



Ottawa, Wednesday, May 21, 2003

Appeal No. AP-2001-095

IN THE MATTER OF an appeal heard on October 17, 2002,
under subsection 67(1) of the *Customs Act*, R.S.C. 1985
(2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Commissioner of
the Canada Customs and Revenue Agency dated January 4, 2002,
with respect to a request for redetermination under
subsection 60(4) of the *Customs Act*.

BETWEEN

SUPERTEK CANADA INC.

Appellant

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY**

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Richard Lafontaine

Richard Lafontaine
Presiding Member

Michel P. Granger

Michel P. Granger
Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-2001-095

SUPERTEK CANADA INC.

Appellant

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY

Respondent

This is an appeal pursuant to subsection 67(1) of the *Customs Act* from decisions of the Commissioner of the Canada Customs and Revenue Agency (the Commissioner). The goods in issue are battery-operated push-on lights, composed of an opaque white plastic dome. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9405.40.90 as other electric lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included, as determined by the Commissioner, or, alternatively, should be classified under tariff item No. 8513.10.90 as other portable electric lamps designed to function by their own source of energy (for example, dry batteries, accumulators, magnetos), other than lighting equipment of heading No. 85.12, or should be classified under tariff item No. 8513.10.10 as flashlights, as claimed by Supertek Canada Inc. (Supertek).

HELD: The appeal is dismissed. Upon examination of the *Explanatory Notes to the Harmonized Commodity Description and Coding System (Explanatory Notes)* to heading No. 85.13, the Tribunal finds that the goods in issue are not “portable lamps”. The phrase “lamps ... which are designed for use when carried in the hand or on the person” means, in respect of these lamps, that they are intended to be used when carried in the hand or on the person. Examples given in the *Explanatory Notes* to heading No. 85.13 refer to hand-held lamps or lamps carried on the person, such as miners’ safety lamps, which lend support to the notion that these are the purposes for which “portable lamps” are designed. Moreover, the Tribunal is not convinced, from the evidence presented, that the goods in issue lend themselves naturally to being used when carried in the hand or on the person. The Tribunal notes that Supertek’s marketing material makes no reference or allusion to hand-held usage for this type of lamp. The Tribunal points out that Note (2) of the *Explanatory Notes* to heading No. 85.13 indicates that hand lamps are often fitted with a simple device for hanging them temporarily on the wall, while others are designed so that they can be placed on the ground. In the Tribunal’s view, these lamps are still designed for use when carried in the hand, as would be expected in the case of “hand lamps”.

The Tribunal determines that the goods in issue are not portable lamps and that there is no need to address the issue of whether they are flashlights. It finds that the goods in issue are properly classified under tariff item No. 9405.40.90 as other electric lamps and lighting fittings.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	October 17, 2002
Date of Decision:	May 21, 2003
Tribunal Member:	Richard Lafontaine, Presiding Member
Counsel for the Tribunal:	Michèle Hurteau
Clerk of the Tribunal:	Margaret Fisher
Appearances:	Jeffrey Goernet, for the appellant Jean-Robert Noiseux, for the respondent



Appeal No. AP-2001-095

SUPERTEK CANADA INC.

Appellant

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY**

Respondent

TRIBUNAL: RICHARD LAFONTAINE, Presiding Member

REASONS FOR DECISION

This is an appeal pursuant to subsection 67(1) of the *Customs Act*¹ from decisions of the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) dated January 4, 2002, regarding goods imported into Canada during the period from December 1999 to February 2001. The goods in issue, Smartlight lamps, are battery-operated push-on lights, composed of an opaque white plastic dome, approximately 5 centimetres high in the middle, sitting on a circular plastic housing which is 14 centimetres in diameter and 3 centimetres high.

The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9405.40.90 of the schedule to the *Customs Tariff*² as other electric lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included, as determined by the Commissioner, or, alternatively, should be classified under tariff item No. 8513.10.90 as other portable electric lamps designed to function by their own source of energy (for example, dry batteries, accumulators, magnetos), other than lighting equipment of heading No. 85.12, or should be classified under tariff item No. 8513.10.10 as flashlights, as claimed by Supertek Canada Inc. (Supertek).

