



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2016-031

RONA Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Monday, September 11, 2017*

TABLE OF CONTENTS

DECISION.....	i
STATEMENT OF REASONS	1
BACKGROUND	1
GOODS IN ISSUE.....	1
PROCEDURAL HISTORY	1
LEGAL FRAMEWORK	2
TERMS OF RELATIVE HEADINGS AND LEGAL AND EXPLANATORY NOTES	4
Relevant Classification Provisions Concerning Heading No. 85.43	4
Relevant Classification Provisions Concerning Heading No. 94.05	5
POSITIONS OF PARTIES.....	6
Rona.....	6
CBSA	6
ANALYSIS.....	7
Preliminary Comments.....	7
Starting Point for the Analysis.....	7
The Goods in Issue Are Not Excluded From Chapter 94 Pursuant to Note 1(f).....	8
The Goods in Issue Cannot Be Classified in Heading No. 85.43	9
The Goods in Issue Are Classified in Heading No. 94.05.....	10
Subheading and Tariff Item Classification of the Goods in Issue.....	12
DECISION	13

IN THE MATTER OF an appeal heard on May 18, 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 September 1, 2016, with respect to a request for further re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

RONA INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Jason W. Downey

Jason W. Downey
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: May 18, 2017

Tribunal Panel: Jason W. Downey, Presiding Member

Support Staff: Courtney Fitzpatrick, Counsel
Amélie Cournoyer, Counsel

PARTICIPANTS:**Appellant**

RONA Inc.

Counsel/RepresentativesMarco Ouellet
Jeffrey Goernert**Respondent**

President of the Canada Border Services Agency

Counsel/Representative

Luc Vaillancourt

WITNESS:David Hinder
President
Lightway Systems

Please address all communications to:

The Registrar
Secretariat to the Canadian International Trade Tribunal
333 Laurier Avenue West
15th Floor
Ottawa, Ontario K1A 0G7
Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

BACKGROUND

1. This appeal was filed with the Canadian International Trade Tribunal (the Tribunal) by RONA Inc. (Rona), pursuant to subsection 67(1) of the *Customs Act*,¹ with regard to the decision made by the President of the Canada Border Services Agency (CBSA) dated September 1, 2016, pursuant to subsection 60(4).

2. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9405.40.90 of the schedule to the *Customs Tariff*² as other electric lamps and lighting fittings, as determined by the CBSA, or should be classified under tariff item No. 8543.70.00 as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85, as submitted by Rona.

GOODS IN ISSUE

3. The appeal concerns the importation of two categories of decorative light emitting diode (LED) luminaires (the goods in issue). The parties do not dispute the description of the goods in issue.

4. The first category of decorative LED luminaires consists of freestanding garden luminaires. These luminaires are designed to be used outdoors. They come in many shapes, such as lanterns and flowers. Most of these luminaires consist of a solar panel, a charge controller, a rechargeable battery, an LED bulb, a photoelectric cell and a switch. The solar panel produces electricity during the day, which is stored in the battery. When night falls, the photoelectric cell activates the circuit, causing power to flow from the battery to the bulb, which then gives off light. This category also includes certain garden luminaires that are battery powered but not equipped with a solar panel.³

5. The second category of decorative LED luminaires consists of rope lights.⁴ These rope lights are designed to be used indoors. They are 27 feet long and have LED bulbs placed at approximately 8-inch intervals. They are also equipped with an electrical adapter and must be connected to a power source to work. Rona stated that they are designed to create a decorative lighting effect.

PROCEDURAL HISTORY

6. From February 8, 2011, to September 5, 2012, Rona imported the goods in issue by way of 25 transactions. When they were imported, the garden luminaires were classified under tariff item No. 9405.40.90 as other electric lamps and lighting fittings, and the rope lights were classified under tariff item No. 9405.30.00 as lighting sets of a kind used for Christmas trees.

7. Between January 30 and November 16, 2015, Rona applied for refunds of duties under paragraph 74(1)(e) of the *Act*, claiming that the goods in issue should be classified under tariff

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

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

3. The CBSA designated these garden luminaires as *lumières clignotantes sans flamme* (“flameless blinking lights” [translation]) and argued before the Tribunal that Rona had made no submissions in their regard. The Tribunal is of the opinion that these garden luminaires are included in the first category of the goods in issue and are at issue in this appeal. See, for example, Exhibit AP-2016-031-05, tab 2 at pp. 11 and 97.

