

Ottawa, Monday, June 15, 1992

Appeal No. AP-90-211

IN THE MATTER OF an appeal heard on March 4, 1992,
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 December 14, 1990, with respect to a request
for a re-determination pursuant to section 63 of the *Customs
Act*.

BETWEEN

PHILIPS ELECTRONICS LTD.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed. The Tribunal finds that the television converters in issue are properly classified under tariff item No. 8529.90.30 as parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28, which include domestic television receivers.

Desmond Hallissey
Desmond Hallissey
Presiding Member

Kathleen E. Macmillan
Kathleen E. Macmillan
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-90-211

PHILIPS ELECTRONICS LTD.

Appellant

and

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

Respondent

The goods in issue are remote controlled converters for use with television sets. A converter is connected to a television set by coaxial cable and enables the set to receive more channels than the maximum of 12 that are available with a standard television. A converter allows a viewer to access cable TV. It isolates high frequency signals from the other frequencies in the system and delivers the desired signal or channel to the television receiver to which it is connected.

The respondent claimed that the goods are properly classified under tariff item No. 8543.80.90 as "Other electrical machines and apparatus, having individual functions, not specified or included elsewhere in this Chapter." The appellant claimed that the goods are properly classified under tariff item No. 8529.90.30 as parts suitable for use solely or principally with domestic television receivers.

HELD: *The appeal is allowed. The Tribunal finds that the television converters in issue are properly classified under tariff item No. 8529.90.30 as parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28, which include domestic television receivers.*

Place of Hearing: Ottawa, Ontario

Date of Hearing: March 4, 1992

Date of Decision: June 15, 1992

*Tribunal Members: Desmond Hallissey, Presiding Member
Kathleen E. Macmillan, Member
Sidney A. Fraleigh, Member*

Legal Services: France Deshaies

Clerk of the Tribunal: Janet Rumball

*Appearances: Geoffrey S. Lester, for the appellant
Michael A. Kelen, for the respondent*

Appeal No. AP-90-211

PHILIPS ELECTRONICS LTD.

Appellant

and

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

Respondent

TRIBUNAL: DESMOND HALLISSEY, Presiding Member
KATHLEEN E. MACMILLAN, Member
SIDNEY A. FRALEIGH, Member

REASONS FOR DECISION

The goods in issue in this appeal are remote controlled converters that were imported between May and September 1989. The issue facing the Tribunal is the proper tariff classification of the goods.

Witnesses appearing on behalf of the appellant explained that a converter is connected to a television set by coaxial cable and enables the set to receive more channels than the maximum of 12 that are available with a standard television. Citing the example of the Ottawa-Hull region where 85 percent of households subscribe to a cable TV service, some 60 channels are offered to cable subscribers who have a converter. Although converters are built into television receivers currently being manufactured, a separate converter is necessary to receive cable channels on an older television receiver and for people wishing to access pay-TV channels or pay-per-view service.

Witnesses explained that a converter performs a function similar to an antenna or aerial. It isolates high frequency signals from the other frequencies in the system and delivers the desired signal or channel to the television receiver to which it is connected.

The appellant claimed that the goods are properly classified under tariff item No. 8529.90.30 as parts suitable for use solely or principally with domestic television receivers. The relevant tariff nomenclature is:

- 8528.10.91 ----Domestic television receivers having a screen size of 48.26 cm
- 8528.10.98 ----Other domestic television receivers
- 85.29 Parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28.
- 8529.10 -Aerials and aerial reflectors of all kinds; parts suitable for use therewith
- 8529.90 -Other

8529.90.30 ---Of the goods of tariff item No. 8528.10.91 or 8528.10.98

The respondent claimed that the goods are 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 relevant tariff nomenclature is:

85.43 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this Chapter.

8543.80 -Other machines and apparatus

8543.80.90 ---Other

Section 11 of the *Customs Tariff*¹ requires that regard shall be had to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*² (Explanatory Notes) in interpreting the headings and subheadings in Schedule I of the *Customs Tariff*. The Tribunal referred to the Explanatory Notes to define the meaning of the term "individual functions."

In defining the term with reference to electrical machines and apparatus of heading No. 85.43, the relevant Explanatory Notes adopt the criteria provided in the Notes to heading No. 84.79, dealing with machinery having individual functions. With appropriate modifications to make the criteria relevant to heading No. 85.43, the Explanatory Notes describe two situations where electrical machines and apparatus are considered as having "individual functions."

