Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2007-011

Standard Products Inc.

v.

President of the Canada Border Services Agency

Decision and reasons issued Tuesday, October 28, 2008

Canada

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IN THE MATTER OF an appeal heard on May 29 and 30, 2008, 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 17, 2007, with respect to requests for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

STANDARD PRODUCTS 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

Diane Vincent
Diane Vincent
Member

André F. Scott
André F. Scott
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	May 29 and 30, 2008
Tribunal Members:	James A. Ogilvy, Presiding Member Diane Vincent, Member André F. Scott, Member
Counsel for the Tribunal:	Jidé Afolabi
Research Director:	Audrey Chapman
Research Officer:	Simon Glance
Manager, Registrar Office:	Gillian Burnett
Senior Registrar Officer:	Marija Renic

PARTICIPANTS:

Appellant	**Counsel/Representatives**
Standard Products Inc.	Michael Kaylor Marco Ouellet
Respondent	**Counsel/Representative**
President of the Canada Border Services Agency	Andrew Gibbs

WITNESSES:

Dr. Voicu Z. Groza Assistant Professor Faculty of Engineering University of Ottawa	George C. Hedrei Engineering R&D Manager Stanpro Lighting Systems Inc.
Stéphane Guindon Electronic Technologist Canada Border Services Agency	Dr. Jim S. Wight Professor Department of Electronics Carleton University

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STATEMENT OF REASONS

BACKGROUND

1. On July 24, 2007, Standard Products Inc. (Standard Products) filed an appeal with the Canadian International Trade Tribunal (the Tribunal), pursuant to subsection 67(1) of the *Customs Act*,[1] from decisions of the President of the Canada Border Services Agency (CBSA) dated May 17, 2007, made pursuant to subsection 60(4).

2. The issue in this appeal is whether electronic ballasts imported by Standard Products are properly classified under tariff item No. 8504.10.00 of the schedule to the *Customs Tariff*[2] as ballasts for discharge lamps or tubes, as determined by the CBSA, or should be classified under tariff item No. 8542.70.00 as electronic microassemblies or, in the alternative, under tariff item No. 8542.60.00 as hybrid integrated circuits (HICs), as submitted by Standard Products.

PROCEDURAL HISTORY

3. Standard Products imported the goods in issue between 2002 and 2006. It filed 55 requests for re-determination of the classification of a range of ballast models, which requests were subsequently denied. Requests for further re-determination were then made under subsection 60(1) of the *Act*. The CBSA denied these requests on May 17, 2007.

4. On July 24, 2007, Standard Products filed the present appeal with the Tribunal.

5. The Tribunal held a public hearing in Ottawa, Ontario, on May 29 and 30, 2008.

6. Dr. Voicu Z. Groza, Assistant Professor, Faculty of Engineering, University of Ottawa, was called to appear as an expert witness for Standard Products. The Tribunal qualified Dr. Groza as an expert witness in electrical engineering design. Standard Products also called Mr. George C. Hedrei, Engineering R&D Manager, Stanpro Lighting Systems Inc., a subsidiary of Standard Products. The Tribunal qualified Mr. Hedrei as an expert in the design of electronic ballasts. Mr. Stéphane Guindon, Electronic Technologist, CBSA, was called as a witness for the CBSA. Dr. Jim S. Wight, Professor, Department of Electronics, Carleton University, was called as an expert witness for the CBSA and was qualified by the Tribunal as an expert in the area of electrical circuits and systems.

PRELIMINARY ISSUES

7. The parties each submitted physical exhibits to assist them in presenting their respective positions. Although the parties had initially agreed that physical exhibits A-1 and A-2 were representative of all the goods in issue, at the commencement of the hearing, as a preliminary matter, the parties explained that three models of the goods, which accounted for less than 5 percent of the total number of goods in issue, were sufficiently different from the other goods that they were not properly represented by these physical exhibits.[3]

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1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].
2. S.C. 1997, c. 36.
3. The three models have the following product numbers: T-D12060-AF, T-D12080-AF and T-D12150-AF. *Transcript of Public Hearing*, 29 and 30 May 2008, at 7, 8.

