

Ottawa, Monday, June 16, 1997

**Appeal No. AP-95-271**

IN THE MATTER OF an appeal heard on September 30, 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 November 8, 1995, with respect to a  
request for re-determination under subsection 63(3) of the  
*Customs Act*.

**BETWEEN**

**CLYDE R. BYERS**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**AND**

**SANYO CANADA INC., JUTAN INTERNATIONAL LIMITED,  
LENBROOK INDUSTRIES LIMITED, TOSHIBA OF CANADA  
LIMITED AND RADIO SHACK, DIVISION InterTAN  
CANADA LTD.**

**Intervenors**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Lyle M. Russell

Lyle M. Russell

Member

Charles A. Gracey

Charles A. Gracey

Member

Michel P. Granger

Michel P. Granger

Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-95-271**

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**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

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**and**

**SANYO CANADA INC., JUTAN INTERNATIONAL LIMITED,  
LENBROOK INDUSTRIES LIMITED, TOSHIBA OF CANADA  
LIMITED AND RADIO SHACK, DIVISION InterTAN  
CANADA LTD.**

**Intervenors**

This is an appeal under subsection 67(1) of the *Customs Act* from a decision of the Deputy Minister of National Revenue dated November 8, 1995. The appellant imported a two-channel AT & T cordless telephone, model 4305, consisting of a cordless handset and base unit from the United States. At the time of importation, the product in issue was classified under tariff item No. 8517.10.00 as a cordless telephone set. Pursuant to a notice of objection served by the appellant, the respondent confirmed the classification of the product in issue in heading No. 85.17. The issue in this appeal is whether the product in issue is properly classified under tariff item No. 8517.10.00 as a cordless telephone set, as determined by the respondent, or should be classified under tariff item No. 8525.20.90 as other transmission apparatus for radio-telephony incorporating reception apparatus, as claimed by the appellant.

**HELD:** The appeal is dismissed. Having considered the evidence and arguments put forward by the parties in this appeal, and taking into account the Tribunal's decision in *Royal Telecom Inc. v. The Deputy Minister of National Revenue for Customs and Excise*, the Tribunal was not persuaded to draw a different conclusion in respect of the tariff classification of the product in issue from that drawn in *Royal Telecom*.

The Tribunal agrees with the following conclusion reached in *Royal Telecom*: "Unlike portable telephones, to be functional both the cordless and corded telephones must be physically connected to the public switched telephone system. Though the cordless telephone employs a radio component, it is merely an ancillary and peripheral component to the unit that must be connected to the line system to effect communication. While the radio component has increased the utility and convenience of the goods, nevertheless the goods are sold, essentially, to interface with and to effect line-telephony."

In the Tribunal's view, the clearly defined function of the product in issue is to effect communication through the line telephone system. Accordingly, the Tribunal finds that the product in issue is properly classified in heading No. 85.17 as electrical apparatus for line telephony and, more specifically, under tariff item No. 8517.10.00 as a telephone set.

Place of Hearing: Ottawa, Ontario  
Date of Hearing: September 30, 1996  
Date of Decision: June 16, 1997

Tribunal Members: Robert C. Coates, Q.C., Presiding Member  
Lyle M. Russell, Member  
Charles A. Gracey, Member

Counsel for the Tribunal: Heather A. Grant

Clerk of the Tribunal: Anne Jamieson

Appearances: Clyde R. Byers, for the appellant and SANYO Canada Inc.  
Lubomyr Chabursky, for the respondent  
Donald J. Goodwin, for Jutan International Limited and Lenbrook Industries Limited  
John O'Reilly, for Toshiba of Canada Limited  
Raymond E. Hodgson, for Radio Shack, Division InterTAN Canada Ltd.

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**Interveners**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
LYLE M. RUSSELL, Member  
CHARLES A. GRACEY, Member

**REASONS FOR DECISION**

This is an appeal under subsection 67(1) of the *Customs Act*<sup>1</sup> (the Act) from a decision of the Deputy Minister of National Revenue dated November 8, 1995.

