



Ottawa, Friday, November 8, 2002

Appeal Nos. AP-2001-007 to AP-2001-010

IN THE MATTER OF appeals heard on March 4, 2002, under subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Commissioner of the Canada Customs and Revenue Agency dated March 9, 2001, with respect to requests for redetermination under subsection 60(4) of the *Customs Act*.

BETWEEN

STAR CHOICE TELEVISION NETWORK INCORPORATED

Appellant

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY**

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Zdenek Kvarda
Zdenek Kvarda
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

James A. Ogilvy
James A. Ogilvy
Member

Michel P. Granger
Michel P. Granger
Secretary



UNOFFICIAL SUMMARY

Appeal Nos. AP-2001-007 to AP-2001-010

STAR CHOICE TELEVISION NETWORK INCORPORATED

Appellant

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY

Respondent

These are appeals pursuant to subsection 67(1) of the *Customs Act* from decisions rendered by the Commissioner of the Canada Customs and Revenue Agency pursuant to subsection 60(4) of the *Customs Act*. The issue in these appeals is whether the integrated receivers/decoders (IRDs) in issue are properly classified under tariff item No. 8528.12.99 as other colour reception apparatus for television, as determined by the respondent, or should be classified under tariff item No. 8529.90.90 as other parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28, as claimed by the appellant.

HELD: The appeal is dismissed. All the criteria point to an IRD being a part of a satellite television reception system (STRS). The IRD is essential to the operation of the STRS. It is a necessary and integral component of the STRS. An STRS cannot function without it. The Tribunal also notes that the IRD is attached to the STRS by a coaxial cable and is sold along with the rest of the components that make up an STRS. Accordingly, the Tribunal finds that the goods in issue are a part of STRSs.

In the Tribunal's view, the goods in issue constitute reception apparatus for television. The expert witness acknowledged that the IRD receives television signals. The Tribunal's view is also supported by the following definition of reception provided to the Tribunal by the appellant: "The conversion of modulated electromagnetic waves or electric signals, transmitted through the air or over wires or cables, into the original intelligence, or into desired useful information (as in radar), by means of antennas and electronic equipment." Indeed, the IRD converts, by means of electronic equipment, modulated electric signals transmitted over wires into signals that can be displayed on a television set.

While it is true that the IRD cannot receive satellite television signals transmitted by a satellite without the dish antenna and the low-noise block converter with feed (LNBF), the IRD can receive television signals transmitted by the LNBF. This suffices for the IRD to constitute a reception apparatus for television. There is no requirement that a machine be capable of receiving **satellite** television signals to be classified in heading No. 85.28 as a reception apparatus for television.

The Tribunal's analysis is consistent with the *Explanatory Notes to the Harmonized Commodity Description and Coding System* and the relevant classification opinion that classify receivers of satellite television broadcasts in heading No. 85.28.

Place of Hearing: Ottawa, Ontario
Date of Hearing: March 4, 2002
Date of Decision: November 8, 2002

Tribunal Members: Zdenek Kvarda, Presiding Member
Peter F. Thalheimer, Member
James A. Ogilvy, Member

Counsel for the Tribunal: Philippe Cellard
Clarissa Lewis

Clerk of the Tribunal: Anne Turcotte

Appearances: Dennis A. Wyslobicky and Teresa Galle, for the appellant
Derek Rasmussen, for the respondent



Appeal Nos. AP-2001-007 to AP-2001-010

STAR CHOICE TELEVISION NETWORK INCORPORATED

Appellant

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY

Respondent

TRIBUNAL: ZDENEK KVARDA, Presiding Member
PETER F. THALHEIMER, Member
JAMES A. OGILVY, Member

REASONS FOR DECISION

These are appeals pursuant to subsection 67(1) of the *Customs Act*¹ from decisions of the Commissioner of the Canada Customs and Revenue Agency, dated March 9, 2001, made under subsection 60(4) of the Act. The issue in these appeals is whether the integrated receivers/decoders (IRDs), imported by the appellant in September and October 1999, are properly classified under tariff item No. 8528.12.99 of the schedule to the *Customs Tariff*² as other colour reception apparatus for television, as determined by the respondent, or should be classified under tariff item No. 8529.90.90 as other parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28, as claimed by the appellant.

The IRD is one of the four major components of a satellite television reception system (STRS). The other three components are the low-noise block converter with feed (LNBF), the dish antenna and the remote control.

