



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2014-024

Globe Union (Canada) Inc.

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Friday, September 30, 2016*

*Corrigendum issued  
Monday, October 3, 2016*

**TABLE OF CONTENTS**

DECISION..... i

CORRIGENDUM ..... ii

STATEMENT OF REASONS ..... 1

    INTRODUCTION ..... 1

    PROCEDURAL HISTORY ..... 1

    DESCRIPTION OF THE GOODS IN ISSUE ..... 2

    LEGAL FRAMEWORK ..... 2

        Relevant Tariff Nomenclature and Notes ..... 3

    TRIBUNAL ANALYSIS..... 6

        Tariff Heading Classification of the Bathroom Vanities ..... 6

        Classification at the Subheading and Tariff Item Levels ..... 14

DECISION ..... 15

IN THE MATTER OF an appeal heard on July 14, 2016, pursuant to subsection 67(1) of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF decisions of the President of the Canada Border Services Agency, dated July 25, 2014, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**GLOBE UNION (CANADA) INC.**

**Appellant**

**AND**

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

**Respondent**

**AND**

**HOME DEPOT OF CANADA INC.**

**Intervener**

**DECISION**

The appeal is allowed.

Ann Penner

Ann Penner

Presiding Member

IN THE MATTER OF an appeal heard on July 14, 2016, pursuant to subsection 67(1) of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF decisions of the President of the Canada Border Services Agency, dated July 25, 2014, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

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**Appellant**

**AND**

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

**Respondent**

**AND**

**HOME DEPOT OF CANADA INC.**

**Intervener**

**CORRIGENDUM**

In paragraph 76 of the statement of reasons, the text in parentheses should have read as follows: “(i.e. heading No. 70.09 for the mirror and heading No. 69.10 for the bathroom vanity)”.

By order of the Tribunal,

Ann Penner  
Ann Penner  
Presiding Member

Place of Hearing: Ottawa, Ontario  
Date of Hearing: July 14, 2016  
Tribunal Member: Ann Penner, Presiding Member  
Counsel for the Tribunal: Laura Little  
Senior Registrar Officer: Julie Lescom

**PARTICIPANTS:****Appellant**

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## STATEMENT OF REASONS

### INTRODUCTION

1. This is an appeal filed by Globe Union (Canada) Inc. (Globe Union) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from decisions made by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4). Those decisions re-determined the tariff classification of various models of bathroom vanity and mirror sets (the goods in issue) imported by Globe Union.

2. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9403.60.10 of the schedule to the *Customs Tariff*<sup>2</sup> as other wooden furniture for domestic purposes, as determined by the CBSA, or should be classified under tariff item No. 6910.90.00 as other ceramic sinks and similar sanitary fixtures, as submitted by Globe Union.

### PROCEDURAL HISTORY

3. Between June 2, 2010, and October 11, 2012, the goods in issue were imported under tariff item No. 9403.60.10.

4. In August 2013, Globe Union filed requests for refunds under subsection 74(1) of the *Act*, claiming that the goods issue should be classified under tariff item No. 6910.90.00.

5. Between January 15 and March 14, 2014, the CBSA denied Globe Union's refund requests and found that the goods in issue were properly classified under tariff item No. 9403.60.10. Globe Union then filed requests for further re-determination under subsection 60(1) of the *Act*.

6. On July 25, 2014, the CBSA issued its further re-determinations under subsection 60(4) of the *Act* confirming that the goods in issue were properly classified under tariff item No. 9403.60.10.

7. On October 3, 2014, Globe Union filed the present appeal.

8. On December 1, 2014, Globe Union requested that the appeal be held in abeyance pending the decision in *The Home Depot Canada v. President of the Canada Border Services Agency*.<sup>3</sup> The Tribunal granted Globe Union's request. Following the *Home Depot* decision, these proceedings were resumed on December 17, 2015.

9. On June 24, 2016, the Tribunal granted a request from Home Depot of Canada Inc. (Home Depot) for intervener status in this appeal. The Tribunal limited the scope of Home Depot's intervention to filing submissions and presenting oral arguments regarding (i) the significance of "undermount sinks"<sup>4</sup> in the goods in issue and (ii) whether permanently installed shelving should fall within the scope of the definition of "furniture" as provided in the notes to Chapter 94.

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

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

3. (8 September 2015), AP-2014-026 (CITT) [*Home Depot* decision].

4. The term "undermount sink" refers to a sink that is attached to the underside of the counter using a silicone adhesive or clamps. *Transcript of Public Hearing*, 14 July 2016, at 42-43.

