



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2014-026

The Home Depot Canada

v.

President of the Canada Border
Services Agency

*Decision issued
Tuesday, September 8, 2015*

*Reasons issued
Wednesday, September 9, 2015*

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DECISION 13

IN THE MATTER OF an appeal heard on May 5, 2015, 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 October 6, 2014, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

THE HOME DEPOT CANADA

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Peter Burn
Peter Burn
Presiding Member

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

Place of Hearing: Ottawa, Ontario
Date of Hearing: May 5, 2015

Tribunal Member: Peter Burn, Presiding Member

Counsel for the Tribunal: Kalyn Eadie

Acting Senior Registrar Officer: Haley Raynor

PARTICIPANTS:**Appellant**

The Home Depot Canada

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STATEMENT OF REASONS

1. This is an appeal filed by The Home Depot Canada (Home Depot) pursuant to subsection 67(1) of the *Customs Act*¹ from a re-determination of an advance ruling by the President of the Canada Border Services Agency (CBSA), dated October 6, 2014, made pursuant to subsection 60(4).

2. This appeal concerns the tariff classification of 24-inch Eurostone bases with sinks (vanities) (the goods in issue). The CBSA determined that the goods in issue were properly classified under tariff item No. 9403.60.10 of the schedule to the *Customs Tariff*² as other wooden furniture for domestic purposes. Home Depot argued that the goods in issue should be classified under tariff item No. 6910.90.00 as other ceramic sinks and similar sanitary fixtures.

PROCEDURAL HISTORY

3. On July 18, 2013, Home Depot requested an advance ruling of the tariff classification of the goods in issue.

4. On November 25, 2013, the CBSA issued the advance ruling, holding that the goods in issue were properly classified under tariff item No. 9403.60.10.

5. On January 22, 2014, Home Depot requested a re-determination of the advance ruling.

6. On October 6, 2014, the CBSA informed Home Depot that it had re-determined the tariff classification of the goods in issue and found that they were properly classified under tariff item No. 9403.60.10.

7. On November 4, 2014, Home Depot filed this appeal.

8. On May 5, 2015, the Tribunal held a public hearing in Ottawa, Ontario. Home Depot presented one witness; the CBSA did not call any witnesses.

THE GOODS IN ISSUE

9. The goods in issue are described as 24-inch Eurostone bases with sinks. According to the product literature submitted by the parties and the CBSA's examination of the goods in issue, they consist of a two-door cabinet composed of medium-density fibreboard/particle board and a sink top of imitation porcelain. The product manual indicates that the goods in issue are imported in an unassembled condition and that they are intended to be installed by attaching the base to the wall via screws, as well as by attaching the sink to the plumbing.

LEGAL FRAMEWORK

10. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).³ The schedule is divided into sections and chapters,

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

2. S.C. 1997, c. 36.

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

with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

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

12. The *General Rules* comprise six rules. Classification begins with Rule 1, which provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the other rules.

13. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*⁶ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,⁷ published by the WCO. While the *Classification Opinions* and *Explanatory Notes* are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.⁸

14. The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the *General Rules* as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. 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.⁹

15. Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to use a similar approach to determine the proper subheading.¹⁰ The final step is to determine the proper tariff item.¹¹

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

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

6. World Customs Organization, 2d ed., Brussels, 2003 [*Classification Opinions*].

7. World Customs Organization, 5th ed., Brussels, 2012 [*Explanatory Notes*].

8. 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 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 classification opinions.

9. Rules 1 through 5 of the *General Rules* apply to classification at the heading level.

10. Rule 6 of the *General Rules* provides that "... the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules [i.e. 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.

TERMS OF RELATIVE HEADINGS AND LEGAL AND EXPLANATORY NOTES

16. Heading No. 94.03 provides as follows:

Section XX**MISCELLANEOUS MANUFACTURED ARTICLES****Chapter 94**

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

...

94.03 **Other furniture and parts thereof.**

...

9403.60 **-Other wooden furniture**

9403.60.10 - - -For domestic purposes

17. Note 2 to Chapter 94 provides as follows:

2. The articles (other than parts) referred to in headings 94.01 to 94.03 are to be classified in those headings only if they are designed for placing on the floor or ground.

The following are, however, to be classified in the above-mentioned headings even if they are designed to be hung, to be fixed to the wall or to stand one on the other:

- (a) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture;
- (b) Seats and beds.