The relevant tariff nomenclature is as follows:

8528	Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors. -Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus:
8528.12	--Colour
8528.12.10	---Incomplete or unfinished television receivers, including assemblies for television receivers consisting of video intermediate (IF) amplifying and detecting systems, video processing and amplification systems, synchronizing and deflection circuitry, tuners and tuner control systems, and audio detection and amplification systems plus a power supply, but not incorporating a cathode-ray tube, flat panel screen or similar display --- Other
8528.12.99	----Other

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].
2. S.C. 1997, c. 36.

85.29	Parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28.
8529.90.90	---Other

In addition, the *Explanatory Notes to the Harmonized Commodity Description and Coding System*³ to heading No. 85.28 provide, in part, as follows:

This heading covers television receivers (including video monitors and video projectors), whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus.

The heading includes:

- (1) Television receivers of the kind used in the home (table models, consoles, etc.) including coin-operated television sets.
- (4) Receivers of satellite television broadcasts. These apparatus, which do not include a display device (cathode-ray tube, LCD, etc.) are similar to video tuners in that they serve to receive amplified signals whose frequency has been lowered by a down converter, to select a single signal (channel) and to convert it to a signal suitable for display on a video monitor. They may incorporate a modulator capable of producing a standard television broadcast signal for outputting to the aerial connection of a television receiver. They may also incorporate a device for receiving remote signals to change the channel selection or to rotate the aerial and polarizer.

Further, the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*⁴ contains the following classification opinion under subheading No. 8528.12.

- 8528.12** 2. **Receiver of satellite television broadcasts**, which receives amplified down-converted frequency signals from a low-noise-block (LNB) down converter and selects a single signal (channel) for display, thus acting as a channel selector or tuner. It also contains a reception device for remote signals to change the channel or to rotate the aerial and polarizer.

EVIDENCE

Mr. Frederick Heinz Kalina, Senior Director of Logistics, Star Choice Television Network Incorporated, testified on behalf of the appellant. He indicated that the appellant is a provider of direct-to-home satellite television in Canada. The appellant also imports STRSs. Mr. Kalina has worked for the appellant since April 2001. His responsibilities include working with the technical group to ensure that the appellant's products meet technical specifications. Mr. Kalina also conducts inventory management and arranges the importation of the components of the STRS with customs brokers. He indicated that the components of the STRS are imported separately from various countries and are warehoused until they are assembled into an STRS. As inventory, the IRD has a part number along with the other components of the STRS. Mr. Kalina testified that the IRD is only sold as a component of the STRS. On cross-examination, he testified that the IRD has not changed since the relevant time of importation in 1999 and since he began working for the appellant in April 2001.

In addition, Mr. Russell Wells, Engineering & Operations, Canadian Satellite Communications Inc., gave testimony as an expert witness, on behalf of the appellant. His expertise is in satellite, cable and broadcast television communications. He described the transmission and reception processes of satellite television.

3. Customs Co-operation Council, 2d ed., Brussels, 1996 [hereinafter Explanatory Notes].

4. Customs Co-operation Council, 1st ed., Brussels, 1987 [hereinafter Classification Opinions].

Mr. Wells explained the functions of the four components of an STRS. The dish antenna receives the satellite television signals and focuses them into a central spot right in front of the LNBF. The LNBF then amplifies the signals and converts them from about 12 gigahertz down to about 1 gigahertz. The IRD selects a channel, converts the signals and decrypts them so that they can be displayed on a television set. The remote control is used to operate the STRS.

Mr. Wells testified that, if any of the four main components were missing, the system would not work. In addition, he stated that the four components are designed to work exclusively with each other and that they have no other commercial function. Mr. Wells also indicated that the IRDs in issue will work only with the Star Choice network due to the type of encryption used. From a technical standpoint, Mr. Wells testified that the STRS is properly described as a reception apparatus for television. Further, he testified that the IRD, on its own, could not receive the signals from the satellite and display them on television.

On cross-examination, Mr. Wells testified that the IRD receives signals for television. However, he would not agree with the respondent that the IRD receives satellite signals. He stated that the IRD receives signals from the LNBF. Mr. Wells testified that an IRD performs some of the processing conversions for reception of television and that the LNBF does the rest.

Mr. Wells testified with respect to two machines described in the Classification Opinions under subheading No. 8528.12: (1) a satellite television reception system; and (2) a receiver of satellite television broadcasts. With respect to the first machine, he testified that, as described, it appears to be one of the older analogue STRS systems, which is useful only for receiving free and non-scrambled broadcasts. With respect to the second machine, Mr. Wells testified that it would appear to be the receiver of the first machine and that again there is no mention of a decoding function being included.

Mr. Wells also testified with respect to Note 4 of the Explanatory Notes to heading No. 85.28, which refers to “[r]eceptors of satellite television broadcasts”. He stated that the receiver described does not have any decoder and, therefore, would only access free and unscrambled signals. Further, he stated that the broadcast industry has switched from analogue systems to digitally compressed systems over the past five years.

