



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal AP-2021-006

Lumisave Industrial LED
Technologies Ltd.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Thursday, April 14, 2022*

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IN THE MATTER OF an appeal heard on December 14, 2021, pursuant to section 67 of the *Customs Act*;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated April 7, 2021, with respect to a request for further re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

LUMISAVE INDUSTRIAL LED TECHNOLOGIES LTD.

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Frédéric Seppey

Frédéric Seppey
Presiding Member

Place of Hearing: By videoconference
Date of Hearing: December 14, 2021

Tribunal Panel: Frédéric Seppey, Presiding Member

Tribunal Secretariat Staff: Yannick Trudel, Counsel
Nadja Momcilovic, Counsel
Morgan Oda, Registrar Officer

PARTICIPANTS:

Appellant	Counsel/Representative
Lumisave Industrial LED Technologies Ltd.	Alfred Chase
Respondent	Counsel/Representative
President of the Canada Border Services Agency	Andrew Newman

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STATEMENT OF REASONS

OVERVIEW

[1] This appeal was filed by Lumisave Industrial LED Technologies Ltd. (Lumisave) on June 17, 2021, pursuant to subsection 67(1) of the *Customs Act*¹ (Act) from a decision made on April 7, 2021, by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4) of the Act.

[2] The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 9405.40.90 as “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” (other electric lamps and lighting fittings), as determined by the CBSA, or should be classified under tariff item No. 9405.99.00 as “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; parts; other” (other parts), as submitted by Lumisave.

DESCRIPTION OF THE GOODS IN ISSUE

[3] The goods in issue are two models of lighting housings² / incomplete lighting fittings³ for streetlights, namely the FL390 model and the SL760 model.⁴

[4] The evidence indicates that the goods in issue have, respectively for each model, the following common characteristics: The FL390 model consists of an aluminum housing or shell, lens, lens clips, reflector, driver plate, and hex bolts, whereas the SL760 model consists of an aluminum housing or shell, gasket, lens, reflector, terminal block bracket, and driver plate.⁵ The evidence also indicates that neither of the goods in issue contain any electrical components, light-emitting diode (LED) chips or constant voltage drivers (power supply) for the LED chips.⁶

PROCEDURAL HISTORY

[5] Between April 2018 and May 2018, Lumisave imported the goods in issue in numerous transactions,⁷ declaring them as other parts of electric lamps and lighting fittings under tariff item No. 9405.99.00. On March 6, 2020, the CBSA shared with Lumisave the final report of a trade compliance verification that it conducted under sections 42 and 42.01 of the Act and re-determined the tariff classification of the goods. The CBSA classified the goods under tariff item No. 9405.40.90

¹ R.S.C. 1985 (2d Supp.), c. 1.

² Exhibit AP-2021-006-03.D at para. 6.

³ Exhibit AP-2021-006-10 at para. 3.

⁴ Exhibit AP-2021-006-03.D at para. 6; Exhibit AP-2021-006-10 at paras. 1, 6. There is a disagreement between parties as to how to refer to the goods.

⁵ Exhibit AP-2021-006-10 at para. 6; Exhibit AP-2021-006-03E at paras. 7-8; Exhibit AP-2021-006-14.

⁶ Exhibit AP-2021-006-10 at para. 6; Exhibit AP-2021-006-03E at para. 9; Exhibit AP-2021-006-14.

⁷ Exhibit AP-2021-006-01.D at 11–23.

as “other electric lamps and lighting fittings”. That decision was treated as a re-determination under paragraph 59(1)(a) of the Act.⁸

[6] On June 9, 2020, under subsection 60(1) of the Act, Lumisave requested a further re-determination of the tariff classification.⁹ Lumisave claimed that the goods should have been classified under tariff item No. 9405.99.00 as “other parts”.

[7] On April 7, 2021, under subsection 60(4) of the Act, the CBSA issued a further re-determination of the tariff classification of the goods. The CBSA classified the goods under tariff item No. 9405.40.90.¹⁰

[8] On June 17, 2021, Lumisave filed an appeal with the Tribunal under subsection 67 (1) of the Act.¹¹

[9] On August 13, 2021, Lumisave filed its public brief.¹²

[10] Due to issues regarding the treatment of confidential information, Lumisave filed an amended brief on August 17, 2021,¹³ and a further amended brief on August 25, 2021.¹⁴

[11] On September 7, 2021, Lumisave filed photographs of the goods in issue in various stages of assembly along with their dimensional specifications.¹⁵

[12] On October 12, 2021, the CBSA filed its brief.¹⁶

[13] The CBSA filed physical exhibits, photographs of which have been placed on the record.¹⁷ Neither party called any witnesses.

[14] The hearing was held by way of videoconference on December 14, 2021.

LEGAL FRAMEWORK

[15] The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*,¹⁸ which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).¹⁹ 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.

⁸ *Ibid.* at 24–29.

⁹ *Ibid.* at 8.

¹⁰ *Ibid.* at 8–10.

¹¹ *Ibid.*

¹² Exhibit AP-2021-006-03.

¹³ Exhibit AP-2021-006-03.B.

¹⁴ Exhibit AP-2021-006-03.D.

¹⁵ Exhibit AP-2021-006-06.

¹⁶ Exhibit AP-2021-006-10.

¹⁷ Exhibit AP-2021-006-14.

¹⁸ S.C. 1997, c. 36.

¹⁹ Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.

[16] 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 System²⁰ (General Rules) and the Canadian Rules²¹ set out in the schedule.

[17] 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.

[18] 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*²² and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,²³ published by the WCO. While classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.²⁴

[19] 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.²⁵

[20] 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.²⁶ The final step is to determine the proper tariff item.²⁷

²⁰ S.C. 1997, c. 36, schedule.

