

Ottawa, Thursday, August 3, 1995

Appeal No. AP-94-168

IN THE MATTER OF an appeal heard on January 11, 1995,  
under section 67 of the *Customs Act*, R.S.C. 1985, c. 1  
(2nd Supp.);

AND IN THE MATTER OF a decision of the Deputy Minister of  
National Revenue dated May 17, 1994, with respect to a request  
for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**CARLON CANADA LIMITED**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Lyle M. Russell  
Lyle M. Russell  
Presiding Member

Charles A. Gracey  
Charles A. Gracey  
Member

Lise Bergeron  
Lise Bergeron  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-94-168**

**CARLON CANADA LIMITED**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

*The appellant is an importer of security infra-red motion sensors and outdoor light controls which are described in the accompanying instruction manual as security lights with infra-red motion detectors which operate continuously and turn on the lights after sensing moving heat sources. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9405.10.00 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 respondent, or should be classified under tariff item No. 8531.10.90 as other burglar or fire alarms and similar apparatus, as claimed by the appellant.*

**HELD:** *The appeal is dismissed. The Tribunal finds that the goods in issue are properly classified under tariff item No. 9405.10.00 as chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares.*

*Place of Hearing: Ottawa, Ontario*  
*Date of Hearing: January 11, 1995*  
*Date of Decision: August 3, 1995*

*Tribunal Members: Lyle M. Russell, Presiding Member*  
*Charles A. Gracey, Member*  
*Lise Bergeron, Member*

*Counsel for the Tribunal: Hugh J. Cheetham*

*Clerk of the Tribunal: Anne Jamieson*

*Appearances: Michael Sherbo, for the appellant*  
*Stéphane Lilkoff, for the respondent*

Appeal No. AP- 94-168

CARLON CANADA LIMITED

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: LYLE M. RUSSELL, Presiding Member  
CHARLES A. GRACEY, Member  
LISE BERGERON, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> (the Act) from a decision of the Deputy Minister of National Revenue dated May 17, 1994.

The appellant is an importer and distributor of electronic products including the goods in issue, which are security infra-red motion sensors and outdoor light controls. The goods in issue are described in the accompanying instruction manual as being equipped with infra-red motion detectors which operate continuously and turn on the lights after sensing moving heat sources. The goods in issue are also described as being equipped with a photoelectric sensor which prevents the lights from operating during the daytime, unless desired.

The goods in issue were imported in a number of transactions occurring in 1992 and were classified under tariff item No. 9405.10.00 of Schedule I to the *Customs Tariff*.<sup>2</sup> The appellant filed a request for re-determination of the classification under tariff item No. 8531.10.90. This request was rejected. The appellant subsequently filed a request for a further re-determination and, by decision dated May 17, 1994, the respondent maintained the classification of the goods in issue under tariff item No. 9405.10.00, on the basis of the Tribunal's decision in *Outils Royal Tools Corporation v. The Deputy Minister of National Revenue for Customs and Excise*<sup>3</sup> which, he felt, confirmed his position that goods of the kind imported by the appellant are properly classified under tariff item No. 9405.10.00.

The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9405.10.00 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 respondent, or should be classified under tariff item No. 8531.10.90 as other burglar or fire alarms and similar apparatus, as claimed by the appellant

The goods in issue are composed of a wall gasket, back plate, lampholder (which includes light bulb sockets), ceiling mount extension and control module. The control module functions as an infra-red motion detector which, when the goods in issue are activated, operates continuously and turns on the lights upon sensing a moving heat source. The goods in issue are meant to deter unwanted persons or animals from

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. R.S.C. 1985, c. 41 (3rd Supp.).
3. Appeal No. AP-92-151, September 17, 1993.

approaching buildings or other structures. The instruction manual also suggests that the goods in issue can be used as sensing devices to turn on lights to greet people approaching a home on foot and to light up the driveway when a car enters.

There were no witnesses at the hearing. The appellant's representative filed parts of the goods in issue as physical exhibits. Counsel for the respondent and the representative agreed that the goods in issue were basically the same goods as those considered by the Tribunal in *Outils Royal*. Therefore, counsel and the representative proceeded to argument.

