



Ottawa, Wednesday, July 5, 2000

**Appeal Nos. AP-99-029 and AP-99-046**

IN THE MATTER OF appeals heard on December 8, 1999, 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 with respect to requests for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**SANYO CANADA INC.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**AND**

**RADIOSHACK, DIVISION INTERTAN CANADA LTD.**

**Intervener**

**DECISION OF THE TRIBUNAL**

The appeals are dismissed.

Arthur B. Trudeau  
Arthur B. Trudeau  
Presiding Member

Raynald Guay  
Raynald Guay  
Member

Zdenek Kvarda  
Zdenek Kvarda  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

Appeal Nos. AP-99-029 and AP-99-046

**SANYO CANADA INC.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**AND**

**RADIOSHACK, DIVISION INTERTAN CANADA LTD.**

**Intervener**

These are appeals under section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency). The issue in these appeals is whether the telephones imported by the appellant are properly classified under tariff item No. 8517.11.00 as line telephone sets with cordless handsets, 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 appeals are dismissed. The telephones in issue are electrical apparatus for line telephony. It was not contested that they are electrical apparatus. It was also clear from the evidence that the base unit of the telephones in issue has to be connected to the public switched telephone network to effect communications over that network. Clearly, these telephones are bought to communicate via the public switched telephone network. Therefore, the telephones in issue are properly characterized as line telephone sets. Given the fact that they are equipped with cordless handsets, which communicate with the base unit using radio waves, they are line telephone sets with cordless handsets.

Even if the Tribunal were to accept that the telephones in issue are, *prima facie*, classifiable in heading No. 85.25 as transmission apparatus for radio-telephony incorporating reception apparatus, as well as in heading No. 85.17, the Tribunal would still classify the telephones in issue in heading No. 85.17 by application of Rule 3(a) of the *General Rules for the Interpretation of the Harmonized System*. In the Tribunal's view, heading No. 85.17 provides a more specific description of the telephones in issue than heading No. 85.25. The expression "[t]ransmission apparatus for radio-telephony incorporating reception apparatus" covers a variety of goods as indicated by the list found in the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to heading No. 85.25. On the contrary, heading No. 85.17 provides a precise description of the products in issue, namely, "[l]ine telephone sets with cordless handsets."

Place of Hearing: Ottawa, Ontario  
Date of Hearing: December 8, 1999  
Date of Decision: July 5, 2000

Tribunal Members: Arthur B. Trudeau, Presiding Member  
Raynald Guay, Member  
Zdenek Kvarda, Member

Counsel for the Tribunal: Philippe Cellard

Clerk of the Tribunal: Anne Turcotte

Appearances: Michael A. Kelen, for the appellant  
Lynne M. Soublière, for the respondent  
Raymond E. Hodgson, for the intervener

Appeal Nos. AP-99-029 and AP-99-046

**SANYO CANADA INC.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**AND**

**RADIOSHACK, DIVISION INTERTAN CANADA LTD.**

**Intervener**

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member  
RAYNALD GUAY, Member  
ZDENEK KVARDA, Member

**REASONS FOR DECISION**

These are appeals under section 67 of the *Customs Act*<sup>1</sup> from decisions of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency). The issue in these appeals is whether the telephones imported by the appellant in 1997 are properly classified under tariff item No. 8517.11.00 of Schedule I to the *Customs Tariff*<sup>2</sup> as line telephone sets with cordless handsets, 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.

The relevant tariff nomenclature provisions are as follows:

- |            |   |
|------------|---|
| 85.17      | Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones.<br>-Telephone sets; videophones:                  |
| 8517.11.00 | --Line telephone sets with cordless handsets  |
| 85.25      | Transmission apparatus for radio-telephony, radio-telegraphy, radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras and other video camera recorders. |
| 8525.20    | -Transmission apparatus incorporating reception apparatus   |
| 8525.20.90 | ---Other  |