²¹ *Ibid.*

²² World Customs Organization, 4th ed., Brussels, 2017.

²³ World Customs Organization, 6th ed., Brussels, 2017.

²⁴ See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17 and *Canada (Attorney General) v. Best Buy Canada Inc.*, 2019 FCA 20 at para. 4.

²⁵ *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) [*Igloo Vikski*] at para. 21. Rules 1 through 5 of the General Rules apply to classification at the heading level.

²⁶ 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.”

²⁷ 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.” The Classification Opinions and Explanatory Notes do not apply to classification at the tariff item level.

[21] The relevant tariff classification provisions are as follows:

<p>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.</p>	<p>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.</p>
<p>9405.40 - Other electric lamps and lighting fittings</p>	<p>9405.40 - Autres appareils d'éclairage électriques</p>
<p>9405.40.90 - - - Other</p>	<p>9405.40.90 - - - Autres</p>
<p>Parts:</p>	<p>Parties :</p>
<p>9405.99.00 - - Other</p>	<p>9405.99.00 - - Autres</p>

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

PARTS	PARTIES
<p>This Chapter only covers parts, whether or not in the rough, of the goods of headings 94.01 to 94.03 and 94.05, when identifiable by their shape or other specific features as parts designed solely or principally for an article of those headings. They are classified in this Chapter when not more specifically covered elsewhere.</p>	<p>Le présent Chapitre ne couvre que les parties des produits des nos 94.01 à 94.03 et 94.05. Sont considérés comme telles les articles, même simplement ébauchés qui, par leur forme ou d'autres caractéristiques, sont reconnaissables comme étant conçus exclusivement ou principalement pour un article de ces positions et qui ne sont pas repris plus spécifiquement ailleurs.</p>

[23] The relevant version of the explanatory notes to heading 94.05 at the time of the importation of the goods in 2018 provides as follows:

<p style="text-align: center;">(I) LAMPS AND LIGHTING FITTINGS, NOT ELSEWHERE SPECIFIED OR INCLUDED</p> <p>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.</p> <p>This heading covers in particular:</p> <p>(2) Lamps for exterior lighting, e.g.:</p> <p><u>street lamps</u>; porch and gate lamps; special illumination lamps for public buildings, monuments, parks.</p> <p>PARTS</p> <p>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.:</p> <p>(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.</p>	<p style="text-align: center;">I.- APPAREILS D'ÉCLAIRAGE NON DÉNOMMÉS NI COMPRIS AILLEURS</p> <p>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 réglottes pour lampes fluorescentes, d'un starter et d'un ballast.</p> <p>Les principaux types d'appareils d'éclairage repris ici sont :</p> <p>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.</p> <p>PARTIES</p> <p>On range également dans cette position, dès lors qu'elles sont reconnaissables comme telles et lorsqu'elles ne sont pas reprises plus spécifiquement ailleurs, les parties d'appareils d'éclairage, de lampes réclames, d'enseignes lumineuses, de plaques indicatrices lumineuses et d'articles similaires, au nombre desquelles on peut citer :</p> <p>1) Les assemblages rigides ou à chaînettes pour supporter les lustres et suspensions. 2) Les griffes pour globes. 3) Les pieds, poignées et cages protectrices pour lampes à main. 4) Les becs de lampes; les porte-manchons. 5) Les corps de lanterne.</p>
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<p>(9) Diffusers (including alabaster diffusers).</p> <p>(10) Bowls, cups, shades (including skeleton wire frames for making lampshades), globes and similar articles.</p> <p>(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.</p> <p>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).</p> <p>This heading also excludes:</p> <p>(a) Candles (heading 34.06).</p> <p>(b) Resin torches (heading 36.06).</p> <p>(c) Signs, name-plates and the like, not illuminated or illuminated by a light source not permanently fixed, (heading 39.26, Chapter 70, heading 83.10, etc.).</p> <p>(d) Printed globes, with internal lighting fittings, of heading 49.05.</p> <p>(e) Wicks for lamps, of woven, plaited or knitted textile materials (heading 59.08).</p> <p>(f) Glass beads and fancy glass smallwares (e.g., fringes) made of threaded glass beads or bugles and intended for trimming lampshades (heading 70.18).</p> <p>(g) Electrical lighting and signalling equipment for cycles and motor vehicles (heading 85.12).</p> <p>(h) Electric filament lamps, discharge lamps (including tubes in various complex forms such as scrolls, letters, figures, stars, etc.) and, arc-lamps (heading 85.39).</p> <p>(ij) Photographic flashlight apparatus (including electrically ignited photographic flashbulbs) (heading 90.06).</p> <p>(k) Optical light-beam signalling apparatus (heading 90.13).</p>	<p>6) Les miroirs de réflecteurs.</p> <p>7) Les verres ou cheminées d'éclairage (à étranglement, à renflement, etc.).</p> <p>8) Les petits cylindres en verre épais pour lampes de mineurs.</p> <p>9) Les diffuseurs (y compris les diffuseurs en albâtre)</p> <p>10) Les vasques, coupes, coupelles, abat-jour (y compris leurs carcasses), globes, tulipes et articles similaires.</p> <p>11) Les pièces de lustrerie telles que boules, amandes, fleurons, pendeloques, plaquettes et articles analogues, qui en raison, notamment, de leurs dispositifs de fixation ou de leurs dimensions sont reconnaissables comme étant utilisées pour le garnissage des lustres.</p> <p>Les parties non électriques d'articles de cette position combinées avec des parties électriques restent classées ici. Les parties électriques de ces articles (douilles, commutateurs, interrupteurs, transformateurs, starters, ballasts, par exemple), présentées isolément, relèvent du Chapitre 85.</p> <p>Sont également exclus de cette position :</p> <p>a) Les bougies (n° 34.06).</p> <p>b) Les torches et flambeaux de résine (n° 36.06).</p> <p>c) Les enseignes, plaques-réclames, plaques indicatrices et articles similaires, non lumineux ou illuminés par une source d'éclairage non fixée à demeure (n° 39.26, Chapitre 70, n° 83.10, etc.).</p> <p>d) Les globes imprimés, munis d'un éclairage intérieur, du n° 49.05.</p> <p>e) Les mèches tissées, tressées ou tricotées, en matières textiles, pour lampes (n° 59.08).</p> <p>f) Les perles de verre et articles similaires de verroterie (par exemple, de simples franges faites de perles ou de petits tubes enfilés et destinés à enjoliver des abat-jour de lampes) (n° 70.18).</p>
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<p>(l) Medical diagnostic, probing, irradiation, etc., lamps (heading 90.18).</p> <p>(m) Decorations, such as Chinese lanterns (heading 95.05).</p>	<p>g) Les appareils électriques d'éclairage et de signalisation pour cycles et automobiles (n° 85.12).</p> <p>h) Les lampes (ampoules) et tubes à incandescence ou à décharge (y compris ceux affectant la forme d'arabesques, de lettres, de chiffres, d'étoiles, etc.), ainsi que les lampes à arc (n° 85.39).</p> <p>ij) Les appareils et dispositifs (y compris les lampes à allumage électrique) pour la production de la lumière-éclair en photographie et en cinématographie (n° 90.06).</p> <p>k) Les transmetteurs optiques de signaux lumineux (n° 90.13).</p> <p>l) Les lampes pour le diagnostic, le sondage, l'irradiation ou autres applications médicales (n° 90.18).</p> <p>m) Les articles de décoration, tels que lampions et lanternes vénitiennes (n° 95.05).</p>
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[24] There are no relevant classification opinions.

