



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal AP-2022-009

Stanley Black & Decker Canada
Corporation

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, March 1, 2023*

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DECISION 10

IN THE MATTER OF an appeal heard on November 29, 2022, 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 March 18, 2022, made pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

STANLEY BLACK & DECKER CANADA CORPORATION

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Eric Wildhaber

Eric Wildhaber

Presiding Member

Place of Hearing: Via videoconference
Date of Hearing: November 29, 2022
Tribunal Panel: Eric Wildhaber, Presiding Member
Tribunal Secretariat Staff: Isaac Turner, Counsel
Sarah Sharp-Smith, Registrar Officer
Morgan Oda, Registrar Officer

PARTICIPANTS:**Appellant**

Stanley Black & Decker Canada Corporation

Counsel/RepresentativesMichael Sherbo
Andrew Simkins**Respondent**

President of the Canada Border Services Agency

Counsel/Representative

Narin Sdieq

WITNESS:Steve Whidden
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STATEMENT OF REASONS

OVERVIEW

[1] This is an appeal filed by Stanley Black & Decker Canada Corporation (Stanley Black & Decker) with the Canadian International Trade Tribunal on May 26, 2022, pursuant to subsection 67(1) of the *Customs Act* (Act)¹ from a decision made on March 18, 2022, by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4), with respect to a request for further redetermination of tariff classification.

[2] The issue under appeal is whether the goods in issue are properly classified under tariff item No. 8513.10.90 as “other lamps”, as determined by the CBSA, or should be classified under tariff item No. 8513.10.10 as “flashlights”, as claimed by Stanley Black & Decker.

[3] As explained below, the Tribunal finds that the goods in issue are “flashlights” of tariff item No. 8513.10.10.

GOODS IN ISSUE

[4] The goods in issue are eight models of portable electric lamps. The goods are battery powered and equipped with light-emitting diode bulbs (LEDs). Each of the goods features a handle and a pivoting head.

[5] The specific models in issue are as follows: Porter-Cable 20V Max Cordless LED Flashlight (PCC700B); Craftsman V20 LED Work Light (CMCL020B); Craftsman V20 LED Work Light (CMCL050B); DeWalt 20V MAX LED Work Light (DCL040); DeWalt 20V MAX Jobsite LED Spotlight (DCL043); DeWalt 20V MAX LED Work Light (DCL044); DeWalt 20V MAX LED Area Light (DCL050); and DeWalt 12V Max LED Work Light (DCL510).²

PROCEDURAL HISTORY

[6] Between May 2019 and October 2021, Stanley Black & Decker imported the goods in issue in numerous transactions, accounting for them under tariff item No. 8513.10.10 as “flashlights”.

[7] On December 4, 2020, the CBSA informed Stanley Black & Decker that it had been selected for a trade compliance verification of the tariff classification of goods accounted for as “flashlights and miners’ safety lamps” during the period from January 1, 2019, to December 31, 2019, under the authority of sections 42 and 42.01 of the Act.³

[8] On June 22, 2021, the CBSA issued the interim report of its trade compliance verification. The CBSA indicated that certain goods were incorrectly classified under tariff item No. 8513.10.10 as “flashlights” and were properly classified under tariff item No. 8513.10.90 as “other lamps”.⁴

¹ R.S.C., 1985, c. 1 (2nd Supp.).

² Exhibit AP-2022-009-13 at 3, 31–38. See also Exhibit AP-2022-009-03.A at 1–8.

³ Exhibit AP-2022-009-05 at 46–48.

⁴ *Ibid.* at 99–104.

[9] On August 4, 2021, after receiving comments from Stanley Black & Decker on the interim report on July 22, 2022, the CBSA issued the final report of its trade compliance verification. The CBSA maintained the classification of the goods under tariff item No. 8513.10.90 as “other lamps”.⁵

[10] In accordance with the CBSA’s final report and subsection 32.2(2) of the Act, Stanley Black & Decker submitted corrections to its declarations of tariff classification for the goods in issue, including those not covered by the CBSA’s trade compliance verification.⁶ For the purposes of the Act, such corrections are treated as if they were redeterminations under paragraph 59(1)(a).⁷