8. As the parties agreed on this position, and yet the anomalous goods remained in issue, the Tribunal granted the parties, in light of the peculiar set of facts in this case, an additional 60 days from the date of the hearing to exchange submissions on these goods. The additional period allowed 45 days for Standard Products to submit a supplementary brief, with a requirement to provide the CBSA with an appropriate physical exhibit within the first 3 days. Upon receipt of the supplementary brief within the allotted period, the CBSA then had 10 days to reply, and Standard Products had 5 days to respond to the reply brief. In each instance, the supplementary briefs were to apply only to the anomalous goods. The Tribunal further ruled that failure to abide by the supplementary timeline would be viewed as a settlement or voluntary withdrawal of the appeal with respect to the specific goods to which the extraordinary consideration applied. The Tribunal also decided that an oral hearing would not be conducted with respect to these goods.

9. On July 14, 2008, Standard Products notified the Tribunal that it was unable to comply with the timeline as set out and agreed to by the parties during the public hearing. The Tribunal therefore considered the failure of the parties to meet the conditions as a voluntary withdrawal of the appeal with respect to these goods. The Tribunal will therefore not rule on the appropriate classification of these goods.

GOODS IN ISSUE

10. The goods in issue are more than 100 different models of goods commonly known as "electronic ballasts for fluorescent light fixtures".[4]

11. According to Standard Products, the goods in issue typically contain various transistors, monolithic integrated circuits (MICs), capacitors, resistors and diodes. Together, these components are used to convert mains frequency voltage and current to direct current and then to higher-frequency alternating current (AC), which in turn operates the electric lamps. The active elements (diodes, transistors and MICs) and the passive elements (diodes, transistors, resistors, capacitors, etc.) are printed on a single substrate by the use of soldering and wire bonding. The circuit assembly is then moulded into a steel casing to form the goods in issue.[5]

12. On May 13, 2008, Standard Products provided two physical exhibits to the Tribunal. Both exhibits are electronic ballasts, model No. E-21338-UV-TDE FLX. Exhibit A-1 is the model as imported (except that the four tabs that retain the back cover have been bent so that it can be removed for examination). Exhibit A-2 is the same model of ballast, uncased and unpotted.[6] The same model of electronic ballast was provided by Standard Products for examination by the Laboratory and Scientific Services Directorate of the CBSA.

13. On May 20, 2008, the CBSA submitted three physical exhibits: (1) exhibit B-1, an example of an electronic microassembly; (2) exhibit B-2, an example of an HIC; and (3) exhibit B-3, an electronic ballast, model No. E21338-UV-TDE FLX, the last of which had been examined in the CBSA laboratory.

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4. Respondent's brief, tab B. Electromagnetic ballasts are not part of the goods in issue. Standard Products agrees that these types of ballasts are properly classified in heading No. 85.04.
5. Appellant's brief at para. 12.
6. Exhibit A-02. A potting compound is an asphalt- or epoxy-based liquid that partially fills the aluminum box and chemically hardens, sealing the circuit board assembly inside the metal case. The potting compound provides a functional and safety role, preventing accidental electrical discharges, dissipating heat and strengthening the resistance of the device in field use. Tribunal Exhibit AP-2007-001-011-21A, tab 4; *Transcript of Public Hearing*, 29 and 30 May 2008, at 61, 133-34; Tribunal Exhibit AP-2007-001-011-22C at 6.

ANALYSIS

Law

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

15. The tariff nomenclature is set out in considerable detail in the schedule to the *Customs Tariff*. Each section and chapter of the schedule has its own notes, and sometimes supplementary notes, followed by a list of goods categorized under a number of headings, subheadings and individual tariff items. Sections 10 and 11 of the *Customs Tariff* prescribe the approach that the Tribunal must follow when interpreting the schedule in order to arrive at the proper tariff classification.

16. Subsection 10(1) of the *Customs Tariff* reads as follows: ". . . 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[7] and the Canadian Rules[8] set out in the schedule."

17. The *General Rules* comprise six rules structured in sequence 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.[9] Classification therefore begins with Rule 1, which 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."

