

Ottawa, Friday, December 8, 1995

Appeal No. AP-94-202

IN THE MATTER OF an appeal heard on March 7, 1995, 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 dated July 12, 1994, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

CANADIAN SATELLITE COMMUNICATIONS INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

AND

TEE-COMM ELECTRONICS INC.

Intervener

DECISION OF THE TRIBUNAL

The appeal is allowed.

Anthony T. Eyton

Anthony T. Eyton
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-94-202

CANADIAN SATELLITE COMMUNICATIONS INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

and

TEE-COMM ELECTRONICS INC.

Intervener

This is an appeal under section 67 of the Customs Act from nine decisions of the Deputy Minister of National Revenue. The issue in this appeal is whether Orion consumer satellite decoder modules and personal decoders are properly classified under tariff item No. 8529.90.50 as parts suitable for use solely or principally with other colour, black and white or other monochrome television receivers, as determined by the respondent, or should be classified under tariff item No. 8543.80.50 as television converters, as claimed by the appellant, or under tariff item No. 8529.10.10 as parts suitable for use solely or principally with aerials and aerial reflectors of all kinds, and parts suitable for use therewith of a kind used with television apparatus, as argued by the intervener.

HELD: *The appeal is allowed. The Tribunal finds that the decoders in issue should be classified under tariff item No. 8543.90.95 as parts of television converters. The decoders are designed for use with satellite receivers and are not of any value or use unless inserted into the backs of satellite receivers or attached to satellite receivers by coaxial cable. In theory, the decoders are optional add-ons to satellite receivers. In practice, most consumers who buy a satellite receiver also buy a decoder module or a stand-alone decoder. Therefore, in the Tribunal's view, a decoder is an essential part of a satellite receiver for the customer.*

Having made the determination that decoders are parts of satellite receivers, the Tribunal further considered the appropriate classification of satellite receivers. The Tribunal finds that a satellite receiver has an individual function, a conversion function, which, although related to the function of a television receiver, is distinct from that function. A satellite receiver converts satellite signals to signals which can be received by and viewed on a television receiver. Moreover, a satellite receiver can perform this conversion function without a television receiver. In the Tribunal's view, the function of a satellite receiver is fundamentally the same as the function of a television converter, which is specifically named under tariff item No. 8543.80.50.

*Place of Hearing: Ottawa, Ontario
Date of Hearing: March 7, 1995
Date of Decision: December 8, 1995*

Tribunal Members: *Anthony T. Eyton, Presiding Member*
 Arthur B. Trudeau, Member
 Robert C. Coates, Q.C., Member

Counsel for the Tribunal: *Shelley Rowe*

Clerk of the Tribunal: *Anne Jamieson*

Appearances: *Michael A. Kelen, for the appellant*
 Christopher Rupar, for the respondent
 Shane B. Brown, for the intervener

Appeal No. AP-94-202

CANADIAN SATELLITE COMMUNICATIONS INC. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

and

TEE-COMM ELECTRONICS INC. **Intervener**

TRIBUNAL: ANTHONY T. EYTON, Presiding Member
ARTHUR B. TRUDEAU, Member
ROBERT C. COATES, Q.C., Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act) from nine decisions of the Deputy Minister of National Revenue. The issue in this appeal is whether Orion consumer satellite decoder modules and personal decoders are properly classified under tariff item No. 8529.90.50 of Schedule I to the *Customs Tariff*² as parts suitable for use solely or principally with other colour, black and white or other monochrome television receivers, as determined by the respondent, or should be classified under tariff item No. 8543.80.50 as television converters, as claimed by the appellant, or under tariff item No. 8529.10.10 as parts suitable for use solely or principally with aerials and aerial reflectors of all kinds, and parts suitable for use therewith of a kind used with television apparatus, as argued by the intervener.

