



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

---

## DECISION AND REASONS

Appeal No. AP-2004-017

3319067 Canada Inc.  
(Universal Lites)

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Thursday, March 23, 2006*

**TABLE OF CONTENTS**

DECISION OF THE TRIBUNAL .....i

REASONS FOR DECISION .....1

    INTRODUCTION .....1

    EVIDENCE .....1

        Universal Lites .....1

    ARGUMENT .....3

        Universal Lites .....3

        CBSA .....4

    ANALYSIS .....5

    DISSENTING OPINION OF MEMBER CLOSE .....9

IN THE MATTER OF an appeal heard on April 21, 2005, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency dated August 12, 2004, pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**3319067 CANADA INC. (UNIVERSAL LITES)**

**Appellant**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Patricia M. Close  
Patricia M. Close  
Member

Zdenek Kvarda  
Zdenek Kvarda  
Member

Susanne Grimes  
Susanne Grimes  
Acting Secretary

Place of Hearing: Ottawa, Ontario  
Date of Hearing: April 21, 2005

Tribunal Members: Pierre Gosselin, Presiding Member  
Patricia M. Close, Member  
Zdenek Kvarda, Member

Counsel for the Tribunal: Roger Nassrallah

Clerk of the Tribunal: Karine Turgeon

Appearances: Michael Kaylor and Peter Baron, for the appellant  
Elizabeth Kikuchi, for the respondent

Please address all communications to:

The Secretary  
Canadian International Trade Tribunal  
Standard Life Centre  
333 Laurier Avenue West  
15th Floor  
Ottawa, Ontario  
K1A 0G7

Telephone: (613) 993-3595  
Fax: (613) 990-2439  
E-mail: [secretary@citt-tcce.gc.ca](mailto:secretary@citt-tcce.gc.ca)

## REASONS FOR DECISION

### INTRODUCTION

1. This is an appeal under section 67 from the *Customs Act*<sup>1</sup> from a decision of the President of the Canada Border Services Agency (CBSA).

2. The issue in this appeal is whether the goods in issue, the electric net light sets imported by 3319067 Canada Inc. (Universal Lites) are properly classified under tariff item No. 9405.40.90 of the schedule to the *Customs Tariff*<sup>2</sup> as other electric lamps and lighting fittings, as determined by the CBSA, or should be classified under tariff item No. 9505.10.00 as festive articles, as argued by Universal Lites.

3. The relevant nomenclature from the *Customs Tariff* that was in effect when the goods in issue were imported reads as follows:

...	
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.
...	
9405.30.00	-Lighting sets of a kind used for Christmas trees
9405.40	-Other electric lamps and lighting fittings
9405.40.90	---Other
...	
95.05	Festive, carnival or other entertainment articles, including conjuring tricks and novelty jokes.
9505.10.00	-Articles for Christmas festivities
...	

### EVIDENCE

4. Universal Lites called two witnesses to testify: Mr. Michael Finkelstein and Mr. Bill Makinson. The CBSA did not call any witnesses.

#### Universal Lites

5. Mr. Finkelstein indicated that he is the President of Universal Lites and that he joined the company in 1962. He testified that 99 percent of Universal Lites' business is the importation and sale of Christmas lights, decorations and trees—"... anything in the Christmas industry . . . ."<sup>3</sup> He provided a description of Universal Lites' business cycle and discussed Universal Lites' purchasing and importing practices, as well as its practices vis-à-vis supplying its customers (i.e. the retailers).

6. Mr. Finkelstein indicated that Universal Lites' customers generally like to have all their Christmas products sold before Christmas, around December 15, and that any remaining products after that date are sold at reduced prices to "... get rid of [them] . . . ."<sup>4</sup>

---

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

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

3. *Transcript of Public Hearing*, 21 April 2005, at 5.

4. *Ibid.* at 10.

7. Mr. Finkelstein provided descriptions of the various exhibits that were filed with the Tribunal by Universal Lites, which included several “straight line” lights sets, net light sets, and illuminated and non-illuminated decorations, garlands and sculptures. He also testified regarding the images on the box in which the goods were sold and submitted that those images (e.g. holly, wreath, Christmas tree) indicated that the goods were for use during the Christmas season. Furthermore, he testified that the goods did not have any utilitarian value and that their purpose was as a “. . . festive decoration for the Christmas season . . . .”<sup>5</sup>

8. Mr. Finkelstein testified that Universal Lites offered a wide variety of Christmas lights because it has a lot of competition, which means that it has to provide its customers (i.e. the retailers) with a lot of choices, so that they can, in turn, provide their customers (i.e. the consumers) with a lot of choices. In this light, he indicated that the net light sets were introduced in order to provide something new and that the net light sets had a “. . . totally different shape than . . . regular light sets that were out there . . . .”<sup>6</sup> Furthermore, he testified that it would be very difficult to decorate with the straight line sets in the same way as with the net light sets.