18. Section 11 of the *Customs Tariff* states the following: "In interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System[10] and the Explanatory Notes to the Harmonized Commodity Description and Coding System,[11] published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time." Therefore, unlike chapter and section notes, the *Explanatory Notes* are not binding on the Tribunal in its classification of imported goods. However, the Federal Court of Appeal has stated that these notes should be respected, unless there is a sound reason to do otherwise, as they serve as an interpretative guide to tariff classification in Canada.[12]

19. In other words, the above legislation requires the Tribunal to follow several steps when applying Rule 1 of the *General Rules*, in order to properly determine the heading that correctly describes the goods: first, to examine the schedule to see if the goods fit *prima facie* within the language of a particular tariff heading; second, to see if there is anything in the Section or Chapter notes that supports, or precludes, classification of the goods in the heading; and, third, to examine the *Classification Opinions* and *Explanatory Notes* for the same purpose.

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7. S.C. 1997, c. 36, schedule [*General Rules*].
8. S.C. 1997, c. 36, schedule.
9. Rules 1 through 5 of the *General Rules* apply to classification at the heading level (i.e. to four digits). Pursuant to Rule 6 of the *General Rules*, Rules 1 through 5 are applicable to classification at the subheading level. Similarly, the *Canadian Rules* make Rules 1 through 5 of the *General Rules* applicable to classification at the tariff item level.
10. World Customs Organization, 4th ed. Brussels, 2007 [*Classification Opinions*].
11. World Customs Organization, 3d ed., Brussels, 2002 [*Explanatory Notes*].
12. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) (*Suzuki*). At paragraph 17, the Federal Court of Appeal states as follows: ". . . the Tribunal is not bound to apply the Explanatory Notes, where there is a sound reason to depart from their guidance. Expert evidence can, in some circumstances, provide such a reason. However, even in a case where the Tribunal could reasonably choose not to apply the Explanatory Notes, it does not have the authority to rewrite or ignore such Notes by redefining their terms."

20. If the process described above does not lead to one heading over all others, then the remaining *General Rules* must be applied, in sequence, until the heading which most correctly describes the goods is found. Once this exercise has led to classification of the goods in one, and only one, heading, the next step is to determine the appropriate subheading and tariff item, applying Rule 6 in the case of the former and the *Canadian Rules* in the case of the latter.

21. In this case, the parties agreed that the goods in issue should be classified in Chapter 85. However, they disagreed as to the appropriate heading, subheading and tariff item within Chapter 85. Standard Products argued that the goods in issue should be classified as electronic microassemblies under tariff item No. 8542.70.00 or, in the alternative, as HICs under tariff item No. 8542.60.00. The CBSA classified the goods in issue as ballasts for discharge lamps or tubes under tariff item No. 8504.10.00.

Tariff Classification at Issue

22. The Tribunal must apply the *Customs Tariff* as it read at the time of the importations by Standard Products. The nomenclature which Standard Products claims should apply to the goods in issue reads as follows:

> . . .
>
> **85.42 Electronic integrated circuits and microassemblies.**
>
> . . .
>
> **85.42.70.00 -Electronic microassemblies**
>
> . . .

23. Standard Products argued, in the alternative, that the goods in issue should be classified as HICs under tariff item No. 8542.60.00, which reads as follows:

> . . .
>
> **85.42 Electronic integrated circuits and microassemblies.**
>
> . . .
>
> **85.42.60.00 -Hybrid integrated circuits**
>
> . . .

24. The nomenclature which the CBSA ruled applicable to the goods in issue reads as follows:

> . . .
>
> **85.04 Electrical transformers, static converters (for example, rectifiers) and inductors.**
>
> **8504.10.00 -Ballasts for discharge lamps or tubes**
>
> . . .

Tariff Item No. 8542.70.00

25. Standard Products argued, in the first instance, that the goods should be classified under tariff item No. 8542.70.00 as electronic microassemblies.

Applicable Law

26. Considering Rule 1 of the *General Rules*, classification must be determined according to the terms of the heading and any relative section or chapter notes.

