at para. 21.

10 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."

11 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.

[16] The relevant tariff nomenclature is as follows:

SECTION XX: MISCELLANEOUS MANUFACTURED ARTICLES

CHAPTER 94

FURNITURE; BEDDING, MATTRESSES, MATTRESS SUPPORTS, CUSHIONS AND SIMILAR STUFFED FURNISHINGS; LAMPS AND LIGHTING FITTINGS, NOT ELSEWHERE SPECIFIED OR INCLUDED; ILLUMINATED SIGNS, ILLUMINATED NAME-PLATES AND THE LIKE; PREFABRICATED BUILDINGS

94.01 Seats (other than those of heading 94.02), whether or not convertible into beds, and parts thereof.

. . .

-Other seats, with metal frames:

9401.71 **- -Upholstered**

9401.71.10 - - -For domestic purposes

9401.71.90 - - -Other

9401.79 **- -Other**

9401.79.10 - - -For domestic purposes

9401.79.90 - - -Other

[17] The explanatory notes to subheading No. 9401.71 provide as follows, in relevant part:

> "Upholstered seats" are those having a soft layer of, for example, wadding, tow, animal hair, cellular plastics or rubber, shaped (whether or not fixed) to the seat and covered with a material such as woven fabric, leather or sheeting of plastics. Also classified as upholstered seats are seats the upholstering materials of which are not covered or have only a white fabric cover which is itself intended to be covered (known as upholstered seats "in muslin"), seats which are presented with detachable seat or back cushions and which could not be used without such cushions, and seats with helical springs (for upholstery).

TRIBUNAL'S ANALYSIS

[18] The parties agree that the goods in issue are classifiable in subheadings No. 9401.71 and 9401.79 as other seats, with metal frames, upholstered or other.[12] Applying the *General Rules*, the Tribunal finds that the goods in issue are indeed correctly classified in subheading No. 9401.71

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[12] According to the evidence, at the time of importation, while the chairs in issue have backrests and/or armrests that are covered by upholstery (foam and waterproof nylon fabric) and are therefore classifiable as "upholstered" (subheading No. 9401.71), the ottomans in issue consist only of metal frames and legs and are classifiable as "other" (subheading No. 9401.79).

(which covers the goods in issue that are upholstered) and subheading No. 9401.79 (which covers those that are not). Therefore, the sole issue in this appeal concerns the classification of the goods in issue at the tariff item level, which specifically requires determining whether the goods in issue are for domestic purposes or for other purposes.[13]

[19] As stated in *Canac*,[14] the appellant bears the burden to demonstrate that the CBSA's classification of the goods in issue as "for domestic purposes" is incorrect. In addition, because the tariff item classifications submitted by Ratana are residual ("other") categories, they "can only apply if the goods in issue cannot be classified under a more specific category", namely, the "domestic purposes" category.[15]

[20] The Tribunal has previously stated that goods will be "for domestic purposes" where they are primarily intended for domestic or household purposes.[16] Tribunal precedents also make it clear that an appellant can discharge its burden of showing that the goods are not primarily intended for domestic purposes, and therefore *cannot* be classified in the "domestic purposes" category, in one of two ways:

- by establishing that the goods in issue are equally intended for domestic and non-domestic purposes; or

- by establishing that they are primarily intended for non-domestic purposes.[17]

[21] The test to be applied is that of the *intended* use of the goods in issue, as opposed to their *actual* or *end* use.[18]

[22] The CBSA disputed the legal correctness of this test for determining whether or not goods are primarily intended for domestic purposes. At the hearing, the CBSA specified that it did not oppose the intended use test, its grievance rather being about how the Tribunal evaluated intended use in previous cases.[19] It submitted that, as formulated, the test only requires that the non-domestic use of the goods be more than merely potential, incidental, occasional or ancillary in order for those goods to be equally intended for domestic and non-domestic purposes, and thus to be classified in the

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13 The goods in issue that are for domestic purposes would be classified in tariff item Nos. 9401.71.10 or 9401.79.10, as appropriate. Those that are for other purposes would be correctly classified in tariff item Nos. 9401.71.90 or 9401.79.90, as appropriate.