10. On July 14, 2016, the Tribunal held a public hearing in Ottawa, Ontario. Globe Union presented a witness, and all three parties made oral arguments.<sup>5</sup>

## DESCRIPTION OF THE GOODS IN ISSUE

11. The goods in issue include several models<sup>6</sup> of Eurostream<sup>®</sup> bathroom vanities and mirrors. Each model consists of a bathroom vanity and a mirror (or, in some cases, two mirrors), which are separate items imported together as a set for retail sale.<sup>7</sup>

12. While the bathroom vanities vary in terms of style and size, they all include a vitreous china sink (or, in some cases, two sinks),<sup>8</sup> a counter top made of granite, marble or vitreous china, and a wooden base with front doors and/or drawers. At the time of importation, the sinks, counter tops and bases are presented unassembled.<sup>9</sup> Upon assembly, the bathroom vanities are designed to be installed by attaching the wooden base to the wall via screws, as well as by attaching the sink to a plumbing system.<sup>10</sup>

## LEGAL FRAMEWORK

13. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).<sup>11</sup> The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

14. Subsection 10(1) of the *Customs Tariff* provides that the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*<sup>12</sup> and the *Canadian Rules*<sup>13</sup> set out in the schedule.

15. The *General Rules* comprise six rules structured in sequence so that, if the classification of the goods cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, and so on, until classification is completed. Classification begins with Rule 1, which provides that classification shall be

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5. Home Depot's oral arguments were limited to the same scope as its written submissions, as set out in para. 9.

6. The models covered by this appeal are the following: "Modero" (models RJ1054-GBG2, RJ1061-GBG2, RJ1062-GBG2, RJ1063-GBG2); "Lloyd Collection" (models RJ1056-GBG2, RJ1057-GBG2, RJ1058-GBG2, RJ1071-GBG2, RJ1072); "B-01" (models RX0098-GBG2, RX0099-GBG2, RX0070-GBG2, RJ1068); "Vernon" (models RJ1037-GBG2, RJ1038-GBG2); "Merlot Collection" (models RJ1031-GBG2, RJ1032-GBG2); "Zena" (model RJ1055-GBG2); "Chelsea" (model RJ1053-GBG2); and "Minsk" (models RJ1029-GBG2, RJ1030-GBG2). Exhibit AP-2014-024-20, tab 1, Vol. 1A; Exhibit AP-2014-024-24A at 1-4, Vol. 1C. Another model, "Lexi" (model RJ1036-GBG2), was originally included in the appeal but, prior to the hearing, the parties reached an agreement regarding its proper tariff classification; therefore, that model is no longer subject to the appeal. *Transcript of Public Hearing*, 14 July 2016, at 9.

7. *Transcript of Public Hearing*, 14 July 2016, at 39, 56, 75, 110.

8. Most of the models in issue have undermount sinks, with the exception of model "B-01", which has an integrated (one piece) countertop and sink made of vitreous china. *Transcript of Public Hearing*, 14 July 2016, at 41-42.

9. *Transcript of Public Hearing*, 14 July 2016, at 38-39.

10. Exhibit AP-2014-024-20 at 1-20, Vol. 1A.

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

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

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

determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the other rules.

16. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*<sup>14</sup> and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,<sup>15</sup> published by the WCO. While classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.<sup>16</sup>

17. The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the *General Rules* as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. 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.<sup>17</sup>

18. 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.<sup>18</sup> The final step is to determine the proper tariff item.<sup>19</sup>

### Relevant Tariff Nomenclature and Notes

19. As noted above, the issue before the Tribunal is whether the goods in issue should be classified in heading No. 69.10 or are properly classified in heading No. 94.03. The relevant tariff nomenclature and notes for those headings are provided below.

#### Heading No. 69.10

#### Section XIII

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

...

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14. World Customs Organization, 2nd ed., Brussels, 2003 [classification opinions].

15. World Customs Organization, 5th ed., Brussels, 2012 [explanatory notes].

16. 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.

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

18. 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."

19. 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.



**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

20. 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);

...

21. None of the explanatory notes to Chapter 69 are relevant to this appeal.

22. 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.

Heading No. 94.03

**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

23. 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.

24. 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 fittings, 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).

25. The explanatory notes to heading No. 94.03 provides 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,

escritorios, 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 [furniture] 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; foot-stools, fire screens; draught-screens; pedestal ashtrays; music cabinets, music stands or desks; play-pens; serving trolleys (whether or not fitted with a hot plate).

## TRIBUNAL ANALYSIS

26. As stated above, each model of the goods in issue consists of a bathroom vanity and one or more mirrors imported together as sets for retail sale. The parties submitted that classification should be based on the bathroom vanity, as opposed to the mirrors, given that, pursuant to Rule 3 (b)<sup>20</sup> of the *General Rules*, the bathroom vanity gives the set its essential character.

