



Ottawa, Thursday, January 30, 1992

**Appeal No. AP-90-006**

IN THE MATTER OF an appeal heard on September 26, 1991, under section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.) as amended;

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue for Customs and Excise dated February 23, 1990, with respect to a request for a re-determination pursuant to section 63 of the *Customs Act*.

**BETWEEN**

**ESDEN LIMITED**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE  
FOR CUSTOMS AND EXCISE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed in part. The Tribunal finds that the DLS card reading sensor should be classified under tariff item No. 8543.80.90 as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85, and the ST-2 security tap and the MI-6/RO-1 panel should be classified under tariff item No. 8537.10.99 as other boards, panels ... for electric control or the distribution of electricity ... for a voltage not exceeding 1,000 V.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.

Member

W. Roy Hines

W. Roy Hines

Member

Robert J. Martin

Robert J. Martin

Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-90-006**

**ESDEN LIMITED**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE  
FOR CUSTOMS AND EXCISE**

**Respondent**

*The goods in issue are three components of a proximity access control and alarm monitoring system known as the SE 902. The system is used to control and record access to secure premises. It will also support additional devices such as heat or motion detectors to monitor the secure premises.*

*The goods in issue are linked by electrical cable to the central processing unit (CPU) of the system. The goods include the DLS card reading sensor, the ST-2 security tap and the MI-6/RO-1 panel. The DLS emits electro-magnetic radiation in the form of radio waves which induces a card to transmit information back to the DLS through the electromagnetic field between them. This signal is then routed through the ST-2 security tap to the SE 902 CPU. Based on these signals, the CPU will allow the card holder to access the building. The ST-2 security tap isolates the signals, preventing any short circuit to reach the CPU. The MI-6/RO-1 is connected to six sensor devices that are triggered by such conditions as extreme heat. If one of the devices is triggered, a signal is sent to the CPU via the MI-6/RO-1. Depending on its program, the CPU then sends out a signal to a fire alarm or to a modem to automatically dial the fire department, etc.*

**HELD:** *The appeal is allowed in part. The Tribunal finds that the DLS card reading sensor should be classified under tariff item No. 8543.80.90 as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85, and the ST-2 security tap and the MI-6/RO-1 panel should be classified under tariff item No. 8537.10.99 as other boards, panels ... for electric control or the distribution of electricity ... for a voltage not exceeding 1,000 V.*

*Place of Hearing: Ottawa, Ontario*  
*Date of Hearing: September 26, 1991*  
*Date of Decision: January 30, 1992*  
*Tribunal Members: Robert C. Coates, Q.C., Presiding Member*  
*Robert J. Bertrand, Q.C., Member*  
*W. Roy Hines, Member*  
*Counsel for the Tribunal: David M. Attwater*  
*Clerk to the Tribunal: Janet Rumball*  
*Appearances: Gardner Hodder, for the appellant*  
*Gilles Villeneuve, for the respondent*

**Appeal No. AP-90-006**

**ESDEN LIMITED**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE  
FOR CUSTOMS AND EXCISE**

**Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
ROBERT J. BERTRAND, Q.C., Member  
W. ROY HINES, Member

**REASONS FOR DECISION**

The goods in issue are three components of a proximity access control and alarm monitoring system known as the SE 902. The system is used to control and record access to secure premises. It will also support additional devices such as heat or motion detectors to monitor the secure premises. These items are linked by electrical cable to the central processing unit (CPU) of the system. The CPU consists of a microprocessor circuit board mounted in a metal housing. The program to run the system is contained on its integrated circuits. The SE 902 may be linked by modem to an IBM or compatible personal computer, although this is not necessary for the system to function. However, neither the CPU nor the personal computer are among the goods in issue.

The goods in issue are the DLS card reading sensor, the ST-2 security tap and the MI-6/RO-1 panel. The DLS card reading sensor emits electro-magnetic radiation in the form of radio waves that are picked up by an antenna in a credit-card-sized card. This induces a change in the magnetic field around the card that induces a current in the antenna. The current is used to transmit information back to the DLS through the electromagnetic field between them. This analog signal is then converted to a digital signal and routed through the ST-2 security tap to the SE 902 CPU. Based on these signals, the CPU will allow the card holder to access the building. It does this by sending a signal to the locking mechanism on the door. The ST-2 security tap allows the signals transmitted from the DLS card reading sensor to be forwarded to the CPU. It isolates the signals, preventing any short circuit from reaching the CPU. The MI-6/RO-1 is connected to as many as six sensor devices that are triggered by such conditions as extreme heat. If one of the devices is triggered, a signal is sent to the CPU via the MI-6/RO-1. Depending on its program, the CPU then sends out a signal to a fire alarm or to a modem to automatically dial the fire department, etc.

The goods were imported into Canada on September 2, 1988.

The issue in this appeal is to determine the proper tariff classification of the goods. The respondent claims that the goods are properly classified as such:

- a) the DLS card reading sensor under tariff item No. 8543.80.90, as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85;
- (b) the ST-2 security tap under tariff item No. 8536.90.20, as a junction box, being electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits, for a voltage not exceeding 1,000 volts; and
- (c) the MI-6/RO-1 panel under tariff item No. 8537.10.99, as other boards, panels for electric control or the distribution of electricity for a voltage not exceeding 1,000 V.