The following is the relevant tariff nomenclature from Schedule I to the *Customs Tariff*:

85.28	<i>Television receivers (including video monitors and video projectors), whether or not incorporating ... radio-broadcast receivers or sound or video recording or reproducing apparatus.</i>
8528.10	<i>-Colour</i>
8528.10.90	<i>---Other:</i>
8528.20	<i>-Black and white or other monochrome</i>
8528.20.90	<i>---Other</i>
85.29	<i>Parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28.</i>
8529.10	<i>-Aerials and aerial reflectors of all kinds; parts suitable for use therewith</i>
8529.10.10	<i>---Of a kind used with domestic radio or television apparatus, excluding amateur service radio and general radio service</i>

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. R.S.C. 1985, c. 41 (3rd Supp.).

8529.90	<i>-Other</i>
8529.90.50	<i>---Of the goods of tariff item No. 8528.10.99 or 8528.20.90</i>
85.43	<i>Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this Chapter.</i>
8543.80	<i>-Other machines and apparatus</i>
8543.80.50	<i>---Television converters</i>
8543.90	<i>-Parts</i>
8543.90.10	<i>---Of the goods of tariff item No. 8543.80.10 or 8543.80.50</i>

Counsel for the appellant introduced evidence through four witnesses: Mr. Claude W. Lewis, Executive Vice-President of Canadian Satellite Communications Inc.; Mr. Raymond G. Kennedy, Assistant Director of Engineering for Canadian Satellite Communications Inc.; Mr. David R. Lewis, International Sales Manager for TV/COM International; and Mr. Mike Lively, co-owner of Ferguson Satellite, a satellite equipment retailer for commercial and residential use and an authorized dealer of the appellant's products.

Mr. Claude Lewis briefly described the history of the appellant's provision of satellite television services and its mandate to deliver television programming to remote or underserved regions of Canada. He stated that the appellant provides its services through a dealer network across Canada and has approximately 32,000 subscribers. He explained that, in order to use the appellant's services, a person must have what he described as a decoder/converter, which is a satellite receiver and a decoder. He described the two types of decoders in issue. The Orion consumer satellite decoder module is intended to be inserted into the recessed space in the back of a satellite receiver. Together, the decoder module and satellite receiver are called an integrated receiver/descrambler (IRD). The Orion personal decoder is an outboard, stand-alone decoder that is designed to be attached to a satellite receiver by coaxial cable. Mr. Lewis stated that, without a decoder, a satellite receiver will only receive a few free non-scrambled signals, such as those for the Canadian Broadcasting Corporation and House of Commons channels.

The Tribunal accepted Mr. Kennedy as an expert in the technology necessary to convert cable and satellite television signals to signals which can be received by and viewed on a television receiver. Mr. Kennedy stated that a cable company supplies a band of frequencies consisting of its channels and that the function of a television converter is to isolate a channel so that a customer can select and present that channel on a television receiver. He explained that, with the aid of a television converter, a user can receive channels that do not necessarily appear on a television channel selector. A television converter converts the frequency of a signal received through a cable company from 550 MHz to 61 to 67 MHz, which is the frequency for channel 3 on a television channel selector.

In discussing the function of a television converter, Mr. Kennedy explained that it may also have a built-in decoder. He introduced, as an exhibit, an item described as a converter/decoder, used by Rogers Ottawa Limited (Rogers), which, he stated, converts the frequency of the signals received from a cable company and unscrambles them. He referred to the statement in his expert report that a cable television converter for pay television often includes a decoder because the signals are scrambled. He agreed that the descrambling function of a cable television converter is separate from the conversion function and that there are television converters that simply perform a conversion function and do not perform a descrambling

function. However, he further stated that, even with a cable-ready television, a user requires an external television converter, as well as a decoder, to convert the scrambled signals.

In describing a satellite system, Mr. Kennedy stated that a signal is uplinked to a satellite by converting the signal to radio waves at a frequency of approximately 6,000 MHz. The signal is then downlinked to a satellite receiver at a microwave frequency of approximately 4,000 MHz. The satellite receiver converts the high-frequency satellite television signal to the frequency for channel 3, and, if the signal is scrambled, the decoder inserted into the back of, or attached to, the satellite receiver unscrambles the signal.

Mr. Kennedy also referred to the statement in his expert report that a satellite television receiver performs essentially the same function as that of a television converter, in that it converts a satellite television signal to a frequency that can be viewed on a domestic television. He stated that, in his view, the difference between a cable television converter and a satellite receiver is the input frequency of the signals received. However, he stated that both a cable television converter and a satellite receiver convert the frequency of a signal received to the frequency for channel 3 on a television. He agreed that, if a satellite television signal is not scrambled, a decoder is not necessary for the reception of that signal. He described a decoder as an adjunct to a satellite receiver.

