CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, June 10, 1998

Appeal Nos. AP-93-392, AP-93-393, AP-94-001, AP-94-002, AP-94-007, AP-94-019, AP-94-020, AP-94-026, AP-94-028, AP-94-030, AP-94-033, AP-94-043, AP-94-055, AP-94-060, AP-94-064, AP-94-068, AP-94-077, AP-94-079, AP-94-097 and AP-96-118

IN THE MATTER OF appeals heard on September 10, 1997, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue with respect to requests for re-determination under section 63 of the *Customs Act*.

BETWEEN

ASEA BROWN BOVERI INC. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

AND

ASEA BROWN BOVERI INC. (VARENNES DIVISION) AND ENTRELEC CANADA INC. **Interveners**

DECISION OF THE TRIBUNAL

The appeals are allowed in part. The matter is sent back to the respondent for further consideration.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Patricia M. Close
Patricia M. Close
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal Nos. AP-93-392, AP-93-393, AP-94-001, AP-94-002, AP-94-007, AP-94-019, AP-94-020, AP-94-026, AP-94-028, AP-94-030, AP-94-033, AP-94-043, AP-94-055, AP-94-060, AP-94-064, AP-94-068, AP-94-077, AP-94-079, AP-94-097 and AP-96-118

ASEA BROWN BOVERI INC. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

and

ASEA BROWN BOVERI INC. (VARENNES DIVISION) AND ENTRELEC CANADA INC. **Interveners**

These are 20 appeals under section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue. The goods in issue are described as relays or relay assemblies. They range from single individual relays that perform simple operations, such as measuring voltage, current, speed, temperature, etc., which react to pre-set parameters to control the operation of industrial equipment, such as electric generating sets in generating stations, to very complex sophisticated relay assemblies that perform all of the necessary functions to control or regulate automatically an industrial process, such as the generation, transmission or distribution of electricity. The first issue in these appeals is whether the RELZ and BLR relays are properly classified in subheading No. 8536.49 as other electrical apparatus for protecting electrical circuits (for example, relays), as determined by the respondent, or should be classified under tariff item No. 9032.89.20 as process control apparatus, excluding sensors, which converts analog signals from or to digital signals, as claimed by the appellant. The second issue in these appeals is whether these goods along with a series of others qualify for duty-free entry under Code 2101 of Schedule II to the *Customs Tariff*.

HELD: The appeals are allowed in part. The Tribunal relied on its decision in *Asea Brown Boveri Inc.* v. *The Deputy Minister of National Revenue* in finding that the RELZ and BLR are relays and that they are properly classified in subheading No. 8536.49. The Tribunal held that the fact that these two items may perform other functions does not make them something other than relays. The Tribunal, therefore, dismissed the first issue in these appeals. With respect to the second issue, the Tribunal decided, in light of the evidence which was before it in the present appeals, to send the matter back to the respondent so that it can be determined, with the assistance of the appellant, which goods in issue were imported "for use in" stations or substations which have a "control centre" that meets the definition contained in Customs Notice N-010.

Place of Hearing: Ottawa, Ontario
Date of Hearing: September 10, 1997
Date of Decision: June 10, 1998

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Tribunal Members:	Arthur B. Trudeau, Presiding Member Patricia M. Close, Member Charles A. Gracey, Member
Counsel for the Tribunal:	Joël J. Robichaud
Clerks of the Tribunal:	Anne Jamieson and Margaret Fisher
Appearances:	Stanley E. Morris and Ray L. Wistaff, for the appellant Stéphane Lilkoff, for the respondent Michael Sherbo, for the interveners

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal Nos. AP-93-392, AP-93-393, AP-94-001, AP-94-002, AP-94-007, AP-94-019, AP-94-020, AP-94-026, AP-94-028, AP-94-030, AP-94-033, AP-94-043, AP-94-055, AP-94-060, AP-94-064, AP-94-068, AP-94-077, AP-94-079, AP-94-097 and AP-96-118

ASEA BROWN BOVERI INC. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

and

ASEA BROWN BOVERI INC. (VARENNES DIVISION) AND ENTRELEC CANADA INC. **Interveners**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
PATRICIA M. CLOSE, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

BACKGROUND

These are 20 appeals under section 67 of the *Customs Act*[1] (the Act) from decisions of the Deputy Minister of National Revenue made under section 63 of the Act.

The goods in issue are described as relays or relay assemblies.[2] They range from single individual relays that perform simple operations, such as measuring voltage, current, speed, temperature, etc., which react to pre-set parameters to control the operation of industrial equipment, such as electric generating sets in generating stations, to very complex sophisticated relay assemblies that perform all of the necessary functions to control or regulate automatically an industrial process, such as the generation, transmission or distribution of electricity.

The goods in issue were imported under 249 separate transactions between January 18, 1988 and December 14, 1991. At the time of importation, the goods in issue were classified in subheading No. 8536.49 of Schedule I to the *Customs Tariff*[3] as other electrical apparatus for protecting electrical circuits (for example, relays). The appellant filed requests for re-determination of the tariff classification and submitted that the goods in issue should be classified under tariff item No. 8537.10.91 as boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading No. 85.35 or 85.36, for electric control or the distribution of electricity, of a kind used with the goods classified under the tariff items enumerated in Schedule VI. The requests were denied by the respondent.

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1. R.S.C. 1985, c. 1 (2nd Supp.).
2. A list of the goods in issue which is taken from columns 2 and 3 of Tab 1 of the appellant's brief is provided in an appendix to this decision.
3. R.S.C. 1985, c. 41 (3rd Supp.).

In light of the Tribunal's decision in *Asea Brown Boveri Inc.* v. *The Deputy Minister of National Revenue*,[4] the appellant conceded that all of the goods in issue listed in columns 1 and 2 of Tab 1 of its brief are properly classified in subheading No. 8536.49. However, the appellant claimed that the goods in issue listed in column 2 qualify for the benefits of Code 2101 of Schedule II to the *Customs Tariff*. The appellant maintained its position that the RELZ and BLR relays listed in column 3 of Tab 1 of its brief should be classified in heading No. 90.32 as automatic regulating or controlling instruments and apparatus or, more specifically, under tariff item No. 9032.89.20 as process control apparatus, excluding sensors, which converts analog signals from or to digital signals. In the event that the Tribunal finds that these relays are properly classified in subheading No. 8536.49, then the appellant's position is that they also qualify for the benefits of Code 2101.

