



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2010-024

Ulextra Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, June 15, 2011*

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IN THE MATTER OF an appeal heard on April 14, 2011, pursuant to subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF two decisions of the President of the Canada Border Services Agency, dated May 12, 2010, with respect to a request for review of two advance rulings pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

ULEXTRA INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: April 14, 2011
Tribunal Member: Pasquale Michael Saroli, Presiding Member
Counsel for the Tribunal: Georges Bujold
Research Director: Matthew Sreter
Research Officer: Gary Rourke
Manager, Registrar Office: Michel Parent
Registrar Officer: Cheryl Unitt

PARTICIPANTS:**Appellant**

Ulextra Inc.

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Respondent

President of the Canada Border Services Agency

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Ulextra Inc. (Ulextra) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ from two decisions made by the President of the Canada Border Services Agency (CBSA) pursuant to subsection 60(4).

2. The issue in this appeal is whether certain ceiling-mounted recessed lighting fittings (the goods in issue) are properly classified under tariff item No. 9405.10.00 of the schedule to the *Customs Tariff*² as chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares, as determined by the CBSA, or should be classified under tariff item No. 8537.10.99 as other boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading No. 85.35 or 85.36, for electric control or the distribution of electricity, for a voltage not exceeding 1,000 V, or, in the alternative, under tariff item No. 8536.61.00 as lamp-holders, as claimed by Ulextra.

PROCEDURAL HISTORY

3. On February 9, 2009, pursuant to paragraph 43.1(1)(c) of the *Act*, the CBSA issued two advance rulings concerning the tariff classification of the goods in issue.³

4. Subsequently, Ulextra requested a review of these advance rulings pursuant to subsection 60(2) of the *Act*.

5. On May 12, 2010, the CBSA issued two decisions pursuant to paragraph 60(4)(b) of the *Act* in order to dispose of Ulextra's request for review. The CBSA held that the goods in issue were properly classified under tariff item No. 9405.10.00 as other electric ceiling or wall lighting fittings, thereby affirming its advance rulings.⁴

6. On July 5, 2010, Ulextra filed the present appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

7. On April 14, 2011, the Tribunal held a public hearing in Ottawa, Ontario.

8. Mr. Christopher Perry, Master Electrician at Energie Eardley Energy Inc. appeared as a witness for the CBSA. Mr. Perry was qualified by the Tribunal as an expert in the areas of electricity and the installation of lighting equipment. Mr. Sylvain Bédard, a technical advisor and certification technician at Ulextra, testified on its behalf.

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

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

3. Tribunal Exhibit AP-2010-024-01.

4. Tribunal Exhibit AP-2010-024-01. As discussed below, the goods in issue consist of three models of recessed lighting fittings. The Tribunal notes that one of the decisions pertains to two of these models, i.e. models HIC03 and HIC04, whereas the other pertains to the third model, i.e. model HR-04-GU. The two decisions, however, are identical on the merits. In short, the CBSA, through two separate decisions, determined that the three models of the goods in issue were properly classified under tariff item No. 9405.10.00.

GOODS IN ISSUE

9. The goods in issue are three models of ceiling-mounted recessed lighting fittings that are sometimes referred to as “pot lights” or “recessed lighting fixtures” in the electrical industry⁵ and that are designed to be permanently installed in a ceiling for the purposes of room illumination. The models are identified by both parties as models HIC03, HIC04 and HR-04-GU.⁶

10. In this regard, models HIC03 and HIC04⁷ are very similar. They include a metal box that contains a junction box, a lamp socket, mounting brackets and electrical wiring. Model HR-04-GU⁸ includes a junction box, metal brackets and a flexible conduit that connects the junction box to a cone in which a lamp socket is embedded and electrical wiring in the lighting fitting. The main difference between model HR-04-GU and the other two models in terms of physical appearance is that its various components are not enclosed in a metal box. According to the evidence, model HR-04-GU is intended for installation in a ceiling that is completely built or finished, whereas models HIC04 and HIC03 are designed to be fixed on wood beams before a ceiling is finished.⁹ For all three models, additional components that are necessary to form a complete lighting fitting, including the glass shield, trim and bulb, are imported separately.

ANALYSIS

Statutory Framework

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

12. 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.¹⁰ 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. Sections and chapters may include notes concerning their interpretation. Sections 10 and 11 of the *Customs Tariff* prescribe the approach that the Tribunal must follow when interpreting the schedule in order to arrive at the proper tariff classification of goods.

13. Subsection 10(1) of the *Customs Tariff* provides as follows: “. . . 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^[11] and the Canadian Rules^[12] set out in the schedule.”

5. *Transcript of Public Hearing*, 14 April 2011, at 67.

6. Tribunal Exhibit AP-2010-024-06A at para. 2; Tribunal Exhibit AP-2010-024-08A at paras. 4, 5. The Tribunal notes that product codes HIC03 and HIC04 appear to relate to a series of goods, as is indicated in the relevant decision made by the CBSA (Tribunal Exhibit AP-2010-024-01) pursuant to subsection 60(4) of the *Act*. However, in view of the fact that both parties agree that the issue in this appeal is the tariff classification of three models of recessed lighting fittings and have used these codes to identify two of the models in issue, the Tribunal finds that product codes HIC03 and HIC04 indeed refer to two separate models. Thus, the goods in issue comprise three models, that is, model HIC03, model HIC04 and model HR-04-GU.