27. Note 5 to Chapter 85 provides the following definitions:

> For the purpose of headings 85.41 and 85.42:
>
> . . .
>
> (B) "Electrical integrated circuits and microassemblies" are:
>
> (a) Monolithic integrated circuits in which the circuit elements (diodes, transistors, resistors, capacitors, interconnections, etc.) are created in the mass (essentially) and on the surface of a semiconductor material (doped silicon, for example) and are inseparably associated;
>
> . . .
>
> (c) Microassemblies of the moulded module, micromodule or similar types, consisting of discrete, active or both active and passive, components which are combined and interconnected.
>
> For the classification of the articles defined in this Note, headings 85.41 and 85.42 shall take precedence over any other heading in the Nomenclature which might cover them by reference to, in particular, their function.

28. The Tribunal must have regard to the *Explanatory Notes* to heading No. 85.42 which state the following:

> . . .
>
> Electronic integrated circuits and microassemblies are devices having a high passive and active element or component density, which are regarded as single units . . . .
>
> The articles of this heading (electronic microcircuits) fall into two groups, according to manufacturing process: integrated circuits and microassemblies.
>
> . . .
>
> **(I) Electronic integrated circuits.**
>
> These include:
>
> (1) **Monolithic integrated circuits.** These are microcircuits in which the circuit elements (diodes, transistors, resistors, capacitors, inductances, etc.) are created in the mass (essentially) and on the surface of a semiconductor material (doped silicon, for example) and are therefore inseparably associated. Monolithic integrated circuits may be digital, linear (analogue) or digital-analogue.
>
> . . .
>
> **(II) Electronic microassemblies.**
>
> Micro assemblies are made from discrete, active or both active and passive components which are combined and interconnected.
>
> Discrete components are indivisible and are the basic electronic construction components in a system. They may have a single electrical function (semiconductor devices defined by Note 5 (A) to Chapter 85) or a single passive electrical function (resistors, capacitors, interconnections, etc.).
>
> However, components consisting of several electric circuit elements and having multiple electrical functions, such as integrated circuits, are not considered as discrete components.

> Microassemblies are normally in the form of modules such as:
>
> (1) Moulded modules in which the components are encased in a block (cube, parallelepiped, hemisphere, etc.) generally of plastics.
>
> . . .
>
> . . . the heading also **excludes** assemblies formed by mounting one or more discrete components on a support formed, for example, by a printed circuit . . . .

29. Standard Products submitted that, while the goods in issue would normally be classified under tariff item No. 8504.10.00 as ballasts, reliance can be had on the legally binding Note 5 to Chapter 85, which stipulates that, for the articles defined by the chapter note, heading Nos. 85.41 and 85.42 shall take precedence over any other headings which cover them by particular reference to their function. Standard Products asserted that the goods in issue meet the definition of electronic microassemblies that appears in that chapter note, and as further described by Note (II) of the *Explanatory Notes* to heading No. 85.42. Pursuant to the *Explanatory Notes*, electronic microassemblies are made from discrete, active or both active and passive components and cannot have components formed by mounting one or more discrete components on a support formed, for example, by a printed circuit. Further, the *Explanatory Notes* exclude as discrete components those components that consist of several electric circuit elements and have multiple functions, such as integrated circuits.

30. As an introductory matter, the Tribunal notes that the *Explanatory Notes* to heading No. 85.42 indicate that microassemblies are devices possessing a high active and passive component density. There was disagreement between the expert witnesses regarding what constitutes sufficient component density to be considered high.[13] In the Tribunal's view, the density of components found within the goods in issue is relatively low, particularly in comparison with the electronic systems described by Dr. Wight. Nevertheless, since the term at issue is descriptive rather than quantitative, the Tribunal will continue its exploration of classifying the goods in this heading.

31. Standard Products argued that Note 5 to Chapter 85 does not indicate that the components within an electronic microassembly must *only* be discrete ones, asserting that ". . . there are many, many places in the Customs Tariff where Parliament, when it wanted to restrict the meaning of something to including only . . . knows very well which words to use . . . ."[14] Standard Products further argued that, depending on the definition of the term "function", the integrated circuits found within the goods in issue can be seen as performing a single electrical function and that, therefore, they cannot be classed within the exclusion in the *Explanatory Notes*.