For the purposes of this appeal, the relevant tariff nomenclature reads as follows:

85.13	Portable electric lamps designed to function by their own source of energy (for example, dry batteries, accumulators, magnetos), other than lighting equipment of heading No. 85.12.
8513.10	-Lamps
8513.10.10	---Flashlights; Miners' safety lamps
8513.10.90	---Other
94.05	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included.
9405.40	-Other electric lamps and lighting fittings
9405.40.90	---Other

1. R.S.C. 1985 (2d Supp.), c. 1.
2. S.C. 1997, c. 36.

EVIDENCE

Dr. Claude D'Amours, Assistant Professor at the School of Information Technology and Engineering at the University of Ottawa, testified on behalf of Supertek. He did not testify as an expert witness, but the Tribunal did recognize his background in the field of electrical engineering.

Dr. D'Amours testified that he measured the width of the beam produced by the light and examined the internal characteristics of flashlights and compared them to those of the goods in issue. He testified that a flashlight is generally powered by batteries which produce a voltage source in direct current. The current passes through the light bulb and causes the filament to heat and expel light. A switch is placed in the circuit to turn the bulb "on" or "off". Dr. D'Amours testified that the goods in issue do not differ electrically from any other typical flashlight, as they have the same circuit.

Dr. D'Amours testified that the goods in issue produce a very wide beam of light that is between 140 and 160 degrees, as opposed to the narrower beam of light from conventional flashlights, which is between 20 and 30 degrees. He testified that, like flashlights, the goods in issue emit a beam of light, have a tiny bulb, are powered by dry batteries and operate in the same way as flashlights. He also testified that flashlights have a reflector to focus the light into a narrower beam. Dr. D'Amours testified that the goods in issue also have a reflector, albeit a crude one. He testified that the goods in issue do not provide long-term lighting such as a household lamp, in that the latter is plugged into an electrical outlet and will emit light indefinitely until the light bulb burns out. In the case of the goods in issue, they would turn off well before the light bulb is "defective".

In cross-examination, Dr. D'Amours agreed that the goods in issue were electrical lamps and that they could faintly illuminate a room.

Dr. D'Amours testified that the illustrations on the packaging showed the goods in issue hung up in closets or cabinets and laid flat on stairs or tables and that there was no illustration of someone using the goods in issue as flashlights. He also acknowledged that the word "flashlight" was not found on the packaging.

In response to the Tribunal's questions in connection with the French definition of "flashlight", Dr. D'Amours stated that the main body of the goods in issue is cylindrical in shape. He testified that there was a dome at the top, essentially the lens, and that the body housing the material was a cylinder. He went on to say that the cylinder is not as tall as it is wide, as opposed to other flashlights that have a cylinder that is much taller than it is wide.

Dr. D'Amours testified that some flashlights, such as those with big batteries, would usually have a handle. He also indicated in reply that some flashlights are cylindrical and that others are box shaped.

ARGUMENT

Supertek submitted that the case came down to two words, "portable" and "flashlight". In order for the goods in issue to be classified in heading No. 94.05, they must be lamps or lighting fittings not elsewhere specified or included. It submitted that the goods in issue are a type of lamp, but do not fall within the scope of heading No. 94.05, as they are specified and included elsewhere, specifically, in heading No. 85.13, in that they are "portable lamps". The word "portable" is defined as "capable of being carried or

moved about”.³ Supertek noted that the definition does not refer to “use”. While the Commissioner’s decisions state that the goods in issue are not designed for “normal use” when carried in the hand, Supertek submitted that the term “portable” was not contingent on “use”.

Supertek referred to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁴ to heading No. 85.13 and argued that the goods in issue are “portable electric lamps”, as they are portable and designed to function by means of a self-contained source of electricity, specifically dry batteries, as described in the first paragraph of the *Explanatory Notes* to that heading.⁵ Supertek also contended that, as the goods in issue are comprised of two elements, the lamp proper and its source of electricity, and as they are mounted together and directly connected to a single case, the goods in issue meet the criteria found in the second paragraph of the *Explanatory Notes* to that heading.⁶

