



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2018-063

TSC Stores L.P.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Friday, January 3, 2020*

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IN THE MATTER OF an appeal heard on August 1, 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 15, 2018, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

TSC STORES L.P.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Rose Ann Ritcey

Rose Ann Ritcey
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: August 1, 2019
Tribunal Panel: Rose Ann Ritcey, Presiding Member
Support Staff: Heidi Lee, Counsel

PARTICIPANTS:**Appellant**

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STATEMENT OF REASONS

SUMMARY

[1] This is an appeal filed by TSC Stores L.P. (TSC) under subsection 67(1) of the *Customs Act*¹ from a decision by the President of the Canada Border Services Agency (CBSA) dated November 15, 2018, pursuant to subsection 60(4) of the *Act*.

[2] The issue in appeal is whether three models of pop-up gazebos (the goods in issue) are properly classified in heading No. 63.06 of the schedule to the *Customs Tariff*² as tents, as determined by the CBSA, or in heading No. 73.08 as structures of steel, as claimed by TSC.

[3] For the reasons that follow, the Canadian International Trade Tribunal finds that the goods are tents of tariff item No. 6306.22.00, as classified by the CBSA.

PROCEDURAL HISTORY

[4] From 2014 to 2016, TSC imported the goods under various tariff item numbers. On October 3, 2017, and December 10, 2017, TSC applied for a refund of duties pursuant to subsection 74(1) of the *Act* on the basis that the goods are properly classified under tariff item No. 7308.90.00.

[5] The CBSA denied TSC's application for refund and classified the goods under tariff item No. 6306.22.00 as tents of synthetic fibres, pursuant to paragraph 59(1)(a) of the *Act*.

[6] On April 11, 2018, TSC requested a further re-determination of the goods, pursuant to subsection 60(2) of the *Act*.

[7] On November 15, 2018, pursuant to subsection 60(4) of the *Act*, the CBSA rejected TSC's request and maintained its tariff classification determination.

[8] On February 13, 2019, TSC filed the present appeal.

[9] The Tribunal held a public hearing on August 1, 2019, in Ottawa, Ontario.

[10] On August 15, 2019, the Tribunal invited the parties to make additional written submissions on the application of classification opinion No. 6306.22/1 (hereinafter the Classification Opinion), published by the World Customs Organization (WCO), which classifies a "temporary gazebo" pursuant to Rules 1 and 6 of the *General Rules*.

[11] The CBSA filed its additional submission on August 23, 2019. After seeking and receiving an extension of time from the Tribunal, TSC filed its additional submission and reply comments to the CBSA's submission on August 30, 2019. The CBSA filed its reply comments on September 6, 2019.

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

² S.C. 1997, c. 36.

DESCRIPTION OF THE GOODS IN ISSUE

[12] The goods in issue are three models of outdoor “pop-up gazebos”. At the time of importation, the goods are unassembled.

[13] Each model consists of a frame made of commercial-grade steel, a polyester or polyethylene textile canopy roof, temporary spike anchors and a storage bag. The goods have pinch proof sliders and locks to secure the frame in place, and do not have flooring. Both parties submit that the goods are designed for easy assembly.

[14] Model No. 601156 is 10 feet by 10 feet with a camouflage design canopy; No. 601157 is 8 feet by 10 feet; and No. 600724 is 10 feet by 10 feet with walls of netting.

LEGAL FRAMEWORK

[15] 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.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.

[16] 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*⁴ set out in the schedule.

[17] 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.

[18] 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 System⁵ and the Explanatory Notes to the Harmonized Commodity Description and Coding System,⁶ 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.⁷

[19] 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.⁸ For

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.

⁵ WCO, 4th ed., Brussels, 2017.

⁶ WCO, 6th ed., Brussels, 2017.

⁷ *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17.

⁸ *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) [*Igloo Vikski*] at para. 21.

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.⁹ 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

RELEVANT NOMENCLATURE

[20] The relevant tariff classification provisions are as follows:

Chapter 63

OTHER MADE UP TEXTILE ARTICLES; SETS; WORN CLOTHING AND WORN TEXTILE ARTICLES; RAGS

I. -OTHER MADE UP TEXTILE ARTICLES

...

63.06 Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods.

...