The appellant claims that the goods are properly classified under tariff heading No. 84.71 as "Automatic data processing machines and units thereof; magnetic or optical readers.... " Tariff item No. 8471.92.90 was identified as the most appropriate, being other automatic data processing machines and units thereof.

Section 10 of the *Customs Tariff*<sup>1</sup> provides that reference shall be made to the General Rules for the Interpretation of the Harmonized System (the General Rules). Rule 1 of the General Rules provides that the classification of goods shall be determined by, amongst other things, reference to any relevant Chapter Notes. Pursuant to Note 5(A) to Chapter 84, for the purpose of heading No. 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.

Accordingly, the SE 902 must meet the four criteria of Note 5(A) to be considered an automatic data processing machine. Counsel for the respondent, however, argued that the second and third requirements are not fulfilled.

Much of the evidence and argument focused on the interpretation of the term "programmed." Counsel for the appellant advocated a more general and layperson's definition, whereby it could be said that a user of the SE 902 was programming the system by inputting certain times during which a door will be unlocked or inputting certain codes allowing access to particular card holders. In support of this proposition, counsel argued that statutes are to be

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1. R.S.C., 1985, c. 41 (3rd Supp.) as amended.

construed according to the ordinary and popular meaning of their words, notwithstanding that the statute deals with scientific or technical matters.

In contrast, counsel for the respondent urged the adoption of a more technical definition. Basically, a program is a set of instructions that directs the computer what to do with the data. Under such a definition, there is a distinction between instruction and data. The program is the set of instructions to tell the computer what to do with the data that are provided by the user through the keyboard or by inputs through the various devices of the SE 902 system. Under this definition, the activities described above as programming would be considered configuring, meaning to input data on which the programmed instructions will work. Thus, counsel for the respondent argued that to meet the second criterion of Note 5(A), the user must be able to do more than provide data to the computer. Rather, the user must be able to instruct the computer what to do with the data.

In construing a statute, words used in a technical or specialized sense must be given a technical or specialized meaning. Similarly, words used in a context that suggests they should be given their grammatical and ordinary meaning should be given that meaning. In recognition of this, the Tribunal had to determine whether the context of Note 5(A) suggests that the word "programmed" be given its technical meaning or that meaning advocated by counsel for the appellant. In ascertaining this, the Tribunal made reference to the tariff item, the relevant section and Chapter Notes and the Explanatory Notes to the Harmonized Commodity Description and Coding System<sup>2</sup> (the Explanatory Notes). On this basis, the Tribunal concludes that the word is used in its technical sense.

In rendering this opinion, the Tribunal notes that the word "programmed" is modified by the adverb "freely." In contrast, the Explanatory Notes to heading No. 85.37 refer to "programmed switchboards to control apparatus" that "are normally used in domestic electrical appliances, such as washing machines and dish washers." During the hearing, both Drs. Tho Le-Ngoc and David Gibbons, who appeared as expert witnesses for the respondent, drew an analogy between the program of the SE 902 and those contained in domestic appliances such as a washing machine. With such machines, the user inputs data on which the pre-programmed instructions work or chooses between a number of fixed programs. Therefore, if apparatus with fixed instructions are considered "programmed," then "freely programmed in accordance with the requirements of the user" must mean more than simply inputting basic data or choosing between fixed programs, which is what occurs with a washing machine or other domestic electrical appliances. The Tribunal concludes, therefore, that "freely programmed in accordance with the requirements of the user" implies that the user can introduce or alter the instructions that tell the computer what to do with the data being inputted. As a user is incapable of doing this with the SE 902, the Tribunal finds that the second criterion on Note 5(A) to Chapter 84 has not been met and the goods cannot be considered units of an automatic data processing machine.

The Tribunal's interpretation is supported by the Explanatory Notes to heading No. 84.71 which state:

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2. Customs Co-operation Council, Brussels, First Edition, 1986.

*Thus machines which operate only on fixed programs, that is programs which cannot be modified by the user, are excluded even though the user may be able to choose between a number of such fixed programs.*

Nor does the Tribunal believe that the DLS should be classified under heading No. 84.71 as a magnetic or optical reader. The undisputed evidence of the experts described the DLS as a sensor working by means of radio transmission which, in the true sense, is neither magnetic nor optical. It is more properly described as working by means of electromagnetic radiation. Accordingly, the DLS does not qualify under heading No. 84.71 as a magnetic or optical reader. Rather, the Tribunal believes that it is properly classified under tariff item No. 8543.80.90 as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85.

The Tribunal is not satisfied that the ST-2 was properly classified as a junction box. In the Explanatory Notes, junction boxes are defined as "boxes fitted internally with terminals or other devices for connecting together electrical wires." It is apparent to the Tribunal that the ST-2 is much more than the basic device being described.

In contrast, the Explanatory Notes to heading No. 85.37 define boards and panels as "consisting of an assembly of apparatus," such as switches and fuses on a board or panel. The heading includes "programmed switchboards to control apparatus" that "are normally used in domestic electrical appliances, such as washing machines and dish washers." The Tribunal believes that the microprocessor circuit boards of the ST-2 and MI-6/RO-1 are analogous to those found in domestic electrical appliances. As they are designed for a voltage not exceeding 1,000 V, they should be classified under tariff item No. 8537.10.99.

Accordingly, the Tribunal allows the appeal in part.

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Presiding Member

Robert J. Bertrand, Q.C.  
Robert J. Bertrand, Q.C.  
Member

W. Roy Hines  
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