7. Exhibits B-01, B-02.

8. Exhibit B-03.

9. Tribunal Exhibit AP-2010-024-08A, tabs 2 to 8; *Transcript of Public Hearing*, 14 April 2011, at 10-11, 33-34.

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

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

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

14. The *General Rules* comprise six rules structured in sequence so that, if the classification of the goods cannot be determined in accordance with Rule 1, regard must be had to Rule 2, and so on, until classification is completed.¹³ Classification therefore begins with Rule 1, which provides as follows: “. . . 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.” The next provision to consider, if necessary, is Rule 2 (a), which notably provides the following additional guidance: “Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article.”

15. Section 11 of the *Customs Tariff* provides as follows: “In interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System^[14] and the Explanatory Notes to the Harmonized Commodity Description and Coding System,^[15] published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time.” Accordingly, unlike chapter and section notes, the *Explanatory Notes* are not binding on the Tribunal in its classification of imported goods. However, the Federal Court of Appeal has stated that these notes should be respected, unless there is a sound reason to do otherwise, as they serve as an interpretive guide to tariff classification in Canada.¹⁶

16. Once the Tribunal has used this approach to determine the heading in which the goods should be classified, the next step is to determine the proper subheading and tariff item, applying Rule 6 of the *General Rules* in the case of the former and Rule 1 of the *Canadian Rules* in the case of the latter.

Relevant Provisions of the Customs Tariff and Explanatory Notes

17. The relevant provisions of the *Customs Tariff*, which Ulextra claims should apply to the goods in issue, are as follows:

Section XVI

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

...

Chapter 85

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

...

13. Rules 1 through 5 of the *General Rules* apply to classification at the heading level (i.e. to four digits). Pursuant to Rule 6 of the *General Rules*, Rules 1 through 5 apply to classification at the subheading level (i.e. to six digits). Similarly, the *Canadian Rules* make Rules 1 through 5 of the *General Rules* applicable to classification at the tariff item level (i.e. to eight digits).

14. World Customs Organization, 2d ed., Brussels, 2003 [*Classification Opinions*].

15. World Customs Organization, 4th ed., Brussels, 2007 [*Explanatory Notes*].

16. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII), at paras. 13, 17.

85.37 **Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 85.35 or 85.36, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of Chapter 90, and numerical control apparatus, other than switching apparatus of heading 85.17.**

8537.10 **-For a voltage not exceeding 1,000 V**

...

---Other

...

8537.10.99 ---Other

18. There are no relevant section notes to Section XVI or chapter notes to Chapter 85.

19. The relevant *Explanatory Notes* to Section XVI provide as follows:

- (A) Subject to certain **exclusions** provided for in the Notes to this Section and to Chapters 84 and 85 and *apart from goods covered more specifically in other Sections*, this Section covers all mechanical or electrical machinery, plant, equipment, apparatus and appliances and parts thereof, together with certain apparatus and plant which is neither mechanical nor electrical (such as boilers and boiler house plant, filtering apparatus, etc.) and parts of such apparatus and plant.

[Italics added for emphasis]

20. The relevant *Explanatory Notes* to heading No. 85.37 provide as follows:

These consist of an assembly of *apparatus of the kind referred to in the two preceding headings (e.g., switches and fuses) on a board, panel, console, etc., or mounted in a cabinet, desk, etc.* They usually also incorporate meters, and sometimes also subsidiary apparatus such as transformers, valves, voltage regulators, rheostats or luminous circuit diagrams.

The goods of this heading vary from *small switchboards with only a few switches, fuses, etc. (e.g., for lighting installations) to complex control panels* for machine-tools, rolling mills, power stations, radio stations, etc., including assemblies of several of the articles cited in the text of this heading.

[Emphasis added]

21. In the alternative, should the Tribunal find that the goods in issue are not classifiable in heading No. 85.37, Ulextra submitted that the good in issue should be classified in heading No. 85.36. The relevant provisions of heading No. 85.36 are as follows:

85.36 **Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000 volts; connectors for optical fibres, optical fibre bundles or cables.**

...

-Lamp-holders, plugs and sockets:

...

8536.61.00 **--Lamp-holders**

22. The relevant *Explanatory Notes* to heading No. 85.36 provide as follows:

The heading also **excludes**:

...

- (b) Assemblies (**other than** simple switch assemblies) of the apparatus mentioned above (**heading 85.37**).

23. The relevant provisions of the *Customs Tariff*, which the CBSA considers applicable to the goods in issue, are as follows:

Section XX

MISCELLANEOUS MANUFACTURED ARTICLES

...

Chapter 94

FURNITURE; BEDDING, MATTRESSES, MATTRESS SUPPORTS, CUSHIONS AND SIMILAR STUFFED FURNISHINGS; LAMPS AND LIGHTING FITTINGS, NOT ELSEWHERE SPECIFIED OR INCLUDED; ILLUMINATED SIGNS, ILLUMINATED NAME-PLATES AND THE LIKE; PREFABRICATED BUILDINGS

...

94.05 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.

...