The first issue in these appeals is whether the BLR and RELZ relays are properly classified in subheading No. 8536.49, as determined by the respondent, or should be classified under tariff item No. 9032.89.20, as claimed by the appellant. If the Tribunal determines that they should be classified under tariff item No. 9032.89.20, then the appeals should be allowed. If the Tribunal decides that they are properly classified in subheading No. 8536.49, then they would form part of the second issue in these appeals, that is, whether such goods qualify for the benefits of Code 2101.

The respondent raised an issue in his brief, that is, that the Tribunal has no jurisdiction to address the second issue, as it is one of diversion, which falls under section 77 of the Act, rather than an issue of tariff classification, which falls under section 67 of the Act. The issue was, however, abandoned by counsel for the respondent at the hearing. He accepted that the appellant knew the end use to which the goods in issue were to be put at the time of importation, but erroneously had failed to claim the benefits of Code 2101. In light of this, the interveners' representative did not make any oral representations to the Tribunal, as this was the only issue on which he intervened. Accordingly, the Tribunal has not addressed this issue.

For the purposes of these appeals, the relevant tariff nomenclature of Schedule I to the *Customs Tariff* reads as follows:

85.36	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 volts.
8536.30	-Other apparatus for protecting electric circuits
	-Relays:
8536.49	--Other
90.32	Automatic regulating or controlling instruments and apparatus.
9032.89	--Other
9032.89.20	Process control apparatus, excluding sensors, which converts analog signals from or to digital signals
9032.90	-Parts and accessories
9032.90.20	---Of the goods of tariff item No. 9032.89.20 or 9032.89.30

4. Appeal No. AP-93-383, January 18, 1995.

Code 2101 provides for the duty-free entry of articles (other than goods of the tariff item Nos. listed), for use in, among others, the goods of tariff item No. 9032.90.20, but not those of subheading No. 8536.49.

FACTS

Mr. John M. Gillies, an engineer, testified on behalf of the appellant. He was qualified as an expert in the field of "power systems." Mr. Gillies explained that the appellant is a worldwide engineering organization. He testified that protective relays, controls and metering devices constitute but one part of the company's operations. He explained that the appellant imports individual relays and then puts them together through an engineering process to form a complete operating integrated protective and control system to meet the customer's specific requirements. For example, these systems are used to protect energy control distribution networks.

Mr. Gillies explained that, historically, a relay was basically a simple black box which could perform a single function. If, for example, there was a need for three functions, there had to be three boxes. With the advent of microprocessors, it became possible to integrate more and more functions into a single unit. Protection would be but one of these functions. He explained that the "Pyramid" concept was developed by the appellant to indicate to the industry that it could cover their protection, communication, control and self-supervision needs with a single unit. He testified that the appellant provides a complete range of relays and protection systems, which can be used in many different sectors of the power grid, including the generation, the transmission, the distribution and the utilization of the energy. A customer can purchase its total protection needs from the appellant.

To further explain such systems, a table from the appellant's buyer's guide, which lists relays by the type of protection that they provide, was introduced into evidence. Mr. Gillies testified that most of the relays in issue fall into the "COMBIFLEX" series of relays. Most of these relays can be either integrated in the COMBIFLEX Modular System (CMS) or sold individually. Another excerpt from the appellant's buyer's guide, which contains a picture of the CMS, was also introduced into evidence. With the aid of this exhibit, Mr. Gillies described the goods in issue as small plug-in units, or little boxes with controls on the front and pins on the back where they plug into a base. Each of these units provides a specific relay function. The appellant puts these units or relays together to provide the protection or control functions required by its customers. The appellant engineers interconnections for these relays, which end up in cubicles or panels. These make up the CMS, for example, which is known worldwide for its flexibility in interconnecting these units.

Turning again to the Pyramid concept, Mr. Gillies explained that, by co-ordinating the different functions in one unit, the relays can communicate with one another. The RELZ 100, which is a communication relay, is directly connected into the Pyramid. This means that the control centre can communicate with the system through this relay. For example, it can download information and change the relay settings. These communication relays can also be connected with older conventional relays so that the operator in the control centre can collect data from the older relays in the system.

Documentation pertaining to a specific control centre designed and manufactured by the appellant for installation at the Shand Power Station in Saskatchewan was also introduced into evidence. It contained bills of material that explain the various types of relays apportioned within each of the panels involved.

Mr. Gillies explained that the BLR relay is not mentioned because it is not part of a control centre per se. Rather, it is a component of a different type of automatic control system. He explained that the total production, control and metering package at the Shand Power Station consists of a line-up of six panels or cubicles. Various functions are performed by each of the six panels. Most of the goods in issue are interconnected on these panels. Furthermore, there can be numerous CMS-integrated relays in the same panel. Each of the panels comprises different levels or rows of relays identified as U02, U06, U10 and so on, up to U026. This is useful to help identify where each of the particular relays is located on the panels. The individual relays are identified by letter codes, for instance, RARIB, RARID and RXPE. Mr. Gillies testified that approximately 63 relays form part of the total installation.

Mr. Gillies testified that there were six panels installed at the Shand Power Station, although the largest is a standard installation. Other power-related operations, such as substations, transmission lines or distribution centres, are much simpler and may have only one panel. He explained that the protection panels are connected to the control centre to supply information to the operator. He stated that the panels provide certain control functions. Mr. Gillies clarified that protective relays are only part of the control system. Building block relays, auxiliary relays, peripheral relays, timers and other specific types of relays are needed to make up the whole scheme. A protective relay, by itself, cannot do very much. He explained that there are manual control centres. To be automatic, the control centre needs relays which are capable of sensing certain signals and then initiating control functions. Mr. Gillies testified that the six panels at the Shand Power Station provide protection and control functions, but that they cannot be referred to as a control centre. He explained that the output signals from the panels go to a control centre where the operator can initiate protection and control functions directly.

