



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2017-055

Globe Union Canada

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Thursday, August 22, 2019*

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IN THE MATTER OF an appeal heard on April 9, 2019, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated November 21, 2017, with respect to a request for re-determination pursuant to subsection 60(1) of the *Customs Act*.

**BETWEEN**

**GLOBE UNION CANADA**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is allowed.

Jean Bédard, Q.C.  
Jean Bédard, Q.C.  
Presiding Member

Place of Hearing: Ottawa, Ontario  
Date of Hearing: April 9, 2019  
Tribunal Panel: Jean Bédard, Presiding Member  
Support Staff: Sarah Perlman, Counsel  
Courtney Fitzpatrick, Counsel

**PARTICIPANTS:****Appellant**

Globe Union Canada

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Marco Ouellet  
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President of the Canada Border Services Agency

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Modern OTDaniel Mercier  
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## STATEMENT OF REASONS

### INTRODUCTION

1. This is an appeal filed by Globe Union Canada (Globe Union) with the Canadian International Trade Tribunal pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision by the President of the Canada Border Services Agency (CBSA) dated November 21, 2017, made pursuant to subsection 60(4).

2. The issue in this appeal is whether three models of toilet bowls and fourteen models of toilet tanks<sup>2</sup> (the goods in issue) can be classified under tariff item No. 9979.00.00 of the schedule to the *Customs Tariff*<sup>3</sup> as goods specifically designed to assist persons with disabilities in alleviating the effects of those disabilities, and articles and materials for use in such goods, as claimed by Globe Union.

### PROCEDURAL HISTORY

3. The goods in issue were imported by Globe Union between 2010 and 2014 through 22 separate transactions under tariff item Nos. 6910.10.10, 6910.10.90 and 6910.90.00. Globe Union filed requests for re-determination under section 74 of the *Act*, claiming that the goods qualify for conditional relief of duties under tariff item No. 9979.00.00. Between August 20 and September 15, 2015, the CBSA denied Globe Union's requests.

4. On August 27, September 3 and 22, 2015, Globe Union requested further re-determinations under section 60 of the *Act*. The CBSA denied the requests on November 21, 2017.

5. On January 31, 2018, Globe Union filed this appeal with the Tribunal under subsection 67(1) of the *Act*.

6. On April 9, 2019, the Tribunal held a public hearing in Ottawa, Ontario. Globe Union called two witnesses, Ms. Kate Berry, an occupational therapist, and Mr. Daniel Mercier, Vice-President and General Manager for Globe Union. The CBSA did not call any witnesses.

### DESCRIPTION OF THE GOODS IN ISSUE

7. The goods in issue are the following models of toilet bowls or tanks, as the case may be:<sup>4</sup>

Type	Model	Type	Model
Bowl	GVP-21-562	Tank	GMX-28-995
Bowl	GVP-21-572	Tank	G00-28-992

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

2. The goods in issue originally included one additional toilet bowl as well as one sink pedestal. However, these were removed from the appeal by Globe Union at the hearing (see *Transcript of Public Hearing* at 4). In addition, Globe Union claimed that additional toilet bowls were intended to be included in the appeal (see *Transcript of Public Hearing* at 6). Following further submissions from the parties, Globe Union confirmed that these toilet bowls were in fact not subject to the appeal (Exhibit AP-2017-055-44, Vol. 1D; Exhibit AP-2017-055-46 (protected), Vol. 2; Exhibit AP-2017-055-48, Vol. 1D).

3. S.C. 1997, c. 36.

4. Globe Union submitted that the "Alpha prefixes do not affect the numeric designator for the particular bowl as to its eligibility of its' [*sic*] compliance to ADA and/or CSA standard(s)." Exhibit AP-2017-055-48, Vol. 1D at 2 of 4.

Bowl	GX00-21-128	Tank	G00-28-492
Tank	28-590-09	Tank	GX00-28-495
Tank	28-592	Tank	EF-28-380
Tank	28-592-09	Tank	G00-28-380
Tank	28-592-25	Tank	GXLT-28-530
Tank	DF-28-380	Tank	28-595
Tank	DF-28-380-25		

8. The toilet bowls do not include toilet seats. The toilet tanks include tank lids and flushing controls.<sup>5</sup>

## LEGAL FRAMEWORK

9. 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>6</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.

10. 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>7</sup> and the *Canadian Rules*<sup>8</sup> set out in the schedule.

11. 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.