ARGUMENT

The appellant submitted that the goods in issue should be classified in heading No. 85.29, and more specifically under tariff item No. 8529.90.90 as other parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28. However, if the goods in issue are properly classified in heading No. 85.28, the appellant argued, in the alternative, they should be classified under tariff item No. 8528.12.10 as incomplete or unfinished television receivers.

The appellant referred to two Tribunal decisions in which the matter of classification of digital STRSs was dealt with: *C.L. Blue Systems Ltd. v. DMNR*⁵ and *Jonic International Inc. v. DMNR*.⁶ It was decided in those cases that a complete STRS is properly classified in heading No. 85.28 as a reception apparatus for television.

The appellant submitted that the IRDs in issue are a part of STRSs for the following reasons: they are essential to the operation of STRSs; they are committed and designed for use with STRSs given that

5. (24 November 1999), AP-97-074 (CITT) [hereinafter *C.L. Blue*].

6. (28 September 1998), AP-97-078 (CITT) [hereinafter *Jonic*].

they have no independent function or use; they are a necessary and integral component of STRSs; they are installed in or attached to STRSs, in particular to the LNBF by coaxial cable; and they are considered a part of STRSs in the television industry.

The appellant submitted that the Tribunal is not bound by the Explanatory Notes and the classification opinion that indicate that an IRD is classifiable in heading No. 85.28. It noted that the Explanatory Notes and the classification opinion did not provide rationale for that view and argued that the Tribunal should follow its decision in *Canadian Satellite Communications Inc. v. DMNR*⁷ where it classified an analogue IRD as a television converter. The appellant submitted that the IRD is only one of the components of the STRS and cannot perform the satellite television reception function described in heading No. 85.28 on its own. Therefore, the IRD cannot be classified in heading No. 85.28. The appellant submitted that the IRD must consequently be classified as a part of an STRS in heading No. 85.29.

The respondent submitted that the goods in issue were properly classified under tariff item No. 8528.12.99. He submitted that there is no authority to suggest that only a complete STRS can be classified as a reception apparatus for television. The respondent referred to Mr. Wells' acknowledgement that an IRD receives television signals. He stated that this establishes that the IRD is a reception apparatus for television. In addition, the respondent pointed out that the technical definitions of television reception include a requirement that signals be converted and that this requirement was satisfied by the IRD.

To support his position, the respondent submitted that the goods in issue are covered by Note 1 of the Explanatory Notes to heading No. 85.28 concerning "[t]elevision receivers of the kind used in the home". Further, the respondent referred to a classification opinion classifying receivers of satellite television broadcasts in heading No. 85.28.

DECISION

The Tribunal is directed by section 10 of the *Customs Tariff* to classify goods in accordance with the *General Rules for the Interpretation of the Harmonized System*⁸ and the *Canadian Rules*.⁹ Rule 1 of the General Rules provides, in part, that "for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes". The Tribunal is further directed by section 11 of the *Customs Tariff* to have regard to the Classification Opinions and Explanatory Notes in interpreting the headings and subheadings of the *Customs Tariff*.

The classification of digital STRSs was dealt with in *Jonic* and *C.L. Blue*. In those cases, the Tribunal determined that a complete STRS is properly classified in heading No. 85.28 as a reception apparatus for television. The present appeal concerns the classification of IRDs, one of the components of STRSs.

The first issue is to determine whether the goods in issue are a part of STRSs. In *Jonic*, the Tribunal stated that: "While acknowledging that each case must be determined on its own merits and that there is no universally applicable test, the Tribunal, in [*York Barbell Company v. DMNRCE*]¹⁰, indicated that the following criteria are relevant in determining whether a product is a part: (1) the product is essential to the

7. (8 December 1995), AP-94-202 (CITT) [hereinafter *Cancom*].

8. *Supra* note 2, Schedule [hereinafter General Rules].

9. *Ibid.*

10. (19 August 1991), AP-90-161 (CITT).

operation of another product; (2) the product is a necessary and integral component of the other product; (3) the product is installed in the other product; and (4) common trade usage and practice.”¹¹

In applying those criteria to the case at hand, the Tribunal relied on Mr. Wells’ testimony. In the Tribunal’s view, all the criteria point to an IRD being a part of an STRS. Indeed, the IRD is essential to the operation of the STRS. It is a necessary and integral component of the STRS. The STRS cannot function without it. The Tribunal also notes that the IRD is attached to the STRS by a coaxial cable and is sold along with the rest of the components that make up an STRS. Accordingly, the Tribunal finds that the goods in issue are a part of STRSs.