Mr. David Lewis described TV/COM International as a manufacturer of cable television converters/decoders, IRDs and stand-alone decoders. The Tribunal qualified Mr. Lewis as an expert in the manufacture and use of converters/decoders for cable television and of IRDs and stand-alone decoders for satellite television. He introduced two products manufactured by TV/COM International and used for accessing scrambled pay television signals. These two products are described in the company's product literature as converters/decoders. In comparing a cable television converter/decoder to a cable television converter, Mr. Lewis stated that they both perform the same function, that is, they both convert cable television signals from a high range of frequencies to the frequency for channel 3 or 4 and amplify and isolate those signals.

Mr. David Lewis stated that an IRD receives a high-frequency microwave signal from a low-noise block converter, downconverts it to baseband frequencies, demodulates it from frequency modulation (FM) to amplitude modulation (AM), unscrambles it and upconverts it to the frequency for channel 3 or 4. He confirmed the earlier descriptions of a stand-alone decoder and a decoder module and stated that, in his view, a decoder module does not perform any conversion function by itself without a satellite receiver and that it has no usable function unless attached to a satellite receiver.

During cross-examination, Mr. David Lewis agreed that, for both a cable television converter and a satellite receiver, the descrambling function is not necessary for the reception of a television signal by a television and that the decoder component is an add-on.

The appellant's final witness, Mr. Lively, stated that his company generally sells satellite receivers and decoders as IRDs, but that he has sold decoder modules separate from satellite receivers. He explained that, once a decoder module is inserted into the back of a satellite receiver, there is a protective door covering the module so that the customer is not aware that the module is in the receiver. He also indicated that he sells satellite receivers without decoder modules for uses other than receiving satellite signals, such as data

communication, communication of a foreign language or other specific services. However, all sales of satellite receivers for household use in the last two years included sales of decoder modules.

Counsel for the respondent called one witness, Dr. Yiyan Wu, Research Scientist at the Communications Research Centre, who was qualified as an expert in satellite and cable communications, specifically with respect to encoding, receiving and transporting signals through cable and satellites. Dr. Wu first discussed the reception of cable television signals. He described the newer cable-ready televisions, with built-in converters, as having a switch, one side of which is for accessing all cable television programs and the other side, the antenna side, for accessing off-air broadcasts. He also described the older model televisions which have a channel selector with a limited number of channels. To access a greater number of channels than those shown on the selector, a user requires an external television converter to downconvert the frequency of the cable television signals to the frequency for channel 3 or 4 on the television channel selector. He explained that, for both cable television programs and off-air broadcasts, a television signal is modulated using AM, whereas with satellite transmission, a television signal is modulated using FM.

During cross-examination, Dr. Wu acknowledged that there are cable television converters that have built-in decoders, such as those used by Rogers. Referring to those types of converters, Dr. Wu agreed that an ordinary household user could not remove the decoders and that, even if a user had a newer television with a built-in converter, that user would still require a converter/decoder to convert the scrambled signals. Dr. Wu also agreed that the principal function of the Rogers converter/decoder is to convert a non-scrambled signal to baseband frequencies and then to the frequency for channel 3 or 4, or to convert a scrambled signal to baseband frequencies, unscramble it and then convert it to the frequency for channel 3 or 4.

Dr. Wu also discussed the reception of satellite television signals. He described the function of a low-noise block amplifier (LNB) attached to the antenna on a satellite receiver which downconverts the frequency of a satellite signal from C-band or Ku-band, at 4,000 and 11,000 MHz, respectively, to air band, at around 1,000 MHz. The satellite receiver then takes the signal from the LNB through a cable and downconverts it to baseband frequencies and demodulates it from FM to AM. A decoder only unscrambles and does not convert the frequency or change the modulation of a signal.

Dr. Wu agreed that some of the functions of an IRD are the conversion of a satellite signal down to baseband frequencies, demodulation to AM, tuning, unscrambling and conversion up to the frequency for channel 3 or 4. Dr. Wu stated that some high-quality television monitors can receive a signal in baseband, but that the average viewer has a television receiver that interfaces at channel 3 or 4.

