



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2005-035

Panasonic Canada Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Friday, October 19, 2007*

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IN THE MATTER OF an appeal heard on October 31, 2006, under subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the President of the Canada Border Services Agency, dated September 12, 2005, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

PANASONIC CANADA INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Serge Fréchette
Serge Fréchette
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	October 31, 2006
Tribunal Members:	Pierre Gosselin, Presiding Member Meriel V. M. Bradford, Member Serge Fréchette, Member
Counsel for the Tribunal:	Reagan Walker
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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal under subsection 67(1) of the *Customs Act*¹ from decisions made on September 12, 2005, by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4) of the *Act*.
2. The appeal concerns Panasonic digital disk recorders, model Nos. WJ-HD200, WJ-HD220, WJ-HD316 and WJ-HD500 (the goods in issue), which are a combination of video multiplexers and hard disk recorders of various sizes.
3. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8521.90.90 of the schedule to the *Customs Tariff*² as other video recording or reproducing apparatus, whether or not incorporating a video tuner, as determined by the CBSA, or should be classified under tariff item No. 8525.10.00 as transmission apparatus, whether or not incorporating reception apparatus, as claimed by Panasonic Canada Inc. (Panasonic).
4. Panasonic imported the goods in issue in four separate transactions between November 4, 2003, and August 27, 2004.
5. The relevant nomenclature of the *Customs Tariff* that was in effect when the goods in issue were imported reads as follows:

...

85.21 **Video recording or reproducing apparatus, whether or not incorporating a video tuner.**

...

8521.90 **-Other**

...

8521.90.90 - - -Other

85.25 **Transmission apparatus for radio-telephony, radio-telegraphy, radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras and other video camera recorders; digital cameras.**

8525.10.00 **Transmission apparatus**

EVIDENCE

6. Panasonic stated that the goods in issue are designed to receive multiple video signals, digitalize the incoming pictures and encode them by camera number, and then combine the multiple video signals and transmit them over a single channel. Once digitized and encoded by camera number, the images can then be viewed on a video monitor, recorded on the disk drive or transmitted to another output device.³

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

2. S.C. 1997, c. 36.

3. Appellant's Brief, para. 22.

7. On behalf of Panasonic, Mr. Michael Reynolds, Product Manager, Security Products Broadcast & Security Systems Department, at Panasonic, testified that the goods in issue are not sold at the retail level, but only to security professionals and integrators.⁴ Mr. Reynolds explained how the equipment worked using an exhibit that consisted of a small-scale basic or typical system. The exhibit consisted of one of the goods in issue, two cameras and a monitor. He explained that a typical application would have a person sitting at a desk, watching the monitor and looking at images from multiple cameras throughout an office or a building. At any given time, the person can choose to watch different multiscreen patterns or a single spot, as well as have the recording function turned on or off. Mr. Reynolds also explained that, in the model number, “WJ” represents the factory where the product was built and that “HD” stands for “hard disk”.

8. On behalf of the CBSA, Mr. Tony Mungham, Manager, Electronics and Computer Systems Section, Laboratory and Scientific Services Directorate, at the CBSA, was called as a witness. Mr. Mungham provided a description of multiplexing and digital recording. He stated that multiplexing is the ability to allow multiple signals to be combined into one signal path and that digital recording is the action of transcribing information to a digital domain. He explained that digital recording and video surveillance have allowed operators to have clear images and to record over and over again without degradation of the media. Mr. Mungham described the relationship between the multiplexer and the recorder. He stated that the multiplexer combines the camera signals so that the recorder can record those images. He explained that a hard drive has a finite bandwidth or finite frame rate at which it can record. As a result, a compromise has to be made. The multiplexer allows a compromise to be made by throttling the bandwidth in a controlled way. In the type of video system at issue, when recording, the multiplexer can take, for example, three frames a second on each camera and send them to the hard drive. When needed, such as when motion is detected in an area, the frame rate can be increased on a certain camera and decreased on other cameras.⁵

ARGUMENT

Panasonic

9. Panasonic argued that the goods in issue are composite goods and, as such, governed by Note 3 to Section XVI of the schedule to the *Customs Tariff*, which states as follows:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the *principal function*.

[Emphasis added]

10. Panasonic argued that the video recorders are composite machines consisting of a multiplexer and a video recorder. There are a number of other features contained in these boxes, but they are features of one or another of the machines.

11. Panasonic argued that the principal function rests with the multiplexer, since it receives the signals, processes them and makes them available to the recorder and/or the monitor. The multiplexer also works in reverse, allowing the retrieval of specific recorded signals. In support of this claim is the fact that the multiplexer is always “on”, whereas the recorder only functions on demand. Both the multiplexer and the recorder are a function of the number of input ports that the user wishes to have. The goods in issue offer either 8 (models WJ-HD200 and WJ-HD220) or 16 (models WJ-HD316 and WJ-HD500) channels.

4. *Transcript of Public Hearing*, 31 October 2006, at 10.

5. *Ibid.* at 109-11.