12. 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>9</sup> and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,<sup>10</sup> published by the WCO. While the classification opinions and the explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.<sup>11</sup>

13. The parties agree, and the Tribunal accepts, that the goods in issue are classified under tariff item Nos. 6910.10.10, 6910.10.90 and 6910.90.00.

14. Chapter 99, which includes tariff item No. 9979.00.00, provides special classification provisions that allow certain goods to be imported into Canada duty-free. The provisions of this chapter are not standardized at the international level. As none of the headings of Chapter 99 are divided at the subheading or tariff item level, the Tribunal need only consider, as the circumstances may require, Rules 1 through 5 of the *General Rules* in determining whether goods may be classified in that chapter. Moreover, since the

5. *Transcript of Public Hearing* at 70, 135.

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

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

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

9. WCO, 4th ed., Brussels, 2017.

10. WCO, 6th ed., Brussels, 2017.

11. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, and *Canada (Attorney General) v. Best Buy Canada Inc.*, 2019 FCA 20 at para. 4.

Harmonized System reserves Chapter 99 for special classifications (i.e. for the exclusive use of individual countries), there are no classification opinions or explanatory notes to consider.

15. Note 3 to Chapter 99 is relevant to the present appeal. This note provides as follows:

Goods may be classified under a tariff item in this Chapter and be entitled to the Most Favoured-Nation Tariff or a preferential tariff rate of customs duty under this Chapter that applies to those goods according to the tariff treatment applicable to their country of origin only after classification under a tariff item in Chapters 1 to 97 has been determined and the conditions of any Chapter 99 provision and any applicable regulations or orders in relation thereto have been met.

16. As the goods in issue are classified under tariff item Nos. 6910.10.10, 6910.10.90 and 6910.90.00, the condition of note 3 to Chapter 99 requiring that the goods first be classified under tariff items in Chapters 1 to 97 is met.

17. In order to qualify for relief of duties under tariff item No. 9979.00.00, the goods in issue must be specifically designed to assist persons with disabilities in alleviating the effects of those disabilities.

18. The Tribunal notes that tariff item No. 9979.00.00 was amended effective on January 1, 2019. The goods in issue were imported between 2010 and 2014, and the decisions by the CBSA that are being appealed were made before the amendments came into force. Therefore, the Tribunal's analysis and decision are based on the tariff item description as it existed prior to January 1, 2019.<sup>12</sup>

## POSITIONS OF THE PARTIES

### Globe Union

19. Globe Union submitted that the goods in issue assist persons with disabilities by addressing "pain and discomfort by reducing the range the knees need to bend and by reducing the muscular effort required to sit down, stand up, and flush the toilet".<sup>13</sup> Globe Union submitted that a 17 inch-high toilet bowl, as opposed to a 14 ½-inch high toilet bowl,<sup>14</sup> reduces the negative angle of the knee joint and makes it easier for a person to rise from the seat. In addition, Globe Union submitted that higher toilet bowls make it easier for wheelchair-bound persons to transfer to and from the wheelchair.<sup>15</sup>

20. Globe Union submitted that, at time of importation, the goods in issue comply with the Canadian Standards Association's (CSA) "Accessible Design for the built environment" standard (Code B651),<sup>16</sup> which "contains requirements for making buildings and other facilities accessible to persons with a range of physical, sensory, and cognitive disabilities".<sup>17</sup> Globe Union also submitted that the goods in issue comply with the *Americans with Disabilities Act (ADA)*,<sup>18</sup> which provides certain requirements for accessible toilet

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12. As of January 1, 2019, the amended tariff item No. 9979.00.00 reads as follows: "goods specifically designed to alleviate the specific effects of a disability, and articles and materials for use in such goods."

13. Exhibit AP-2017-055-04A, Vol. 1 at 2; Exhibit AP-2017-055-11C, Vol. 1D at 892.

14. Mr. Mercier testified that a bowl that is 14 ½ inches high is the most common model that is sold. See *Transcript of Public Hearing* at 130.

15. Exhibit AP-2017-055-04A, Vol. 1 at 2; Exhibit AP-2017-055-11C, Vol. 1D at 892.

16. The CBSA refers to Code B651-04 whereas Globe Union refers to Code B651-012. Both standards relate to "Accessible design for the built environment", but have different publication dates.

17. Exhibit AP-2017-055-11C, Vol. 1D at 818, 892, 904; Exhibit AP-2017-055-11B, Vol. 1C at 594; see also Exhibit AP-2017-055-11A, Vol. 1B at 301.