4. The parties designated them as *lumières micro diode LED* (“micro LED diode lights”), *lumières Microdots LED* (“microdot LED lights”) or *cordons de lumières* (“rope lights”) [translations].

item No. 8543.70.00 as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85.

8. Between February 10, 2015, and August 22, 2016, the CBSA denied Rona's claims for a refund of duties. The CBSA determined that the garden luminaires had been properly classified under tariff item No. 9405.40.90 and the rope lights under tariff item No. 9405.30.00. In accordance with subsection 74(4) of the *Act*, these denials were treated as re-determinations under paragraph 59(1)(a).

9. Between April 24, 2015, and August 22, 2016, Rona requested further re-determinations of tariff classification under subsection 60(1) of the *Act*, arguing that the goods in issue should be classified under tariff item No. 8543.70.00.

10. On September 1, 2016, the CBSA conducted a further re-determination of tariff classification in accordance with subsection 60(4) of the *Act* and reaffirmed that the garden luminaires and the rope lights had been properly classified under tariff item No. 9405.40.90 and tariff item No. 9405.30.00, respectively. The CBSA thus affirmed that no error had been made in determining the tariff classification of the goods in issue and that Rona was not entitled to a refund of the duties paid at the time of their importation.

11. On November 22, 2016, Rona filed this appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

12. The following documents were filed on the record: Rona's brief, the CBSA's brief, the report by Mr. David Hinder filed by Rona, additional documents filed by Rona, and two additional decisions filed by the CBSA.

13. Rona also filed a range of items to illustrate the characteristics of the goods in issue, since the actual goods in issue were no longer available at the time of the hearing. Rona submitted that although the items were slightly different in appearance from the goods in issue, they worked exactly the same. Two solar flashlights and an LED string light were also filed and were used for comparison purposes during Mr. Hinder's testimony.

14. On May 18, 2017, the Tribunal held a public hearing in Ottawa, Ontario.

15. Rona called only one witness, Mr. Hinder, and asked the Tribunal to qualify him as an expert in photonic devices and systems. With the consent of the parties at the hearing, and having considered his qualifications, the Tribunal qualified Mr. Hinder as an expert in semiconductors.

16. Having heard Mr. Hinder's testimony, the Tribunal would like to begin by noting that since Mr. Hinder was not examined or cross-examined specifically on subjects within his field of expertise, his testimony was of limited use for the purposes of determining the tariff classification in this case. The CBSA did not call any witnesses.

LEGAL FRAMEWORK

17. 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).⁵ The schedule is divided into sections and chapters,

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

with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

18. Subsection 10(1) of the *Customs Tariff* provides that the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*⁶ and the *Canadian Rules*⁷ set out in the schedule.

19. 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.

20. 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*⁸ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,⁹ published by the WCO. While the classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.¹⁰

21. 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 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.¹¹

22. 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 use a similar approach 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.”

23. 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.

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

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

8. World Customs Organization, 2nd ed., Brussels, 2003.

9. World Customs Organization, 5th ed., Brussels, 2012.

10. 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 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 classification opinions.

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

TERMS OF RELATIVE HEADINGS AND LEGAL AND EXPLANATORY NOTES

Relevant Classification Provisions Concerning Heading No. 85.43

24. Rona submitted that the goods in issue are “electrical machines and apparatus, having individual functions, not specified or included in [Chapter 85]” of heading No. 85.43 and should be classified under tariff item No. 8543.70.00. The relevant tariff nomenclature provisions provide as follows:

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

...

85.43 **Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this Chapter.**

...

8543.70.00 **-Other machines and apparatus**

25. Note 4 for section XVI provides as follows :

Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.

26. The explanatory notes to heading No. 85.43 provide as follows:

This heading covers all electrical appliances and apparatus, **not falling** in any other heading of this Chapter, **nor covered more specifically** by a heading of any other Chapter of the Nomenclature, nor excluded by the operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of **Chapter 84** and certain instruments and apparatus of **Chapter 90**.

The electrical appliances and apparatus of this heading must have individual functions. The introductory provisions of Explanatory Note to heading 84.79 concerning machines and mechanical appliances having individual functions apply, *mutatis mutandis*, to the appliances and apparatus of this heading.

