CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, November 24, 1999

Appeal No. AP-97-074

IN THE MATTER OF an appeal heard on December 3, 1998, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue dated June 26, 1997, with respect to requests for re-determination under section 63 of the *Customs Act*.

BETWEEN

C.L. BLUE SYSTEMS LTD. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Peter F. Thalheimer
Peter F. Thalheimer
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
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UNOFFICIAL SUMMARY

Appeal No. AP-97-074

C.L. BLUE SYSTEMS LTD. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal under section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue (now the Commissioner, Canada Customs and Revenue Agency) made under subsection 63(3) of the *Customs Act*. The issue in this appeal is whether satellite television reception systems (STRSs) are properly classified under tariff item No. 8528.12.99 of Schedule I to the *Customs Tariff* as colour reception apparatus for television, as determined by the respondent, or should be classified under tariff item No. 8529.90.91 as television converters being parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28, as claimed by the appellant.

HELD: The appeal is dismissed. The appellant claimed that STRSs should be classified in heading No. 85.29 as parts of reception apparatus for television. As indicated by the terms of the heading, for a product to be classified in this heading, it must be a part. In *Jonic International Inc.* v. *Deputy Minister of National Revenue*, the Tribunal concluded that an STRS meets none of the criteria relevant in determining whether a product is a part. The Tribunal held that an STRS is not essential to the operation of a television reception apparatus, e.g. a television set; it is not a necessary and integral component of such an apparatus; nor is it installed in one. The Tribunal further held that no evidence relating to common trade usage and practice had been submitted to support the classification of an STRS as a part of a television reception apparatus. In the present appeal, the Tribunal reaches the same conclusion. Therefore, STRSs cannot be classified under heading No. 85.29 as parts suitable for use solely or principally with reception apparatus for television. In *Jonic International Inc.* v. *Deputy Minister of National Revenue*, the Tribunal classified STRSs, which were identical to the goods in issue in the present appeal, in heading No. 85.28 as reception apparatus for television. It is clear that an STRS constitutes an apparatus which receives television signals. The fact that an STRS also converts the signals does not affect its classification.

Place of Hearing:	Calgary, Alberta, and Hull, Quebec
Date of Hearing:	December 3, 1998
Date of Decision:	November 24, 1999
Tribunal Member:	Peter F. Thalheimer, Presiding Member
Counsel for the Tribunal:	Philippe Cellard
Clerks of the Tribunal:	Margaret Fisher and Anne Turcotte
Appearances:	Barry P. Korchmar, for the appellant Jocelyn Sigouin, for the respondent

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-97-074

C.L. BLUE SYSTEMS LTD. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: PETER F. THALHEIMER, Presiding Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*[1] from decisions of the Deputy Minister of National Revenue (now the Commissioner, Canada Customs and Revenue Agency), dated June 26, 1997, made under subsection 63(3) of the *Act*.

The issue in this appeal is whether satellite television reception systems (STRSs), imported by the appellant between January 17, 1996 and July 4, 1996, are properly classified under tariff item No. 8528.12.99 of Schedule I to the *Customs Tariff* [2] as colour reception apparatus for television, as determined by the respondent, or should be classified under tariff item No. 8529.90.91 as television converters being parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28, as claimed by the appellant.

Following is the relevant nomenclature of Schedule I to the *Customs Tariff*:

85.28	Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors.
	-Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus:
8528.12	--Colour
	---Other:
8528.12.99	----Other
85.29	Parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28.
8529.90	--Other
	---Other:
8529.90.91	----Of the goods of tariff item No. 8526.92.91; remote controls and parts thereof; television converters and parts thereof

No witnesses were heard in the present appeal. The parties have agreed that the goods in issue are identical to those whose classification was confirmed by the Tribunal in *Jonic International Inc.* v. *Deputy*

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter *Act*].
2. R.S.C. 1985 (3d Supp.), c. 41.