[11] On September 20, 2021, and November 23, 2021, Stanley Black & Decker requested a further redetermination pursuant to subsection 60(1) of the Act. Stanley Black & Decker claimed that the goods should be classified under tariff item No. 8513.10.10 as “flashlights”.⁸

[12] On December 2, 2021, the CBSA issued a preliminary decision, finding that the goods in issue are classified under tariff item No. 8513.10.90 as “other lamps”.⁹

[13] On March 18, 2022, the CBSA issued a final decision pursuant to subsection 60(4) of the Act, confirming that the goods in issue are classified under tariff item No. 8513.10.90 as “other lamps”.¹⁰

[14] Stanley Black & Decker filed the present appeal on May 26, 2022.¹¹

[15] The Tribunal held a videoconference hearing on November 29, 2022.

[16] Steven Whidden, Product Commercialization Manager for Stanley Black & Decker, testified at the hearing. The CBSA did not call any witnesses.

LEGAL FRAMEWORK

[17] The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*,¹² which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).¹³ The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized under a number of headings, subheadings and tariff items.

⁵ Exhibit AP-2022-009-03 at 44–50; Exhibit AP-2022-009-05 at 50–56.

⁶ Subsection 32.2(2) of the Act provides that an importer who has “reason to believe” that its declaration is incorrect must make a correction to it and pay any duties and interest owing as a result of the correction. In this case, the CBSA’s final report provided Stanley Black & Decker with a “reason to believe” that its declarations of tariff classification for the goods in issue were incorrect.

⁷ See subsection 32.2(3) of the Act.

⁸ Exhibit AP-2022-009-05 at 58–67. The date of November 23, 2021, is referenced in the CBSA’s notice of decision of March 18, 2022. There are no documents on the record relating to this date.

⁹ Exhibit AP-2022-009-05 at 95–97.

¹⁰ Exhibit AP-2022-009-03 at 25–43; Exhibit AP-2022-009-05 at 69–87.

¹¹ Exhibit AP-2022-009-01.

¹² S.C. 1997, c. 36.

¹³ Canada is a signatory to the International Convention on the Harmonized Commodity Description and Coding System, which governs the Harmonized System.

[18] Subsection 10(1) of the *Customs Tariff* provides that the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*¹⁴ (General Rules) and the *Canadian Rules*¹⁵ set out in the schedule.

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

[20] Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System* (Classification Opinions)¹⁶ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System* (Explanatory Notes),¹⁷ published by the WCO. While the Classification Opinions and the Explanatory Notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.¹⁸

[21] The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the General Rules as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. It is only where Rule 1 does not conclusively determine the classification of the goods that the other general rules become relevant to the classification process.¹⁹

[22] Once the Tribunal has applied 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.²⁰ The final step is to determine the proper tariff item.²¹

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

Section XVI: Machinery and Mechanical Appliances; Electrical Equipment; Parts Thereof; Sound Recorders and Reproducers, Television Image and

Section XVI : Machines et appareils, matériel électrique et leurs parties; Appareils d'enregistrement ou de reproduction du son, appareils

¹⁴ S.C. 1997, c. 36, schedule.

¹⁵ S.C. 1997, c. 36, schedule.

¹⁶ World Customs Organization, 4th ed., Brussels, 2017.

¹⁷ World Customs Organization, 6th ed., Brussels, 2017.

¹⁸ See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17; *Canada (Attorney General) v. Best Buy Canada Ltd.*, 2019 FCA 20 (CanLII) at para. 4.

¹⁹ *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) at para. 21. Rules 1 through 5 of the General Rules apply to classification at the heading level.

²⁰ 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."

²¹ 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.

**Sound Recorders and Reproducers, and
Parts and Accessories of Such Articles**

Chapter 85

**ELECTRICAL MACHINERY AND
EQUIPMENT AND PARTS THEREOF;
SOUND RECORDERS AND
REPRODUCERS, TELEVISION
IMAGE AND SOUND RECORDERS
AND REPRODUCERS, AND PARTS
AND ACCESSORIES OF SUCH
ARTICLES**

**85.13 Portable electric lamps designed
to function by their own source of energy
(for example, dry batteries,
accumulators, magnetos), other than
lighting equipment of heading 85.12.**