**EVIDENCE**

Mr. Steve Eidelberg, Manager, Marketing & Sales, and Mr. Armando Abanil, Technical Support Coordinator, both at Sanyo Canada Inc., testified on behalf of the appellant. Mr. Eidelberg testified that the telephones in issue are 900-MHz radio telephones. He acknowledged that they are marketed as 900-MHz cordless telephones. Mr. Abanil testified that the telephones in issue have a base unit and a hand unit, the handset. The base unit is connected to the public switched telephone network. Mr. Abanil testified that

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

the technology used in the telephones in issue is completely different from the technology used in previous cordless telephones, the 46/49-MHz cordless telephones. Mr. Abanil indicated that the signals between the base unit and the hand unit are digitized, scrambled, transmitted and then reconstructed at the receiving end. The scrambling provides extremely high privacy. On the contrary, the transmission method used by the 46/49-MHz cordless telephones is not digital, but analogue, and is far from providing the same degree of privacy. Mr. Abanil testified that another difference between the telephones in issue and the 46/49-MHz cordless telephones is that the former operate on a higher frequency, around 900 MHz, than the latter, which operate on a paired frequency around 50 MHz. The power output of the telephones in issue is also much greater than that of the 46/49-MHz cordless telephones. Finally, Mr. Abanil indicated that the range of the handsets of the telephones in issue, at 1.6 km, is also much greater than the range of the handsets of the 46/49-MHz cordless telephones, which is approximately 0.2 km. Mr. Abanil also mentioned that the telephones in issue comprise intercoms which permit communications between the handset and the base unit without using the public switched telephone network.

Mr. Abanil described the functioning of other different telephones, including the cellular telephones using the Advanced Mobile Phone Service (AMPS), the cellular telephones using the D AMPS and the personal communications service (PCS) telephones. In both the cellular telephone network and the PCS network, the user communicates through a handset with one of the base stations of the network. Mr. Abanil testified that the base stations of a cellular telephone network and of a PCS network are connected by wires to the public switched telephone network. Mr. Eidelberg testified that the telephones in issue are marketed as 900-MHz cordless telephones rather than 900-MHz radio telephones, for fear of confusing the customers with a new technology or new technological names.

Dr. William F. McGee was qualified as an expert witness in electrical engineering regarding radio-telephony. Dr. McGee referred to a chart prepared by the Department of Industry showing the allocation of radio spectra in Canada. He mentioned that the chart indicated that, in Canada, the 46/49-MHz cordless telephones have been allocated the frequencies between 47 and 50 MHz. He recognized that the 46/49-MHz cordless telephones use radio waves. He also mentioned that the frequency used by the telephones in issue fell within the 902-928 MHz range which has been allocated for industrial, scientific and medical use. Dr. McGee indicated that the way in which the voice is communicated between the handset and the base unit of the telephones in issue and the way in which it is communicated between the handset and the base station of a cellular telephone network is similar. Dr. McGee testified that the main differences between the 46/49-MHz cordless telephones and the telephones in issue are that the telephones in issue work at a higher frequency, have more power, have a longer range, ensure total privacy and provide a better quality of sound.

During cross-examination, Mr. Abanil testified that the telephones in issue are designed for a single user, meaning that a specific handset works only with a specific base. Mr. Eidelberg also testified that a telephone call cannot be made with the telephones in issue if the base unit is not connected to the public switched telephone network through a telephone jack. He acknowledged that a cellular telephone does not need to be connected to the public switched telephone network through a telephone jack.

Mr. Raymond E. Hodgson, Manager, Import/Export Department, RadioShack, Division InterTAN Canada Ltd., testified on behalf of the intervener. He testified that at least 90 percent of the circuitry in the telephones in issue is committed to the radio communication aspects. He submitted that the essential character of the telephones in issue is radio transmission and radio reception, with respect to telephony.

## ARGUMENT

The appellant submitted that the telephones in issue should be classified in heading No. 85.25 as transmission apparatus for radio-telephony incorporating reception apparatus. The appellant submitted that radio transmission is the primary function of the telephones in issue and that these telephones, while marketed as cordless telephones, are portable radio telephones. The appellant referred to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>3</sup> to heading No. 85.25, which indicate that cellular telephones should be classified in this heading. The appellant asserted that, given the characteristics shared by cellular telephones and the telephones in issue, the latter should also be classified in heading No. 85.25.