32. The CBSA argued for reliance on Note 5 to Chapter 85 and on the *Explanatory Notes*. Thus, regarding the requirement that electronic microassemblies be made from discrete components, the CBSA submitted that its laboratory analysis of the representative sample of the goods in issue revealed that they contained some integrated circuits, consisting of several electrical circuit elements which have multiple electrical functions and that they cannot therefore be classified as discrete components. Regarding the requirement that electronic microassemblies cannot have components formed by mounting on a support formed by a printed circuit, the CBSA submitted that the goods in issue fail to meet the criteria for classification in heading No. 85.42 because the components are mounted on a support formed by a printed circuit.

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13. *Transcript of Public Hearing*, 29 and 30 May 2008, at 77, 153, 294.
14. *Ibid.* at 337.

33. It is the Tribunal's conclusion that the goods in issue do not satisfy the legal requirement for classification as microassemblies. Although they may consist of multiple active and passive components, these components are not all discrete, a requirement for classification in heading No. 85.42, as stipulated in Note 5(B)(c) to Chapter 85.

34. Further, the Tribunal notes that the experts for Standard Products and for the CBSA disagreed over the question of single versus multiple functions with regard to the integrated circuits included within the goods in issue. The Tribunal is persuaded by Dr. Wight's description of levels of functionality, whereby the same component can be described alternatively as having one general function or several more specific functions.[15] In the Tribunal's view, the implication of the language of the *Explanatory Notes* is clear in attributing multiple functions to integrated circuits and in removing them from consideration as discrete components: ". . . components consisting of several electrical circuit elements and having multiple electrical functions, such as integrated circuits, are not considered as discrete components . . . ."[16]

35. The Tribunal also notes that the goods are formed by mounting discrete components on a printed circuit board, a category of goods that is explicitly excluded from the heading.

36. As described by the *Explanatory Notes*, articles of this heading are either electronic integrated circuits or electronic microassemblies. The goods in issue, though they include integrated circuits among their components, are not themselves integrated circuits.[17] They therefore fail to satisfy the terms of description for that group under the *Explanatory Notes*. Further, the Tribunal notes that Standard Products argued that the goods in issue were microassemblies, not integrated circuits.

37. On the basis of the foregoing, the Tribunal does not accept Standard Products' argument that the goods in issue should be classified under tariff item No. 8542.70.00.

Tariff Item No. 8542.60.00

38. Standard Products argued, in the alternative, that the goods in issue should be classified under tariff item No. 8542.60.00 as HICs.

Applicable Law

39. Classification must be determined according to Notes 4 and 5 to Chapter 85, which state as follows:

> 4. For the purpose of heading No. 85.34 "printed circuits" are circuits obtained by forming on an insulating base, by any printing process . . . or by the "film circuit" technique, conductor elements, contacts or other printed components . . . alone or interconnected according to a pre-established pattern, other than elements which can produce, rectify, modulate or amplify an electrical signal . . . .
>
> . . .
>
> Thin- or thick-film circuits comprising passive and active elements obtained during the same technological process are to be classified in heading No. 85.42.

15. *Ibid.* at 277-80.
16. Note II of the *Explanatory Notes* to heading No. 85.42.
17. *Transcript of Public Hearing*, 29 and 30 May 2008, at 295.

5. For the purpose of headings 85.41 and 85.42:

. . .

(B) "Electrical integrated circuits and microassemblies" are:

. . .

(b) Hybrid integrated circuits in which passive elements (resistors, capacitors, interconnections, etc.) obtained by thin- or thick-film technology, and active elements (diodes, transistors, monolithic integrated circuits, etc.) obtained by semiconductor technology, are combined to all intents and purposes indivisibly, on a single insulating substrate (glass, ceramic, etc.). These circuits may also include discrete components.

. . .

40. Regard is to be had to the *Explanatory Notes* to heading No. 85.42, which state as follows:

. . .

The articles of this heading are defined in Note 5 (B) to the Chapter.

Electronic integrated circuits and microassemblies are devices having a high passive and active element or component density, which are regarded as single units . . . .

. . .

(I) Electronic integrated circuits.

These include:

. . .

