

Ottawa, Wednesday, October 23, 1996

Appeal No. AP-95-016

IN THE MATTER OF an appeal heard on April 17, 1996, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue dated February 9, 1995, with respect to a request for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**SHARP ELECTRONICS OF CANADA LTD.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Susanne Grimes

Susanne Grimes

Acting Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-95-016**

**SHARP ELECTRONICS OF CANADA LTD.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

This is an appeal under section 67 of the *Customs Act* from a decision of the Deputy Minister of National Revenue dated February 9, 1995, made under section 63 of the *Customs Act*. The issue in this appeal is whether certain computer and computer/video projection panels, incorporating a transparent liquid crystal display, are properly classified under tariff item No. 8471.92.90 as other output units of a kind used with automatic data processing machines of heading No. 84.71, as determined by the respondent, or should be classified under tariff item No. 9013.80.10 as liquid crystal devices, as claimed by the appellant.

**HELD:** The appeal is allowed. In the Tribunal's view, the goods in issue fit the description of liquid crystal devices classifiable in heading No. 90.13. The goods in issue consist of a liquid crystal layer sandwiched between two plates of glass and are fitted with electrical connections, as described by the witness for the appellant. As to whether the goods in issue are more specifically described in another heading, the Tribunal takes the view that they are not. In the Tribunal's view, the goods in issue do not fit the description of an output unit. Specifically, the Tribunal is not persuaded that the goods in issue convert signals provided by the computers into an intelligible form.

Place of Hearing: Ottawa, Ontario  
Date of Hearing: April 17, 1996  
Date of Decision: October 23, 1996

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

Counsel for the Tribunal: Heather A. Grant

Clerk of the Tribunal: Anne Jamieson

Appearances: Michael Kaylor, for the appellant  
Brian Tittlemore, for the respondent

**Appeal No. AP-95-016**

**SHARP ELECTRONICS OF CANADA LTD.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member

**REASONS FOR DECISION**

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> (the Act) from a decision of the Deputy Minister of National Revenue dated February 9, 1995, made under section 63 of the Act. The appeal was heard by one member of the Tribunal.<sup>2</sup>

The issue in this appeal is whether certain computer and computer/video projection panels, incorporating a transparent liquid crystal display, are properly classified under tariff item No. 8471.92.90 of Schedule I to the *Customs Tariff*<sup>3</sup> as other output units of a kind used with automatic data processing machines of heading No. 84.71, as determined by the respondent, or should be classified under tariff item No. 9013.80.10 as liquid crystal devices, as claimed by the appellant. The goods in issue are models QA-350, QA-1150 and QA-1650. The goods in issue are normally placed on the glass surface of an overhead projector, and light from the overhead projector is used to project the image produced on the panel by the computer onto a screen.

Mr. Harry Leppington appeared as a witness on behalf of the appellant. Mr. Leppington is Regional Sales Manager in the Systems Division of Sharp Electronics of Canada Ltd. Mr. Leppington described the goods in issue as products which one attaches to a computer and an overhead projector in order to produce a large image of the information generated by the computer, so that it may be viewed by more than one person at a time. While all three models may be used with a computer, two of the three may additionally be attached to a video source rather than to a computer.

Mr. Leppington testified that the liquid crystal display panel itself is a grid of connections that, when activated by dry circuitry around it, takes the information sent by the computer in code form and forms a shadow of the information within the device. According to Mr. Leppington, the rest of the device consists of interpretation circuits and a fan. Mr. Leppington further explained that, included in the goods in issue is a processor which receives the signals from the computer and, accordingly, decides which pixels are turned

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

2. Section 3.2 of the *Canadian International Trade Tribunal Regulations*, added by SOR/95-27, December 22, 1994, *Canada Gazette* Part II, Vol. 129, No. 1 at 96, provides, in part, that the Chairman of the Tribunal may, taking into account the complexity and precedential nature of the matter at issue, determine that one member constitutes a quorum of the Tribunal for the purposes of hearing and determining any appeal made to the Tribunal pursuant to the *Customs Act*.

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

on, how much light goes through each pixel and how much shading is applied to the image in relation to colour. In this way, the panel replicates the image that is on the computer screen.

Mr. Leppington acknowledged that a shadow image can be seen on the panel even when the overhead projector is not turned on. However, he explained that, in order for the information to be intelligible, the overhead projector must indeed be turned on. Once the overhead projector is turned off, the image disappears. In other words, the goods in issue are not functional without an overhead projector. Mr. Leppington also testified that the panel only runs when it is connected to a computer. Once the computer is turned off, the image disappears regardless of whether the overhead projector is turned on.

During cross-examination, Mr. Leppington discussed additional features of the goods in issue and how the data processing works. He explained that the data originate in the central processing unit of the computer, which is connected to the panel by means of a connector cable. Mr. Leppington further testified that the panel is connected to the computer using the computer's "external monitor device" outlet and that the panel processes signals from the computer to produce the shadow on the panel.