In argument, counsel for the appellant took the position that the decoders in issue should be classified under tariff item No. 8543.80.50 as electrical machines, having individual functions, not specified or included elsewhere and, more specifically, as television converters. Counsel submitted that neither decoders nor satellite receivers are television receivers and that decoders are integral parts of satellite receivers which are used with television receivers.

Referring to Section Notes 2, 3 and 4 to Section XVI of Schedule I to the *Customs Tariff*, counsel for the appellant submitted that the decoders in issue should be classified with the satellite receivers which perform the principal function of conversion. Section Note 2 provides that parts suitable for use solely or principally with a particular kind of machine are to be classified with the machines of that kind. Section Note 3 provides, in part, as follows:

[C]omposite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

Section Note 4 provides as follows:

Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by ... electric cables ...) intended to contribute together to a clearly defined function covered by one of the headings in ... Chapter 85, then the whole falls to be classified in the heading appropriate to that function.

Counsel for the appellant submitted that a satellite receiver is a converter which has, as an integral part, a decoder. He outlined the key facts established in the testimony of the witnesses in support of this position. First, he stated that a cable television converter may include a decoder as an integral part, if used to unscramble cable television signals. Second, he stated that an IRD with a decoder module and a stand-alone decoder attached to a satellite receiver by coaxial cable are similar to a cable television converter, in that they include a decoder as an integral part of a satellite receiver. He referred to the evidence of the three expert witnesses that the main function of a satellite receiver is to convert a high-frequency satellite signal to a low-frequency signal which can be received by a domestic television. Finally, counsel submitted that, today, television viewers want to receive not only non-scrambled but also scrambled television signals that have been unscrambled, and, for that reason, a satellite receiver does not effectively work without a decoder.

Counsel for the appellant referred to the definition of a “converter” as “an auxiliary device that permits a radio or television receiver to pick up frequencies or channels for which it was not orig. designed³” and the definition of a “satellite receiver” as the “indoors electronic component of an earth station which downconverts, processes and prepares satellite signals for viewing or listening.⁴”

Relying on the provisions of section 10 of the *Interpretation Act*⁵ which provides that “[t]he law shall be considered as always speaking,” counsel for the appellant submitted that the Tribunal should interpret the term “converter” in light of the technological developments that have taken place. Counsel submitted that a television converter that contains a built-in decoder is still a television converter. Similarly, a satellite television receiver which includes a decoder as an integral part is a converter.

Counsel for the appellant submitted that the Explanatory Notes to the Harmonized Commodity Description and Coding System⁶ (the Explanatory Notes) to heading No. 85.28, which set out examples of the types of goods covered by that heading, contemplate that television sets used in the home or modified for specific uses, such as in a hospital, be included in that heading and do not contemplate the inclusion of goods such as an IRD.

3. Random House Webster’s College Dictionary (New York: Random House, 1992) at 298.

4. World Satellite TV and Scrambling Methods — The Technicians’ Handbook, 1st ed. (Baylin Publications, 1990) at 300.

5. R.S.C. 1985 c. I-21.

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

Counsel for the appellant referred to Rule 3 (a) of the General Rules for the Interpretation of the Harmonized System⁷ (the General Rules), which provides that goods *prima facie* classifiable in two or more headings are to be classified in the heading which provides the most specific description. Counsel submitted that the most specific description of the decoders in issue is “[t]elevision converters.” In addition, he referred to Rule 3 (b), which provides that composite goods made up of different components which cannot be classified according to Rule 3 (a) shall be classified as if they consisted of the component which gives them their essential character. He submitted that the decoders in issue are installed in or attached to satellite receivers and become integral parts of the receivers. He submitted that the satellite receivers are television converters and that the classification of the decoders in issue should be based on the receivers in which they are installed.