Most of the appliances of this heading consist of an assembly of electrical goods or parts (valves, transformers, capacitors, chokes, resistors, etc.) operating wholly electrically. However, the heading also includes electrical goods incorporating mechanical features **provided** that such features are subsidiary to the electrical function of the machine or appliance.

The heading includes, *inter alia*:

...

(16) **Electro-luminescent devices**, generally in strips, plates or panels, and based on electro-luminescent substances (e.g., zinc sulphide) placed between two layers of conductive material.

[Bold and italics in original, underlining added for emphasis]

Relevant Classification Provisions Concerning Heading No. 94.05

27. The CBSA submitted that the goods in issue should be classified in heading No. 94.05 as lamps and lighting fittings and parts thereof, not elsewhere specified or included, and under tariff item No. 9405.40.90. The relevant provisions concerning heading No. 94.05 provide as follows:

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.**

...

9405.30 **-Lighting sets of a kind used for Christmas trees**

9405.40 **-Other electric lamps and lighting fittings**

...

9405.40.10 -- -Xenon type

9405.40.20 -- -Motion picture or theatrical spotlights

9405.40.90 -- -Other

28. Note 1(f) to chapter 94 provides as follows :

This Chapter does not cover:

...

(f) Lamps or lighting fittings of Chapter 85;

29. The general considerations of the 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, 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).

30. 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:

...

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

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

...

(5) **Portable lamps (other than those of heading 85.13)**, e.g.: hurricane lamps; stable lamps; hand lanterns; miners' lamps; quarrymen's lamps.

POSITIONS OF PARTIES

Rona

31. Rona alleged that the goods in issue are “electrical machines and apparatus, having individual functions, not specified or included in [Chapter 85]” of heading No. 85.43 because they are electrical apparatus having an individual function, namely, to produce a decorative lighting effect. More specifically, Rona argued that the goods in issue should be classified under tariff item No. 8543.70.00 as other electrical machines and apparatus.

32. Rona also alleged that heading No. 94.05 is not more specific than heading No. 85.43, contrary to what the Tribunal ruled in *Liteline*.¹² On this point, Rona submitted that heading No. 94.05 is a residual heading, essentially a “catch-all” for *the entire Tariff*, whereas heading No. 85.43 is also a residual, “catch-all” heading, but *only for chapter 85*. Consequently, Rona argued that the goods in issue are not excluded from classification in heading No. 85.43 by virtue of its explanatory notes, which provide that the heading does not include electrical apparatus covered more specifically by a heading of any other chapter.

33. Rona submitted that the goods in issue cannot be classified in heading No. 94.05 because, in order to be classified as such, the lamps and lighting fittings must be connected to a fixed installation, which is not the case for the goods in issue.

CBSA

34. The CBSA submitted that both categories of goods in issue should be classified in heading No. 94.05 as lamps and lighting fittings not elsewhere specified or included, and specifically under tariff item No. 9405.40.90 as other electric lamps and lighting fittings. The CBSA argued that the explanatory notes to heading No. 94.05 specifically cover the goods in issue and that these notes therefore confirm that the goods in issue are properly classified in that heading.

35. The CBSA submitted that the goods in issue cannot be classified in heading No. 85.03, as Rona argued, because they are excluded from classification in this heading by virtue of the relevant explanatory notes. The CBSA relies on, among other authorities, the Tribunal's decision in *Liteline* in arguing that heading No. 94.05 is more specific than heading No. 85.43.

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

ANALYSIS

Preliminary Comments

36. Before beginning the tariff classification exercise, the Tribunal will make a few preliminary comments regarding *Liteline*, which is similar in many respects to the dispute in this case.

37. The issue in *Liteline* had to do with tariff classification concerning the same headings as in this case. As in the present case, the appellant claimed that the goods in issue should have been classified under tariff item No. 8543.70.00, while the CBSA submitted that they had been properly classified under tariff item No. 9405.40.90.

38. In short, in its analysis of the classification provisions relating to the headings in issue, the Tribunal determined that note 1(f) to Chapter 94 did not exclude all electric lamps and light fittings; it only excluded those that are specifically named in Chapter 85. The Tribunal also determined that the lamps and light fittings of Chapter 85 covered certain goods which are components, whereas complete products were classified under Chapter 94.

39. The goods in issue in that case were LED puck lights and three-puck LED starter kits; they were therefore different from the goods in issue in the present case, although they did share some common elements.

