



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2019-041

Canac Immobilier Inc. (importing as
Canac Marquis Grenier Ltée)

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, December 22, 2020*

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IN THE MATTER OF an appeal heard on August 25, 2020, 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 November 6, 2020, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

**CANAC IMMOBILIER INC. (IMPORTING AS CANAC MARQUIS
GRENIER LTÉE)**

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Jean Bédard

Jean Bédard, Q.C.
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: August 25, 2020
Tribunal Panel: Jean Bédard, Q.C., Presiding Member
Support Staff: Heidi Lee, Counsel

PARTICIPANTS:**Appellant**

Canac Immobilier Inc. (importing as Canac
Marquis Grenier Ltée)

Counsel/Representatives

Marco Ouellet
Jeffrey Goernert

Respondent

President of the Canada Border Services Agency

Counsel/Representative

Rigers Alliu

Please address all communications to:

The Deputy Registrar
Telephone: 613-993-3595
E-mail: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

OVERVIEW

[1] This is an appeal filed by Canac Immobilier Inc. (importing as Canac Marquis Grenier Ltée) (Canac), pursuant to subsection 67(1) of the *Customs Act*,¹ from a decision made by the President of the Canada Border Services Agency (CBSA) pursuant to subsection 60(4) of the *Act*.

[2] Canac sought to appeal the tariff classification of three products—an insect-killing solar light and two models of planter pots with solar-powered LED lights (LED Pots). The two models of pots differ only in size.

[3] The CBSA submitted that the Tribunal does not have jurisdiction to hear the appeal against the insect-killing lights. For the reasons set out below, the Tribunal agrees. The scope of this appeal is therefore limited to the two models of LED Pots (goods in issue).

[4] As a result, the sole issue in this appeal is whether the goods in issue are properly classified as “other electric lamps and lighting fittings”, under tariff item No. 9405.40.90, as determined by the CBSA, or as “other tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics”, under tariff item No. 3924.90.00, as claimed by Canac. For the reasons set out below, the Tribunal finds that they are lamps or lighting fittings under tariff item No. 9405.40.90.

PROCEDURAL HISTORY

Importation process

[5] In March of 2014, Canac imported various items with solar lights in transaction No. 10013100000689, including the insect-killing solar lights and the LED Pots, which were all declared under a single line (i.e. Line 1) as “solar lights” of tariff item No. 9405.40.90.

[6] In December of 2017, Canac requested a refund of duties pursuant to paragraph 74(1)(e) of the *Act* and sought re-classification of the imported products as other electrical machines and apparatus of tariff item No. 8543.70.00.²

[7] On March 26, 2018, the CBSA denied the request and issued a Detailed Adjustment Statement (DAS), which was treated as a re-determination under paragraph 59(1)(a) of the *Act*.

[8] On May 9, 2018, Canac requested a further re-determination pursuant to subsection 60(1) of the *Act*.³

[9] On November 6, 2019, the President of the CBSA issued a decision pursuant to subsection 60(4) of the *Act* denying the request, maintaining that the correct classification for the LED Pots was tariff item No. 9405.40.90.

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

² Canac requested that the CBSA hold its decision in abeyance pending the outcome of two appeals which were before the Tribunal at that time. According to Canac, the appeals, which were brought by a third party, concerned similar articles. The Tribunal notes that the appeals were subsequently withdrawn.

³ Canac requested that the CBSA hold its decision in abeyance pending the outcome of an appeal before the Tribunal, which had been brought by Canac. Canac withdrew the appeal on September 17, 2018.

[10] On January 30, 2020, Canac filed this appeal with the Tribunal.⁴

Appeal before the Tribunal

[11] On March 30, 2020, Canac filed the appellant's brief. In its brief, Canac set out arguments appealing the tariff classification of the LED Pots as well as the insect-killing solar light.

[12] On June 12, 2020, the CBSA filed the respondent's brief. In its brief, the CBSA challenged the Tribunal's jurisdiction with respect to the appeal of the insect-killing lights. The CBSA argued that the insect-killing lights were not subject to the President's underlying decision, and therefore their tariff classification could not be appealed to the Tribunal.

[13] On June 30, 2020, the Tribunal requested additional views from the parties on the issue of jurisdiction. Canac submitted its views on July 28, 2020. The CBSA submitted comments in reply on August 5, 2020.

