



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal Nos. AP-2006-016 and
AP-2006-018

Pelco Worldwide Headquarters

v.

President of the Canada Border
Services Agency

and

Panasonic Canada Inc.

*Decision and reasons issued
Thursday, September 27, 2007*

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IN THE MATTER OF appeals heard on April 17, 2007, 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 May 8, May 16 and June 5, 2006, with respect to requests for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

PELCO WORLDWIDE HEADQUARTERS

Appellant

AND

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

Respondent

AND

PANASONIC CANADA INC.

Intervener

DECISION

The appeals are dismissed.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

Elaine Feldman
Elaine Feldman
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	April 17, 2007
Tribunal Members:	James A. Ogilvy, Presiding Member Pierre Gosselin, Member Elaine Feldman, Member
Counsel for the Tribunal:	Georges Bujold Dominique Laporte
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STATEMENT OF REASONS

1. These are appeals filed by Pelco Worldwide Headquarters (Pelco) under subsection 67(1) of the *Customs Act*¹ from 46 decisions of the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4) of the *Act*. Appeal No. AP-2006-016 concerns 6 re-determinations dated May 8, 2006. Appeal No. AP-2006-018 concerns 40 re-determinations dated May 16 and June 5, 2006.

2. The goods in issue in both appeals are certain models of digital video recorders (DVRs) and certain models of black and white and color monitors which can be used in video surveillance and security applications.

3. There are two classification issues in these proceedings. The central issue is whether the imported DVRs 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, or, in the alternative, under tariff item No. 8471.10.00 as analog or hybrid automatic data processing machines and units thereof, not elsewhere specified or included, as claimed by Pelco.

4. The second issue is whether the imported monitors are properly classified under tariff item No. 8528.22.00 (for the imported black and white monitors) and tariff item No. 8528.21.82 (for the imported colour monitors), as determined by the CBSA, or should be classified under tariff item No. 9948.00.00 as articles for use in automatic data processing machines (to the extent that the DVRs are classified in heading No. 84.71 as automatic data processing machines), as claimed by Pelco.

FACTS

5. The parties agree that the goods in issue are certain models of DVRs which are used in closed circuit television (CCTV) security surveillance systems and certain monitors which can also be used in CCTV systems.

Description of Imported Goods

6. These appeals primarily concern the classification of various DVRs identified as Pelco model Nos. DX2000, DX3100, DX7100, DX8000, DX9100 and DX9200 Series (DVRs in issue).³ There was no significant disagreement in the evidence of the parties concerning the fact that DVRs, including the DVRs in issue, constitute the central or core component of CCTV systems. Typically, CCTV systems include several cameras mounted at various places in order to provide for the surveillance and protection of a building or perimeter. The cameras produce images that are processed through the DVR and can be viewed remotely on a monitor. The cameras and the monitor are wired to a DVR as inputs and an output respectively. A DVR is a control device that allows an operator to interact with the system. Each of the DVRs in issue is in the form of a rectangular metal box similar in size to a large personal computer.

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

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

3. The re-determinations specifically refer to model Nos. DX3016-120, DX7016-240, DX8016-500 and DX8008-080. They also relate to models generically identified as Pelco DVRs Series DX9000 and DX9100.

7. According to the evidence, the DVRs in issue share general characteristics and perform the same basic functions. They are all capable of receiving video signals from multiple cameras and allowing the images from the incoming multiple video signals to be recorded and viewed on a monitor (in real time or playback). The DVRs in issue offer the possibility of programming recording schedules so as to record input from a given camera at selected times and rates (e.g. at 15 or 30 images per second), record only predefined events of interest (e.g. certain point of sales transactions) or start recording when an alarm or motion detection occurs.⁴

8. The DVRs in issue record individual images from multiple sources at different rates depending on the capacity of each model and the parameters programmed by the users. For example, a DVR can be programmed to take a snapshot every 10 seconds and, if something of importance happens, as deemed by the operator or pre-programmed, the DVR would take a series of snapshots at a higher rate (e.g. 15 images per second) and thereby create a sequence of images. Depending on the model, this can allow it to record a brief clip of that particular event.⁵ This also enables users to maximize the hard disk usage.

