



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2005-041

IPSCO Inc.

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Thursday, June 21, 2007*

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IN THE MATTER OF an appeal heard on September 19, 2006, under subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated November 9, 2005, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

**BETWEEN**

**IPSCO INC.**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is dismissed.

James A. Ogilvy  
James A. Ogilvy  
Presiding Member

Elaine Feldman  
Elaine Feldman  
Member

Serge Fréchette  
Serge Fréchette  
Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

Place of Hearing: Ottawa, Ontario  
Date of Hearing: September 19, 2006

Tribunal Members: James A. Ogilvy, Presiding Member  
Elaine Feldman, Member  
Serge Fréchette, Member

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## STATEMENT OF REASONS

### BACKGROUND

1. This is an appeal pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision of the President of the Canada Border Services Agency (CBSA), dated November 9, 2005, under subsection 60(4) of the *Act*.

2. The goods in issue are a 600-kilowatt seam annealer system (the annealer) and a Weldac G2 1200-kilowatt electric resistance welding (ERW) system (the welder).

3. The CBSA determined that the goods in issue were properly classified under separate tariff items of the schedule to the *Customs Tariff*,<sup>2</sup> i.e. the annealer under tariff item No. 8514.40.90 as other industrial or laboratory electric furnaces for the heat treatment of materials by induction or dielectric loss and the welder under tariff item No. 8515.21.10 as a high frequency or ultra high frequency ERW apparatus.

4. IPSCO Inc. (IPSCO) is claiming that the goods in issue should be classified under tariff item No. 8455.10.00 as components of a “functional unit” or, in the alternative, under tariff item No. 8455.90.90 as other parts of metal-rolling mills and rolls therefor.<sup>3</sup>

5. At the request of IPSCO, and with the consent of the CBSA, the Tribunal decided to hold a hearing by way of written submissions in accordance with rules 25 and 25.1 of the *Canadian International Trade Tribunal Rules*.<sup>4</sup> A notice to this effect was published in the August 12, 2006, edition of the *Canada Gazette*.<sup>5</sup>

6. For the purposes of this appeal, the relevant tariff nomenclature is as follows:

...	
84.55	Metal-rolling mills and rolls therefor.
8455.10.00 00	-Tube mills
...	
8455.90	-Other parts
...	
8455.90.90 00	---Other
...	
85.14	Industrial or laboratory electric (including induction or dielectric) furnaces and ovens; other industrial or laboratory induction or dielectric heating equipment . . .
8514.40	-Other induction or dielectric heating equipment . . .
8514.40.90	---Other
85.15	Electric (including electrically heated gas), laser or other light or photon beam, ultrasonic, electron beam, magnetic pulse or plasma arc soldering, brazing or welding machines and apparatus, whether or not capable of cutting; electric machines and apparatus for hot spraying of metals or cermets.
	-Brazing or soldering machines and apparatus:
...	

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

2. S.C. 1997, c. 36 [*Customs Tariff*].

3. IPSCO incorrectly characterized tariff item No. 8455.90.90 as “parts for a tube mill”.

4. S.O.R./91-499.

5. C. Gaz. 2006.I.2340.

8515.21 --Fully or partly automatic  
8515.21.10 00 ---High frequency or ultra high frequency electric resistance welding apparatus

7. Note 4 to Section XVI of the *Customs Tariff* reads as follows:

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

8. Note 5 to Section XVI of the *Customs Tariff* reads as follows:

For the purpose of these Notes, the expression “machine” means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.

9. General Note VII of the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>6</sup> to Section XVI concerning “Functional Units”, reads as follows:

[Note 4] applies when a machine (including a combination of machines) consists of separate components which are intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or, more frequently, Chapter 85. The whole then falls to be classified in the heading appropriate to that function, whether the various components (for convenience or other reasons) remain separate or are interconnected by piping (carrying air, compressed gas, oil, etc.), by devices used to transmit power, by electric cables or by other devices.

...

10. The goods in issue were part of a single purchase of equipment, sourced in Norway, that took place in February 2001. There were no subsequent importations. IPSCO imported the goods in issue to incorporate them into its existing pipe mill in Regina, Saskatchewan, in order to produce pipe to new specifications for the oil industry.