27. The parties agreed, and the Tribunal accepts, that the mirrors are *prima facie* classifiable in heading No. 70.09 as glass mirrors, whether or not framed.<sup>21</sup>

28. The Tribunal must now determine whether the bathroom vanities are classifiable in heading No. 69.10 or 94.03. The Tribunal will therefore proceed by considering the applicability of those headings in turn. If it determines that the goods in issue are *prima facie* classifiable in both, it will then consider the application of Rule 3 of the *General Rules* to ascertain the proper classification of the goods in issue as a whole, i.e. the bathroom vanities and the mirrors. It will then consider the proper tariff classification at the subheading and tariff item levels.

### Tariff Heading Classification of the Bathroom Vanities

29. The parties agreed, and the Tribunal accepts, that the tariff classification exercise for the bathroom vanities must begin with heading No. 94.03, by virtue of Note 2(ij) to Chapter 69. This approach was explained by the Tribunal in the *Home Depot* decision as follows:

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, . . . Note 2(ij) to Chapter 69 specifically excludes articles of Chapter 94, which includes furniture, from classification under 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 the Note 2(ij) to Chapter 69 are more specific than those of the explanatory notes to Chapter 94.

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20. Rule 3 (b) of the *General Rules* applies when, “. . . by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings . . .”, such that “. . . goods put up in sets for retail sale, which cannot be classified by reference to Rule 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character . . .”

21. *Transcript of Public Hearing*, 14 July 2016, at 7.

30. Accordingly, the Tribunal will begin its analysis by determining whether the bathroom vanities are other furniture of heading No. 94.03.<sup>22</sup>

31. To qualify as “furniture” for the purposes of heading No. 94.03, goods must meet the terms of Note 2 to Chapter 94 and the definition of “furniture” provided in the explanatory notes to that chapter. As noted above, the definition of “furniture” includes subparagraphs (A) and (B). Subparagraph (B) includes clauses (i) and (ii).

32. The CBSA submitted that the bathroom vanities are “furniture” in accordance with clause (B)(i) of the definition of “furniture” because they are, in effect, *cupboards* designed to be fixed to the wall and to hold various objects, such as linen, medicaments and toilet articles.<sup>23</sup> In support, it argued that subparagraph (B) should be read separately from subparagraph (A), in keeping with the Tribunal’s approach in the *Home Depot* decision. The CBSA’s entire case turned on this argument, as it did not challenge Globe Union’s evidence that the bathroom vanities in issue are not “movable”, a criterion set out in subparagraph (A).<sup>24</sup>

33. Globe Union and Home Depot submitted that the bathroom vanities could not be considered “furniture” because they do not meet the “movable” criterion in subparagraph (A) of the definition of “furniture”. In their view, any and all “furniture” had to meet the criteria in subparagraph (A), with the exception of being constructed for placing on the floor or ground in the case of goods that are covered by subparagraph (B).<sup>25</sup> In support, they referred to Tribunal jurisprudence prior to the *Home Depot* decision, namely, *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency*.<sup>26</sup>

34. Home Depot suggested that subparagraph (B) of the definition of “furniture” is intended to provide an exception to the general criterion in subparagraph (A) that all furniture of Chapter 94 must be designed to be placed on the floor. However, it argued that this should not be taken to mean that goods covered by subparagraph (B) could be exempt from the rest of the criteria under subparagraph (A).<sup>27</sup> In Home Depot’s view, disconnecting the criteria in subparagraph (A) from goods that meet the terms of subparagraph (B) would significantly broaden the scope of heading No. 94.03 in a way that would be arbitrary and inconsistent with other terms of the tariff nomenclature and could create uncertainty for importers.<sup>28</sup>

#### Definition of “furniture”

35. In the *Home Depot* decision, the Tribunal adopted an approach to the definition of “furniture” in the explanatory notes to Chapter 94 that involved reading subparagraphs (A) and (B) as completely separate from one another.<sup>29</sup> According to that approach, subparagraphs (A) and (B) set out three separate clauses, which can be summarized as follows:

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22. Also, since the bathroom vanities 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.

23. *Transcript of Public Hearing*, 14 July 2016, at 111.

24. *Ibid.* at 18-19, 22-23.

25. *Ibid.* at 78-80, 97-98; Exhibit AP-2014-024-20 at para. 43, Vol. 1A; Exhibit AP-2014-024-38A at paras. 17-20, Vol. 1C.

26. (6 April 2011), AP-2010-019 (CITT) [*HBC Zellers*] at paras. 53, 55.

27. *Transcript of Public Hearing*, 14 July 2016, at 105.

28. *Ibid.* at 92-96, 98-99, 103-105.

29. *Home Depot* decision at para. 32.

