



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2015-033

Build.Com Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, December 14, 2016*

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IN THE MATTER OF an appeal heard on September 13, 2016, 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 December 14, 2015, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

BUILD.COM INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Serge Fréchette
Serge Fréchette
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: September 13, 2016
Tribunal Member: Serge Fréchette, Presiding Member
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STATEMENT OF REASONS

OVERVIEW

1. On March 9, 2016, Build.Com Inc. (Build.Com) filed an appeal with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ in response to a decision made by the President of the Canada Border Services Agency (CBSA) dated December 14, 2015, pursuant to subsection 60(4).

2. The issue in this appeal is whether the two models of toilets imported by Build.Com, i.e. the Toto Neorest 550 and the Toto Neorest 600, are properly classified under tariff item No. 6910.90.00 of the schedule to the *Customs Tariff*² as other ceramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary fixtures, as determined the CBSA, or should be classified under tariff item No. 8543.70.00 as other machines and apparatus, as claimed by Build.Com.

GOODS IN ISSUE

3. The goods in issue are two models of toilets: the Toto Neorest 550 (Part MS980CMG) and the Toto Neorest 600 (Part MS990CGR). Both are described as one-piece elongated toilets that are composed of a vitreous china toilet bowl, covered with plastic side panels and integrated with an electro-mechanical automated main unit/washlet, a plastic seat and a lid.

4. The goods in issue, in addition to the functions of a regular toilet, provide warm water, perform front and rear washing, incorporate temperature and pressure controls, warm air drying, an automatic air deodorizer, a purifying system and a heated seat, and include a remote control and portable LCD display.

PROCEDURAL HISTORY

5. On January 29, 2014, Build.Com filed three refund claims under paragraph 74(1)(e) of the *Act* for the goods in issue, retaining tariff item No. 6910.90.00 but, in addition, claiming the benefits of tariff item No. 9979.00.00.

6. On June 26, 2015, the CBSA rejected Build.Com's refund requests and issued detailed adjustment statements.

7. On July 3, 2015, Build.Com requested further re-determinations under subsection 60(1) of the *Act*. Build.Com also filed new refund claims, requesting a change from tariff item No. 6910.90.00 to tariff item No. 8543.70.00.

8. On December 14, 2015, the CBSA issued a final determination, pursuant to subsection 60(4) of the *Act*, that the goods were properly classified under tariff item No. 6910.90.00 as other ceramic sanitary fixtures.

9. On March 9, 2016, Build.Com appealed that decision to the Tribunal.

10. The Tribunal held a public hearing in Ottawa, Ontario, on September 13, 2016.

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

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

LEGISLATIVE FRAMEWORK

11. On appeals under section 67 of the *Act* concerning tariff classification matters, the Tribunal determines the proper classification of the goods in accordance with the prescribed interpretative rules.

12. The proper tariff classification of goods is determined according to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization.³ The schedule to the *Customs Tariff* sets out the tariff nomenclature and 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.

13. Subsection 10(1) of the *Customs Tariff* provides that, “[s]ubject to subsection (2), the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System and the Canadian Rules set out in the schedule.”

14. The *General Rules for the Interpretation of the Harmonized System*⁴ 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.

15. After the appropriate heading has been determined, 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] . . .” As the Supreme Court of Canada indicated in *Canada (Attorney General) v. Igloo Vikski Inc.*, it is “. . . only where Rule 1 does not conclusively determine the classification of the goods that the other General Rules become relevant to the classification process”⁵

16. Although the Tribunal is of the view that this dispute may be resolved with an analysis under Rule 1 of the *General Rules*, the application of Rule 2 (b) was also in question in this proceeding. It provides as follows:

Any reference in a heading to a material or substance shall 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 such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

17. Rule 3 of the *General Rules* applies “[w]hen by application of Rule 2 (b) or for any other reason, goods are *prima facie*, classifiable under two or more headings”

18. Section 11 of the *Customs Tariff* provides that, in interpreting 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*

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

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

5. 2016 SCC 38 (CanLII) [*Igloo Vikski*] at para. 21.

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

System.⁷ While classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.⁸

19. Finally, Rule 1 of the *Canadian Rules* provides that “. . . the classification 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”

RELEVANT PROVISIONS AND NOTES

20. The CBSA argued that the goods in issue are properly classified under tariff item No. 6910.90.00, which 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.