40. The Federal Court of Appeal recently reiterated the following in *Bri-Chem*:¹³ “[W]hile it is true that later tribunal panels are not bound by the decisions of earlier tribunal panels, it is equally true that later panels should not depart from the decisions of earlier panels unless there is good reason”. In the present case, it is up to the Tribunal to determine whether it must make the same finding regarding the tariff classification of the goods in issue as it did in *Liteline* regarding the goods in issue in that case. With this in mind, the Tribunal invited the parties, at the outset of the hearing, to state what in their view the relevant distinctions between the present case and *Liteline* were.

41. For the reasons that follow, and having considered Rona’s various submissions, which, in particular, attempted to distinguish the facts in this case from those in *Liteline* and considering other attempted arguments that were not raised in that case, the Tribunal is not persuaded that it should depart from the analysis of the tariff classification provisions it followed in *Liteline*.

42. As discussed in more detail below, the Tribunal finds that the goods in issue are properly classified in heading No. 94.05 as lamps and lighting fittings and parts thereof, not elsewhere specified or included, and specifically under tariff item No. 9405.40.90.

Starting Point for the Analysis

43. Both parties agreed that this appeal can be resolved by applying Rule 1 of the *General Rules*. The dispute between the parties deals with classification at the heading level.

44. In identifying the appropriate starting point for its tariff classification analysis, the Tribunal considers it useful to begin with an assessment of the implications of note 1(f) to Chapter 94, which provides that Chapter 94 does not cover lamps or lighting fittings of Chapter 85. It is well established in Tribunal jurisprudence that when there is a single relevant exclusionary note that precludes the *prima facie*

13. *Canada (Attorney General) v. Bri-Chem Supply Ltd.*, 2016 FCA 257 (CanLII) at para. 44.

classification of goods in both of the headings at issue in an appeal, the Tribunal should begin its analysis with the excluded heading.¹⁴

45. Accordingly, the Tribunal will start its analysis by considering whether the goods in issue are excluded from classification under Chapter 94 pursuant to note 1(f), as submitted by Rona. This approach was also followed by the Tribunal in *Liteline*.

The Goods in Issue Are Not Excluded From Chapter 94 Pursuant to Note 1(f)

46. The Tribunal considers it appropriate to first deal with the scope of note 1(f) to Chapter 94. In *Liteline*, the Tribunal found that note 1(f) to Chapter 94 excludes only those lamps or lighting fittings that are specifically named in Chapter 85¹⁵ and does *not* exclude other lamps that are not specifically named but which arguably are generally described by the catch-all, residual heading No. 85.43.¹⁶

47. On this point, Rona submitted that the Tribunal's interpretation is too narrow and that note 1(f) instead directs the Tribunal to consider whether the goods in issue can be classified under any heading of Chapter 85. Rona further submitted that the goods in issue are "electrical machines and apparatus, having individual functions, not specified or included elsewhere in [Chapter 85]" of heading No. 85.43 and, therefore, cannot be classified in Chapter 94.

48. The Tribunal does not agree with the interpretation of note 1(f) proposed by Rona and is of the opinion that this note should not be interpreted so broadly. As the Tribunal noted in *Liteline*, where the appellant had submitted a similar argument, such a broad interpretation of note 1(f) would rob heading No. 94.05 of its meaning, as all electric lamps, which could be classified in heading No. 94.05, would now have to be classified in heading No. 85.43.¹⁷

49. Furthermore, the explanatory notes to heading No. 85.43 support the interpretation that note 1(f) excludes goods that can be classified in the headings of Chapter 85 that specifically apply to lamps and lighting fittings. Indeed, these explanatory notes provide for the application of another heading in the nomenclature, either a heading under Chapter 85 or a heading under another chapter, if it is more specific than heading No. 85.43.

50. The residual (or catch-all, as it is sometimes called) and general nature of the terms of heading No. 85.43 "electrical machines and apparatus" can be distinguished from the terms "lamps and lighting fittings" of heading No. 94.05, which are more specific. The fact that the goods in issue might also, at the sub-heading level, be classified under a residual sub-heading (9405.40) of heading No. 94.05 does not render heading No. 94.05 less specific.

14. *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; *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (29 July 2013), AP-2012-041 and AP-2012-042 (CITT) [*Costco*] at para. 47.