The appellant imported a two-channel AT & T cordless telephone, model 4305, consisting of a cordless handset and base unit from the United States. At the time of importation, the product in issue was classified under tariff item No. 8517.10.00 of Schedule I to the *Customs Tariff*<sup>2</sup> as a cordless telephone set. Pursuant to a notice of objection served by the appellant, the respondent confirmed the classification of the product in issue in heading No. 85.17.

The issue in this appeal is whether the product in issue is properly classified under tariff item No. 8517.10.00 as a cordless telephone set, as determined by the respondent, or should be classified under tariff item No. 8525.20.90 as other transmission apparatus for radio-telephony incorporating reception apparatus, as claimed by the appellant.

Five companies intervened in the appeal: SANYO Canada Inc. (SANYO), Jutan International Limited (Jutan), Lenbrook Industries Limited (Lenbrook), Toshiba of Canada Limited (Toshiba) and Radio Shack, Division InterTAN Canada Ltd. (Radio Shack). All the interveners expressed an interest in the appeal because they are importers of cordless telephones.

The Tribunal had previously heard an appeal regarding the classification of certain cordless telephones, specifically models EXCXX-Excursion and Royal Telecom 32025. In the Tribunal's decision in

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

*Royal Telecom Inc. v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>3</sup> it determined that the goods in issue were properly classified under tariff item No. 8517.10.00 as telephone sets and not in subheading No. 8525.20 as transmission apparatus incorporating reception apparatus. In its reasons for decision, the Tribunal stated the following:

Unlike portable telephones, to be functional both the cordless and corded telephones must be physically connected to the public switched telephone system. Though the cordless telephone employs a radio component, it is merely an ancillary and peripheral component to the unit that must be connected to the line system to effect communication. While the radio component has increased the utility and convenience of the goods, nevertheless the goods are sold, essentially, to interface with and to effect line-telephony.

Both radio and line telephones have their own tariff heading and, accordingly, a telephone cannot be classified as both. At issue is whether the radio component or line component defines the primary function. If one were to order the relative significance of the two features and classify the goods according to the most significant, the cordless telephone would be classified as a line telephone because the radio component in a cordless telephone simply replaces the cord from a corded telephone and nothing more. This classification is also most consistent with ordinary, every day parlance.<sup>4</sup>

Given the identical nature of the issue in both appeals, the Tribunal, at the outset of the hearing, cited the paragraphs set out above and indicated to the parties that, in addition to being interested in having the parties address the Tribunal's reasons in *Royal Telecom*, it was interested in hearing new evidence and arguments that were not raised in the earlier appeal. In particular, it was interested in hearing how the product in issue differs or may differ from the goods in issue in *Royal Telecom*.

The relevant tariff nomenclature reads as follows:

85.17	Electrical apparatus for line telephony or line telegraphy, including such apparatus for carrier-current line systems.
8517.10.00	-Telephone sets
85.25	Transmission apparatus for radio-telephony ... whether or not incorporating reception apparatus...
8525.20	Transmission apparatus incorporating reception apparatus
8525.20.90	---Other

Mr. Byers began his testimony by citing the following definition of a "cordless telephone," found in the Radio Standards Specification, RSS 209:<sup>5</sup> "a two-way, low power, radio communication device comprised of a base station and a portable handset. The portable handset is intended to operate as an extension of the base station by the elimination of the connecting handset cord of the standard telephone.... Cordless telephones operate in a full duplex mode which allows simultaneous conversations between both parties. This method of operation requires the use of two frequencies for each cordless telephone."<sup>6</sup>

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3. Appeal No. AP-90-027, April 5, 1991.

4. *Ibid.* at 7.

5. "Cordless Telephones in the Bands 46 MHz and 49 MHz," Issue 4, Department of Communications, March 23, 1991.

6. *Ibid.* at 1.

Mr. Byers further testified that the product in issue features a two-channel selection and a paging feature to locate the portable handset if it is misplaced.

Mr. Byers submitted that there is essentially no difference between the way in which a cordless telephone operates and the way in which a cellular telephone operates in terms of the interface of the cordless telephone to the line telephone system. According to Mr. Byers, a high ratio of phone calls on cellular telephones go through the line telephone system.

