



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2016-007

LRI Lighting International Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, May 23, 2017*

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IN THE MATTER OF an appeal heard on April 20, 2017, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated March 24, 2016, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

LRI LIGHTING INTERNATIONAL INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Peter Burn
Peter Burn
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: April 20, 2017
Tribunal Panel: Peter Burn, Presiding Member
Support Staff: Dustin Kenall, Counsel
Laura Little, Counsel

PARTICIPANTS:

Appellant	Counsel/Representative
LRI Lighting International Inc.	Sean Everden
Respondent	Counsel/Representative
President of the Canada Border Services Agency	Aileen Jones

WITNESS:

Bruce Howitt
President
LRI Lighting International Inc.

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STATEMENT OF REASONS

INTRODUCTION

1. This is an appeal filed by LRI Lighting International Inc. (LRI) pursuant to subsection 67(1) of the *Customs Act*,¹ from a decision of the President of the Canada Border Services Agency (CBSA) dated March 24, 2016, made pursuant to subsection 60(4).

2. The issue in this appeal is whether stainless steel bollards that house a fluorescent lamp (the goods in issue) are properly classified under tariff item No. 9405.40.90 of the schedule to the *Customs Tariff*² as other electric lamps and lighting fittings, as determined by the CBSA, or under tariff item No. 7308.90.00 as other structures of iron or steel, as submitted by LRI.

PROCEDURAL HISTORY

3. On May 8, 2014, LRI filed a request with the CBSA for an advance ruling under section 43.1 of the *Act* with respect to the tariff classification of the goods in issue (specifically, bollard model No. 7216, manufactured in and exported from Germany by BEGA) under tariff item No. 7308.90.00.³

4. On June 17, 2014, the CBSA classified the goods in issue under tariff item No. 9405.40.90.⁴ On August 20, 2014, LRI requested a review of the ruling under subsection 60(2) of the *Act*.⁵ On March 24, 2016, the CBSA denied the request.⁶

5. On June 3, 2016, LRI appealed the decision to the Canadian International Trade Tribunal (the Tribunal) under section 67 of the *Act*. On November 22, 2016, the parties requested an adjournment to allow LRI to request an advance ruling on tariff classification with respect to stainless steel bollards stripped of their electrical lighting components. On January 16, 2017, the CBSA found that bollards stripped of their electric lighting components should be classified as parts of lamps under tariff item No. 9405.99.00.⁷

6. On January 26, 2017, LRI notified the Tribunal that it wished to proceed with the present appeal on the basis that the goods in issue are stainless steel bollards imported with their electrical components but that it would no longer pursue the appeal relative to stainless steel bollards imported without their electrical components.⁸

7. On April 20, 2017, the Tribunal held a public hearing. LRI presented a lay witness, and both parties made oral arguments.

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

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

3. Exhibit AP-2016-007-07A, tab 1, Vol. 1.

4. *Ibid.*, tab 2.

5. *Ibid.*, tab 3.

6. *Ibid.*, tab 5.

7. Exhibit AP-2016-007-20, Vol. 1A.

8. *Ibid.*

DESCRIPTION OF THE GOODS IN ISSUE

8. The goods in issue are bollards (BEGA model No. 7216) that provide exterior lighting, for example, to illuminate walkways.⁹ They are made up of a stainless steel shell that contains a hand-blown opal glass cylinder, a compact fluorescent lamp and connecting terminals. Light is emitted through a non-shielded luminaire with two light sectors in the shell, i.e. where the opal glass is visible. BEGA sells illuminating bollards of varying dimensions, but the BEGA model No. 7216 bollards at issue in this appeal are 540 mm in height, 135 mm in width and weigh 3.6 kilograms.¹⁰ The goods in issue have a mounting plate of slightly over 100 mm in diameter made of galvanized steel for bolting the bollard onto a foundation or an anchorage unit.¹¹

LEGAL FRAMEWORK

9. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).¹² The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

10. Subsection 10(1) of the *Customs Tariff* provides that, subject to subsection 10(2), the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*¹³ and the *Canadian Rules*¹⁴ set out in the schedule.