18. *Americans with Disabilities Act*, 42 USC § 604.4, 604.6 (1990).

seats and flush controls. According to Globe Union, the goods in issue also comply with the requirements of the Régie du bâtiment du Québec's (Régie) standards titled "Normes de conception sans obstacles" regarding toilet seats and flushing mechanisms for accessible washrooms. Finally, Globe Union submitted that the goods in issue comply with International Code Council (ICC) Standard 117-1, which also sets requirements for toilet seat heights.<sup>19</sup>

## CBSA

21. The CBSA submitted that a two-part test applies to classification under tariff item No. 9979.00.00, namely that goods must be (1) specifically designed to assist persons with disabilities (2) in alleviating the effects of those disabilities. Furthermore, the CBSA submitted that "the goods in issue must be committed by design (i.e. specifically designed) to assist a specific class of persons (i.e. persons with disabilities) in a specific way (i.e. in the alleviation of the effects of those disabilities)".<sup>20</sup>

22. The CBSA argued that the goods in issue do not meet the two-part test. For the first part, the CBSA submitted that each of the goods, on its own, must be specifically designed to assist persons with disabilities. The CBSA submitted that the evidence in this case is silent as to the purposeful intent during the design phase of the goods. According to the CBSA, Globe Union solely relied on the goods' purported compliance with the standards listed above to meet its burden of proof in this regard. The CBSA argued that, although compliance with such standards is indicative of the fact that a good is specifically designed to accommodate persons with disabilities, the goods in issue cannot benefit from duty-free treatment solely because they comply with certain accessibility design standards. In addition, the CBSA submitted that Globe Union has provided no evidence as to how the goods in issue are compliant with the CSA, ADA, Régie and ICC barrier-free standards and has therefore not met its evidentiary burden.<sup>21</sup>

23. On the contrary, the CBSA submitted that the evidence shows that the goods in issue do not achieve full compliance with the barrier-free standards. The CBSA submitted that these standards apply to complete toilets, and that the product literature for the goods in issue shows that only some of Globe Union's complete toilets bear the ADA icon. The CBSA noted, however, that the goods in issue are not complete toilets and that none of the goods in issue bear the ADA icon on their own.<sup>22</sup>

24. The CBSA argued that Globe Union takes certain requirements from the barrier-free standards, such as toilet seat heights as well as placement and type of flush controls, and applies them to the goods in issue. The CBSA submitted that this results in the tanks and bowls failing to accomplish the purpose for which these standards were written. The CBSA thus argued that it is inappropriate to assess the goods in issue against the barrier-free design standards listed above on the basis of their height or flush controls as independent elements.<sup>23</sup>

25. In addition, the CBSA submitted that the height requirements of the barrier-free standards include both the toilet bowl and seat, whereas toilet seats are not included in this appeal. The CBSA also submitted that the evidence does not show whether the tanks meet the standards related to flushing controls and

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19. Exhibit AP-2017-055-04A, Vol. 1 at 4-6; *Transcript of Public Hearing* at 28.

20. Exhibit AP-2017-055-06A, Vol. 1 at 1, 8, citing *BSH Home Appliance Ltd. v. President of the Canada Border Services Agency* (27 October 2014), AP-2013-057 (CITT) [BSH] at para. 51.

21. Exhibit AP-2017-055-06A, Vol. 1 at 8-9, 13-14.

22. *Ibid.* at 9, 11-12.

23. *Ibid.* at 9.



operable parts. The CBSA noted that the tanks in issue do not have secured lids, contrary to the requirements of the CSA barrier-free standard.<sup>24</sup>

26. For the second part of the test, the CBSA submitted that, although “hard-and-fast scientifically verifiable evidence” is not required, Globe Union must demonstrate that “the design of the goods was specifically aimed at alleviating the effects of identified disabilities”.<sup>25</sup> According to the CBSA, there is no evidence demonstrating a rational connection between the design of the goods in issue and Globe Union’s claim that the goods alleviate the identified disabilities, or that the intended result has been achieved.<sup>26</sup>

## ANALYSIS

27. As indicated above, the parties agree, and the Tribunal accepts, that the goods in issue are classified under tariff item Nos. 6910.10.10, 6910.10.90 and 6910.90.00. Accordingly, the only issue before the Tribunal is whether the goods in issue can benefit from duty relief under tariff item No. 9979.00.00 as goods specifically designed to assist persons with disabilities in alleviating the effects of those disabilities.