9. It is common ground between the parties that the DVRs in issue are computer-based and incorporate a motherboard, a multiplexer and a hard disk recorder. The multiplexer component allows the DVRs in issue to process and record data from multiple video inputs. The multiplexer component digitizes individual pictures from multiple cameras, puts these pictures together and combines them with other information from non-video inputs. It also allows users to display images from multiple sources on one screen, to record multiple images on the hard disk and to transmit multiple images to a remote location. The multiplexer is required to make it possible to use a single recording unit to capture information from multiple video inputs. Without the multiplexer, it would only be possible to record images from a single channel.

10. The multiplexer component is therefore essential to the operation and functioning of the DVRs in issue. Multiplexers are available on the market as stand-alone products, which Pelco also manufactures and sells. Such devices do not have recording capabilities like the DVRs in issue. However, they do enable the display of individual images from multiple sources on a single monitor.

11. The DVRs in issue vary in the number of inputs or signals that they can process (typically, the DVRs in issue support 8 or 16 cameras) and in recording capacity (i.e. hard disk size). They also have different features in terms of input and output controls, recording speed and operating functions, including networking capabilities (to allow remote administration, playback or data export to other media).

12. The monitors in issue are black and white monitors of Pelco's PMM Series ranging from 9 in. to 20 in. (Pelco models PMM9A, PMM12A, PMM15A and PMM20A) and 9-in. colour monitors identified as Pelco model PMC9A-9. The monitors can all be attached by wire to the DVRs in issue and were described at the hearing as passive receptors of information which they display in a standardized format.

Classification and Procedural History

13. Pelco imported the DVRs in issue between November 9, 2001, and March 8, 2005. On May 8, 2006, the CBSA issued six decisions under subsection 60(1) of the *Act* in which it determined that (i) DVR model Nos. DX3016-120, DX7016-240 and DX8016-500 are properly classified under tariff item No. 8521.90.90, under the specific provisions for other video recording or reproducing apparatus, and that

4. *Transcript of Public Hearing*, 17 April 2007, at 20-30, 34, 61-63 and 156-57.

5. *Transcript of Public Hearing*, 17 April 2007, at 61-64.

(ii) the monitors in issue are not goods “for use in” a data processing machine within the meaning of tariff item No. 9948.00.00 and are properly classified under tariff item No. 8528.22.00 (for the imported black and white monitors) and tariff item No. 8528.21.82 (for the imported colour monitors), under the specific provisions for other high-definition monitors.

14. On June 5, 2006, Pelco appealed these six CBSA decisions to the Tribunal (Appeal No. AP-2006-016).

15. On May 16 and June 5, 2006, the CBSA issued 40 decisions concerning other import transactions under subsection 60(1) of the *Act* in which it determined that model Nos. DX8000, DX9000 and DX9100 Series DVRs are also properly classified under tariff item No. 8521.90.90 as other video recording or reproducing apparatus.

16. On August 4, 2006, Pelco appealed these 40 CBSA decisions to the Tribunal (Appeal No. AP-2006-018).

17. On the same date, Pelco also requested that the Tribunal combine the two proceedings, since the CBSA decisions concern essentially the same goods. On August 24, 2006, the Tribunal informed the parties of its decision to combine the proceedings in Appeal No. AP-2006-016 and Appeal No. AP-2006-018, pursuant to rule 6.1 of the *Canadian International Trade Tribunal Rules*.⁶

18. On December 27, 2006, the Tribunal received a notice of intervention on behalf of Panasonic Canada Inc. (Panasonic), on the grounds that the issue before the Tribunal was similar to the one in an appeal filed by Panasonic (Appeal No. AP-2005-035). On January 7, 2007, in response to a request from the Tribunal, Panasonic provided additional explanations and, on January 15, 2007, the Tribunal granted intervener status to Panasonic.