Supertek then turned to the wording of the third paragraph of the *Explanatory Notes* to heading No. 85.13⁷ and argued that, while the Commissioner submitted that the goods in issue are not designed for normal use when carried in the hand or on the person, the *Explanatory Notes* to heading No. 85.13 do not include the word “normal”. To add the word “normal” to the *Explanatory Notes* changes the meaning significantly and, had the authors wanted to add that word, they would have done so. In response to the Tribunal’s question as to whether the phrase “for use when carried in the hand” denoted exclusivity of use, Supertek submitted that the phrase simply meant that the goods in issue have to be “in use when carried” and not “only in use when carried”. If the latter meaning were retained, there would be a contradiction within the *Explanatory Notes* to heading No. 85.13 with respect to Note (2). Such a meaning would distort the wording and meaning of the heading so that the phrase could not logically mean exclusively in the hand or on the person. Supertek further argued that, with respect to the interpretation of the word “only” in the third paragraph of the *Explanatory Notes* to heading No. 85.13, that term could not refer to both “only in the hand or on the person” and “only to those lamps which are also designed for placing on the ground”. In its view, the term “only” refers to the “lamps” and not to the “use”. If one were to accept the Commissioner’s argument that “portable lamps” can only be considered portable when used in the hand or on the person, not only does this change the common meaning of the word “portable” but it also distorts the scope of heading No. 85.13.

In its submission, Supertek pointed out that Note (3) of the *Explanatory Notes* to heading No. 85.13 states that “Morse signalling lamps” are included in the heading. It provided an example of a typical nautical “Morse signalling lamp”,⁸ which shows the lamp mounted on a stand. Supertek argued that the lamp was mounted for stability and was obviously not designed for normal use in the hand, but was designed for use when carried in the hand.

3. *Webster’s New Collegiate Dictionary*, s.v. “portable”.

4. Customs Co-operation Council, 2d ed., Brussels, 1996 [*Explanatory Notes*].

5. The paragraph states: “This heading covers portable electric lamps designed to function by means of a self-contained source of electricity (e.g., dry cell, accumulator or magneto).”

6. The paragraph states: “They comprise two elements (i.e., the lamp proper and the source of electricity) which are usually mounted and directly connected together, often in a single case. In some types, however, these elements are separate and are connected by wires.”

7. The paragraph states: “The term ‘portable lamps’ refers **only** to those lamps (i.e., both the lamp and its electricity supply) which are designed for use when carried in the hand or on the person. They usually have a handle or a fastening device and may be recognised by their particular shapes and their light weight. The term therefore **excludes** lighting equipment for motor vehicles or cycles (**heading 85.12**), and inspection lamps and the like which are connected to a fixed installation (**heading 94.05**).”

8. Appellant’s brief, Tab 11.

The only question that remains, in Supertek's view, is whether the goods in issue are a type of flashlight. Supertek referred to a number of dictionary definitions, in both English and French, of the term "flashlight" (*lampe de poche*).⁹

Supertek argued that the word "flashlight" is not found or defined in the *Explanatory Notes* to heading No. 85.13. It submitted that, according to the evidence, the goods in issue emit a beam of diffuse light, have a small bulb and are powered by dry batteries. Moreover, the evidence shows that the body of the goods in issue is of the same design shape as a traditional flashlight, but the cylinder of the goods in issue is wider rather than taller. Supertek also submitted that neither heading No. 85.13 nor the *Explanatory Notes* to that heading refer to shape.

Supertek also argued that none of the definitions speak of use in the hand, although the goods in issue are capable of being used in the hand. Supertek submitted that the goods in issue may appear less comfortable to carry than some flashlights, but that they are still easy to carry in the hand. Regardless of their dimensions, the goods in issue function equally well when they are stationary, placed on the ground or floor or carried in the hand. In the absence of a definition of "flashlight" in the *Explanatory Notes*, one must rely on other sources to define the goods in issue. Supertek recalled Dr. D'Amours's testimony that the goods in issue and flashlights are made of the same components, work identically, are portable, use batteries and have reflectors and light bulbs. The only difference between the two, according to Supertek's submission, is the shape. Regardless of their unique dimensions, the goods in issue function equally well in the hand or on the floor. They are clearly designed to emit light and to be used while carried in the hand.

Supertek also argued that the goods in issue are equipped with a fastening device, specifically, an indent, that one could use to fasten or affix them to a wall, using a screw, a clip or a nail, just like other flashlights. It contended that pictures of flashlights showed little handles at the end, which could be used to hang them on a hook, clip or nail.