With the aid of several diagrams, Mr. Gillies explained how the installation at the Shand Power Station operates and how, in his view, it meets the requirements of Note 6(b) to Chapter 90 and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*[5] (the Explanatory Notes) to heading No. 90.32. He explained that the Shand Power Station meets the requirements of the control function described in those notes, that is, it has a measuring device and an electrical control device which compare the actual measured values with desired values to give an output. It also has a starting, stopping or operating device which supplies current to the circuit breakers. More specifically, Mr. Gillies explained that the generating station, which can consist of a boiler, a turbine, a generator and/or a transformer, sends electricity to the system. From this process, analog signals from various sensors, pressure switches, current transformers and voltage transformers located in the system are sent to the relay panels, which contain the measuring and control devices. These panels then give information to the operator's console, so that the operator can analyze it and take appropriate action. Mr. Gillies also explained that some relays in the installation respond automatically to perform the starting, stopping and regulating functions. Again, he referred to the installation as protection and control panels and declined to call them control centres.

Mr. Gillies explained that a relay protects and controls the generating station, which is considered a complete process, and that this combination of protection and control is vastly different from a normal protection function. He explained that, if there is a problem on a specific line, the relay simply switches off the line to solve the problem. For the generator, there are numerous aspects to consider. For example, if there

5. Customs Co-operation Council, 1st ed., Brussels, 1986.

is a fault in the transformer, the relay cannot switch it off, because the boiler has a full head of steam, and all this energy must go somewhere in the system. If this were done, the power system would suffer a severe shock. The relay, therefore, has to control the whole process and shut it down in a logical, controlled way in order to make the impact to the system less severe. Mr. Gillies presented a table which listed all of the protection functions and the operation and control sequences that go into effect when particular problems occur. He testified that, from 1988 through 1992, the appellant produced at least five or six major generating stations and a much larger number of substations. He said that this may have represented some 50 to 60 protection packages.

Mr. Gillies referred to the Shand Power Station as a "closed-loop control system," where everything is interlocked. He testified that all of the products imported by the appellant are incorporated in control and protection systems such as those used at the Shand Power Station. He stated that the RELZ is now referred to as a "numerical protection terminal" rather than a relay, because of the number of functions that it can perform. He explained that the RELZ is one of the building blocks in the Pyramid family of relays, which performs many functions, and that it would take a whole panel of relays to replace its functions. Mr. Gillies indicated that none of the goods in issue were imported for stock purposes. Rather, they were all ordered for particular jobs. He testified that, at the time of importation, the appellant knew the use to which these goods were going to be put. He reiterated that the goods in issue are used in protection and control systems, which are designed and built in the appellant's factory.

In cross-examination, Mr. Gillies explained that, in smaller substations, the operator's console will not necessarily be in the same building as the panels. In certain cases, the information may be transferred through communication channels to a larger control centre which looks over all of the power system. The relays feed the information to the control centre. He acknowledged that, from the evidence, he could not always determine which goods went to a power generating plant and which ones went to a substation. He testified, however, that it was unlikely that they would have been used in other applications because they are too expensive to be used elsewhere.

In answering questions from the Tribunal, Mr. Gillies explained that each imported relay panel is tailor-made or designed for a particular project, as required by a customer. He testified that, in his view, a "control centre" is where control functions are carried out. He explained that, when he says that relays perform protection, control and metering functions and that these relays are on panels which are normally in a protection and control room, the "control centre" is the room next door, in the case of a power station. In other words, the room where the panels are located and where signals are received from these devices and the room where the operator controls the generator with switches is different. He explained that there are other "control centres," such as "motor control centres," which are motors used to control pumps and fans, for example. In the case of substations, control centres or the "room next door" can be "quite far away." Mr. Gillies reiterated that a control centre can also be completely automatic. He testified that he could not think of any possible uses for the goods in issue other than the use for which they were designed. Mr. Gillies confirmed that it is possible to import a complete generating station and that this had already been done. He testified that the appellant did not claim the benefits of Code 2101 at the time of importation because it was not aware of its existence.

Since the appellant's literature was published by the manufacturer in Europe, Mr. Gillies could not explain why the words "control centre" were not found therein. He explained that, although relays may be

referred to as "protection terminals" or "intelligent systems," after importation, they are connected in a building block for use in "control centres." He testified that, in electrical engineering terms, the words "process control" have no meaning in the context of a generating station. He explained that the relays are installed in a protection panel and receive analog inputs from sensors, make measurement decisions and give outputs to the process and/or to the operator. The generator is but one link. There are other relays which control other parts of the system. Certain relays can protect and control automatically, while others send the information to the operator in the control centre. Mr. Gillies confirmed that the relays in issue receive analog signals. He said that the relays probably do not have analog to digital conversion capability but that a more accurate description is that they receive and analyze analog signals and that their output is in the form of digital signals.

Mr. Sylvain Lanoue, Product Manager for Asea Brown Boveri Inc., also testified as an expert witness on behalf of the appellant. He explained that the BLR relay is better described as a "*régulateur de puissance réactive*" ("power factor control relay") which is the description found in the French version of a document entitled "Power Factor Control Relay Type BLR-MC," rather than as a "power factor relay," which is the description found in the English version of that document. In his view, the use of the word "*régulateur*" in the French version better explains the function of the relay, which is to control. Mr. Lanoue also referred to a document entitled "Profile of Certification Reports" of the Canadian Standards Association which describes the BLR as a "power factor controller," rather than as a "power factor relay." He explained that there are two types of BLR relays: the BLR-MC and the BLR-MQ. The BLR-MC contains 14 different relays, while the BLR-MQ contains 6 different relays.

With the use of diagrams, Mr. Lanoue explained how the BLR functions. In brief, he explained that the BLR receives analog signals from the current transformer in the main network of an office building or manufacturing plant, for example, with respect to the amount of current being consumed. The signal is processed inside the power factor controller. The microprocessors inside the BLR do certain calculations and then send information to the relays, which switch on the capacitors to provide energy to the customers. The information is then sent back to the network. The process is then repeated continuously in order to determine whether another capacitor needs to be switched on or off to provide more or less energy. Mr. Lanoue described the system as a "closed-loop system." He explained that the BLR is a component of a larger automatic power system referred to as the "Autobank." He testified that the BLR is designed to be used in this power system. He said that the BLR is the "brain" of the Autobank. The BLR, as imported, cannot operate on its own. The relays need to be connected to the contactors which are connected to the capacitors, which feed the information back to the network. If there is no connection, then the power factor controller will be there for nothing.

In answering questions from the Tribunal, Mr. Lanoue explained that the BLR is designed to optimize the use of energy and that it does not protect anything. When asked whether the Autobank was a control centre, he responded by saying that it is a "power factor compensation system." However, he said that it could also be referred to as an "automatic regulator."

