Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2013-057

BSH Home Appliance Ltd.

v.

President of the Canada Border Services Agency

Decision and reasons issued Monday, October 27, 2014

Canada

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IN THE MATTER OF an appeal heard on September 18, 2014, pursuant to subsection 67(1) 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 19, 2013, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

BSH HOME APPLIANCE LTD. **Appellant**

AND

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

DECISION

The appeal is dismissed.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	September 18, 2014
Tribunal Member:	Pasquale Michaele Saroli, Presiding Member
Counsel for the Tribunal:	Laura Little
Acting Senior Registrar Officer:	Haley Raynor

PARTICIPANTS:

Appellant	**Counsel/Representatives**
BSH Home Appliance Ltd.	Michael Sherbo Andrew Simkins Peter Kirby

Respondent	**Counsel/Representative**
President of the Canada Border Services Agency	Dah Yoon Min

WITNESSES:

Mike Peebles Manager—Technical Services BSH Home Appliance Ltd.	Peter Wolanski Manager, Trade Program Appeals Canada Border Services Agency

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by BSH Home Appliance Ltd. (BSH) pursuant to subsection 67(1) of the *Customs Act*[1] from a decision issued by the President of the Canada Border Services Agency (CBSA) pursuant to subsection 60(4), with respect to the tariff classification of seven models of Bosch washers and dryers (the goods in issue).

PROCEDURAL HISTORY

2. In late 2011, BSH applied for several advance rulings in respect of the tariff classification of the goods in issue to seek confirmation of the applicability of tariff item No. 9979.00.00.

3. On January 24 and March 21, 2012, the CBSA issued five advance rulings[2] pursuant to paragraph 43.1(1)(*c*) of the *Act* (the initial advance rulings), classifying three washers[3] under tariff item No. 8450.11.10 and two dryers[4] under tariff item No. 8451.21.00. The CBSA further concluded that those goods were eligible for the benefit of tariff item No. 9979.00.00.

4. In March 2012, BSH began claiming the benefit of tariff item No. 9979.00.00 for importations of the goods in issue, in accordance with the initial advance rulings.

5. BSH also requested, pursuant to subsection 74(1) of the *Act*, refunds of duties paid on importations of the goods in issue dating back four years and not covered by the advance rulings of January 24 and March 21, 2012, on the basis of classification of the goods in issue under tariff item No. 9979.00.00.

6. The CBSA granted BSH's requests for refunds on the basis that the goods in issue were eligible for classification under tariff item No. 9979.00.00. By virtue of subsection 74(1.1) of the *Act*, those decisions were treated as decisions under paragraph 59(1)(*a*).[5]

7. However, on August 3, 2012, the CBSA revoked the five initial advance rulings and replaced them with five new advance rulings[6] (the new advance rulings), which concluded that the goods in issue did not qualify for classification under tariff item No. 9979.00.00.[7] Specifically, the CBSA stated in the new advance rulings that "[a]dditional information from [the CBSA's] Tariff Policy unit in Headquarters regarding the use of tariff code 9979 indicates that [the goods in issue] do not qualify for use with this code."[8]

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1. R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].
2. Advance rulings TRS No. 254086 and TRS No. 254088 (24 January 2012) and advance rulings TRS No. 255170, TRS No. 255169 and TRS No. 255167 (21 March 2012). See Exhibit AP-2013-057-06A, tab 1, Vol. 1A.
3. Bosch washer models WAS24460UC, WAS20160UC and WFL2090UC.
4. Bosch dryer models WTV76100US and WTE86300US.
5. Subsection 74(1.1) of the *Act* reads as follows: "The granting of a refund under paragraph (1)(*c.1*), (*c.11*), (*e*) or (*f*) or, if the refund is based on tariff classification, value for duty or origin, under paragraph (1)(*g*) is to be treated for the purposes of this Act, other than section 66, as if it were a re-determination made under paragraph 59(1)(*a*)."
6. Advance Rulings TRS No. 257391, TRS No. 257389, TRS No. 257388, TRS No. 257393 and TRS No. 257390.
7. Exhibit AP-2013-057-06A, tab 2, Vol. 1A.
8. *Ibid.* at 34.

8. On October 16, 2012, BSH filed a request under subsection 60(2) of the *Act*[9] for a review of the new advance rulings.[10]

9. In light of the new advance rulings, the CBSA invoked paragraph 59(1)(*b*) of the *Act* to recover refunds that fell outside of the effective period of those advance rulings and which were eligible for further re-determination under that paragraph.[11] Between November 28, 2012, and January 2013, the CBSA, pursuant to paragraph 59(1)(*b*), further re-determined that importations of the goods in issue that had been the subject of duty refunds did not qualify for classification under tariff item No. 9979.00.00 and indicated that the amounts payable were due.[12]

10. On February 25, 2013, BSH started submitting requests under subsection 60(1) of the *Act*[13] for further re-determination of the tariff classification of the goods in issue and subsequently informed the CBSA that more requests were forthcoming. In this connection, the parties agreed that BSH would file and that the CBSA would consider the requests for further re-determination as a single-issue-based dispute. It was uncontested, in this regard, that all of BSH's requests for further re-determination by the CBSA were filed within the 90-day period prescribed by subsection 60(1).[14]

11. In one such request filed on June 12, 2013, BSH requested further re-determinations pursuant to subsection 60(1) of the *Act* that covered 188 importations of the goods in issue.[15] Specifically, BSH claimed (a) that the further re-determinations of the CBSA—not having been made on the basis of a properly conducted verification, as required by paragraph 59(1)(*b*)—were issued without legislative authority and (b) that the goods in issue, in any event, qualified for classification under tariff item No. 9979.00.00.

12. On August 15, 2013, the CBSA issued a decision pursuant to subsection 60(4) of the *Act*, affirming the new advance rulings, thereby rejecting BSH's October 16, 2012, request for a review. That decision was never appealed to the Canadian International Trade Tribunal (the Tribunal).