11. The *General Rules* comprise six rules. Classification begins with Rule 1, which provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the other rules.

12. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*¹⁵ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,¹⁶ published by the WCO. While the *Classification Opinions* and the *Explanatory Notes* are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.¹⁷

13. The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the *General Rules* as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and

9. Exhibit AP-2016-007-07A, para. 7 and tab 6; *Transcript of Public Hearing*, 20 April 2017, at 18.

10. Exhibit AP-2016-007-09A, tab 14, Vol. 1A.

11. *Ibid.*

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

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

14. S.C. 1997, c. 36, schedule [*Canadian Rules*].

15. WCO, 2nd ed., Brussels, 2003 [*Classification Opinions*].

16. WCO, 5th ed., Brussels, 2012 [*Explanatory Notes*].

17. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII), at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that the *Explanatory Notes* be respected unless there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to the *Classification Opinions*.

explanatory notes. It is only where Rule 1 does not conclusively determine the classification of the goods that the other general rules become relevant to the classification process.¹⁸

14. Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to determine the proper subheading. Rule 6 of the *General Rules* provides that “. . . the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules [i.e. Rules 1 through 5] . . .” and that “. . . the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

15. Finally, the Tribunal must determine the proper tariff item classification. Rule 1 of the *Canadian Rules* provides that “. . . the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the [*General Rules*] . . .” and that “. . . the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires.” Classification opinions and explanatory notes do not apply to classification at the tariff item level.

TERMS OF RELATIVE HEADINGS AND LEGAL AND EXPLANATORY NOTES

16. LRI submits that the proper classification of the goods in issue is under tariff item No. 7308.90.00, which reads as follows:

SECTION XV

BASE METALS AND ARTICLES OF BASE METAL

...

Chapter 73

ARTICLES OF IRON OR STEEL

...

73.08 Structures (excluding prefabricated buildings of heading 94.06) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frame-works, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel.

...

7308.90.00 -Other

17. Legal note 1(k) to Section XV provides that Section XV “does not cover: . . . (k) Articles of Chapter 94 (for example, furniture, mattress supports, lamps and lighting fittings, illuminated signs, prefabricated buildings)”.

18. The relevant explanatory notes to heading No. 73.08 provide as follows:

This heading covers complete or incomplete metal structures, as well as parts of structures. *For the purpose of this heading, these structures are characterised by the fact that once they are put in position, they generally remain in that position. They are usually made up from bars, rods, tubes, angles, shapes, sections, sheets, plates, wide flats including so-called universal plates, hoop, strip,*

18. *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) at para. 21.

forgings or castings, by riveting, bolting, welding, etc. Such structures sometimes incorporate products of other headings such as panels of woven wire or expanded metal of heading 73.14. Parts of structures include clamps and other devices specially designed for assembling metal structural elements of round cross-section (tubular or other). These devices usually have protuberances with tapped holes in which screws are inserted, at the time of assembly, to fix the clamps to the tubing.

Apart from the structures and parts of structures mentioned in the heading, the heading *also includes products such as:*

Pit head frames and superstructures; adjustable or telescopic props, tubular props, extensible coffering beams, tubular scaffolding and similar equipment; sluice-gates, piers, jetties and marine moles; lighthouse superstructures; masts, gangways, rails, bulkheads, etc., for ships; balconies and verandahs; shutters, gates, sliding doors; assembled railings and fencing; *level-crossing gates and similar barriers*; frameworks for greenhouses and forcing frames; large-scale shelving for assembly and permanent installation in shops, workshops, storehouses, etc.; stalls and racks; certain protective barriers for motorways, made from sheet metal or from angles, shapes or sections.

[Emphasis added]

19. The CBSA submits that the goods in issue should be classified under tariff item No. 9405.40.90, which reads 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**

...

9405 Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included.

...

9405.40 -Other electric lamps and lighting fittings

9405.40.90 -- -Other

...