9405.10.00 -Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares

24. There are no section notes to Section XX.

25. The relevant chapter notes to Chapter 94 provide as follows:

1. This Chapter does not cover:

...

- (f) Lamps or lighting fittings of Chapter 85;

...

26. The relevant *Explanatory Notes* to Chapter 94 provide as follows:

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 . . .

27. The relevant *Explanatory Notes* to heading No. 94.05 provide as follows:

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

Lamps and lighting fittings of this group can be constituted of any material (**excluding** those materials described in Note 1 to Chapter 71) and use any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, etc.). Electrical lamps and lighting fittings of this heading may be equipped with lamp-holders, switches, flex and plugs, transformers, etc., or, as in the case of fluorescent strip fixtures, a starter or a ballast.

This heading covers in particular:

- (1) **Lamps and lighting fittings normally used for the illumination of rooms**, e.g.: hanging lamps; bowl lamps; ceiling lamps; chandeliers; wall lamps; standard lamps; table lamps; bedside lamps; desk lamps; night lamps; water-tight lamps.

Positions of Parties

Ulextra

28. Ulextra submitted that heading No. 94.05 and the *Explanatory Notes* thereto cover lamps and lighting fittings not elsewhere specified or included. However, as the goods in issue are, in its view, specifically mentioned and included in heading No. 85.37, Ulextra argued that it follows that they cannot be classified in heading No. 94.05, as determined by the CBSA.

29. In particular, Ulextra referred to note 1(f) to Chapter 94, which, as noted above, explicitly excludes electrical fittings of Chapter 85 from the ambit of Chapter 94. Therefore, before considering classification of the goods in issue in any heading of Chapter 94, Ulextra argued that the Tribunal must first determine whether the goods in issue are classifiable in a heading of Chapter 85.

30. In support of its position that the goods in issue are classifiable in heading No. 85.37, Ulextra referred to exclusionary note (b) in the *Explanatory Notes* to heading No. 85.36 which directs that “assemblies” of the apparatus mentioned in heading No. 85.36 are to be classified in heading No. 85.37. Indicating that the goods in issue consist of an assembly of two apparatus provided for in heading No. 85.36, namely, a lamp-holder and a junction box, Ulextra submitted that they are therefore classifiable in heading No. 85.37 and, more precisely, under tariff item No. 8537.10.99.

31. Ulextra argued that the goods in issue meet the definition of an assembly and referred to jurisprudence in which the term “assembly” was defined by the Tribunal as something which “. . . constitutes a number of parts fitted together to form a single device or unit which may, on its own, provide only limited functionality.”¹⁷ As well, Ulextra quoted a decision of the Federal Court of Canada (now the Federal Court) in *Fiat Auto Canada Limited v. The Queen*, where the Court accepted the definition of “assemble” as “[t]o bring together (things) into one place or mass, to collect” and “to bring together ... to fit together various parts of so as to make it into an operative whole....”¹⁸

32. Specifically, Ulextra argued that the lamp-holders in issue are part of an assembly which includes a junction box to allow an electrical connection. It submitted that, while the junction box is incidental to the essential character of the goods in issue, because it is part of the whole unit, the exclusions in the

17. *Fenwick Automotive Products Limited v. President of the Canada Border Services Agency* (11 March 2009), AP-2006-063 (CITT) at para. 54.

18. [1984] 1 F.C. 203 at 5.

Explanatory Notes to heading No. 85.36 apply in this case and direct classification to heading No. 85.37, which covers “[b]oards, panels, consoles, desks, cabinets and *other bases*, equipped with two or more *apparatus* of heading 85.35 or 85.36, for electric control *or* the *distribution* of electricity...” [Emphasis added]

33. In this regard, Ulextra contended, *inter alia*: (i) that the fact that the word “bases” is preceded by the word “other” precludes the application of the limited class (*ejusdem generis*) rule in interpreting the terms of heading No. 85.37 and denotes the inclusion within the scope of heading No. 85.37 of bases other than those of the class to which boards, panels, consoles, desks and cabinets belong,¹⁹ (ii) that “apparatus” is a word of broad application that captures the goods in issue,²⁰ (iii) that “control” and “distribution” functions must be considered separate activities, as denoted by the use of the disjunctive “or”, with either being sufficient to meet the requirement of heading No. 85.37,²¹ and (iv) that “distribution” must be distinguished from “supply”, with the latter stopping at the point of entry into the building from which point onward, the electrical components are part of the distribution system.²² On that basis, Ulextra submitted that the goods in issue meet the terms of heading No. 85.37, in that they are bases equipped with two apparatus of heading No. 85.36 used for the distribution of electricity.

34. In the alternative, and in the event that the Tribunal determined that they are not assemblies of apparatus, Ulextra argued that the goods in issue fall within the scope of heading No. 85.36, as they are lamp-holders/sockets²³ (i.e. goods provided for in heading No. 85.36) and are not complete lighting fixtures or fittings as described in heading No. 94.05.

CBSA

35. The CBSA submitted that the goods in issue meet the definition of “lighting fittings”. In this regard, the CBSA noted that a representative for Ulextra admitted, in prior correspondence with the CBSA, that the goods in issue are lighting fittings.²⁴ The CBSA further submitted that heading No. 94.05, and more specifically, tariff item No. 9405.10.00, provides for the goods in issue, that is, “. . . other electric ceiling . . . lighting fittings . . .”