Finally, in addressing the respondent’s position, counsel for the appellant submitted that the decoders in issue cannot be classified as parts of colour television receivers, since television receivers function without decoders. He submitted that, by amending the *Customs Tariff* to add tariff item No. 8543.80.50 for “[t]elevision converters” in February 1992, Parliament signalled its intention that television converters be classified as machines having individual functions rather than as parts of television receivers. Counsel submitted that the Tribunal’s decision in *Philips Electronics Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*,⁸ on which counsel relied to support his position, would have been decided differently had the remote controlled converters in issue in that appeal been imported after February 1992 when Parliament added tariff item No. 8543.80.50.

In response, counsel for the respondent submitted that the decoders in issue are not television converters nor composite goods nor functional units. Referring specifically to the provisions of Section Note 3 to Section XVI of Schedule I to the *Customs Tariff*, counsel submitted that an IRD is a single integrated apparatus and not two machines fitted together. Alternatively, counsel submitted that, if the Tribunal found that an IRD was a composite machine, it would have to classify it in heading No. 85.28 based on its principal function as an apparatus for television reception.

Counsel for the respondent argued that a television converter takes an incoming signal from a cable line, selects the desired carrier frequency or channel number and converts it to the carrier frequency which permits the reception of channels with a frequency above that of channel 13. Counsel submitted that a television converter does not unscramble signals to allow viewing on a television receiver. Rather, a television converter simply converts the frequency received to one that can be used by a television receiver. In counsel’s view, the term “television converter” is a specific term that does not generically describe the entire range of apparatus that may be used in conjunction with a television receiver. Counsel also argued that satellite television signals are different from cable television signals and that a satellite receiver performs a function beyond that of a television receiver, since it reconstructs information from a satellite to make it suitable for televisions.

It was the position of counsel for the respondent that the decoders in issue cannot be classified in heading No. 85.43, since they do not have an individual function. Rather, the decoders act as part of an integrated system. Relying on the Tribunal’s decision in *Philips* and the Explanatory Notes to heading

7. *Supra*, note 2, Schedule I.

8. Appeal No. AP-90-211, June 15, 1992.

No. 85.43, which adopt the criteria in the Explanatory Notes to heading No. 84.79, counsel submitted that there are two types of electrical appliances and apparatus which are considered as having “individual functions:” (1) electrical appliances or apparatus whose function can be performed distinctly from, and independently of, any other machine, appliance or other entity; or (2) electrical appliances or apparatus which perform a function distinct from that of the entity onto which they are mounted or into which they are incorporated.⁹ Counsel submitted that the decoders in issue do not have “individual functions” since they have no function independent of the reception apparatus for the television and contribute directly to the main function of the television receiver. Therefore, in accordance with Rule 1 of the General Rules, the decoders cannot be classified in heading No. 85.43, as they do not meet the terms of that heading. Rather, the decoders are parts of satellite receivers which must be included in larger reception apparatus for aiding television reception of television signals.

Counsel for the respondent referred to the decision in *Robert Bosch (Canada) Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*¹⁰ for guidance in determining whether the decoders in issue may be considered to be parts. He submitted that the test is whether goods are committed for use with other goods and that the decoders are committed for use in the satellite reception of television signals by television receivers.

In considering the applicability of tariff item No. 8543.80.50, counsel for the respondent submitted that the Tribunal should examine the surrounding tariff items. As an illustration, counsel pointed out that the decoders in issue are markedly different from the goods covered by tariff item No. 8543.80.20, electroshocking apparatus for sampling fish populations, and the goods covered by tariff item No. 8543.80.30, ozone generators or airifiers. Conversely, he submitted that the goods covered by the tariff items surrounding tariff item No. 8529.90.50 are similar to the decoders in issue.

Finally, counsel for the respondent referred to a document entitled Amendments to the Nomenclature Appended as an Annex to the Convention¹¹ which was accepted pursuant to the Recommendation of July 6, 1993, of the Customs Co-operation Council. The amendments include changing the wording of heading No. 85.28 from “[t]elevision receivers” to “[r]eception apparatus for television.” In addition, counsel referred to a supplementary document discussing the provisions of heading No. 85.28 and a proposal by Canada to add new subheading No. 8528.40 for satellite television reception apparatus.¹² Counsel pointed out that, in the latter document, the Sub-Committee decided that “the term ‘appareils récepteurs de télévision’ in the first part of the existing French text of heading 85.28 already covered the satellite television reception apparatus” and that “the English heading text ought to be aligned on the corresponding French by replacing the term ‘Television receivers’ by ‘Reception apparatus for television.’”