POSITIONS OF THE PARTIES

Lumisave

[25] Lumisave submitted that the goods in issue are aluminum housing assemblies with no electrical components²⁸ which meet the five criteria to be classified as “parts” within the meaning of subheading 9405.99 of the *Customs Tariff* and Memorandum D10-0-1, which clarifies the CBSA’s administrative policy regarding the classification of parts and accessories in the *Customs Tariff*.²⁹

[26] Lumisave contended that Rule 1 of the General Rules suffices to classify the goods in issue as parts, under tariff item No. 9405.99.00.³⁰

[27] Lumisave further argued that the CBSA’s argument that the goods in issue are incomplete versions of the finished product by way of application of Rule 2(a) of the *General Rules* is erroneous given that the goods, at the moment of importation, do not display the essential character of the finished products.³¹

²⁸ Exhibit AP-2021-006-03.D at paras. 6–9; *Transcript of Public Hearing* at 7.

²⁹ Exhibit AP-2021-006-03.D at para. 27.

³⁰ *Ibid.* at para. 29.

³¹ *Ibid.* at paras. 30–44.

CBSA

[28] The CBSA submitted that the goods in issue are properly classified as lighting fittings in tariff item No. 9405.40.90 because, despite being incomplete and unfinished, they have the essential character of complete and finished lighting fittings in that their physical characteristics are those of the finished products.³² The CBSA therefore submitted that the goods are classifiable under tariff item No. 9405.40.90 by way of application of Rules 1 and 2(a) of the General Rules.

ANALYSIS

Tariff classification at the heading and subheading levels

[29] It is common ground between the parties, and the Tribunal agrees, that the goods in issue are properly classified in heading 94.05.

[30] The dispute between the parties is at the subheading level, and considers whether the goods should be classified as either:

- a. other electric lamps and lighting fittings under tariff item No. 9405.40.90, or
- b. other parts of electric lamps and lighting fittings under tariff item No. 9405.99.00.

[31] Classification at the subheading level commences by, *mutatis mutandis*, the application (pursuant to Rule 6) of Rule 1 of the General Rules, which directs that the classification of goods must initially be determined with reference only to the headings within a chapter, as well as any applicable section or chapter notes.³³

[32] Rule 1 provides that:

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, *provided such headings or Notes do not otherwise require*, according to the following provisions.

[Emphasis added]

[33] Therefore, classification is based, first, on the terms of the headings, relevant section or chapter notes pursuant to Rule 1 and, provided such headings or notes do not otherwise require, according to the provisions of Rules 2 to 6.

[34] The phrase “provided such headings or Notes do not otherwise require” conveys that a heading providing specifically for a collection of unassembled parts or an incomplete article would prevail by application of Rule 1 because Rules 2 to 6 would not apply (that is, because “such headings or Notes . . . otherwise require”).³⁴ This principle is expounded in paragraph (V) of the explanatory notes to Rule 1:

³² Exhibit AP-2021-006-10 at paras. 40–42.

³³ *Igloo Vikski* at para. 20.

³⁴ Examples of such are found in headings 87.06 and 87.07.

In provision (III) (b), the expression “provided such headings or Notes do not otherwise require” is intended to make it quite clear that the terms of the headings and any relative Section or Chapter Notes are paramount, i.e., they are the first consideration in determining classification. For example, in Chapter 31, the Notes provide that certain headings relate only to particular goods. Consequently, those headings cannot be extended to include goods which otherwise might fall there by reason of the operation of Rule 2 (b).³⁵

[35] In that regard, for cases where applying Rule 1 alone does not settle the classification of a good, as is the case for unfinished or incomplete goods, the Supreme Court in *Igloo Vikski* found that:

[22] . . . Where the goods are unfinished or where they are comprised of a mix of materials or substances (and where no heading specifically describes the unfinished or composite good as such),⁴ Rule 2 is applied in conjunction with Rule 1 to determine the *prima facie* classification of such goods.

. . .