[14] Due to the circumstances surrounding the COVID-19 pandemic, the Tribunal cancelled the scheduled in-person hearing and held a file hearing on August 25, 2020.⁵

[15] In advance of the file hearing, the Tribunal requested additional submissions from the parties regarding the LED Pots. The Tribunal received submissions from both parties in a timely manner.⁶

PRELIMINARY ISSUE

Positions of the parties

[16] The CBSA submitted that the underlying decision made by the President did not apply to the insect-killing lights, and therefore the Tribunal did not have jurisdiction pursuant to section 67 of the *Act* to hear an appeal with respect to those goods.

[17] The CBSA argued that the President's decision did not cover the insect-killing lights because Canac did not request a further re-determination of these products. According to the CBSA, Canac's request for a further re-determination could not reasonably be interpreted as requesting a re-determination of the insect-killing lights.

[18] In response, Canac argued that its requests for re-determination and the President's decisions covered all the goods. Canac argued that the requests and the decisions were made in reference to Line 1 of the transaction at issue, and therefore all goods imported under Line 1, which include the insect-killing lights, were subject to be appealed to the Tribunal.

⁴ On February 3, 2020, Canac filed a revised Notice of Appeal amending the description of the goods being appealed to read "ceiling fans with optional lights and bathroom fan lights" instead of "plastic lighted flower pots item 4021048". On March 31, 2020, Canac filed a further revised Notice of Appeal amending its name. See Exhibits AP-2019-041-01A and AP-2019-041-01B.

⁵ The Tribunal decided to proceed by way of a file hearing based on the parties' views. See Exhibit AP-2019-041-10; Exhibit AP-2019-041-11; Exhibit AP-2019-041-12.

⁶ The CBSA's submission was received on August 20, 2020. Canac also filed its submission on August 20, 2020. Though Canac's submission was not processed in time for the file hearing, its comments were fully considered during the Tribunal's deliberations. See Exhibit AP-2019-041-19; Exhibit AP-2019-041-20; Exhibit AP-2019-041-21.

Tribunal's analysis

[19] The *Act* establishes an administrative process that consists of initial CBSA decisions or deemed determinations under section 58, re-determinations and further re-determinations by CBSA officials under section 59, additional determinations by the President of the CBSA under section 60 and appeals to the Tribunal under subsection 67(1).⁷

[20] In accordance with subsection 67(1) of the *Act*, the Tribunal may hear appeals from decisions of the President of the CBSA made under section 60 or 61 of the *Act*. Only section 60 of the *Act* is relevant in the present appeal, which provides the following:

60 (1) A person to whom notice is given under subsection 59(2) in respect of goods may, within ninety days after the notice is given, request a re-determination or further re-determination of origin, tariff classification, value for duty or marking. The request may be made only after all amounts owing as duties and interest in respect of the goods are paid or security satisfactory to the Minister is given in respect of the total amount owing.

...

(4) On receipt of a request under this section, the President shall, without delay,

(a) re-determine or further re-determine the origin, tariff classification or value for duty;

(b) affirm, revise or reverse the advance ruling; or

(c) re-determine or further re-determine the marking determination.

...

[21] In the present case, the parties agree that the underlying decision made by the President of the CBSA is a valid decision under subsection 60(4) of the *Act* and therefore subject to appeal before the Tribunal under subsection 67(1). The parties also agree that the LED Pots were covered by the decision.

[22] The issue in dispute is whether the decision also covered the insect-killing lights. This issue is a question of fact to be determined in the circumstances of the case.⁸

[23] In the Tribunal's view, Canac made a request for further re-determination pursuant to subsection 60(1) of the *Act* in respect of the LED Pots only. This request was made through an informal process. Canac made its request for re-determination by email. The body of the email referred to the transaction number only and did not identify any item specifically.⁹ However, Canac attached to its email a copy of the CBSA's re-determination under paragraph 59(1)(a) of the *Act* with

⁷ *Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61 (CanLII) at para. 28.

⁸ *Wolseley Engineered Pipe Group v. President of the Canada Border Services Agency* (11 March 2010) AP-2009-010 (CITT) at para. 45.

⁹ Exhibit AP-2019-041-09 at 146.

a handwritten note stating “appeal flower pots” and the same pages of product literature on the LED Pots previously provided to the CBSA.¹⁰

[24] The evidence also indicates that the CBSA interpreted Canac’s request as a request for further re-determination of the LED Pots only.