Counsel for the respondent submitted that it is highly persuasive that the Customs Co-operation Council found that the French term of heading No. 85.28 covered the apparatus like those in issue.

9. *Ibid.* at 2.

10. (1985), 10 T.B.R. 110.

11. International Convention on the Harmonized Commodity Description and Coding System, Customs Co-operation Council, Doc. 38.700 at 113.

12. International Convention on the Harmonized Commodity Description and Coding System, Customs Co-operation Council, Doc. 36.960, Annex V, par. 28.

Counsel for the appellant pointed out that recommendations of the Customs Co-operation Council cannot supersede the provisions of section 10 of the *Customs Tariff*, which direct the Tribunal to look to the Explanatory Notes in classifying goods and that the Explanatory Notes to heading No. 85.28 do not include IRDs.

The intervener in this appeal, Tee-Comm Electronics Inc., did not appear at the hearing. However, counsel for the intervener submitted that the decoders in issue should be classified under tariff item No. 8529.10.10 as parts suitable for use solely or principally with aerials and aerial reflectors of all kinds, and parts suitable for use therewith of a kind used with television apparatus. Counsel submitted that the relevant jurisprudence and Explanatory Notes indicate that goods are “parts” of other goods if they are essential to the operation of those goods. He contended that an aerial is an essential component of television reception apparatus, in that it provides a sufficiently strong signal to the tuner and subsequent components. Similarly, the decoders in issue, when used with aerials, unscramble signals, thereby putting them in a usable format for other components.

The Tribunal is directed by section 10 of the *Customs Tariff* to classify goods in accordance with the General Rules and the Canadian Rules.¹³ Rule 1 of the General Rules provides that classification is to be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the principles set out in Rules 2 through 6, as well as the Canadian Rules which follow. Thus, the starting point in classifying the decoders in issue is the terms of the headings and any relative Section or Chapter Notes.

The Tribunal must determine whether to classify the decoders in issue either as parts suitable for use solely or principally with television receivers or parts suitable for use solely or principally with aerials and aerial reflectors of all kinds, in heading No. 85.29, or as electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85, in heading No. 85.43.

If the decoders in issue are parts of satellite receivers, as contended by all parties, then the Tribunal is of the view that it cannot classify the decoders in isolation and that it must determine the proper classification of the satellite receivers. Counsel for the appellant submitted that, pursuant to Section Notes 2(b), 3 and 4 to Section XVI of Schedule I to the *Customs Tariff*, the decoders should be classified with the satellite receivers which perform the principal function of conversion. However, the Tribunal notes that Section Note 2(a) provides that parts which are goods included in any of the headings of Chapters 84 and 85 are to be classified in their respective headings. Moreover, for each of the headings proposed for the classification of satellite receivers, there are specific provisions for parts. Heading No. 85.29 covers parts suitable for use solely or principally with television receivers and subheading No. 8543.90 covers parts of television converters. Thus, the Tribunal does not accept counsel’s argument that the decoders should be classified pursuant to the principal function of satellite receivers. Rather, the Tribunal is of the view that it must first determine if the decoders are parts of satellite receivers and then determine the proper classification of satellite receivers.

To make the determination of whether the decoders in issue are parts of satellite receivers, the Tribunal adopted the approach previously taken in other appeals that there is no one universally applicable test to determine whether goods are parts of other goods and that each case must be determined on its own

13. *Supra*, note 2, Schedule I.

merits.¹⁴ The Tribunal considered the following factors: (1) whether the decoders are essential to the operation of satellite receivers; (2) whether the decoders are committed for use with satellite receivers; (3) whether the decoders are necessary and integral components of satellite receivers; (4) whether the decoders are installed in satellite receivers; and (5) common trade usage and practice. The evidence indicates that the decoders are designed for use with satellite receivers and are not of any value or use unless inserted into the backs of satellite receivers or attached to satellite receivers by coaxial cable. In theory, the decoders are optional add-ons to satellite receivers. In practice, most consumers who buy a satellite receiver also buy a decoder module or a stand-alone decoder. Therefore, in the Tribunal's view, a decoder is an essential part of a satellite receiver for the customer.