8513.10 -Lamps

8513.10.10 - - -Flashlights;
Miners' safety lamps

8513.10.90 - - -Other

**d'enregistrement ou de reproduction des
images et du son en télévision, et parties
et accessoires de ces appareils**

Chapitre 85

**MACHINES, APPAREILS ET
MATÉRIELS ÉLECTRIQUES ET
LEURS PARTIES; APPAREILS
D'ENREGISTREMENT OU DE
REPRODUCTION DU SON,
APPAREILS D'ENREGISTREMENT
OU DE REPRODUCTION DES
IMAGES ET DU SON EN
TÉLÉVISION, ET PARTIES ET
ACCESSOIRES DE CES APPAREILS**

**85.13 Lampes électriques portatives,
destinées à fonctionner au moyen de leur
propre source d'énergie (à piles, à
accumulateurs, électromagnétiques, par
exemple), autres que les appareils
d'éclairage du n° 85.12.**

8513.10 -Lampes

8513.10.10 - - -Lampes de poche;
Lampes de sûreté pour mineurs

8513.10.90 - - -Autres

[24] There are no relevant legal notes or classification opinions.

[25] The explanatory note to heading 85.13 provides as follows:²²

This heading covers portable electric lamps designed to function by means of a self-contained source of electricity (e.g., dry cell, accumulator or magneto).

They comprise two elements (i.e., the lamp proper and the source of electricity) which are usually mounted and directly connected together, often in a single case. In some types, however, these elements are separate and are connected by wires.

The term "portable lamps" refers **only** to those lamps (i.e., both the lamp and its electricity supply) which are designed for use when carried in the hand or on the person, or are designed to be attached to a portable article or object. They usually have a handle or a fastening device and may be recognised by their particular shapes and their light weight. The

²² Exhibit AP-2022-009-03 at 52–53; Exhibit AP-2022-009-05 at 92–93.

term therefore **excludes** lighting equipment for motor vehicles or cycles (**heading 85.12**), and lamps which are connected to a fixed installation (**heading 94.05**).

The lamps of this heading include:

- (1) **Pocket lamps**. Some (“dynamo lamps”) are operated by a magneto, hand driven by means of a spring-loaded lever.
- (2) **Other hand lamps** (including those with an adjustable beam). Hand lamps are often fitted with a simple device for hanging them temporarily on a wall, etc., while others are designed so that they can be placed on the ground.
- (3) **Lamps, torches or flashlights** in the shape of pens, often fitted with a clip for securing the lamp to the user’s pocket when not in use.
- (4) **Morse signalling lamps**.
- (5) **Miners’ safety lamps**; the lighting device is usually designed for fitting to the miners’ helmet, while the source of electricity (accumulator) is usually hooked on to the belt.
- (6) **Examination lamps for general use**, fixed to a headband (which usually consists of a curved strip of metal). Such lamps are classified here **only** if they have their own source of current (dry battery in user’s pocket, for example). The lamps of this heading are used by doctors, watchmakers, jewellers, etc. Specialised medical inspection lamps (e.g., for throat or ear inspection) are **excluded (heading 90.18)**.
- (7) **Fancy torches** in the shape of pistols, lipsticks, etc. Composite articles composed of a lamp or torch and a pen, screwdriver, key ring, etc., remain classified here **only** if the principal function of the whole is the provision of light.
- (8) **Reading lamps** fitted with a clip or the like for attachment to a book or magazine.

[Bold in original]

POSITIONS OF THE PARTIES

[26] The parties agree that the goods in issue are properly classified at the heading level in heading 85.13 as “portable electric lamps” and at the subheading level in subheading 8513.10 as “lamps”.²³ The issue is at the tariff item level.

[27] The parties also agree that, as tariff item No. 8513.10.90 is a residual tariff item, it must first be determined whether the goods are classified under tariff item No. 8513.10.10 as “flashlights”.

Stanley Black & Decker

[28] Stanley Black & Decker submits that the goods in issue should be classified under tariff item No. 8513.10.10 as “flashlights” because flashlights are small portable electric lamps, and the goods in issue meet that definition. In support of this position, Stanley Black & Decker refers to two

²³ The only other subheading in heading 85.13 is “parts”.

dictionary definitions of flashlights²⁴ and the definitions of flashlights cited in the Tribunal's decision in *Supertek Canada Inc. v. the Commissioner of the Canada Customs and Revenue Agency*.²⁵

[29] Stanley Black & Decker submits that the goods in issue are designed, marketed and sold as “flashlights” even though other terms are interchangeably used in its marketing.