9. Mr. Finkelstein testified that consumers, on average, put up their Christmas lights in early November and typically remove them toward the end of December. He also indicated that some people choose not to remove them at that point in time because of weather constraints, but keep them turned off.

10. Mr. Finkelstein also testified regarding various items found in Christmas catalogues (e.g. wreaths, garlands) which were similar to the exhibits filed with the Tribunal and, at times, read into the record the various descriptions provided for these items in the catalogues.

11. Mr. Finkelstein also provided a description of the types of bulbs used in the light sets filed with the Tribunal and indicated that the bulbs used in the net light sets last between 300 and 500 hours.

12. Mr. Finkelstein indicated that Universal Lites imports and sells some “party/patio” light sets, but that they are not a big part of its business, accounting for about 1 percent of its business. He indicated that this type of light set is basically for use in the summer and that it is a straight line type.

13. Under cross-examination, Mr. Finkelstein acknowledged that the goods in issue could be used in various fashions, not just the ones that are listed on the box in which they are sold. He also acknowledged that the term “Christmas” does not appear on the box, but clarified that it was meant to indicate Christmas. Furthermore, he agreed that the goods can be used at other times of the year and for purposes other than decorating for Christmas.

14. Universal Lites’ second witness, Mr. Makinson, testified that he is the owner of Roy’s Lighting Services and that the company provides the service of Christmas light installation and rentals, as well as parking lot lights and signage. He indicated that he has been carrying on business for 22 years and that his company has installed the Christmas lights for the National Capital Commission for the past 20 years. He read into the record a Web site extract which indicated that the Christmas lights in the Ottawa-Gatineau region were to be illuminated between December 1, 2005, and January 8, 2006, and subsequently testified that those dates represented the festive season.

---

5. *Ibid.* at 33.

6. *Ibid.* at 30.

15. Under cross-examination, Mr. Makinson acknowledged that he does not have any knowledge of whether net lights are used at any other time of the year other than the Christmas season.

16. In reply to a question from the Tribunal, Mr. Makinson stated that, in his opinion, the net lights were designed strictly to be used for the illumination of a small bush or a small evergreen tree and indicated that he would never attempt to install a net light on a larger tree.

## ARGUMENT

### Universal Lites

17. Universal Lites argued that the net light sets are not “electric garlands” and are therefore not excluded from heading No. 95.05 by virtue of Note (B)(f) of the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>7</sup> to that heading.

18. Universal Lites submitted that the tariff nomenclature does not provide a definition of the phrase “electric garland” and that neither the chapter notes nor the *Explanatory Notes* deal with this phrase. On this basis, it argued that, in seeking to properly interpret the phrase “electric garland”, the Tribunal must consider the ordinary meaning of the term “garland”, and it provided several dictionary definitions for the Tribunal’s consideration.

19. Universal Lites noted that the term “garland” appeared in several places in heading No. 95.05. It submitted that any meaning accorded the term “garland” must be the same throughout heading No. 95.05 and heading No. 94.05, as well as in the chapter notes and the *Explanatory Notes*. With respect to the term “electric”, Universal Lites submitted that it was “merely” an adjective that describes the type of garland which is excluded from heading No. 95.05 and that this adjective does not change the basic meaning of the word “garland”.

20. Universal Lites concluded, on the basis of the above arguments, that the term “garland” means a “. . . string of things (including electric light bulbs) which are placed in series, one after the other, in a straight line format . . .”<sup>8</sup> It acknowledged that, under this meaning, the term “garland” could be taken to include a “wreath”; however, it submitted that Customs Notice N-179<sup>9</sup> narrowed the scope of the term, thus, excluding “wreaths” from the scope of the meaning of the term “garland”.