Mr. Réjean M. Breton, President of Breton Banville & Associés, a consulting firm, testified on behalf of the respondent. He was qualified as an expert witness in the field of power systems engineering. He testified that, in his view, both the BLR and the RELZ are relays: the former, a power control relay, and the latter, a line protection relay. With the aid of a diagram, Mr. Breton gave a description of an electric or power

grid. In doing so, he attempted to distinguish between the primary equipment, the protective equipment and the control equipment used within such a grid. He indicated that the primary equipment is the equipment which transports the current from its generation point to its destination. The secondary or auxiliary equipment transforms the current, for example, from 1,000 amps down to 5 amps in order to take readings and monitor the grid. In this operation, protection relays are required to protect the transformer. He testified that this used to be done with electromagnetic relays. It is now done with more sophisticated relays, but the principles have not changed. Mr. Breton explained that what occurs is that an analog input is transmitted to the relays from the power system. Where digital relays are being used, it is necessary to convert the analog signals to digital signals. The information is then processed by the relay.

Mr. Breton explained that protection relays monitor the system. If there are no faults, then the protection relays are not activated. That does not mean, however, that they do not work. They continuously receive and convert information. Mr. Breton explained that every breaker, or relay, needs some form of control. He said that with new technology, protective relays are now more complete. Some have measuring functions and can store information which may or may not be fed to a control system. Mr. Breton defined a relay as "a device that interprets input conditions, compares the input with a setting and transmits a command or an indication or an alarm to a destination." He indicated that the definition was taken from a document entitled "Applied Protective Relaying." He explained that the Institute of Electrical and Electronics Engineers describes all of the relays generally used in a power system under 97 designations, each identified by a number. For example, relay n^{o} 21 is a line protection relay, while relay n^{o} 55 is a power factor regulating relay. These designations are accepted by Canada.

Mr. Breton reiterated that, although relays are now more sophisticated, they perform in the same way in which they have performed for the last 50 years. They still process information and then transmit it to a breaker, a disconnect switch or a generator. The difference is that they deal with more information in a relatively short time. He mentioned that the measuring devices, which allow information to be sent to a local control panel or to a more sophisticated centralized control centre, are new. He explained that most relays are designed for specific uses. For example, it is difficult to use a protection relay for anything other than line protection. There are, however, relays that have more general uses. These are called overcurrent relays. Mr. Breton explained that there are control relays. However, such relays are always used within a protection scheme. The primary function of that scheme is still protection, even though there are relays that perform control functions.

Mr. Breton testified that the term "process control" is generally not used in the field of power system engineering. It is more generally used in the industries that have, for example, paper machines or an arc furnace. These are processes which need to be controlled. For example, a simple form of process control would be to try to maintain the water levels in water tanks. To do this, sensors, which are installed to measure the level of water, can activate a valve either to drain or to fill the tank. Mr. Breton explained that, in the field of power system engineering, the term used is "control equipment." In the power grid, the breakers, disconnect switches or transformer tap switches are generally used to control. He reiterated that the control function can be either local or at a different location. Furthermore, it can be either automatic or manual.

According to Mr. Breton, the BLR, although it performs many different functions and has even been reduced in size, is still a relay. He said that, if someone in the industry wanted to buy a BLR, that person would ask for a power control relay. He agreed with Mr. Lanoue that the BLR relay is used to control a

capacitor bank, such as the Autobank, in a substation. In other words, it controls the amount of energy used by the customer. Mr. Breton testified that, if a substation has a capacitor bank, it is not necessary that it also have a central control station. He said that, in certain cases, the operator can directly operate the equipment.

Mr. Breton reiterated that the RELZ is a line protection relay. It converts information which it receives from the current transformer into digital information. There are many sensing devices in the relay, because there are many functions to cover. One of these functions is to measure the distance to determine where the fault is located on the line. Once the fault has been located, the relay closes the line to determine whether the fault is permanent or temporary. The line can be turned back on automatically once the fault has been corrected. He explained that the RELZ relay is a completely static item. It does not do anything to the line. For example, it does not improve its performance. It measures and monitors what is happening on the line, but does not regulate. It acts like a fuse which blows to protect the electrical circuit when subjected to abnormal conditions, such as an overcurrent.

In cross-examination, Mr. Breton testified that the grouping of different relays within a specific cabinet does not change their function. This would apply to the CMS that is produced by the appellant. He explained that a relay can be bought as a stand-alone item or incorporated into a control panel. He testified that, in his view, there are no control centres which are completely automatic. There is always the possibility of manual intervention. Certain functions are automatic, such as closing the breaker after detecting a fault. He said that such changes have been going on for at least 30 years. In his view, the definitions of relays have not changed during this time. Mr. Breton acknowledged that there are control devices within the BLR, which convert analog signals to digital signals and then send them to an output relay which transmits analog signals to contactors, which, in turn, activate capacitors in the Autobank. However, he repeated that the added sophistication does not change their function or the fact that they are still relays.

In answering questions from the Tribunal, Mr. Breton testified that a "control centre" is the room which contains the controlling equipment. It is usually located somewhere in the substation, and the capacitors may be outside. He explained that, unless the capacitors are at a low voltage, they will be in a relay room within the power system. They will not be in the control room. A control room is essentially an elaborate computer terminal which is controlled by an operator. There usually would be a panel or a mimic diagram inside the room with switches and lights that show whether a breaker is opened or closed.

Ms. Susan Ryan, Tariff Administrator at the Department of National Revenue (Revenue Canada), also testified on behalf of the respondent. She explained that the purpose of Customs Notice N-010[6] was to help importers determine whether relays qualify for the benefits of Code 2101. She testified that, because the term "process control apparatus" is not common in the industry, it can be difficult to determine the meaning of that term. She said that, in consultations with engineers, it was determined that the control centre in a substation is in fact a "process control apparatus" of tariff item No. 9032.89.20. However, she stated that not all control centres are necessarily classified under that tariff item. It depends where the control centre fits on the hierarchy of control within a substation. If it is the master control, then, in her view, it would be classified under tariff item No. 9032.89.20. She testified that a control panel would not meet the requirements of tariff item No. 9032.89.20. She explained that, when the benefits of Code 2101 are claimed at the time of

6. "Interpretation of Tariff Code 2101 as it Relates to an Electrical Network," Department of National Revenue, December 5, 1995.

importation, Revenue Canada officials usually consult engineers to determine whether the imported goods will, in fact, be incorporated into a "process control apparatus." Ms. Ryan appeared to be of the view that the Shand Power Station has a "control centre" and that the goods in issue would have qualified for the benefits of Code 2101 if there had been evidence that they were used in that station.