15. Indeed, Chapter 85 specifically covers certain types of lighting. For example, heading No. 85.12 covers "[e]lectrical lighting or signalling equipment (excluding articles of heading 85.39) . . .", heading No. 85.13 covers "[p]ortable electric lamps designed to function by their own source of energy (for example, dry batteries, accumulators, magnetos), other than lighting equipment of heading 85.12", and heading No. 85.39 covers "[e]lectric filament or discharge lamps, including sealed beam lamp units and ultra-violet or infra-red lamps; arc-lamps".

16. *Liteline* at para. 36.

17. *Ibid.* at para. 33.

51. In light of this interpretation of note 1(f) to Chapter 94, the Tribunal must therefore consider whether the goods in issue are lamps and lighting fittings of Chapter 85, that is, whether they are excluded from Chapter 94 by virtue of this note.

52. Having considered the specific headings in Chapter 85 describing lamps and lighting fittings of Chapter 85,¹⁸ and given that Rona has acknowledged that the goods in issue are not lamps or lighting fittings specifically named in heading Nos. 85.12, 85.13, 85.30, 85.31 or 85.39,¹⁹ the Tribunal finds that the goods in issue are not lamps or lighting fittings of Chapter 85 within the meaning of note 1(f) to Chapter 94. The goods in issue are therefore not excluded from classification under Chapter 94 pursuant to note 1(f), as submitted by Rona.

The Goods in Issue Cannot Be Classified in Heading No. 85.43

53. Having interpreted note 1(f) as being limited to lamps and lighting fittings specifically named in a heading of Chapter 85, and having found that the goods in issue were not classified in any of these headings, the Tribunal must now consider whether the goods in issue can be classified in the residual heading No. 85.43, as submitted by Rona.

54. For the goods in issue to be classified in heading No. 85.43, they must be electrical apparatus, having individual functions, not specified or included elsewhere in Chapter 85.

55. Rona alleged that all the components of the goods in issue have the function to provide lighting by electrical means. Mr. Hinder explained how they work in his testimony.²⁰ Rona also alleged that the goods in issue have the individual function of providing light. On this point, Mr. Hinder explained that the garden luminaires were designed to perform a particular function by producing light.²¹

56. The explanatory notes to heading No. 85.43 provide that most machines and apparatus under this heading consist of “an assembly of electrical goods or parts (valves, transformers, capacitors, chokes, resistors, etc.) operating wholly electrically”.

57. The Tribunal is of the opinion that this note is not determinative of the classification in this case. Although the goods in issue could potentially fall within the very general terms of an “assembly of electrical goods or parts . . . operating wholly electrically”, the explanatory notes to heading No. 85.43 also state that this heading covers “all electrical appliances and apparatus, not falling in any other heading of this Chapter, *nor covered more specifically by a heading of any other Chapter*”. As discussed above, the Tribunal finds that heading No. 94.05 is more specific than heading No. 85.43.

58. At the hearing, Rona noted that the first paragraph of the French version of the explanatory notes to heading No. 85.43 provides that this heading covers “l’ensemble des machines et appareils électriques qui ne sont ni dénommés ni compris dans d’autres positions du Chapitre, ni couverts plus spécifiquement par une position quelconque d’un autre Chapitre (*notamment les Chapitres 84 ou 90*)” [emphasis added]. The English explanatory notes to heading No. 85.43 provide the following:

This heading covers all electrical appliances and apparatus, **not falling** in any other heading of this Chapter, **nor covered more specifically** by a heading of any other Chapter of the Nomenclature, nor

18. See footnote 15.

19. Exhibit AP-2016-031-05 at paras. 87-90, 97-102.

20. *Transcript of Public Hearing*, 18 May 2017, at pp. 59-60.

21. *Ibid.* at pp. 61-62.

excluded by the operation of a Legal Note to Section XVI or to this Chapter. *The principal electrical goods* covered more specifically by other Chapters are electrical machinery of **Chapter 84** and certain instruments and apparatus of **Chapter 90**.

[Emphasis added]

59. Rona submitted that the inclusion of the phrase “notamment les Chapitres 84 ou 90” significantly limits the scope of these explanatory notes. Rona argued that these notes should be interpreted as meaning that only goods classified under Chapter 84 and Chapter 90 would be excluded from heading No. 85.43. Since these notes do not mention Chapter 94, in which heading No. 94.05 is found, Rona claimed that the goods in issue are not covered by these explanatory notes and are therefore not excluded from heading No. 85.43.