21. Universal Lites submitted that there is an inconsistency between the English and French versions of the phrase “electric garland” (*guirlandes électriques*). It submitted that, in the French version of subheading No. 9405.30, the phrase “*guirlandes électriques*” connotes the phrase “electric light sets”, whereas, everywhere else in the nomenclature, the phrase “*guirlandes électriques*” is translated as “electric garlands”. In this context, it argued that the jurisprudence indicates that the Tribunal ought to interpret the legislation in such a way as to reach a common meaning between the two versions. In this regard, it submitted that the French version is plain and unambiguous and, therefore, that the interpretation therein ought to be adopted. Furthermore, it submitted that the phrase “electric light sets” as found in subheading 9405.30 constitutes “. . . an unfortunate word choice . . .”<sup>10</sup> and must be discarded.

---

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

8. Universal Lites’ brief, para. 19.

9. “The Administration of Heading 95.05” (3 November 1997).

10. *Transcript of Public Hearing*, 21 April 2005, at 4.

22. With respect to Note (B)(f) of the *Explanatory Notes* to heading No. 95.05, which excludes “[e]lectric garlands of all kinds . . .” from that heading, Universal Lites submitted that the phrase “of all kinds” was not intended to widen the scope of the exclusion, but to simply ensure that all forms of garlands are excluded. It also submitted that the note ought to be read in conjunction with Note 3 of the *Explanatory Notes* to heading No. 94.05, which provides examples of “specialised lamps”. It concluded that, under this approach, the goods in issue are not “electric garlands” and, thus, not excluded from heading No. 95.05.

23. Universal Lites also submitted that the goods in issue are not used to decorate Christmas trees, rather they are designed and dedicated for outdoor use, in that they are commonly used to cover hedges, exterior walls or roofs of a building.

24. Universal Lites accepted that the goods in issue are *prima facie* classifiable in subheading No. 9405.40, not as “electric garlands”, but simply as other lighting fittings. In this regard, it concluded that they are not excluded from classification in heading No. 95.05 by virtue of Note (B)(f) of the *Explanatory Notes* to that heading.

25. Regarding the CBSA’s submission of a U.S. Customs decision, Universal Lites argued that the Tribunal is not bound by this decision and that the CBSA’s analysis regarding the meaning of “electric garlands” lacked depth. It also argued that the excerpt of the decision emphasized by the CBSA was not a dictionary definition for “garland” and, therefore, carried very little weight.

## CBSA

26. The CBSA submitted that the net light set is an electric garland, is properly classified under tariff item No. 9405.40.90 and is specifically excluded from heading No. 95.05. It submitted that the *Explanatory Notes* state that heading No. 94.05 specifically includes electric garlands, that the description of an electric garland therein is inclusive and that, therefore, the examples cited are not an exhaustive list.

27. The CBSA submitted that the goods in issue are specifically excluded from Chapter 95 by virtue of Note 1(t) that states that the chapter does not cover “[e]lectric garlands of all kinds . . .”

28. The CBSA referred the Tribunal to a U.S. decision in which the definition of “electric garland” was considered and submitted that, although the Tribunal is not bound by the decision, the discussion concerning the definition of “electric garland” is instructive. It specifically referred to an excerpt of the decision which stated that “. . . [a]n article is an electric garland if it is able to be hung or displayed and is composed of lights which are powered by an electrical source attached by a power cord to a battery or plug . . .”<sup>11</sup> In light of the above submission, it argued that the goods were designed to be displayed on hedges, trees, bushes and windows and were powered by an electrical source and that, therefore, they were properly classified under tariff item No. 9405.40.90 as other electric lamps and lighting fittings.

29. The CBSA submitted that the interpretation provided by Universal Lites for “electric garland” is too narrow, in that it should include more than just “[l]ighting sets of a kind used for Christmas trees”. In this regard, it submitted that heading No. 95.05 excludes electric garlands “of all kinds”, thereby implying that electric garlands for a variety of uses are excluded from this heading, not just lighting sets for Christmas trees.

---

11. U.S. Commercial Rulings Division, HQ 963264. See the CBSA’s brief, Tab 8.



30. The CBSA submitted that heading No. 95.05 covers “[f]estive, carnival and other entertainment articles . . .” usually made of non-durable material, whereas the goods in issue are made of durable material and specifically for outdoor use. It also submitted that this heading covers articles that are traditionally used at Christmas festivities or associated with a particular festival. It noted that, in Customs Notice N-179, the main criterion for eligibility to heading No. 95.05 is that the decorations be designed with themes appropriate to the “festive occasion” and not used year-round. In this connection, it submitted that the goods in issue can be used year-round and that their use is not limited to display at Christmas.