LAW

19. On appeals under section 67 of the *Act* concerning tariff classification matters, the Tribunal determines the proper classification of the goods in accordance with the prescribed interpretative rules.

20. Subsection 10(1) of the *Customs Tariff* reads as follows: “Subject to subsection (2), the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System and the Canadian Rules set out in the schedule.”

21. Section 11 of the *Customs Tariff* states as follows: “In interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System and the [*Explanatory Notes to the Harmonized Commodity Description and Coding System*]⁷, published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time.”

22. The *General Rules for the Interpretation of the Harmonized System*⁸ are six rules structured in cascading form so that, if the classification of the goods cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, and so on.

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

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

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

23. Rules 1 through 5 of the *General Rules* apply to the classification at the heading level. Rule 6 of the *General Rules* makes these rules also applicable for the classification at the subheading level. Similarly, the *Canadian Rules*⁹ make Rules 1 through 5 of the *General Rules* applicable for the classification at the tariff item level.

24. Rule 1 of the *General Rules* reads as follows: "... 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."

ANALYSIS

25. Pelco claims that the DVRs in issue should be classified under tariff item No. 8525.10.00 as transmission apparatus, whether or not incorporating reception apparatus. Panasonic also submits that they should be classified under that tariff item. In the alternative, Pelco contends that the DVRs in issue meet the conditions to be classified in heading No. 84.71 as automatic data processing machines or units thereof. To the extent that the DVRs in issue are classified in heading No. 84.71, Pelco claims that the monitors in issue qualify as articles for use in "automatic data processing machines".¹⁰

26. The nomenclature of the *Customs Tariff* which Pelco claims should apply to the imported goods reads as follows:

...
84.71 Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included.
8471.10.00 -Analog or hybrid automatic data processing machines
...
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
8525.10.00 -Transmission apparatus
...
9948.00.00 Articles for use in the following:
...
Automatic data processing machines and units thereof

27. The nomenclature which the CBSA applied to the DVRs in issue reads as follows:

...
85.21 Video recording or reproducing apparatus, whether or not incorporating a video tuner.
...
8521.90 -Other
...
8521.90.90 -- -Other
...

9. *Supra* note 2, schedule.

10. Panasonic did not make submissions on the alternative classification proposed by Pelco and on the classification of the monitors.

28. Note 3 to Section XVI (which includes Chapters 84 and 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.”

29. The Tribunal notes that Note 3 to Section XVI applies to the nomenclature which the CBSA applied to the DVRs in issue and to both classifications proposed by Pelco for those goods.

30. Other relevant notes include Notes 5(A)(a) and 5(E) to Chapter 84 and the *Explanatory Notes* to heading Nos. 84.71, 85.21 and 85.25.

31. Notes 5(A)(a) and 5(E) to Chapter 84 read as follows:

5. (A) For the purpose of heading 84.71, the expression “automatic data processing machines” means:

(a) Digital machines, capable of (1) storing the processing program or programs and at least the data immediately necessary for the execution of the program; (2) being freely programmed in accordance with the requirements of the user; (3) performing arithmetical computations specified by the user; and, (4) executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run;

...

(E) Machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data processing machine are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.

32. The *Explanatory Notes* to heading No. 84.71 indicate that “[t]he digital data processing machines of this heading must be capable of fulfilling **simultaneously** the conditions laid down in Note 5 (A) (a)”

33. The *Explanatory Notes* to heading No. 85.21 read as follows:

(A) RECORDING AND COMBINED RECORDING AND REPRODUCING APPARATUS

These are apparatus which, when connected to a television camera or a television receiver, record on media electric impulses (analogue signals) or analogue signals converted into digital code (or a combination of these) which correspond to the images and sound captured by a television camera or received by a television receiver. Generally the images and sound are recorded on the same media. The method of recording can be by magnetic or optical means and the recording media is usually tapes or discs.

The heading also includes apparatus which record, generally on a magnetic disc, digital code representing video images and sound, by transferring the digital code from an automatic data processing machine (e.g., digital video recorders).