Mr. Armando B. Abanil, Technical Services Manager, Sanyo Fisher Service Corporation, also appeared as a witness on behalf of the appellant. He testified that cordless telephones operate essentially in the same way as cellular telephones, except that cellular telephones are somewhat more sophisticated than the product in issue. Mr. Abanil further stated that calls on a cellular system, at times, are transmitted via a line telephone system if a different telephone network outside the cellular system is used. He explained that the cordless handset communicates with the base unit like an intercom and that, if the base unit is disconnected from the telephone line, it can function simply as an intercom within a house. Mr. Abanil later indicated that the product in issue could operate as an intercom even without disconnecting the base unit from the telephone line, since it has an intercom function built into it.

Further to questions from the Tribunal, Mr. Abanil clarified that the essential difference between cordless and cellular telephones is the practical or operational distance between the base station and the telephone itself. He testified that newer cordless telephones, operating at 900 MHz, have an effective range of 4,200 ft. By comparison, cordless telephones operating at 46 MHz, such as the product in issue, have approximately a 1,800-ft. range. He explained that higher frequencies mean shorter wavelengths and that shorter wavelength transmissions can pass through solid barriers more effectively.

Mr. Byers submitted, on his own behalf and on behalf of SANYO, that the respondent, in making his decision, erred by relying, in part, upon changes to the *Harmonized Commodity Description and Coding System*<sup>7</sup> (the Harmonized System) that were not in effect at the time that the decision was made. In his decision, the respondent noted forthcoming amendments to the Harmonized System which specifically refer to “line telephone sets with cordless handsets” at a subheading of heading No. 85.17, indicating that these amendments were intended to “further distinguish telephones with cordless handsets from cellular telephones using a radio telephony system.” Moreover, in Mr. Byers’ view, the respondent did not take into account or give adequate weight to definitions of relevant terms contained in dictionaries, as well as in legislation and regulations promulgated under the *Radiocommunication Act*<sup>8</sup> in finding the product in issue classifiable in heading No. 85.17. Mr. Byers submitted that this was a similar failing in *Royal Telecom*.

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7. Customs Co-operation Council, 1st ed., Brussels, 1987.

8. R.S.C. 1985, c. R-2.

Mr. Byers argued that, as the product in issue meets the definition of “radio apparatus<sup>9</sup>” as set out in the *Radiocommunication Act* and, furthermore, performs “radio-based telephone communication,<sup>10</sup>” also as defined in the *Radiocommunication Act*, the product in issue should be recognized as “[t]ransmission apparatus for radio-telephony ... whether or not incorporating reception apparatus” of heading No. 85.25.<sup>11</sup> He submitted that, had this information been forthcoming during the *Royal Telecom* appeal, the Tribunal’s decision in that case might have been different.

In Mr. Byers’ view, the essential character of the product in issue is defined by the fact that the radiocommunication between the handset and the base station allows users to take the handset anywhere, within certain distance limitations. In other words, it is because of this feature that people buy the product in issue. Mr. Byers submitted that the fact that the base station is interfaced with the line telephone system is no different from the step-by-step operation of the cellular telephone. He argued that the difference between the two types of telephones, namely, the low power of the cordless telephone compared with the higher megahertz power of the cellular telephone, is not relevant for classification purposes.

Mr. Byers argued, in reference to the Tariff Board’s decision in *Waltham Watch Company of Canada Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>12</sup> that given the high percentage of radio components in the product in issue, the respondent should have given greater consideration to tariff classifications pertaining to radiocommunication or radio apparatus. He further argued that, since cordless telephones are certified and administered under the *Radiocommunication Act* and its regulations, they ought to be classified in the *Customs Tariff* as radios. Although cordless telephones interact with the line telephone, Mr. Byers submitted that so do cellular telephones.

The representative for Jutan and Lenbrook submitted that the product in issue is a single function product and not a composite product and, therefore, it ought to be classified according to what it does and how it accomplishes that function. As the product in issue functions on radio signals, in the representative’s view, it should be classified in terms of this function. The representative argued that this appeal is distinguishable from the appeal in *Royal Telecom* in that the Tribunal found in the earlier case that the goods were composite goods whereas, in this appeal, the evidence shows that the product is a single function product.