-Parts:

...

9405.99.00 -- -Other

20. The relevant legal notes to Chapter 94 read 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, 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).*

[Bold in original, italics added]

21. The relevant explanatory notes to heading No. 94.05 read 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:

...

(2) *Lamps for exterior lighting, e.g.: street lamps; porch and gate lamps; special illumination lamps for public buildings, monuments, parks.*

...

PARTS

The heading also covers identifiable parts of lamps and lighting fittings, illuminated signs, illuminated name-plates and the like, not more specifically covered elsewhere, e.g., :

- (1) Suspension assemblies (rigid or chain type) for lighting pendants.
- (2) Globe holders.
- (3) Bases, handles and cases for hand lamps.
- (4) Burners for lamps; mantle holders.
- (5) Lantern frames.
- (6) Reflectors.
- (7) Lamp glasses or chimneys (bottle-necked, etc.).
- (8) Small cylinders of thick glass for miner's safety lamps.
- (9) Diffusers (including alabaster diffusers).
- (10) Bowls, cups, shades (including skeleton wire frames for making lampshades), globes and similar articles.
- (11) Chandelier trimmings, such as balls, pear-shaped drops, flower-shaped pieces, pendants, small plates and the like, identifiable by their size or their fixing or fastening devices.

Non-electrical parts of articles of this heading, combined with electrical parts, remain classified here. Separately presented electrical fittings (e.g., switches, lamp holders, flex, plugs, transformers, starters, ballasts) are **excluded (Chapter 85)**.

...

[Bold in original, italics added]

POSITIONS OF PARTIES

22. As discussed more fully below, initially the parties disagreed on the order of the analysis to be conducted by the Tribunal. In its brief, LRI took the position that the Tribunal should first determine whether the goods in issue are structures under heading No. 73.08 before considering whether they are lamps or lighting fittings under heading No. 94.05. It therefore structured its submissions to argue first that the goods in issue are structures and second, even if they were not, that they are only classifiable as parts of lamps. The CBSA submitted throughout the proceedings that the Tribunal should first determine whether the goods in issue are lamps or lighting fittings.

23. LRI argued that the goods in issue have the relevant characteristics of “structures” under heading No. 73.08. It observed that they come with a mounting plate for bolting onto a foundation, thereby meeting the characteristic of a “structure” found in the *Explanatory Notes*, to wit, that “once they are put in position, they generally remain in that position”.

24. LRI further observed that the bollards are constructed from a hollow stainless steel tube and include a mounting plate, a socket harness and an upper section comprising the luminaire head; therefore, the bollards accord with the observation of the *Explanatory Notes* that structures “are usually made up from bars, rods, tubes, angles, shapes, sections, sheets, plates, [etc.] . . . by riveting, bolting, welding, etc.”

25. LRI cited a dictionary definition of “bollard” as a “short post used to prevent traffic from entering an area or using a part of the road”. Thus, it submitted, they are a type of “barrier”, which the *Explanatory Notes* confirm is a type of structure: “structures . . . also include products such as: . . . level-crossing gates and *similar barriers*; . . . *certain protective barriers for motorways*, made from sheet metal or from angles, shapes or sections” [emphasis added]. The fact that the bollard includes a lighting element does not, LRI maintained, preclude it from being a structure, as the *Explanatory Notes* provide that “. . . structures sometimes incorporate products of other headings such as panels of woven wire or expanded metal of heading 73.14.”

26. LRI argued that recent Tribunal cases such as *Rona Corporation Inc.* (File No. AP-2006-033) (gazebos)¹⁹ and *Costco Wholesale Canada Ltd.* (File No. AP-2012-057) (aluminium sun shelters)²⁰ have confirmed that a good can be a structure even if it does not support anything beyond itself. Regardless, the bollard does support the lamp incorporated therein.

27. In the alternative, LRI submitted that if the Tribunal finds that the goods in issue are not structures, then they are at most parts of lamps because they cannot function in Canada without a complete retrofitting to meet Canadian electrical standards.