ARGUMENT

The appellant's representatives submitted that goods in issue are incorporated into automatic controlling or regulating apparatus of tariff item No. 9032.89.20 and, thus, qualify for the benefits of Code 2101. They argued that the evidence showed that the appellant manufactures, maintains and repairs automatic control systems which control the generation, transmission and distribution of electricity. The evidence also showed that each step in the process is controlled independently of each other by a control centre. The representatives argued that "control centres" are designed and manufactured to fit the individual needs of customers and are not simply known by model number or name. Rather, they are designed and installed as a series of panels, each controlling specific areas as governed by the nature of the control centre, be it for generation, transmission or distribution of electricity.

Next, the appellant's representatives argued that the term "process control" simply means the control of a process, such as a manufacturing process. In support of their argument, they referred to the decision of the Supreme Court of Canada in *Quebec Hydro-Electric Commission* v. *The Deputy Minister of National Revenue for Customs and Excise*,[7] in which it was found that transformers were used directly in the manufacture of electricity. The representatives submitted that the evidence clearly showed that, at the time of accounting, the goods in issue were intended for use in automatic, controlling and regulating apparatus, that is, control centres for the generation, transmission or distribution of electricity in power grids or, in the case of the BLR, in power factor compensation systems. They argued that these goods are classifiable under tariff item No. 9032.89.20. They submitted that the evidence even went further and showed that the goods in issue were actually used in automatic, controlling and regulating apparatus. The representatives referred to the definition of "for use in" in section 4 of the *Customs Tariff*. It provides that "for use in" means that the goods must be wrought into, attached to or incorporated into other goods. They argued that, in the present case, the goods in issue are incorporated into control panels which make up the automatic control system, such as the one found at the Shand Power Station.

In support of their argument that the goods into which the goods in issue are incorporated should be classified under tariff item No. 9032.89.20, the appellant's representatives referred to Note 4 to Section XVI of Schedule I to the *Customs Tariff*, which provides that, "[w]here a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or 85, then the whole falls to be classified in the heading appropriate to that function," and to Note 3 to Chapter 90, which provides that "[t]he provisions of Note 4 to Section XVI apply also to this Chapter."

The appellant's representatives argued that Customs Notice N-010 clearly provides that components which are integral to the basic function of control centres qualify for the benefits of Code 2101. They argued

7. [1970] S.C.R. 30.

that the evidence is that the goods in issue are integral to the overall function of an automatic control centre of tariff item No. 9032.89.20. They noted that Customs Notice N-010 specifically refers to "protection relays" as being one of the components that qualifies for the benefits of Code 2101. The representatives agreed with the respondent that control centres can and do exist at different levels of an electrical network, as, when a fault occurs in one part of the network, it is not necessary to shut down the entire network, but only the part that has been affected. The representatives submitted that the goods in issue are used in control centres that meet the respondent's own description of that term. They argued that the fact that the protection and control panels may be located in a relay room and not in the control centre does not make the control panels anything other than what they are, that is, control centres. It is irrelevant that the relays are protection relays, control relays, auxiliary relays or any other type of relays. The fact that they are specifically designed for and, in fact, included in control centres qualifies them for the benefits of Code 2101.

The appellant's representatives referred to the testimony of Mr. Breton that all goods containing relays are still referred to as relays and argued that, at some point in time, a relay which forms part of or is a component of a larger piece of equipment or an assembly must take on new characteristics which alter its essential character and must be considered something other than a relay. They gave as an example computers, which, although they contain relays, are not classified as relays. The representatives argued that this applies to the BLR, which has had its essential character changed from a relay to an automatic controlling or regulating apparatus. They referred to the evidence which showed that the BLR converts analog signals to digital signals. They argued that the relay in the BLR is simply the starting, stopping or operating device which is referred to in the Explanatory Notes to heading No. 90.32.

According to the appellant's representatives, the BLR is not properly classified in heading No. 85.36 simply because it contains a relay. In the representatives' view, the BLR is an automatic process control system with analog to digital and digital to analog conversion and should, therefore, be classified under tariff item No. 9032.89.20. In support of their argument, the representatives referred to Customs Notice N-795,[8] which provides that a programmable controller of the closed-loop type is classifiable in heading No. 90.32. They argued that the BLR meets this description. In addition, the BLR contains a measuring device, which is a component of a process control apparatus. The representatives referred to Rules 1 and 2 of the *General Rules for the Interpretation of the Harmonized System*[9] (the General Rules) in support of their argument that the BLR and the RELZ should be classified under tariff item No. 9032.89.20. They argued that the Tribunal's decision in *Asea Brown Boveri Inc.* v. *The Deputy Minister of National Revenue*[10] is irrelevant to the present appeals. They reiterated that, in their view, the BLR cannot be classified as a relay simply because it contains a relay. It is more properly described as a power factor controller.

Finally, the appellant's representatives referred to the Tribunal's decision in *Asea Brown Boveri Inc.* v. *The Deputy Minister of National Revenue*[11] in which the Tribunal held that, where a switchgear imported as a single functional unit is used in a transmission station incorporating a control centre, it qualifies for the benefits of Code 2101. In the representatives' view, this decision confirms the following three salient facts: (1) control centres are classified under tariff item No. 9032.89.20; (2) goods which are integral to the

8. "Tariff Classification of Programmable Controllers," Department of National Revenue, Customs, Excise and Taxation, June 15, 1993.
9. *Supra* note 3, Schedule I.
10. Appeal No. AP-93-383, January 18, 1995.
11. Appeal No. AP-95-189, November 5, 1996.

operation of the control centre qualify for the benefits of Code 2101; and (3) Customs Notice N-010, even though issued as an administrative guideline, has taken on a quasi-legal status because of its use in the justification of the decision.

