

Ottawa, Monday, September 28, 1998

**Appeal No. AP-97-078**

IN THE MATTER OF an appeal heard on March 9, 1998, 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 September 25, 1997, with respect to a request for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**JONIC INTERNATIONAL INC.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Patricia M. Close  
Patricia M. Close  
Presiding Member

Anita Szlazak  
Anita Szlazak  
Member

Charles A. Gracey  
Charles A. Gracey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-97-078**

**JONIC INTERNATIONAL INC.**

**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 made under subsection 63(3) of the *Customs Act*. The issue in this appeal is whether satellite television reception systems (STRSs), each consisting of a dish antenna, a low noise block converter with integrated feed, a satellite receiver and a remote control, are properly classified under tariff item No. 8528.12.99 as other 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 Tribunal is of the view that the STRSs in issue are properly classified under tariff item No. 8528.12.99 as other colour reception apparatus for television. An STRS cannot be classified in heading No. 85.29 as a part of a reception apparatus for television. 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 Limited v. The Deputy Minister of National Revenue for Customs and Excise*, 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. In the present appeal, none of those criteria is fulfilled. An STRS is not essential to the operation of a television reception apparatus, e.g. a television set, is not a necessary and integral component of such an apparatus and is not installed in such an apparatus. No evidence relating to common trade usage and practice was submitted to support the classification of an STRS as a part of a television reception apparatus.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	March 9, 1998
Date of Decision:	September 28, 1998
Tribunal Members:	Patricia M. Close, Presiding Member Anita Szlajak, Member Charles A. Gracey, Member
Counsel for the Tribunal:	Philippe Cellard
Clerk of the Tribunal:	Margaret Fisher
Appearances:	Richard A. Wagner and Larry N. James, for the appellant Jocelyn Sigouin, for the respondent

**Appeal No. AP-97-078**

**JONIC INTERNATIONAL INC.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member  
ANITA SZLAZAK, Member  
CHARLES A. GRACEY, Member

**REASONS FOR DECISION**

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> (the Act) from decisions of the Deputy Minister of National Revenue dated September 25, 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 in February and March 1997, are properly classified under tariff item No. 8528.12.99 of Schedule I to the *Customs Tariff*<sup>2</sup> as other 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.

The relevant provisions of Schedule I to the *Customs Tariff* are the following:

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

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

Counsel for the appellant called as a witness Mr. Andy Redmond, President of Ionic International Inc. Mr. Redmond presented to the Tribunal the components of an STRS imported by the appellant. The system has four components: a dish antenna, a low noise block converter with integrated feed (LNBF), a satellite receiver and a remote control.

Counsel for the appellant and counsel for the respondent each called an expert witness. Mr. David Lester, Technology Manager at Motorola, testified for the appellant, and Dr. Yiyang Wu, Research Scientist at the Communications Research Centre, testified for the respondent. The experts agreed on the operation of the STRS. The dish antenna reflects microwave satellite television signals to the LNBF. The LNBF converts the signals from 11,000 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.

Mr. Lester indicated that the STRSs in issue are designed to be used exclusively with television sets and cannot be used without them, since all the controls are interactive and require an on-screen display. An STRS can be used with either a colour or a black and white television set. Mr. Lester defined a television converter as a device that allows a television set to receive more channels than it would otherwise receive. He explained that a television converter permits reception of most of the channels offered by the cable television industry. While, originally, television converters were separate devices that were plugged into the television sets, they are now built into the television sets. According to Mr. Lester, an STRS plays the same role as those television converters, by permitting a television set to receive satellite television signals. Thus, he concluded that an STRS is, in fact, a television converter.

Dr. Wu stated that there are differences between an STRS and a television converter used to receive cable television (cable television converter). He underlined that the frequencies involved are different and that the STRS is digital, while a cable television converter is analogue.

While counsel for the appellant agreed that an STRS can be described as a reception apparatus for television, they submitted that the STRS should be classified as a television converter under tariff item No. 8529.90.91, since it performs fundamentally the same function as a cable television converter. They cited the Tribunal's decisions in *Canadian Satellite Communications Inc. v. The Deputy Minister of National Revenue*<sup>3</sup> and *Philips Electronics Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*<sup>4</sup> in support of their claim. Counsel also suggested that an STRS could not be classified in subheading No. 8528.12 as a "colour" reception apparatus for television, pointing to the fact that an STRS can receive both colour and black and white signals.