[30] Stanley Black & Decker further submits that the goods satisfy the criteria for “flashlights” previously set out by the CBSA in its trade compliance verification report.²⁶ Stanley Black & Decker submits that the goods are (1) designed to be used in the hand and (2) provide a single directional beam of light to a small area.

[31] Finally, Stanley Black & Decker submits that the CBSA has provided no basis for additional criteria²⁷ that the CBSA is now asking the Tribunal to adopt for a good to be classified as a flashlight.

CBSA

[32] The CBSA submits that the goods in issue should be classified under tariff item No. 8513.10.90 as “other lamps” because the goods are work lights.

[33] The CBSA submits that the manufacturers of the goods in issue make the explicit distinction between work lights and flashlights on their websites. The CBSA further submits that the goods are typically available only at hardware stores and that the batteries used in the goods, which are more cost-prohibitive than those used in “common flashlights”,²⁸ are the same as those used for power tools and generally acquirable only at stores and websites that sell such power tools.

[34] The CBSA submits that the characteristics of the goods demonstrate that they have a dual purpose. The CBSA argues that, although the goods can function as a flashlight to guide in the dark, their intended purpose is that of a work light. They are designed to allow users to place them on the ground or affix them somewhere while working. The CBSA submits that, in *Globe Electric Company Inc. v. President of the Canada Border Services Agency*, the Tribunal recognized that flashlights normally have a specific design and characteristics.²⁹ The CBSA argues that the specific characteristics of the goods distinguish them from flashlights that are to be used while in the hand.

²⁴ Stanley Black & Decker submitted in its brief that the term “flashlight” is defined in the *Merriam-Webster Dictionary* as “a small battery-operated portable electric light” and in the *Cambridge Dictionary* as “a small electric light you can carry in your hand”. See Exhibit AP-2022-009-03 at 6.

²⁵ (21 May 2003), AP-2001-095 (CIIT) [*Supertek Canada*] at note 9: “[A] small battery-operated portable electric lamp”, *Webster’s New Collegiate Dictionary*, s.v. ‘flashlight’. ‘A small, portable lamp usually powered by batteries’, *The American Heritage Dictionary of the English Language*, 1996, s.v. ‘flashlight’. ‘A small, portable device that emits a beam of light, consisting typically of a cylinder housing a tiny bulb powered by dry batteries’, *Standard College Dictionary*, 1978, s.v. ‘flashlight’. The French term ‘*lampe de poche*’ is defined as ‘*boîtier plat ou cylindrique équipé d’une pile et d’une ampoule*’ in the *Dictionnaire des noms communs en couleurs*, s.v. ‘*lampe*’.”

²⁶ See Exhibit AP-2022-009-03 at 46; Exhibit AP-2022-009-05 at 52. In its written submissions, Stanley Black & Decker also took the position that these criteria are arbitrary.

²⁷ See *Transcript of Public Hearing* at 95–96.

²⁸ Exhibit AP-2022-009-05 at 19.

²⁹ *Globe Electric Company Inc. v. President of the Canada Border Services Agency* (16 April 2010), AP-2008-022 (CIIT) [*Globe Electric Company Inc.*] at para. 26.

[35] Similarly, the CBSA submits that the goods are more than flashlights. The CBSA submits that the goods are built of robust materials and are under warranty by the manufacturer for three years in all cases, which demonstrates a commitment to make a product that meets work site needs and standards which goes beyond that of everyday life use. The CBSA also submits that the goods themselves are sold without batteries and are often described as “tool only”.³⁰

[36] The CBSA submits that the explanatory notes to heading 85.13 differentiate “Other hand lamps” from “flashlights”. The CBSA submits that the description of “Other hand lamps” mirrors the characteristics that are present in the goods in issue. The CBSA argues that the use of the term “flashlights” in tariff item No. 8513.10.10 is not an oversight of Parliament. The CBSA further argues that hand lamps that are designed to be hung or placed on the ground with an adjustable beam are distinct and cannot be classified as “flashlights”.