13. On November 19, 2013, the CBSA issued its decision under subsection 60(4) of the *Act* in respect of the June 12, 2013, request for further re-determinations, in which it determined that (a) the goods in issue did not qualify for the benefit of tariff item No. 9979.00.00 and (b) BSH's claim that the CBSA lacked the legislative authority to make the underlying paragraph 59(1)(*b*) decisions fell outside its scope of review under section 60.[16]

14. Prior to its request for further re-determination of June 12, 2013, BSH had already filed separate requests for further re-determinations in respect of an additional 346 importations of the goods in issue.[17]

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9. Under subsection 60(2) of the *Act*, "[a] person may request a review of an advance ruling made under section 43.1 within ninety days after it is given to the person."
10. Exhibit AP-2013-057-06A at 42, Vol. 1A.
11. *Transcript of Public Hearing*, 18 September 2014, at 81.
12. Exhibit AP-2013-057-04 at 62, Vol. 1; Exhibit AP-2013-057-10A at 2, Vol. 1B.
13. Under subsection 60(1) of the *Act*, "[a] person to whom notice is given under subsection 59(2) in respect of goods may, within ninety days after the notice is given, request a re-determination or further re-determination of . . . tariff classification . . . . The request may be made only after all amounts owing as duties and interest in respect of the goods are paid or security satisfactory to the Minister is given in respect of the total amount owing."
14. Exhibit AP-2013-057-10A at 2, Vol. 1B.
15. Exhibit AP-2013-057-06A, tab 8, Vol. 1A; Exhibit AP-2013-057-06A at 66-69, Vol. 1A.
16. Exhibit AP-2013-057-01, Vol. 1.
17. Exhibit AP-2013-057-04 at 39-46, Vol. 1.

In this regard, the parties agreed that the CBSA's decision of November 19, 2013, was understood to apply to 534 importations in total, all of which pertained to the goods in issue, and were being considered together by the CBSA.[18]

15. The notice of appeal filed with the Tribunal by BSH on February 10, 2014, is in respect of the CBSA's further re-determination of November 19, 2013.

16. On July 28, 2014, the parties filed an agreed statement of facts.[19]

17. On July 31, 2014, the Tribunal received a request from MSR Customs & Commodity Tax Group (MSR) to intervene in this appeal. MSR submitted that it acts as a customs agent for a number of importers whose interests would be directly affected by the Tribunal's decision in the present appeal. In particular, MSR argued that its clients, like BSH, did not receive any notice from the CBSA regarding the conduct of a verification under section 42.01 of the *Act* prior to the issuance of re-determinations or further re-determinations under paragraph 59(1)(*b*), thereby rendering those decisions invalid. MSR argued that its intervention was necessary because BSH's submission did not fully canvass the legal issues in relation to section 42.01.

18. On August 5, 2014, after considering the request by MSR and the comments of the parties, both of which were opposed to having MSR intervene in the appeal, the Tribunal found that the grounds for intervention, as set out in section 40.1 of the *Canadian International Trade Tribunal Rules*,[20] were not met and, thus, denied the request. Specifically, MSR failed to persuade the Tribunal that its intervention in the proceeding was necessary to assist in the resolution of the appeal. In this regard, the Tribunal anticipated that the legal issues in relation to section 42.01 of the *Act*, as referred to by MSR, would be appropriately dealt with by the parties and the Tribunal in the normal course of the proceeding, without the need to address submissions from MRS on behalf of unidentified importers.

19. While both parties originally indicated that they did not intend to call any witnesses at the hearing, the Tribunal, by correspondence dated July 31, 2014, directed the CBSA to present a witness who had knowledge of what transpired at every stage of its proceedings in respect of this matter and, by correspondence dated August 5, 2014, directed BSH to present a witness who could speak to the goods in issue.

20. The Tribunal held a hearing in Ottawa, Ontario, on September 18, 2014, at which two witnesses testified: Mr. Mike Peebles, Manager—Technical Services, at BSH, and Mr. Peter Wolanski, Manager, Trade Program Appeals, CBSA.

GOODS IN ISSUE

21. The parties agreed and the Tribunal accepts that the goods in issue comprise seven models of stackable, front-loading washers and dryers, which are part of the Axxis® series of Bosch products.[21] Specifically, the goods in issue consist of the following models:

- Bosch Axxis One® Washer (model WAE20060UC)

18. Exhibit AP-2013-057-10A at 2, Vol. 1B.
19. Exhibit AP-2013-057-10A, Vol. 1B.
20. S.O.R./91-499.
21. Exhibit AP-2013-057-01, Vol. 1; Exhibit AP-2013-057-04 at 26, Vol. 1; Exhibit AP-2013-057-11A at 3, 5, 7, 9, 11, 13, Vol. 1B.

- Bosch Axxis® Washer (model WAS20160UC)
- Bosch Axxis® Plus Washer (model WAS24460UC)
- Bosch Axxis® Washer (model WFL2090UC)
- Bosch Axxis One® Condensation Dryer (model WTC82100US)
- Bosch Axxis One® Condensation Dryer (model WTE86300US)
- Bosch Axxis® Vented Dryer (model WTV76100CN)

STATUTORY FRAMEWORK

22. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*,[22] which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).[23] 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.

23. 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*[24] and the *Canadian Rules*[25] set out in the schedule.

24. 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.

25. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the Compe*ndium of Classification Opinions to the Harmonized Commodity Description and Coding System*[26] and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,[27] published by the WCO. While the *Classification Opinions* and the *Explanatory Notes* are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.[28]

26. 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. If the goods in issue cannot be classified at the heading level through the application of Rule 1, then the Tribunal must consider the other rules.[29]

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22. S.C. 1997, c. 36.
23. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.
24. S.C. 1997, c. 36, schedule [*General Rules*].
25. S.C. 1997, c. 36, schedule.
26. World Customs Organization, 2d ed., Brussels, 2003 [*Classification Opinions*].
27. World Customs Organization, 5th ed., Brussels, 2012 [*Explanatory Notes*].
28. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that the *Explanatory Notes* be respected unless there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to the *Classification Opinions*.
29. Rules 1 through 5 of the *General Rules* apply to classification at the heading level.