28. For its part, the CBSA submitted that the Tribunal must first determine whether the goods in issue are lamps or lighting fittings. It argued that the goods in issue, as considered at the time of importation, are functional lamps and, as such, should be classified so.

19. *Rona Corporation Inc. v. President of the Canada Border Services Agency* (29 February 2008), AP-2006-033 (CITT).

20. *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (29 July 2013), AP-2012-041 and AP-2012-042 (CITT) [*Costco*].

TRIBUNAL ANALYSIS

29. For the reasons provided below, the Tribunal must begin its analysis by determining whether the goods in issue are lamps or lighting fittings of heading No. 94.05. Having determined that the goods in issue are classified under that heading, pursuant to Rule 1 of the *General Rules*, the Tribunal need not determine whether the goods in issue could also be classified as structures of heading No. 73.08. Further, the Tribunal rejects LRI's alternative submission that if the goods in issue fall within heading No. 94.05, they should be classified as only parts of lamps and lighting fittings.

Sequence for the Tariff Heading Analysis

30. Heading No. 94.05 covers "lamps and lighting fittings . . . not elsewhere specified or included; . . .". Legal note 1(k) in Section XV, in which heading No. 73.08 (the relevant "elsewhere" heading in this case) is found, specifically excludes articles of Chapter 94, such as lamps and lighting fittings.

31. The CBSA submitted that the Tribunal should begin its analysis with the excluded heading (lamps and lighting fittings). Initially, in its brief, LRI submitted that the Tribunal should begin its analysis with heading No. 73.08.²¹ At the hearing, however, LRI conceded that the Tribunal could or even should begin its analysis with heading No. 94.05.²² LRI maintained that there was some uncertainty as to the sequencing in the case law, referencing the Tribunal's decision in File No. AP-2013-050.²³

32. There is no uncertainty. The goods in issue cannot be *prima facie* classifiable in both headings; a good that has been "specifically excluded" cannot be "elsewhere specified"; and so the analysis must begin with the heading that is specifically excluded.

33. The Tribunal finds that the relevant headings and legal notes interact to require the Tribunal to consider first whether the goods in issue are lamps or lighting fittings of heading No. 94.05, in which case they cannot be classified as structures of heading No. 73.08. LRI's reliance on File No. AP-2013-050 is misplaced, as that appeal involved *two* mutually exclusive headings in which the tariff nomenclature ascribed no particular order of analysis. Here, by contrast, while heading No. 73.08 excludes heading No. 94.05, the latter does not specifically exclude the former. In this regard, the Tribunal has previously held that, when there is a *single* relevant exclusionary note that precludes the *prima facie* classification of goods in both of the headings at issue in an appeal, the Tribunal should begin its analysis with the excluded heading.²⁴

34. The Tribunal applied this principle in the context of heading No. 94.05 in *Costco*, finding that solar-powered garden lamps were not "elsewhere specified" in heading No. 70.13 because they were explicitly excluded by note 1 of Chapter 70 and by the explanatory notes of heading No. 70.13.²⁵ Likewise, here, lamps cannot be "elsewhere specified" in heading No. 73.08, because they are explicitly excluded by legal note 1(k) in Section XV, which includes heading No. 73.08. In other words, if the goods in issue are

21. Exhibit AP-2016-007-07A at para. 35, Vol. 1.

22. *Transcript of Public Hearing*, 20 April 2017, at 22-23.

23. *BMW Canada Inc. v. President of the Canada Border Services Agency* (16 September 2014), AP-2013-050 (CITT).

24. *Costco* at paras. 46-48; *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency* (6 April 2011), AP-2010-005 (CITT) at paras. 41-74; *Korhani Canada Inc. v. President of the Canada Border Services Agency* (18 November 2008), AP-2007-008 (CITT) at paras. 27-28.

25. *Costco* at paras. 46-48, 66.

classifiable under Rule 1 as lamps, then no further analysis is required as they cannot be classified as structures.