14 *Canac Marquis Grenier Ltée v. President of the Canada Border Services Agency* (28 February 2017), AP-2016-005 (CITT) [*Canac*] at para. 24. See also *Stylus Sofas Inc., Stylus Atlantic, Stylus Ltd. and Terravest (SF Subco) Limited Partnership v. President of the Canada Border Services Agency* (19 August 2015), AP-2013-021, AP-2013-022, AP-2013-023 and AP-2013-024 (CITT) [*Stylus*] at para. 62.

15 *Canac* at para. 24; *Cycles Lambert Inc. v. President of the Canada Border Services Agency* (28 November 2013), AP-2012-060 (CITT) at para. 29; *Partylite Gifts Ltd. v. The Commissioner of the Canada Customs and Revenue Agency* (16 February 2004), AP-2003-008 (CITT) at 8, noting that a "residual tariff item . . . would only be used if there were no other appropriate tariff items for classification."

16 *IKEA Supply AG v. President of the Canada Border Services Agency* (18 September 2014), AP-2013-053 (CITT) [*IKEA*] at para. 17.

17 *Nouveau Americana DBA Nuevo Americana v. President of the Canada Border Services Agency* (6 March 2019), AP-2017-004 (CITT) [*Nuevo Americana*] at para. 18, aff'd 2019 FCA 318 [*Nuevo FCA*]; *Canac* at para. 25; *Stylus* at para. 63; *IKEA* at para. 18.

18 *Nuevo Americana* at para. 19; *Canac* at para. 25; *Stylus* at para. 64; *IKEA* at para. 17; *6572243 Canada Ltd. O/A Kwality Imports* (3 August 2012), AP-2010-068 [*Kwality Imports*] at para. 43.

19 *Transcript of Public Hearing* at 73.

"other" category. In addition, the CBSA argued that the Tribunal erroneously defined the meaning of the phrase "primarily intended for domestic purposes" by what it is not (i.e. goods either equally intended for domestic and non-domestic purposes or primarily intended for non-domestic purposes).

[23] According to the CBSA, this transforms the "equal intent" aspect of the test into one that is satisfied on the basis of evidence of any non-domestic intent that is more than insignificant. As a result, the CBSA submitted that goods will end up classified in the "other" category as long as there is some evidence of a non-domestic intent, thereby creating an unreasonably high burden for goods to be classified as "for domestic purposes". The CBSA submitted that this application of the "intended use" test unduly narrows the category of goods "for domestic purposes" and deprives this tariff classification of its utility. The CBSA submitted that the Tribunal should rather focus on the fundamental nature of the goods being examined and the meaning of the term "domestic" as applied to the goods rather than who uses them.[20]

[24] The CBSA further submitted that the current formulation of the test is contrary to the intent of the *Customs Tariff* and to the spirit of the *General Rules*, as well as to the relevant jurisprudence from the courts, all of which emphasize the preference of the harmonized system for specificity in tariff classification. The CBSA argued that where the evidence demonstrates that goods are equally intended for domestic and non-domestic purposes, their classification cannot be disposed of under Rule 1. Rather, the CBSA submitted that the proper analysis requires turning to Rule 3(a), which favours specificity in determining the appropriate tariff classification.[21] Following this approach, the CBSA maintained that the "domestic purposes" category would appropriately be preferred over the "other" category.

[25] At the hearing, the CBSA noted that it intended to present similar arguments challenging the Tribunal's application of the relevant legal test to the Federal Court of Appeal in a prior and relevant proceeding, namely, the appeal under section 68 of the *Act* that it filed against the Tribunal's decision in *Nuevo Americana*.[22] It therefore requested that the Tribunal hold its decision in this appeal under reserve, pending the issuance of the Federal Court of Appeal's decision in *Nuevo Americana*. The Tribunal indicated that it would take this request under reserve.[23]

[26] However, on December 18, 2019, while the matter was pending before the Tribunal, the Federal Court of Appeal rendered its judgment and reasons in *Nuevo FCA*. The Tribunal therefore has the benefit of the guidance provided by the Federal Court of Appeal on the test to be applied to determine whether goods are properly classified under the "domestic purposes" or the "other" tariff item.

[27] In this regard, the Court upheld the Tribunal's decision. Accordingly, the Tribunal is unable to accept the CBSA's arguments and finds that there is no reason to depart from the guidance provided by Tribunal precedents on this issue. First, as a matter of law, the Federal Court of Appeal upheld the Tribunal's test as set out above for determining whether an appellant discharged its burden of establishing that the goods are not primarily intended for domestic purposes. The Court

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20 *Transcript of Public Hearing* at 78-84. The CBSA argued that the term "domestic" should apply to goods that could be used in a home or home-like setting.