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Minister of National Revenue.[3] The STRSs in issue therefore have four components: a dish antenna, a low noise block converter with integrated feed (LNBF), a satellite receiver and a remote control. In *Jonic*, the Tribunal thus described the operation of an STRS: "The dish antenna reflects microwave satellite television signals to the LNBF. The LNBF converts the signals from 11,000 megahertz (MHz) down to 1,000 MHz. The LNBF also amplifies the signals and sends them through coaxial cables to the receiver; the receiver then converts the signals to 61-67 MHz, which is the frequency for channel 3 on a television channel selector, or to a video base band that can be received by some television sets. If the user is a subscriber of the selected satellite television channel, a decoder built into the receiver then descrambles the signals so that they can be displayed to the user on the television set. The remote control operates the receiver and is used through on-screen menus".[4]

Counsel for the appellant contested the Tribunal's decision in *Jonic*, where it classified STRSs in heading No. 85.28 as reception apparatus for television. The appellant submitted that *Jonic* was decided primarily on the basis of a World Customs Organization Classification Opinion (WCO Opinion) published in July 1997 in the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*.[5] He further submitted that, in considering a WCO Opinion, the Tribunal is free to give it the weight it deems appropriate. Moreover, counsel argued that WCO Opinions should only be effective from the date of their publication. Consequently, he submitted that, in the present case, the WCO Opinion dealing with STRSs, published after the transactions in issue, should not be taken into consideration by the Tribunal.

Counsel for the appellant advanced that the fact that an STRS not only receives but converts television signals precludes its classification in heading No. 85.28 as a reception apparatus for television. To support its position that the goods in issue should rather be classified in heading No. 85.29 as parts of reception apparatus for television, the appellant made a comparison between STRSs and cable television converters. Counsel recalled that cable television converters, which are specifically named under tariff item No. 8529.90.91, are now incorporated into television sets but used to be separate. Counsel advanced that, similarly, STRSs are now separate from television sets but will, one day, be incorporated in them. The appellant also cited *Canadian Satellite Communications Inc.* v. *Deputy Minister of National Revenue*,[6] where the Tribunal classified the receiver component of an STRS as a television converter under the previous tariff item covering television converters.

Counsel for the respondent submitted that the goods in issue cannot be classified as sought by the appellant because an STRS forms a complete functional unit and cannot be classified as a part. Counsel also referred to the *WCO Opinion* where STRSs are classified in subheading No. 8528.12.

The Tribunal is directed by section 10 of the *Customs Tariff* to classify goods in accordance with the *General Rules* and the *Canadian Rules for the Interpretation of the Harmonized System*.[7] Section 11 of the *Customs Tariff* provides that the Tribunal shall have regard to the *Classification Opinions* in interpreting the headings and subheadings of Schedule I to the *Customs Tariff*.

General Rule 1 provides that classification shall be determined according to the terms of the headings. Therefore, the Tribunal must determine whether the goods in issue are properly classified in

3. (28 September 1998), AP-97-078 (CITT) [hereinafter *Jonic*].
4. *Supra n*ote 3 at 2.
5. 1st ed. (Brussels, 1987) [hereinafter *Classification Opinions*].
6. (8 December 1995), AP-94-202 (CITT) [hereinafter *Canadian Satellite*].
7. *Supra* note 2, Schedule I.

heading No. 85.28 as reception apparatus for television or should rather be classified in heading No. 85.29 as parts of such apparatus.

Counsel for the appellant claimed that STRSs should be classified under heading No. 85.29 as parts of reception apparatus for television. As indicated by the terms of the heading, for a product to be classified in this heading it must be a part. In *Jonic*, the Tribunal mentioned that: "While acknowledging that each case must be determined on its own merits and that there is no universally applicable test, the Tribunal, in [*York Barbell Company* v. *Deputy Minister of National Revenue for Customs and Excise*[8]], indicated that the following criteria are relevant in determining whether a product is a part: (1) the product is essential to the operation of another product; (2) the product is a necessary and integral component of the other product; (3) the product is installed in the other product; and (4) common trade usage and practice".[9]

In *Jonic*, the Tribunal concluded that none of those criteria is fulfilled by an STRS. The Tribunal held that an STRS is not essential to the operation of a television reception apparatus, e.g. a television set; it is not a necessary and integral component of such an apparatus; nor is it installed in one. The Tribunal further held that no evidence relating to common trade usage and practice had been submitted to support the classification of a STRS as a part of a television reception apparatus. In the present appeal, the Tribunal reaches the same conclusion. Therefore, STRSs cannot be classified under heading No. 85.29 as parts suitable for use solely or principally with reception apparatus for television.