35. Because the goods in issue cannot be *prima facie* classifiable in both headings, the analysis must begin with the heading that is specifically excluded, in this case heading No. 94.05.

Heading No. 94.05

36. In order for goods to be classified in heading No. 94.05, they must (1) be lamps or lighting fittings or parts thereof (2) of any material (3) that use any source of light and (4) are not elsewhere specified or included.²⁶

Lamps or Lighting Fittings

37. The CBSA submitted that the first criterion is satisfied because the goods in issue are made, marketed, retrofitted and installed to be lamps or lighting fittings.

38. The terms “lamps” and “lighting fittings” are not defined for the purposes of heading No. 94.05. The *Merriam-Webster Dictionary* defines a “lamp” as a “device that produces light”.²⁷ The goods in issue are described as “luminaires”, which are synonymous with lamps and lighting fittings. Under “Product Description”, the data sheet lists various features including the following: “Luminaire with mounting plate for bolting onto a foundation or an anchorage unit”.²⁸ The first definition of “luminaire” in the *Dictionary of Architecture & Construction* reads as follows: “A complete lighting unit consisting of one or more lamps, together with components which are designed to distribute the light, to position and protect the lamps, and to connect the lamps to the electric power supply; also called a lighting fixture.”²⁹ In *Ulextra*, the Tribunal accepted the definition of “luminaire” from the *Canada 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”.³⁰

39. Furthermore, lamps for exterior lighting, as these bollards are used for, are explicitly contemplated by the *Customs Tariff*. The *Explanatory Notes* clarify that heading No. 94.05 includes “in particular: . . . **Lamps for exterior lighting**, e.g.: *street lamps*; porch and gate lamps; *special illumination lamps* for public buildings, monuments, parks” [bold in original, emphasis added]. Further, LRI and BEGA are both businesses that primarily sell lighting products, as evidenced by their names and marketing materials.³¹

40. The Tribunal finds that the above evidence amply demonstrates that the goods in issue are lamps or lighting fittings.

41. LRI did not dispute that the goods in issue would be classifiable as lamps or lighting fittings were they to be used where they are manufactured, in Europe. It maintained, however, that in this case they do not meet the criteria for lamps or lighting fittings and, therefore, cannot be classified as such because, in order to

26. *Costco* at para. 49.

27. Exhibit AP-2016-007-09A, tab 13, Vol. 1A.

28. Exhibit AP-2016-007-07A, tab 3, Vol. 1.

29. Exhibit AP-2016-007-09A, tab 15, Vol. 1A.

30. *Ulextra Inc. v. President of the Canada Border Services Agency* (15 June 2011), AP-2010-024 (CITT) [*Ulextra*] at para. 75.

31. Exhibit AP-2016-007-09A, tabs 16-18, Vol. 1A.

be used in Canada, their lighting elements must be retrofitted and certified to the Canadian standard of 120 volts.

42. LRI called as a witness Mr. Bruce Howitt, founder and President of LRI, who testified about the measures LRI must take after importing the goods in issue to make them functional in Canada. He stated that LRI imports bollards, including the goods in issue, either as-is and then retrofits them to meet Canadian electrical standards (in which case it simply scraps the European electrical components) or it imports them stripped of electrical components. Generally, LRI retrofits the products itself to save time.³² The retrofitting process is comprehensive, requiring the replacement of the European ballast, socket and wires and cables with Canadian equivalents. The lighting fixture is then inspected by a Canadian electrical testing agency and installed and certified on site by an electrician.³³

43. LRI submitted that, consistent with the above, the goods in issue are not functional on importation. It relied on *Pièces d'autos usagées RTA (1986) Inc. v. Canada*, in which the Federal Court found that automobiles that were damaged beyond repair and imported by the appellant only for scrap value could not be considered “vehicles” for the purpose of excise taxes because they had lost their “primary finality”.³⁴

44. The present case is distinguishable. In *Pièces d'autos*, the appellant was importing goods that were, at the time of importation, not only *not* functional but also incapable of repair. The Court observed that “[t]he vehicles are not imported to be used as or sold as vehicles to be driven on the roads. The plaintiff extracts any salvageable parts from the vehicles, and then sells the hulk, along with any non-salvageable parts, as scrap metal to shredders.”³⁵ The goods in issue here are both functional when imported and capable of functioning in Canada after modification, which, it should be noted, is not only physically possible but economically profitable. Thus, the goods in issue are not used for scrap but for their “primary finality”—to illuminate.