21 Rule 3(a) provides that "[t]he heading which provides the most specific description shall be preferred to headings providing a more general description."

22 The CBSA informed the Tribunal that its appeal of the *Nuevo Americana* decision was scheduled to be heard by the Federal Court of Appeal on December 17, 2019, that is, three weeks after the Tribunal's hearing in this matter.

23 *Transcript of Public Hearing* at 71-73.

noted that the Tribunal's case law is quite settled that "for domestic purposes" applies only to goods which are primarily intended for domestic purposes, and that this refers to the "intended use" as opposed to the "actual or end use" of the goods.[24] It further stated as follows:

> Again, following its own jurisprudence, the Tribunal noted . . . that to meet its burden, [the appellant] must establish that its chairs: i) were equally intended for domestic and non-domestic purposes, or ii) were primarily intended for non-domestic purposes. I have not been persuaded that this perfectly logical statement is unreasonable.[25]

[28] The Court also rejected the CBSA's argument that goods equally intended for domestic purposes and for other purposes imply that they are classifiable in more than one category, thereby making Rule 3(a) applicable. On this issue, the Tribunal found in *Nuevo Americana* that the CBSA's approach could not be reconciled with the threshold stated above, under which it is not possible to classify goods equally intended for both domestic and non-domestic purposes in both categories. In this regard, the Court stated as follows:

> With due respect to the appellant's view to the contrary, I also conclude that the Tribunal followed the exact approach mandated by the Supreme Court in *Igloo* [*Vikski*] (at paras. 20-29). The Tribunal made it clear that this was not a case where the goods in issue could fall under two classifications. The goods simply could not be categorized as "for domestic purposes". There was no need to resort to Rule 3; it was not relevant.[26]

[29] The Tribunal therefore continues to be of the opinion that Rule 3 is irrelevant in this appeal, as the goods in issue cannot, for tariff classification purposes, be determined to be for *both* domestic and non-domestic purposes.

[30] Second, as a matter of fact, Ratana did not argue in this appeal that the goods in issue are equally intended for domestic and non-domestic purposes. Its position is that they are primarily intended for non-domestic purposes. Clearly, if the evidence indicates that the goods are primarily intended for non-domestic purposes, they cannot, at the same time, be primarily intended for domestic purposes. In this scenario, as it is settled law that "for domestic purposes" applies only to goods which are primarily intended for domestic purposes – an aspect of the test which the CBSA did not dispute and that was, in any event, upheld by the Federal Court of Appeal – the Tribunal would have to allow the appeal.

[31] As such, the Tribunal finds that the CBSA's concern about rendering the "domestic purposes" category meaningless is misplaced in this appeal. In other words, the hypothesis that the CBSA finds worrisome is not relevant on the facts of this case, as the Tribunal can dispose of the appeal without turning to the issue of equal intent.

[32] Against this backdrop, the Tribunal will now examine whether Ratana discharged its burden of demonstrating that the goods in issue are primarily intended for non-domestic purposes. The question of whether or not the goods in issue are intended for domestic purposes is a question of mixed law and fact.[27] Consistent with its own jurisprudence and the guidance provided by the

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24 *Nuevo FCA* at para. 4. See also *Canac* at para. 25; *Stylus* at para. 64; *IKEA* at para. 17; *Kwality Imports* at para. 43.

25 *Nuevo FCA* at para. 6.

26 *Nuevo FCA* at para. 11.

27 *Canac* at para. 26; *IKEA* at para. 19; *Kwality Imports* at para. 47.

Federal Court of Appeal, the Tribunal will consider factors such as the design, characteristics, marketing and pricing of the goods.[28]

Factors

[33] As detailed below, having considered the arguments and evidence before it, the Tribunal finds that the goods in issue are primarily intended for non-domestic purposes and are thus properly classified as other seats with metal frames, upholstered or other, for purposes other than domestic purposes.