-Tents:

6306.22.00 - -Of synthetic fibres

...

Chapter 73

ARTICLES OF IRON OR STEEL

73.08 Structures (excluding prefabricated buildings of heading 94.06) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frame-works, doors and windows and their frames and thresholds for

⁹ *Igloo Vikski* at para. 22.

¹⁰ 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.”

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.

doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel

...

7308.90.00 -Other

[21] The Classification Opinion and the relevant section, chapter and explanatory notes are set out in the Annex to these reasons.

POSITIONS OF THE PARTIES

TSC

[22] TSC submitted that the goods in issue are not tents of heading No. 63.06. According to TSC, a key characteristic of a tent is that its structure and form is achieved by stretching and tightening a fabric cover over tent poles. TSC submitted that the goods do not meet this definition, as they derive their structure and shape from the steel frame. Although TSC acknowledged that the goods are portable, ready-to-assemble shelters that do not remain in the same position and are not used year-round, it argued that these factors do not make the goods into tents.

[23] TSC also argued that the goods are excluded¹² from Chapter 63 by the explanatory notes to that chapter on the basis that the steel frame, which constitutes 70 percent of the value of the good, is more than a mere accessory.

[24] Instead, TSC submitted that the goods are gazebos properly classified as structures of steel in heading No. 73.08. TSC argued that the goods meet the criteria for structures set out in the relevant explanatory notes. It further argued that the explanatory notes do not establish permanency as a condition necessary for a good to be considered a structure and, in any event, that the goods remain in place during their use.

[25] With respect to the Classification Opinion, TSC submitted that the goods in issue are distinguishable from the “temporary gazebo” classified by the Opinion. TSC argued that the goods in issue are more complex, sturdy and expensive than the temporary gazebo. To undertake the comparative analysis, TSC relied on three gazebo products found online that it determined were the same as or similar to the temporary gazebo. TSC also submitted that the Classification Opinion does not provide any reasons for its determination.

CBSA

[26] The CBSA submitted that the goods are tents of heading No. 63.06, as they meet the description of a “tent” in the relevant explanatory notes and as set out in the Tribunal’s jurisprudence. The CBSA argued that the steel frame is a tent accessory and therefore its presence does not affect classification in heading No. 63.06.

[27] The CBSA also submitted that the goods are not structures of heading No. 73.08 as the explanatory notes require a structure to have a degree of permanency. The CBSA argued that the

¹² The Tribunal notes that the explanatory notes to Chapter 63 do not *exclude* goods where the presence of other materials constitutes more than mere trimmings or accessories. Rather, the notes direct that such articles “are classified in accordance with the relative Section or Chapter Notes (General Interpretive Rule 1), or in accordance with the other General Interpretive Rules as the case may be.”

goods do not meet this requirement as they are portable, intended to be taken down after use, and easy to set up and take down.

[28] With respect to the Classification Opinion, the CBSA submitted that it is relevant and should be followed as the goods in issue are materially the same as the temporary gazebos classified by the opinion by nature of their size, purpose, structure and materials.¹³

ANALYSIS

[29] 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.¹⁴

[30] As the goods in issue were imported in an unassembled or disassembled state, and no tariff heading specifically describes the goods as such, the classification of the goods in issue cannot be determined solely by the application of Rule 1 of the *General Rules* and the Tribunal must turn to Rule 2(a).

[31] Accordingly, on the basis of Rule 2(a), the Tribunal will consider whether the goods in issue, once *assembled*, are classifiable in heading Nos. 63.06 or 73.08 through the application of Rule 1, i.e. per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, and having regard to any relevant classification opinions and explanatory notes. It is only if the classification of the goods in issue cannot be determined on this basis that the Tribunal would need to consider the other *General Rules*.¹⁵

[32] For the reasons that follow, the Tribunal finds that the goods are tents of heading No. 63.06 on the basis of Rules 1 and 2(a) and are not *prima facie* classifiable in heading No. 73.08. Both parties made alternative submissions on the application of Rule 3. Given the Tribunal's conclusions, it is not necessary to address them in these reasons.

Heading No. 63.06: "Tents"

[33] At the outset, the Tribunal will briefly address several preliminary considerations for classification in heading No. 63.06.