27. 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.[30] The final step is to determine the proper tariff item.[31]

ANALYSIS

28. The issues in this appeal are the following:

- as a preliminary matter, whether the CBSA's further re-determinations under paragraph 59(1)(*b*) of the *Act*, which underpinned its subsection 60(4) decision under appeal, are invalid by reason of a failure on the part of the CBSA to act on the basis of a properly conducted "verification", within the meaning of that term for the purposes of paragraph 59(1)(*b*); and
- whether the goods in issue, in addition to being classified in Chapter 84 of the schedule to the *Customs Tariff*, fall within the scope of tariff item No. 9979.00.00 as "[g]oods specifically designed to assist persons with disabilities in alleviating the effects of those disabilities, and articles and materials for use in such goods" and thereby qualify for duty-free treatment.

29. As previously noted by the Tribunal,[32] in appeals under section 67 of the *Act*, the appellant, by operation of law, bears the overall burden of demonstrating that the CBSA incorrectly classified goods.[33] This onus on the appellant extends to demonstrating that the CBSA did not comply with the provisions of the *Act*.[34] For purposes of the present case, this means that BSH bears the burden of demonstrating (a) that the CBSA failed to further re-determine the tariff classification of the goods in issue in accordance with the requirements of paragraph 59(1)(*b*) and (b) that, in any event, the conditions of tariff item No. 9979.00.00 are met and that the goods in issue therefore qualify for the benefit of that provision. As recognized by

30. 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 the above Rules [i.e. Rules 1 through 5] . . ." and that ". . . the relative Section and Chapter Notes also apply, unless the context otherwise requires."
31. 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.
32. See, for example, *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (23 May 2014), AP-2011-033 (CITT) at para. 25; *Eastern Division Henry Schein Ash Arcona Inc. v. President of the Canada Border Services Agency* (19 February 2014), AP-2013-026 (CITT) [*Eastern Division*] at para. 14; *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (17 September 2013), AP-2012-057 (CITT) at para. 23; *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (29 July 2013), AP-2012-041 and AP-2012-042 (CITT) at para. 43; *Wolseley Canada Inc. v. President of the Canada Border Services Agency* (17 June 2013), AP-2012-066 (CITT) [*Wolseley*] at para. 37.
33. In this regard, subsection 152(3) of the *Act* provides as follows: ". . . in any proceeding under this Act, the burden of proof in any question relating to . . . (*c*) the payment of duties on any goods, or (*d*) the compliance with any of the provisions of this Act or the regulations in respect of any goods lies on the person, other than Her Majesty, who is a party to the proceeding . . . ." The present appeal is a proceeding under subsection 67(1). Moreover, because duty liability on imported goods depends upon their tariff classification, tariff classification is a question "relating to" the payment of duties on goods, within the meaning of paragraph 152(3)(*c*). With the conditions of paragraph 152(3)(*c*) having been met, the burden of proof therefore resides with BSH.
34. Paragraph 153(3)(*d*) of the *Act*.

BSH,[35] within this overarching burden, the appellant bears the initial onus of establishing its case on a *prima facie* basis, at which point the onus would shift to the respondent to rebut same.[36]

First Issue: Validity of the Further Re-determinations Under Paragraph 59(1)(*b*) of the *Act*

30. The Tribunal is of the view that its authority under section 67 of the *Act* allows it to examine a purported further re-determination made by the CBSA under paragraph 59(1)(*b*) insofar as it underpins the validity of the CBSA's decision under section 60 from which an appeal to the Tribunal is directly made.[37] The Tribunal notes that such authority was not contested by the parties.[38]

31. As noted above, BSH submitted that the CBSA's further re-determinations of tariff classification lacked legislative authority because they were not made on the basis of a properly conducted verification, as required by paragraph 59(1)(*b*) of the *Act*. It therefore argued that they should be set aside by the Tribunal.[39]

32. Specifically, BSH contended that the CBSA improperly relied on records from a prior decision-making process (i.e. the new advance rulings) as the basis for its further re-determinations under paragraph 59(1)(*b*) without conducting a separate verification of tariff classification, as required for the purposes of that paragraph.[40] BSH further submitted that the CBSA, contrary to its own policies, did not provide BSH with any written notice of the purported verification.[41] In this connection, BSH claimed that the CBSA, in violation of fundamental principles of administrative law, failed to ensure that its decision-making process was fair, transparent and non-arbitrary and that it upheld the importer's right to be heard.[42]

33. The CBSA responded that its officers had the regulatory authority to review the accounting records of BSH for the purposes of a verification of tariff classification, even though that information had been filed in relation to the earlier five advance rulings, and that the CBSA had no obligation to provide any further notice of such verification in the particular circumstances of this case—especially in light of the temporal

35. Exhibit AP-2013-057-04 at paras. 16-18, Vol. 1; *Transcript of Public Hearing*, 18 September 2014, at 148.
36. See *Hickman Motors Ltd. v. Canada* [1997] 2 S.C.R. 336; *Smith v. Nevins*, 1924 CanLII 70 (SCC), [1925] S.C.R. 619; *Les Produits Laitiers Advidia Inc. v. President of the Canada Border Services Agency* (20 April 2004), AP-2003-040 (CITT) at paras. 13-14.
37. Subsection 67(3) of the *Act* provides that, in appeals under subsection 67(1), the Tribunal ". . . may make such order, finding or declaration as the nature of the matter may require . . . ." In the Tribunal's view, its authority under section 67 is not limited to issues relating to the substantive merits of an appeal but extends to questions of jurisdiction as well, including the examination of decisions under section 59 insofar as they underpin any decision made under section 60 from which an appeal to the Tribunal is directly made. Indeed, in *Fritz Marketing Inc. v. Canada*, [2009] 4 F.C.R. 314, the Federal Court of Appeal expressly held that the Tribunal, rather than the Federal Court, has jurisdiction under section 67 of the *Act* to determine the validity of a detailed adjustment statement issued on the basis of an invalid decision made under subsection 59(1) (para. 36). See, also, *Grodan Inc. v. President of the Canada Border Services Agency* (1 June 2012), AP-2011-031 (CITT) at paras. 29-36; *BalanceCo v. President of the Canada Border Services Agency* (3 May 2013), AP-2012-036 (CITT) at para. 22; *Cargill Inc. v. President of the Canada Border Services Agency* (23 May 2014), AP-2012-070 (CITT) at para. 41.
38. Exhibit AP-2013-057-06A at 23, Vol. 1A.
39. Exhibit AP-2013-057-04 at 17, Vol. 1; *Transcript of Public Hearing*, 18 September 2014, at 198.
40. *Transcript of Public Hearing*, 18 September 2014, at 113, 115.
41. Exhibit AP-2013-057-04 at 17, Vol. 1.
42. *Transcript of Public Hearing*, 18 September 2014, at 117-20, 124.