In reply, Supertek argued that the "legal notes" to Chapter 94 specifically exclude the goods in issue, as Note 1(f) states that Chapter 94 does not cover lamps of Chapter 85. Moreover, the third paragraph of the *Explanatory Notes* to heading No. 85.13 states, in part, that the term "portable lamps" excludes "inspection lamps and the like which are connected to a fixed installation (**heading 94.05**)". In Supertek's view, the key distinction between heading No. 85.13 and heading No. 94.05 is that the latter refers to fixed installations that are permanently attached to an electrical source as opposed to being portable. It is clear that heading No. 85.13 includes the goods in issue, as they are designed for use when carried in the hand. Further, "flashlight" should be given a broad interpretation. In its view, this means that a liberal meaning of the word "flashlight" would cover small battery-operated portable electric lights of different shapes and uses, including when carried in the hand. Finally, flashlights need not have a handle, although the goods in issue do have a fastening device. In conclusion, Supertek requested that the appeal be allowed.

9. "[A] small battery-operated portable electric light", *Webster's New Collegiate Dictionary*, s.v. "flashlight". "A small, portable lamp usually powered by batteries", *The American Heritage Dictionary of the English Language*, 1996, s.v. "flashlight". "A small, portable device that emits a beam of light, consisting typically of a cylinder housing a tiny bulb powered by dry batteries", *Standard College Dictionary*, 1978, s.v. "flashlight". The French term "*lampe de poche*" is defined as "*boîtier plat ou cylindrique équipé d'une pile et d'une ampoule*" in the *Dictionnaire des noms communs en couleurs*, s.v. "*lampe*".

The Commissioner argued that, under Rule 1 of the *General Rules for the Interpretation of the Harmonized System*¹⁰ and under the *Explanatory Notes* to heading No. 94.05, the goods in issue are considered to be electric lamps and are properly classified under tariff item No. 9405.40.90.

The Commissioner reviewed the English and French versions of the first three paragraphs of the *Explanatory Notes* to heading No. 85.13 and argued that the goods in issue are excluded from that heading. He submitted that two conditions must be met for the goods in issue to be portable lamps. They must have their own source of electricity and they must be portable. While the goods in issue have their own source of electricity, they are not portable within the meaning of the *Explanatory Notes*. There are three important elements found in the *Explanatory Notes* to support this position: the emphasis on the word “only”; the phrase “for use when carried in the hand”; and the phrase “a handle or a fastening device”. The Commissioner addressed those three points in turn.

With respect to the emphasis on the term “only” in the *Explanatory Notes* to heading No. 85.13, the Commissioner argued that it restricts the classification of goods in that heading to those goods which meet the terms of the definition of “portable lamps”. Based on the definition of “portable lamps”, it can be drawn from the *Explanatory Notes* that goods of that heading must not only be designed to be carried in the hand or on the person but also be designed for use when carried in the hand or on the person. Therefore, the key characteristic which distinguishes the goods of heading No. 85.13 from the goods in issue is that the goods of heading No. 85.13 must be “designed for use when carried in the hand or on the person.” The Commissioner argued that, for goods such as flashlights to be classified in this heading, those goods must be capable of being carried or moved and used while in the hand or on the person. That phrase suggests a use beyond a mere capability of being carried.

In answer to the Tribunal’s questions about whether the phrase “for use when carried in the hand” means that the goods must be designed for exclusive use when carried in the hand or whether they can be used for other purposes, the Commissioner was of the view that the goods must be designed to be used mainly while in the hand. In the Commissioner’s submission, if the goods are not exclusively for use in the hand, then they do not meet the test of heading No. 85.13; they cannot have a multiple number of uses or purposes. The Commissioner argued that, where the goods can be used in the hand, but are not designed for use when carried in the hand, then the goods cannot be classified in heading No. 85.13, as they do not meet the requirements of the *Explanatory Notes* to that heading. In the Commissioner’s view, the goods in issue were not designed or created for use in the hand.

The Commissioner reviewed the advertisement on the packaging of the goods in issue. He noted that the goods in issue are primarily designed and marketed for placement on horizontal or vertical surfaces, floors, stairs, ceilings and walls and not for use in the hand or on the person. He noted that the goods in issue can be carried in the hand, but that they are not designed for use when carried in the hand, although they may be useable when carried in the hand.