18. The explanatory notes to Chapter 94 provide as follows:

GENERAL

This Chapter covers, **subject** to the exclusions listed in the Explanatory Notes to this Chapter:

- (1) All furniture and parts thereof (headings 94.01 to 94.03).

...

For the purposes of this Chapter, the term “furniture” means:

- (A) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, laboratories, hospitals, dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

- (B) The following:
- (i) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture, designed to be hung, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles (books, crockery, kitchen utensils, glassware, linen, medicaments, toilet articles, radio or television receivers, ornaments, etc.) and separately presented elements of unit furniture.
 - (ii) Seats or beds designed to be hung or to be fixed to the wall.

Except for the goods referred to in subparagraph (B) above, the term “furniture” **does not apply** to articles used as furniture but designed for placing on other furniture or shelves or for hanging on walls or from the ceiling.

...

Headings 94.01 to 94.03 cover articles of furniture **of any material** (wood, osier, bamboo, cane, plastics, base metals, glass, leather, stone, ceramics, etc.). Such furniture remains in these headings whether or not stuffed or covered, with worked or unworked surfaces, carved, inlaid, decoratively painted, fitted with mirrors or other glass fitments, or on castors, etc.

...

Articles of furniture presented **disassembled** or **unassembled** are to be treated as assembled articles of furniture, **provided** the parts are presented together. This applies whether or not the furniture incorporates sheets, fittings or other parts of glass, marble or other materials (e.g., a wooden table with a glass top, a wooden wardrobe with a mirror, a sideboard with a marble top).

19. The explanatory notes to heading No. 94.03 provide as follows:

This heading covers furniture and parts thereof, **not covered** by the previous headings. It includes furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing desks, escritoirs, book-cases, and other shelved furniture (including single shelves presented with supports for fixing them to the wall), etc.), and also furniture for special uses.

The heading includes furnitures [sic] for:

- (1) **Private dwellings, hotels, etc.**, such as: cabinets, linen chests, bread chests, log chests; chests of drawers, tallboys; pedestals, plant stands; dressing-tables; pedestal tables; wardrobes, linen presses; hall stands, umbrella stands; side-boards, dressers, cupboards; food-safes; bedside tables; beds (including wardrobe beds, camp-beds, folding beds, cots, etc.); needlework tables; stools and foot-stools (whether or not rocking) designed to rest the feet, fire screens; draught-screens; pedestal ashtrays; music cabinets, music stands or desks; play-pens; serving trolleys (whether or not fitted with a hot plate).

20. Heading No. 69.10 provides as follows:

Section XIII

ARTICLES OF STONE, PLASTER, CEMENT, ASBESTOS, MICA OR SIMILAR MATERIALS; CERAMIC PRODUCTS; GLASS AND GLASSWARE

Chapter 69

CERAMIC PRODUCTS

...

69.10 Ceramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary fixtures.

...

6910.90.00 -Other

21. Note 2 to Chapter 69 provides as follows:

2. This Chapter does not cover:

...

(ij) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

...

22. None of the explanatory notes to Chapter 69 are relevant.

23. The explanatory notes to heading No. 69.10 provide as follows:

This heading covers fittings designed to be **permanently fixed in place**, in houses, etc., normally by connection to the water or sewage systems. They must therefore be made impervious to water by glazing or by prolonged firing (e.g., stoneware, earthenware, fire-clay sanitary ware, imitation porcelain, or vitreous china). In addition to the fittings specified, the heading includes such items as lavatory cisterns.

TRIBUNAL ANALYSIS

Tariff Heading Classification

24. The explanatory notes to Chapter 94 provide that, in order to meet the definition of “furniture” set out above, the goods in issue must, among other things, be “. . . **not included** under other more specific headings of the Nomenclature” However, as noted by the parties, Note 2(ij) to Chapter 69 specifically excludes articles of Chapter 94, which includes furniture, from classification in Chapter 69. Therefore, if the goods in issue are *prima facie* classifiable in heading No. 94.03, they cannot also be included in heading No. 69.10, even if they would otherwise be more specifically described by that heading, because the legal notes take precedence over the explanatory notes and, in any case, the terms of Note 2(ij) to Chapter 69 are more specific than those of the explanatory notes to Chapter 94.

25. As a result, the Tribunal will begin the tariff classification exercise by determining whether the goods in issue are properly classifiable in heading No. 94.03.