11. In October 2002, IPSCO applied for a refund of duties paid, on the basis that the goods in issue should have been classified as components of a “functional unit” under tariff item No. 8455.10.00 or 8455.90.90. The request for a refund was denied. In September 2003 and June 2005, IPSCO requested further re-determinations. In its decision of November 9, 2005, the CBSA indicated that the goods in issue did not meet the requirements of a “functional unit” under Note 4 to Section XVI of the *Customs Tariff* and Memorandum D10-13-2<sup>7</sup> and, therefore, could not be considered under heading No. 84.55.

12. The evidence on file shows that IPSCO’s tube mill was built in 1993. The goods in issue were integrated into that mill sometime after being imported in 2001. With the addition of the goods in issue, IPSCO’s tube mill can now perform the following functions: (1) take coil metal strip through a series of bending rolls to form cylindrical tubes; (2) weld the seams of these tubes; (3) anneal the seams; and (4) cut tubes to length. According to IPSCO, the integration of the goods in issue into the existing stations of the original tube mill allowed it to produce pipe products of superior gauge, grade and quality.

13. IPSCO added that the welder is designed solely for high-frequency welding of pipe and cannot be used for welding other products. IPSCO submitted that the annealer is specifically designed to serve as a component of its integrated tube mill and that, in order to meet American Petroleum Institute (API) and

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6. World Customs Organization, 4th ed., Brussels, 2007 [*Explanatory Notes*].

7. Canada Border Services Agency, “Administrative Policy – Tariff Interpretation of ‘Functional Units’” (3 April 1992).

Canadian Standards Association (CSA) specifications, all ERW pipe must be annealed. IPSCO also submitted that its pipe mill functions as a continuous operation in which its various stations are set up side by side, each station performing successive steps in the manufacturing process.

## ANALYSIS

14. For the purposes of this matter, the Tribunal is guided by sections 10 and 11 of the *Customs Tariff*. Section 10 provides that the classification of imported goods under a tariff item shall be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*<sup>8</sup> and the *Canadian Rules*.<sup>9</sup> Section 11 provides that, in interpreting the headings and subheadings in the schedule, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*<sup>10</sup> and to the *Explanatory Notes*.

15. The Tribunal agrees that IPSCO's tube mill is made up of individual interconnected components, two of which are the welder and the annealer. All the components, including the goods in issue, taken together, serve a clearly defined function, that is, to work together as a rolling mill and, more specifically, as a tube mill.

16. IPSCO submitted that the goods in issue are essential components of the "functional unit" that is its tube mill and that they should be classified in the same manner as the tube mill itself, namely, under tariff item No. 8455.10.00 or 8455.90.90. IPSCO argued that Note 4 to Section XVI of the *Customs Tariff* does not preclude the goods in issue from being classified in the same manner as the "functional unit" that, together, they contribute to create, even if the goods in issue were imported subsequently to that existing host machinery.

17. The CBSA argued that the goods in issue cannot be considered a "functional unit" of a metal-rolling mill because they were intended to be integrated into an existing system. At the time of importation, the goods in issue were two separate machines, and the existing system was not a system in the process of being built. The CBSA submitted that Note 4 to Section XVI of the *Customs Tariff* applies only when all the machines, apparatus and other components of the resulting "functional unit" are imported at the same time. The CBSA conceded that it allows, in certain cases, a "functional unit" to be imported in a number of separate and discrete shipments, provided the goods are named in a single contract and are part of a single purchase.

18. The CBSA indicated that its policy in that respect is in order with the Tribunal's decision in *Windsor Wafers, Division of Beatrice Foods Inc. v. Deputy M.N.R.C.E.*,<sup>11</sup> where it was held that, although the goods in that appeal were imported at different times, they constituted a total system for baking wafers and, therefore, formed a "functional unit". The CBSA recalled however that the Tribunal had held in that case that "... the legislation is not intended to allow future additions, upgrading or replacement of equipment ordered under the original importation . . .".<sup>12</sup> The CBSA's contention, in the present appeal, is that the goods in issue were merely upgrades to an existing system that were imported several years after the original tube mill came into operation.

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8. *Supra* note 2, schedule [*General Rules*].

9. *Supra* note 2, schedule.

10. World Customs Organization, 2d ed., Brussels, 2003.

11. (21 November 1991), AP-89-281 (CITT) [*Windsor Wafers*].

12. *Ibid.* at 2.