4 An example of a heading that specifically describes an unfinished good is 64.04 (“Parts of footwear”), and an example of a heading that specifically describes a composite good is 59.06 (“Rubberized textile fabrics”). Where a good falls within one of those headings, there would be no need to apply Rule 2, as the heading specifically contemplates the incomplete or composite nature of the good in question. Rule 1’s direction that the classification of the goods should be determined according to the terms of the headings therefore suffices.³⁶

[36] More precisely, although the application of the General Rules is commonly explained as sequential, when classification is possible by applying General Rules 1 and 6, it does not mean that other rules have not been consulted. Rather, it merely means that application of the text of Rule 1, in particular the phrase, “provided such headings or Notes do not otherwise require” makes Rule 2 inapplicable.³⁷

[37] Therefore, classification is based, first, on the terms of the headings, relevant section, or chapter notes pursuant to Rule 1 and, provided such headings or notes do not otherwise require, according to the provisions of Rules 2 to 6. In such cases, the next rule to consider is Rule 2(a).

[38] With regards to Rule 2(a), in *Igloo Vikski*, the Court further found that:

[23] Rule 2 is a deeming provision. Rule 2(a) deems unfinished goods to be finished goods, and directs that they be classified using Rule 1 as if they were goods in a complete or finished state. . . .³⁸

³⁵ Paragraph (V) of the explanatory notes to Rule 1 of the General Rules.

³⁶ *Igloo Vikski* at para. 22 and footnote 4.

³⁷ This is because the phrase “and . . . according to the following provisions” requires that all the general rules be consulted when classifying articles in the Harmonized System. However, Rules 3 and 4 begin with text that clearly makes them applicable only when general rules 1, 2, 5 and 6 do not provide a unique classification for the subject article. Not being introduced by such conditional text, Rule 2 must always be considered provided the headings and legal notes do not otherwise require.

³⁸ *Igloo Vikski* at para. 23.

[39] Furthermore, as explained by the Tribunal in *IMPEKK*:

. . . Rule 1 and Rule 2(a) are to be applied *in conjunction* to determine whether goods can be *prima facie* classified in a particular heading. . . . the purpose of Rule 2(a) is to expand the terms of the headings to include goods that would otherwise fall in those headings if complete or finished, provided that they have the essential character of the complete or finished good. However, the Court also clearly sets out that it is not necessary to apply Rule 2(a) where an incomplete good is specifically described “as such” by a heading. . . . The Tribunal has previously interpreted this guidance to mean that classification in the “parts” heading (or subheading) should be considered before turning to the analysis of whether the goods have the essential character of the finished good.³⁹

[40] Following the above, the Tribunal will first start its analysis by determining whether the goods in issue can be classified by virtue of application of Rule 1, as parts of electric lamps and lighting fittings of subheading 9405.99.

[41] The Tribunal will then analyze whether the goods in issue are incomplete or unfinished electric lamps and lighting fittings of subheading 9405.40, and require the application of Rule 2(a) in conjunction with Rule 1 in order to be classified.

The goods in issue are classified in subheading 9405.99

[42] The explanatory notes to Chapter 94 provide three conditions which must be satisfied in order for goods to be considered as “parts” in heading 94.05. Notably, they must be:

- (i) Parts;
- (ii) “Identifiable” by their shape and other specific features as parts designed solely or principally for an article of heading 94.05; and
- (iii) Not included more specifically elsewhere.

[43] Below, the Tribunal considers each of these conditions.

Parts

[44] The Tribunal observes that the term “part” is not defined in the *Customs Tariff* or in the Explanatory Notes. The Tribunal therefore relies on the ordinary meaning of the word: A “part” refers to “a manufactured object assembled with others to make a machine; a component”.⁴⁰ There is nothing on the record indicating that the parties objected to the goods being as described in this definition. Each good constitutes a component which, when combined with other elements added to the good by Lumisave after import (e.g. electrical components, LED chips, junction box, constant voltage drivers), constitutes a complete streetlight. Hence, the Tribunal is of the view that the goods in issue meet this criterion.

³⁹ 9291-9281 *Quebec Inc. DBA IMPEKK v. President of the Canada Border Services Agency* (22 August 2019), AP-2018-039 (CITT) [*IMPEKK*] at para. 33, citing *Alliance Mercantile Inc. v. President of the Canada Border Services Agency* (3 November 2017), AP-2016-038 (CITT) [*Alliance*] at para. 49.

⁴⁰ *Lexico Online Oxford Dictionary*, 2022, online: <<https://www.lexico.com/definition/part>>.

Identifiable

[45] As it is the case for the word “part”, the adjective “identifiable” (*reconnaissable* in French) is not defined in the *Customs Tariff* or the Explanatory Notes. It is derived from the verb “identify”, which is defined as “establish or indicate who or what (someone or something) is”.⁴¹ In French, “reconnaissable” is defined as “qui peut être aisément reconnu, discerné, distingué”.⁴²

[46] Paraphrasing elements from the explanatory notes to Chapter 94, the CBSA argued that “identifiable parts” are “identifiable by their shape and other specific features as parts designed solely or principally for an article of heading 94.05”.⁴³ The CBSA further argued that the text of Memorandum D-10-0-1 suggests that the condition for a good to qualify as an “identifiable part” under the Act applies only to a “*single* identifiable component” [emphasis added].⁴⁴

[47] Memorandum D-10-0-1 provides that:

“part” is defined as “an identifiable component of an article, machine, apparatus, equipment, appliance or specific good which is integral to the design and essential to the function of the product in which it is used.”⁴⁵

[48] The CBSA contended that the goods in issue are not a single identifiable component, but rather a “bundle” of identifiable components. Noting that the non-exhaustive list of “identifiable parts” provided in the explanatory notes to heading 94.05 includes lantern frames, reflectors, and lamp glasses,⁴⁶ and that these parts are components contained in both of Lumisave’s products, the CBSA concluded that the goods in issue are a “bundle” of “identifiable components” which precludes both models from being classified as “parts” because they are not a *single* “identifiable component”.⁴⁷