Are the goods in issue properly classified as “[o]ther wooden furniture” of heading No. 94.03?

– Are the goods in issue “furniture”?

26. Home Depot submitted that, in accordance with previous Tribunal decisions, subparagraph (A) of the definition of “furniture” found in the explanatory notes to Chapter 94 establishes that goods must meet the following criteria in order to be considered “furniture”:

- they must be “movable”;
- they must be articles;

- they must have the essential characteristic of being constructed for placing on the floor or ground;
- they must be used mainly with a utilitarian purpose;
- they must be used to equip private dwellings; and
- they must not be included in a more specific heading of the Nomenclature.¹²

27. The CBSA has argued that the definition proposed by Home Depot is incomplete. According to the CBSA, subparagraphs (A) and (B) of the definition of “furniture” found in the explanatory notes to Chapter 94 should be read together by reading in an exception to the third criterion, as follows: “. . . must have the essential characteristic that they are constructed for placing on the floor or ground, *except cupboards, bookcases, and other shelved furniture designed to be hung, to be fixed to the wall or to stand one on the other*” [emphasis added]. In its brief, the CBSA proposed that the goods in issue would therefore have to meet the following criteria in order to be considered “furniture”:¹³

- they must be movable;
- they must be articles;
- they must have the essential characteristic of being constructed for placing on the floor or ground, *except cupboards, bookcases and other shelved furniture designed to be hung, to be fixed to the wall or to stand one on the other*;
- they must be used mainly with a utilitarian purpose to equip private dwellings; and
- they must not be included in other more specific headings of the Nomenclature.

28. However, at the hearing, the CBSA argued that the exception for goods that are fixed to the wall set out in subparagraph (B) of the definition of “furniture” found in the explanatory notes to Chapter 94 also provides an exception to the requirement in subparagraph (A) that the goods be movable.¹⁴ The CBSA argued that it is necessary to read these two provisions together in this way to give effect to the overall intent of this provision, which is that cupboards that are fixed to the wall should nevertheless be included in the category of furniture.¹⁵

29. While the Tribunal agrees with the CBSA that the requirement that goods must be both “movable” and “fixed to the wall” to meet the definition of “furniture” appears contradictory on its face, it cannot accept that subparagraph (B) of the definition of “furniture” found in the explanatory notes to Chapter 94 can be read as an exception to the requirement in subparagraph (A) that the goods be “movable”.

30. Subparagraphs (A) and (B) of the definition of “furniture” found in the explanatory notes to Chapter 94 parallel, in part, the terms of Note 2 to Chapter 94. Note 2 states that articles can only be classified in heading No. 94.03, *inter alia*, if they are designed for placing on the floor or ground. However, Note 2(a) states that cupboards, etc., that are fixed to the wall, etc., can still be classified in heading No. 94.03. Note 2 does not include any explicit reference to the movability of the goods.

12. Exhibit AP-2014-026-04 at para. 17, Vol. 1.

13. Exhibit AP-2014-026-06A at para. 20, Vol. 1A.

14. *Transcript of Public Hearing*, 5 May 2015, at 58-59.

15. *Ibid.* at 59.

31. The CBSA has itself argued, in this proceeding, that the legally binding chapter or section notes must take precedence over the explanatory notes.¹⁶ In accordance with this principle, the Tribunal cannot use the terms of an explanatory note to expand the application of the chapter note in such a manner.

32. However, the Tribunal agrees with the CBSA that the overall intent of both Note 2 to Chapter 94 and the definition of “furniture” found in the explanatory notes to Chapter 94 seems to be to ensure that articles such as cupboards, etc., that are fixed to the wall remain included in heading No. 94.03. This can be achieved by adopting an alternative interpretation of the definition of “furniture”, which is to read subparagraphs (A) and (B) as completely separate from one another.

33. This interpretation is more consistent with the structure of the definition, which does not require that readers refer to subparagraph (A) in order to understand subparagraph (B) (or *vice versa*); instead, the definition includes three complete and separate sentences that set out the following criteria that goods can meet in order to be considered furniture:

- movable articles constructed for placing on the floor or ground, used mainly with a utilitarian purpose to equip private dwellings, etc., not included more specifically elsewhere in the Nomenclature;
- cupboards, etc., that are designed to be fixed to the wall, etc.; and
- seats and beds that are designed to be fixed to the wall or hung.