(2) **Hybrid integrated circuits.** These are microcircuits built up on an insulating substrate on which a thin or thick film circuit has been formed. This process allows certain passive elements . . . to be produced at the same time. However, to become a hybrid integrated circuit of this heading, semiconductors must be incorporated and mounted on the surface, either in the form of chips . . . or as encased semiconductors . . . . Hybrid integrated circuits may also contain separately produced passive elements which are incorporated into the basic film circuit in the same way as the semiconductors . . . .

. . .

The components forming a hybrid integrated circuit must be combined **to all intents and purposes indivisibly**, i.e., though some of the elements could theoretically be removed and replaced, this would be a long and delicate task which would be uneconomic under normal manufacturing conditions.

. . .

Except for the combinations (to all intents and purposes indivisible) . . . concerning hybrid integrated circuits, the heading also **excludes** assemblies formed by mounting one or more discrete components on a support formed, for example, by a printed circuit . . . .

41. Pursuant to Note 5 to Chapter 85, HICs are articles in which passive elements obtained by thin- or thick-film technology and active elements obtained by semiconductor technology are combined to all intents and purposes indivisibly on a single insulating substrate. Note (I)(2) of the *Explanatory Notes* to heading No. 85.42 further indicates that HICs are built up on an insulating substrate on which a thin or thick film circuit has been formed, a process which allows certain passive elements to be produced at the same time. Standard Products submitted that the goods in issue meet the criteria set out in Note 5 to Chapter 85.

Standard Products further submitted that, to the extent that the goods in issue do not meet the additional indication set out in the *Explanatory Notes*, which requires that not only the elements but also the substrate itself possess thin- or thick-film technology, the Tribunal ought to rely on *Suzuki*[18] and not apply the *Explanatory Notes*.[19]

42. The CBSA submitted that, contrary to the requirement found in the *Explanatory Notes*, there are no thin- or thick-film circuits formed on the printed circuit board of the goods in issue and that the mounted passive elements could not have been produced at the same time as the printed circuit board in the course of the manufacturing process. The CBSA asserted that the *Explanatory Notes* ought to be applied in this instance, as they offer additional guidance regarding the definition contained in Note 5 to Chapter 85 and render the implicit explicit.[20] The CBSA further submitted that the active and passive components of the goods in issue are not combined to all intents and purposes indivisibly, since a representative sample was taken apart by a CBSA expert in a process that was neither long nor delicate.[21]

43. Note 5(B)(b) to Chapter 85 refers to HICs with ". . . passive elements . . . obtained by thin- or thick-film technology, and active elements . . . obtained by semiconductor technology . . . ." Testimony by Standard Products and the CBSA clearly indicated that, in each instance, the elements in question had been obtained by these technologies.[22] However, in their further description of HICs, the *Explanatory Notes* to heading No. 85.42 require the thin or thick film to have been formed on the insulating substrate. That is not the case here, as the substrate, a printed circuit board, does not have thin- or thick-film circuits formed on its surface.[23] In fact, it was clear from testimony that the substrate material used could not have withstood the temperature necessary to create thick-film circuitry.[24] While it might have withstood the application of thin-film circuitry, which is created at much lower temperatures, but in vacuum conditions, Mr. Hedrei confirmed that no such circuitry was present on the substrate of the goods in issue.[25]

44. Note 5(B)(b) to Chapter 85 also states that the elements that make up the HICs must be ". . . combined to all intents and purposes indivisibly . . . ." Standard Products argued that, since the circuitry is encased in potting compound, the components are to all intents and purposes indivisible.[26] The Tribunal notes that, according to the *Explanatory Notes*, the test is in part technical, with respect to the removal and replacement of components, but the threshold is economic and practical: whether removal and replacement would be ". . . a long and delicate task which would be uneconomic under normal manufacturing conditions . . . ." Testimony from Dr. Wight indicated that the task was, from a technical perspective, relatively easy and quick and that the likelihood of this taking place differed from North America, where it would not likely be economic to do so, to the Far East, where it would be possible on economic grounds. Mr. Hedrei indicated that, with a price of $20 to $25 per unit (as compared with the price of a magnetic ballast in the $12-to-$14 range), the manufacturer's standard procedure for a faulty unit is to discard it because repair is too costly.[27] The Tribunal, while acknowledging that repairs might be made under certain circumstances, notes that: (1) the economic test is "under normal manufacturing conditions", and Mr. Hedrei spoke in part from a manufacturer's perspective; and (2) the presence of potting compound