36. The CBSA argued that the *Explanatory Notes* to Chapter 94 confirm that Chapter 94 and heading No. 94.05 are intended to cover certain lamps and lighting fittings, not elsewhere specified or included. In addition, the CBSA argued that the goods in issue are specifically provided for in the *Explanatory Notes* to heading No. 94.05, which indicate that lighting fittings of heading No. 94.05 may be equipped with lamp-holders, as is the case with the goods in issue. The CBSA also noted that the purpose of the goods in issue is the illumination of rooms and that, according to the *Explanatory Notes* to heading No. 94.05, this heading covers, in particular, “. . . **lighting fittings normally used for the illumination of rooms . . .**”

19. On this issue, Ulextra relied on a Supreme Court of Canada precedent, namely, *Superior Pre-Kast Septic Tanks Ltd. et al. v. The Queen*, [1978] 2 S.C.R. 612 [*Superior Pre-Kast Septic Tanks*].

20. In support of this argument, Ulextra cited *Ingenuity Inc. v. Deputy M.N.R. (Customs & Excise)* [1987] 15 C.E.R. 52.

21. Ulextra referred to the Tribunal’s decision in *Dynamo Industries, Inc. v. President of the Canada Border Services Agency* (1 April 2009), AP-2008-007 (CITT) in support of this interpretation.

22. *Lightolier, Division of Canlyte Inc. v. M.N.R.* (19 October 1993), AP-92-205 (CITT) [*Lightolier*] was cited as an authority for this proposition.

23. *Transcript of Public Hearing*, 14 April 2011, at 49, 123. Both Mr. Bédard and Mr. Perry gave testimony that a lamp-holder and lamp-socket are essentially the same apparatus.

24. Tribunal Exhibit AP-2010-024-08A, para. 17, tab 11.

37. Therefore, on the basis of the application of Rule 1 of the *General Rules*, and given that the goods are named or generically described in heading No. 94.05 as lighting fittings, the CBSA argued that the goods in issue fall to be classified under tariff item No. 9405.10.00.

38. By way of rebuttal of Ulextra's arguments, the CBSA submitted that the goods in issue are covered more specifically in heading No. 94.05 of Section XX, within the meaning of the *Explanatory Notes* to Section XVI. In this regard, the CBSA highlighted that note (A) of the *Explanatory Notes* to Section XVI indicates that goods covered more specifically in other sections are excluded from Section XVI.

39. Furthermore, the CBSA, referring to the specific wording of heading No. 85.37, submitted that the goods in issue were not set on "boards, panels, consoles, desks, cabinets or other bases" and, therefore, could not be classified in that heading. In this regard, it submitted that the ceiling into which the goods in issue are installed cannot be considered to fall within the meaning of the term "other bases" by virtue of the *ejusdem generis* rule of interpretation which, in the CBSA's view, applies in this context. In particular, the CBSA argued that the scope of the words "other bases" is limited to the class to which the specific items all belong and that, in the present appeal, a ceiling does not present the same characteristics as the specific bases enumerated in heading No. 85.37.

40. In addition, the CBSA argued that the goods in issue are not "assemblies" of the kind described in the *Explanatory Notes* to heading No. 85.37, that is, they are not akin to switchboards or complex control panels for machine-tools, rolling mills, power stations, radio stations, etc., nor are they switches and fuses mounted on a board, panel, console, etc. In the CBSA's view, having regard to the guidance afforded by the *Explanatory Notes* to heading No. 85.37, in which very different types of goods are listed as examples of goods that meet the terms of that heading, it is clear that heading No. 85.37 does not cover the goods in issue.

41. The CBSA further argued that the primary function of the goods in issue is to create light in a room and not to make an electrical connection between the electrical systems of the dwelling in which they will be installed and the rest of the components. In this regard, it submitted that the distribution and control of electricity and protection against the heat generated by the bulbs or lamps are functions that are incidental to the primary function of the goods in issue. On that basis, the CBSA submitted that the goods in issue are not apparatus for electric control or the distribution of electricity, as is required by the terms of heading No. 85.37.

42. With respect to the fact that glass shields, trims and bulbs are not present at the time of importation and may be chosen by a customer to match décor, the CBSA submitted that this situation does not detract from the fact that the goods are classifiable as lighting fittings of heading No. 94.05.

43. Finally, in regard to Ulextra's alternative classification argument that the goods in issue could be classified under tariff item No. 8536.61.00, the CBSA submitted (i) that, on the basis of the design and marketing of the goods, it is clear that their function goes beyond simply protecting or making connections to or in electrical circuits, (ii) that the goods in issue consist of many parts and cannot be reduced to one component (a lamp-holder) and (iii) that the goods in issue are recessed lighting (pot lights) for lighting a room and, as such, are properly classified under tariff item No. 9405.10.00.

Tariff Classification of the Goods in Issue

44. The dispute between the parties in this appeal arises at the heading level. The Tribunal must therefore first determine whether, pursuant to Rule 1 of the *General Rules*, the goods in issue meet the terms of heading No. 85.36, 85.37 or 94.05.