60. The Tribunal is of the opinion that the explanatory notes to heading No. 85.43 are not limited in the manner argued by Rona. Although the inclusion of the word “notamment” [notably] suggests that Chapters 84 and 90 are to be taken into account when considering classification in heading No. 85.43, it is not an absolute bar to taking other chapters into account. It is indicative in nature, not definitive. This note is therefore relevant to the classification of the goods in issue and must be taken into account in this case.

61. Regarding the classification opinions mentioned by Rona, the Tribunal will adopt the same reasoning used in *Liteline*,²² according to which the goods described in the relevant classification opinions for heading No. 85.43 are components of lamps and lighting fittings (e.g., light bulbs) rather than complete fixtures and lamps. These classification opinions are therefore not relevant to the classification of the goods in issue, which are complete luminaires.

62. In light of the preceding, the goods in issue are not classifiable in heading No. 85.43 since they are specifically covered by a heading of another chapter, that is, a heading of Chapter 94.

The Goods in Issue Are Classified in Heading No. 94.05

63. As discussed above, the goods in issue are not lamps or lighting fittings of Chapter 85 and are therefore not excluded from classification under Chapter 94 by operation of note 1(f) to Chapter 94. The Tribunal will therefore determine whether the goods are classifiable in heading No. 94.05, as submitted by the CBSA.

64. It is appropriate to first consider *Costco*, a decision in which the Tribunal ruled on the tariff classification of goods very similar to one of the two categories of goods in issue in this appeal, namely, the garden luminaires.²³

65. That case involved solar-powered garden lights in the shape of either cattails or mushroom caps, consisting of shades, LED bulbs, solar panels, rechargeable batteries, bronze stalks and ground stakes. The function of those goods is also very similar, if not identical, to the garden luminaires in issue in this appeal: “During daylight hours, the sun will charge the batteries in the solar panel and the lights will turn on at dusk.”²⁴ Moreover, Rona has admitted that *Costco* dealt with goods similar to those in issue in this appeal.

22. At para. 40.

23. That proceeding did not, however, concern the same two headings as in the present case; the competing headings were Nos. 94.05 and 70.13.

24. *Costco* at para. 12.

66. In *Costco*, the Tribunal found that the lights in issue had been classified in heading No. 94.05 as the four criteria for classifying a good in that heading had been met. Those criteria are the following: (1) the goods must be lamps or lighting fittings; (2) they can be of any material; (3) they can use any source of light; and (4) they must not be elsewhere specified or included.²⁵

67. As mentioned above, the Tribunal does not normally depart from its previous decisions unless there is a good reason to do so. In the present case, the garden luminaires appear to be very similar to those in issue in *Costco* and appear to meet the same four conditions.

68. For its part, Rona did not dispute that the goods meet the first three conditions, but it did dispute the fourth condition, as discussed above, and also argued that there is now a fifth condition which must be met for the goods to be classified in heading No. 94.05.

69. Rona submitted that lamps and lighting fittings of heading No. 94.05 must either (a) be designed to be connected to a fixed electrical installation; or (b) use an energy source other than electricity to produce light, which, according to Rona, is not the case with the goods in issue.

70. To demonstrate its proposition that the goods must be connected to a fixed electrical installation to be classified in heading No. 94.05, Rona relied on an explanatory note to heading No. 85.13, entitled “Portable electric lamps designed to function by their own source of energy”. This note excludes from this heading “lamps which are connected to a fixed installation (heading 94.05)”. Rona therefore proposed, on the basis of this note, that all lamps and lighting fittings in heading No. 94.05 must be connected to a fixed installation.

71. Rona also tried to distinguish the present matter from the Tribunal’s decision in *Liteline*, in which the Tribunal found that the goods in issue had been properly classified in heading No. 94.05, noting that the goods in issue in that case were designed to be connected to a fixed installation.

72. The Tribunal is of the opinion that although lamps and lighting fittings connected to a fixed installation could be classified in heading No. 94.05, not all lamps and lighting fittings in heading No. 94.05 are connected to a fixed installation; there is a fine distinction here.

73. First of all, the Tribunal notes that this requirement is not set out in the terms of Chapter 94, in the terms of heading No. 94.05, or in the corresponding explanatory notes.

74. Second, the Tribunal also notes that the explanatory notes to heading No. 94.05 specifically include “[p]ortable lamps (other than those of heading 85.13), e.g.: hurricane lamps; stable lamps; hand lanterns; miners’ lamps; quarrymen’s lamps”. These goods are all defined by their portable nature, which would therefore rule out a connection to a fixed installation.