18. At para. 17.
19. *Transcript of Public Hearing*, 29 and 30 May 2008, at 351-53.
20. *Ibid.* at 363.
21. *Ibid.* at 212, 369.
22. *Ibid.* at 89, 222.
23. *Ibid.* at 189, 198.
24. *Ibid.* at 251-52, 254-56.
25. *Ibid.* at 198.
26. *Ibid.* at 354-55.
27. *Ibid.* at 172.

would render repair more difficult than simply de-soldering and re-soldering a component. The Tribunal concludes that, under the terms of the test provided in the *Explanatory Notes*, the goods in issue are effectively indivisible.

45. Notwithstanding the Tribunal's finding with regard to divisibility, pursuant to the operative test outlined in Rule 1 of the *General Rules*, it is imperative that the Tribunal include Notes 4 and 5 to Chapter 85 in a determination concerning any potential classification under tariff item No. 8542.60.00. Note 5(B)(b) to Chapter 85 is clear in requiring that the elements that make up HICs be combined ". . . on a single insulating substrate (glass, ceramic, etc.) . . . ." Further, the Tribunal notes that section 11 of the *Customs Tariff* places an obligation on the Tribunal to have regard to the *Explanatory Notes* unless a sound reason exists to do otherwise. Despite the desire of Standard Products to rely on *Suzuki*, it is the Tribunal's conclusion that the test outlined in that jurisprudence, pursuant to which the *Explanatory Notes* may be ignored, has not been met in this instance. The Tribunal accepts the characterization of the CBSA that Note (I)(2) of the Explanatory Notes to heading No. 85.42 renders the implicit explicit in further describing HICs as ". . . microcircuits built up on an insulating substrate on which a thin or thick film circuit has been formed . . . ." The goods in issue need only fail one test to fail to qualify for consideration under the description of HICs. The fact that the thick- or thin-film circuitry has not been formed on the substrate is sufficient to disqualify the goods in issue from classification under tariff item 8542.60.00.

46. The Tribunal therefore does not accept Standard Products' argument that the goods in issue should be classified under tariff item No. 8542.60.00.

Tariff Item No. 8504.10.00

47. It remains for the Tribunal to confirm whether the goods in issue are properly classified under tariff item No. 8504.10.00.

Applicable Law

48. Note 2 to Chapter 85 states as follows:

> Headings 85.01 to 85.04 do not apply to goods described in heading 85.11, 85.12, 85.40, 85.41 or 85.42.
>
> . . .

49. The relevant *Explanatory Notes* to heading No. 85.04 include the following definitions for electrical transformers and electrical static converters:

> . . .
>
> **(I) ELECTRICAL TRANSFORMERS**
>
> Electrical transformers are apparatus which, without having any moving parts, transform, by means of induction . . . , an alternating current into another alternating current of different voltage, impedance, etc. . . . .
>
> . . .
>
> The heading covers all transformers. They vary from ballasts for the control of the amount of current that flows through discharge lamps . . . .
>
> . . .

(II) ELECTRICAL STATIC CONVERTERS

> The apparatus of this group are used to convert electrical energy in order to adapt it for further use. They incorporate converting elements (e.g., valves) of different types. They may also incorporate various auxiliary devices (e.g., transformers, induction coils, resistors, command regulators, etc.) . . . .

50. The CBSA submitted that, pursuant to Rule 1 of the *General Rules*, the goods in issue are properly classified under tariff item 8504.10.00 because ballasts for discharge lamps are specifically provided for and described in that tariff item. The CBSA argued that the goods in issue were excluded from heading No. 85.42 pursuant to the *Explanatory Notes* and that they can best be described as a type of electrical static converter machine, or apparatus, used to adapt electrical energy for further use, which would fit under heading No. 85.04. The CBSA submitted that, according to the *Explanatory Notes* to heading No. 85.42, ". . . [a]ssemblies which constitute a complete machine or appliance . . ." are to be classified ". . . in the heading appropriate to the machine or appliance . . ." and that Note 5 of Section XVI includes "apparatus" as a machine. The CBSA noted further that the Tribunal had previously classified electronic ballasts under tariff item No. 8504.10.00.[28]

51. Standard Products submitted that, while heading No. 85.04 describes the goods in issue by function, Note 5 to Chapter 85 clearly states that "[f]or the classification of the articles defined in this Note, headings 85.41 and 85.42 shall take precedence over any other heading in the Nomenclature which might cover them by reference to, in particular, their function."