34. The *Explanatory Notes* to heading No. 85.25 read as follows:

**(A) TRANSMISSION APPARATUS FOR RADIO-BROADCASTING OR TELEVISION,
WHETHER OR NOT INCORPORATING RECEPTION APPARATUS OR SOUND
RECORDING OR REPRODUCING APPARATUS**

The apparatus for radio-broadcasting falling in this group must be for the transmission of signals by means of electro-magnetic waves transmitted through the ether without any line connection. On

the other hand television apparatus falls here whether the transmission is by electro-magnetic waves or by line.

This group includes:

- (1) Transmitters for radio-broadcasting or television.
- (2) Relay apparatus used to pick up a broadcast and retransmit it and so increase the range (including television relay apparatus for mounting in aircraft).
- (3) Relay television transmitters for transmission, by means of an aerial and parabolic reflector, from the studio or site of an outside broadcast to the main transmitter.
- (4) Television transmitters for industrial use (e.g., for reading instruments at a distance, or for observation in dangerous localities). With this apparatus the transmission is often by line.

DVRs in Issue

35. The Tribunal will deal first with the question of whether the DVRs in issue are multifunction or composite machines within the meaning of Note 3 to Section XVI. The parties agreed that the DVRs in issue perform multiple functions (multiplexing, recording and monitoring) and that, on the strength of their having various components (motherboard, multiplexer, etc.), they are composite machines.

36. The Tribunal agrees with the parties that, in combining multiplexing and recording functions, the DVRs in issue are composite machines, in that they consist of two or more machines fitted together to form a whole and perform complementary functions, and that Note 3 to Section XVI therefore applies. Under the terms of this applicable section note, the Tribunal thus considers the DVRs in issue classifiable "... as if consisting only of that component or as being that machine which performs the principal function."

37. The Tribunal's initial task is therefore to determine the principal function of the DVRs in issue on the basis of the evidence presented. The *Canadian Oxford Dictionary*¹¹ defines "principal" as "... first in rank or importance; chief"¹² It defines "function" as "... a mode of action or activity by which a thing fulfills its purpose"¹³ While the parties agreed that the classification should be based on the principal function of the DVRs, they held opposing views on what constitutes their principal function.

38. Pelco argued that it is the multiplexer component of the DVRs in issue that performs their principal function and that, for this reason, the DVRs in issue should be classified as multiplexers under tariff item No. 8525.10.00. In Pelco's view, pursuant to Note (B) of the *Explanatory Notes* to heading No. 85.25, multiplexers (and, through the application of Note 3 to Section XVI, the DVRs in issue) are "television transmitters", a type of "transmission apparatus" that falls under tariff item No. 8525.10.00.

39. Pelco submitted that the multiplexer is required for all functions of the DVRs, including their recording, transmission and display functions. It added that, while it is possible to use the DVRs without activating the hard disk recorder, it is not possible to use the DVRs without employing the multiplexer. In Pelco's view, the reason for the purchase of a DVR is the number of video inputs which allow the DVR to be connected to multiple cameras, not its recording capabilities. Because the DVRs have a frame rate of less than 30 images per second, Pelco added, they do not record video and, consequently, cannot be classified in heading No. 85.21. Panasonic essentially adopted the same position.

11. Second ed.

12. *Ibid.*, s.v. "principal".

13. *Ibid.*, s.v. "function".

40. The CBSA argued that the principal function of the DVRs in issue is that of a video recording apparatus for surveillance and security purposes and that, for this reason, the DVRs in issue are correctly classified in heading No. 85.21 with proper regard to Note (A) of the *Explanatory Notes* to heading No. 85.21, which specifically refer to digital video recorders. In the CBSA's view, the DVRs in issue are named digital video recorders and are marketed as recorders with a strong emphasis on the recording capabilities and hard disk size. The CBSA added that recording is the prime objective of the customers who purchase such devices. With respect to the multiplexer feature, the CBSA agreed that it is essential, but argued that it allows the recording device to record from multiple cameras and to select and only record at certain moments and at different rates, thereby essentially enhancing and supporting the recording functionality of the DVRs. In this way, users can record from several cameras with one recorder instead of with multiple recorders. Finally, the CBSA disagreed that the DVRs in issue do not record video.