In reference to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>13</sup> (the Explanatory Notes) to heading No. 85.25, the representative for Jutan and Lenbrook submitted that the product in issue falls within the description of “apparatus ... used for the transmission of signals ...

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9. “[A] device or combination of devices intended for, or capable of being used for, radiocommunication,” *ibid.* s. 2, as amended.

10. “[A]ny radiocommunication that is made over apparatus that is used primarily for connection to a public switched telephone network,” *Radiocommunication Act*, R.S.C., 1985, c. R-2, s. 2, as amended.

11. In further support of his position, Mr. Byers submitted that the product in issue meets the definitions of “radiotelephony,” which is a “[t]wo-way transmission of sounds by means of modulated radio waves, without interconnecting wires,” and “radiotelephone,” which pertains “to telephony over radio channels. 2. A radio transmitter and a radio receiver used together for two-way telephone communication by radio. Also known as a radiophone,” *McGraw-Hill Dictionary of Scientific and Technical Terms*, 4th ed. (Toronto: McGraw-Hill, 1989) at 1557.

12. (1984) 9 T.B.R. 388.

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

through the ether.” The fact that the product in issue is regulated by the *Radiocommunication Act* and its regulations moreover supports this classification. In arguing against the classification of the product in issue in heading No. 85.17, the representative submitted that, contrary to the Explanatory Notes to heading No. 85.17, the product in issue does not transmit information over a metallic circuit. The representative submitted that the handset does all the work in the unit and that it operates on radio waves.

The representative for Jutan and Lenbrook also argued that any differences between cordless telephones and cellular telephones, such as differences in signal distances and switching operations, are not a basis for excluding the product in issue from classification in heading No. 85.25.

The representative for Toshiba submitted that the classification of cordless telephones in heading No. 85.17 contradicts the Supplementary Notes to Chapter 85 of Schedule I to the *Customs Tariff*. Furthermore, cordless telephones have been classified in heading No. 85.25 in the United States.<sup>14</sup>

The representative for Radio Shack indicated support for the position expressed by Mr. Byers and, in particular, for his arguments that the product in issue is used for radiocommunication and, therefore, that it must meet certain legislative requirements for radiocommunication devices. The representative also supported Mr. Byers’ contention that the reason for buying a cordless telephone is because of its portability. In the alternative, the representative argued that, even if the Tribunal were to consider the product in issue to be a composite product, Rule 3 (c) of the *General Rules for the Interpretation of the Harmonized System*<sup>15</sup> (the General Rules) would apply because the essential character of the product is in dispute and cannot be determined. As such, the tariff classification that falls last in numerical order among those that are applicable would take precedence.

Counsel for the respondent submitted that the Tribunal, in *Royal Telecom*, already determined that the essential character of the cordless telephone is for the purpose of line telephony as opposed to radiotelephony. He rejected the analogy drawn between cellular and cordless telephones put forward once again by the other parties to this appeal. In particular, counsel focused on the differences between the two types of telephones as found by the Tribunal in *Royal Telecom*. The first difference highlighted by counsel was that, whereas a land-based station that services the cellular network will service many different cellular telephones at the same time, a cordless telephone base unit services only one telephone at a time. While a base unit may have two portable handsets, this does not alter the fact that there is still only one telephone line. The second difference referred to was that, while the cellular network has switching capability, the same cannot be said for cordless telephones. With respect to the term “switching,” counsel submitted that, in telephony, this means connecting two separate telephone lines and not simply switching the unit on or off. Counsel further submitted that two individuals speaking to one another using the intercom function of cordless telephones would not fall within the meaning of telephony and, therefore, that this function does not come within the purview of “switching.” Along the same lines, the third difference referred to by counsel is that cordless telephones must rely on the public telephone system for switching and cannot effect telephony without connection to that system. The fourth difference highlighted by counsel is that the base station of the cordless telephone is part of the product in issue, whereas classification of a cellular telephone does not include consideration of the base station, which is owned by a different party and removed from the portable unit.