Counsel for the respondent argued that there is no doubt that the BLR and RELZ relays are indeed relays. In his view, all the experts agreed that the goods in issue are relays, even though some may be for protection and others for control. He argued that they are described as such in the product literature and that they function as relays. He noted that the appellant's catalogues describe these goods as "HV Protection and Protection Systems." Counsel also referred to the definition of "relays" in the *IEEE Standard Dictionary of Electrical and Electronics Terms*.[12] It provides that a relay is "[a]n electric device that is designed to interpret input conditions in a prescribed manner and after specified conditions are met to respond to cause contact operation or similar abrupt change in associated electric control circuits.[13]" He argued that the evidence showed that the BLR meets this description. Therefore, the BLR is a relay. Counsel argued that the following definition of a "distance relay," which is part of the IEEE standards, describes the RELZ relay as "a device which functions when the circuit admittance, impedance or reactance increases or decreases beyond predetermined limits.[14]" He also noted that a "power control relay," that is, the BLR, is specifically defined as a "relay."

In support of his argument, counsel for the respondent referred to the Tribunal's decision in *Asea Brown*.[15] In that case, the Tribunal stated that "nothing in the [Explanatory Notes indicates] that heading No. 85.36 is intended to cover simple but not complex devices. On the contrary, the references to automatic control and resetting imply a degree of sophistication greater than that suggested by the appellant's representative. It is also evident that devices which control as well as protect electrical circuits come within the ambit of the provision for 'relays.'[16]" Counsel argued that this is the proper way to interpret the Explanatory Notes. He submitted that the fact that they may function automatically does not mean that they are automatic control apparatus. In his view, these refer to other types of products, such as thermostats, humidity regulators and water level regulators.

Counsel for the respondent referred to the evidence given by one of his witnesses that the fact that technology evolves or that companies change the name of their products does not change their basic or ultimate function. He also referred to some of the appellant's product literature, which, he argued, supports this view. Counsel argued that the inclusion of several relays in a panel, such as in the CMS, does not create an automatic regulating and controlling device. Furthermore, there is no evidence to show that these panels are control centres. He pointed out that even a witness for the appellant declined on several occasions to describe the panels as control centres. Rather, he testified that the control centre was the "room next door." Because the goods in issue are relays, counsel argued that they are properly classified in heading No. 85.36 in accordance with Rule 1 of the General Rules or, more particularly, in subheading No. 8536.49. He argued that it is not because these goods are complex or have some controlling aspect to them that they should be classified elsewhere.

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12. Third ed. (New York: The Institute of Electrical and Electronics Engineers, 1984).
13. *Ibid*. at 761.
14. Exhibit B-3.
15. *Supra* note 4.
16. *Ibid*. at 5.

Counsel for the respondent submitted that the evidence is not clear as to whether the goods in issue were imported for use in automatic regulating or process control devices, as required by Code 2101. In counsel's view, except maybe for the evidence relating to the Shand Power Station, the appellant did not provide the Tribunal with any evidence to show that the goods in issue were actually imported specifically "for use in" process control apparatus. He argued that this lack of evidence is critical due to the fact that there was some evidence, presented by a witness for the respondent, that these goods can be used independently of process control apparatus. Counsel argued that the evidence presented with respect to the Shand Power Station is insufficient, because it did not show that the goods in issue were the ones which were actually used in that station. They could have been other goods. He said that, if such evidence had been presented, then the goods would have qualified for the benefits of Code 2101.

DECISION

As noted earlier, the first issue in these appeals is whether the BLR and RELZ relays are properly classified in subheading No. 8536.49, as determined by the respondent, or should be classified under tariff item No. 9032.89.20, as claimed by the appellant. When classifying goods in Schedule I to the *Customs Tariff*, the application of Rule 1 of the General Rules is of the utmost importance. Rule 1 states that classification is first determined according to the terms of the headings and any relative Chapter Notes. Therefore, the Tribunal must determine whether the goods in issue are named or generically described in a particular heading. If they are, then they must be classified therein, subject to any relative Chapter Note. Section 11 of the *Customs Tariff* provides that, in interpreting the headings or subheadings, the Tribunal shall have regard to the Explanatory Notes.

In an earlier case,[17] the Tribunal dealt with the tariff classification of products similar to the ones in issue. In that appeal, the issue was whether four types of relays were properly classified in subheading No. 8536.49 as other electrical apparatus for switching or protecting electrical circuits or whether they should be classified under tariff item No. 8537.10.91 as boards, panel or consoles, equipped with two or more apparatus of heading No. 85.35 or 85.36, for electric control or the distribution of electricity of a kind used with the goods classified in Schedule VI to the *Customs Tariff*. In the present appeals, the appellant's position is that the BLR and the RELZ should be classified under tariff item No. 9032.89.20 as process control apparatus rather than in subheading No. 8536.49.

In Appeal No. AP-93-383, the appellant's representative made arguments similar to those made by the appellant's representatives in the present appeals. He argued that heading No. 85.36 is intended to cover devices of rather simple design and operation, whereas the goods in issue were complex assemblies consisting of several components. He argued that, although one of the components was, in fact, a simple relay which, if imported separately, might be classifiable in heading No. 85.36, the assembly as a whole was a base "equipped with two or more apparatus of heading No. 85.35 or 85.36," as described in heading No. 85.37 and was designed for the purpose specified in that heading, namely, "electric control or the distribution of electricity." In the present appeals, the appellant's representatives argued that the BLR, because of its sophistication, has had its essential character changed from a relay to an automatic controlling or regulating apparatus and that it should, therefore, be classified under tariff item No. 9032.89.20. With respect to the RELZ, the appellant's position is essentially the same as the position it took in Appeal No. AP-93-383, i.e. that the RELZ should not be classified as a relay, because of its complexity. The evidence of the appellant's first witness in these appeals was that the RELZ is a "numerical protection terminal, rather than a relay," because of the number of functions that it can perform.

17. *Supra* note 4.