Design and Characteristics

[34] Ms. Leung stated that Ratana is the designer of the goods in issue and is also involved in their development and manufacturing processes.[29] The preponderant evidence indicates that the goods in issue were designed with the intent of being used by customers in a commercial setting. In fact, both Ms. Leung and Mr. Ngai stated that Ratana designed the goods in issue with the specific intent that they would be used for a non-domestic purpose, that is, outside of a home, in a commercial setting.[30] They explained that the goods in issue were designed to meet the more stringent demands and requirements of commercial customers. As such, they have characteristics and features that are not typically required by domestic customers, although Ratana may market and sell residential products that have similar constituent materials.[31]

[35] For example, the goods in issue are made of aluminum of a higher gauge, such that their structure can withstand the wear and tear that is associated with the longer hours of use of furniture destined for the commercial market.[32] In this regard, Mr. Ngai's evidence indicates that the goods in issue use aluminum of a heavy gauge (2.0 mm) in terms of wall thickness for the structure and the legs, compared to the lighter gauge (1.2 mm or 1.5 mm) aluminum that is usually used in residential furniture.[33]

[36] Ratana also uses a powder coating, known as "Tiger" coating, which is of a better quality than the more standard type of powder coating normally applied to residential furniture. According to Mr. Ngai, Tiger powder coating is specifically requested by customers who intend to purchase furniture for commercial use.[34]

[37] Moreover, Mr. Ngai stated that the design of the goods in issue is different in that it is very flexible in terms of the various configurations that it allows a customer to choose. As such, customers can use the goods in issue in a variety of settings and spaces and they can accommodate various seating requirements. Mr. Ngai's testimony is that this flexibility suits the demands of commercial customers.[35]

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28 *Nuevo FCA* at para. 5; *Canac* at para. 26; *Stylus* at para. 65; *IKEA* at para. 19.

29 *Transcript of Public Hearing* at 25. Mr. Ngai, as marketing director for Ratana, also indicated that he is involved in product development, from concept to sample making, as well as in the product launch; *Transcript of Public Hearing* at 32-33.

30 *Transcript of Public Hearing* at 25-26, 43-45.

31 *Transcript of Public Hearing* at 27-28, 46, 52.

32 *Transcript of Public Hearing* at 17, 28, 34.

33 Exhibit AP-2019-006-11, Vol. 1 at 22, 25, 27, 29, 48, 97-100; *Transcript of Public Hearing* at 34-36, 43, 48.

34 Exhibit AP-2019-006-11, Vol. 1 at 50-52; *Transcript of Public Hearing* at 17, 28, 43-44.

35 *Transcript of Public Hearing* at 34, 37.

[38] Mr. Ngai testified that the upholstered goods in issue have a waterproof liner on their armrests and backrests. While cushions on residential furniture may also feature waterproof elements, Mr. Ngai stated that the waterproofing material (known as Fiberon) on the goods in issue is very important for commercial customers (e.g. restaurants) because it helps to ensure that the furniture can be ready to use shortly after rain.[36]

[39] Ms. Leung testified that commercial customers will typically require that the furniture be designed and manufactured to meet stringent standards.[37] According to the witnesses' testimony, once in Canada, the goods in issue are covered with a choice of "contract" (i.e. commercial) grade fabrics.[38] The evidence shows that the "Sunbrella" fabrics used on the goods in issue meet California Proposition 65 and are certified to meet the chemical emission requirements for UL GreenGuard Gold certification, which complies with California's Department of Health Services Standard Practice for testing chemical emissions from building products used in schools, offices and other sensitive environments.[39] A Pattern Specification Sheet from Glen Raven for the Sunbrella "Transform" fabric also states that the fabric is soil and stain repellent, which Ms. Leung testified is more relevant in commercial spaces because soiling and staining is more susceptible to happen in that context.[40] Mr. Ngai also testified that Ratana offers "Bella Dura", "Stamskin" and "Batyline" fabrics in addition to the Sunbrella fabrics, which are all used for commercial customers and are as durable as the Sunbrella fabrics.[41]

[40] There is no evidence before the Tribunal that residential furniture is generally designed to meet the above standards. Therefore, the fact that the goods in issue are designed to meet such standards supports the view that their intended use is for non-domestic purposes.