[25] Based on the evidence described above, the Tribunal finds that the CBSA’s interpretation was reasonable and consistent with the content of Canac’s request. The Tribunal disagrees with Canac’s argument that the mere mention of the transaction number implied that all items were meant to be subject to the request when the focus of the request was clearly and exclusively on the LED Pots.

[26] The President’s decision was issued on November 6, 2019, and it provides, in relevant part, as follows:

Subject: Decision regarding the tariff classification of LED Solar Flower Pot Lights

...

Your appeal requested a review of Notices of Decision # 10013100000689 issued under subsection 59(2) of the *Act*.

The issue under appeal was whether the LED Solar Flower Pots are classified as tariff item 9405.40.90 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. -Other electric lamps and lighting fittings - -Other, as determined by the CBSA, or under tariff item 8543.70.00 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this Chapter, as suggested by the Importer.¹¹

[27] The Tribunal notes that Canac does not seem to have reacted once it received the President’s decision which was ostensibly limited to the LED Pots. There is no evidence presented to the Tribunal of any contact with the CBSA to inquire about the items that were not mentioned in the President’s decision. The Tribunal also notes that the notice of appeal filed with the Tribunal at the end of January 2020 referred to the LED Pots only and that the issue of the alleged inclusion of the insect-killing lights in the request for re-determination surfaced for the first time in the appellant’s brief filed on March 31, 2020. After reviewing the evidence and the facts, the Tribunal concludes that, on balance, the request for re-determination was for the LED Pots only and it finds accordingly.

¹⁰ Exhibit AP-2019-041-09 at 148-153. This evidence was also supported by the sworn affidavit of Éric Beauchamp, senior program advisor at the CBSA. Mr. Beauchamp attested that Canac provided the following documents with its request for further re-determination: the DAS with a handwritten note stating “appeal flower pots”; literature documentation for solar flower pots and solar round table lamps; a Customs Coding form (B3) accompanied by commercial invoices; a letter from the Tribunal acknowledging receipt of the notice of appeal in AP-2017-066; a letter of authorization; and an email communication form. Mr. Beauchamp attested that he did not see any other documents provided by Canac with its request. See Exhibit AP-2019-041-16, Affidavit of Éric Beauchamp at paras. 7-8.

¹¹ See Exhibit AP-2019-041-05 at 23-24.

[28] A plain reading of the President's decision demonstrates that it was made in respect of the LED Pots only. As a result, there is no decision in respect of the insect-killing lights that may be appealed to the Tribunal.

[29] The Tribunal therefore finds that it has no jurisdiction to hear an appeal regarding the insect-killing lights, and will proceed to consider the tariff classification of the LED Pots only.

GOODS IN ISSUE

[30] In accordance with the Tribunal's finding above, the goods in issue are the LED Pots.

[31] The goods are plastic planter pots that contain a solar-powered LED light at the bottom of the pot. The goods include a solar panel, a rechargeable battery and a switch to turn the light on and off. The goods come in two sizes; model No. 4021047 is larger and model No. 4021048 is smaller.

LEGAL FRAMEWORK

[32] 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.

[33] 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*¹³ and the *Canadian Rules*¹⁴ set out in the schedule.

[34] 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.

[35] 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 classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is sound reason to do otherwise.¹⁷

[36] 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

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.

¹⁵ World Customs Organization, 4th ed., Brussels, 2017.

¹⁶ World Customs Organization, 6th ed., Brussels, 2017.

¹⁷ See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17; *Canada (Attorney General) v. Best Buy Canada Inc.*, 2019 FCA 20 at para. 4.

relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. As the Supreme Court of Canada indicated in *Igloo Vikski*, 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

[37] 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.¹⁹ The final step is to determine the proper tariff item.²⁰

[38] The relevant provisions of the *Customs Tariff* are as follows:

<p>Section VII</p> <p>PLASTICS AND ARTICLES THEREOF; RUBBER AND ARTICLES THEREOF</p>	<p>Section VII</p> <p>MATIÈRES PLASTIQUES OU OUVRAGES EN CES MATIÈRES; CAOUTCHOUC ET OUVRAGES EN CAOUTCHOUC</p>
<p>Chapter 39</p> <p>PLASTICS AND ARTICLES THEREOF</p>	<p>Chapitre 39</p> <p>MATIÈRES PLASTIQUES ET OUVRAGES EN CES MATIÈRES</p>
<p>39.24 Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics.</p> <p>3924.90.00- - -Other</p>	<p>39.24 Vaisselle, autres articles de ménage ou d'économie domestique et articles d'hygiène ou de toilette, en matières plastiques.</p> <p>3924.90.00- - -Autres</p>
<p>Section XX</p> <p>MISCELLANEOUS MANUFACTURED ARTICLES</p>	<p>Section XX</p> <p>MARCHANDISES ET PRODUITS DIVERS</p>
<p>Chapter 94</p> <p>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</p>	<p>Chapitre 94</p> <p>MEUBLES; MOBILIER MÉDICO- CHIRURGICAL; ARTICLES DE LITERIE ET SIMILAIRES; APPAREILS D'ÉCLAIRAGE NON DÉNOMMÉS NI COMPRIS AILLEURS; LAMPES- RÉCLAMES, ENSEIGNES LUMINEUSES, PLAQUES INDICATRICES LUMINEUSES ET ARTICLES SIMILAIRES; CONSTRUCTIONS PRÉFABRIQUÉES</p>

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

¹⁹ 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 [Rules 1 through 5] . . .” and that “the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

²⁰ 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.

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.

9405.40 - - Other electric lamps and lighting fittings

9405.40.90 - - Other

94.05 Appareils d'éclairage (y compris les projecteurs) et leurs parties, non dénommés ni compris ailleurs; lampes-réclames, enseignes lumineuses, plaques indicatrices lumineuses et articles similaires, possédant une source d'éclairage fixée à demeure, et leurs parties non dénommées ni comprises ailleurs.

9405.40 - - Autres appareils d'éclairage électriques

9405.40.90 - - Autres

[39] The notes to Chapter 39 provide the following:

Notes.

...

2. This Chapter does not cover:

...

(x) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, illuminated signs, prefabricated buildings)

[40] The relevant explanatory notes are set out in Appendix A of these reasons.

POSITIONS OF THE PARTIES

Canac

[41] Canac submitted that the goods in issue are “planters” or “flower pots” classified in tariff item No. 3924.90.00, pursuant to Rule 1 of the *General Rules*.²¹

[42] Canac argued that the main function of the goods is to hold plants, while the lighting feature is merely a decorative accessory, akin to a painted or moulded decoration. Canac argued that heading 94.05 only covers articles that produce light as their main function, not goods that have accessory lighting features, and therefore the goods are not classified in that heading.

CBSA

[43] The CBSA submitted that the goods in issue are other electric lamps of tariff item No. 9405.40.90 in accordance with Rule 1 of the *General Rules*. The CBSA argued that by their classification in Chapter 94, the goods are excluded from classification in Chapter 39, by virtue of note 2(x) to Chapter 39.

²¹ Exhibit AP-2019-041-15 at para. 48.

[44] The CBSA also submitted that Canac did not meet its burden to prove that the goods are not classified in heading 94.05.

TRIBUNAL'S ANALYSIS

[45] This dispute concerns the heading level. In its initial brief, Canac submitted that the goods were classifiable in heading 39.24 pursuant to Rules 1 and 3(b) of the *General Rules*.²² Canac subsequently argued that the goods were classifiable in heading 39.24 pursuant to Rule 1.²³ The Tribunal notes that to be classified pursuant to Rule 3, goods must be *prima facie* classifiable in two or more headings. To the extent that Canac relies on Rule 3(b), Canac's broader position, i.e. the goods are not classifiable in 94.05 and therefore not excluded from Chapter 39 by note 2(x), would not support the application of Rule 3.

[46] There is also a relevant exclusionary note, namely note 2(x) to Chapter 39, which provides that goods of Chapter 94 are excluded from classification in Chapter 39.²⁴ This precludes a *prima facie* classification of the goods in both headings at issue. It is well established that where there is an exclusionary note that precludes *prima facie* classification of goods in both headings at issue, the Tribunal must begin its analysis with the heading to which the exclusionary note does not apply.²⁵

[47] Accordingly, Rule 1 applies and the Tribunal will therefore first consider whether the goods in issue are classified in heading 94.05. If the Tribunal finds that the goods are not classified in this heading, it will then consider whether they are classified in heading 39.24.