28. As indicated in *Sigvaris*, the Tribunal must therefore determine (1) whether the goods in issue are specifically designed to assist persons with disabilities, and (2) whether the goods in issue are specifically designed to assist such persons in alleviating the effects of those disabilities.<sup>27</sup>

29. With regard to whether goods are specifically designed to assist persons with disabilities in alleviating the effects of those disabilities, the Tribunal in *BSH* stated as follows:

The issue... is essentially one of fact, turning upon an assessment of the specific design characteristics of those goods, as presented for importation, including such assessment against generally recognized accessibility standards relevant to the disability that the goods purport to accommodate.<sup>28</sup>

30. In addition, in *Wolseley* the Tribunal stated that compliance with U.S. accessibility standards, namely the *ADA*, was indicative of the fact that the good in issue was specifically designed to accommodate persons with disabilities.<sup>29</sup> The same applies in this instance.

31. As to the question whether the goods in issue were specifically designed to assist persons with disabilities, in *Masai* the Tribunal noted that “documentation that shows a purposeful intent during the design phase of a product would normally constitute the best way of demonstrating such an intent.”<sup>30</sup>

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24. *Ibid.* at 10-11.

25. *Ibid.* at 15.

26. *Ibid.*

27. *Sigvaris Corporation v. President of the Canada Border Services Agency* (23 February 2009), AP-2007-009 (CITT) [*Sigvaris*] at para. 26. See also *Wolseley Canada Inc. v. President of the Canada Border Services Agency* (11 December 2013), AP-2012-066 (CITT) [*Wolseley*] at para. 41; *BSH* at para. 51.

28. *BSH* at para. 56.

29. *Wolseley* at footnote 44. The Tribunal adopts the same view with regard to the ICC, CSA and Régie barrier-free standards. Exhibit AP-2017-055-06A, Vol. 1 at 192, 197; Exhibit AP-2017-055-11, Vol. 1A at 5; Exhibit AP-2017-055-11B, Vol. 1C at 594; Exhibit AP-2017-055-11C, Vol. 1D at 827.

30. *Masai Canada Limited v. President of Canada Border Services Agency* (5 August 2011), AP-2010-025 (CITT) [*Masai*] at para. 21.

However, the Tribunal also noted that proof of purposeful intent may come from various sources, which only need to be probative and convincing.<sup>31</sup>

32. In the current case, Globe Union presented product data sheets showing that toilets comprised of the toilet tanks in issue paired with other toilet bowls are marked with the accessibility symbol and are therefore compliant with the *ADA*.<sup>32</sup> In addition, Globe Union's CSA certification record shows that the toilet bowls and tanks in issue, other than toilet bowl model GVP-21-562, when paired with other toilet bowls and tanks are identified as "ADA models".<sup>33</sup>

33. As for toilet bowl model GVP-21-562, the product data sheet provided by Globe Union shows that it has a height of 15 ¼ inches, which, on its own, is below the requirements of the *ADA*, *CSA*, *ICC* and *Régie* barrier-free standards.<sup>34</sup> However, the Tribunal notes that the height requirements apply to toilet *seat* height. Globe Union submitted, and Mr. Mercier testified, that the toilet bowls in issue are committed by design to receive a seat through the presence of two holes on the bowls.<sup>35</sup> Mr. Mercier testified that the toilet bowls cannot be used without a seat and that the average thickness of a standard toilet seat is one inch.<sup>36</sup> As such, the Tribunal is satisfied that bowl model GVP-21-562 is committed by design to be installed with a seat and is therefore intended to meet the requirements of the *CSA* and *Régie* barrier-free standards.

34. The *ADA*, *ICC* and *Régie* barrier-free standards seem to require compliance of the complete toilet to be certified as barrier-free compliant. However, in order to be fully compliant, each of the toilet bowl and tank must meet their associated requirements. As stated by Mr. Mercier, the tanks and the bowls in issue respond to different types of disabilities: "[I]t's not true to say that you need the combination to help someone that has disabilities."<sup>37</sup> The Tribunal is satisfied that the fact that the toilet bowls and tanks can be part of such compliant toilets is evidence that each of the toilet bowls and tanks, on their own, meet their associated requirements.<sup>38</sup>