Counsel for the appellant argued that the STRSs should be classified like cable television converters which are classified under heading No. 85.29, and more specifically, in tariff item No. 8529.90.91 as television converters. The Tribunal cannot accept that argument. In *Jonic*, the Tribunal stated that a cable television converter could be classified as a part of a reception apparatus for television pursuant to the above-mentioned criteria. The Tribunal indicated that a cable television converter is a necessary and integral component of a television set, and is seen as such in the trade, and that a television converter is built into the set. This can be contrasted with what has just been said concerning the goods in issue in the present appeal. Whether STRSs will one day be incorporated into television sets has no bearing on the present appeal.

Counsel for the appellant also relied on the Tribunal's decision in *Canadian Satellite* to sustain its position that the goods in issue should be classified as television converters under heading No. 85.29. In *Jonic*, the Tribunal dealt with such an argument as follows:

> In that appeal [*Canadian Satellite*], the Tribunal was dealing with the classification of a decoder that was used with a receiver. The receiver was one of the components of an analogue STRS. The Tribunal determined that the decoder was a part of the receiver. The Tribunal further found that the receiver had functions similar to those of a cable television converter and that it should, therefore, be classified as a television converter under tariff item No. 8543.80.50. This tariff item however was replaced on January 1, 1996, by tariff item No. 8529.90.91 that now covers television converters. In the Tribunal's opinion, this is a critical change because, while heading No. 85.43 covered "[e]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in this Chapter", heading No. 85.29 covers "[p]arts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28". While the *Canadian Satellite* decision supports the appellant's position that the STRS performs functions similar to those of a cable television converter, it does not sustain the appellant's view that an STRS should be classified as a part in heading No. 85.29.

8. (19 August 1991), AP-90-161 (CITT).
9. *Supra* note 3 at 3.

The Tribunal adopts this reasoning in the present appeal.

In *Jonic*, the Tribunal classified STRSs, which were identical to the goods in issue in the present appeal, under heading No. 85.28, as reception apparatus for television. It is clear that an STRS constitutes an apparatus which receives television signals.[10] The fact that an STRS also converts television signals does not affect its classification. Similarly, television sets are still classified in heading No. 85.28 even though, at present, they incorporate cable television converters that convert television signals.

Counsel for the appellant has argued that the Tribunal's decision in *Jonic* rested solely on a WCO Opinion classifying STRSs in subheading No. 8528.12 that was published following the dates of importation of the goods in the present appeal. It submitted that this WCO Opinion should only be followed in classifying goods imported after its publication. In the Tribunal's view, it is clear that the *Jonic* decision was not made solely on the basis of the WCO Opinion. This is clearly demonstrated by the preceding references to *Jonic*, by a reading of that decision and by the fact that, in the second last paragraph of the Tribunal's decision, it simply noted the WCO Opinion classifying STRSs under subheading No. 8528.12. In the present appeal, the Tribunal notes, again, that the WCO Opinion is parallel to the Tribunal's decision. In the Tribunal's view, the fact that a new WCO Opinion, dealing with the goods in issue, was issued after the date of the transaction does not prevent the Tribunal from taking that WCO Opinion into consideration.

For the foregoing reasons, the Tribunal concludes that the goods in issue are properly classified under tariff item No. 8528.12.99 as colour reception apparatus for television. Consequently, the appeal is dismissed.

Peter F. Thalheimer
Peter F. Thalheimer
Presiding Member

10. Note 4 to Section XVI states that: "Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function."