Heading 94.05

[48] In accordance with the terms of heading 94.05 and the relevant explanatory notes, the Tribunal has consistently held that goods must meet the following four criteria in order to be classified in heading 94.05:

- (1) be lamps or lighting fittings;
- (2) be of any material;
- (3) use any source of light; and
- (4) not elsewhere specified or included.²⁶

[49] The Tribunal has also previously considered heading 94.05 in the context of other decorative articles with solar-powered lighting.²⁷

²² See Exhibit AP-2019-041-05 at paras. 25-28.

²³ See Exhibit AP-2019-041-15 at paras. 48, 50.

²⁴ Conversely, note 1 to Chapter 94 excludes some goods of Chapter 39; however, these exclusions are not relevant to the goods in issue.

²⁵ *HBC Imports c/o Zellers Inc. v. President of the Canada Border Services Agency* (6 April 2011) AP-2010-005 (CITT) at para. 42; *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 paras. 46-48.

²⁶ *Rona Inc. v. President of the Canada Border Services Agency* (11 September 2017) AP-2016-031 (CITT) [*Rona*] at para. 66. See also *Rona Inc. v. President of the Canada Border Services Agency* (18 October 2019) AP-2018-053 (CITT) at paras. 141-142; *Costco* at para. 49.

²⁷ The CBSA submitted that the goods in issue are solar-powered decorative outdoor lamps that produce light at dusk, similar to the goods in *Costco* and *Rona*. For its part, Canac argued that the goods in issue are distinguishable from the goods in those appeals.

[50] In *Costco*, the Tribunal found that decorative solar-powered garden lights, which turned on at dusk and charged via sunlight during the day, were lamps of heading 94.05.²⁸ The lights were described as “cattail garden lights” and “glass mushroom light sets”. In addition, in *Rona* the Tribunal considered the tariff classification of decorative solar-powered garden “luminaires” in various shapes, such as lanterns and flowers, which the Tribunal described as being very similar to the goods in *Costco*.²⁹ The Tribunal found that the goods were lamps of heading 94.05, and in doing so, noted that they were explicitly contemplated within that heading as “lamps for exterior lighting” by the explanatory notes to heading 94.05.³⁰

(1) Are the goods lamps or lighting fittings?

[51] As the terms “lamps” and “lighting fittings” are not defined in the tariff nomenclature, the Tribunal must turn to the ordinary meaning of these terms.

[52] The CBSA submitted that the goods in issue produce light and are therefore lamps or lighting fittings in accordance with the meaning of these terms given by the Tribunal in *Costco*.

[53] In *Costco*, the Tribunal considered “lamp” to mean “any of various devices for producing light or sometimes heat” and a “device that produces light, such as an electric lamp”. The Tribunal also noted “lighting” to mean “equipment on a street or in a room etc. for producing light” and “fitting” to mean “a small part on or attached to a piece of furniture or equipment”, or “a small often standardized part”.³¹ In addition, the Tribunal noted that the term “device” means “piece of equipment or a mechanism designed to serve a special purpose or perform a special function”, which it recognized as a very broad meaning.³² The Tribunal determined that neither the terms of heading 94.05 nor the explanatory notes require a minimum amount of light that must be emitted in order to be classified as a lamp of that heading; in other words, there is no requirement that goods emit a “useable” amount of light, i.e. to illuminate anything beyond itself.³³

[54] Based on these definitions, the Tribunal found in *Costco* that it had “. . . no difficulty in concluding that the goods in issue are devices that produce light and, as such, are lamps or lighting in accordance with the ordinary meaning of those terms”.³⁴

[55] For its part, Canac submitted various dictionary definitions for “lamp”, “light” and “lighting”, as well as the French dictionary definitions for “*appareil*” (device) and “*éclairage*” (lighting).³⁵ Canac argued that the goods in issue do not meet these definitions and therefore are not “lamps” or “lighting fittings”. In this regard, the Tribunal finds that the dictionary definitions submitted by Canac do not alter the meanings of “lamps and lighting fittings” adopted by the

²⁸ *Costco* at para. 11.

²⁹ *Rona* at paras. 66-67.

³⁰ *Rona* at paras. 3-5.

³¹ *Costco* at paras. 50-55. The Tribunal also noted that it has previously treated the terms “lamp” and “light” as essentially synonymous (see para. 50).

³² *Costco* at paras. 56, 59.

³³ *Costco* at para. 60.

³⁴ *Costco* at para. 59.