Having reviewed Appeal No. AP-93-383, the Tribunal sees no reason why the BLR and the RELZ are different from the relays which were in issue in that appeal. The Tribunal, therefore, adopts its reasons in Appeal No. AP-93-383. In particular, the Tribunal adopts the following passage, where, after having reviewed the Explanatory Notes to heading No. 85.36,[18] the Tribunal stated that:

> There is nothing in the [Explanatory Notes to heading No. 85.36] to indicate that heading No. 85.36 is intended to cover simple but not complex devices. On the contrary, the references to automatic control and resetting imply a degree of sophistication greater than that suggested by the appellant's representative. It is also evident that devices which control as well as protect electrical circuits come within the ambit of the provision for "relays."
>
> Although the relays in issue are sophisticated devices consisting of several components, such as a test switch assembly, a power supply, a transformer, a measuring unit and an output device, the evidence is that the manufacturer describes the complete assembly as a "relay" in its technical manuals, and this is the common terminology used to describe them by suppliers and users alike. It is also evident from the manufacturer's literature and the oral testimony that the primary purpose of the relays is to protect the generator sets, with which they are used, from damage due to electrical malfunction, power surges, etc. Although communication with another control device or human operator may be necessary to achieve this protective function, the Tribunal does not believe that this is sufficient grounds to classify the relays in heading No. 85.37. Relays are named in subheading No. 8536.49, and the Explanatory Notes make clear that some degree of control may be subsumed within the overall function of protecting electrical circuits which is specified in heading No. 85.36.[19]

For these reasons, the Tribunal finds that the RELZ and the BLR are relays and that they are properly classified in subheading No. 8536.49 as other electrical apparatus for switching or protecting electrical circuits rather than in heading No. 90.32 as automatic regulating or controlling instruments and apparatus or, more specifically, under tariff item No. 9032.89.20 as process control apparatus, excluding sensors, which converts analog signals from or to digital signals. The Tribunal is of the view that the words in subheading No. 8536.49 and in the Explanatory Notes to heading No. 85.36 specifically describe the goods in issue. More specifically, the evidence shows that the BLR is a power control relay and that the RELZ is a protection or communication relay. The Tribunal is of the view that the fact that they may perform other functions does not make them something other than relays. Even though, for example, the BLR may convert analog signals from or to digital signals, the Tribunal is of the view that it is not an "automatic

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18. The Explanatory Notes to heading No. 85.36 state, in part, as follows:

> (C) Relays are electrical devices by means of which the circuit is automatically controlled by a change in the same or another circuit. They are used, for example, in telecommunication apparatus, road or rail signalling apparatus, for the control or protection of machine-tools, etc.
>
> The various types can be distinguished by, for example:
>
> (1) The electrical means of control used: electromagnetic relays, permanent magnet relays, thermo-electric relays, induction relays, electro-static relays, photoelectric relays, electronic relays, etc.
>
> (2) The predetermined conditions on which they operate: maximum current relays, maximum or minimum voltage relays, differential relays, fast acting cut-out relays, time delay relays, etc.
>
> Contactors, which are also considered as relays, are devices for making and breaking electrical circuits, which automatically reset without a mechanical locking device or hand operation. They are generally operated and maintained in an active state by an electric current.

19. *Supra* note 4 at 5.

regulating or controlling instrument" or a "process control apparatus" and, therefore, that it cannot be classified as such. The Tribunal, in addressing the next issue, gives a more detailed view with respect to the type of goods which would meet this description. The first issue in these appeals is, therefore, dismissed.

Having determined that the RELZ and BLR relays are properly classified in subheading No. 8536.49, the issue that must now be decided by the Tribunal is whether these goods, along with those listed in column 2 of Tab 1 of the appellant's brief, qualify for the benefits of Code 2101. As noted earlier, Code 2101 provides for the duty-free entry of articles, other than goods of a series of tariff items, not including subheading No. 8536.49, for use in the goods of a series of other tariff items, including goods of tariff item No. 9032.90.20. This tariff item provides for the classification of parts and accessories of the goods of tariff item No. 9032.89.20 or 9032.89.30. The appellant's position is that the goods in issue (goods listed in column 2 of Tab 1 of its brief, now including the BLR and the RELZ) are parts and accessories of the goods of tariff item No. 9032.89.20, which provides for the tariff classification of "process control apparatus, excluding sensors, which converts analog signals from or to digital signals." As noted earlier, these are "automatic regulating or controlling instruments and apparatus" of heading No. 90.32.

The appellant's first witness, Mr. Gillies, testified that the goods in issue are imported individually and then grouped together into a single unit. He referred to these units as cubicles or panels. He also testified that most of the relays in issue fall into the CMS series of relays and added that there could be numerous CMS relays in the same panel. Mr. Gillies, on numerous occasions, declined to call these panels anything other than protection and control panels. For example, he declined to call them "control centres." The appellant's representatives appeared to argue that these panels are "process control apparatus" of tariff item No. 9032.89.20 and that, on this basis, the goods in issue would qualify for the benefits of Code 2101. However, the Tribunal has already ruled, in these appeals and in Appeal No. AP-93-383, that an assembly of relays must be classified in subheading No. 8536.49, even though, when grouped together, relays may perform numerous functions. In the Tribunal's view, the panels and the CMS into which certain of these panels are incorporated are simply assemblies of relays. Therefore, the Tribunal cannot find that the goods in issue qualify for the benefits of Code 2101 simply on this basis.

This, however, does not solve the issue of what is a "process control apparatus" of tariff item No. 9032.89.20. The first witness for the appellant tried to explain how the installation at the Shand Power Station met the requirements of Note 6 (b) to Chapter 90 and the Explanatory Notes to heading No. 90.32.[20] In the Tribunal's view, his testimony was an explanation of how the Shand Power Station itself met the

20. Explanatory Note (II) to heading No. 90.32 provides, in part, as follows:

> The automatic regulators of this heading are intended for use in complete automatic control systems which are designed to bring a quantity, electrical or non-electrical, to, and maintain it at, a desired value, stabilised against any disturbances, by constantly measuring its actual value. They consist essentially of the following devices:
>
> (A) **A measuring device** (sensing device, converter, resistance probe, thermocouple, etc.) which determines the actual value of the variable to be controlled and converts it into a proportional electrical signal.
>
> (B) **An electrical control device** which compares the measured value with the desired value and gives a signal (generally in the form of a modulated current).
>
> (C) **A starting, stopping or operating device** (generally contacts, switches or circuit breakers, reversing switches or, sometimes, relay switches) which supplies current to an actuator in accordance with the signal received from the control device
>
> An automatic regulator within the meaning of Note 6 (b) to this Chapter consists of the devices described in (A), (B) and (C) above, whether assembled together as a single entity or in accordance with Note 3 to this Chapter, a functional unit.

requirements of those notes. He said that the station has a measuring device and an electrical control device which compares the actual measured values with desired values to give an output. It also has a starting, stopping or operating device which supplies current to the circuit breakers. Having reviewed the Explanatory Notes and the words of the heading, subheading and tariff item, the Tribunal cannot find that these refer to a power station such as the Shand Power Station. In the Tribunal's view, they appear to refer to something more specific that would be found inside the station. Neither of the witnesses for the appellant testified as to which part of the Shand Power Station would be considered a "process control apparatus." To the extent that they testified, and, in the Tribunal's view, this point was not clear, that the panels in which the relays were incorporated are "process control apparatus," the Tribunal, for the reasons enunciated, has declined to accept this.