34. Further, unlike the approach suggested by the CBSA, this interpretation does not create an inconsistency with Note 2 to Chapter 94, as it does not require that additional terms be read into the note.

35. In accordance with this interpretation of the definition of “furniture”, the Tribunal will first consider whether the goods in issue are cupboards, etc., that fit within the parameters of clause (B)(i). If not, the Tribunal will consider whether the goods in issue could nevertheless be considered “furniture” according to the terms of subparagraph (A). There is no need to consider clause B(ii), as the goods in issue are clearly not seats or beds.

- Are the goods in issue cupboards, bookcases or other shelved furniture designed to be hung, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles?

36. As noted above, the goods in issue are described as vanities, but this term does not appear in the *Customs Tariff*. The CBSA argued that the term “vanity” is defined as “. . . a bathroom cabinet containing a sink and usu. having a countertop . . .”; “. . . a wide, counterlike shelf containing a wash basin, as in the bathroom of a hotel or residence, often equipped with shelves, drawers, etc., underneath . . .”; and “. . . a cabinet built below or around a bathroom sink, primarily to hide exposed pipes . . .”¹⁷

37. Two of the above definitions use the term “cabinet”, which is in turn defined as “. . . a cupboard or case with drawers, shelves, etc., for storing or displaying articles . . .”; “. . . a case or cupboard usu. having doors or shelves . . .”; “. . . a piece of furniture with shelves, drawers, etc., for holding or displaying items . . .”; and “. . . a wall cupboard used for storage, as of kitchen utensils or toilet articles . . .”¹⁸

16. Exhibit AP-2014-026-06A at para. 35, Vol. 1A.

17. Exhibit AP-2014-026-06A at para. 26, tab 13, Vol. 1A.

18. Exhibit AP-2014-026-06A at para. 25, tab 12, Vol. 1A.

Conversely, some of the definitions of “cupboard” describe it as a “cabinet”, for example, “. . . any small closet or cabinet, as for clothes, food, or the like.”¹⁹

38. The CBSA submitted that, according to these definitions, the terms “cupboard”, “cabinet” and “vanity” can all be considered synonymous to some degree. As a result, the CBSA’s position is that a vanity can be considered a type of cupboard.

39. With respect to the goods in issue, the product literature shows that the wooden base has doors.²⁰ The witness for Home Depot testified that the goods in issue have no interior shelf;²¹ however, the CBSA argued that shelving is not a necessary requirement for goods to be considered cupboards.²²

40. The expression “cupboards, bookcases and other shelved furniture” implies that cupboards and bookcases must also have shelves to fit within clause (B)(i) of the definition of “furniture” found in the explanatory notes to Chapter 94. However, a similar formulation appears in the explanatory notes to heading No. 94.03, which lists “. . . cupboards, show-cases, tables, telephone stands, writing desks, escritoirs, book-cases, *and other* shelved furniture . . .” [emphasis added]. Some of the goods listed here, for example, tables, do not generally contain interior shelves.

41. The word “shelf” is defined as follows:

1 a: a thin flat usu. long and narrow piece of material (as wood) fastened horizontally (as on a wall) at a distance from the floor to hold objects²³

1 a A thin flat piece of wood or metal etc. projecting from a wall, or as part of a unit, used to support books etc.²⁴

42. In accordance with these definitions, especially the second, a table-top could be considered a type of shelf. Similarly, the bottom or top of a vanity could be considered a shelf. Therefore, the fact that the goods in issue do not contain interior shelves does not prevent them from being “cupboards, bookcases and other shelved furniture”.

43. Moving to the second element of clause (B)(i) of the definition of “furniture” found in the explanatory notes to Chapter 94, there seems to be no disagreement between the parties that, factually speaking, the goods in issue are designed to be fixed to the wall. The product literature shows that the goods in issue are designed to be fixed to the wall by screws, which was also confirmed by the witness for Home Depot.²⁵

44. Finally, with respect to the “. . . for holding various objects or articles . . .” element of the definition, Home Depot’s Web site describes the goods in issue as “adding storage”.²⁶ The witness for Home Depot confirmed that the wooden base could be used to hold articles such as a plunger or toilet paper.²⁷

19. Exhibit AP-2014-026-06A at para. 24, tab 11, Vol. 1A.

20. Exhibit AP-2014-026-04, tab 1, Vol. 1.

21. *Transcript of Public Hearing*, 5 May 2015, at 25.

22. *Ibid.* at 61.