[34] First, heading No. 63.06 falls in sub-Chapter I of Chapter 63, which covers (1) "made up" articles¹⁶ of (2) any textile fabrics.¹⁷ Although the parties did not make written submissions in this regard, there was no dispute between them that the goods meet these two criteria.¹⁸ Accordingly, the

¹³ The CBSA also relied on a ruling on similar goods by the U.S. Customs and Border Protection (see Exhibit AP-2018-063-05A at p. 132, Vol. 1). The Tribunal notes that such rulings are not binding on the Tribunal and gave the ruling minimal weight (see *Liteline Corporation v. President of the Canada Border Services Agency* (1 February 2016), AP-2014-029 (CITT) at para. 43).

¹⁴ *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (17 September 2013), AP-2012-057 (CITT) at para. 16.

¹⁵ Heading No. 63.06 includes goods which are "not more specifically described" elsewhere in the Nomenclature (see General explanatory note 1 to Chapter 63). If the goods had been *prima facie* classifiable in both headings, the Tribunal would have first considered whether one heading described the goods more specifically than the other. If classification could not be determined on this basis, the Tribunal would then have considered the remaining Rules.

¹⁶ The definition of "made up" is set out in note 7 to Section XI.

¹⁷ See note 1 to Chapter 63.

¹⁸ The canopy component is a synthetic fabric of polyester, i.e. a textile (see Exhibit AP-2018-063-03A at p. 31, Vol. 1). In its written submissions, TSC took the position that the goods are not "made up" as it would be "contrary to the intentions of the provisions", without further explanation (see Exhibit AP-2018-063-03A at para. 5.17, Vol. 1). However, when questioned at the hearing, counsel for TSC responded that the textile

Tribunal is satisfied that the goods are not precluded from classification in sub-Chapter I of Chapter 63 on this basis.

[35] Second, the explanatory notes to Chapter 63 provide as follows:

The classification of articles in [sub-Chapter I] is not affected by the presence of minor trimmings or accessories of . . . metal

Where, however, the presence of these other materials constitutes **more than** mere trimming or accessories, the articles are classified in accordance with the relative Section or Chapter notes (General Interpretative Rule 1), or in accordance with the other General Interpretative Rules as the case may be.

[36] TSC submitted that the steel frame of the goods is more than mere trimming or accessories on the basis that it constitutes more than 70 percent of the value of the good as a whole.¹⁹ The CBSA argued that the steel frame is a tent accessory akin to a tent pole. In support, the CBSA relied on the explanatory note to heading No. 63.06, which provides as follows:

[Tents] are classified in this heading, whether or not they are presented complete with their tent poles, tent pegs, guy ropes or *other accessories*.

[Emphasis added]

[37] The goods in issue have pre-assembled, fold-up frames that are expanded and locked into its open position with sliders.²⁰ In the Tribunal's view, the frames on which the fabric canopy directly sits are akin to tent poles in that they are fashioned either by inserting the steel tubes into one another and connectors²¹ or by simply extending a pre-assembled frame²². The Tribunal therefore finds that the frame is a tent accessory as contemplated by the explanatory note to heading No. 63.06. Accordingly, the steel frame does not affect the classification of the goods in heading No. 63.06.

[38] Further, the instructions for some of the models of the goods in issue refer to stakes or anchors and guy ropes that are used to secure either the frame or the fabric canopy.²³ These are also "accessories" as identified by the explanatory notes.

[39] The Tribunal now turns to the question of whether the goods are "tents".

[40] The explanatory note to heading No. 63.06 reads in relevant part as follows:

component of the goods meets the definition of "made up" set out in note 7(b) to Section XI. Counsel for the CBSA submitted that the canopy meets the definition set out in 7(f).

¹⁹ The Tribunal notes that there is no evidence on the record to support this claim.

²⁰ Exhibit AP-2018-063-03A at p. 31 and 41, Vol. 1; Exhibit AP-2018-063-08A at p. 79, Vol. 1. The CBSA's decision of November 15, 2019, noted that all three models have steel frames that come preassembled in a collapsed form (see Exhibit AP-2018-063-03A at p. 31, Vol. 1). The Tribunal notes that TSC also submitted set-up instructions for a product that could reasonably be model No. 600724 (see Exhibit AP-2018-063-03A at p. 38, Vol. 1). However, during the hearing counsel for TSC confirmed that the Owner's Manual at p. 79 of the appellant's additional authorities is for model No. 600724. This manual provides that the model comes with a pre-assembled frame in collapsed form (*Transcript of Public Hearing* at p. 7).