45. Having regard (i) to the fact that heading No. 94.05 by its own terms (and as confirmed by the *Explanatory Notes* thereto) only cover lamps and lighting fittings *not elsewhere specified or included*, and (ii) to chapter note 1(f) to Chapter 94, which explicitly *excludes* electrical fittings of Chapter 85 from the ambit of that chapter, the Tribunal agrees with Ulextra that, before taking Chapter 94 into consideration, it must first be determined whether the goods in issue are classifiable in Chapter 85.²⁵

46. The Tribunal will therefore take, as its point of departure, a consideration of whether or not the goods in issue are lighting fittings of heading No. 85.36 or 85.37, as argued by Ulextra.

Are the Goods in Issue Classifiable in Heading No. 85.36?

47. By its own terms, heading No. 85.36 covers “[e]lectrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes)”

48. The evidence indicates that the key components of the goods in issue are the lamp-holder/socket and the junction box apparatus. In this regard, both the *Canadian Electrical Code, Part I*²⁶ and the *Ontario Electrical Safety Code*²⁷ specifically define a lamp-holder as “a device constructed for the mechanical support of lamps *and for connecting them to circuit conductors*” [emphasis added]. Given the role of the lamp-holder in making an electrical connection between the lamp and circuit conductor, it is the Tribunal’s view that the goods in issue meet this requirement of heading No. 85.36.

49. However, exclusionary note (b) in the *Explanatory Notes* to heading No. 85.36 specifically excludes the following goods from the ambit of that heading: “Assemblies (**other than** simple switch assemblies) of the apparatus mentioned above [i.e. apparatus of heading No. 85.36] (**heading 85.37**).” Thus, to the extent that the goods in issue constitute “assemblies” of apparatus, they cannot be classified in heading No. 85.36.

50. On the basis of its review of the evidence, the Tribunal finds that the goods in issue are indeed assemblies (other than simple switch assemblies) of two apparatus of heading No. 85.36, namely, a lamp-holder/socket and a junction box. Accordingly, the Tribunal finds, and Ulextra acknowledges,²⁸ that the goods in issue cannot be classified in heading No. 85.36.

25. As indicated by the Tribunal in *3319067 Canada Inc. (Universal Lites) v. President of the Canada Border Services Agency* (23 March 2006), AP-2004-017 (CITT) at para. 39, “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.”

26. Tribunal Exhibit AP-2010-024-13A at 53.

27. *Ibid.* at 20.

28. Tribunal Exhibit AP-2010-024-06A at para. 7; *Transcript of Public Hearing*, 14 April 2011, at 208.

Are the Goods in Issue Classifiable in Heading No. 85.37?

51. According to the requirements of heading No. 85.37, in order for the goods in issue to be classified in this heading, they must be (i) boards, panels, consoles, desks, cabinets or other bases, (ii) equipped with two or more apparatus of heading No. 85.35 or 85.36 and (iii) for electric control or the distribution of electricity.

Second Requirement

52. The Tribunal has chosen to begin its analysis with the second of these three requirements. In this regard, the Tribunal notes that both lamp-holders/sockets and junction boxes are among the apparatus specifically named in notes III (A) and (B) of the *Explanatory Notes* to heading No. 85.36 as being included in heading No. 85.36. Accordingly, the goods in issue, being equipped with two apparatus of heading No. 85.36, meet this requirement of heading No. 85.37.

First Requirement

53. Returning to the first requirement, in order for the goods in issue to be classified in heading No. 85.37, the apparatus would have to form part of the equipment of “boards, panels, consoles, desks, cabinets or other bases”.

54. For its part, the CBSA argued that the scope of the phrase “other bases” is limited, through the application of the *ejusdem generis* rule of interpretation, to the particular class to which the specifically listed items in heading No. 85.37 belong.

55. Ulextra, on the other hand, relying on the decision of the Supreme Court of Canada in *Superior Pre-Kast Septic Tanks*, argued that the adjective “other” precludes an *ejusdem generis* reading of the phrase “other bases”.

56. In the Tribunal’s view, Ulextra’s reliance on *Superior Pre-Kast Septic Tanks* reflects a misunderstanding of the scope and relevancy to the present appeal of the Supreme Court of Canada’s decision in that case. In its decision, the Supreme Court of Canada rejected the application of the *ejusdem generis* rule to the words “building or other structure”, as it would have restricted the meaning of the phrase “or other structure” to something in the nature of a building. In this regard, the Supreme Court of Canada noted, *inter alia*, that the word “structure” was preceded by the word “other”, which indicated that it was intended to refer to something other than a building. Indeed, to have suggested otherwise would have rendered the phrase “or other structure” contextually redundant.

57. However, unlike the phrase at issue in *Superior Pre-Kast Septic Tanks* which involved two different concepts, namely, that of a building and that of a structure other than a building, the present case involves a single concept, namely, “bases”, certain of which are specified and others of which are not.

58. The definition of the word “base” in the *Canadian Oxford Dictionary*, includes “a part that supports from beneath or serves as a foundation for an object or structure”,²⁹ while the *Oxford English Dictionary* defines “base” as including, “the bottom of any object, when considered as its support, or as that on which it stands or rests.”³⁰

29. Second ed., s.v. “base”.

30. *Ibid.*

59. That boards, panels, consoles, desks and cabinets are themselves “bases” derives from the fact that they all physically support the apparatus with which they are equipped. Therefore, as heading No. 85.37 involves a single concept, i.e. bases (unlike in *Superior Pre-Kast Septic Tanks*), the Tribunal agrees with the CBSA and is of the view that the *ejusdem generis* rule is indeed relevant to the interpretation of heading No. 85.37, with the scope of the words “other bases” being limited to the class to which the items specifically listed belong.