The Commissioner argued that, when classifiable in heading No. 85.13, goods usually have a handle or a fastening device. He reviewed the dictionary definitions of “handle”¹¹ and “fasten”.¹² He submitted that the goods in issue do not have a handle. In his view, a flashlight has a handle because one can

10. *Supra* note 2, schedule [*General Rules*].

11. “1. That part of an object, tool, utensil, etc., designed to be grasped in the hand. 2. Something that resembles or serves the same function as a handle”, *supra* note 3, s.v. “handle”.

12. “To attach firmly to something else. . . . These verbs mean to cause to remain firmly in position or place”, online: *Dictionary.com*. <<http://www.dictionary.com>>, s.v. “fasten”.

grab it by the cylinder by grasping the hand around the flashlight. The body of the flashlight is also a handle. He also argued that the goods in issue neither firmly attach to a horizontal or vertical surface nor possess a feature which would allow them to be fastened. The goods in issue simply rest on a surface or hang from a nail or hook; they are not fastened to the hand or on the person. The Commissioner pointed to the example of the headlamp where the fastening device in that case would be the elastic, which allows the lamp to be affixed to the head and would thus meet the definition of “fasten”.

The Commissioner further submitted that the *Explanatory Notes* to heading No. 85.13 clearly define and describe “portable lamps” and that the Tribunal does not need to refer to dictionary definitions of “portable”. Therefore, since the goods in issue do not meet the criteria of “portable lamps”, they cannot be classified in heading No. 85.13.

In response to Supertek’s argument concerning “Morse signalling lamps”, the Commissioner submitted that there are two types of “Morse signalling lamps”: portable ones and stationary ones. He argued that, based on the definition of “portable lamps” in the *Explanatory Notes* to heading No. 85.13, portable “Morse signalling lamps” are classified in heading No. 85.13, while stationary “Morse signalling lamps”, which are not portable, are classified in heading No. 94.05, which provides for lamps not classified in heading No. 85.13.

The Commissioner referred to Note 1(f) to Chapter 94, which states that Chapter 94 does not cover “[l]amps or lighting fittings of Chapter 85”. Given that the goods in issue are not classified in Chapter 85, Note 1(f) does not apply, and the classification of the goods in issue in Chapter 94 can be considered. The Commissioner argued that the goods in issue are electric lamps under heading No. 94.05. Moreover, Dr. D’Amours testified that the goods in issue are electrical lamps and can be used to illuminate a room. Therefore, they meet the terms of tariff item No. 9405.40.90.

The Commissioner also addressed the issue that, if the goods in issue meet the definition of “portable” of heading No. 85.13, they are not flashlights, but other portable electric lamps, as found at tariff item No. 8513.10.90. In the Commissioner’s submission, the goods in issue do not have the typical cylindrical shape of a flashlight, they do not have a handle, and they emit a more diffuse beam of light than a flashlight. Therefore, the goods in issue are not flashlights and are other portable electric lamps.

DECISION

The Tribunal is directed by section 10 of the *Customs Tariff* to classify goods in accordance with the *General Rules* and the *Canadian Rules*.¹³ Rule 1 of the *General Rules* provides that classification is to 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 principles set out in Rules 2 through 6, as well as the *Canadian Rules* that follow. The Tribunal is further directed by section 11 of the *Customs Tariff* to have regard to the *Explanatory Notes* in interpreting the headings and subheadings in the schedule to the *Customs Tariff*.

Supertek argued that the goods in issue should be classified as “portable lamps” and, more specifically, as “flashlights” under tariff item No. 8513.10.10.

13. *Supra* note 2, schedule I.

The *Explanatory Notes* to heading No. 85.13 read, in part, as follows:

This heading covers portable electric lamps designed to function by means of a self-contained source of electricity (e.g., dry cell, accumulator or magneto).

They comprise two elements (i.e., the lamp proper and the source of electricity) which are usually mounted and directly connected together, often in a single case. In some types, however, these elements are separate and are connected by wires.

The term “portable lamps” refers **only** to those lamps (i.e., both the lamp and its electricity supply) which are designed for use when carried in the hand or on the person. They usually have a handle or a fastening device and may be recognised by their particular shapes and their light weight. The term therefore **excludes** lighting equipment for motor vehicles or cycles (**heading 85.12**), and inspection lamps and the like which are connected to a fixed installation (**heading 94.05**).