- Any “movable” articles (not included under other more specific headings of the Nomenclature), which have the essential characteristics that they are constructed for placing on the floor or ground, and are used, mainly with a utilitarian purpose, to equip private dwellings, etc. [subparagraph (A)]
- Cupboards, bookcases, other shelved furniture and unit furniture designed to be hung, to be fixed to the wall, etc., for holding various objects or articles [clause (B)(i)]
- Seats and beds that are designed to be hung or fixed to the wall [clause (B)(ii)]

36. Whereas the Tribunal had not previously read subparagraphs (A) and (B) of the definition of “furniture” in this manner,<sup>30</sup> in the *Home Depot* decision, it found that such an approach was more consistent with the structure of the definition of “furniture”. In particular, the definition does not expressly require that readers refer to subparagraph (A) in order to understand subparagraph (B) or *vice versa*.<sup>31</sup> The Tribunal also considered that such an approach would be more consistent with the scope and intent of Note 2 to Chapter 94, which provides that specific articles that are fixed to the wall can still be considered “furniture” even though they cannot be moved.<sup>32</sup>

37. Globe Union and Home Depot urged the Tribunal to find that the criteria in subparagraph (A) of the definition of “furniture”—except being constructed for placing on the floor or ground—must apply to goods covered by subparagraph (B). However, they did not directly address the above rationale for the Tribunal’s approach in the *Home Depot* decision, as relied upon by the CBSA in this case.<sup>33</sup>

38. The Tribunal maintains the view that the definition of “furniture” does not require, in its structure or content, that the criteria in subparagraph (A) be applied to the specifically named articles, such as cupboards, bookcases or seats, in subparagraph (B). Put another way, a plain reading of the definition of “furniture” does not require cupboards that fall within the parameters of subparagraph (B) to also meet the criteria of subparagraph (A), in particular that they be “movable”.

39. The Tribunal also considers that this approach is consistent with the scope of Note 2 to Chapter 94. As stated above, Note 2 provides that articles referred to in heading No. 94.03, *inter alia*, are only to be classified in that heading if they are designed for placing on the floor or ground. It then sets out an exception for specific articles, such as cupboards, which are to be classified in heading No. 94.03 “. . . *even if they are designed to be hung, to be fixed to the wall or to stand one on the other*” [emphasis added]. In Note 2, there is no express reference to a “movable” requirement or any of the other criteria under subparagraph (A) of the definition of “furniture”.

40. Home Depot highlighted the notes to heading No. 39.25 (builders’ ware of plastics) and heading No. 73.08 (various iron or steel structures), which state that those headings include “[l]arge-scale shelving for assembly and permanent installation . . . in shops, workshops, warehouses . . .”<sup>34</sup> and exclude “[m]ovable shelved furniture (**heading 94.03**)” to suggest that reading subparagraphs (A) and (B) of the

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30. In *HBC Zellers*, the Tribunal concluded that the goods were “other shelved furniture” on the basis that they met the criteria for “furniture” in subparagraph (A) of the definition of “furniture” as expanded by subparagraph (B) to include shelved furniture designed to be hung instead of placed on the ground. *HBC Zellers* at paras. 55, 62, 77.

31. *Home Depot* decision at paras. 32-33.

32. *Ibid.* at paras. 31-34.

33. *Transcript of Public Hearing*, 14 July 2016, at 92-106, 133.

34. Note 11(g) to Chapter 39.

definition of “furniture” separately creates an inconsistency with other headings of the tariff nomenclature.<sup>35</sup> The Tribunal is not persuaded by this argument.

41. The use of the term “movable” in relation to shelved furniture in those particular notes cannot be viewed as determinative in limiting the scope of all goods that are covered by subparagraph (B) of the definition of “furniture”. Moreover, the Tribunal sees no risk of redundancy because, unlike heading No. 94.03, the term “large-scale shelving” is not described as *furniture* at all in those headings.<sup>36</sup>

42. In light of the above, the Tribunal will focus its analysis on whether the bathroom vanities in issue are “cupboards” within the meaning of clause (B)(i) of the definition of “furniture”, as argued by the CBSA.

43. The CBSA made no claim that the bathroom vanities would meet the definition of “furniture” otherwise. Nevertheless, to cover off the rest of the definition, the Tribunal accepts the uncontested evidence that the bathroom vanities in issue are not “movable”<sup>37</sup> and, thus, do not meet the criteria in subparagraph (A) of the definition of “furniture”. Not only are they designed to be anchored to the wall, Mr. John A. Gummersall testified that, as the sinks must be attached to the plumbing system in order to function, it is very difficult to move the bathroom vanities from one place to another after they have been installed.<sup>38</sup> There was no evidence on the record indicating that the vanities are designed to be moved after being installed; typically, they are only dismantled and removed when they are being replaced.<sup>39</sup>

44. Accordingly, in order to determine whether the bathroom vanities in issue qualify as “furniture” for the purposes of heading No. 94.03, the Tribunal will consider whether they are (1) cupboards (2) designed to be hung, to be fixed to the wall or to stand one on the other or side by side (3) for holding various objects or articles (e.g. linen, medicaments, toilet articles, etc.).