6910.10 -Of porcelain or china

6910.10.10 ---Water closet pans (toilet bowls) and flushing cisterns (toilet tanks) or combinations thereof

...

6910.90.00 -Other

21. The relevant notes to Chapter 69 provide as follows:

1. This Chapter applies only to ceramic products which have been fired after shaping. Headings 69.04 to 69.14 apply only to such products other than those classifiable in headings 69.01 to 69.03.

...

GENERAL

...

Firing, after shaping, is the essential distinction between the goods of this Chapter and the mineral or stone articles classified in Chapter 68 which are generally not fired, and the glass articles of Chapter 70 in which the vitrifiable compound has undergone complete fusion.

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 the *Explanatory Notes* be respected unless there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to the *Classification Opinions*.

22. The relevant 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.

Ceramic flushing cisterns remain classified in this heading, **whether or not** equipped with their mechanisms.

The heading **does not**, however, **include** small accessory bathroom or sanitary fittings, such as soap dishes, sponge baskets, tooth-brush holders, towel hooks and toilet paper holders, even if of a kind designed for fixing to the wall, nor portable sanitary articles such as bed pans, urinals and chamber-pots; these goods fall in **heading 69.11 or 69.12**.

23. Build.Com argued that the goods should be classified under tariff item No. 8543.70.00, which provides as follows:

SECTION XVI

**MACHINERY AND MECHANICAL APPLIANCES;
ELECTRICAL EQUIPMENT; PARTS THEREOF;
SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE
AND SOUND RECORDERS AND REPRODUCERS, AND PARTS
AND ACCESSORIES OF SUCH ARTICLES**

...

Chapter 85

**ELECTRICAL MACHINERY AND EQUIPMENT AND PARTS THEREOF;
SOUND RECORDERS AND REPRODUCERS,
TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND
PARTS AND ACCESSORIES OF SUCH ARTICLES**

...

85.43 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this Chapter.

24. The relevant explanatory notes to heading No. 85.43 provide as follows:

This heading covers all electrical appliances and apparatus, **not falling** in any other heading of this Chapter, **nor covered more specifically** by a heading of any other Chapter of the Nomenclature, nor excluded by the operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of **Chapter 84** and certain instruments and apparatus of **Chapter 90**.

The electrical appliances and apparatus of this heading must have individual functions. The introductory provisions of Explanatory Note to heading 84.79 concerning machines and mechanical appliances having individual functions apply, *mutatis mutandis*, to the appliances and apparatus of this heading.

Most of the appliances of this heading consist of an assembly of electrical goods or parts (valves, transformers, capacitors, chokes, resistors, etc.) operating wholly electrically. However, the heading also includes electrical goods incorporating mechanical features **provided** that such features are subsidiary to the electrical function of the machine or appliance.

TRIBUNAL ANALYSIS

25. The Tribunal must determine whether the classification of the goods in issue can be resolved in accordance with Rule 1 of the *General Rules*. In conducting the tariff classification exercise, it is important to keep in mind that the goods in issue must be evaluated as a whole, as imported, and not on the basis of any of their components.⁹ The Tribunal is conscious of the fact that the goods in issue are composed of a number of individual parts with different characteristics and functions, which may, when imported separately, be classified differently. However, regard must be given to the characteristics and operation of the complete unit in determining whether it is in fact a “similar sanitary fixture” or an “electrical machine and apparatus”.

26. For the reasons given below, the Tribunal finds that the goods in issue are properly classified as “similar sanitary fixtures” under tariff item No. 6910.90.00.

27. The Tribunal finds that the goods in issue may be classified according to Rules 1 and 6 of the *General Rules* and Rule 1 of the *Canadian Rules*. However, in the alternative, even if the Tribunal were to find that Rule 1 of the *General Rules* does not conclusively determine the classification of the goods in issue, an analysis under Rule 2 leads to the same result.

28. In appeals under section 67 of the *Act*, the appellant bears the burden of showing that the CBSA incorrectly classified the goods.¹⁰ In this case, Build.Com must demonstrate that the goods in issue should be classified under tariff item No. 8543.70.00 rather than under tariff item No. 6910.90.00.