23. *Merriam-Webster’s Collegiate Dictionary*, 11th ed., s.v. “shelf”.

24. *Canadian Oxford Dictionary*, 2d ed., s.v. “shelf”.

25. Exhibit AP-2014-026-04, tab 1, Vol. 1; *Transcript of Public Hearing*, 5 May 2015, at 21.

26. Exhibit AP-2014-026-06A, tab 6, Vol. 1A.

27. *Transcript of Public Hearing*, 5 May 2015, at 27.

45. However, the witness for Home Depot also stressed that the storage space was minimal, as most of it would be taken up by the pipes connecting the sink to the water and drainage systems.²⁸ Further, he indicated that he does not recommend to customers that the space be used for storage, as it could cause damage to the pipes.²⁹

46. Most importantly, the main thrust of the witness's testimony was that the primary purpose of the wooden base is not to add storage, but to provide necessary support for the sink.³⁰ The witness testified that, unlike some other types of sinks, the sink portion of the goods in issue is not independently supported in the wall when installed.³¹ Instead, the base provides almost all the support for the sink,³² which is necessary to prevent the weight of the sink from damaging the integrity of the water lines and the drain lines, and thus to prevent leakage of water or sewer gases into the home.³³

47. In addition, the goods in issue are always sold as one integrated product and never sold separately, and are designed so that the sink fits into the cabinet, with the dimensions of the cabinet top no greater than the dimensions of the sink; in other words, the base is not intended for use as anything other than a support for this specific sink.

48. Therefore, while the goods in issue are *capable* of holding objects or articles, they cannot be said to be *for* holding objects or articles. The primary purpose of the wooden base is not to provide storage space, but to provide support for the sink.

49. As a result, the goods in issue are not cupboards, bookcases or other shelved furniture designed to be hung, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles.

- Are the goods in issue movable articles constructed for placing on the floor or ground, used mainly with a utilitarian purpose to equip private dwellings, not included more specifically elsewhere in the Nomenclature?

50. Neither party has argued that the goods are not “articles” or that they are not “. . . used mainly for a utilitarian purpose to equip buildings such as private dwellings.”³⁴

51. Home Depot argued that the goods in issue do not meet the definition of “furniture” because heading No. 69.10 provides a more specific description of the goods. However, as argued by the CBSA and discussed above, Note 2(ij) to Chapter 69 prevents the consideration of this element of the definition set out in the explanatory notes in this instance.

52. Upon review, the Tribunal could find no other heading of the Nomenclature that would appear to more specifically describe the goods in issue. In particular, the term “vanity” does not appear anywhere in the *Customs Tariff*.

28. *Ibid.* at 26.

29. *Ibid.* at 27.

30. *Ibid.* at 6-10, 13-14, 23-24.

31. *Ibid.* 5 May 2015, at 13-14.

32. *Ibid.* at 23-24. The attachment to the pipes provides a small amount of support (about 5 percent).

33. *Transcript of Public Hearing*, 5 May 2015, at 6-10.

34. Exhibit AP-2014-026-06A at para. 21, Vol. 1A.

53. Home Depot argues that the goods in issue are not “movable” because they are designed to be permanently attached to the water or sewage system.

54. In its brief, the CBSA argued that the goods in issue are movable by definition,³⁵ but did not elaborate further on this point.

55. At the hearing, the CBSA argued that the goods in issue did not need to be “movable” because the exception for goods that are fixed to the wall set out in subparagraph (B) of the definition of “furniture” found in the explanatory notes to Chapter 94 also provides an exception to that criterion.³⁶ As discussed above, the Tribunal has rejected this interpretation.

56. While the Tribunal has already found that the goods in issue are “designed to be fixed in place”, this does not necessarily resolve the question of whether the goods in issue are “movable”.

57. Previous Tribunal jurisprudence establishes that “movable” means that the whole object is designed to be displaced to a new location with relative ease. In *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency*,³⁷ the Tribunal stated as follows:

52. The Tribunal accepts the agreement reached between the parties that the goods in issue are movable articles, which are intended to be placed on the floor of a private dwelling when in use, and are used primarily to store laundry. *They are lightweight, are not packaged with any parts that would suggest that they are to be affixed to the ceiling, wall or floor, and are equipped with handles for carrying, thus allowing them to be picked up and carried.* The Tribunal finds that the goods . . . are movable and, thus, meet the first condition.