and informational overlap between the two processes.[43] In its view, the detailed adjustment statements issued under subsection 74(1) of the *Act*, pursuant to which the CBSA initially granted BSH's request for refunds, provided sufficient notice to BSH that the CBSA may, if necessary, and pursuant to paragraph 59(1)(*b*), further re-determine the tariff classification of the goods in issue.[44]

34. Moreover, the CBSA submitted that, if its decisions under paragraph 59(1)(*b*) of the *Act* were found by the Tribunal to be invalid, which the CBSA expressly denied, the subsection 60(4) decision would also be invalid and that, as a result, the Tribunal would have no jurisdiction to hear the present appeal.[45]

35. Paragraph 59(1)(*b*) of the *Act* provides that the CBSA may further re-determine the tariff classification of goods on the basis of an audit, examination or verification:

59.(1) *An officer*, or any officer within a class of officers, designated by the President for the purposes of this section *may*	59.(1) *L'agent* chargé par le président, individuellement ou au titre de son appartenance à une catégorie d'agents, de l'application du présent article *peut* :
. . .	[...]
(*b*) *further re-determine the origin, tariff classification* or value for duty of imported goods, within four years after the date of the determination or, if the Minister deems it advisable, within such further time as may be prescribed, *on the basis of* an audit or examination under section 42, *a verification under section 42.01* or a verification of origin under section 42.1 that is conducted after the granting of a refund under paragraphs 74(1)(*c.1*), (*c.11*), (*e*), (*f*) or (*g*) that is treated by subsection 74(1.1) as a re-determination under paragraph (*a*) or the making of a correction under section 32.2 that is treated by subsection 32.2(3) as a re-determination under paragraph (*a*).	*b*) *réexaminer l'origine, le classement tarifaire* ou la valeur en douane dans les quatre années suivant la date de la détermination ou, si le ministre l'estime indiqué, dans le délai réglementaire *d'après les résultats* de la vérification ou de l'examen visé à l'article 42, *de la vérification prévue à l'article 42.01* ou de la vérification de l'origine prévue à l'article 42.1 effectuée à la suite soit d'un remboursement accordé en application des alinéas 74(1) *c.1*), *c.11*), *e*), *f*) ou *g*) qui est assimilé, conformément au paragraphe 74(1.1), à une révision au titre de l'alinéa *a*), soit d'une correction effectuée en application de l'article 32.2 qui est assimilée, conformément au paragraphe 32.2(3), à une révision au titre de l'alinéa *a*).

[Emphasis added]

36. Indeed, the CBSA relied on a verification conducted under section 42.01 of the *Act* as the basis for its further re-determinations under paragraph 59(1)(*b*).[46] On the issue of whether the CBSA conducted a proper verification, section 42.01 provides as follows with respect to the methods for conducting a verification of tariff classification:

43. Exhibit AP-2013-057-06A at 22-23, Vol. 1A; *Transcript of Public Hearing*, 18 September 2014, at 176.
44. *Transcript of Public Hearing*, 18 September 2014, at 78-79.
45. Exhibit AP-2013-057-06A at 23, Vol. 1A.
46. *Transcript of Public Hearing*, 18 September 2014, at 110, 169.

42.01 *An officer*, or an officer within a class of officers, designated by the President for the purposes of this section *may conduct a* verification of origin (other than a verification of origin referred to in section 42.1), *verification of tariff classification* or verification of value for duty *in respect of imported goods in the manner that is prescribed* and may for that purpose at all reasonable times enter any prescribed premises.

42.01 *L'agent* chargé par le président, individuellement ou au titre de son appartenance à une catégorie d'agents, de l'application du présent article *peut effectuer* la vérification de l'origine des marchandises importées, autres que celles visées à l'article 42.1, ou *la vérification* [*du*] *classement tarifaire* [*des marchandises importées*] ou de leur valeur en douane *selon les modalités réglementaires*; à cette fin, il a accès aux lieux désignés par règlement à toute heure convenable.

[Emphasis added]

37. Subsection 2(1) of the *Verification of Origin (Non-Free Trade Partners), Tariff Classification and Value for Duty of Imported Goods Regulations*[47] in turn prescribes the following methods for conducting a verification for purposes of the *Act*:

> 2.(1) Subject to subsection (2), *a verification in respect of goods may be conducted in a manner set out in one or more of the following paragraphs*:
>
> (*a*) a review of a verification questionnaire completed by
>
> (i) the importer or owner of the goods, or
>
> (ii) the person who accounted for the goods under subsection 32(1), (3) or (5) of the Act;
>
> (*b*) a review of a written response received from a person referred to in paragraph (*a*) to a verification letter;
>
> (*c*) *a review of any record or information* or an inspection of any goods or component of goods *received from a person referred to in paragraph (a)*;
>
> (*d*) the collection, from the premises prescribed under subsection 3(1), and review of information that
>
> (i) was requested in a verification questionnaire or verification letter but was not provided, or
>
> (ii) is needed to verify information from a completed verification questionnaire or written response to a verification letter.
>
> [Emphasis added]

38. As denoted by the phrase ". . . a verification in respect of goods may be conducted in a manner set out in *one or more* of the following paragraphs" in the chapeau to subsection 2(1) of the *Verification Regulations*, each of the ensuing paragraphs (*a*) through (*d*) constitutes a separate and potentially sufficient method for conducting the verification referred to in paragraph 59(1)(*b*) of the *Act*, a point acknowledged by BSH.[48]

39. The CBSA indicated that it used the method of verification defined in paragraph 2(1)(*c*) of the *Verification Regulations*, i.e. "a review of any record or information . . . received from . . ." the importer.[49]

47. S.O.R./98-45 [*Verification Regulations*].
48. *Transcript of Public Hearing*, 18 September 2014, at 143-44.
49. Exhibit AP-2013-057-06A at 22-23, Vol. 1A.