29. The Tribunal has previously held that goods are not *prima facie* classifiable in two headings if, by virtue of a relevant section or chapter note, the terms of one heading are excluded from the terms of the other. Accordingly, it is well established that, when the Tribunal is faced with an exclusionary note, it must begin its analysis with the heading or headings that are excluded by the note.¹¹

30. In considering the two headings at issue, the Tribunal notes that the explanatory notes to heading No. 85.43 provide that, where the goods are covered more specifically by another heading of any chapter of the nomenclature, they are excluded from Chapter 85. Accordingly, the Tribunal must start its analysis by considering whether the goods in issue are covered more specifically by any other heading. In this case, that means beginning the analysis with heading No. 69.10. Only if the goods are not more specifically covered by heading No. 69.10 than by heading No. 85.43 will the latter be considered.

Are the Goods in Issue “Similar Sanitary Fixtures” of Heading No. 69.10?

31. In order to determine whether the goods in issue should be classified in heading No. 69.10, the Tribunal first considered whether the goods in issue, as a whole, are “similar sanitary fixtures”.

9. *Proctor-Silex Canada v. President of the Canada Border Services Agency* (8 April 2013), AP-2011-065 (CITT) at para. 34; *Cross Country Parts Distribution Ltd. v. President of the Canada Border Services Agency* (19 August 2016), AP-2012-052R (CITT) at para. 22.

10. *J. Cheese Inc. v. President of the Canada Border Services Agency* (13 September 2016), AP-2015-011 (CITT) at para. 63; *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (23 May 2014), AP-2011-033 (CITT) at para. 25; *Canada (Border Services Agency) v. Miner*, 2012 FCA 81 (CanLII).

11. *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (29 July 2013), AP-2012-041 and AP-2012-042 (CITT) at para 46; *Cross Country Parts Distribution Ltd. v. Canada (Border Services Agency)*, 2015 FCA 187 (CanLII).

32. The goods in issue are described in the product literature and by the parties as toilets or automated toilets. The CBSA submitted that the term “toilet” is defined as “. . . a bathroom fixture for defecation and urination, consisting of a large porcelain basin [usually] with a hinged lid and seat and a tank from which running water is flushed to rinse the basin.”¹² The CBSA argued that automatic toilets, such as the goods in issue, are sanitary fixtures.

33. Heading No. 69.10 covers “[c]eramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary fixtures.” Although the term “toilet” is not specifically used in heading No. 69.10, the Tribunal notes that a “water closet pan” is generally considered to be a toilet bowl, and a “flushing cistern” is generally considered to be a toilet tank.¹³ These goods, and the others listed in heading No. 69.10, are considered “sanitary fixtures” on account of their features and the functions they perform, which are common knowledge to most people.

34. The first paragraph of the explanatory notes to heading No. 69.10 describes some of the characteristics of goods falling under this heading 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.

35. The evidence demonstrates that the goods in issue possess all the characteristics identified in the explanatory notes as being associated with sanitary fixtures under heading No. 69.10.¹⁴ In particular,

- the goods are designed to be permanently fixed in place in houses or other buildings by connection to the water or sewage systems, as evidenced by the TOTO Neorest 550 Installation Instructions;¹⁵
- the toilet bowl is made of vitreous china;¹⁶ and
- the goods are covered with a “SanaGloss” ceramic glaze, which makes them impervious to water.¹⁷

36. Build.Com did not dispute these facts and agreed that the goods in issue are similar to “water closets and bidets”, goods explicitly enumerated in heading No. 69.10.¹⁸ However, it argued that, because the goods in issue include non-ceramic components, they cannot be classified in heading No. 69.10. On this basis, Build.Com argued that the electro-mechanical components of the toilet require the goods in issue to be classified in heading No. 85.43.

12. Exhibit AP-2015-033-06A, tab 1 at para. 16, Vol. 1A.

13. *Transcript of Public Hearing*, 13 September 2016, at 20.

14. Build.Com seemed to argue in its brief that the case at hand is analogous to the Tribunal’s decision in Appeal No. AP-90-174 where certain stainless steel toilets were classified as “other electric machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85.” However, in that decision, the goods in issue had none of the characteristics of the goods falling under heading 69.10 (they were not made of ceramic and were not fixtures) and neither party argued that they were ceramic sanitary fixtures. This case is therefore not helpful in determining classification of the goods in issue.