#### Are the Bathroom Vanities Cupboards Designed to be Fixed to the Wall for Holding Various Objects

45. No party disputed that the bathroom vanities in issue are designed to be fixed to the wall. Indeed, the product literature filed by Globe Union clearly refers to “anchoring” the rear of the wooden base to the wall, i.e. with screws.<sup>40</sup> On that point, Mr. Gummersall testified that proper installation requires the vanities to be secured to the wall in accordance with applicable building code requirements to prevent undue stress on the plumbing system as it, in turn, is connected to the sink component.<sup>41</sup> Therefore, the Tribunal finds

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35. Explanatory notes to heading No. 73.08.

36. The meaning of the phrase “other shelved furniture” in clause (B)(i) of the definition of “furniture” is not at issue in this case, given the CBSA’s position that the bathroom vanities are “cupboards”. However, the Tribunal notes that it would seem reasonable to refer to subparagraph (A), which is more general in scope, in order to give meaning to the term “furniture” as found in clause (B)(i), i.e. “other shelved *furniture*”. Conversely, for specific articles listed in clause (B)(i), such as “cupboards”, the Tribunal is of the view that the application of the criteria of subparagraph (A) is not required by the definition or the related notes of Chapter 94. That is to say, even if one were to refer to subparagraph (A) to inform the meaning of the term “other shelved furniture” in clause (B)(i), it would not result in a requirement for *all* articles covered by subparagraph (B) to meet the criteria in subparagraph (A).

37. The Tribunal accepts that “movable” means that the whole object is designed to be displaced to a new location with relative ease, in accordance with previous Tribunal jurisprudence. *HBC Zellers* at para. 52; *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency* (6 April 2011), AP-2010-019 (CITT) at para 56; *Spacesaver Corporation v. Deputy M.N.R.* (26 March 1996), AP-95-013, AP-95-073 and AP-95-078 (CITT).

38. *Transcript of Public Hearing*, 14 July 2016, at 18-19, 22.

39. *Ibid.* at 19.

40. Exhibit AP-2014-024-20 at 3, 5-7, 10, 11, 13, 14, 18, 22, 23, Vol. 1A.

41. *Transcript of Public Hearing*, 14 July 2016, at 16, 22-23.

that the bathroom vanities meet this criterion of clause (B)(i) of the definition of “furniture”; they are indeed designed to be fixed to the wall.

46. The Tribunal will now consider the arguments and evidence related to the remaining two criteria: “cupboards” and “for holding various objects or articles”.

47. Although the term “vanity” does not appear in the *Customs Tariff*, the CBSA submitted that it is synonymous with the term “cupboard” for the purposes of clause (B)(i) of the definition of “furniture”. It highlighted dictionary definitions of “vanity” (for example, “. . . a unit consisting of a sink set into a flat top with cupboards beneath, esp. in bathroom . . .”)<sup>42</sup> and “cupboard” (for example, “. . . a recess or a piece of furniture with a door and (usu.) shelves, in which things are stored . . .”)<sup>43</sup> to support its view.

48. For the Tribunal, the storage aspect of a cupboard is in line with the requirement in clause (B)(i) of the definition of “furniture” that it be designed “. . . for holding various objects or articles . . .” The use of the word “for” in subparagraph (B) indicates that cupboards under this part of the definition must be *designed or intended for* that purpose, as opposed to merely *capable* of holding objects and articles.

49. The Tribunal accepts that each model of the bathroom vanities in issue has some of the physical characteristics of cupboards, such as doors on the front of the unit, drawers and/or shelves.<sup>44</sup> It also notes Mr. Gummersall’s testimony that the various models of the bathroom vanities in issue come in different sizes and configurations to reflect different consumer tastes and needs (including storage to a certain degree).<sup>45</sup> As such, the Tribunal finds that the bathroom vanities are *capable* of holding objects and articles, including those routinely used in a bathroom (e.g. linen, medicaments, toilet articles etc.).

50. Nevertheless, the Tribunal finds that the bathroom vanities in issue differ from cupboards in one fundamental respect—they feature a sink. Although none of the parties disputed this fact, the CBSA essentially ignored the presence of the sink when arguing that the vanities should be classified as cupboards or “furniture”. In the Tribunal’s view, while a cupboard may be incorporated into a “vanity”, as per the ordinary meaning of that term above, a vanity featuring a bathroom sink cannot be characterized simply as a cupboard because doing so would overlook the sink component altogether.