³⁵ Canac submitted the Merriam-Webster and Canadian Oxford Dictionary definitions of “lamp”, “light” and “lighting”. Canac also submitted the *Petit Larousse* dictionary definitions of “*appareil*” and “*éclairage*”. In addition, Canac submitted the Wikipedia definition of “light fixture”. See Exhibit AP-2019-041-15 at paras. 31-34 and at 43-57.

Tribunal in *Costco*. In fact, the Tribunal notes that several of the definitions provided by Canac were also cited by the Tribunal in *Costco*. Overall, Canac argued that heading 94.05 covers articles that produce light as their primary function, not as an accessory feature.

[56] Having considered Canac's submissions, the Tribunal is not persuaded that it should depart from the analysis set out in *Costco*,³⁶ which was also followed by the Tribunal in *Rona*.³⁷ In particular, neither the provisions of the tariff nomenclature nor the explanatory notes limit the meaning of "lamps and lighting fittings" in heading 94.05 in the manner suggested by Canac.

[57] In the Tribunal's view, the goods in issue in the present appeal are devices that produce light and, as a result, fall within the broad definition set out in *Costco*. Consequently, the Tribunal finds that the goods in issue are lamps or lighting fittings within their ordinary meaning and meet the first criteria for classification in heading 94.05.

[58] In addition to the ordinary meaning, the Tribunal has previously considered market characteristics of goods.³⁸ In *PartyLite Gifts*, the Tribunal held that while not determinative, the design, best usage, marketing and distribution of goods can be indicative of their proper tariff classification.³⁹ In the present case, the Tribunal did not consider the marketing of the goods in issue to be particularly instructive. Some retailers marketed similar products as "glow" or "luminous" pots, whereas others sold them as "vase-shaped LED lights" [translation] or "potting lamps".⁴⁰

(2) Are the goods of any material?

[59] The explanatory notes to heading 94.05 provide that lamps and lighting fittings of this group can be constituted of any material (excluding those materials described in Note 1 to Chapter 71).

[60] The parties did not dispute that the goods in issue met this requirement and were not excluded by the explanatory note. There was no evidence for the Tribunal to find otherwise.

[61] The Tribunal is therefore satisfied that the goods in issue meet this second criterion.

(3) Do the goods use any source of light?

[62] The explanatory notes to heading 94.05 also provide that "lamps and lighting fittings of this group can . . . use any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, etc.)".

[63] The parties also agreed, and the Tribunal finds, that the goods in issue satisfy this criterion.

³⁶ In *Canada (Attorney General) v. Bri-Chem Supply Ltd.*, 2016 FCA 257 (CanLII) at para. 44, the Federal Court of Appeal held that ". . . while 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". See also *Rona* at para. 40.

³⁷ The Tribunal in *Rona* adopted the Tribunal's approach in *Costco*, though the meaning of "lamps" and "lightings" was not disputed by the parties in *Rona*. See *Rona* at paras. 66-68, 81.

³⁸ *Costco* at para. 61 and footnote 33.

³⁹ *PartyLite Gifts Ltd. v. The Commissioner of the Canada Customs and Revenue Agency* (16 February 2004) AP-2003-008 (CITT).

⁴⁰ Exhibit AP-2019-041-05 at 213-240; Exhibit AP-2019-041-09 at 189 and Annex 11 at 191.

(4) Are the goods elsewhere specified or included?

[64] The parties did not raise any other tariff item provisions that could specify or include the goods in issue. The Tribunal also did not identify any such provisions. As a result, the only provision in issue, other than heading 94.05, is heading 39.24.

[65] The CBSA argued that the goods in issue cannot be considered to be specified or included in heading 39.24 because they are lamps and lighting fittings specifically excluded by note 2(x) to Chapter 39.

[66] The Tribunal does not agree with this analysis. Note 2(x) provides that Chapter 39 “does not cover articles of Chapter 94”. In order for the goods to be excluded by note 2(x), they must first be classified within Chapter 94—in this case, within heading 94.05. However, the goods in issue cannot be classified in heading 94.05 without first concluding that they are “not elsewhere specified or included”. As a result, the Tribunal must first consider whether the goods in issue are specified or included in heading 39.24.