With respect to the BLR, the appellant's representatives argued that the Autobank into which it is incorporated is a "process control apparatus" and that, on this basis, the BLR qualifies for the benefits of Code 2101. The appellant's second witness testified that the BLR is a component of a larger automatic power system. He said the BLR is the "brain" of the Autobank. When asked whether the Autobank was a control centre, he responded by saying that it is a "power factor compensation system." He did say that it could be referred to as an "automatic regulator," but without giving any further explanation. The first witness for the respondent testified that the Autobank is a capacitor bank, the term Autobank simply constituting the trade name used by the appellant. He said that a substation which has a capacitor bank does not need a "control centre."

The Tribunal is of the view that the appellant did not present sufficient evidence to show that the Autobank is a "process control apparatus" of tariff item No. 9032.89.20. Having reviewed the Explanatory Notes to heading No. 90.32, the Tribunal cannot conclude that this product meets the requirements listed therein. As noted, the evidence of the first witness for the appellant seemed to be that the Shand Power Station met those requirements. The Tribunal comes to this conclusion despite the fact that the appellant's second witness testified that the Autobank could be referred to as an "automatic regulator." In the Tribunal's view, there was no evidence to show why this product could be referred to as such. The Tribunal, therefore, cannot conclude, on the basis of the evidence presented by the appellant in the present appeals, that the BLR qualifies for the benefits of Code 2101 simply on the basis that it was incorporated into the Autobank.

The only real evidence that the Tribunal has as to what constitutes a "process control apparatus" of tariff item No. 9032.89.20 is the testimony of the official from Revenue Canada and the wording of Customs Notice N-010. In fact, she is the author of this notice and simply reiterated most of what is found in it. Essentially, it provides that, within an electrical network, there are "control centres" and that these are classified under tariff item No. 9032.89.20. Furthermore, the notice provides that components which are integral to the basic function of the control centres qualify for the benefits of Code 2101 and that these components include such items as "protection relays." As long as the relays are located in a station equipped with a control centre, they qualify for the benefits of Code 2101. The notice mentions that a generating station is normally equipped with a control centre.

Essentially, the notice provides, and the Revenue Canada official testified, that the "process control apparatus" within an electrical network is the central control or the master control centre. There is a hierarchy of control within a network. There are a number of control centres within a station or substation; however, not all of them would be considered "process control apparatus" within the meaning of tariff item No. 9032.89.20. It must be the master control in order to be classified thereunder. The appellant's

first witness testified that, in his view, a "control centre" is the room in which control functions are carried out. He explained that, when he says that relays are on panels which are normally in a protection or control room, this room, which is usually the "room next door" in the case of a power station such as the Shand Power Station, is the "control centre." It is the room where the operator has the control panels, and receives signals from all of the relays and controls the generator with switches. In the Tribunal's view, this evidence coincides with the wording of Customs Notice N-010 and the testimony of the Revenue Canada official as to what constitutes a "control centre."

Referring again to the testimony of the appellant's first witness, he said that all of the goods imported by the appellant usually end up in generating plants such as the Shand Power Station. Although he did not testify specifically that the Shand Power Station has a control centre, the Tribunal is prepared to conclude that it does from the testimony that he did provide and also on the basis of the evidence presented by the other witnesses in these appeals, including that of the official from Revenue Canada. Indeed, having reviewed her testimony, it would appear that she was quite prepared to accept that the Shand Power Station has a "control centre" and that the goods in issue would have qualified for the benefits of Code 2101 if there had been evidence that they were used in the Shand Power Station. Furthermore, it would appear from the evidence that all power stations of the nature of the Shand Power Station would have a "control centre." However, it is not clear from the evidence that all substations have "control centres." As a result, the Tribunal is not prepared to make such a conclusion.

In cross-examination, the appellant's first witness acknowledged that most of the goods in issue can be used as stand-alone relays or be incorporated into other goods. However, he testified that, in the present appeals, all of the goods in issue were imported for use in protection or control systems. He said that it would be very unlikely that they would be used in other applications because they are too expensive to be used elsewhere. The appellant's second witness provided similar testimony. On the basis of this evidence, the Tribunal is prepared to accept that the goods in issue were not imported with the intention that they be used as stand-alone relays. Rather, they were imported for use in a power station or substation.

The appellant's first witness could not say with certainty, based on the evidence presented by the appellant in the present appeals, which goods went to a power generating plant, such as the Shand Power Station, and which ones went elsewhere. For this reason, the Tribunal is not prepared to allow unconditionally the second part of these appeals. Rather, the Tribunal concludes that the more appropriate finding under these circumstances is to send the matter back to the respondent so that it can be determined, with the assistance of the appellant, which goods in issue were imported "for use in" stations or substations which have a "control centre" that meets the definition contained in Customs Notice N-010. The Tribunal notes that section 4 of the *Customs Tariff* provides that the "expression 'for use in', wherever it occurs in a tariff item in Schedule I or a code in Schedule II in relation to goods, means, unless the context otherwise requires, that the goods must be wrought into, attached to or incorporated into other goods as provided for in that tariff item or code." On the basis of this provision, the Tribunal finds that some actual use must be shown by the appellant in order for it to be entitled to the benefits of Code 2101. No arguments were made by the appellant's representatives in the present appeals to prove otherwise.

Accordingly, the appeals are allowed in part. The matter is sent back to the respondent for further consideration.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member

Patricia M. Close
Patricia M. Close
Member

Charles A. Gracey
Charles A. Gracey
Member

APPENDIX

Column Two Application of Code 2101		Column Three Tariff item No. 9032.89.20
RADHA	RADHD	RELZ
RADSB	RADSG	BLR
RACID	RACIF	
RAGEA	RAKZB	
RAMDE	RARIB	
RATUB	RXEEB	
RXIDF	RXODB	
RASA	RASC	
REXA	RXEG	
RXFE	RXIB	
RXIC	RXIG	
RXIK	RXIL	
RXKC	RXKD	
RXKE	RXKF	
RXKP	RXMA	
RXNB	RXPE	
RXVE	SPAU	
IKC	TFF	
	SPER	