Counsel for the respondent submitted that an STRS is a complete functional system and cannot be classified in a heading for parts, such as heading No. 85.29. Counsel made reference to the Tribunal's decision in *York Barbell Company Limited v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>5</sup> which enunciates criteria for a product to be considered a part. She submitted that none of those criteria was met in the present appeal. Counsel also referred the Tribunal to a decision of the Harmonized System Committee which

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3. Appeal No. AP-94-202, December 8, 1995.

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

5. Appeal No. AP-90-161, August 19, 1991.

classified an STRS in subheading No. 8528.12 as a reception apparatus for television. Finally, counsel argued that an STRS was not a television converter.

The Tribunal is directed by section 10 of the *Customs Tariff* to classify imported goods in accordance with the *General Rules for the Interpretation of the Harmonized System*<sup>6</sup> (the General Rules). Rule 1 of the General Rules provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. Heading No. 85.28 covers reception apparatus for television, while heading No. 85.29 covers parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28. The issue, therefore, is whether an STRS is a reception apparatus for television or a part thereof.

The Tribunal is of the view that an STRS cannot be classified in heading No. 85.29 as a part of a reception apparatus for television, even if it has functions similar to those of a cable television converter. 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*, 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. In the present appeal, none of those criteria is fulfilled. An STRS is not essential to the operation of a television reception apparatus, e.g. a television set, is not a necessary and integral component of such an apparatus and is not installed in such an apparatus. No evidence relating to common trade usage and practice was submitted to support the classification of an STRS as a part of a television reception apparatus. This can be contrasted with the application of the same criteria to a cable television converter. As agreed by the two expert witnesses, nowadays, a cable television converter is a necessary and integral component of a television set and is seen as such in the trade. A cable television converter is built into the set. It is clear that a cable television converter could be classified as a part of a television reception apparatus in heading No. 85.29, more specifically, as a television converter under tariff item No. 8529.90.91. Such is not the case for an STRS.

As noted above, counsel for the appellant relied on the Tribunal's decision in *Canadian Satellite* to support their claim that an STRS should be classified as a television converter. In that appeal, 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 decision in *Canadian Satellite* supports the appellant's position that an 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.

Counsel for the appellant also cited an earlier case, *Philips Electronics*, where the Tribunal classified the old cable television converters, that were separate from the television receivers, as parts of television receivers. It must be underlined that the goods in issue in *Philips Electronics* were imported before the coming into force of tariff item No. 8543.80.50, which specifically covered television converters. By enacting that tariff item, Parliament indicated that those old cable television converters were not to be considered parts of television receivers.

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6. *Supra* note 2, Schedule I.

The Tribunal is of the view that the STRSs in issue<sup>7</sup> are properly classified in heading No. 85.28 as reception apparatus for television.<sup>8</sup> The Tribunal notes that counsel for the appellant and counsel for the respondent agreed that an STRS can be said to be a reception apparatus for television.<sup>9</sup> The Tribunal is further of the view that the STRSs in issue are properly classified in subheading No. 8528.12 as “colour” reception apparatus for television. An STRS can receive and transmit to a television set colour as well as black and white signals. In a similar way, a colour television set can receive and display colour or black and white signals. On the contrary, a black and white television set can receive but cannot display colour signals.

Finally, the Tribunal notes that, following an amendment issued in July 1997, the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*<sup>10</sup> now includes an Opinion that specifically covers STRSs and classifies them in subheading No. 8528.12.

For the foregoing reasons, the Tribunal is of the view that the STRSs in issue are properly classified under tariff item No. 8528.12.99 as other colour reception apparatus for television. Therefore, the appeal is dismissed.

Patricia M. Close  
Patricia M. Close  
Presiding Member

Anita Szlazak  
Anita Szlazak  
Member

Charles A. Gracey  
Charles A. Gracey  
Member

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7. As indicated earlier, an STRS comprises a dish antenna, an LNBF, a satellite receiver and a remote control.

8. Note 4 to Section XVI of Schedule I to the *Customs Tariff* states that, “[w]here 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.”

9. *Transcript of Public Argument*, March 9, 1998, at 2.

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