[67] The Tribunal has previously held that goods are not specified or included elsewhere for the purposes of classification in heading 94.05 as long as they are not more specifically described elsewhere in the tariff nomenclature.⁴¹

[68] Heading 39.24 covers “tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics”. In the Tribunal’s view, the term most relevant to the goods in issue would be “other household articles of plastic”. Having considered the matter, the Tribunal concludes that “lamps and lighting fittings” more specifically describe the goods in issue than “other household articles of plastic”. As a result, the Tribunal finds that the goods in issue are not elsewhere specified or included, and meet the final requirement for classification in heading 94.05.

CONCLUSION

[69] For the foregoing reasons, the Tribunal finds that the goods in issue are classified in heading 94.05.

[70] With respect to exclusionary note 2(x), Canac argued that the note does not apply to the goods in issue because the goods must be classified according to their primary function, i.e. holding plants, and not their secondary or accessory function, i.e. lighting.

[71] Having found that the goods are indeed classified in heading 94.05, the Tribunal is not persuaded by Canac’s argument, which is not consistent with the application of Rule 1. The Tribunal recognizes that the tariff nomenclature and the *General Rules* are technical in nature and can, at times, operate in a manner that does not seem intuitive. The Tribunal, after having carefully considered the *General Rules*, the wording of the *Customs Tariff*, the explanatory notes and its previous decisions on the issue, comes to the conclusion that the goods in issue are properly classified as “lamps or lighting fittings” pursuant to Rule 1.

⁴¹ 3319067 *Canada Inc. (Universal Lites) v. President of the Canada Border Services Agency* (23 March 2006), AP-2004-017 (CITT) at paras. 39, 41.

[72] The Tribunal therefore finds that the goods in issue, having been properly classified in heading 94.05, are excluded from classification in Chapter 39 by note 2(x) to that chapter.

[73] The Tribunal also agrees with the CBSA that the goods in issue are properly classified under subheading 9405.40 and tariff item No. 9405.40.90 as “other electric lamps and lighting fittings”.

DECISION

[74] The appeal is dismissed.

Jean Bédard
Jean Bédard, Q.C.
Presiding Member

APPENDIX A

[1] The relevant notes to Chapter 39 provide as follows:

Notes.

2. This Chapter does not cover: . . .

(x) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, illuminated signs, prefabricated buildings)

Notes.

2. Le présent Chapitre ne comprend pas : [...]

(x) les articles du Chapitre 94 (meubles, appareils d'éclairage, enseignes lumineuses, constructions préfabriquées, par exemple)

[2] The relevant explanatory notes to Chapter 94 provide as follows:

GENERAL

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 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);

CONSIDÉRATIONS GÉNÉRALES

Le présent Chapitre englobe, **sous réserve** des exceptions mentionnées dans les Notes explicatives de ce Chapitre : [...]

3) Les appareils d'éclairage et leur parties, non dénommés ni compris ailleurs, en toutes matières (**à l'exclusion** des matières visées à la Note 1 du Chapitre 71), ainsi que les lampes-réclames, enseignes lumineuses, plaques indicatrices lumineuses et articles similaires, possédant une source d'éclairage fixée à demeure, ainsi que leur parties non dénommés ni comprises ailleurs (n. 94.05).

[3] The relevant explanatory notes to heading 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, flexes and plugs, transformers, etc., or, as in the case of fluorescent strip fixtures, a starter or a ballast.

I. – APPAREILS D'ÉCLAIRAGE NON DÉNOMMÉS NI COMPRIS AILLEURS

Les appareils d'éclairage relevant de ce groupe peuvent être constitués de toutes matières (**à l'exclusion** des matières visées à la Note 1 du Chapitre 71) et utiliser toute source de lumière (bougie, huile, essence, pétrole, gaz d'éclairage, acétylène, électricité, etc.). Lorsqu'il s'agit d'appareils électriques, ils peuvent être équipés de douilles, d'interrupteurs, de fils électriques avec fiche, de transformateurs, etc. ou, comme dans le cas des réglettes pour lampes

This heading covers in particular:

fluorescentes, d'un starter et d'un ballast.

Les principaux types d'appareils d'éclairage repris ici sont :

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

2) Les **lampes pour l'éclairage extérieur** : lanternes-réverbères, lampes-console, lampes de jardins et de parcs, réflecteurs pour l'illumination des édifices, monuments, parcs.

...

[...]

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

5) Les **lampes portatives (autres que celles du n. 85.13)** : lanternes-tempêtes, lanternes d'écurie, falots et lanternes pour cortèges, lampes de carriers et de mineurs.