41. On the basis of the evidence presented, it is the Tribunal's view that the recording and reproduction of visual images are the basic requirements for which the DVRs in issue provide a solution. Without the recording, storing and reproduction of information which begins as visual images and can later be reconstituted as visual images, the DVRs in issue would not be capable of providing that solution.

42. The Tribunal acknowledges that multiplexing is a significant part of the solution. However, in the Tribunal's view, single-channel functionality would still permit surveillance and recording. Multiplexing is a process function, which is used to organize the information that is the substantive content of both the input and output of the units, and, in the DVRs in issue, it is integral to their proper functioning. Multiplexing is therefore a means of responding to the need for complexity in information management, and it enhances the sophistication of the goods, but it does not determine the identity of the goods. The goods exist to capture, record and reproduce the substantive information. The Tribunal therefore regards the principal function as the recording and reproduction of visual images.

43. This conclusion is supported by Pelco's product literature, which highlights the video recording function of the DVRs in issue, and by the fact that multiplexers are stand-alone goods that are available on the market. This means that persons who simply want to review or monitor live images do not need to purchase a DVR. While the witness for Pelco testified that, in most cases, the DVRs in issue are used in situations where an operator has live interaction with the system, the fact remains that the main features of the DVRs in issue all point to their recording capabilities, i.e. they have recording capabilities that can be scheduled, they have motion detection options that will initiate the recording, they have alarm inputs to trigger recording, and they offer search and playback features that allow a user to review recorded images to determine what happened during an event. That certain users may choose to monitor live images through DVRs does not imply that the principal function of such goods is not video recording.

44. Moreover, the CBSA's expert witness, whose functions include managing user requirements and providing technology recommendations based on user requirements in the field of video security and surveillance, indicated during his testimony that he would not recommend the purchase of a device with recording capabilities to a client who would want to look at live video only. In that event, he stated that he would consider multiplexer solutions.¹⁴ The witness also provided evidence that factors such as the larger size of DVRs, their higher costs and the fact that they require additional training and technical knowledge to operate and manage compared to multiplexers militate against the introduction and use of DVRs for

14. *Transcript of Public Hearing*, 17 April 2007, at 134-36.

applications where there is no need for recording.¹⁵ This provides further support for the Tribunal's conclusion that the principal function of the DVRs in issue is the recording and reproduction of visual images.

45. In view of its determination that the principal function of the DVRs in issue is recording and not multiplexing, the Tribunal does not need to examine whether the DVRs in issue fit within the terms of heading No. 85.25 and must conclude that the DVRs in issue cannot be classified under tariff item No. 8525.10.10, as claimed by both Pelco and Panasonic.

46. Turning to Pelco's alternative position that the DVRs in issue should be classified in heading No. 84.71, the Tribunal notes that it took into consideration the testimony and submissions on whether the DVRs in issue, which are digital machines, meet the conditions specified in Note 5(A)(a) to Chapter 84 to be classified in heading No. 84.71 as automatic data processing machines or units thereof. However, the Tribunal observes that Note 3 to Section XVI (which includes Chapters 84 and 85) also applies to the alternative nomenclature proposed by Pelco.

47. Note 3 to Section XVI requires that composite goods, such as the DVRs in issue, be classified "...as if consisting only of that component or as being that machine which performs the principal function." The Tribunal has already determined that the principal function of the DVRs in issue is the recording and reproduction of visual images. Thus, the principal function of the DVRs in issue is not that performed by an automatic data processing machine. In view of the above considerations, the Tribunal is of the opinion that the DVRs in issue are therefore not classifiable under tariff item No. 8471.10.00, as claimed by Pelco.

48. Note 5(E) to Chapter 84 further supports this conclusion. Although the most sophisticated DVRs in issue appear to meet the criteria set out in Note 5(A) for automatic data processing machines, Note 5(E) states that, where machines perform a specific function in conjunction with an automatic data processing machine, those machines are to be classified under the headings appropriate to their respective function. In the Tribunal's view, while the DVRs in issue may work in conjunction with an automatic data processing machine, they first and foremost perform the specific function of video recording apparatus. They must therefore be classified in the heading appropriate for such a function, not as automatic data processing machines.