Citing decisions of the Tribunal and of the Tariff Board, the appellant submitted that the way in which a product is marketed should not be determinative of its classification. A product should be classified according to what it is. According to the appellant, the telephones in issue use a technology which is completely different from the technology used in 46/49-MHz cordless telephones and should not be classified as cordless telephones.

In 1996, the text of heading No. 85.17 was amended to refer specifically to “[l]ine telephone sets with cordless handsets”. The appellant argued that this wording does not cover the telephones in issue because, when the amendment was proposed and discussed before the Customs Co-operation Council in 1990 and 1991, the telephones in issue were not on the market. The appellant also noted that the telephones in issue were not yet on the market in 1996 when the amendment was made to the *Customs Tariff*. According to the appellant, Parliament’s intention when amending heading No. 85.17 was that this heading cover the 46/49-MHz cordless telephones.

The appellant referred to paragraph 15(2)(b) of the *Interpretation Act*,<sup>4</sup> which states that, where an enactment contains an interpretation section or provision, it shall be read and construed as being applicable to all other enactments relating to the same subject matter unless a contrary intention appears. Relying on this paragraph of the *Interpretation Act*, the appellant argued that the definition of “cordless telephone” found in the *General Radio Regulations, Part II*,<sup>5</sup> which referred to the 46/49-MHz cordless telephones, should be applicable in the context of the present appeals. According to the appellant, this would prevent the classification of the 900-MHz telephones in issue as cordless telephones.

The appellant submitted that, if the Tribunal determined that the telephones in issue could, *prima facie*, be classified in both heading Nos. 85.17 and 85.25, the telephones in issue should still be classified in heading No. 85.25 by application of Rule 3 (b) of the *General Rules for the Interpretation of the Harmonized System*.<sup>6</sup> The appellant argued that it is the radio transmission capabilities that give the telephones in issue their essential character.

---

3. Customs Co-operation Council, 2d ed., Brussels, 1996 [hereinafter Explanatory Notes].

4. R.S.C. 1985, c. I-21.

5. S.O.R./86-916, s.2 [hereinafter *General Radio Regulations*].

6. *Supra* note 2, Schedule I [hereinafter General Rules]. Rule 3 (b) provides, in part, that:

When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

The appellant submitted that the two preceding Tribunal cases dealing with the classification of cordless telephones, *Royal Telecom v. DMNRCE*<sup>7</sup> and *Byers v. DMNR*,<sup>8</sup> can be distinguished from the present appeals. The appellant underlined that the telephones in issue use a completely different technology from that used in the 46/49-MHz cordless telephones in *Royal* and *Byers*. It recalled that the wording of heading No. 85.17 has changed since these two appeals. The appellant also questioned the Tribunal's statement in *Royal* where it stated: "Unlike portable telephones, to be functional both the cordless and corded telephones must be physically connected to the public switched telephone system".<sup>9</sup> The appellant stated that the cellular telephones are also physically connected to the public switched telephone system.

The respondent submitted that the telephones in issue are properly classified in heading No. 85.17. He stressed the fact that the text of this heading was modified in 1996 and now refers specifically to line telephone sets with cordless handsets. It is also significant that, in *Royal* and *Byers*, the Tribunal classified the cordless telephones in those cases in heading No. 85.17, even though, at the time, the heading simply referred to telephone sets. The respondent further submitted that the telephones in issue are composite machines and that the base unit is the machine of the composite machine which performs the principal function of making the connection to and communicating with other telephone apparatus through the line telephony system.

The respondent submitted that heading No. 85.17 and the *Explanatory Notes* to that heading make no distinction based on the characteristics of cordless telephones, such as the security, the range, the power output, the frequency and the price. Consequently, such features are irrelevant in determining classification. The respondent argued that the dedication of a specific handset to a specific base unit, the absence of switching capabilities in the base unit and the absolute necessity of having a connection to the public switched telephone network in order for them to operate and to allow communication with other telephone apparatus clearly distinguish the telephones in issue from cellular telephones.

## DECISION

Section 10 of the *Customs Tariff* provides that the classification of imported goods under a tariff item shall be determined in accordance with the General Rules. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in Schedule I to the *Customs Tariff*, regard shall be had to the Explanatory Notes.