The first situation involves electrical appliances or apparatus whose function can be performed distinctly from, and independently of, any other machine, appliance or other entity. This is clearly not the case with respect to converters since they have no function independent of the television set. The second situation involves appliances or apparatus which cannot perform their function unless they are mounted on another entity or incorporated into a more complex entity. To meet this definition, the appliance or apparatus must perform a function that is distinct from that of the entity onto which it is mounted or into which it is incorporated. Also, this function must not play an integral or inseparable part in the operation of the entity.

The Tribunal interprets the second situation to mean that an electrical machine or apparatus with an individual function must perform an ancillary or separate function to that of the greater entity. In contrast, the function of a converter is, in the Tribunal's view, very closely related to that of the television receiver to which it is connected. Although the television can operate without a converter by increasing the number of channels a television is capable of receiving, a converter contributes directly to the main function of a television receiver, that being the reception of audio-visual signals. It does not perform a separate or ancillary function. Further indication of the integral role played by converters in the functioning of television receivers is the fact that converters are now built into the receivers. Television receivers, today, are not manufactured without the built-in capability that is contained in the goods in issue in this appeal.

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

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

Since the goods do not, in the Tribunal's view, meet the requirements of individual function as set out in the Explanatory Notes, they cannot fall under heading No. 85.43.

The Explanatory Notes to heading No. 84.79, which are adopted with appropriate modifications for purposes of heading No. 85.43, state that electrical machines and apparatus of heading No. 85.43 are distinguished from parts of such entities in that the former have individual functions. As the Tribunal determined that the goods in issue do not have individual functions, it looked to the provisions for parts contained in the tariff nomenclature and Legal Notes of Schedule I of the *Customs Tariff* for purposes of tariff classification.

The general Explanatory Notes to Section XVI at Part II entitled "Parts," which give effect to Legal Note 2 of the same section, provide that:

In general, parts which are suitable for use solely or principally with particular machines or apparatus ... are classified in the same heading as those machines or apparatus.... Separate headings are, however, provided for:

...

(H) Parts of apparatus of headings 85.25 to 85.28 (heading 85.29).

It was common ground in this case that the goods in issue are suitable for use solely with televisions and not with a number of machines falling in different headings. In general, such goods would be classified with the particular machine or apparatus for which they were solely suitable. However, an exception to this principle is provided for parts of apparatus of heading No. 85.28, which includes domestic television receivers. Such parts are to be classified under heading No. 85.29. Therefore, as the goods cannot be seen as appliances or apparatus having individual functions, the Tribunal considers them parts that should be classified under heading No. 85.29 that provides for parts to television receivers.

Examination of the other tariff items under heading No. 85.29 reinforces the Tribunal's views in this regard. Subheading No. 8529.10, "Aerials and aerial reflectors of all kinds;" for example, refers to goods which share many of the characteristics and perform much the same function as converters. Similarly, the Explanatory Notes to heading No. 85.28 stipulate that "devices which simply isolate high-frequency television signals (sometimes called video tuners) are to be classified as parts in heading 85.29." Like aerials and converters, video tuners also isolate high-frequency signals, thereby enabling or improving the reception of television sets. They are also connected to the sets by a cable or wire.

In making its determination, the Tribunal is aware that, in February 1992, Parliament amended the *Customs Tariff* to provide for duty-free entry of television converters. In so doing, Parliament established a separate tariff item for converters, No. 8543.80.50, which falls under the general heading submitted by the respondent in this appeal. Clearly, any importation of television converters following this amendment must enter under this new tariff classification.

The Tribunal does not accept, however, the respondent's argument that Parliament's actions, some two and a half years after the importation of the goods in issue in this appeal, are binding on the Tribunal in its determination of tariff classification. The Tribunal's consideration must be the tariff schedule as it existed in 1989 when the imports entered Canada. In focusing on Schedule I of the *Customs Tariff* in existence at the time, it is the Tribunal's clear belief that the goods are best described under heading No. 85.29.

The Tribunal therefore finds that the television converters in issue are properly classified under tariff item No. 8529.90.30 as parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28, which include domestic television receivers.

The appeal is allowed.

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