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31. *Ibid.*

32. Exhibit AP-2017-055-06A, Vol. 1 at 33, 37, 41, 45, 49, 53, 57, 61, 65, 69, 73; Exhibit AP-2017-055-11D (protected), Vol. 2 at 7-10, 14-16, 20-23, 28-30, 34-36, 40-42, 46-49, 53-55, 59-66, 73, 77, 81-83, 87-89, 90-92, 96-101, 111-113, 119-121, 130-135, 140-144, 148-153, 160-162, 168-170, 174-175; Exhibit AP-2017-055-11E, Vol. 1D at 5-6, 9-10, 13-14, 16 of 30. *Transcript of Public Hearing* at 45, 65-66, 123. In addition, Mr. Mercier testified that all of the goods in issue are also compliant with the *ICC* and *CSA* barrier-free standards (*Transcript of Public Hearing* at 28, 45, 47-52, 55-57, 123).

33. Exhibit AP-2017-055-11C, Vol. 1D at 856-858, 860, 863, 865-867.

34. Exhibit AP-2017-055-11E, Vol. 1D at 16 of 30. The *ADA*, *ICC* and 2012 *CSA* barrier-free standards require toilet seat heights between 17 and 19 inches (or 430 and 485 mm), whereas the *Régie* and 2004 *CSA* barrier-free standards both require toilet seat heights between 400 and 460 mm (approximately 15 ¾ and 18 inches). The Tribunal notes that the 2012 *CSA* barrier-free standard states that "[t]oilet seats 400 to 460 mm high offer a reasonable compromise. Thick seats and filler rings are available to adapt standard fixtures to these requirements." See Exhibit AP-2017-055-06A, Vol. 1 at 198; Exhibit AP-2017-055-11, Vol. 1A at 167; Exhibit AP-2017-055-11A, Vol. 1B at 404; Exhibit AP-2017-055-11B, Vol. 1C at 682; Exhibit AP-2017-055-11C, Vol. 1D at 838.

35. *Transcript of Public Hearing* at 40-41, 141-142; *BSH* at para. 68.

36. *Transcript of Public Hearing* at 40-41, 84.

37. *Ibid.* at 94, 136.

38. Exhibit AP-2017-055-06A, Vol. 1 at 198; Exhibit AP-2017-055-11, Vol. 1A at 165; Exhibit AP-2017-055-11A, Vol. 1B at 301; Exhibit AP-2017-055-11B, Vol. 1C at 594, 682-683; Exhibit AP-2017-055-11C, Vol. 1D at 837. The *CSA* barrier-free standard, for its part, seems to allow references to individual requirements.

35. Ms. Berry, an occupational therapist and a rehabilitation case manager, testified as a lay witness on issues about which she has first-hand knowledge as part of her work. She said that the purpose of occupational therapy is to enable function and independence, increase participation in meaningful activities and improve quality of life.<sup>39</sup> The Tribunal finds that Ms. Berry's uncontradicted testimony is credible.

36. In her testimony, Ms. Berry said that she would recommend a barrier-free toilet where a person has difficulty operating a standard toilet tank due to issues with hand functions, or required a higher seat due to issues of balance, strength, muscle control or range of motion.

37. With regard to the ADA, ICC and CSA barrier-free standards' requirement that toilet flush controls be operable with one hand without tight grasping, pinching, or twisting of the wrist, Ms. Berry testified that this is meant to address various types of hand injuries or chronic pain conditions, which can be considered disabilities or handicaps if it affects a person's ability to participate in meaningful occupations. Similarly, she testified that the requirement for minimal flush control operation force "would be like a compensatory strategy" which would address these disabilities or handicaps.

38. With regard to the barrier-free standards' requirement for toilet seat heights between approximately 15¾ and 18 inches or between 17 and 19 inches, Ms. Berry indicated that such higher toilet seats are helpful for those with ambulatory restrictions, which may be considered disabilities if they affect a person's ability to participate in normal life activities, as there is less distance to travel when transferring from a standing to a sitting position and vice versa.<sup>40</sup>

39. Ms. Berry also confirmed that each of the height and the lever would alleviate a specific disability in the manner that she had described in her testimony.<sup>41</sup>

40. Ms. Berry further testified that there may be situations where a person may need both a barrier-free toilet tank and bowl while, in other situations, a person may only need one of them.<sup>42</sup> This was confirmed by Mr. Mercier.<sup>43</sup>