52. The Tribunal accepts Dr. Groza's statement that "electrical" includes "electronics".[29] The implication is that electronic goods are not excluded from classification in heading No. 85.04. Rather, should such goods meet the conditions for classification, they can be accepted for inclusion, since they are simply a subset of the electrical goods generally described in that heading. A tariff heading reference to electrical apparatus and devices includes a reference to electronic apparatus and devices.

Transformers

53. Note (I) of the *Explanatory Notes* to heading No. 85.04 indicates that the goods described therein transform AC of a given voltage to AC of another voltage. The note is clear that this is done ". . . by means of induction . . . ." Mr. Hedrei, without stating categorically that the electronic ballasts do not work by induction, indicated that a ballast that operates ". . . by means of inductance, capacitance or resistance . . ." is a magnetic ballast.[30] However, in his letter of June 8, 2006, to counsel,[31] he stated that an electronic ballast ". . . contains . . . passive components like capacitors, resistors, and inductors . . . ." Mr. Guindon, describing his laboratory examination of the goods, stated that he had discovered and removed two transformers from the substrate.[32] It therefore appears that electronic ballasts function at least in part by means of "inductance, capacitance or resistance".

54. The *Explanatory Notes* to heading No. 85.04 state that ". . . [t]he heading covers all transformers . . .", and the first example given is ". . . *ballasts* for the control of the amount of current that flows through discharge lamps or tubes . . ." [emphasis added]. Dr. Groza's confirmation that "electrical" includes "electronic" supports the Tribunal's conclusion with regard to the proper classification of the goods in issue. Given that confirmation, neither the heading nor the *Explanatory Notes* excludes electronic ballasts from classification in this heading.

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28. *Philips Electronics Ltd. v. Deputy M.N.R.* (5 February 1998), AP-96-208 and AP-97-009 (CITT).
29. *Transcript of Public Hearing*, 29 and 30 May 2008, at 137.
30. *Transcript of Public Hearing*, 29 May 2008, at 187-88.
31. Respondents brief, tab I.
32. *Transcript of Public Hearing*, 29 and 30 May 2008, at 215-17.

Static Converters

55. The same can be said of the expression “electrical static converters”, i.e. that the expression does not exclude electronic static converters.

56. Note (II) of the *Explanatory Notes* to heading No. 85.04 states that electrical static converters are used to convert electrical energy to adapt it for further use. It further indicates that they may incorporate auxiliary devices, such as transformers, induction coils, resistors, command regulators, etc. They are sometimes referred to as voltage or current regulators, and this category of goods includes rectifiers, inverters, and AC converters and cycle converters by which alternating current is converted to a different frequency or voltage.

57. The goods in issue, as described by the witnesses and as illustrated on the written record, perform such functions. Further, they are not—by their makeup, by their function, or by the vocabulary of the heading, the tariff item and the *Explanatory Notes*—excluded from the heading or the tariff item.

58. The Tribunal is not required to distinguish among the different terms used in the heading. As long as the heading includes the goods in issue without exclusion, the heading can apply. In the Tribunal’s view, tariff item No. 8504.10.00 describes the goods in issue, and the notes to Chapter 85 do not exclude them from the heading or the tariff item. Whether the goods in issue fall under transformers or static converters is not critical for classification in this instance, and they are properly classified, in the Tribunal’s view, as ballasts for discharge lamps or tubes.

59. In the Tribunal’s view, the goods in issue are properly classified under tariff item No. 8504.10.00.

DECISION

60. For the foregoing reasons, the Tribunal concludes that the goods in issue are properly classified under tariff item No. 8504.10.00 as ballasts for discharge lamps or tubes.

61. The appeal is therefore dismissed.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Diane Vincent
Diane Vincent
Member

André F. Scott
André F. Scott
Member