40. In this regard, BSH argued that a "verification" under section 42.01 of the *Act* means "something more than a review" of a previous decision and is to be conducted in the prescribed manner for the purposes of that section.[50] In its view, the word "received" in paragraph 2(1)(*c*) of the *Verification Regulations* must be read as referring to information received in the context, and as part of a verification process conducted independently of any prior decision-making process involving the same importer.[51] Moreover, BSH claimed that, while, as a basic principle of administrative law, an importer should be afforded the opportunity to make submissions during a verification process, BSH was denied the right to be heard by the CBSA.[52]

41. It is well established through a series of Supreme Court of Canada decisions that the proper approach to statutory interpretation is the modern contextual approach pursuant to which ". . . the words of an Act are to be read in their *entire context* and in their *grammatical and ordinary sense* harmoniously with the *scheme* of the Act, the *object* of the Act, and the *intention* of Parliament" [emphasis added].[53] However, in *65302 British Columbia Ltd. v. Canada*,[54] the Supreme Court of Canada, while reaffirming the modern contextual approach to statutory interpretation, cautioned against the utilization of tools of statutory interpretation in order to stray from clear and unambiguous statutory language.[55]

42. The information that may form the basis of a verification, as specified in paragraphs 2(1)(*a*), (*b*) and (*d*) of the *Verification Regulations*, includes *a response to a verification questionnaire* by the importer, owner or person who accounted for the goods in issue, *a written response to a verification letter* by the importer, owner or person who accounted for the goods in issue and *information collected from prescribed premises that was requested in a verification questionnaire or verification letter*, but which was not provided. Whereas the information referred to in paragraphs 2(1)(*a*), (*b*) and (*d*) is explicitly tied to a verification questionnaire or verification letter, the reference in paragraph 2(1)(*c*) to "any record or information" received from the importer, owner or person who accounted for the goods in issue is not similarly qualified.

43. In this respect, the Tribunal agrees with the CBSA that the language used in paragraph (2)(1)(*c*) of the *Verification Regulations* is clear and unambiguous.[56] As a result, the Tribunal finds no basis upon which to read into that provision the additional conditions and limitations proposed by BSH, which would effectively exclude from its ambit otherwise relevant and probative information because it was not received or collected by the CBSA in the specific context of a response to the verification in question.

44. More specifically, the fact that the CBSA received information from the importer or person who accounted for the goods in the context of a prior proceeding in respect of those goods does not, by virtue of that fact alone, preclude its use in a subsequent verification under paragraph 2(1)(*b*) of the *Verification Regulations*, if such information is relevant for the purposes of a further re-determination under paragraph 59(1)(*b*) of the *Act*. The Tribunal therefore rejects BSH's assertion that the CBSA's use of the information in question was improper by reason of it having been received in the context of a prior

50. *Transcript of Public Hearing*, 18 September 2014, at 111, 113-14, 128.
51. *Ibid.* at 121, 128, 140-41.
52. *Ibid.* at 124, 135.
53. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21.
54. [1999] 3 S.C.R. 804.
55. *Ibid.* at para. 51.
56. *Transcript of Public Hearing*, 18 September 2014, at 172.

proceeding (i.e. the new advance rulings under subsection 43.1[1] of the *Act*) in respect of which the CBSA was allegedly *functus*.[57]

45. The refund decisions under subsection 74(1) of the *Act*, which, as already noted, are treated by law as re-determinations under paragraph 59(1)(*a*), included standard wording notifying BSH that the CBSA reserved the right to further re-determine the tariff classification of the goods in issue within four years of the date of the determination, pursuant to paragraph 59(1)(*b*).[58]

46. It is the Tribunal's further view that section 42.01 of the *Act* cannot be considered in a vacuum but must be read within the broader statutory scheme of the *Act*, which expressly provides for further administrative recourse under section 60 for parties aggrieved by a subsection 59(1) decision and the option to appeal any section 60 decision to the Tribunal under subsection 67(1). In this way, the sequential schematic framework of the determination, re-determination, further re-determination and appeal provisions in the *Act*, when considered holistically, meets the basic requirements of natural justice and procedural fairness as they relate to the provision of notice to importers and their right to be heard.

47. With the CBSA having conducted a verification in a manner consistent with paragraph 2(1)(*c*) of the *Verification Regulations*, the Tribunal finds no basis upon which to impugn the CBSA's further re-determinations under paragraph 59(1)(*b*) of the *Act*. The validity of the ensuing decision under subsection 60(4) of the *Act* therefore remains intact. Having so found, the Tribunal will next turn to a *de novo* consideration of the tariff classification of the goods in issue.[59]

Second Issue: Classification Under Tariff Item No. 9979.00.00

48. There are no notes to Section XXI, which includes Chapter 99. Notes 3 and 4 to Chapter 99 are however relevant to the issue of whether the goods in issue are classifiable under tariff item No. 9979.00.00. Notes 3 and 4 provide as follows:

> 3. Goods may be classified under a tariff item in this Chapter and be entitled to the Most-Favoured-Nation Tariff or a preferential tariff rate of customs duty under this Chapter that