51. The presence of the sink goes to the heart of the reason for which the vanities were designed. Mr. Gummersall’s testimony demonstrated that the bathroom vanities in issue were designed around the sink and its operation. As the sinks were to be connected to the plumbing system in order to deliver water and drain waste away, he explained that the bathroom vanities were, first and foremost, intentionally designed for the purposes of personal hygiene in the bathroom.<sup>46</sup> He further testified that the wooden bases of the vanities were designed to support the countertops and the sinks.<sup>47</sup>

52. While Mr. Gummersall acknowledged that the bathroom vanities were designed in such a way that they could also be used to store, or hold, objects either on the countertop or inside the cabinet,<sup>48</sup> he noted

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42. *Canadian Oxford Dictionary*, 2nd ed., s.v. “vanity”, as cited in Exhibit AP-2014-024-24A tab 10, Vol. 1C.

43. *Canadian Oxford Dictionary*, 2nd ed., s.v. “cupboard”, as cited in Exhibit AP-2014-024-24A, tab 11, Vol. 1C.

44. The “Zena” and “Minsk” models have no drawers at all; they simply have doors on the front of the unit and, in the case of the “Minsk” models, an interior shelf. The remaining models have one or more drawers. Exhibit AP-2014-024-20, tab 1, Vol. 1A.

45. *Transcript of Public Hearing*, 14 July 2016, at 62, 69.

46. *Ibid.* at 14-15, 25, 58, 69.

47. *Ibid.* at 20.

48. *Ibid.* at 15, 27, 50-51, 53.

that the storage space was limited by the sink basin and the necessary plumbing fixtures inside the unit.<sup>49</sup> Similarly, storage was limited in those models with drawers, as some of those drawers were “fake”, in that they were purely cosmetic and could not open or close.<sup>50</sup>

53. In light of Mr. Gummersall’s evidence, the Tribunal finds that, while the bathroom vanities *can* be used for storage purposes, they are not “[c]upboards . . . designed . . . *for* holding various objects” [emphasis added] as per clause (B)(i) of the definition of “furniture”. Any storage opportunities are incidental to the sanitary or personal hygiene purpose of the bathroom vanities. This conclusion is further supported by the fact that there is no mention of a storage function in the product literature for any of the bathroom vanities in issue, whereas the sink is listed under the “product features” of each one.<sup>51</sup>

54. Given the range of different sizes and configurations of the bathroom vanities in issue, the Tribunal recognizes that some do indeed offer more potential storage space than others. However, the amount of potential storage space does not negate the evidence before the Tribunal that none of the models are cupboards designed for storage purposes. They are bathroom vanities featuring sinks and are designed primarily around the attendant functions of the sinks.

55. Consequently, the Tribunal finds that the bathroom vanities in issue do not meet the criteria of “cupboards” and “. . . for holding various objects or articles . . .” of clause (B)(i) of the definition of “furniture”.

56. As a result, the Tribunal finds that the bathroom vanities in issue are not “furniture” and, as such, are not *prima facie* classifiable in heading No. 94.03.

Heading No. 69.10: are the Bathroom Vanities “ceramic sanitary fixtures”?

57. Having found that the bathroom vanities are not classifiable in heading No. 94.03, the Tribunal will now determine whether they can be classified in heading No. 69.10, as claimed by Globe Union.

58. The terms of heading No. 69.10 include “[c]eramic sinks, wash basins, wash basin pedestals . . . and similar sanitary fixtures.” Further, according to the explanatory notes to heading No. 69.10, such fixtures 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 made impervious to water by glazing or by prolonged firing (e.g. . . . vitreous china)”.

59. Mr. Gummersall testified that the bathroom vanities in issue include sinks that are made of a “. . . ceramic material, with a clay base . . .” that has been fired with a vitreous china coating, making them waterproof.<sup>52</sup> The CBSA did not dispute those facts. The Tribunal is thus satisfied that the sinks are ceramic and impervious to water.

60. However, as discussed above, each model of the bathroom vanities in issue is composed not only of a ceramic sink but also of a wooden base and a counter top made of granite, marble or vitreous china. Those physical characteristics were undisputed. Therefore, the bathroom vanity, as a whole, does meet the “ceramic” requirement in the terms of heading No. 69.10.

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49. *Ibid.* at 20, 67-69.

50. *Ibid.* at 62-63.

51. For example, Exhibit AP-2014-024-20 at 17, Vol. 1A.

52. *Transcript of Public Hearing*, 14 July 2016, at 23, 42, 59.



61. Where the terms of a heading refer to goods of a specific material, Rule 2 (b) of the *General Rules* provides that it shall be taken as a reference to “. . . goods consisting wholly or partly of goods of such material or substance.”<sup>53</sup> Nevertheless, Rule 2 (b) 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.”<sup>54</sup>

62. This means that Rule 2 (b) of the *General Rules* can only be invoked to classify goods in heading No. 69.10 if the non-ceramic components do not deprive the goods of their character as “. . . sinks, wash basins, wash basin pedestals . . . and similar sanitary fixtures . . .”

