

Ottawa, Thursday, February 5, 1998

Appeal Nos. AP-96-208 and AP-97-009

IN THE MATTER OF appeals heard on July 30, 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 dated October 15, 22, 23, 24, 25 and 30, 1996, and February 5 and March 27, 1997, under section 63 of the *Customs Act*.

BETWEEN

PHILIPS ELECTRONICS LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeals are dismissed.

Raynald Guay
Raynald Guay
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal Nos. AP-96-208 and AP-97-009

PHILIPS ELECTRONICS LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

These are appeals under section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue under section 63 of the *Customs Act*. The issue in these appeals is whether electronic ballasts are properly classified under tariff item No. 8504.10.00 as ballasts for discharge lamps or tubes, as determined by the respondent, or should be classified under tariff item No. 8504.40.99 as other static converters, as claimed by the appellant.

HELD: The appeals are dismissed. The Tribunal is of the opinion that the definitions of the word “ballast,” which were submitted as evidence, clearly indicate that a ballast can have two separate functions, that is, the ballast can be used not only to control the current within the lamp but also to provide the required starting voltage. According to the Tribunal, the goods in issue are electronic ballasts and are properly classified under tariff item No. 8504.10.00 as ballasts for discharge lamps or tubes.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	July 30, 1997
Date of Decision:	February 5, 1998
Tribunal Member:	Raynald Guay, Presiding Member
Counsel for the Tribunal:	Joël J. Robichaud
Clerk of the Tribunal:	Anne Jamieson
Appearances:	Jean-Pierre Boucher, for the appellant Jan Brongers, for the respondent

Appeal Nos. AP-96-208 and AP-97-009

PHILIPS ELECTRONICS LTD.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: RAYNALD GUAY, Presiding Member

REASONS FOR DECISION

These are appeals, heard by one member of the Tribunal,¹ under section 67 of the *Customs Act*² (the Act) from decisions of the Deputy Minister of National Revenue dated October 15, 22, 23, 24, 25 and 30, 1996, and February 5 and March 27, 1997, under section 63 of the Act.

The issue in these appeals is whether electronic ballasts are properly classified under tariff item No. 8504.10.00 of Schedule I to the *Customs Tariff*³ as ballasts for discharge lamps or tubes, as determined by the respondent, or should be classified under tariff item No. 8504.40.99 as other static converters, as claimed by the appellant. For the purpose of these appeals, the following is the relevant tariff nomenclature:

85.04	Electrical transformers, static converters (for example, rectifiers) and inductors.
8504.10.00	-Ballasts for discharge lamps or tubes
8504.40	-Static converters
8504.40.99	----Other

During the hearing, Mr. Ronald Peterson, Director, Product Service Engineering, for Advance Transformer Co., A Division of Philips Electronics North America Corporation, testified on behalf of the appellant as an electronics expert. Mr. Peterson described the first exhibit (Exhibit A-1) as a linear reactance ballast for fluorescent lamps. He explained that this device comprises, amongst other things, a transformer and a magnetic coil and that it is used to control the flow of current. Mr. Peterson described the second exhibit (Exhibit A-2) as an automatic transformer that also works as a reactance coil. In addition, this device heats the filaments and provides the required level of voltage to light a fluorescent lamp. A simple conductor, such as Exhibit A-1, does not have both of these characteristics. Mr. Peterson explained that Exhibits A-1 and A-2 both operate on a principle of magnetic or inductive reactance. They are reactance coils and inductors designed to control the flow of current in fluorescent lamps. The fact that they operate this way makes them ballasts.

1. 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, determining and dealing with any appeal made to the Tribunal pursuant to the *Customs Act*.