Having made the determination that decoders are parts of satellite receivers, the Tribunal considered which, if any, of the headings suggested by the parties covered satellite receivers. In considering the terms of heading No. 85.43, electrical machines and apparatus having individual functions, and heading No. 85.28, television receivers, the Tribunal referred to the *Philips* decision, to which counsel referred, which provides some guidance as to the meaning of the words "individual functions." In *Philips*, the Tribunal stated that a machine has an "individual function" if it performs a function distinctly from, and independently of, any other machine or distinct from that of the entity onto which it is mounted or into which it is incorporated. Applying the same analysis used by the Tribunal in *Philips* to the facts of this appeal, the Tribunal finds that a satellite receiver does have an individual function and one that is not specified in Chapter 85. A satellite receiver performs a conversion function which, although related to the function of a television receiver, is distinct from that function. A satellite receiver converts satellite signals to signals which can be received by and viewed on a television receiver. Moreover, a satellite receiver can perform this conversion function without a television receiver.

In the Tribunal's view, the function of a satellite receiver is fundamentally the same as the function of a television converter, which is specifically named under tariff item No. 8543.80.50. Counsel for the respondent's argument that a satellite receiver is not an electrical machine or apparatus having an individual function would mean, in the Tribunal's view, that a television converter itself does not have an "individual function" and could not, therefore, be classified in heading No. 85.43, a conclusion clearly at odds with the existence of tariff item No. 8543.80.50, which specifically covers television converters. Moreover, the evidence indicates that the principal function of a satellite receiver is to downconvert microwave signals from 1,000 MHz to baseband frequencies, then upconvert the signals to 61 to 67 MHz so that the signals may be viewed on channel 3 on the television receiver. The only relatively minor difference between a satellite receiver and a television converter is that a satellite receiver, in addition to its conversion function, demodulates an FM signal transmitted from the satellite to an AM signal, as required by the television receiver. Moreover, there are television converters which also perform a descrambling function similar to the combination of the decoder module or stand-alone decoder and a satellite receiver. The Tribunal is, therefore, of the view that a satellite receiver should be classified as a television converter under tariff item No. 8543.80.50.

14. See *York Barbell Company Limited v. The Deputy Minister of National Revenue for Customs and Excise*, Appeal No. AP-90-161, August 19, 1991, at 6; *Hoover Canada, A Division of MH Canadian Holdings Limited v. The Deputy Minister of National Revenue*, Appeal No. AP-93-128, July 14, 1994, at 3; and *Snydergeneral Canada Inc. v. The Deputy Minister of National Revenue*, Appeal No. AP-92-091, September 19, 1994, at 6.

In reaching its decision, the Tribunal considered the amendments to the International Convention on the Harmonized Commodity Description and Coding System to which counsel for the respondent referred. The Tribunal notes that these amendments were accepted internationally pursuant to the Recommendation of July 6, 1993, of the Customs Co-operation Council. However, the amendments will not enter into force until January 1, 1996, and Parliament has yet to implement them through amendments to the *Customs Tariff*. The Tribunal is not, therefore, bound by the amendments. Moreover, the Tribunal does not find that the amendments are persuasive, in light of the evidence and argument presented in this appeal.

Counsel for the intervener argued that the decoders in issue should be classified as parts suitable for use solely or principally with aerials and aerial reflectors of all kinds for use with television receivers. The Tribunal heard evidence that an aerial and aerial reflector used for the reception of satellite signals would be a satellite dish and not a satellite receiver. However, the Tribunal did not hear any evidence to persuade it that subheading No. 8529.10 contemplates the inclusion of satellite dishes or that it is more appropriate to classify satellite receivers as parts suitable for use with satellite dishes rather than as television converters, which are specifically mentioned under tariff item No. 8543.80.50.

Accordingly, the Tribunal finds that the decoders in issue should be classified under tariff item No. 8543.90.95 as parts of television converters.

Anthony T. Eyton

Anthony T. Eyton
Presiding Member

Arthur B. Trudeau

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Robert C. Coates, Q.C.

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Member