63. Accordingly, the Tribunal must first determine whether the bathroom vanities in issue meet the terms of heading No. 69.10, aside from the “ceramic” requirement. If so, then the next question will be whether the non-ceramic components of the bathroom vanities deprive them of their character as sinks, wash basins, wash basin pedestals or similar sanitary fixtures.

64. The Tribunal considers the term “wash basin” to refer to a type of sink, for the purposes of heading No. 69.10. The ordinary meaning of “wash basin” is “a large bowl for water that is used to wash your hands and face”<sup>55</sup> or “[a] sink or basin, typically fixed to a wall or on a pedestal, used for washing one’s hands and face.”<sup>56</sup> It is clear from the explanatory notes to heading No. 69.10 that the type of wash basin covered by this heading would normally be designed to be permanently connected to the water or sewage systems, as opposed to a bowl or basin that is manually filled with water for washing.

65. Mr. Gummersall’s testimony indicated, and the Tribunal accepts, that the bathroom vanities in issue are similar to other types of sanitary fixtures that are specifically named in the terms of heading No. 69.10, such as a sink or wash basin pedestal, because the vanities serve the same fundamental purpose as those goods.<sup>57</sup> In particular, he stated that “[y]ou can buy a pedestal sink . . . a wall-mount sink . . . a vanity. They all do the same purpose which gives you the opportunity to do personal hygiene in the bathroom . . .”<sup>58</sup>

66. Furthermore, Mr. Gummersall testified that, although the wooden base of each model has varying degrees of storage capability, depending on the design, the primary function of the base is “. . . to support the sink . . .”<sup>59</sup> For the models with undermount sinks, which include all the bathroom vanities in issue except for the “B-01” models, the evidence shows that the sinks are attached to and supported by the countertop, which is in turn supported by the base of the vanity.<sup>60</sup> In the case of the “B-01” models, the sink and the

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53. 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 or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of 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.”

54. Note (XII) of the explanatory notes to Rule 2 (b) of the *General Rules*.

55. <http://www.merriam-webster.com/dictionary/washbasin>.

56. [http://www.oxforddictionaries.com/definition/american\\_english/washbasin](http://www.oxforddictionaries.com/definition/american_english/washbasin).

57. *Transcript of Public Hearing*, 14 July 2016, at 58.

58. *Ibid.* at 58.

59. *Ibid.* at 20, 21.

60. *Ibid.* at 42, 43, 60; Exhibit AP-2014-024-20 at 3, 5-7, 10, 11, 13, 14, 16, 18, 22, 23, Vol. 1A.

countertop are an integrated single piece of ceramic, which is placed on top of, attached to and supported by the base.<sup>61</sup>

67. The Tribunal finds that the sanitary function of the bathroom vanities is paramount to their design, purpose and function; the design and construction of the vanities are primarily based around the sink feature and related plumbing connections. As such, the bathroom vanities are for use in bathrooms because they are designed to allow for personal hygiene functions involving the sink. In the Tribunal's view, the fact that the wooden base and counter offer storage options based on a customer's preferences and needs is incidental to their function of supporting and encasing the sink. Given that heading No. 69.10 expressly refers to "... wash basin *pedestals* ..." [emphasis added], 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.

68. Furthermore, the fact that Globe Union supplies these vanities for sale in hardware and plumbing stores, as plumbing fixtures for the bathroom, provided additional support for the Tribunal's conclusion that the bathroom vanities are sanitary fixtures.<sup>62</sup>

69. In terms of the criterion that sanitary fixtures must be permanently fixed in place, Mr. Gummersall's testimony established that the bathroom vanities are designed to be installed by anchoring the wooden base to a wall and connecting the sink to the plumbing system.<sup>63</sup> This is consistent with the installation instructions included in the product literature.<sup>64</sup> He stated that, "[I]like a toilet or a shower, you install it and you basically leave it there, and you use it" because removing the vanity, once it has been installed, is a difficult process.<sup>65</sup> The Tribunal accepts this undisputed evidence that the bathroom vanities are designed to be permanently fixed in place, in houses, etc., by connection of the sink to the water or sewage systems, in accordance with the explanatory notes to heading No. 69.10.

70. In light of the above, the Tribunal finds that the bathroom vanities in issue are sanitary fixtures that meet the terms of heading No. 69.10, aside from the "ceramic" criterion.

71. Turning to the "ceramic" criterion, the Tribunal will now consider whether the non-ceramic components deprive the goods of their character as sanitary fixtures.