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

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

Mr. Peterson described the third exhibit (Exhibit A-3) as an inverter or high-frequency static converter. This device converts alternating current into direct current and, then, the direct current into a higher frequency. Mr. Peterson explained that Exhibit A-3 is not a ballast. According to him, an inverter is not a ballast. He explained that this device is sold as an “electronic ballast” because this term describes the use for which it was originally designed. The static converter is a new invention which allows for the application of a new technology, that is, the conversion of frequency, whereas Exhibits A-1 and A-2 always operate at the same frequency and the ballast functions within them. He explained that Exhibit A-3 comprises a reactance coil that controls the flow of current, but that it does not operate like a ballast. The ballast is auxiliary to the main function of the static converter. Mr. Peterson described the fourth exhibit (Exhibit A-4) as a static converter that receives current in three stages. He explained that Exhibit A-3 is astable. The three-stage converter regulates the direct current and operates at a very high frequency.

Under cross-examination, Mr. Peterson explained that only Exhibits A-3 and A-4 are part of the goods in issue. He explained that, in the early 1940s, during the Second World War, there was only one type of ballast, i.e. a simple reactance coil and inductors, such as Exhibit A-1, which controlled the flow of current to the lamp. Each lamp had a ballast. He explained that, by definition, a ballast is a controlling device. Without the ballast, the force of the current could destroy the lamp. Mr. Peterson testified that he agreed with the following definition of the term “ballast” as it appears in the appellant’s literature: “Device for starting and regulating fluorescent and high intensity discharge lamps.” He testified that static converters, such as Exhibits A-3 and A-4, have been designed to transform the voltage to light the lamp. According to Mr. Peterson, this has nothing to do with the function of the ballast, that is, to control the current to keep the lamp lit.

Counsel for the respondent presented Mr. Peterson with several definitions for the term “ballast.” Mr. Peterson explained that, according to him, these definitions are of “magnetic ballasts,” such as Exhibits A-1 and A-2, and not of “high-frequency converters,” such as Exhibits A-3 and A-4, i.e. the goods in issue. He reiterated that the static converter functions independently of the ballast, but that a ballast is required to operate a fluorescent lamp. The manufacturer chose to place the ballast on the same device as the converter because there was space available. Mr. Peterson explained that the apparatus is sold as a “high-frequency electronic ballast” because that is how it is known in the industry. He explained that consumers do not know the expression “high-frequency static converter” because this is a new product.

The appellant’s representative submitted that the goods in issue are indeed static converters and that, consequently, they should be classified in subheading No. 8504.40. In his view, Mr. Peterson’s testimony clearly established that the goods in issue are not ballasts. The representative submitted that the goods in issue are not excluded from subheading No. 8504.40 by any of the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁴ (the Explanatory Notes) to heading No. 85.04, Chapter 85 or Section XVI. According to the representative, the fact that the goods in issue are sold as “high-frequency electronic ballasts” is irrelevant to classification. Referring to the Explanatory Notes to heading No. 85.04, the representative submitted that the fact that the goods in issue include a ballast as an auxiliary device does not modify their classification.

Counsel for the respondent submitted that the goods in issue are electronic ballasts used in discharge lamps and that, consequently, they are properly classified under tariff item No. 8504.10.00. He referred to the evidence, especially the appellant’s literature, which, according to him, clearly indicates that the goods in

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

issue are ballasts or, more specifically, high-frequency electronic ballasts. He submitted that the goods in issue are ballasts in spite of the appellant's position and the testimony of the expert witness. Counsel referred to several dictionary definitions of the word "ballast" which, in his view, describe the goods in issue.

Counsel for the respondent admitted, however, that the goods in issue can also be described as "static converters," given the definition of this term in the Explanatory Notes: "The apparatus of this group are used to convert electrical energy in order to adapt it for further use." Counsel submitted that it is, therefore, necessary to refer to Rule 3 (a) of the *General Rules for the Interpretation of the Harmonized System*⁵ (the General Rules) which stipulates that "[t]he heading which provides the most specific description shall be preferred to headings providing a more general description." According to counsel, the goods in issue are more specifically described as ballasts for discharge lamps or tubes than as static converters. Counsel submitted that the tariff item that covers ballasts for discharge lamps or tubes has to be considered, without a doubt, more specific than the tariff item that covers the "[o]ther" category. He referred to two Tribunal decisions in support of this argument, *Praher Canada Products Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*⁶ and *Smith & Nephew Inc. v. The Deputy Minister of National Revenue for Customs and Excise*.⁷

Counsel for the respondent added that, in his view, the expression "static converters" refers to a wide range of products, whereas the expression "ballasts for discharge lamps or tubes" only refers to a restricted group of products used with fluorescent lamps. In counsel's opinion, most ballasts for discharge lamps or tubes could also be classified as static converters, but the reverse would not be possible, since only a small portion of static converters are also ballasts for discharge lamps or tubes.