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14. United States Customs Bulletin and Decisions, Vol. 29; No. 39, September 27, 1995, at 68.

15. *Supra* note 2, Schedule I.



With respect to the classification of the product in issue as a composite product, counsel for the respondent submitted that it is a composite product in two ways. First, it performs two separate functions, namely, it performs telephony, in addition to performing an intercom function. Secondly, it consists of two separate components, specifically, a handset and a base station.

Counsel for the respondent further emphasized that there is no evidence before the Tribunal in this appeal that was not before it in *Royal Telecom*. In response to Mr. Byers' arguments that the product in issue is classifiable in heading No. 85.25 because it is covered by the *Radiocommunication Act* and its regulations, counsel submitted that this is not relevant to customs classification. Counsel also submitted that the ruling of the U.S. Customs Service with respect to the classification of cordless telephones is not persuasive, given that, in his view, the U.S. Customs Service erred in finding that the goods were portable radiotelephones. Counsel submitted that a cordless telephone is not truly "portable" because it has to be plugged, by wire, into the public switched network.

In reply, Mr. Byers submitted that whoever owns the base station/unit should have no bearing on the classification of the product in issue. Furthermore, despite the admitted range limitations of cordless telephones, they are indeed portable. Finally, Mr. Byers argued that there is a specific exclusion from heading No. 85.17 for "[r]adiotelegraphic or radiotelephonic transmission and reception apparatus (heading 85.25 or 85.27)," as found in the Explanatory Notes to heading No. 85.17, and that this applies to the product in issue.

In determining the classification of goods, 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, in interpreting the headings and subheadings in Schedule I, regard shall be had to the Explanatory Notes.

Note 4 to Section XVI of Schedule I to the *Customs Tariff* is relevant to this appeal and provides that, "[w]here a machine ... 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 85, then the whole falls to be classified in the heading appropriate to that function."

Having considered the evidence and arguments put forward by the parties in this appeal, and taking into account the Tribunal's decision in *Royal Telecom*, the Tribunal was not persuaded to draw a different conclusion in respect of the tariff classification of the product in issue from that drawn in *Royal Telecom*.

The Tribunal agrees with the following conclusion reached in *Royal Telecom* : "Unlike portable telephones, to be functional both the cordless and corded telephones must be physically connected to the public switched telephone system. Though the cordless telephone employs a radio component, it is merely an ancillary and peripheral component to the unit that must be connected to the line system to effect communication. While the radio component has increased the utility and convenience of the goods, nevertheless the goods are sold, essentially, to interface with and to effect line-telephony."

In the Tribunal's view, the clearly defined function of the product in issue is to effect communication through the line telephone system. Accordingly, the Tribunal finds that the product in issue is properly classified in heading No. 85.17 as electrical apparatus for line telephony.

The Tribunal recognizes that, because the product in issue operates in part by radio signals, it is governed by the *Radiocommunication Act* and its subordinate legislation, in addition to the Radio Standards Specification. However, the Tribunal does not consider this fact to be persuasive insofar as influencing its determination as to the clearly defined function of the product in issue and its tariff classification. The Tribunal also did not find the US customs ruling persuasive in these regards.

The Tribunal notes that the respondent, in his decision of November 8, 1995, may have relied, in part, on amendments to the Harmonized System that had yet to be incorporated into the *Customs Tariff*. While the Tribunal acknowledges that these amendments are now in effect, this was not so at the time that Mr. Byers imported the cordless telephone and, therefore, they do not apply to the product in issue. Consequently, the Tribunal did not take these amendments into consideration in reaching its decision.

For the foregoing reasons, the Tribunal determines that the product in issue is properly classified in heading No. 85.17 as electrical apparatus for line telephony and, more specifically, under tariff item No. 8517.10.00 as a telephone set.

Accordingly, the appeal is dismissed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.

Presiding Member

Lyle M. Russell

Lyle M. Russell

Member

Charles A. Gracey

Charles A. Gracey

Member