[Footnote omitted, emphasis added]

58. In another decision,³⁸ the Tribunal stated as follows:

56. First, the Tribunal has examined the physical exhibits and finds that the goods . . . are *easily portable* and agrees with the parties that they are movable. They are neither constructed nor designed to be or to become an immovable item as understood by law.

[Footnote omitted, emphasis added]

59. Furthermore, the jurisprudence would seem to preclude any argument that the goods in issue could be considered “movable” by virtue of the fact that parts of them, for example, the vanity doors, remain movable after installation. In *Spacesaver Corporation v. Deputy M.N.R.*,³⁹ the Tribunal stated as follows:

First, the goods in issue must be “movable.” The Tribunal is of the view that this means “movable” in the sense that a chair can be moved from one place to another in a room, as opposed to “movable” in the sense of how an article operates after it has been placed somewhere, i.e. in this case, how the superstructure operates after being placed on the rail system. *Although the goods in issue may be said to be “movable” in terms of the operation of certain components of a system,* the Tribunal notes that the evidence shows that, once installed, they are meant essentially to be permanent. *There is no evidence before the Tribunal that the goods in issue are designed to be movable in the sense discussed above or that, once installed, the appellant’s customers in fact*

35. *Ibid.* at para. 19.

36. *Transcript of Public Hearing*, 5 May 2015, at 58-59.

37. (6 April 2011), AP-2010-005 (CITT).

38. *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency* (6 April 2011), AP-2010-019 (CITT).

39. (26 March 1996), AP-95-013, AP-95-073 and AP-95-078 (CITT).

*“move” the goods in issue. Therefore, the Tribunal finds that the goods in issue are not movable for purposes of the definition of “furniture.”*⁴⁰

[Emphasis added]

60. However, if the goods can be, and generally are, designed to be dismantled and moved to another location, they may still be considered “movable”, as were the modular wall panels discussed in the following:

Turning to heading No. 94.03, the Tribunal must consider whether the goods . . . satisfy the definition of “furniture” found in the Explanatory Notes. As indicated above, this definition has three requirements. First, the goods . . . must be movable. It is clear that, although the goods . . . *may not be as movable as, for instance, a small chair, they are “movable.”* In fact, they are designed with this characteristic as a *primary selling feature*. Furthermore, *the evidence is that purchasers of the goods . . . move them to a significant degree*. The Tribunal agrees with the appellant’s representative that *the fact that the goods . . . have to be dismantled to be moved should not disqualify them from being considered furniture*, as this is no different from, for instance, large modular furniture. The Tribunal also notes that there is no such restriction on defining goods as furniture in the definition. . . .⁴¹

[Emphasis added]

61. In other words, the goods in issue could be both “movable” and “designed to be fixed in place” if they are designed to be uninstalled and are moved from place to place to a significant degree, even if they have to be dismantled to do so. However, there is no evidence to this effect on the record of this appeal. Instead, the evidence shows that the goods in issue are only removed if they are being replaced.⁴² In addition, the CBSA conceded in argument that the goods in issue are not intended to be moved on a regular basis.⁴³

62. The Tribunal finds that the goods in issue are not “movable” and, therefore, do not meet the requirements of the definition of “furniture” set out in subparagraph (A) of the definition of “furniture” found in the explanatory notes to Chapter 94. As a result, the goods in issue are not classifiable in heading No. 94.03.

63. Having found that the goods in issue cannot be classified in heading No. 94.03, the Tribunal will now consider whether the goods in issue can be classified in heading No. 69.10.

Should the goods in issue be classified as other ceramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary fixtures of heading No. 69.10?

64. The terms of heading No. 69.10 require that, in order to be classified in that heading, the goods in issue must be “. . . sinks . . . and similar sanitary fixtures” and must be made of ceramic.

65. Further, according to the explanatory notes to heading No. 69.10, the goods in issue must be “. . . designed to be **permanently fixed in place**, in houses, etc., normally by connection to the water or sewage systems”, and must also be treated as described so as to render them “impervious to water”.

40. *Ibid.* at 7.

41. *Krueger International Canada Inc. v. Deputy M.N.R.* (14 February 1996), AP-94-357 (CITT) at 5.

42. Exhibit AP-2014-026-04, tab 1 at 2, Vol. 1; *Transcript of Public Hearing*, 5 May 2015, at 11.

43. *Transcript of Public Hearing*, 5 May 2015, at 59.