[49] The Tribunal is not convinced by the CBSA’s characterization based on such a rigid interpretation of the semantics of the text of Memorandum D-10-0-1.⁴⁸ The evidence does not demonstrate that parts under the explanatory notes to heading 94.05 would exclude “identifiable parts” composed of multiple elements. In fact, the explanatory notes to heading 94.05 include the following sentence after the illustrative list of “identifiable parts”: “Non-electrical parts of articles of this heading, *combined with electrical parts*, remain classified here” [emphasis added].⁴⁹ The inclusion of this sentence in the explanatory notes is an explicit indication that “identifiable parts” are not limited in scope to *single* components, but could include individual parts combined together.

[50] In the present appeal, the goods in issue are an assemblage of a reflector, a lens, a driver plate and, in the case of the FL390 model, clips. An examination of the physical exhibits and of the

⁴¹ *Ibid.*, online: <<https://www.lexico.com/definition/identify>>.

⁴² *Le Petit Robert de la langue française*, 2017 edition.

⁴³ Exhibit AP-2021-006-10 at para. 26; *Transcript of Public Hearing* at 28–29.

⁴⁴ Exhibit AP-2021-006-10 at para. 37.

⁴⁵ Cited in Exhibit AP-2021-006-010 at para. 37.

⁴⁶ Exhibit AP-2021-006-10 at 42.

⁴⁷ *Ibid.* at para. 37; *Transcript of Public Hearing* at 28–29.

⁴⁸ The Tribunal also notes that the CBSA itself recognizes that Memorandum D-10-0-1 “is not authoritative in and of itself” (see Exhibit AP-2021-006-10 at para. 36, citing *Black & Decker Canada Inc. v. Commissioner of the Canada Customs and Revenue Agency* (3 November 2004), AP-2002-116 (CITT) [*Black & Decker*]).

⁴⁹ Exhibit AP-2021-006-10 at 42.

pictures provided by the parties leads the Tribunal to consider that the goods in issue are clearly identifiable as housings for lighting components that are absent from the goods at the time of importation. Hence, the Tribunal considers that this criterion is met.

Not included more specifically elsewhere

[51] As both parties agree that the goods in issue are to be classified under heading 94.05, there is no reason to believe that this criterion is not met.

[52] In light of the above analysis, the Tribunal is of the view that a plain interpretation of the explanatory notes to heading 94.05 supports a classification of the goods in issue in this heading.

The Tribunal's general criteria for "parts"

[53] Considering that the *Customs Tariff* and Explanatory Notes do not offer a definition of the term "parts", but only a non-exhaustive list of examples, the CBSA submitted that the Tribunal should follow the same analytical approach as in *IMPEKK*, which synthesized the long-standing practice of the Tribunal. In that decision, the Tribunal noted that "each case must be determined on its own merits and that there is no universal test",⁵⁰ but that the following general criteria have previously been laid out by the Tribunal in determining whether a good is a part or not:

- (i) Whether the product is essential to the operation of other goods;
- (ii) Whether the product is a necessary and valid component of other goods;
- (iii) Whether the product is installed in the other goods in the course of manufacture; and
- (iv) Common trade usage and practice.⁵¹

[54] The Tribunal will review each of these criteria against the goods in issue.

Essential to the operation of other goods

[55] The goods in issue serve as housings for other components essential to the operation of the final good, i.e. the streetlight.⁵² A specific type of housing is necessary for internal components to be protected from varying climate conditions (i.e. rain, snow, wind, sun) and to prevent unauthorized tempering. The housing should also allow connection to the appropriate support to a structure (e.g. streetlight pole, wall, tunnel, bridge). In that regard, the Tribunal received no reason to consider that the goods in issue do not meet this criterion.

Necessary and valid component of other goods

[56] Similarly, the goods in issue seem to meet this criterion. The shape and size of the housings make it clear that it is a component or an assembling of components of other goods, i.e. streetlights.

⁵⁰ *IMPEKK*, citing *Atomic Ski Canada Inc. v. The Deputy Minister of National Revenue* (8 June 1998), AP-97-030 and AP-97-031 (CITT) [*Atomic Ski*] at 6.

⁵¹ Exhibit AP-2021-006-10 at para. 29, citing *IMPEKK* at para. 37; see also *York Barbell Company Limited v. The Deputy Minister of National Revenue for Customs and Excise* (19 August 1991), AP-90-161 (CITT), *Atomic Ski* at 6; *Alliance* at para. 56.

⁵² The issue of what is the final good is discussed in more details below at paras. 73–77.

Installed in the other goods in the course of manufacture

[57] The CBSA submitted that the goods “are the exact size and shape of a finished lighting fitting”⁵³ and constitute a frame which can contain other articles, and not the other way around. Accordingly, the CBSA was of the view that the goods in issue do not meet this criterion. The Tribunal disagrees. This criterion needs to be read in context. In its argument, the CBSA insisted on the terms “installed in” and seems to make it the key element of this criterion.⁵⁴ The Tribunal rather considers that the key element to consider is the notion of assembly of different components in a manufacturing process. The build sheets for the streetlight produced by Lumisave indicate that there are up to 36 steps for the FL390 series (52 steps in the case of the SL760 series) to be performed by Lumisave’s staff on the goods in issue before arriving at a customer-ready product.⁵⁵

[58] In this regard, the Tribunal considers the example of boot bottoms in *Alliance* to be especially relevant.⁵⁶ A boot bottom is not installed *in* another good (i.e. footwear), but rather serves as a structure to *receive* other components that are either affixed to or applied on the bottom. Similarly, in the current appeal, the housings receive other components (e.g. electrical components, LED chips, constant voltage drivers) as part of the manufacturing process performed by Lumisave after importation.