45. The CBSA submitted that the legal standard to be applied when considering the goods in issue is their status at the time of importation. By that standard, the goods in issue are functional, complete lamps at the time of importation—irrespective of the fact that they need to undergo certain compatibility/adaptability transformations for legal commercial sale and safe use in Canada.

46. The CBSA is correct. It is well established in law that the tariff classification of goods according to the *Customs Tariff* is determined at the time of importation of the goods.³⁶ Moreover, in *J. Cheese* (File No. AP-2015-011), the Tribunal held that domestic compositional regulations did not prevent an imported item from being classified as “cheese”, given the international nature of the tariff regime and the absence of any provision incorporating domestic standards into the classification process.³⁷ Likewise, here, domestic electrical standards are not incorporated into the tariff for the purpose of identifying what a lamp is. Consequently, there is no bar to the goods in issue being classified as lamps by reason of their inability of immediate connection (unadapted) to a plug-and-light domestic power source in Canada. Rather,

32. *Transcript of Public Hearing*, 20 April 2017, at 14-15.

33. *Ibid.* at 8-11.

34. *Pièces d'autos usagées RTA (1986) Inc. v. Canada*, 2005 FC 771 (CanLII) [*Pièces d'autos*] at para. 34.

35. *Pièces d'autos* at para. 2.

36. *Deputy M.N.R.C.E. v. MacMillan & Bloedel (Alberni) Ltd.*, [1965] S.C.R. 366; *Ulextra* at para. 63; *Powers Industries Limited v. President of the Canada Border Services Agency* (22 April 2013), AP-2012-010 (CIIT) at para. 22; *L. Lavoie v. President of the Canada Border Services Agency* (6 September 2013), AP-2012-055 (CIIT) at para. 28.

37. *J. Cheese Inc. v. President of the Canada Border Services Agency* (13 September 2016), AP-2015-011 (CIIT) at paras. 72-74.

irrespective of initial Canadian standards compatibility, the goods in issue, even at the time of importation, are still very much functional lamps. Notably, they include all the requisite parts of a lamp (connecting terminal, G23 lamp holder, 230 V 50 Hz ballast and compact fluorescent lamp), consistent with the definition in the explanatory note to heading No. 94.05 (noting that lamps “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.”).

47. Accordingly, the Tribunal finds that the goods in issue are lamps or lighting fittings and that they can also function as such, albeit not without adaptation for legal commercial sale and safe use in Canada.

Of any Material

48. BEGA’s product data sheet describes the goods in issue under “Application” as “[b]ollards made of stainless steel. A non-shielded luminaire with two light sectors and hand-blown opal glass.”³⁸ It also confirms that the product is “[d]ust tight and [has] protection against water jets”.³⁹

49. The Tribunal finds that the goods in issue are made “of any material” and, more specifically, a material consistent with providing fixed outdoor lighting.

Use any Source of Light

50. The goods in issue are made of stainless steel and provide a source of light emanating from a compact fluorescent bulb. The bottom left corner of the data sheet contains a diagram showing the range of light distribution from the bollard. The product data sheet confirms that “[a]fter installation, the light exits can be adjusted.”⁴⁰

51. The Tribunal finds that the goods in issue use “any source of light”, specifically, an electrical (fluorescent) light source designed to be connected to a power source.

Not Elsewhere Specified or Included

52. In *Universal Lites* (File No. AP-2004-017),⁴¹ the Tribunal considered the phrase “not elsewhere specified or included” found in heading No. 94.05 and observed that this heading is a “not elsewhere specified” heading, which covers all lamps or lighting fittings, as long as they are not more specifically described elsewhere in the nomenclature.