## ANALYSIS

31. As indicated earlier, the issue in this appeal is whether the goods in issue, the electric net light sets imported by Universal Lites, are properly classified in heading No. 94.05 as lamps and lighting fittings, as determined by the CBSA, or should be classified in heading No. 95.05 as festive articles, as argued by Universal Lites.

32. The various tariff classifications are set out in considerable detail in the schedule, enacted as part of the *Customs Tariff*. Each section and chapter of the *Customs Tariff* has its own notes, and sometimes supplementary notes, followed by a list of goods categorized under a number of headings, subheadings and individual tariff items. The *Customs Tariff* contains its own rules for interpreting the schedule, which are found in sections 10 and 11:

10. (1) Subject 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.

...

11. In interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System and the Explanatory Notes to the Harmonized Commodity Description and Coding System, published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time.

33. The *General Rules for the Interpretation of the Harmonized System*<sup>12</sup> referred to in section 10 of the *Customs Tariff* originated in the *International Convention on the Harmonized Commodity Description and Coding System*. They are structured in cascading form so that, if the classification of goods cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, and so on. Rule 1 reads as follows:

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, 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 following provisions.

34. The above legislation requires the Tribunal to follow several steps before arriving at the proper classification of goods on an appeal: first, to examine the schedule to see if the goods fit *prima facie* within the language of a tariff heading; second, to see if there is anything in the chapter or section notes that precludes the goods from classification in the heading; and third, to examine the *Compendium of Classification Opinions*<sup>13</sup> and the *Explanatory Notes* to confirm classification of the goods in the heading.

---

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

13. Customs Co-operation Council, 1st ed., Brussels, 1987.

35. If this process leads to the classification of the goods in one, and only one, heading, the next step is to find the appropriate subheading and tariff item. If the process leads to classification in more than one heading, the remaining *General Rules* must be applied in sequence, until the most appropriate heading is found. If necessary, the same process is repeated at the subheading and tariff item levels, by applying the *Canadian Rules* in the case of the latter.

36. The Tribunal notes that both parties agreed, at least initially, that Rule 1 of the *General Rules* should be used to classify the goods. In this instance, the competing classifications are heading No. 94.05, “Lamps and lighting fittings . . . not elsewhere specified or included”, and heading No. 95.05, “Festive, carnival or other entertainment articles, including conjuring tricks and novelty jokes”.

37. The Tribunal notes that the General Notes to Chapter 94 state the following:

...

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

...

(3) *Lamps and lighting fittings and parts thereof, not elsewhere specified or included*, of any material (**excluding** those of materials described in Note 1 to Chapter 71), and illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included (heading 94.05).

...

(Italics added)

38. The Tribunal also notes that the *Explanatory Notes* to heading No. 94.05 provide as follows:

...

**I. LAMPS AND LIGHTING FITTINGS,  
NOT ELSEWHERE SPECIFIED OR INCLUDED**

...

This heading covers in particular:

...

(3) *Specialised lamps*, e.g.: darkroom lamps; machine lamps (presented separately); photographic studio lamps; inspection lamps (**other than** those of **heading 85.12**) non-flashing beacons for aerodromes; shop window lamps; *electric garlands (including those fitted with fancy lamps for carnival or entertainment purposes or for decorating Christmas trees)*.

...

(Italics added)

39. The Tribunal is of the view that, since heading No. 94.05 is a “not elsewhere specified” heading, it covers all lamps or lighting fittings, as long as they are not more specifically described elsewhere.<sup>14</sup>

---

14. *Éditions Panini du Canada Ltée v. Deputy M.N.R.C.E.* (19 March 1993), AP-92-018 (CITT).

40. The Tribunal finds that the evidence indicates that the goods in issue consist of small electric lights on a string arranged in the form of a net or grid, used mainly outdoors to decorate trees, shrubs or houses, usually for festive occasions.<sup>15</sup> Based on this description, it is clear to the Tribunal that the goods in issue are lights on a string configured as a net of lights, i.e. *specialized lamps*. It is also true that the goods are generally used as festive articles, but, to fall in heading No. 95.05 instead of heading No. 94.05, they would have to be, as noted above, “specified or included” elsewhere or “excluded” by the *Explanatory Notes* to heading No. 94.05.

41. The Tribunal first considered whether the goods were excluded by virtue of the *Explanatory Notes* to Chapter 94. In this regard, Universal Lites argued that the *Explanatory Notes* to heading No. 94.05, specifically Note I(3), state that specialized lamps only cover electric garlands (including those fitted with fancy lamps for carnival or entertainment purposes or for decorating Christmas trees) and that the net light sets are neither garlands nor goods used for decorating Christmas trees. On this basis, Universal Lites argued that the goods more logically fall in heading No. 95.05, where the focus is on the festive aspect, given that these light sets are used mainly at Christmastime.