Note 2 of Section XVI of the *Customs Tariff*, which is applicable to goods of Chapter 85, dictates the analysis that the Tribunal must conduct once it has determined that the goods in issue constitute a part of a machine. It provides, in part, as follows:

[P]arts of machines ... are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of Chapters 84 or 85 (other than heading Nos. ... 85.29 ...) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading ... are to be classified with the machines of that kind or in heading No. ... 85.29 ... as appropriate.

Pursuant to Note 2 of Section XVI, the Tribunal must therefore determine whether the goods in issue are included in any of the headings of Chapter 84 or 85. The respondent has determined that they are included in heading No. 85.28 as reception apparatus for television. The appellant opposed that classification.

In the Tribunal’s view, the goods in issue constitute reception apparatus for television. The expert witness acknowledged that the IRD receives television signals. The Tribunal’s view is also supported by the following definition of reception provided to the Tribunal by the appellant: “The conversion of modulated electromagnetic waves or electric signals, transmitted through the air or over wires or cables, into the original intelligence, or into desired useful information (as in radar), by means of antennas and electronic equipment.”¹² Indeed, the IRD converts, by means of electronic equipment,¹³ modulated electric signals transmitted over wires into signals that can be displayed on a television set.

The appellant submitted that the IRD is only one of the components of an STRS and cannot perform the satellite television reception function on its own. While it is true that the IRD cannot receive satellite television signals transmitted by a satellite without the dish antenna and the LNBF, the IRD can receive television signals transmitted by the LNBF. This suffices for the IRD to constitute a reception apparatus for television. There is no requirement that a machine be capable of receiving **satellite** television signals to be classified in heading No. 85.28 as a reception apparatus for television.

The Tribunal’s analysis is consistent with the Explanatory Notes and the relevant classification opinion that classify receivers of satellite television broadcasts in heading No. 85.28. The appellant indicated that the receivers described in the Explanatory Notes and the classification opinion are analogue and do not have decoders while the IRDs in issue are digital and have a decoder. The Tribunal acknowledges those distinctions. However, even once the distinctions are taken into account, the Explanatory Notes and the

11. *Supra* note 6, at 3.

12. S.B. Parker, ed., *McGraw-Hill Dictionary of Scientific and Technical Terms*, 3d ed. (New York: McGraw-Hill), s.v. “reception”.

13. Antennas need not be used for television reception. Cable television exemplifies that.

classification opinion remain applicable. The Tribunal notes that it was not apprised of any convincing reason and it can see none that would justify disregarding the Explanatory Notes and the classification opinion on the basis that they were applicable to analogue machines not equipped with decoders.

The key elements of the definition of “receiver of satellite television broadcasts” found in the Explanatory Notes are present in the digital IRDs in issue. Those IRDs do not include a display device and serve to receive amplified signals whose frequency has been lowered by a down converter, to select a single signal (channel) and to convert it to a signal suitable for display on a video monitor. The key elements of the definition of “receiver of satellite television broadcasts” found in the classification opinion are also present.

The appellant submitted that the Tribunal is not bound by the Explanatory Notes and classification opinion and should follow its decision in *Cancom* where the Tribunal classified an IRD under the then tariff item No. 8543.80.50 as a television converter. At the heading level, the Tribunal determined in that case, on the basis of the argument and evidence presented to it, that the IRDs in issue should be classified in heading No. 85.43 as electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. The Tribunal notes that the appellant is not requesting that the IRD in issue in this appeal be classified in heading No. 85.43.

As already indicated, section 11 of the *Customs Tariff* directs the Tribunal to have regard to the Explanatory Notes and Classification Opinions. The Tribunal notes that, at the time it made its determination in *Cancom*, the Explanatory Notes and classification opinion concerning receivers of satellite television broadcasts had not been published. In this appeal, on the basis of the wording of heading No. 85.28, the Section Notes, the Explanatory Notes and the classification opinion, as well as the evidence and argument presented, it is the Tribunal’s view that the goods in issue are properly classified in heading No. 85.28 as reception apparatus for television.

The appellant argued that, in the event that the Tribunal decided that the goods in issue were properly classified in heading No. 85.28, they should be classified under tariff item No. 8528.12.10 as incomplete or unfinished television receivers. As indicated above, the Tribunal determined that the IRD constitutes, in itself, a reception apparatus for television. Therefore, it should not be classified as an incomplete or unfinished television receiver under tariff item No. 8528.12.10. Rather, it is properly classified under tariff item No. 8528.12.99 as other colour reception apparatus for television.

Accordingly, the appeal is dismissed.

Zdenek Kvarda
Zdenek Kvarda
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

James A. Ogilvy
James A. Ogilvy
Member