[37] In addition, the CBSA made several submissions in reply to those made by Stanley Black & Decker. Of note, the CBSA submits that Stanley Black & Decker’s approach to the classification of the goods in issue is overly broad. The CBSA argues that the definition of “flashlight” does not consider the nature of the goods, which requires a fact-driven exercise into the design, marketing and pricing of the goods. The CBSA argues that there is no need to rely on a common dictionary definition given that the explanatory notes to heading 85.13 provide for a similar broad definition when defining “portable electric lamps”. The CBSA argues that, should Stanley Black & Decker’s position be accepted, all portable lamps captured in heading 85.13 would either be classified as “flashlights” or “miner’s safety lamps” and that it is inconceivable that this was the intent of Parliament.

[38] The CBSA also submits that it is not maintaining its previous position that a “flashlight” must satisfy the two criteria of (1) being designed to be used in the hand while in use and (2) providing a single directional beam of light, to a small area. The CBSA argues that, although these criteria were developed by it and can assist in identifying certain characteristics specific to flashlights, the position is overly broad and all encompassing.

ANALYSIS

[39] The Tribunal finds that the goods in issue are very clearly flashlights within the ordinary meaning of that word and are therefore classified as such under tariff item No. 8513.10.10.

[40] Steve Whidden’s testimony was straightforward and frank, and the evidence that he provided supports the Tribunal’s conclusion. Importantly, the CBSA provided little or no evidence to support its arguments that the Tribunal ought to view things differently. In fact, as mentioned above, the CBSA did not have a witness, and the only evidence that it provided was from websites showing the goods being marketed as “workspace lighting”,³¹ the batteries used in the goods being the same as those used in power tools and generally being sold in the same places as power tools,³² the goods

³⁰ Exhibit AP-2022-009-05 at 21.

³¹ *Ibid.* at 17–18.

³² *Ibid.* at 19.

having a three-year warranty,³³ the goods being sold without batteries,³⁴ and the price of the batteries that power the goods.³⁵

[41] Steve Whidden testified that Stanley Black & Decker designs products for specific applications across a common “platform” to reduce the complexity and number of components needed for customers. A “platform” is an ensemble of devices of a same manufacturer that are designed for use with a given battery pack. For the goods in issue, this means designing them to use the same rechargeable battery pack that is used with the drills, saws, impact drivers or other devices of the same line of tools. The battery packs slide or snap into the base of each device.³⁶

[42] Steve Whidden indicated that six of the eight lights in issue have an ergonomic designed pistol grip and trigger.³⁷ Two of the lights in issue do not have this grip feature but are nevertheless designed for hand use; they use the battery as part of the handle.³⁸ Other features include their compact light weight, ease of use and storage. All the goods in issue have a pivoting directional head beam.

[43] According to Steve Whidden, all the goods in issue are known in the trade and commercialized as flashlights even though each of them is of a slightly different size or has different features, battery voltage, lumen levels and brightness settings.³⁹ He testified that all the goods in issue have relatively long runtimes and are designed with the professional user in mind but are suitable for a mass consumer audience comprised of “do-it-yourselfers” or “DIYers”.⁴⁰

[44] All the goods in issue can be used in the hand. They can also be used handsfree by placing them on the ground or a flat surface, supported by the battery pack or a kickstand. In some instances, the goods in issue can be hooked on to a carabiner or clipped for placing onto a work belt or pocket or secured to an appropriate surface for those that feature a magnet.⁴¹ In the Tribunal’s view, the fact that the goods in issue can also be used in a handsfree mode (be it by an integrated design that allows them to be placed on the floor or secured by other means via a hook or a magnet) does not transform them into something other than a “flashlight”.

[45] The evidence before the Tribunal is that the goods in issue are small, battery-powered, handheld lamps that emit a beam of light. In the Tribunal’s view, and very simply put, the goods in issue look and work like flashlights. As noted above, in *Supertek Canada*, the Tribunal referred to various dictionary definitions of what a “flashlight” is.⁴² Those definitions all perfectly describe the goods in issue.

³³ *Ibid.* at 21.

³⁴ *Ibid.*

³⁵ *Ibid.* at 24.

³⁶ *Transcript of Public Hearing* at 9–11.