57. BSH asserted that, once a decision has been made on a particular matter, the decision-maker is rendered *functus*, with the evidentiary record in respect of that matter being closed (*Transcript of Public Hearing*, 18 September 2014, at 114-15). In the Tribunal's view, the concept of *functus officio* refers to the finality of a decision taken by a statutory decision-maker and, in this respect, it is a task-based concept, which has been defined as follows: "A task performed . . . Having fulfilled the function, discharged the office or accomplished the purpose and therefore of no further force or authority" (*Black's Law Dictionary*, 6th ed. at 673). Moreover, in *Chandler v. Alberta association of architects*, 1989 CanLII 41 (SCC), [1989] 2 S.C.R. 848 (SCC), the Supreme Court of Canada stated that, "[*a*]*s a general rule, once an administrative tribunal has reached a final decision in respect of the matter that is before it in accordance with its enabling statute, that decision cannot be revisited . . . . It can only do so if authorized by statute . . . .*" [emphasis added]. The accounting records upon which the CBSA claims to have based its verification in this case were filed by BSH in relation to the five initial advance rulings. By operation of law, the CBSA was not *functus* with respect to those rulings. In this respect, paragraph 12(*a*) of the *Tariff Classification Advance Rulings Regulations* (S.O.R./2005-256) authorizes as follows: "An officer may modify or revoke an advance ruling given in respect of goods (a) if the advance ruling is based on an error of fact or in the tariff classification of the goods". The above being the case, the Tribunal is not persuaded by BSH's *functus*-based argument.

58. Exhibit AP-2013-057-11A at 16, Vol. 1B; *Transcript of Public Hearing*, 18 September 2014, at 78-81.

59. It is well established that appeals to the Tribunal under subsection 67(1) of the *Act* proceed *de novo*. See, for example, *Toyota Tsusho America, Inc. v. President of the Canada Border Services Agency* (27 April 2011), AP-2010-063 (CITT) at para. 8.

> applies to those goods according to the tariff treatment applicable to their country of origin only after classification under a tariff item in Chapters 1 to 97 has been determined and the conditions of any Chapter 99 provision and any applicable regulations or orders in relation thereto have been met.
>
> 4. The words and expressions used in this Chapter have the same meaning as in Chapters 1 to 97.

49. According to the first requirement of Note 3 to Chapter 99, goods may only be classified in that chapter after their classification under a tariff item in Chapters 1 to 97. It is well established 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 importation into Canada.[60] In this respect, it is uncontested and the Tribunal accepts that the goods in issue, as presented for importation, were properly classified under tariff item Nos. 8450.11.10 (washers) and 8451.21.00 (dryers). The first requirement of Note 3 is therefore met for the purposes of this appeal.

50. By virtue of the second requirement of Note 3 to Chapter 99, the classification of goods under tariff item No. 9979.00.00 is subject to the conditions of that provision having been met. Tariff item No. 9979.00.00 covers "[g]oods *specifically designed* to assist persons with disabilities in alleviating the effects of those disabilities, and articles and materials for use in such goods" [emphasis added].

51. In *Sigvaris Corporation v. President of the Canada Border Services Agency*,[61] the Tribunal identified the conditions for classification under tariff item No. 9979.00.00 to be as follows: (1) the goods must be "specifically designed to assist persons with disabilities"; and (2) the goods must be specifically designed to assist such persons in "alleviating the effects of those disabilities".[62] Stated differently, the goods in issue must be committed by design (i.e. specifically designed) to assist a specific class of persons (i.e. persons with disabilities) in a specific way (i.e. in the alleviation of the effects of those disabilities). The parties agreed and the Tribunal accepts that this is the applicable test for classification under tariff item No. 9979.00.00.[63]

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60. See *Deputy Minister of National Revenue, Customs and Excise v. MacMillan & Bloedel (Alberni) Ltd.*, [1965] S.C.R. 366, wherein the Supreme Court of Canada indicated that the time for determining tariff classification is at the time of entry of the goods into Canada. While the Supreme Court of Canada reached its conclusion on the basis of the wording of Canada's customs legislation in 1955, it is the Tribunal's view that the principle set out in that case remains valid today, despite various amendments by Parliament to Canada's customs legislation in the intervening years. See, in this regard, *Deputy Minister of National Revenue for Customs and Excise v. Ferguson Industries Ltd.*, [1973] S.C.R. 21, wherein the Supreme Court of Canada affirmed its earlier ruling on this point in the above-mentioned case. This principle has been applied by the Tribunal in numerous cases. See, for example, *Sealand of the Pacific Ltd. v. Deputy M.N.R.* (11 July 1989), 3042 (CITT); *Tiffany Woodworth v. President of the Canada Border Services Agency* (11 September 2007), AP-2006-035 (CITT) at para. 21; *Cobra Anchors Co. Ltd. v. President of the Canada Border Services Agency* (8 May 2009), AP-2008-006 (CITT) at para. 26; *Evenflo Canada Inc. v. President of the Canada Border Services Agency* (19 May 2010), AP-2009-049 (CITT) at para. 29; *Philips Electronics Ltd. v. President of the Canada Border Services Agency* (29 May 2012), AP-2011-042 (CITT) at para. 29; *Powers Industries Limited v. President of the Canada Border Services Agency* (22 April 2013), AP-2012-010 (CITT) at para. 22; *Salzgitter Mannesmann International (Canada) Inc. and Varsteel Ltd. v. President of the Canada Border Services Agency* (25 September 2013), AP-2012-047 and AP-2012-048 (CITT) at para. 12; *L. Lavoie v. President of the Canada Border Services Agency* (6 September 2013), AP-2012-055 (CITT) at para. 28; *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (17 September 2013), AP-2012-057 (CITT) at para. 16; *Eastern Division* at para. 14.
61. (23 February 2009), AP-2007-009 (CITT).
62. *Ibid*. at para. 26. See, also, *Wolseley* at para. 41.
63. Exhibit AP-2013-057-04 at 8, Vol. 1; Exhibit AP-2013-057-06A at 15, Vol. 1A.