15. Exhibit AP-2015-033-06A, tab 22, Vol. 1A.

16. Exhibit AP-2015-033-04A at para. 10, Vol. 1.

17. Exhibit AP-2015-033-06A, tab 17, Vol. 1A.

18. Exhibit AP-2015-033-04A at para. 21, Vol. 1.

37. The explanatory notes to Chapter 69 provide that “[t]his Chapter applies only to ceramic products which have been fired after shaping.” Build.Com interprets these notes as requiring that the goods in issue be made of ceramic in their entirety; because the goods in issue are not made exclusively of ceramic, Build.Com argues that they cannot fall under heading No. 69.10.

38. The CBSA countered, and the Tribunal agrees, that this is an erroneous interpretation of the explanatory notes. Build.Com’s interpretation would render heading No. 69.10 unusable because sanitary fixtures almost always include a component that is not made of ceramic, such as a seat, bolts and screws, a handle for flushing, etc.¹⁹ Indeed, the Tribunal notes that the explanatory notes to heading No. 69.10 provide that “[c]eramic flushing cisterns remain classified in this heading, *whether or not* equipped with their mechanisms” [emphasis added]. In the Tribunal’s view, this indicates that the mechanisms of the goods do not alter their character as ceramic goods even if they are not made of ceramic.

39. There is no definition of “mechanism” in Chapter 69 of the *Customs Tariff*, nor in the *Explanatory Notes*; however, the term has been considered in previous Tribunal cases regarding mechanical appliances. In *Classic Chef Corp. v. Deputy M.N.R.*, the term “mechanism” was described as “[t]hat part of a machine which contains two or more pieces so arranged that the motion of one compels the motion of others” or “the structure or adaptation of parts of a machine. 2 a system of mutually adapted parts working together in or as in a machine.”²⁰ Based on the Tribunal’s previous cases, items such as handles, levers and pumps would all be considered mechanisms for the purposes of this heading. These components work together to enable the good to perform its sanitary functions.

40. With respect to the non-ceramic components of the goods in issue, including the plastic side panels that are integrated with the main electro-mechanical unit, the Tribunal is of the view that these components are also mechanisms that enable the goods in issue to perform their sanitary functions (such as the flushing of the toilet and consequent disposal of human waste), including those designed to enhance the experience of the user (such as the seat warming function, lighting, etc.) as those functions are performed.

41. Thus, notwithstanding the fact that the goods in issue include non-ceramic materials, they are not excluded from heading No. 69.10 on that basis.

42. When the explanatory notes to Chapter 69 are read in context, rather than indicating that the goods must be wholly or entirely made of ceramic, they serve the purpose of distinguishing ceramic products *which have been fired after shaping* from other mineral or stone articles, as explained further as follows:

Firing, after shaping, is the essential distinction between the goods of this Chapter and the mineral or stone articles classified in Chapter 68 which are generally not fired, and the glass articles of Chapter 70 in which the vitrifiable compound has undergone complete fusion.

43. In light of the aforementioned evidence, the Tribunal is satisfied that the goods in issue are “similar sanitary fixtures” and will now turn to whether the goods are more specifically covered by heading No. 69.10.

19. *Transcript of Public Hearing*, 13 September 2016, at 69. At the hearing, Build.Com argued that a distinction must be made between these mechanisms and the electrical component on the basis that the latter is more expensive. However, nothing in the *Customs Tariff* suggests that a distinction between different types of “mechanisms” must be made based on their costs.

20. (17 December 1999), AP-98-078 (CITT) at footnote 6.

Are the Goods in Issue More Specifically Covered by Heading No. 69.10?

44. The explanatory notes to heading No. 85.43 provide that “[t]his heading covers all electrical appliances and apparatus, **not falling** in any other heading of this Chapter, **nor covered more specifically** by a heading of any other Chapter of the Nomenclature” Thus, as mentioned above, if the goods in issue are more specifically covered by heading No. 69.10, they are excluded from heading No. 85.43.

45. Heading No. 85.43 covers “[e]lectrical machines and apparatus, having individual functions, **not specified or included elsewhere in this Chapter.**” This heading does not specify the purpose of the goods other than that they are electrical. Neither does it describe the type of “individual functions” of the goods falling under this heading.

46. In contrast, heading No. 69.10 describes the goods as “**Ceramic sinks, wash basins, wash basins pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary fixtures**” [emphasis added]. This heading, in addition to providing examples of the “sanitary fixtures”, describes the characteristics and functions of the goods falling under its ambit. In particular, the description refers to their composition as a ceramic material, their nature or purpose as sanitary goods, as well as their characterization as fixtures.