[59] Accordingly, the Tribunal considers that the goods in issue meet this criterion.

Common trade usage and practice

[60] According to the CBSA’s analysis of the descriptive documentation submitted by Lumisave (i.e. the technical specifications and build sheets for the goods in issue), the goods in issue are referred to as “fixtures” and not as “parts”.⁵⁷

[61] The Tribunal is not convinced by the CBSA’s arguments. The presence of the word “fixtures” in Lumisave’s documentation is not, in the Tribunal’s view, determinative of whether the goods qualify as “parts”. At least part of the documentation (the documents labelled as “build procedures”) is purely internal to the company.⁵⁸

[62] In light of the above, the Tribunal is of the view that the goods in issue meet the general criteria to be classified as “parts”.

Memorandum D10-0-1

[63] Lumisave submitted that the CBSA’s definition of the term “parts” contained in Memorandum D10-0-1 supports its claim that the goods in issue are, indeed, parts. The memorandum describes a “part” as “an identifiable component of an article, machine, apparatus, equipment,

⁵³ Exhibit AP-2021-006-010 at para. 31.

⁵⁴ See, for example, Exhibit AP-2021-006-10 at paras. 3, 29–31, 50.

⁵⁵ Exhibit AP-2021-006-03.D at 12–23; 26–41.

⁵⁶ *Alliance* at para. 57.

⁵⁷ Exhibit AP-2021-006-10 at para. 32.

⁵⁸ Exhibit AP-2021-006-03.D at 12–23; 26–41; *Transcript of Public Hearing* at 15.

appliance or specific good which is integral to the design and essential to the function of the product in which it is used.”⁵⁹

[64] Memorandum D10-0-1 includes five criteria to be considered in classifying goods as “parts”. The goods:

- (a) form a complete unit with the good
- (b) have no alternative function
- (c) are marketed and shipped as a unit
- (d) are necessary for the safe and prudent use of the unit and/or
- (e) are committed to the use of the unit.⁶⁰

[65] The CBSA contended that these criteria are not binding and pointed to the fact that Memorandum D10-0-1 also mentions that Tribunal decisions provide useful guidance in classifying parts.⁶¹ The CBSA further argued that the memorandum “is not authoritative in and of itself”, citing the Tribunal in *Black & Decker*, where it was found that the criteria can be *useful* in determining whether a good is a “part”.⁶²

[66] The Tribunal agrees with the CBSA that the Memorandum and, hence, these criteria, are not binding. The Tribunal must independently interpret the law according to the relevant legislation and regulations.⁶³ Furthermore, the Tribunal has stated that administrative government policies and interpretations, such as D Memoranda, can be given some weight but are not determinative in tariff classification.⁶⁴ The preceding analysis of the text of the *Customs Tariff*, the explanatory notes to heading 94.05, and the Tribunal’s jurisprudence is sufficient to reach a conclusion on the appropriate classification of the goods in issue. Hence, the Tribunal does not need to further consider this aspect.

Conclusion

[67] The Tribunal therefore considers that the analysis based on the application of Rule 1 of the General Rules is determinative and sufficient to reach the conclusion that the goods in issue are “parts”.

[68] As discussed above, *Igloo Vikski* specifies that in cases where a heading specifically describes an unfinished good as “parts” and where a good falls within that heading, there is no need to apply Rule 2 of the General Rules.

[69] However, given how much of the discussion revolved around the notions of incomplete or unfinished goods and the fact that the CBSA invoked Rule 2(a) in support of its position, the

⁵⁹ Exhibit AP-2021-006-03.D at para. 26, quoting [Memorandum D10-0-1](#).

⁶⁰ *Ibid.* at para. 27, quoting [Memorandum D10-0-1](#).

⁶¹ Exhibit AP-2021-006-10 at para. 38.

⁶² *Ibid.* at para. 36, citing *Black & Decker* at para. 32.

⁶³ See, for example, *Tenneco Automotive Operating Company Inc. v. President of the Canada Border Services Agency* (12 March 2020), AP-2019-019 (CITT) at para. 23; *R.S. Abrams v. President of the Canada Border Services Agency* (21 December 2016), AP-2016-004 (CITT) at para. 25.

⁶⁴ *Synnex Canada v. President of the Canada Border Services Agency* (11 August 2014), AP-2014-034 (CITT) at para. 55.

Tribunal deems it a useful exercise to examine the potential classification of the goods at issue under subheading 9405.40 through the lens of Rule 2(a).

The goods in issue are not classifiable in subheading 9405.40

[70] Where the application of Rule 1 of the General Rules does not preclude the application of Rule 2 of the General Rules, Rule 2 is applied in conjunction with Rule 1 to determine the *prima facie* classification of such goods.⁶⁵

[71] Rule 2(a) reads as follows:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

[72] Item I of the explanatory notes to Rule 2(a) reads as follows:

(I) The first part of Rule 2 (a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, *provided* that, as presented, it has the essential character of the complete or finished article.

[Emphasis added]

The “finished” or “completed” good

[73] Lumisave submitted that the goods in issue, the SL760 and FL390, are both “parts” of final products. Specifically, that the SL760 is the outer housing for a “streetlight” and that the FL390 is “an outer housing for [an] exterior light fitting”.⁶⁶ It further specified that the SL760 is a head for a “typical streetlight”.⁶⁷

[74] Lumisave further submitted the *Merriam-Webster* dictionary’s definition of the term “streetlight”, reproduced below:

Streetlight: a light usually mounted on a pole and constituting one of a series spaced at intervals along a public street or highway.⁶⁸

[75] For its part, the CBSA defined the goods as “incomplete Lumisave lighting fittings *for* streetlights” [emphasis added].⁶⁹ However, in its decision of April 7, 2021, the CBSA stated that “The SL760 and the FL390 series LED streetlights at issue *are* street lamps which are specifically named in the Explanatory Notes to 94.05” [emphasis added].⁷⁰

⁶⁵ *Igloo Vikski* at para. 22.