75. Rona suggested that this explanatory note refers to *non-electric* portable lamps, such as old-fashioned oil lamps used by miners.

76. The Tribunal disagrees with this proposition, since there is no statement in the nomenclature to the effect that portable lamps in heading No. 94.05 cannot be electric. Furthermore, the explanatory notes to

25. *Ibid.* at para. 49.

heading No. 94.05 expressly provide that lamps and lighting fittings in this heading can use any source of light, including electricity.²⁶

77. The explanatory notes to heading No. 94.05 also state that electrical lamps and lighting fittings in this heading *may* be equipped with lamp-holders, switches, flex and *plugs*, transformers, etc. The use of the word “may” suggests that the lamps and lighting fittings do not necessarily have to have a plug.

78. In light of the preceding, the Tribunal rejects Rona’s argument that lamps and lighting fittings in heading No. 94.05 are limited to ones that can be connected to a fixed installation or that use an energy source other than electricity to produce light.

79. As for the classification opinion for heading No. 94.05 mentioned by Rona, this opinion describes a complete light fixture and affirms the Tribunal’s finding that complete luminaires, such as the goods in issue, belong in heading No. 94.05. The fact that the apparatus that is described in that opinion can be connected to a fixed installation is incidental.

80. The Tribunal is also of the opinion that the explanatory notes to heading No. 94.05 explicitly cover garden luminaires, given that they include lamps for exterior lighting, such as “street lamps; porch and gate lamps; special illumination lamps for public buildings, monuments, parks”.

81. Moreover, as the Tribunal stated in *Costco*, the Tribunal had already considered in *Universal Lite* the phrase “not elsewhere specified or included” found in heading No. 94.05.²⁷ In that case, the Tribunal had found that heading No. 94.05 covered all lamps and lighting fittings, as long as they were not more specifically described elsewhere. As discussed above, the Tribunal is of the opinion that no other heading describes the goods in issue more specifically.

82. In sum, the Tribunal finds that the garden luminaires meet all the conditions to be classified in heading No. 94.05 as lamps and lighting fittings and parts thereof, not elsewhere specified or included.

83. As for the rope lights, the Tribunal is also of the opinion that they are properly classified in heading No. 94.05.

84. In addition to meeting the four criteria mentioned above, the rope lights are specifically described in an explanatory note to heading No. 94.05 that includes specialized lamps such as electric garlands (including those fitted with fancy lamps for carnival or entertainment purposes or for decorating Christmas trees). Furthermore, the Tribunal notes that the rope lights have plugs and must be connected to a fixed installation to work.

Subheading and Tariff Item Classification of the Goods in Issue

85. Since the Tribunal has found that the goods in issue were properly classified in heading No. 94.05, it will now have to determine under which subheading and tariff item they should be classified.

26. “. . . any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, etc.).”

27. 3319067 *Canada Inc. (Universal Lites) v. President of the Canada Border Services Agency* (23 March 2006), AP-2004-017 (CITT) at para. 39.

Garden Luminaires

86. Among the possible subheadings of heading No. 94.05, the garden luminaires are properly classified in subheading 9405.40 as other electric lamps and lighting fittings.

87. Subheading 9405.40 includes three tariff item numbers. Since there is nothing to suggest that the garden luminaires are xenon-type, and since they are clearly not motion picture or theatrical spotlights, the garden luminaires are properly classified under residual tariff item No. 9405.40.90, “other”.

Rope lights

88. As for the rope lights, there is confidential evidence that suggests that they could be classified in subheading 9405.30 and tariff item number 9405.30.00 as lighting sets of a kind used for Christmas trees.²⁸

89. However, both parties in this appeal agree that, despite this evidence, the rope lights are used and sold year-round and not only during the holidays.

90. In light of these submissions, the Tribunal finds that the rope lights are also classified under residual tariff item No. 9405.40.90 as “other electric lamps and lighting fittings, other”, contrary to the CBSA’s further re-determination of the tariff classification, which affirmed that the rope lights had been properly classified under tariff item No. 9405.30.00.

DECISION

91. The appeal is dismissed.

Jason W. Downey

Jason W. Downey

Presiding Member

28. Exhibit AP-2016-031-16B (protected) at pp. 63-76.