19. The Tribunal agrees that the evidence indicated that the goods in issue were upgrades to an existing mill and that, at the time of importation, the goods in issue were intended and perceived as parts of a tube mill. The Tribunal notes that IPSCO stated in its brief that “. . . [i]t is only after the imported welding and annealing stations were combined with the useable stations from the former tube mill that IPSCO was able to have a *functional unit* that could produce the new specification pipe . . . .”<sup>13</sup> [Emphasis in original]

20. In the Tribunal’s view, the Harmonized Commodity Description and Coding System is indifferent to the qualities and characteristics of the goods that this machinery produces or is intended to produce, beyond the fact that they are the products of a tube mill. With respect to the application of Note 4 to Section XVI of the *Customs Tariff*, the Tribunal is mindful that its scope includes “. . . a combination of machines . . . [that consist] of individual components . . . .” It also takes into account that these components are “. . . intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85 . . . .”

21. It is clear to the Tribunal that, together, the components constitute a tube mill, whose operation constitutes, in the Tribunal’s view, “a clearly defined function” that is covered by heading No. 84.55, which is “. . . one of the headings in Chapter 84 . . . .”

22. However, the Tribunal notes that, in this instance, the “whole” could not have been classified together because the goods in issue are only two components of that whole. The other components of the tube mill, with which the goods in issue were “. . . intended to contribute together to a clearly defined function . . . .”, are not before the Tribunal, nor were they included in the same importation or series of importations.

23. The Tribunal carefully considered *Sable Offshore Energy Inc. v. Commissioner of the Canada Customs and Revenue Agency*.<sup>14</sup> The appellant in that case had requested that additional elements imported separately from the “host” machinery be classified as components of a functional unit in which the basis for the functional unit was a system that had previously been classified by its individual constituent parts. In its review of that case, the Federal Court of Appeal ruled that the legal bar to reclassification of existing components of the system was not an impediment to the classification of new components as if they were components of a functional unit that might have been identified if all the components had been classified at the same time.

24. In its argument in the present case, the CBSA submitted that *Sable Offshore* merely stood for the proposition that components of a “functional unit” could still be classified as such, even when other parts of the “functional unit” were themselves time-barred from reclassification.<sup>15</sup> In the CBSA’s submission, *Sable Offshore* did not provide guidance concerning the eligibility for reclassification where the goods in issue are used to upgrade or retrofit an existing industrial process.

25. The Tribunal is also cognizant of its own conclusion in *Windsor Wafers*, as brought forward by the CBSA. In that case, the Tribunal concluded that, although the goods were imported separately from the other components of a larger system, they were not precluded from classification as parts of a functional unit, which was that larger system.

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13. Appellant’s brief, para. 15.

14. 2003 FCA 220 [*Sable Offshore*].

15. Paragraph 14 in *Sable Offshore* reads as follows: “In the decision under appeal, the question raised is whether the *Customs Act* or the *Customs Tariff* preclude the classification of components of a functional unit under the tariff item appropriate to that functional unit when the other components of that unit were classified otherwise and are no longer eligible to be reclassified due to the operation of the limitation period.”



26. However, in the Tribunal's view, both *Sable Offshore* and *Windsor Wafers* dealt with factual situations that were different from those in the present case. In each of these previous cases, there was a question as to whether the goods, which were components that were required in order to complete a system in its original form, could be classified with that system, despite being imported separately from its other components. In contrast, the present case concerns a machine that already existed as a total system (a tube mill) and the issue is whether parts that are imported to upgrade it can be classified together with that original system as if the whole were now to be seen as a functional unit. On this point, the Tribunal's view is consistent with its earlier position in *Windsor Wafers*, i.e. that the framework in the *Customs Tariff* for the classification of goods as a functional unit "... is not intended to allow future additions, upgrading or replacement of equipment ordered under the original importation . . . ." Whether the existing tube mill as a whole was an "original importation" under the *Customs Tariff* or whether it could have been classified as a functional unit at the time of its original construction does not concern the Tribunal here. Whatever the classification of the original machinery may have been, it is the Tribunal's view that the conditions that the *Customs Tariff* establishes for the classification of goods as a functional unit are not intended to extend to later upgrades or replacements of existing components of that machinery.

27. In light of these observations, the Tribunal is of the view that, in the given circumstances, the goods in issue are not classifiable as components of a functional unit.

## DECISION

28. Basing its conclusion on the foregoing reasons, the Tribunal finds that the annealer and the welder are properly classified under tariff item Nos. 8514.40.90 and 8515.21.10 respectively.

29. The appeal is therefore dismissed.

James A. Ogilvy  
James A. Ogilvy  
Presiding Member

Elaine Feldman  
Elaine Feldman  
Member

Serge Fréchette  
Serge Fréchette  
Member