Mr. Leppington also described the panel's memory function, which stores the settings of the interface between the video processor in the computer and the video processor in the panel. He stated that it pertains to the frequency phase, stop-start bits and where the image is actually formed on the panel surface.

In discussing certain features of the goods in issue, Mr. Leppington explained that, by using controls located on the panel, or by remote control, the contrast levels from light to dark can be adjusted, as well as the size of the image on the screen, the phase and frequency in communication, the stop-start bits and the colour rendition. He further testified that the light from the overhead projector does not manipulate the data on the panel in any way, other than in respect of focus or light dispersion to the corners of the screen.

In argument, counsel for the appellant submitted that the goods in issue should be classified in heading No. 90.13 as liquid crystal devices or, in the alternative, under tariff item No. 8543.30.90 as other mechanically operated electrical machines. Counsel argued that the goods in issue qualify as liquid crystal devices or liquid crystal appliances and, in support of this view, referred first to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>4</sup> (the Explanatory Notes) to heading No. 90.13, specifically to the following statement which refers to the liquid crystal devices included in that heading:

**Liquid crystal devices** consisting of a liquid crystal layer sandwiched between two sheets or plates of glass or plastics, whether or not fitted with electrical connections, presented in the piece or cut to special shapes and not constituting articles described more specifically in other headings of the Nomenclature.

Counsel for the appellant submitted that the goods in issue consist of a liquid crystal layer which is sandwiched between two sheets of glass and to which electrical connections are attached. Although surrounded by a frame or panel which incorporates a processor and a fan, in counsel's view, these would not take the goods in issue out of heading No. 90.13. Counsel went on to refer to dictionary definitions

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

of “device<sup>5</sup>” and “appliance<sup>6</sup>” to illustrate that, given their scope, the goods in issue may be defined as either one.

Counsel for the appellant argued that, in his view, heading No. 90.13, as supported by the Explanatory Notes and the general wording of the heading, contains the most specific description of the goods in issue. While he acknowledged that the panels could be taken out of heading No. 90.13 if they were more specifically described elsewhere, counsel argued that this is not the case at hand. In respect of counsel for the respondent’s argument that the goods in issue are properly described as computer output units, classifiable in heading No. 84.71, counsel submitted that the goods in issue do not meet the definition of an output unit, particularly as it is used in the Explanatory Notes to that heading.<sup>7</sup>

Counsel for the appellant pointed out that the goods in issue, as imported, do not have any back-up light source. Counsel further submitted that, when the goods in issue receive a signal from a computer, without the presence of an overhead projector, the signal is not translated into an intelligible form on the liquid crystal display surface of the panel. In counsel’s view, this is required in order for something to be considered to be an output unit according to the Explanatory Notes. Counsel referred to examples of “intelligible forms” listed in the Explanatory Notes in further support of this view, which list includes printed text, graphs and displays. Counsel submitted that a printer would be an obvious output unit, whereas the goods in issue are not.

Counsel for the appellant further submitted that the goods in issue do not fulfil the other criteria of an output unit, namely, that they translate signals from a computer into coded data for further use, such as would be the case with a floppy disk or a hard disk, which contains information from the central processing unit and is designed for further processing by other equipment within the system of which the central processing unit is a part. Counsel submitted that the goods in issue were not designed for that purpose, but rather as a presentational vehicle.

In response, counsel for the respondent argued that the goods in issue are properly classified under tariff item No. 8471.92.90 as output units for automatic data processing machines. He submitted that the primary reason for the argument that the proper classification of the goods in issue is in heading No. 84.71 is the qualification in heading No. 90.13 that, in order for goods to be classified in that heading, the goods must not be specified or included elsewhere. Counsel further referred to Rule 1 of the *General Rules for the Interpretation of the Harmonized System*<sup>8</sup> (the General Rules) in support of this view.

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5. “[A] piece of equipment or a mechanism designed to serve a special purpose or perform a special function,” *Webster’s Ninth New Collegiate Dictionary* (Springfield: Merriam-Webster, 1984) at 347.

6. “[A] device or machine for performing a specific task, esp. one that is worked mechanically or by electricity,” *Webster’s New World Dictionary of the American Language*, 2nd College ed. (New York: Simon and Schuster, 1988) at 67.

7. The Explanatory Notes to heading No. 84.71 read, in part, as follows:

*A complete digital data processing system must comprise, at least:*

(3) An **output unit** which converts the signals provided by the machine into an intelligible form (printed text, graphs, displays, etc.) or into coded data for further use (processing, control, etc.).

8. *Supra* note 3, Schedule I.