²¹ Exhibit AP-2018-063-03A at p. 38, Vol. 1.

²² Exhibit AP-2018-063-08A at p. 79, Vol. 1.

²³ Exhibit AP-2018-063-03A at p. 8, Vol. 1; Exhibit AP-2018-063-08A at p. 79-80, 85-86, Vol. 1.

Tents are shelters made of lightweight to fairly heavy fabrics of man-made fibres, cotton or blended textile materials, whether or not coated, covered or laminated, or of canvas. They usually have a single or double roof and sides or walls (single or double), which permit the formation of an enclosure. The heading covers tents of various sizes and shapes, e.g., marquees and tents for military, camping (including backpack tents), circus, beach use.

[41] The examples in the note suggest to the Tribunal that tents are inherently temporary or portable structures, notwithstanding the fact that certain tents could conceivably remain in place for an extended period of time and would not be moved until their intended function was complete (for example, a circus tent or a marquee). The dictionary definitions of “tent” relied on by the parties likewise emphasizes that a tent is a temporary or portable shelter made of fabric supported by poles:

Canadian Oxford Dictionary: “A portable shelter made of cloth, supported by one or more poles and stretched tight by cords or loops attached to pegs driven in the ground”, and

Merriam-Webster Collegiate Dictionary: “A collapsible shelter of fabric (as nylon or canvas) stretched and sustained by poles and used for camping outdoors or as a temporary building; something that resembles a tent or that serves as a shelter”.²⁴

[42] The Tribunal also notes that a “shelter” is defined by the Oxford Dictionary and Merriam-Webster Collegiate Dictionary, respectively, as “a place giving temporary protection from bad weather or danger” and “something that covers or affords protection”.²⁵ However, the explanatory note does not limit classification to a certain type or degree of shelter provided; rather, the examples suggest that the heading covers tents for a variety of uses, from those providing light coverage (such as a beach tent) to tents that provide more substantial shelter (such as a military tent). Similarly, the explanatory note does not require that the form of a tent may only be achieved by stretching fabric over poles, as argued by TSC.

[43] In light of the above, the Tribunal finds that the goods in issue are tents as described by the explanatory note to heading No. 63.06 and supporting dictionary definitions. The goods have fabric canopy roofs and, when assembled, provide shelter from the sun.²⁶ Although model No. 600724 does have walls of netting, in the Tribunal’s view it is not essential for a tent to have sides or walls that permit the formation of an enclosure, based on the wording of the explanatory note.

[44] The Tribunal previously considered the characteristics of a tent in *Rona*.²⁷ As in the present appeal, in *Rona* the Tribunal also considered whether a gazebo-type product was properly classified in heading No. 63.06 or No. 73.08. The *Rona* gazebos were composed of relatively heavy metal panels that attached together to form a metal frame of four pillars that supported a roof framework of metal rods, which was covered by a fabric roof.²⁸ The Tribunal held that the gazebos in that case did not possess the common characteristics of tents as identified in the explanatory notes and in ordinary usage. In particular, the Tribunal noted the following:

²⁴ Exhibit AP-2018-063-03A at p. 101, 103, Vol. 1.

²⁵ Exhibit AP-2018-063-03A at p. 101, 104, Vol. 1.

²⁶ Exhibit AP-2018-063-08A at p. 79, 85, Vol. 1.

²⁷ *Rona Corporation Inc. v. President of the Canada Border Services Agency* (29 February 2008), AP-2006-033 (CIIT) [*Rona*]. In that case, the Tribunal found that goods were structures of heading No. 73.08.

²⁸ *Rona* at paras. 3 and 30.