⁶⁶ Exhibit AP-2021-006-03.D at 3.

⁶⁷ *Ibid.* at para. 6.

⁶⁸ *Ibid.* at para. 36.

⁶⁹ Exhibit AP-2021-006-10, at para. 6.

⁷⁰ Exhibit AP-2021-006-03.D. at 87.

[76] The Tribunal notes that, throughout the hearing, both parties consistently referred to the final goods as “streetlights”.⁷¹ The Tribunal further notes that the CBSA, in its decision, also mentioned that the goods in issue were “marketed and sold as streetlights”.⁷²

[77] In light of the above, the Tribunal considers that the final goods are “streetlights” ready to be fixed to supports (e.g. a pole, a wall).

Essential character

[78] In *Alliance*, the Tribunal noted that “given the specific nature of each article that is the subject matter of a classification appeal, it is virtually impossible to establish a universally applicable test” in assessing the essential character of a good.⁷³ The Tribunal has, however, in the past considered the following:

. . . whether the goods look like the complete or finished article. It has also considered whether the goods possessed the essential features of the complete or finished article. In one instance, the manner in which the article was marketed was a factor taken into consideration. In another, the Tribunal also considered the question of whether the value that is added to the goods in issue after importation is of such a considerable proportion as to render absurd the claim that those goods as imported have the essential character of the finished or complete goods.⁷⁴

[Footnotes omitted]

[79] The CBSA submitted that the Tribunal has found in past cases that incomplete goods can lack certain components, such as rendering them inoperative, while still being able to carry the essential character of the finished good.⁷⁵ As “[t]he goods are the exact size, shape of, and are easily recognizable as complete lighting fittings”, the CBSA argued that they should be considered as such following the application of Rule 2(a).⁷⁶

[80] For its part, Lumisave recalled the Tribunal’s use of the *Canadian Oxford Dictionary*’s definitions of the terms “essential” and “character” in *Renelle*, as reproduced below:

Essential: of or constituting the essence of a person or thing.

Character: collective qualities or characteristics . . . that distinguish a person or thing.⁷⁷

[81] Based on the above definitions, Lumisave argued that a streetlight should produce light, or at the very least, bear the component that allows the good to produce light, in order for its essential

⁷¹ *Transcript of Public Hearing* at 34–35, 43, 47, 50–51, 64, 69–73.

⁷² Exhibit AP-2021-006-01.D at 8. The Tribunal, however, notes that it was a contended issue as on what basis the CBSA made this determination (see *Transcript of Public Hearing* at 69–73).

⁷³ *Alliance* at para. 62.

⁷⁴ *Ibid.* at para. 65.

⁷⁵ *Ibid.* at para. 48, citing *Outdoor Gear Canada v. President of Canada Border Services Agency* (21 November 2011), AP-2010-060 (CITT) [*Outdoor Gear*] at paras. 41, 44; *Renelle Furniture Inc. v. President of the Canada Border Services Agency* (23 March 2007), AP-2005-028 (CITT) [*Renelle*] at para. 20; *Alliance* at para. 64.

⁷⁶ Exhibit AP-2021-006-10 at paras. 48–49.

⁷⁷ Exhibit AP-2021-006-03.D at para. 35.

character to exist. As such, it argued that the goods in issue are but “empty metal shell[s]”.⁷⁸ Lumisave further submitted that the goods in issue are “the frame of the streetlight to which all the electrical components will be attached”⁷⁹ and that no “working components [are contained] inside the housing”.⁸⁰ In its state at importation, the goods in issue cannot produce light.⁸¹

[82] After careful consideration of the parties’ arguments and the Tribunal’s case law, the Tribunal is of the view that the application of the concept of “essential character”, as envisioned in Rule 2(a), of a streetlight or a light structure is provided by its ability to produce light.

[83] The goods in issue are an assembly of a number of key components necessary for a streetlight to operate. As the goods provide the housing for all the components of a streetlight, they look, by definition, “like the complete or finished article”.⁸² However, interpretation of the Rule 2(a) cannot simply rely on superficial appearance. *Alliance* refers to the fact that the goods should “possess the essential *features* of the complete or finished article” [emphasis added].⁸³ This is clearly not the case for the goods in issue.

[84] Missing from the FL390 series housing are the LED chips, the driver, the associated wires, a strain relief, and a cable.⁸⁴ As noted above, several key manufacturing steps are required before the goods can become customer-ready. These necessary steps would not commonly be performed by the end user of the finished good. In that regard, the case at hand differs from several previous cases considered by the Tribunal, as briefly analyzed below.

[85] In *Renelle*, the Tribunal found that unassembled metal futon frames for futon sofa beds and futon bunk beds, imported without a futon mattress, were classified as seats, convertible into beds, and other metal furniture, rather than parts for seats and other furniture, because Rule 2(a) “manifestly includes an article that may lack some components and that is therefore not fully operational.”⁸⁵ The Tribunal noted that:

The essential character of the goods in issue is therefore that they convert from a seat to a bed or from a seat with a stacked bed to a bunk bed. *In both cases, the element that is missing and that would make the goods in issue “complete” goods is a futon mattress and, perhaps, but to a lesser degree, a futon mattress cover.* In the Tribunal’s opinion, the futon mattress is only necessary to render the sofa bed or the bunk bed fully functional. A futon mattress cover merely gives protection or an aesthetic component to the futon. *The absence of a futon mattress, or of a futon mattress cover, at the time of importation, does not change the essential character of the frames as imported.*⁸⁶

[Emphasis added]

⁷⁸ *Ibid.* at para. 37.