Rule 1 of the General Rules is of crucial importance in classifying goods within Schedule I to the *Customs Tariff*. Rule 1 stipulates that classification is first determined according to the terms of the headings and the Chapter Notes. Consequently, the Tribunal must determine whether the goods in issue are named or generically described within a given heading. If they are, they must be classified therein, subject to any relative Chapter Note. The Tribunal is further directed by section 11 of the *Customs Tariff* to consider the Explanatory Notes as a guide to the interpretation of the headings and subheadings.

The respondent classified the goods in issue under tariff item No. 8504.10.00 as ballasts for discharge lamps or tubes. The word "ballast" is not defined in the Explanatory Notes. The Tribunal, therefore, referred to the evidence in order to determine its meaning. During his testimony, Mr. Peterson explained that the static converter transforms the voltage to light the lamp, whereas the ballast controls the current to keep the lamp lit. According to Mr. Peterson, these are two different apparatus with two separate functions. The appellant's literature contains several definitions of the word "ballast." Counsel for the respondent referred to some of these definitions.

For example, in a document that Mr. Peterson identified as part of the appellant's advertising literature, the word "ballast" is defined as follows: "Device for starting and regulating fluorescent and high intensity discharge lamps." The expression "electronic ballast" is defined as follows: "A ballast that, with the aid of electronic components, transforms current at a high frequency to operate discharge lamps." In the

5. *Supra* note 3, Schedule I.

6. Appeal No. AP-92-112, August 31, 1993.

7. Appeal No. AP-92-073, January 10, 1994.

Grand dictionnaire encyclopédique Larousse,⁸ the word “ballast” (“ballast”) is defined as follows: “Dispositif employé dans les lampes à décharge pour assurer la stabilisation et, éventuellement, l’allumage de la décharge⁹” (“Device used in discharge lamps to ensure stability and, when necessary, trigger the discharge”). In the *IEEE Standard Dictionary of Electrical and Electronics Terms*,¹⁰ the word “ballast” is defined as follows: “Devices that by means of inductance, capacitance, or resistance, singly or in combination, limit the lamp current of fluorescent or mercury lamps, to the required value for proper operation, and also, where necessary, provide the required starting voltage and current and, in the case of ballasts for rapid-start lamps, provide for low-voltage cathode heating. *Note*: Capacitors for power-factor correction and capacitor-discharge resistors may form part of such a ballast.¹¹”

The Tribunal is of the opinion that the above definitions describe the goods in issue. Contrary to Mr. Peterson’s testimony, these definitions clearly indicate that a ballast can have two separate functions. In other words, a ballast can be used not only to control the current within the lamp but also to provide the required starting voltage. According to the Tribunal, the goods in issue are electronic ballasts and are properly classified under tariff item No. 8504.10.00 as ballasts for discharge lamps or tubes. Even if the Tribunal agreed that the goods in issue could be described as static converters, in its opinion, the expression “ballasts for discharge lamps or tubes” describes them more specifically and, under the terms of Rule 3 (a) of the General Rules, they would still be properly classified under tariff item No. 8504.10.00.

Consequently, the appeals are dismissed.

Raynald Guay
Raynald Guay
Presiding Member

8. Vol. 1 (Paris: Librairie Larousse, 1982).

9. *Ibid.* at 1002.

10. Third ed. (New York: Institute of Electrical and Electronics Engineers, 1984).

11. *Ibid.* at 79.