60. With these considerations in mind, the Tribunal will now examine whether the goods in issue meet the first essential element or requirement of heading No. 85.37.

– Exhibit B-03 (model HR-04-GU)

61. In the Tribunal’s view, the question of whether this model of the goods in issue meets the first requirement of heading No. 85.37 does not turn on an *ejusdem generis* reading of the phrase “other bases”, as the analysis never reaches the point where the *ejusdem generis* rule enters into play.

62. In this regard, each of the bases specifically referred to in heading No. 85.37 actually forms part of the assemblies constituting the goods of that heading. That is to say, the assembly as a whole is a base equipped with two or more apparatus of heading No. 85.36.

63. It is well established in law that the tariff classification of goods is based on the physical description of the goods as presented at the time of importation.³¹ In the present appeal, the lamp-holder/socket and the junction box assemblies of Exhibit B-03, as presented for importation, were not incorporated in a base, a point conceded by Ulextra.³²

64. Given the failure to meet the first essential requirement of heading No. 85.37, the Tribunal finds that this particular model of the goods in issue is not classifiable in heading No. 85.37.

– Exhibits B-01 and B-02 (models HIC04 and HIC03)

65. Both of these models of the goods in issue have a metal casing that houses the lamp-holder/socket and the junction box, which Ulextra contends can be considered a base, thereby meeting the first requirement of heading No. 85.37.

31. See *Tiffany Woodworth v. President of the Canada Border Services Agency* (11 September 2007), AP-2006-035 (CITT) at para. 21, where the Tribunal stated the following:

... the Tribunal notes the Supreme Court of Canada’s decision in *Deputy M.N.R.C.E. v. MacMillan & Bloedel (Alberni) Ltd.*, which indicated that *the time for determining tariff classification is at the time of entry into Canada of the goods subject to duty*. . . . In the Tribunal’s view, the principle set out in *MacMillan Bloedel* is still valid today despite various amendments by Parliament to Canada’s customs legislation in the years since that case. [Emphasis added, footnote omitted]

The Tribunal has made a similar finding in several other decisions, including *Canadian Optical Supply Company Ltd. v. Deputy M.N.R.* (21 February 1997), AP-96-048 (CITT); *Decolin Inc. v. President of the Canada Border Services Agency* (13 September 2005), AP-2004-011 (CITT); *Cobra Anchors Co. Ltd. v. President of the Canada Border Services Agency* (8 May 2009), AP-2008-006 (CITT).

32. *Transcript of Public Hearing*, 14 April 2011, at 186-87. See also Tribunal Exhibit AP-2010-024-06A at paras.7-9, where Ulextra acknowledges that heading No. 85.37 covers an assembly of apparatus on a board, panel, console, etc, or mounted in a cabinet, desk, etc. While Ulextra argues that the lamp-holders, are part of an assembly of apparatus which includes a junction box, it does not claim that this assembly is mounted or incorporated in a base at the time of their importation.

66. On the basis of an *ejusdem generis* reading of the phrase “other bases”, the Tribunal is of the view that these simple metal casings do not constitute “other bases” within the meaning of that phrase in the context of heading No. 85.37.

67. Heading No. 85.37 requires that the subject bases be “equipped with” two or more apparatus of heading No. 85.35 or 85.36. The Tribunal notes that the definitions of the word “equip” include “[t]o *furnish for service* . . . ; to *provide with what is requisite for efficient action*, as . . . instruments, or apparatus of any kind”³³ and “to *furnish for service or action by appropriate provisioning*”³⁴ [emphasis added].

68. Indeed, the common feature of all the bases explicitly listed in heading No. 85.37 is that each of them is in the nature of an electricity control station or centre, which is consistent with the following guidance afforded by the *Explanatory Notes* to heading No. 85.37:

The goods of this heading vary from *small switchboards* with only a few switches, fuses, etc. (e.g., for lighting installations) to *complex control panels* for machine-tools, rolling mills, power stations, radio stations, etc., including assemblies of several of the articles cited in the text of this heading.

[Emphasis added]

69. In this regard, the Tribunal notes, for example, that the *Canadian Electrical Code, Part I* defines “panelboard” as “an assembly of buses and connections, overcurrent devices and control apparatus with or without switches, or other equipment constructed for installation as a complete unit in a cabinet”.³⁵ A “console” is defined as “a combination of readouts or displays and an input device (as a keyboard or switches) by which an operator can monitor and interact with a system . . .”³⁶ A “desk” is defined as “a table, counter, stand, or booth at which a person works”.³⁷

70. By contrast, the metal casings of these particular goods in issue, simply house the lamp-holder/socket and the junction box apparatus and do not serve as a control platform like the bases explicitly listed in heading No. 85.37.

71. Accordingly, given their failure to satisfy an essential element of heading No. 85.37, namely, to include a base of the same class or nature as the specific bases enumerated in heading No. 85.37, the Tribunal finds that these goods are also not properly classifiable in this heading.