⁷⁹ *Ibid.* at para. 31.

⁸⁰ *Ibid.* at para. 32.

⁸¹ *Ibid.*

⁸² *Alliance* at para. 65.

⁸³ *Ibid.*

⁸⁴ Exhibit AP-2021-006-03.D at 12–23.

⁸⁵ *Renelle* at para. 19.

⁸⁶ *Ibid.* at para. 21.

[86] In *Outdoor Gear*, where the goods in issue were assembled bicycle rims, not fitted with tires, the Tribunal found that the goods in issue should be classified as bicycle wheels rather than parts and accessories of vehicles.⁸⁷ The Tribunal also indicated that the goods in issue “have the essential character of a bicycle wheel with tires and tubes, in the sense that they are recognizable or identifiable as bicycle wheels with tires and tubes.”⁸⁸ The only element missing from the bicycle wheel in order for it to be fully functional was the tire, which could easily be added by the end user.

[87] *Ulextra* concerned three models of ceiling-recessed lighting fittings (or pot lights) containing a junction box, a lamp socket, mounting brackets and electrical wiring in a metal box.⁸⁹ The Tribunal found that:

... even if the goods were to be considered incomplete articles, that is, incomplete lighting fittings or fixtures as presented at importation, they would retain the essential character of complete lighting fittings of heading No. 94.05 and would remain classified as such by application of Rule 2 (a) of the *General Rules*. Indeed, the purpose of the goods in issue is to produce light for room illumination, and, *at the time of importation, the goods in issue comprise the two essential components that are necessary for them to perform this function, namely, the lamp-holder/socket and the junction box.*⁹⁰

[Emphasis added]

[88] The goods in issue differ from the goods considered in these three appeals given that the missing elements to form a complete good (a futon sofa bed in *Renelle*, a bicycle wheel in *Outdoor Gear*, and a ceiling-mounted recessed lighting fitting in *Ulextra*) could easily be procured or added by the end user. This is not the case with the goods in issue.

[89] Indeed, the aluminum housing, as imported, is useless to the end user, who would have to add many features in order to use the goods as they are destined to be used. The SL760 model has a junction box that is only added after importation, whereas the FL390 model does not have a junction box. Rather, the FL390 model has nine feet of wiring which allows the good to connect to an exterior junction box contained in a “pole or structure”.⁹¹ Both models of the goods in issue come without a driver (i.e. a power source) or LED chips. Therefore, it would not only be difficult, if not impossible, for the end user to source and install the models but also means that as such, the goods in issue are lacking the components necessary to make light and do not fulfill their essential character.

[90] The CBSA is of the view that the explanatory notes indicate that a good with the “basic body shape of a finished good is sufficient to confer essential character notwithstanding the absence of functional components.” In support of its position, it refers to the explanatory notes to chapters 86, 87 and 90, which provide examples of incomplete goods with the essential character of the complete goods:

⁸⁷ *Outdoor Gear* at para. 39.

⁸⁸ *Ibid.* at para. 45.

⁸⁹ *Ulextra Inc. v. President of the Canada Border Services Agency* (15 June 2011), AP-2010-024 (CITT) [*Ulextra*] at para. 9.

⁹⁰ Exhibit AP-2021-006-03.D at para. 39, citing *Ulextra* at para. 86.

⁹¹ *Ibid.* at para. 40.

- Locomotives or motorized railway or tramway coaches not fitted with a power unit;
- Cars missing engines, wheels or interiors; and
- Cameras without optical components.⁹²

[91] According to the CBSA, these examples are analogous to lighting fittings which cannot produce light, and which therefore do not have to be functional in order to have the essential character of complete light fittings.⁹³

[92] In the present case, the Tribunal is of the view that more than the mere “basic body shape of a finished good”⁹⁴ is required to confer essential character in absence of functional components. While the Tribunal agrees that the explanatory notes to chapters 86, 87 and 90 provide such examples, it is not convinced that this concept could be extrapolated to the heading under consideration in the present appeal.

[93] Accordingly, the Tribunal does not consider that the goods in issue, such as they are at the moment of importation, have the “essential character of the complete or finished good”, and therefore cannot be classified under subheading 9405.40 through the application of Rule 2(a).

The goods in issue cannot be considered “blanks” as described in item (II) of the explanatory notes to Rule 2(a)

[94] At the hearing, the Tribunal raised the possibility with the parties of whether the goods in issue could be considered “blanks”. Rule 2(a) of the General Rules defines the term “blank” as follows:

an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part (e.g., bottle preforms of plastics being intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape).⁹⁵

[95] Both parties expressed the view that the concept of blanks would not apply to the present case.⁹⁶ After further consideration of the matter, the Tribunal is satisfied, as well, that the goods in issue are not blanks.

Conclusion

[96] As a result of this analysis, the Tribunal is of the view that the goods in issue do not meet the criteria set out in explanatory notes to Rule 2(a) of the General Rules to be considered an incomplete or unfinished goods.

⁹² Exhibit AP-2021-006-10 at para. 46.

⁹³ *Ibid.* at para. 47.

⁹⁴ *Ibid.* at para. 46.

⁹⁵ Explanatory note (II) to Rule 2(a) of the General Rules.

⁹⁶ *Transcript of Public Hearing* at 55–56.

CLASSIFICATION AT THE TARIFF ITEM LEVEL

[97] For the reasons above, the Tribunal finds that the goods in issue are classified as “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; parts; other” under tariff item No. 9405.99.00.

DECISION

[98] The appeal is allowed.

Frédéric Seppey

Frédéric Seppey
Presiding Member