[The goods] are not assembled with the type of elements referred to as tent accessories in the *Explanatory Notes* (i.e. “their tent poles, tent pegs, guy ropes”). Also, the evidence indicates that assembling the goods in issue is a fairly complex operation that can take up to six hours and that it is recommended that a gazebo be set up in the desired location to avoid moving it after assembly. This suggests that, unlike goods which are referred to as tents in common parlance, the goods in issue are not designed for relatively easy set-up and takedown and are not portable.²⁹

[Footnotes omitted]

[45] The CBSA submitted that the goods in issue in the present appeal are distinguishable from the goods in *Rona* because, unlike the *Rona* gazebos, they are portable and designed for easy assembly and disassembly. While TSC agreed that the goods are portable, ready-to-assemble shelters that do not remain in the same position and are not used year-round, it argued that ease of set up does not render the goods into tents.

[46] In the Tribunal’s view, the goods in issue are distinguishable from the gazebos in *Rona*. The parties agree that the goods are portable,³⁰ and the product literature describes them as temporary structures that should be taken down after use.³¹ The Tribunal also notes that the goods are designed for and marketed as easy to set up and take down (“accomplished within seconds”), unlike the *Rona* gazebos which required a complex assembly operation that could take up to six hours.³² The instructions also direct users to secure the goods to the ground with stakes and ropes. This is again in contrast to the goods in *Rona*, which the Tribunal held were not assembled with the type of elements referred to as tent accessories, e.g. anchors and guy ropes. The Tribunal also notes that the use of stakes conflicts with one of TSC’s submitted dictionary definition of “gazebo”, which refers to a “freestanding” roofed structure.³³

[47] Finally, the Tribunal turns to the Classification Opinion. As noted above, while classification opinions are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.³⁴ In this case the temporary gazebo³⁵ has several similarities to the goods in issue: they are approximately the same size; they consist of a textile canopy placed on top of a steel frame and they are for outdoor use. The temporary gazebos also have plastic feet, which are included in some of the models of goods in issue. However, the temporary gazebo is “not anchored firmly to the ground”, while the goods in issue come with “stakes” and “anchors” to secure them to the ground.³⁶ Nonetheless, on balance, the temporary gazebo appears similar enough to the goods in issue that the Tribunal sees no sound reason to disregard the Classification Opinion in the circumstances of this case, which concurs with its own analysis.

²⁹ *Rona* at para. 30.

³⁰ Exhibit AP-2018-063-03A at paras. 2.8, 5.9, Vol. 1; Exhibit AP-2018-063-05A at para. 30, Vol. 1.

³¹ Exhibit AP-2018-063-08A at p. 79, 85, Vol. 1.

³² *Rona* at para. 30.

³³ Exhibit AP-2018-063-03A at p. 102 and 105, Vol. 1.

³⁴ See section 11 of the *Customs Tariff*, and *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17.

³⁵ The Tribunal notes that it relied solely on the product description as provided in the Classification Opinion and did not give regard to the examples of allegedly similar products submitted by TSC, which TSC admitted were only assumed to be the same as or similar to the temporary gazebos.

³⁶ Exhibit AP-2018-063-03A at p. 38, Vol. 1.

[48] For all the foregoing reasons, the Tribunal finds that the goods are *prima facie* classifiable in heading No. 63.06.³⁷

Heading No. 73.08: “Structures of steel”

[49] The analysis now turns to whether the goods in issue are also *prima facie* classifiable in heading No. 73.08 as structures of steel.³⁸ For the reasons that follow, the Tribunal finds that the goods do not meet the terms of this heading.

[50] The Tribunal recently considered the definition of a “structure” in *OVE Décors*.³⁹ It noted that while the term “structure” is not defined in the Nomenclature, the explanatory notes to heading No. 73.08 provide a starting point. The explanatory notes state, in relevant part, that structures are:

“characterized by the fact that once they are put in position, they generally remain in that position,” and

“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.”⁴⁰

[51] In *OVE Décors*, the Tribunal also looked to dictionary definitions and jurisprudence from the Supreme Court of Canada for further guidance, and concluded the following:

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.⁴¹

[52] In *Rona*, the Tribunal found that the gazebos were structures because more than 50 percent of the value of the goods in issue comprised steel parts, and the goods were made up of steel bars, rods or sections held together by bolts and clips, which met the description set out in the explanatory notes. The Tribunal also found that the goods were designed to be permanent and freestanding, and in this regard noted that consumers generally leave the structure in place year-round and remove only the top and bug net during winter.⁴² Finally, the Tribunal noted that the term “gazebo” is defined, in relevant part, as a “small structure”.⁴³

³⁷ The CBSA also argued that the goods are “marquees”, but given the Tribunal’s finding above, it is not necessary to consider this issue.