[41] Similarly, the evidence indicates that the goods in issue use reticulated foam, as all of Ratana's luxury outdoor seating collections, which is described as an extremely open cell material that possesses excellent fluid draining features and is durable, germicide, comfortable, and provides optimal support.[42] At the hearing, Mr. Ngai testified that reticulated foam is also used on some of Ratana's furniture that is intended for domestic use.[43] However, on balance, the Tribunal is of the

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36 *Transcript of Public Hearing* at 39, 44, 49.

37 *Transcript of Public Hearing* at 27.

38 *Transcript of Public Hearing* at 26, 37-38, 42. Although the goods in issue are not covered in fabric at the time of importation, the Tribunal finds that the fabrics intended to cover the goods in issue provide an indication of the intended use of the goods.

39 Exhibit AP-2019-006-11, Vol. 1 at 53-59, 69; Exhibit AP-2019-006-11A, Vol. 2 (protected) at 192-197, 207; *Transcript of Public Hearing* at 38, 40. The certificates of compliance with UL GreenGuard for Sunbrella "Canvas" and "Jacquards" state that "[c]ommercial furniture and furnishings are tested in accordance with ANSI/BIFMA M7.1-2011(R2016) and determined to comply with ANSI/BIFMA X7.1-2011(R2016) and ANSI/BIFMA e3-2014e Credit 7.6.1, 7.6.2, and 7.6.3." According to Mr. Ngai, BIFMA is the Business and Institutional Furniture Manufacturers Association, which has established the contract-quality testing standard; *Transcript of Public Hearing* at 32-33.

40 Exhibit AP-2019-006-11, Vol. 1 at 60; Exhibit AP-2019-006-11A, Vol. 2 (protected) at 198; *Transcript of Public Hearing* at 27.

41 Mr. Ngai noted that the Sunbrella, Stamskin and Batyline fabrics come in different grades, and that contract customers would request higher grades; *Transcript of Public Hearing* at 18, 41-42, 44, 47-48, 51.

42 Exhibit AP-2019-006-11, Vol. 1 at 53, 197; Exhibit AP-2019-006-11A, Vol. 2 (protected) at 191, 335; *Transcript of Public Hearing* at 40-41, 44.

43 *Transcript of Public Hearing* at 50-53.

view that the evidence indicates that this material is particularly well suited for high-quality furniture that meets the durability and quality standards expected by commercial customers.

[42] With respect to warranty, Ms. Leung testified that Ratana has two different warranties: one for domestic or residential furniture and another one for "contract" (i.e. commercial) furniture. Ms. Leung indicated that the goods in issue are covered by Ratana's contract furniture warranty.[44] Ratana submitted a copy of its 2018-2019 Contract Furniture Warranty, which provides for three years structural and weaving or finishing limited warranty for extruded aluminum furniture, excluding normal wear and tear. Outdoor cushions are also covered thereunder against manufacturing defects for one year.[45] According to Ms. Leung, this warranty differs from Ratana's residential warranty in that it provides for a longer period of protection, and that it applies to goods for which a higher usage and volume of wear and tear is expected.[46] As such, this evidence also supports the view that the goods in issue are primarily intended for non-domestic purposes.

[43] In sum, having considered the evidence and the parties' arguments, the Tribunal finds that the goods in issue have important characteristics that differentiate them from residential furniture and are specifically designed as high-quality furniture in order to meet the standards and quality expectations of commercial customers.

Marketing

[44] Ratana provided evidence that it has a different marketing strategy for its contract furniture – i.e. furniture designed to be sold to hospitality buyers, such as restaurants, cafes, outdoor patios, cruise lines, etc. – as opposed to the furniture it intends to sell to retailers for domestic use.[47] According to this uncontroverted evidence, the goods in issue are marketed as contract furniture.

[45] Ratana's 2018-2019 "Outdoor Contract Collection" catalogue includes the goods in issue, which are also marketed on Ratana's contract website.[48] The goods in issue are not included in Ratana's residential collection catalogue for 2019-2020, nor are they listed in the residential category on its website.[49]

[46] By and large, the evidence shows that the typical customers that purchase the goods in issue are hospitality buyers or commercial clients. Ratana provided numerous examples of the types of businesses that purchased the goods in issue for use in non-domestic spaces.[50]

[47] As indicated above, it is the *intended use* of the goods in issue that must be proven, not their actual use. Although actual sales are not determinative, they do represent a manifestation of that

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44 *Transcript of Public Hearing* at 15-16, 21, 29.