53. Here, LRI has not proposed any other heading under which the goods are more specifically described in terms of their lighting function (as opposed to simply being structures and not lamps at all).

54. Accordingly, the Tribunal finds that this condition is also satisfied.

38. Exhibit AP-2016-007-07A, tab 3 at p. 26, Vol. 1.

39. *Ibid.*

40. *Ibid.*

41. *3319067 Canada Inc. (Universal Lites) v. President of the Canada Border Services Agency* (23 March 2006), AP-2004-017 (CITT).

Conclusion Regarding Heading No. 94.05

55. Because the Tribunal finds that the goods in issue are lamps or lighting fittings of any material that use any source of light and are not elsewhere specified or included, the Tribunal concludes that they are properly classified under heading No. 94.05.

Parts of Lamps or Lighting Fittings

56. LRI argued in the alternative that the Tribunal should classify the goods in issue as parts of lamps rather than lamps. In support, it relied on *Liteline* (File No. AP-2014-029), in which the Tribunal found that a puck light starter kit imported without a power source would be considered only part of a lamp.⁴² Here, LRI submitted, the goods in issue will not function in Canada in their condition at the time of importation, and they too lack a power source.

57. In response, the CBSA submitted that the goods in issue are complete, functional lamps as presented for importation. They require a source of electricity to operate, but so do all stationary lamps. Further, they are complete lighting units, unlike the examples of parts listed in the explanatory notes to heading No. 94.05 (e.g. globe holders, lamp glasses or chimneys, etc.).

58. The Tribunal agrees. There is no provision in the *Customs Tariff* that lamps, especially fixed lamps, must be imported with a self-contained power source to be considered whole. Nor does *Liteline* hold so. *Liteline* held that puck lights without the driver necessary to be *connected* to an electrical power source were only parts of lamps whereas starter kits including the driver were full lamps. The goods in issue here are analogous in terms of their state of completion to the starter kits as they include the part necessary for connection of a fluorescent lamp to a power source, i.e. the ballast.

59. Further, as explained above, the timeframe for determining functionality is the time of importation. At that moment, the goods in issue are functional lamps. That they are not immediately functional in Canada without conversion is immaterial. They are designed, manufactured and can operate as lamps; it is elementary that they require a power source. Their classification under the *Customs Tariff* is not transformed simply based on the subjective intentions of an importer as to where and how they will be used in conjunction with the technical vagaries of differing electrical standards, from one region or country of the world to another.

Heading No. 73.08

60. Because the Tribunal finds that the goods in issue are *prima facie* classifiable as lamps under heading No. 94.05, they are expressly excluded, pursuant to legal note 1(k) in Section XV, from classification under heading No. 73.08 as structures.

Subheading and Tariff Item Classification

61. There are seven subheadings under heading No. 94.05. Three of these encompass electrical lamps: 9405.10 (chandeliers and other electric ceiling or wall lighting fittings), 9405.20 (electric table, desk, bedside or floor-standing lamps) and 9405.40 (other electric lamps and lighting fittings). The terms used in none of these subheadings specifically concord with the description of the goods in issue (mounted bollards

42. *Liteline Corporation v. President of the Canada Border Services Agency* (1 February 2016), AP-2014-029 (CIIT) [*Liteline*].

providing outdoor electrical illumination). Consequently, they are classifiable under 9405.40 as “Other electric lamps and lighting fittings”.

62. Under subheading No. 9405.40, there are three tariff item numbers: 9405.40.10 (xenon type), 9405.40.20 (motion picture or theatrical spotlights) and 9405.40.90 (other). The goods in issue are not described by any of these tariff item numbers. Consequently, they are classifiable under tariff item No. 9405.40.90 as “other”.

63. As concluded above, the goods in issue are not parts of lamps or lighting fittings and are therefore not classifiable under subheading No. 9405.99.

64. 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.

DECISION

65. The appeal is dismissed.

Peter Burn
Peter Burn
Presiding Member