Third Requirement

72. Finally, with regard to the third requirement of heading No. 85.37 (i.e. that the goods be for electric control or the distribution of electricity), Ulextra, in support of its position that the goods in issue were for the distribution of electricity³⁸ and citing the Tribunal’s decision in *Lightolier*, argued that the distribution of electricity “. . . occurs after the electricity arrives at the building . . .”³⁹ and that the goods in issue distribute electricity in the sense that they bring it to the light bulb to be put into the lamp-holders, at which point the electricity is actually consumed.⁴⁰

33. *Oxford English Dictionary*, 2d ed., s.v. “equip”.

34. *Merriam Webster’s Collegiate Dictionary*, 11th ed., s.v. “equip”.

35. Tribunal Exhibit AP-2010-024-13A at 54.

36. *Merriam Webster’s Collegiate Dictionary*, 11th ed., s.v. “console”.

37. *Ibid.* s.v. “desk”.

38. The Tribunal notes that Ulextra did not contend that the goods in issue were for “electric control” and, as such, is of the view that it is not necessary to address this issue in order to dispose of this appeal.

39. *Transcript of Public Hearing*, 14 April 2011, at 175.

40. *Ibid.* at 174-75.

73. The CBSA, on the other hand, claimed that “. . . [the] distribution [of electricity] ends at the breaker in the distribution panel”⁴¹ and that the goods in issue were therefore not for the distribution of electricity.

74. In the Tribunal’s view, a distinction must be drawn between the distribution of electricity on the one hand and the consumption of electricity on the other. In this regard, the Tribunal understands that any device that consumes electricity from an electric circuit and converts it into work is called a “load”.⁴²

75. The parties agree with, and the Tribunal accepts, the definition of “luminaire” in the *Canadian Electrical Code, Part I* and the *Ontario Electrical Safety Code* as “. . . a complete lighting unit designed to accommodate the lamp(s) and connect the lamp(s) to circuit conductors” [emphasis added].⁴³

76. The Tribunal is of the view that, as essentially complete lighting units (or luminaires), the goods in issue must be viewed as being dedicated to the load consumption of electricity for the production of light. That being the case, the Tribunal finds that they cannot be properly considered part of the distribution of electricity.

77. In reaching this decision, the Tribunal had particular regard to its earlier decision in *Lovell Lighting Ltd. v. M.N.R.*⁴⁴ The appellant in that case manufactured conversion units for high-pressure sodium (HPS) lamps used in street lighting as replacements for mercury vapour or incandescent lamps. The units in question were encased in a box and mounted on a light standard or placed within, or adjacent to, the light fixture attached to the pole. In dismissing the appellant’s claim that the goods in issue should have been classified as equipment for permanent installation in a system for the supply of electricity, the Tribunal found that the conversion units were an integral part of the HPS lamp system and, thus, of the system that uses rather than supplies electricity. In particular, the conversion units were specifically designed to be used with the HPS lamp, and the HPS lamp could not function without the conversion units. In so finding, the Tribunal stated the following:

It is true that electricity enters the conversion unit and exits, still as electricity, to reach the HPS lamp. In that sense, the unit could be said to supply electricity to the lamp. However, the nature and function of the unit and its dedication to the operation of the lamp make it more a part of the system that uses electricity than of the system that supplies electricity.⁴⁵

78. Similarly, the Tribunal in this case finds that the goods in issue, being essentially complete units dedicated to the load consumption of electricity for the production of light, cannot be properly considered part of the system for the distribution of electricity.

79. Their failure to meet the third requirement of heading No. 85.37 is, in the Tribunal’s view, a further reason for the goods in issue not being classifiable in that heading.

Are the Goods in Issue Classifiable in Heading No. 94.05?

80. Having found the goods in issue are not classifiable in heading No. 85.36 or 85.37, as submitted by Ulextra, the Tribunal will next consider whether the goods in issue are classifiable in heading No. 94.05 and, in particular, under tariff item No. 9405.10.00 as other electric ceiling lighting fittings, as determined by the CBSA.

81. The Tribunal notes that the terms of heading No. 94.05 require that the goods in issue be (i) lighting fittings and (ii) not elsewhere specified or included. General note 3 of the *Explanatory Notes* to Chapter 94 confirms that this chapter provides for “[l]amps and *lighting fittings* . . . not elsewhere specified or included” [emphasis added].

41. *Ibid.* at 165.

42. Tribunal Exhibit AP-2010-024-19B, tab 12; *Transcript of Public Hearing*, 14 April 2011, at 50.

43. Tribunal Exhibit AP-2010-024-13A at 21, 53.

44. (1 June 1989), 2925 (CITT) [*Lovell Lighting*].

45. *Lovell Lighting* at 9.

82. More specifically, the *Explanatory Notes* to heading No. 94.05, provide as follows:

Lamps and lighting fittings of this group can be constituted of any material (**excluding** those materials described in Note 1 to Chapter 71) and use any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, etc.). Electrical lamps and lighting fittings of this heading may be equipped with lamp-holders, switches, flex and plugs, transformers, etc. . . .