41. The CBSA argued that in order to meet the requirement for securely attached lids in the CSA barrier-free standard, a "lid lock", which is not present on the goods in issue, was needed. The Tribunal is not convinced by the CBSA's argument and notes that the CSA barrier-free standard does not require that the lid be locked in place. It only requires that it be securely attached. Mr. Mercier testified that a "lid lock" is a mechanism that is used to prevent against vandalism and that it has nothing to do with the barrier-free standards. He further testified that the lids of the goods in issue could not easily be pushed off the toilet tanks.<sup>44</sup> The Tribunal finds that Mr. Mercier's uncontradicted testimony is credible, accepts his evidence in that regard and finds that the lids are securely attached to the toilet tanks in issue, as required in the CSA barrier-free standard.

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39. *Transcript of Public Hearing* at 9.

40. *Ibid.* at 11-15, 23-24; Exhibit AP-2017-055-06A, Vol. 1 at 198; Exhibit AP-2017-055-11, Vol. 1A at 120, 167-168; Exhibit AP-2017-055-11A, Vol. 1B at 316, 404-405; Exhibit AP-2017-055-11B, Vol. 1C at 682; Exhibit AP-2017-055-11C, Vol. 1D at 835, 838-839.

41. *Transcript of Public Hearing* at 24.

42. *Ibid.*

43. *Ibid.* at 136 and 137

44. *Ibid.* at 71, 135.

42. The Tribunal is of the view that evidence of compliance of the goods in issue with the barrier-free standards is sufficient in this case to show that the goods in issue were specifically designed to assist persons with disabilities in alleviating the effects of those disabilities. The goal of tariff relief under tariff item No. 9979.00.00 is not to reward the first inventor, but rather to ensure that goods intended to assist persons with disabilities and designed to that effect can enter into Canada free of tariffs. It is not necessary to reinvent the wheel each and every time.

43. Although other cases may have relied on medical expert testimony to define the disabilities addressed by certain goods, this is not required in every case involving tariff item No. 9979.00.00. Each case is different, and the type of evidence required to satisfy the Tribunal that the conditions of tariff item No. 9979.00.00 are met will depend on the particular facts of each case. Appellants are always expected to “put their best foot forward” and to present the best evidence available. In some cases, expert testimony will be the best way for an appellant to discharge its onus.

44. In this present case, however, we are dealing with subject goods that meet existing and well-established standards such as the *ADA* standard. Furthermore, the witnesses in this case presented credible evidence in identifying the disabilities whose effects are alleviated by goods meeting those standards and the manner in which those effects were alleviated.

45. In *Masai*, the Tribunal said that proof of purposeful intent may come from various sources, which only need to be probative and convincing.<sup>45</sup> Likewise, the proof of the disabilities addressed by the subject goods may also come from various sources. As is the case for the proof of purposeful intent, however, these sources also need to be probative and convincing. In *Wolseley*, the Tribunal found that the fact that specific features were incorporated in the universal design of the sink in issue to meet various standards such as the *ADA* evinced “a clear and purposeful intention on the part of the designers of the good in issue to assist . . . persons with disabilities”.<sup>46</sup> A similar reasoning applies in this case.

46. Each of the barrier-free standards listed above states that it is intended to make facilities accessible to persons with disabilities.<sup>47</sup> Mr. Mercier testified that toilet bowls and tanks which are manufactured to meet these standards are specifically designed to assist persons with disabilities.<sup>48</sup> Therefore, the Tribunal finds that the goods in issue meet the barrier-free standards.

47. As such, and considering the above, the Tribunal is satisfied that goods meeting various standards such as the *ADA* are specifically designed to assist persons with disabilities in alleviating the effects of those disabilities.

## Conclusion

48. For the foregoing reasons, the Tribunal finds that the goods in issue are specifically designed to assist persons with disabilities in alleviating the effects of those disabilities and therefore qualify for the benefits of tariff item No. 9979.00.00.

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45. *Masai* at para. 21.

46. *Wolseley* at para. 51.

47. Exhibit AP-2017-055-06A, Vol. 1 at 192, 197; Exhibit AP-2017-055-11, Vol. 1A at 5; Exhibit AP-2017-055-11B, Vol. 1C at 594; Exhibit AP-2017-055-11C, Vol. 1D at 827.

48. *Transcript of Public Hearing* at 42, 63-64, 112-113, 124-125.

**DECISION**

49. The appeal is allowed.

Jean Bédard, Q.C.

Jean Bédard, Q.C.

Presiding Member