The appellant's representative noted that the tariff item claimed by the appellant had not been considered by the Tribunal in *Outils Royal*. He argued that heading No. 94.05 describes only one part of the goods in issue, namely, the lighting fixture, whereas heading No. 85.31, as proposed by the appellant, describes the product in its entirety, that is, both the lighting component and the control module. Note (E) of the Explanatory Notes to the Harmonized Commodity Description and Coding System<sup>4</sup> (the Explanatory Notes) to heading No. 85.31 states that the burglar alarms named in subheading No. 8531.10 consist of two parts: a detecting part and a signalling part. The representative contended that the "similar apparatus" referred to in the same subheading would also logically consist of the same two parts and that the goods in issue do, in fact, consist of a detecting part, the control module entered in evidence,<sup>5</sup> and a signalling part, the light fixture. When the light comes on, it is a signal that the detector has sensed motion, he argued. He submitted that, under Rule 1 of the General Rules for the Interpretation of the Harmonized System<sup>6</sup> (the General Rules), tariff item No. 8531.10.90 takes precedence over tariff item No. 9405.10.00 because it more completely describes the product as a whole. Since tariff item No. 8531.10.90 describes both components of the goods in issue, he believed that it was unnecessary to determine, as the respondent has done, the essential character of the goods in issue.

Counsel for the respondent argued that it is clear from the appellant's product literature that the goods in issue are lights. The function of the control module is simply to switch the light on and off; it serves the lighting aspect of the goods in issue and is not, therefore, the essential component. He argued that heading No. 94.05 covers both components of the goods in issue, since the Explanatory Notes state that the lighting fittings falling in the heading may be equipped with switches. Citing the Tribunal's decision in *Outils Royal*, counsel argued that the goods in issue function as lights to illuminate an area rather than function as signals. He noted that the product literature does not claim any signalling capability. Although the term "security" is used to describe the product, he argued that it is not synonymous with "alarm." The latter suggests the conveyance of information or the sending of a warning. He submitted that any signalling aspect of the goods in issue (e.g. informing the householder that someone is approaching the house) is only a consequence of their primary function, which is to light the area where installed. In his view, the appellant's representative was seeking to have the goods in issue classified according to their secondary function (signalling) rather than their primary function (lighting), contrary to Rule 1 of the General Rules. He argued that, if the Tribunal were to accept that the goods in issue perform a signalling function, Rule 3 (b) of the General Rules would still require it to conclude that the essential character of the goods in issue is lighting and, thus, that tariff item No. 9405.10.00 applies.

In reply, the appellant's representative argued that Rule 1 of the General Rules does not say anything about primary function and that the terms of heading No. 85.31 are broad enough to encompass the goods in

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4. Customs Co-operation Council, 1st ed., Brussels, 1986.

5. Exhibit A-2.

6. *Supra*, note 2, Schedule I.

issue. The heading covers all electrical apparatus for signalling, and this is the function of the goods in issue (i.e. the light coming on means that there is motion outside). In his view, Rule 3 of the General Rules does not come into play because the goods in issue can be classified in heading No. 85.31 pursuant to Rule 1 of the General Rules, which requires, in the first instance, that classification be attempted on the basis of the terms of the headings and any relative Section or Chapter Notes. He suggested that, if resort were to be had to Rule 3 of the General Rules, it would not be possible to determine the essential character of the goods in issue and, thus, under Rule 4 of the General Rules, the Tribunal would have to look at the heading that was the most akin or similar. On that basis, it would come back to heading No. 85.31, as the goods in issue are, in his view, more akin to a fire or burglar alarm than to a lighting fixture.

The Tribunal has difficulty accepting the argument that the lights function by sending a signal. It is true that a person seeing the lights come on, and being familiar with their operation, would deduce that motion had been detected by the control module. However, it appears from the product literature that the goods in issue are designed for a light bulb that is much more powerful than would be necessary to convey this information to the viewer. They are designed to illuminate a fairly large area adjacent to a building or other structure on which they are mounted and, in some cases, might not be visible to someone inside that building or structure. This illumination may serve several purposes, including that of alarming and scaring off a would-be burglar. However, this does not make the lights into a burglar alarm or similar signalling apparatus, as described in subheading No. 8531.10. Their primary function remains lighting. The control module is properly seen as a sophisticated switch which ensures that electricity is not wasted when no light is needed. The fact that, through the operation of a photoelectric sensor, the lights send no signal, intended or otherwise, during daylight hours further detracts from the argument that the goods in issue are similar to a burglar alarm.

The Tribunal, therefore, finds that the goods in issue are properly classified under tariff item No. 9405.10.00 as chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares.

Accordingly, the appeal is dismissed.

Lyle M. Russell  
Lyle M. Russell  
Presiding Member

Charles A. Gracey  
Charles A. Gracey  
Member

Lise Bergeron  
Lise Bergeron  
Member