The Tribunal reviewed the above-noted paragraphs of the *Explanatory Notes* to heading No. 85.13, as well as the evidence and arguments provided by the parties. The evidence demonstrates that the goods in issue meet the criteria found in the first paragraph, that is, that they are “lamps designed to function by means of a self-contained source of electricity”, in this case batteries. The evidence also shows that the goods in issue are comprised of the two elements found in the second paragraph, that is, a lamp proper and a source of electricity (the batteries). The evidence also shows that these two elements are “mounted and directly connected together, . . . in a single case.”

However, upon examination of the third paragraph of the *Explanatory Notes* to heading No. 85.13, the Tribunal finds that the goods in issue are not “portable lamps”. The Tribunal is of the view that the phrase “lamps . . . which are designed for use when carried in the hand or on the person” means, in respect of these lamps, that they are intended to be used when carried in the hand or on the person. Generally, the examples given in the *Explanatory Notes* to heading No. 85.13 refer specifically to hand-held lamps or lamps carried on the person, such as miners’ safety lamps, which lend support to the notion that these are the purposes for which “portable lamps” are designed. In the Tribunal’s view, the French version of the *Explanatory Notes* to heading No. 85.13 also lends support to the construct that portable lamps are intended to be carried in the hand or on the person. The phrase “*conçues pour être utilisées à la main ou sur la personne*” (designed for use when carried in the hand or on the person) conveys the notion that portable lamps are specifically made for such purposes, indeed designed with such purposes in mind. Moreover, the Tribunal is not convinced from the evidence presented that the goods in issue lend themselves naturally to being used when carried in the hand or on the person. It notes that Supertek’s marketing material makes no reference or allusion to hand-held usage for this type of lamp.

The Tribunal notes the stationary Morse signalling lamp depicted in Supertek’s brief¹⁴ and Supertek’s submission that this lamp was obviously not designed for “normal” use in the hand. The Tribunal is of the view that the “Morse signalling lamps” included in the English version of Note (3) of the *Explanatory Notes* to heading No. 85.13 are intended to be portable lamps, as defined earlier in the notes. The French version of Note (3) refers to “Morse signalling lamps” as “*lampes portatives équipées pour l’émission de signaux lumineux*”. It thus supports the Tribunal’s view that the “Morse signalling lamps” referred to in the *Explanatory Notes* to heading No. 85.13 are portable lamps which are designed for use when carried in the hand.

14. Tab 11.

The Tribunal also notes Supertek's argument that the goods in issue are equipped with a fastening device, specifically an indent to fasten or affix them to a wall. In the Tribunal's view, the "fastening device", to which reference is made in the *Explanatory Notes* to heading No. 85.13, is for fastening to a person. If portable lamps are intended to be used when carried in the hand or on the person, it is reasonable to conclude that this fastening device is for the purpose of fastening them to a person. According to the Tribunal, there is no evidence that the indent referred to serves any such purpose. In this connection, the Tribunal further notes that Note (2) of the *Explanatory Notes* to heading No. 85.13¹⁵ indicates that hand lamps are often fitted with a "simple device" for hanging them temporarily on the wall, while others are designed so that they can be placed on the ground. In the Tribunal's view, the simple device referred to in the note is not a fastening device. The use of these two different terms in the *Explanatory Notes* to heading No. 85.13 suggests to the Tribunal that they have different meanings. In the Tribunal's view, the two devices have different purposes: the fastening device is for fastening portable lamps to a person while the simple device is for hanging hand lamps temporarily to a wall. Moreover, in the Tribunal's view, these latter lamps are still designed for use when carried in the hand, as would be expected in the case of "hand lamps". This is not the case for the goods in issue.

The Tribunal need not address the issue of whether the goods in issue are flashlights, as it has determined that the goods in issue are not portable lamps and not classifiable in heading No. 85.13 or under tariff item No. 8313.10.90.

In light of the above, the Tribunal finds that the goods in issue are properly classified under tariff item No. 9405.40.90 as "other electric lamps and lighting fittings".

The appeal is, therefore, dismissed.

Richard Lafontaine
Richard Lafontaine
Presiding Member

15. The note states: "**Other hand lamps** (including those with an adjustable beam). Hand lamps are often fitted with a simple device for hanging them temporarily on a wall, etc., while others are designed so that they can be placed on the ground."