³⁸ The Tribunal notes that the goods are not excluded from this heading due to the inclusion of the textile canopy. The explanatory notes to heading No. 73.08 provide that structures “sometimes incorporate products of other headings”.

³⁹ *OVE Décors ULC v. President of the Canada Border Services Agency* (25 June 2019), AP-2017-060 (CITT) [*OVE Décors*].

⁴⁰ *OVE Décors* at para. 28.

⁴¹ *OVE Décors* at para. 30. With respect to the characteristic that a structure must support something else, the Tribunal noted, in *obiter*, that this characteristic arises from a definition of structure from a case considering a “supporting structure” and therefore should not be a determinative factor of whether an article is a structure.

⁴² *Rona* at paras. 37, 39.

⁴³ *Rona* at para. 38.

[53] In the present appeal, the Tribunal notes that the goods appear to be made up of various parts, such as steel bars, rods, tubes, and angles, among others, and may be so made up by riveting, bolting or welding.⁴⁴ The metal frame also supports the canopy roof. However, in the Tribunal's view the goods do not meet the remaining criteria of a structure and, on balance, do not meet the terms of heading No. 73.08.

[54] To begin with, the Tribunal cannot find that the goods meet the requirement that "once they are put in position, they generally remain in that position".⁴⁵ TSC argued that the heading contemplates a spectrum of permanency, but even if it does, it is the Tribunal's view that such a spectrum cannot include the goods in issue. As noted above, the product literature for the goods indicates that the goods are not intended to remain in position after use but should be taken down immediately thereafter:

This gazebo is for sun shade only, not waterproof and not intended to use in the rain . . . Please take a minute to take down the gazebo before rain! . . . This gazebo is NOT a permanent structure. Do not leave the gazebo unattended. Take down and store it away after use . . . Always return the gazebo to the carry bag after use.⁴⁶

Please do not leave your canopy up during [high winds and heavy rain]. . . This is not a permanent structure. This is a temporary structure and is not meant to be left up during inclement weather.⁴⁷

[55] Also, as noted above, the goods in issue are not freestanding but must be secured to the ground with ropes and anchors, unlike the goods in *Rona* and in contrast to the definition of "gazebo" submitted by TSC.⁴⁸ Finally, the Tribunal notes that there is no evidence in this appeal to support TSC's assertion that the metal frame accounts for 70 percent of the value of the good, and the Tribunal finds it difficult on the evidence to characterize the goods as being of substantial size.

[56] For the foregoing reasons, the Tribunal finds that the goods in issue are not structures of heading No. 73.08.

CONCLUSION

[57] The goods in issue are tents of heading No. 63.06 pursuant to Rules 1 and 2(a) of the *General Rules*.

[58] As the goods in issue are undisputedly made of a man-made textile, they are properly classified in tariff item No. 6306.22.00 as tents of synthetic fibres.

⁴⁴ However, this is based merely on observation of the goods in issue. There is no evidence on the record regarding their means of fabrication.

⁴⁵ See explanatory note to heading No. 73.08. TSC submitted that this requirement should be understood as requiring a structure to remain in place for the duration of its purpose, and in this regard relied on the reference to "tubular scaffolding" listed in the explanatory note as a good of a temporary nature covered by heading No. 73.08 (see Exhibit AP-2018-063-03A, Vol. 1 at para. 5.39 and *Transcript of Public Hearing* at p. 22-23). As TSC submitted no evidence to support this interpretation, the Tribunal has no basis on which to consider this submission and declines to interpret the "remain in position" criterion as suggested by TSC.

⁴⁶ Exhibit AP-2018-063-08A at p. 79, Vol. 1.

⁴⁷ Exhibit AP-2018-063-08A at p. 85, Vol. 1.

⁴⁸ Exhibit AP-2018-063-08A at p. 80, Vol. 1; Exhibit AP-2018-063-03A at p. 102 and 105, Vol. 1.

DECISION

[59] The appeal is dismissed.