Counsel for the respondent submitted that the goods in issue are not classified in heading No. 90.13 for a number of reasons. He submitted that the description of “liquid crystal devices” in the Explanatory Notes suggests that the goods that were intended to be classified in that heading are liquid crystal layer sandwiches that are cut and potentially installed in other types of electronic goods, particularly if the devices in which the liquid crystal displays are installed are not specifically provided for in another heading. In this case, counsel submitted that the goods in issue are more specifically included elsewhere and cited, in support of this view, the fact that all three models are compatible with computers and, as such, are used with automatic data processing machines, as required for the purposes of classification in heading No. 84.71.

Counsel for the respondent further submitted that the goods in issue satisfy the definition of an output unit. He argued that the requirement that output units convert signals provided by a machine into an intelligible form or into coded data for further use is met by the goods in issue. Counsel argued that the information that is passed through the computer to the panel is, in fact, intelligible when one looks at the panel. While counsel acknowledged that the information may not be in a form that can be projected before a group of people, it can still be seen on the liquid crystal display panel, even without a light source behind it.

Counsel for the respondent further submitted that, even if the information could not be seen until projected onto a screen, the definition of an output unit would include this type of device because the information that is provided by the computer is still clearly produced on the panel. The only function of the overhead projector is to project through the panel in order to use the information on a projection screen. He submitted that the information that is produced by the computer is clearly manipulated by the processor in the panel. Although the information may not be usable in the manner in which the panel was intended to be used, this should not affect its being recognized as an output unit. At this point, counsel drew an analogy between the goods in issue and a printer and submitted that a printer would likely be classified as an output unit even though paper would be required in order to produce the information in an intelligible form. Similarly, in respect of the goods in issue, even though a light is required to ultimately project the information onto a screen, this should not change the fact that it is actually the panel that is the output unit and not the overhead projector.

In reply, counsel for the appellant submitted that there is no basis for the argument that heading No. 90.13 is restricted to raw materials, namely, liquid crystal displays in raw form for incorporation into other goods. Counsel submitted that the definitions of “device” and “appliance,” to which he referred earlier, demonstrate that Parliament intended liquid crystal devices in a broad variety of forms to be classified in that heading. Counsel further submitted that, from a common-sense point of view, what is intended to be covered by the term “output units” are goods such as the monitor used in the appellant’s demonstration, which provides an output that is usable, visual and intelligible. In contrast, the goods in issue are an intermediary product designed for an overall presentational system of equipment.

In determining the classification of the goods in issue, the Tribunal is cognizant that Rule 1 of the General Rules is of the utmost importance. Rule 1 provides that classification is first determined by the wording of the headings and any relative Section or Chapter Notes. Section 11 of the *Customs Tariff* further provides that, “[i]n interpreting the headings and subheadings in Schedule I, regard shall be had to ... the [Explanatory Notes].” Upon reviewing the legislation, the evidence and relevant jurisprudence, the Tribunal is of the view that the goods in issue should be classified in heading No. 90.13 as “[l]iquid crystal devices not constituting articles provided for more specifically in other headings.”

In the Tribunal's view, the goods in issue fit the description of liquid crystal devices classifiable in heading No. 90.13. The goods in issue consist of a liquid crystal layer sandwiched between two plates of glass and are fitted with electrical connections, as described by Mr. Leppington. The Tribunal is not persuaded by the argument of counsel for the respondent that liquid crystal devices classifiable in that heading are those which are more or less in raw form, likely destined for incorporation into other goods. The specific use of the terms "device" and "appliance" in the nomenclature indicates that the goods classifiable in that heading as liquid crystal devices are more than raw materials and may encompass goods such as those in issue.

As to whether the goods in issue are more specifically described in another heading, the Tribunal takes the view that they are not. In the Tribunal's view, the goods in issue do not fit the description of an output unit, as contained in the Explanatory Notes to heading No. 84.71. Specifically, the Tribunal is not persuaded that the goods in issue convert signals provided by the computers into an intelligible form. The image produced by the computer on the panel is not intelligible without the use of an independent light source supplied by an overhead projector. Whereas a printer has a built-in ability to convert computer signals into an intelligible form, specifically a printed text, the goods in issue do not have that built-in ability, and another machine must be used in conjunction with the goods in issue in order to convert signals into an intelligible form. As such, the goods in issue are more properly considered to be an intermediary unit as opposed to an output unit.

The Tribunal is also not persuaded by the evidence that the goods in issue convert the signals into coded data for further use. According to the testimony of Mr. Leppington, the goods in issue receive signals in code form from the central processing unit, but do not convert the signals into coded data for further use, as provided for by the Explanatory Notes to heading No. 84.71.

Accordingly, the Tribunal finds that the goods in issue should be classified in heading No. 90.13 and, more specifically, under tariff item No. 9013.80.10 as liquid crystal devices.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member