42. The Tribunal rejects this argument. First, the Tribunal notes that the examples given in Note I(3) of the *Explanatory Notes* to Chapter 94 for “specialised lamps” are but examples and not an exhaustive list.<sup>16</sup> It is quite clear to the Tribunal that the goods are better described as “specialised lamps” and that they should fall in the same heading, No. 94.05, as electric garlands or specialized lights for decorating Christmas trees, both of which they closely resemble. Secondly, in the same vein, they should not fall in heading No. 95.05 because electric garlands (of all types) which they closely resemble, are excluded from heading No. 95.05 by virtue of note (B)(f) of the *Explanatory Notes* to heading No. 95.05, which states as follows:

...

This heading also **excludes**:

(f) Electric garlands of all kinds (**heading 94.05**).

43. While Universal Lites argued that the goods in issue were not excluded because they are not technically “garlands” (i.e. they are not a string of lights, but a net of lights), the Tribunal is of the view that, because the term “garland” is vague, referring to a wreath, or “. . . hung as a decoration . . .”,<sup>17</sup> then the inclusion of “all kinds” to qualify the exclusion of electric garlands in note (B)(f) of the *Explanatory Notes* to heading No. 95.05 is sufficient to exclude it. Furthermore, that only “electric garlands” are excluded from heading No. 95.05 and not garlands in general reinforces the argument that the determining feature is the lighting feature and not the festive aspect. In this case, the Tribunal is of the opinion that, because the goods in issue are excluded from heading No. 95.05, then, under Rule 1 of the *General Rules*, they are properly classified in heading No. 94.05.

44. The Tribunal further notes that, as “lights”, the goods are neither specified nor included elsewhere, given that, as it has just reasoned, they are excluded from classification in heading No. 95.05 as festive articles.

---

15. *Transcript of Public Hearing*, 21 April 2005, at 20-21.

16. In this regard, the Tribunal notes the use of the abbreviation “e.g.” within Note I(3) of the *Explanatory Notes* to Chapter 94, which is an abbreviation for *exempli gratia* and means “for example”. The Tribunal took this use into consideration when it found that the “specialised lamps” listed in Note I(3) were not an exhaustive list.

17. *Gage Canadian Dictionary*, 1997, s.v. “garland”.

45. Having found that the proper classification at the heading level is heading No. 94.05, the Tribunal will now turn its attention to the classification of the goods at the subheading level. In this respect, the relevant subheadings are as follows:

...  
9405.30.00 -Lighting sets of a kind used for Christmas trees  
9405.40 -Other electric lamps and lighting fittings  
...

46. In this regard, the Tribunal first notes that the CBSA submitted that the goods were properly classified under tariff item No. 9405.40.90. Second, it notes that Universal Lites did not make any submissions on whether the goods fall in subheading No. 9405.30 or subheading No. 9405.40; however, Universal Lites did specifically submit that the goods are not used to decorate Christmas trees.<sup>18</sup> The plain meaning of tariff item No. 9405.30.00 is quite clear on its face. Lighting sets are strings of lights used for decorating Christmas trees, generally indoors. In addition, the Tribunal notes that, in reply to a question from the Tribunal, the witness from Universal Lites specifically indicated that it "... wouldn't look nice ... " to decorate a Christmas tree using the goods in issue.<sup>19</sup>

47. The Tribunal also considered the packaging of the goods and notes that it indicates that they are "outdoor" lights that are used to decorate hedges, wrap around tall trees, drape around bushes and hang in windows.<sup>20</sup> The packaging does not indicate that the goods are to be used to decorate a Christmas tree, nor does it indicate that the goods are to be used for indoor purposes.

48. Based on the above, and pursuant to Rules 1 and 6 of the *General Rules*, the majority of 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. Therefore, the appeal is dismissed.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Zdenek Kvarda  
Zdenek Kvarda  
Member

---

18. Appellant's brief at 15, paras. 33-36.

19. *Transcript of Public Hearing*, 21 April 2005, at 66.