47. Therefore, the Tribunal is of the view that heading No. 69.10 covers the goods in issue more specifically than heading No. 85.43.

The Goods in Issue Would Also be Classified in Heading No. 69.10 Pursuant to Rule 2 of the *General Rules*

48. Although the Tribunal is satisfied that an analysis under Rule 1 of the *General Rules* establishes that the goods in issue can be classified in heading No. 69.10, the Tribunal would reach the same conclusion following an analysis under Rule 2.

49. As was affirmed in *Igloo Vikski*, where the goods are comprised of a mix of materials or substances and where no heading specifically describes the composite goods as such, Rule 2 of the *General Rules* is applied in conjunction with Rule 1 to determine the *prima facie* classification of such goods.²¹

50. Rule 2 (a) of the *General Rules* concerns the tariff classification of unfinished goods and is irrelevant in the case at hand. Rule 2 (b) applies where a good consists of a mixture of more than one substance and provides that a reference to goods of a given material or substance in a heading shall be taken to include goods consisting wholly or partially of such material or substance.

51. The explanatory notes to Rule 2 (b) of the *General Rules* explain that the effect of the rule is that a reference in a heading to a material or substance is deemed a reference to a combination of that material or substance with other materials or substances. However, Rule 2 (b) does not extend a heading to cover goods which cannot be regarded as answering the description of the heading. In other words, the mixed or composite good is described by that heading unless the addition of the other material or substance deprives the good of the character of goods of the kind described in the heading.²²

52. Build.Com seems to argue that the electric component of the goods in issue deprives them of the character of goods of the kind described in heading No. 69.10. The Tribunal disagrees. In the case at hand,

21. *Igloo Vikski* at para. 22.

22. *Ibid.* at para. 26.

the effect of Rule 2 (b) of the *General Rules* is that goods which fall under heading No. 69.10 remain sanitary fixtures under the heading notwithstanding the fact that they are combined with a material which could fall under a different heading, as long as this addition of the other materials does not deprive the goods of their character as sanitary fixtures. Accordingly, the Tribunal does not find that the addition of an electric component to the toilets deprives them of their character as the kind of goods described in heading No. 69.10.

53. The Tribunal is aware that the CBSA rendered an advance ruling regarding the TOTO Washlet S300 (seat only), and classified that good under tariff item No. 8543.70.00 as “electrical machines and apparatus, having individual functions, not specified or elsewhere included.”²³ However, as mentioned above, the goods in issue must be considered as a whole. A significant distinction between the goods that were subject to the advance ruling and the goods in issue is that the latter are sanitary fixtures, comprised primarily of ceramic. In contrast, the TOTO Washlet S300 has no ceramic components and does not function, on its own, as a sanitary fixture.

54. Therefore, Rule 2 (b) of the *General Rules* has the effect of extending the coverage of Rule 1, which classifies the goods in issue as ceramic sanitary fixtures in heading No. 69.10, to the electric component of the goods in issue.

55. Build.Com submitted, as an alternative argument, that the goods in issue can be classified in heading No. 85.43 by applying an analysis under Rule 3, which provides that only when goods are *prima facie* classifiable under two or more headings will the analysis pursue under Rule 3.

56. It is unnecessary to address Build.Com’s alternative argument with regard to Rule 3 of the *General Rules* because the goods in issue cannot be *prima facie* classifiable in two or more headings. As mentioned above, the Tribunal has previously held that goods are not *prima facie* classifiable in two headings if, by virtue of a relevant section or chapter note, the terms of one heading are excluded from the terms of the other.

57. Accordingly, because the explanatory notes to heading No. 85.43 provide that, where the goods are covered more specifically by another heading of any chapter of the nomenclature, they are excluded from Chapter 85, the goods in issue cannot be *prima facie* classifiable in both heading Nos. 85.43 and 69.10. Therefore, pursuant to the exclusionary note, the goods in issue are properly classified in heading No. 69.10 because, as mentioned above, this heading covers the goods in issue more specifically than does heading No. 85.43.

23. Exhibit AP-2015-033-11A, tab 1, Vol. 1B.

DECISION

58. For the above-noted reasons, the Tribunal concludes that the goods in issue are properly classified under tariff item No. 6910.90.00 as “similar sanitary fixtures”.

59. The appeal is therefore dismissed.

Serge Fréchette
Serge Fréchette
Presiding Member