³⁷ Models PCC700B, DCL040, CMCL020B, DCL043, DCL050 and CMCL050B. *Transcript of Public Hearing* at 13–20, 23–25. See also: Exhibit AP-2022-009-13 at 37, 33, 31, 34, 35, 32; Exhibit AP-2022-009-03A at 8, 3, 2, 4, 6, 1.

³⁸ Models DCL044 and DCL510. *Transcript of Public Hearing* at 20–23. See also: Exhibit AP-2022-009-13 at 38, 36; Exhibit AP-2022-009-03A at 5, 7.

³⁹ *Transcript of Public Hearing* at 12–13.

⁴⁰ *Transcript of Public Hearing* at 40, 43–44.

⁴¹ *Transcript of Public Hearing* at 43, 54–55.

⁴² *Supertek Canada* at note 9.

[46] The CBSA asked the Tribunal to draw a distinction based on price but provided no evidence or basis in law for why such a distinction should be made. To be sure, they are seemingly relatively sophisticated and arguably higher-end flashlights than others, both in features and price, but they are flashlights, nonetheless. Indeed, whether the flashlights themselves or the batteries used to power them are relatively more expensive than other models available on the market is inconsequential. The *Customs Tariff* does not draw a distinction between higher- or lower-priced flashlights. As such, the Tribunal was not persuaded by the CBSA's position.

[47] The CBSA also asked the Tribunal not to classify the goods in issue as flashlights because they are sometimes referred to as "task lights" or "work lights".

[48] According to Steve Whidden, the terms "flashlight", "task light" and "work light" are all synonymous and interchangeably used in the marketplace to designate the goods in issue.⁴³ He testified that Stanley Black & Decker also sells other non-flashlight devices that are larger than the goods in issue and not designed to be primarily held in the hand.⁴⁴

[49] Based on that testimony, and the common meaning of what a flashlight is, the Tribunal is satisfied that the goods in issue are "flashlights" even though they are sometimes designated as "task lights" or "work lights". Other devices, such as "area lights", that are sold by Stanley Black & Decker clearly do not have the same design of the goods in issue and are not primarily for handheld use. Those goods are not flashlights, even by Stanley Black & Decker's admission.⁴⁵ None of the goods in issue have the same characteristics as these other devices referred to in the proceedings, particularly not those that are non-battery-powered corded devices that must be plugged into an electrical outlet.⁴⁶

[50] In short, the CBSA's arguments relating to the design, marketing or price of the goods in issue were either not persuasive or not supported by evidence, or insufficiently supported by evidence. Fundamentally, the goods in issue represent the evolution of how common low-cost and relatively unsophisticated flashlights have developed into more sophisticated and versatile higher-priced goods. The word "flashlight" in the *Customs Tariff* is general enough to capture this evolution and to remain descriptive of the goods in issue.

[51] The Tribunal notes that the CBSA relied on various explanatory notes in arguing its position. None of those notes were of assistance in classifying the goods in issue because explanatory notes pertain to classification at levels other than the eight-digit tariff item level.⁴⁷ Furthermore, none of the case law referred to by the CBSA was applicable to the instant case; in particular, the goods examined in *Globe Electric Company Inc.* were found by the Tribunal to have mainly non-flashlight characteristics. Fundamentally, that case centred on whether the goods in question were of heading 85.13 or heading 94.05.⁴⁸ Nothing in the CBSA's submission supports classification under

⁴³ *Transcript of Public Hearing* at 25–26.

⁴⁴ *Transcript of Public Hearing* at 56–58, 67–68, 71–74, 76–80.

⁴⁵ *Transcript of Public Hearing* at 99.

⁴⁶ *Transcript of Public Hearing* at 56–58, 67–68, 71–74, 76–80.

⁴⁷ It is well established that, as this dispute is at the tariff item level, the *Canadian Rules* of interpretation apply, meaning that classification opinions and explanatory notes do not apply. See, e.g., *Motovan Corporation v. President of the Canada Border Services Agency* (3 June 2019), AP-2017-028 (CITT) at note 22.

⁴⁸ *Globe Electric Company Inc.*

the residual tariff item because the goods in issue are *prima facie* classifiable, according to Rule 1 of the General Rules and the *Canadian Rules*, as “flashlights” under tariff item No. 8513.10.10.

DECISION

[52] The appeal is allowed.

Eric Wildhaber

Eric Wildhaber
Presiding Member