52. BSH's claim that the goods in issue are specifically designed to assist persons with disabilities was primarily based upon the purported compliance of the Bosch washers and dryers with the standards for laundry appliances provided in the *Americans with Disabilities Act of 1990*.[64] In this connection, it claimed that the goods in issue are designed to assist persons reliant on wheelchairs in performing the normal activities of washing and drying clothes, thereby alleviating the effects of their disabilities.

53. The CBSA countered that BSH had failed to demonstrate that the goods in issue were eligible for classification under tariff item No. 9979.00.00 because even if, *arguendo*, they were compliant with the *ADA* standards (a claim contested by the CBSA), such compliance was not, in and of itself, sufficient to establish that the two conditions of that tariff item had been met.

54. In *Nutricia North America v. President of the Canada Border Services Agency*,[65] the Tribunal distinguished between "disabilities" on the one hand and their "effects" on the other, explaining that ". . . 'disabilities' refer to the functional limitations resulting from a disease, ailment or other impairment, with the 'effects of those disabilities' being the inability to perform activities in a manner, or within the range, considered normal."[66]

55. In the Tribunal's view, an individual with a functional limitation resulting from a disease, ailment or other impairment, which results in his/her reliance on a wheelchair, is a person with a disability who, as such, falls within the class of persons that tariff item No. 9979.00.00 was specifically intended to benefit—a fact that was not disputed in these proceedings.[67]

56. The issue of whether goods are specifically designed to assist persons with a particular disability in alleviating the effects of that disability is essentially one of fact, turning upon an assessment of the specific design characteristics of those goods, as presented for importation, including such assessment against generally recognized accessibility standards relevant to the disability that the goods purport to accommodate.[68] For the purposes of the present appeal, the Tribunal accepts BSH's claim[69] and Mr. Peebles' testimony[70] as to the relevancy of the *ADA* standards to its assessment of the design characteristics of the goods in issue.

57. Mr. Peebles testified that the goods in issue are based on a universal design paradigm that seeks to respond to the needs of various user groups (including disabled persons), in the broader market for laundry appliances.[71] In this connection, the Tribunal has previously noted that universal design and purposeful intent to accommodate the special requirements of a particular group of persons are not mutually exclusive

64. Pub. L. 101-336—July 26, 1990, 104 Stat. 327 [*ADA*]. The *ADA* is a U.S. statute providing standards which set out accessibility standards, including for washers and dryers in accordance with section 214. See Exhibit AP-2013-057-028, Vol. 1C.
65. (18 May 2011), AP-2009-017 (CITT) [*Nutricia*].
66. *Nutricia* at para. 120.
67. See *Transcript of Public Hearing*, 18 September 2014, at 150-52. This view is consistent, for example, with the definition of "disability" in the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11, which provides, in relevant part, as follows: "2. In this Act, . . . '*disability*' means, (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, *includes . . . physical reliance . . . on a wheelchair* or other remedial appliance or device" [emphasis added]. See Exhibit AP-2013-057-11A at 22, Vol. 1B.
68. *Wolseley* at para. 43 and footnote 44.
69. Exhibit AP-2013-057-04 at 11-12, Vol. 1.
70. *Transcript of Public Hearing*, 18 September 2014, at 17-19.
71. *Ibid.* at 7-8, 58.

objectives, with a product based on the principle of universal design, which includes features intended to accommodate the specific needs and limitations of persons with disabilities, being specifically designed for that purpose, notwithstanding that other persons can also avail themselves of it.[72]

58. Mr. Peebles further testified that BSH, which sells into multiple jurisdictions, generally designs to the most restrictive accessibility standards so as to ensure that it meets all applicable standards (i.e. insofar as lesser standards are subsumed in more restrictive accessibility guidelines).[73] In this respect, BSH claimed that the goods in issue—as presented for importation—meet the *ADA* dimensional and other related specifications pertaining to minimum and maximum height of the door opening, unobstructed forward reach, unobstructed high forward reach, side reach and operational parts.[74]

59. While the goods in issue incorporate design features that comply or allow for compliance with certain *ADA* wheelchair accessibility standards,[75] an additional component is required in order for the goods in issue to achieve full compliance with the relevant *ADA* standards. Specifically, an internal Bosch document[76] indicates that full compliance requires the use of a Bosch pedestal in conjunction with the goods in issue: "Bosch 24" washers and dryers meet ADA Regulations if [installed] with Bosch pedestals".[77] In this connection, although some of the individual product specifications for the goods in issue did not make any reference to use with a Bosch pedestal accessory, the Tribunal accepts Mr. Peebles' testimony that all seven models of the goods in issue can accept the same type of Bosch pedestal.[78]

60. As confirmed by Mr. Peebles, these pedestals do not form part of the goods in issue as presented for importation, but instead are sold separately as accessories thereto:[79]

> PRESIDING MEMBER: . . . As shipped to Canada, the goods do not include the pedestal. You have to buy that as an accessory.
>
> MR. PEEBLES: That's correct.

61. Mr. Peebles also testified that, absent the pedestal, the goods in issue meet all *ADA* standards except the requirement relating to minimum lower door height:[80]

> PRESIDING MEMBER: And without the pedestal, the goods are not ADA compliant.
>
> MR. PEEBLES: For clarification, *without the pedestal, they do not meet the minimum lower door height of the ADA requirement*. They meet all the other aspects, but they do not meet the minimum door height.
>
> . . .