Rose Ann Ritcey

Rose Ann Ritcey
Presiding Member

ANNEX

1. The relevant Section and Chapter notes are as follows:

SECTION XI**TEXTILES AND TEXTILE ARTICLES****Notes.**

7. For the purpose of this Section, the expression “made up” means:
 - (a) Cut otherwise than into squares or rectangles;
 - (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, table cloths, scarf squares, blankets);
 - (c) Cut to size and with at least one heat-sealed edge with a visibly tapered or compressed border and the other edges treated as described in any other subparagraph of this Note, but excluding fabrics the cut edges of which have been prevented from unravelling by hot cutting or by other simple means;
 - (d) Hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unravelling by whipping or by other simple means;
 - (e) Cut to size and having undergone a process of drawn thread work;
 - (f) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded);
 - (g) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.

Chapter 63**OTHER MADE UP TEXTILE ARTICLES; SETS;****WORN CLOTHING AND WORN TEXTILE ARTICLES; RAGS****Notes.**

1. Sub-Chapter I applies only to made up articles, of any textile fabric.
2. The relevant explanatory notes to this appeal are as follows:

Chapter 63

OTHER MADE UP TEXTILE ARTICLES; SETS;

WORN CLOTHING AND WORN TEXTILE ARTICLES; RAGS

GENERAL

This Chapter includes:

(1) Under headings 63.01 to 63.07 (sub-Chapter I) made up textile articles of any textile fabric (woven or knitted fabric, felt, nonwovens, etc.) which are **not** more specifically described in other Chapters of Section XI or elsewhere in the Nomenclature. (The expression “made up textile articles” means articles made up in the sense defined in Note 7 to Section XI (see also Part (II) of the General Explanatory Note to Section XI).

...

The classification of articles in this sub-Chapter is not affected by the presence of minor trimmings or accessories of furskin, metal (including precious metal), leather, plastics, etc.

Where, however, the presence of these other materials constitutes **more than** mere trimming or accessories, the articles are classified in accordance with the relative Section or Chapter Notes (General Interpretative Rule 1), or in accordance with the other General Interpretative Rules as the case may be.

...

63.06 Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods.

...

(4) **Tents** are shelters made of lightweight to fairly heavy fabrics of man-made fibres, cotton or blended textile materials, whether or not coated, covered or laminated, or of canvas. They usually have a single or double roof and sides or walls (single or double), which permit the formation of an enclosure. The heading covers tents of various sizes and shapes, e.g., marquees and tents for military, camping (including backpack tents), circus, beach use. They are classified in this heading, whether or not they are presented complete with their tent poles, tent pegs, guy ropes or other accessories.

Caravan “awnings” (sometimes known as caravan annexes) which are tent-like structures are also regarded as tents. They are generally made of man-made fibre fabrics or of fairly thick canvas. They consist of three walls and a roof and are designed to augment the living space provided by a caravan.

...

Chapter 73

ARTICLES OF IRON OR STEEL

73.08 Structures (excluding prefabricated buildings of heading 94.06) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frame-works, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel

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. . . .

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

Pit head frames and superstructures; adjustable or telescopic props, tubular props, extensible coffering beams, tubular scaffolding and similar equipment; sluice-gates, piers, jetties and marine moles; lighthouse superstructures; masts, gangways, rails, bulkheads, etc., for ships; balconies and verandahs; shutters, gates, sliding doors; assembled railings and fencing; level-crossing gates and similar barriers; frameworks for greenhouses and forcing frames; large-scale shelving for assembly and permanent installation in shops, workshops, storehouses, etc.; stalls and racks; certain protective barriers for motorways, made from sheet metal or from angles, shapes or sections. . . .

3. The relevant Classification Opinion to this appeal is as follows:

6306.22

1. Temporary gazebo, used outdoors, measuring approximately 3 x 3 x 2.50 m (L x W x H). It consists of a steel tube frame with connecting pieces and plastic feet, and a roof covering the cladding for the four corner posts. The roof covering is a polyethylene-coated plain weave fabric of polypropylene yarns. The coating of the fabric cannot be seen with the naked eye. The individual yarns have an average width of 2.5 mm and an average thickness of 0.05 mm. The gazebo is open on all four sides and is not anchored firmly to the ground.

Application of GIRs 1 and 6