49. Consequently, the Tribunal must now examine whether the DVRs in issue are properly classified in heading No. 85.21. In reviewing the existing classification of the goods under tariff item No. 8521.90.90 and the evidence, the Tribunal gave careful consideration to whether the goods are "recording or reproducing apparatus" and whether they satisfy the term "video".

50. With respect to whether these images are video images, Pelco argued that DVRs do not record video because they do not meet the minimum industry standard for video, which, it submitted, was 30 images per second. The CBSA took the opposite position that video is simply a sequence of images related to each other and that their frequency (the witness used 3, 30 or 200 images per second as examples) does not determine whether they constitute video.¹⁶ The Tribunal notes that the DVRs in issue are, in each instance, capable of recording motion in the form of sequential frames. The Tribunal is not convinced that an "industry standard" of 30 images per second must be met in order for the images to indicate movement or to be considered video images. From a developmental point of view, the evolution of this equipment leading

15. *Transcript of Public Hearing*, 17 April 2007, at 137-39.

16. *Transcript of Public Hearing*, 17 April 2007, at 141-42, 153-54.

to the DVRs in issue has been toward larger and larger memory capacity, which implies an increasing capability to record and store images reproducing motion when put together. The DVRs in issue are at a relatively high point in that evolution. Beyond these considerations, the Tribunal questions whether the recording of motion is ultimately the defining factor in the interpretation of the term “video” as it appears in the tariff nomenclature. Note (D) of the *Explanatory Notes* to heading No. 85.25, for example, presents the combined term “*still image video cameras*”¹⁷ [emphasis added].

51. In reviewing the classification of the DVRs in issue, the Tribunal notes that Note (A) of the *Explanatory Notes* to heading No. 85.21 provides a more detailed description which it considers to be specifically on point and reinforces the conclusion that the goods fall in this heading:

The heading also includes apparatus which record, generally on a magnetic disc, digital code representing video images and sound, by transferring the digital code from an automatic data processing machine (e.g., digital video recorders).

52. The Tribunal therefore regards the DVRs in issue as meeting the terms of heading No. 85.21.

53. The Tribunal must next determine in which subheading the DVRs in issue should be classified. Rule 6 of the *General Rules* states the following: “For legal purposes, 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”

54. Heading No. 85.21 has two subheadings, No. 8521.10 (magnetic tape-type) and No. 8521.90 (other). The evidence was clear that one of the main advantages of the DVRs in issue is that they contain a built-in *digital* disk recorder, as opposed to the more conventional tape recorder. Therefore, the appropriate subheading is No. 8521.90.

55. Finally, the Tribunal must determine under which tariff item the goods should be classified. Rule 1 of the *Canadian Rules* stipulates the following: “For legal purposes, 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 for the Interpretation of the Harmonized System”

56. Subheading No. 8521.90 is subdivided into two tariff items, No. 8521.90.10 (laser video disc players) and 8521.90.90 (other). Again, the evidence was clear that the DVRs in issue are *digital* disc recorders, not *laser* disc players. Therefore, under Rule 1 of the *Canadian Rules*, as the DVRs in issue do not utilize a magnetic tape and are not laser video disc players, they ultimately fall under tariff item No. 8521.90.90.

57. The Tribunal therefore finds that the DVRs in issue are properly classified under tariff item No. 8521.90.90.

Monitors

58. Since the Tribunal has determined that the DVRs in issue are properly classified under tariff item No. 8521.90.90, it is not necessary to examine the question of the reclassification of the monitors, which would have been a consideration only if the DVRs in issue had been classifiable in heading No. 84.71.

17. Appellant’s Book of Documents, Tab 2 at 1669.

DECISION

59. Based on the above, the appeals are dismissed.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

Elaine Feldman
Elaine Feldman
Member