72. *Wolseley* at para. 47.
73. *Transcript of Public Hearing*, 18 September 2014, at 58, 59.
74. Exhibit AP-2013-057-04 at 11, Vol. 1; *Transcript of Public Hearing*, 18 September 2014, at 18-19.
75. For example, the uncontroverted evidence on the record indicates that, consistent with *ADA* accessibility standard 308.4 (Exhibit AP-2013-057-04 at 34, Vol. 1), the goods in issue, which are front-loading appliances, have controls (i.e. operable parts) that are operable with one hand and that do not require tight grasping, pinching or wrist twisting, and which can be activated with a force of less than the prescribed maximum of five pounds.
76. According to the testimony of Mr. Peebles, the one-page document filed by BSH (Exhibit AP-2013-057-04 at 31, Vol. 1) was created by BSH for internal training purposes to help marketing personnel understand *ADA* compliancy. See *Transcript of Public Hearing*, 18 September 2014, at 19.
77. Exhibit AP-2013-057-04 at 31, Vol. 1.
78. *Transcript of Public Hearing*, 18 September 2014, at 48-49, 52, 60. See, also, Exhibit AP-2013-057-11A at 5, 7, 9, 13, Vol. 1B.
79. *Transcript of Public Hearing*, 18 September 2014, at 60.
80. *Ibid.* at 60, 61.

> PRESIDING MEMBER: . . . they are not completely ADA compliant.
>
> MR. PEEBLES: Right. They do not meet that one [criterion].
>
> [Emphasis added]

62. The Tribunal notes however that, in his letter of July 24, 2014, Mr. Peebles asserted the following:

> Dimensions [of the goods in issue] meet ADA standards for Reach, *including High Front and High Side Reach when used with specified pedestal*.[81]
>
> [Emphasis added]

63. The *a contrario* conclusion that the Tribunal draws from this assertion is that the *ADA* non-compliance implications of not using the pedestal would extend beyond the minimum lower door height requirement to also encompass *ADA* dimensional requirements relating to high forward reach and high side reach. This strikes the Tribunal as being eminently logical, insofar as the use of a pedestal, by elevating the entire appliance, would necessarily alter not only the unit's minimum lower door height, but also its other vertical, dimensional specifications.[82]

64. In short, the Tribunal finds that compliance of the goods in issue with *ADA* vertical dimensional standards is contingent upon the use of a pedestal or a comparable alternative platform.[83] This finding is further corroborated by the fact that, when questioned about the difference between the claim made in the marketing literature of a particular appliance retailer and that made by BSH in its own promotional literature as to the *ADA* compliancy of front-load washer model WAE20060UC and front-load dryer model WTC82100US, Mr. Peebles surmised that this was likely due to the fact that these particular goods in issue were being advertised by the retailer, absent the pedestal, in which case the appliances would not have met *ADA* accessibility standards.[84]

65. On the basis of the foregoing analysis, the Tribunal finds that the pedestal, while not forming part of the goods in issue as presented for importation, is in fact integral to the ability of those goods to achieve *ADA*-prescribed dimensional standards for accessibility by persons in wheelchairs.

66. As noted earlier, it is well established in law that tariff classification is to be based on an examination of the goods, as a whole, as presented at the time of importation into Canada. It therefore follows, by necessary implication, that the issue of whether goods meet the requirements of tariff item No. 9979.00.00 must be decided on the same basis. That is to say, the specific intention to assist persons with disabilities in alleviating the effects of those disabilities must be manifested in the design of the goods as presented for importation, independently of the manner of their subsequent installation.

67. In this respect, the Tribunal draws a key distinction between the goods in issue and the goods in *Wolseley*. In particular, the dimensions of the goods in issue are not independently compliant with *ADA* wheelchair accessibility standards for laundry appliances (e.g. in relation to lower door height, high forward reach and high side reach), with such compliance being wholly dependent upon their use in conjunction

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81. Exhibit AP-2013-057-11A at 15, Vol. 1B.
82. See Exhibit AP-2013-057-04 at 31, Vol. 1, for a depiction of high forward reach and high side reach specifications.
83. In this regard, Mr. Peebles testified that, while a purchaser could conceivably build an alternative platform, as a practical matter, there are certain technical advantages to employing the Bosch pedestal accessory designed for use with the goods in issue. *Transcript of Public Hearing*, 18 September 2014, at 64.
84. *Transcript of Public Hearing*, 18 September 2014, at 65, 66.

with a separate component, i.e. the Bosch pedestal accessory (or a comparable alternative platform), which does not form part of the goods in issue as presented for importation into Canada. It cannot be said, therefore, that the goods in issue, at importation, are in and of themselves specifically designed to assist persons reliant on a wheelchair in alleviating the effects of their disabilities. By contrast, the intrinsic design of the bathroom sinks in *Wolseley*, as presented for importation, was independently compliant with *ADA* wheelchair accessibility standards as they pertained specifically to bathroom sinks themselves (e.g. in relation to basin depth, the positioning of the offset and overflow drains and the non-abrasiveness of the underside surface).[85]

68. Regarding BSH's submission that the pedestal accessory should be considered together with the goods in issue for the purpose of discerning specific design intent, while all seven models of the goods in issue can accept the same type of Bosch pedestal, the evidence does not indicate that the goods in issue and the separately available pedestals are committed by design to be used with each other.

69. Finally, BSH provided little in the way of supporting evidence for its assertion that operational controls on the goods in issue were specifically designed to assist visually impaired persons.[86] Mr. Peebles stated that BSH considered persons with weak eyesight in its design process by including controls on the goods in issue that were "easily visible" and provided "audible feedbacks" when the user presses a wrong button.[87] However, BSH did not refer the Tribunal to any related regulations, standards or technical specifications in substantiation of Mr. Peebles' assertions. Indeed, the promotional literature and product specifications for the goods in issue that were filed on the record do not expressly mention design features for the visually impaired. Given the lack of supporting evidence on the record in relation to the specific design and functionality of these other purported features of the Bosch washers and dryers, BSH has not, in the Tribunal's view, established a *prima facie* case that the goods in issue should be classified under tariff item No. 9979.00.00 by reason of these other claimed features.

70. For the foregoing reasons, the Tribunal finds that the goods in issue are not entitled to duty-free treatment under tariff item No. 9979.00.00.

DECISION

71. The appeal is dismissed.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

85. See *Wolseley* at para. 15.
86. *Transcript of Public Hearing*, 18 September 2014, at 159.
87. Exhibit AP-2013-057-11A at 15, Vol. 1B; *Transcript of Public Hearing*, 18 September 2014, at 14-15, 20.