72. The CBSA submitted that the size of the wooden base and the amount of potential storage space that it offers, as well as the non-ceramic countertops, are factors that distinguish the bathroom vanities in issue from those in the *Home Depot* decision, which were smaller and had less storage space. In the *Home Depot* decision, the Tribunal concluded that the wooden base of the vanity did not deprive it of its essential character as a sanitary fixture of heading No. 69.10.<sup>66</sup>

73. The bathroom vanities in issue come in a range of sizes and configurations, as discussed above, with some that are similar in size to the goods in the *Home Depot* decision and others that are much larger. However, the Tribunal does not consider the size of the wooden base, or the amount of potential storage space that it offers, to be determinative, given its findings that the fundamental purpose of the vanities is to function as sanitary fixtures and that the principal function of the base is to provide necessary support for the

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61. *Transcript of Public Hearing*, 14 July 2016, at 37, 41, 42; Exhibit AP-2014-024-20 at 8, Vol. 1A.

62. *Transcript of Public Hearing*, 14 July 2016, at 13-14, 19; Exhibit AP-2014-024-20, tab 7, Vol. 1A; Exhibit AP-2014-024-37A at 12, Vol. 1C.

63. *Transcript of Public Hearing*, 14 July 2016, at 18-19, 22.

64. Exhibit AP-2014-024-20, tab 1, Vol. 1A.

65. *Transcript of Public Hearing*, 14 July 2016, at 22.

66. *Home Depot* decision at para. 73.

sink with any storage capability as secondary to that purpose. The same rationale applies to the non-ceramic countertops. Therefore, the Tribunal finds that the non-ceramic components do not deprive the bathroom vanities in issue of their character as sanitary fixtures.

74. In light of the foregoing, the Tribunal finds that the bathroom vanities in issue are *prima facie* classifiable in heading No. 69.10 as ceramic sanitary fixtures.

#### Tariff Heading Classification of the Goods in Issue as Sets for Retail Sale

75. Having found that the bathroom vanities are classifiable in heading No. 69.10, the Tribunal must now consider the proper classification for the goods in issue as a whole.

76. As noted above, the goods in issue are imported as sets for retail sale. The set includes a bathroom vanity and one or two mirrors. Having concluded that the bathroom vanities and the mirrors are *prima facie* classifiable in two different headings (i.e. heading No. 70.10 for the mirror and heading No. 60.10 for the bathroom vanity), the Tribunal accepts the parties' view that Rule 3 (b)<sup>67</sup> of the *General Rules* must be applied in order to determine the proper classification of the goods in issue *as a whole*.<sup>68</sup>

77. Rule 3 (b) of the *General Rules* provides that "... goods put up in sets for retail sale . . . shall be classified as if they consisted of the material or component which gives them their essential character . . ."

78. The parties agreed, and the Tribunal accepts, that for all the models of the goods in issue, the bathroom vanities, not the mirrors, provide the essential character of the goods in issue when taken as a whole.<sup>69</sup> The sink and its attendant sanitary function are the defining elements of the goods in issue.

79. Therefore, the Tribunal finds that the goods in issue should be classified in heading No. 69.10.

#### **Classification at the Subheading and Tariff Item Levels**

80. Turning to the classification of the goods in issue at the subheading and tariff item levels, Globe Union submitted that the goods in issue should be classified under tariff item No. 6910.90.00.

81. The two subheadings under heading No. 69.10 are 6910.10, "of porcelain or china", and 6910.90 "other".

82. There was limited evidence before the Tribunal regarding the specific type of ceramic material that makes up the sinks found in the bathroom vanities in issue. As stated above, Mr. Gummersall's testimony

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67. Although it was not addressed by the parties, the Tribunal first had to consider the application of Rule 3 (a) of the *General Rules*, which provides for classification in the heading with the most specific description of the goods. The Tribunal finds that Rule 3 (a) does not resolve the classification the goods in issue since each of the relevant headings refers to only part of the set (i.e. heading No. 69.10 covers the bathroom vanity and heading No. 70.09 covers the mirror). As stated in Rule 3 (a), "... when two or more headings each refer to . . . part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods." Therefore, the Tribunal must consider the application of Rule 3 (b).

68. As stated above, the parties agreed, and the Tribunal accepts, that the mirrors alone are *prima facie* classifiable in heading No. 70.09 as "glass mirrors, whether or not framed, including rear-view mirrors". *Transcript of Public Hearing*, 14 July 2016, at 7.

69. *Transcript of Public Hearing*, 14 July 2016, at 76, 83, 110.

indicated that the sinks are made of “vitreous china” otherwise described as a “. . . ceramic material, with a clay base . . .” that has been fired with a vitreous china coating, making them waterproof.<sup>70</sup>

83. Since the CBSA did not oppose Globe Union’s submission or evidence in relation to the subheading level, the Tribunal accepts that subheading No. 6910.90 is applicable.

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

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

## **DECISION**

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

Ann Penner  
Ann Penner  
Presiding Member

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70. *Ibid.* at 23, 42, 59.