66. The witness for Home Depot testified that, in his experience, the goods in issue are normally installed by connecting them to both the water and sewage systems in the bathrooms of private homes.⁴⁴ This is consistent with the product literature submitted by Home Depot and was not disputed by the CBSA.⁴⁵ In accordance with the explanatory notes to heading No. 69.10, the goods in issue can therefore be considered designed to be permanently fixed in place.

67. The witness for Home Depot also testified that the goods are impervious to water.⁴⁶ The CBSA did not dispute that the goods in issue have been treated in the way described in the explanatory notes so as to render them “impervious to water”.

68. The fact that the goods in issue contain sinks and can be used for sanitary purposes is not in dispute.⁴⁷ Nevertheless, the CBSA argued that heading No. 69.10 does not provide a complete description of the goods, as they plainly include more than just sinks.⁴⁸ However, Home Depot also submitted that the goods in issue, if they are not considered “sinks”, can be described as “similar sanitary fixtures”, as they share many important characteristics with the goods specifically named in the heading.⁴⁹

69. As noted by Home Depot, heading No. 69.10 includes “wash basin pedestals”. The Tribunal finds that it is reasonable to describe a sink combined with a base or pedestal as “similar” to the other items listed in the heading.

70. Finally, in order to fall within heading No. 69.10, the goods must be “ceramic”. The evidence on the record is that the goods in issue are composed of both ceramic and wood; however, Rule 2 (b) of the *General Rules* provides as follows:

Any reference in a heading to a material or substance should be taken to include a reference to mixtures or combinations of that material with other materials or substances. *Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of goods of such material or substance.* The classification of goods consisting of more than one material or substance shall be in accordance with the principles of Rule 3.

71. According to Note (XII) of the explanatory notes to Rule 2 (b) of the *General Rules*, this provision cannot be used to “. . . widen the heading so as to cover goods which cannot be regarded, as required under Rule 1, as answering the description in the heading; this occurs where the addition of another material or substance deprives the goods of the character of goods of the kind mentioned in the heading.”

72. In other words, if the wooden base deprives the goods of their character of similar ceramic sanitary fixtures, Rule 2 (b) of the *General Rules* cannot be invoked and the goods cannot be classified in heading No. 69.10.

73. The fact that the goods have a wooden base that can be used for storage does not deprive them of their character as similar sanitary fixtures. Their primary purpose is to function as a sink. As outlined above, the principal purpose of the wooden base is to provide necessary support for the sink, and any storage or

44. *Ibid.* at 5, 10, 12-13, 16.

45. Exhibit AP-2014-026-04, tab 1 at 4, Vol. 1; Exhibit AP-2014-026-06A at para. 3, Vol. 1A.

46. *Transcript of Public Hearing*, 5 May 2015, at 7, 8, 10, 13, 15.

47. Exhibit AP-2014-026-04 at para. 33, Vol. 1; Exhibit AP-2014-026-06A, tab 1 at 2, Vol. 1A; *Transcript of Public Hearing*, 5 May 2015, at 48-49, 52.

48. *Transcript of Public Hearing*, 5 May 2015, at 56, 61.

49. Exhibit AP-2014-026-04 at paras. 40-42, Vol. 1.

other function that it provides is secondary to that purpose. The sink and its attendant sanitary function are the defining elements of the goods in issue.

74. In light of the foregoing, the Tribunal finds that the goods in issue should be classified in heading No. 69.10.

75. Finally, since the goods in issue are imported unassembled, the Tribunal will apply Rule 2 (a) of the *General Rules*, which allows goods imported unassembled to be classified in the same heading as the goods in their complete and assembled state and not in the headings applicable to their component parts.

Classification at the Subheading and Tariff Item Levels

76. The two subheadings within heading No. 69.10 are 6910.10, “of porcelain or china”, and 6910.90, “other”. Since the sink portions of the goods in issue are made of imitation porcelain, not genuine porcelain or china,⁵⁰ the Tribunal finds that subheading No. 6910.90 is applicable.

77. There is only one tariff item under subheading No. 6910.90, which is tariff item No. 6910.90.00, “other”.

78. Therefore, the goods in issue should be classified under tariff item No. 6910.90.00.

DECISION

79. In light of the foregoing, the appeal is allowed.

Peter Burn
Peter Burn
Presiding Member

50. Exhibit AP-2014-026-06A, tab 2 at 2, Vol. 1A.