CBSA

12. The CBSA's principal argument was that, if Note 3 to Section XVI applies, then the recording function is the principal function. This is based on the design of the goods in issue and on the importance given to the recording function in Panasonic's own sales literature.

13. The CBSA also argued that Rule 1 of the *General Rules for the Interpretation of the Harmonized System*⁶ suffices, since the goods are clearly labelled "video recorders" in the sales and service literature, and that, accordingly, they can be classified in heading No. 85.21 without recourse to Note 3 to Section XVI. The support for this view is in Part (VI) of the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,⁷ which reads as follows:

...

Note 3 to Section XVI **need not be invoked** when the composite machine is covered as such by a particular heading, for example, some types of air conditioning machines (heading 84.15).

...

ANALYSIS

14. The Tribunal is directed by section 10 of the *Customs Tariff* to classify goods in accordance with the *General Rules* and the *Canadian Rules*.⁸ The Tribunal is further directed by section 11 of the *Customs Tariff* to consider the *Explanatory Notes* as a guide to the interpretation of the headings and subheadings in the schedule to the *Customs Tariff*.

15. The *General Rules* are structured in cascading form. If the goods cannot be classified in accordance with Rule 1, reference is to be made to Rule 2. If reference to Rule 2 does not resolve how the goods are to be classified, then regard must be had to Rule 3, and so on numerically down the list of *General Rules*.

16. Rule 1 of the *General Rules* provides the following:

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.

17. The competing headings in this case are as follows:

85.21 Video recording or reproducing apparatus, whether or not incorporating a video tuner.

85.25 Transmission apparatus for radio-telephony, radio-telegraphy, radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras and other video camera recorders; digital cameras.

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

7. World Customs Organization, 3d ed., Brussels, 2002 [*Explanatory Notes*].

8. *Supra* note 2, schedule.

18. The Tribunal must first determine if the goods in issue can be classified in accordance with Rule 1 of the *General Rules*. The CBSA argued that, pursuant to this rule, the goods in issue are properly classified under tariff item No. 8521.90.90 as other video recording or reproducing apparatus. On the other hand, Panasonic submitted that the goods in issue should be classified under tariff item No. 8525.10.00 as transmission apparatus.

19. Note 3 to section XVI, which includes Chapter 85, reads as follows: “Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.”

20. In the Tribunal’s opinion, each of the goods in issue is a composite machine. Both multiplexing and recording functions exist separately and are available on the market as stand-alone machines. The goods in issue are a solution to the need to monitor and record multiple feeds simultaneously without the cost of having a multiplicity of monitors and recorders. Multiplexers are available on the market without the built-in recorder. In such a case, the user already has a recording device or the security system is always manned, and the user does not wish to record the images. Recorders are also available without a multiplexer, but they cannot record multiple video streams without a multiplexer. In such a case, each camera feed would need its own recorder. The advantage of the goods in issue is that they offer an inexpensive alternative to having a recorder for each feed.

21. With respect to the meaning of the terms “principal” and “function”, the Tribunal refers to the dictionary definitions of these terms. The *Canadian Oxford Dictionary*, 2d Ed., definition for the word “principal” is “first in rank or importance, chief; main, leading.” The dictionary’s definition for the word “function” is “a mode of action or activity by which a thing fulfills its purpose.”

22. While, as mentioned, each of the two functions is available separately from stand-alone multiplexers and recorders, the clear advantage offered by the goods in issue is their ability to do both functions, inexpensively, with one composite machine. While the multiplexer is essential for processing and viewing multiple feeds, it is the Tribunal’s opinion that the recording function is the more important of the two functions. It is true that this composite machine goes beyond a simple recording machine, as it makes it possible to record, store and retrieve information collected from multiple video feeds. Nevertheless, the machine remains a machine that is principally destined for the recording and storage of information and, in that sense, the “principal function” of the composite machine is still that of “recording” the information from multiple sources.

23. This conclusion is further supported by Mr. Reynolds’ testimony when he indicated that, if the primary purpose was just to review or look at live images, one would not need to buy one of the goods in issue.⁹

24. Furthermore, Panasonic itself, in its sales literature, recognizes that the recording function is the function that differentiates this composite machine from the simple multiplexer. In its marketing literature, this is the function that is highlighted.

9. *Transcript of Public Hearing*, 31 October 2006, at 72.

DECISION

25. In the light of the foregoing and in accordance with Note 3 to Section XVI, the Tribunal finds that the goods in issue are properly classified in heading No. 8521 as video recording or reproducing apparatus, whether or not incorporating a video tuner. The evidence shows that the goods in issue consist of *disk* recorders as opposed to *magnetic tape* recorders. Therefore, they should be classified in subheading No. 8521.90 as video recording or reproducing apparatus, whether or not incorporating a video tuner, other. The evidence also shows that the goods in issue are *disk recorders* as opposed to *video laser disk players*, therefore, in accordance with Rule 1 of the *Canadian Rules*, they should be classified under tariff item No. 8521.90.90 as video recording or reproducing apparatus, whether or not incorporating a video tuner, other, other.

26. Consequently, the appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Serge Fréchette
Serge Fréchette
Member