20. Appellant's Exhibits 6A and 6B.

**DISSENTING OPINION OF MEMBER CLOSE**

49. I agree with the reasoning of my colleagues that the goods in issue are properly classified in heading No. 94.05 and not in heading No. 95.05. I disagree however with their decision on the classification at the subheading and, consequently, at the tariff item level. While the parties dismissed subheading No. 9405.30, it was discussed during the hearing and, in my view, is the proper subheading classification. Subheading No. 9405.30 reads as follows:

Lighting sets of a kind used for Christmas trees

50. In order to determine classification at the subheading level, Rule 6 of the *General Rules* needs to be applied. Rule 6 states in part that:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the . . . above Rules . . . .

51. In other words, the same hierarchy of rules applies at the subheading as at the heading level. It is my opinion that Rule 1 of the *General Rules* does not apply at the subheading level because the goods in issue could *prima facie* be classified in either subheading No. 9405.40 as “[o]ther electric lamps and lighting fittings”, as my colleagues found, or in subheading No. 9405.30 as “[l]ighting sets of a kind used for Christmas trees”. Given that Rule 2 does not apply, one moves to Rule 3. Rule 3 (a) states that “[t]he heading [read subheading] which provides the most specific description shall be preferred . . . .”

52. It is my view that subheading No. 9405.30 provides a more specific description of the goods in issue. First, as my colleagues agree, the goods are “lighting sets”. Second, in my view, they are of a kind used for Christmas trees. The evidence before the Tribunal was that they were used almost exclusively at Christmastime and that they were specifically designed to illuminate “a small bush or a small evergreen tree . . . in your front yard”.<sup>21</sup> The fact that the goods in issue are not used to decorate Christmas trees inside the home is, in my view, not the issue. The three dictionaries consulted, the *Merriam Webster’s Collegiate Dictionary*, the *Canadian Oxford Dictionary* and the *Gage Canadian Dictionary*, make no distinction as to the interior or exterior location of Christmas trees. The dictionary definitions of “Christmas tree” are neutral as to their location, stating merely that a Christmas tree is an “evergreen tree decorated at Christmas”;<sup>22</sup> “evergreen or artificial tree set up with decorations at Christmas”;<sup>23</sup> “evergreen tree, such as a spruce or pine, or an imitation of one, hung with decorations at Christmastime”.<sup>24</sup>

53. The U.S. Customs classification decision in a similar case did not appear to have an issue with the location of Christmas trees. The issue they had in classifying the net lights in subheading No. 9405.30 was that the lights were not principally used to decorate Christmas trees. This, in my view, is a misinterpretation of the phrase “of a kind” in subheading No. 9405.30.<sup>25</sup> The phrase “of a kind” is not an end-use provision and, as such, does not restrict the use of the goods to Christmas trees only, or even principally. Rather, the phrase means that the goods in issue do not necessarily have to be used to decorate Christmas trees, but only need to be similar in kind to those used to decorate Christmas trees. Not only is this, in my view, the correct grammatical interpretation of the phrase but it also follows longstanding jurisprudence of the Tribunal.<sup>26</sup>

---

21. *Transcript of Public Hearing*, 21 April 2005, at 87.

22. *Merriam Webster’s Collegiate Dictionary*, Tenth Edition.

23. *Canadian Oxford Dictionary*, Second Edition.

24. *Gage Canadian Dictionary*, 1997.

25. Respondent’s brief, Tab 8 at 5.

26. *Ballarat Corporation Ltd. v. Deputy M.N.R.* (19 December 1995), AP-93-359 (CITT).

54. The *Customs Tariff* is an inclusive classification system, where all imported goods must be identified under a specific tariff item and nomenclature. Yet, it is also an internationally agreed legal text (at least to the six-digit level) and, as such, its drafting predates new products that arrive on the market. This is often problematic for classification, as none of the classification categories appear to fit. Residual categories, such as those termed “other”, where they exist, can help resolve this classification dilemma. But they should not always be relied upon. When there is a tariff item that reasonably covers the description of the good, then this item is always to be preferred over a residual item. In this regard, the *Explanatory Notes* to Rule 3 (a) of the *General Rules* are particularly important. They state as follows: “If the goods answer to a description which more clearly identifies them, that description is more specific than one where identification is less complete.” It is my view that the goods in issue are more clearly identified as “[l]ighting sets of a kind used for Christmas trees” than as “[o]ther electric lamps and lighting fittings”. That being the case, Rule 3 (a) provides the Tribunal with no further discretion, as the most specific description *shall be preferred*. As a result, the proper tariff classification in my view is tariff item No. 9405.30.00.

Patricia M. Close

---

Patricia M. Close

Member