45 Exhibit AP-2019-006-11, Vol. 1 at 74-77; Exhibit AP-2019-006-11A, Vol. 2 (protected) at 212-215. Certain exclusions apply.

46 *Transcript of Public Hearing* at 29.

47 Exhibit AP-2019-006-20, Vol. 1 at 10-13; *Transcript of Public Hearing* at 12-13, 29; *Transcript of In Camera Hearing* at 8.

48 Exhibit AP-2019-006-11, Vol. 1 at 82, 97-100, 188; Exhibit AP-2019-006-11A, Vol. 2 (protected) at 24, 49, 64, 79, 94, 126, 142, 220, 235-238, 326; *Transcript of Public Hearing* at 15, 16.

49 Exhibit AP-2019-006-20, Vol. 1 at 8; *Transcript of Public Hearing* at 14, 16, 24.

50 Exhibit AP-2019-006-11A, Vol. 2 (protected) at 416-498; Exhibit AP-2019-006-20A, Vol. 2 (protected) at 3-110; *Transcript of Public Hearing* at 7-9; *Transcript of In Camera Hearing* at 2-4, 6-7, 10-11.

intent.[51] Accordingly, the customer lists, invoices and witness testimonies in relation to Ratana's sales show its clear intent and success in selling the goods in issue to overwhelmingly non-domestic consumers. In fact, the evidence indicates that commercial sales represent a sizeable amount of the sales of the goods in issue.[52] Thus, the Tribunal is of the view that the volume of the goods in issue sold to customers in the commercial sector is significant and provides another indicator that they are primarily intended for non-domestic purposes.

[48] There is also ample evidence that Ratana has cultivated relationships with hospitality buyers and interior designers, among others, through participation and presence at contract furniture trade shows, where the goods in issue have been exhibited.[53] Thus, Ratana's marketing efforts and strategy for the goods in issue clearly target commercial customers, not residential retailers or customers.

[49] On the basis of the foregoing, the Tribunal finds that the goods in issue are almost exclusively marketed to commercial customers, which is further evidence that the goods in issue were primarily intended for non-domestic purposes.

Pricing

[50] The Tribunal finds that the pricing of the goods in issue is consistent with Ratana's position that they are primarily intended for non-domestic purposes. The Tribunal finds that the goods in issue are sold on the higher end of the pricing spectrum, which is a reflection of their quality and is consistent with Ratana's argument that the goods in issue are too expensive to be primarily intended for domestic purposes. In this regard, the Tribunal notes that Mr. Ngai stated in his testimony that the goods in issue are sold at the second highest price of all of Ratana's contract collections and that such price is 1.4 to 2.6 times higher than Ratana's residential collections.[54]

[51] On the basis of this evidence, the Tribunal finds that the goods in issue are sold at higher price points than those at which residential furniture is typically sold. Accordingly, pricing is a factor which also supports the view that the goods in issue are not intended for domestic purposes.

CONCLUSION

[52] The Tribunal finds that Ratana has provided sufficient evidence to discharge its burden of establishing that the CBSA incorrectly classified the goods in issue as goods for domestic purposes. Considered as a whole, the evidence regarding their design and characteristics, as well as their marketing and pricing, demonstrates that the goods in issue are intended to be used primarily for non-domestic purposes.

DECISION

[53] For the foregoing reasons, the Tribunal concludes that, pursuant to the *General Rules* and the *Canadian Rules*, the goods in issue should be classified under tariff item Nos. 9401.71.90 and

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51 *Stylus* at para. 88; *Canac* at para. 28.

52 Exhibit AP-2019-006-11A, Vol. 2 (protected) at 415; *Transcript of In Camera Hearing* at 7.

53 Exhibit AP-2019-006-11, Vol. 1 at 271-272; Exhibit AP-2019-006-20, Vol. 1 at 14, 17, 19-25, 32-33, 42-44, 46-48, 53-54, 57, 59-62, 64, 148-150, 155-184; *Transcript of Public Hearing* at 9-12, 22-23.

54 Exhibit AP-2019-006-11A, Vol. 2 (protected) at 416-498; *Transcript of Public Hearing* at 14, 16, 28, 30, 44.

9401.79.90 as other seats with metal frames, upholstered or other, for purposes other than domestic purposes.

[54] The appeal is allowed.

Georges Bujold

Georges Bujold
Presiding Member