This heading covers in particular:

- (1) **Lamps and lighting fittings normally used for the illumination of rooms**, e.g.: hanging lamps; bowl lamps; *ceiling lamps*; chandeliers; wall lamps; standard lamps; table lamps; bedside lamps; desk lamps; night lamps; water-tight lamps.

[Italics added for emphasis]

83. On the basis of the foregoing, the Tribunal finds that the goods in issue fall within the generic description of lighting fittings. Indeed, a representative of Ulextra referred to the goods in issue as lighting fittings in prior correspondence with the CBSA.⁴⁶ The Tribunal further notes that Mr. Perry, the expert witness called by the CBSA, testified that the goods in issue were properly described as “lighting fittings”.⁴⁷ While the Tribunal is aware that Mr. Bédard referred to the goods in issue as electrical fittings (rather than lighting fittings) in his testimony, the Tribunal notes that he was not testifying in an expert capacity. Accordingly, and in light of the expert testimony provided by Mr. Perry, the Tribunal does not ascribe much weight to the description of the goods in issue as electrical fittings.

84. Moreover, having found that they are not *prima facie* classifiable in heading No. 85.36 or 85.37, and being satisfied that they are not *prima facie* classifiable in any other heading, the Tribunal finds that the goods in issue also meet the requirement of heading No. 94.05, as lighting fittings “not elsewhere specified or included”.

85. Finally, with respect to the fact that the glass shield, trim and light bulbs are imported separately from the goods in issue to accommodate the aesthetic and/or style preference of consumers, the Tribunal is of the view that this fact does not preclude them from being classified in heading No. 94.05. In this regard, it bears emphasizing that Rule 2 (a) of the *General Rules* extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, provided, as presented, it has the essential character of the complete or finished article.

86. The Tribunal is of the view that, even if the goods in issue were to be considered incomplete articles, that is, incomplete lighting fittings or fixtures as presented at importation, they would retain the essential character of complete lighting fittings of heading No. 94.05 and would remain classified as such by application of Rule 2 (a) of the *General Rules*. Indeed, the purpose of the goods in issue is to produce light for room illumination, and, at the time of importation, the goods in issue comprise the two essential components that are necessary for them to perform this function, namely, the lamp-holder/socket and the junction box.

87. The Tribunal notes that Ulextra agrees that these two components are indispensable to enable light to be produced.⁴⁸ Moreover, the Tribunal accepts the CBSA’s argument that, as imported, the goods in issue have all the essential characteristics of lighting fittings, particularly in view of the fact that they could function without the presence of a trim and that bulbs are generally not included when one purchases a

46. Tribunal Exhibit AP-2010-024-08A at 75.

47. *Transcript of Public Hearing*, 14 April 2011, at 67.

48. *Ibid.* at 172.

lighting fitting or a lamp.⁴⁹ In sum, having carefully examined the evidence, the Tribunal is of the view that the goods in issue can be viewed as having the “essential character” of complete lighting fittings because they are recognizable or identifiable as lighting fittings.⁵⁰

88. The Tribunal therefore finds that the goods in issue are lighting fittings or, at a minimum, incomplete lighting fittings that have the essential character of complete or finished lighting fittings. As such, they are properly classified in heading No. 94.05 and, in particular, applying Rule 6 of the *General Rules* and Rule 1 of the *Canadian Rules*, under tariff item No. 9405.10.00 as other electric ceiling or wall lighting fittings.

Are the Goods in Issue Classifiable in Heading No. 85.36 by Application of Rule 3 (b) of the General Rules?

89. With respect to Ulextra’s argument that the goods in issue are classifiable in heading No. 85.36 as “lamp-holders” by application of Rule 3 (b) of the *General Rules* because the lamp-holder component confers the essential character to the goods in issue, the Tribunal notes that recourse to Rule 3 of the *General Rules* is explicitly made contingent on the goods in issue being *prima facie* classifiable in two or more headings.

90. Given: (i) that the focus of the appeal was on heading Nos. 85.36, 85.37 and 94.05, and that the Tribunal was satisfied that the goods in issue were not *prima facie* classifiable in any other heading, (ii) that according to note 1(f) to Chapter 94, lamps and lighting fittings can be classified in Chapter 85 or 94 but not both, (iii) that the Tribunal found that the goods in issue are not classifiable in heading No. 85.36 or 85.37, and (iv) that the Tribunal found that the goods in issue are in fact properly classified in heading No. 94.05, the goods in issue are not *prima facie* classifiable in two or more headings.

91. On the basis of the foregoing, the Tribunal concludes that recourse to Rule 3 (b) of the *General Rules* is unnecessary and, accordingly, unavailable in this appeal.

Conclusion

92. For the foregoing reasons, the Tribunal finds that the goods in issue are properly classified under tariff item No. 9405.10.00 as other electric ceiling or wall lighting fittings.

DECISION

93. The appeal is dismissed.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

49. *Ibid.* at 198-99.

50. In *Renelle Furniture Inc. v. President of the Canada Border Services Agency* (23 March 2007), AP-2005-028 (CITT) at 4, 5, the Tribunal stated that “. . . Rule 2 (a) of the *General Rules* manifestly includes an article that may lack some components and that is therefore likely not fully operational” and that “. . . in order for an incomplete or unfinished article to be classified in the heading for the complete or finished article, it must be recognizable or identifiable as the complete or finished product.”