The General Rules are structured in cascading form. If the classification of an article cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, etc. Rule 1 provides the following:

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the [subsequent] provisions.

For the purposes of the present appeals, the relevant terms of heading No. 85.17 are the following: "[e]lectrical apparatus for line telephony . . ., including line telephone sets with cordless handsets". The Tribunal is convinced that the telephones in issue satisfy this description. The telephones in issue are electrical apparatus for line telephony. It was not contested that they are electrical apparatus. It was also

---

7. (5 April 1991), AP-90-027 (CITT) [hereinafter *Royal*].

8. (16 June 1997), AP-95-271 (CITT) [hereinafter *Byers*].

9. *Supra*, note 7 at 7.

clear from the evidence that the base unit of the telephones in issue has to be connected to the public switched telephone network to effect communications over that network. Clearly, these telephones are bought to communicate via the public switched telephone network. The fact that the telephones in issue are equipped with intercoms which permit communication between the handset and the base unit without using the public switched telephone network does not disturb that finding. Therefore, the telephones in issue are properly characterized as line telephone sets. Given the fact that they are equipped with cordless handsets, which communicate with the base unit using radio waves, they are line telephone sets with cordless handsets.

The appellant acknowledges that the 46/49-MHz cordless telephones are classified in heading No. 85.17. The appellant argued that the telephones in issue, given that they use a completely different technology, cannot be classified in this heading. The Tribunal disagrees. The Tribunal accepts the evidence of Mr. Abanil and Dr. McGee that, compared to the 46/49-MHz cordless telephones, the telephones in issue work at a higher frequency, have more power, have a longer range, ensure total privacy and provide a better quality of sound. However, the telephones in issue remain line telephone sets, and their handsets remain cordless handsets.

The appellant submitted that the Customs Co-operation Council, when it considered the amendment to heading No. 85.17 to include line telephone sets with cordless handsets, and Parliament, when it enacted the related amendment to this heading, had in mind the 46/49-MHz cordless telephones. The appellant further submitted that this should prevent the classification of the telephones in issue in heading No. 85.17, especially given that the technology used to effect communication between the handset and the base unit is completely different from the one used in the 46/49-MHz cordless telephones.

The Tribunal is not swayed by this argument. If it were to accept it, one could wonder how new products would be classified. It would be quite extraordinary to refuse to classify products in a certain heading to which description they would fit simply because they were not on the market at the time of the enactment of the heading in question.

The appellant also relied on the *General Radio Regulations*, which contained a definition of cordless telephones which referred to the 46/49-MHz cordless telephones, to support its position that the telephones in issue cannot be classified in heading No. 85.17. The Tribunal notes that the *General Radio Regulations* were no longer in force in 1997, at the time that the telephones in issue were imported. Therefore, the Tribunal need not consider them in the present appeals. In the Tribunal's view, the telephones in issue meet the description found in heading No. 85.17 and are, therefore, classifiable therein.

The appellant submitted that the telephones in issue are classifiable in heading No. 85.25 as transmission apparatus for radio-telephony incorporating reception apparatus. Even if the Tribunal were to accept that the telephones in issue are, *prima facie*, classifiable in this heading, as well as in heading No. 85.17, the Tribunal would still classify the telephones in issue in heading No. 85.17 by application of Rule 3 (a) of the General Rules. This rule provides, in part, that:

When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description.

In the Tribunal's view, heading No. 85.17 provides a more specific description of the telephones in issue than heading No. 85.25. The expression "[t]ransmission apparatus for radio-telephony incorporating

reception apparatus” covers a variety of goods, as indicated by the list found in the Explanatory Notes to heading No. 85.25. On the contrary, heading No. 85. 17 provides a precise description of the products in issue, namely, “[l]ine telephone sets with cordless handsets”. Given that Rule 3 (a) of the General Rules permits the classification of the goods in issue, Rule 3 (b) is not applicable in the present appeals.

For the foregoing reasons, it is the Tribunal’s view that the telephones in issue are properly classified under tariff item No. 8517.11.00 as line telephone sets with cordless handsets. Consequently, the appeals are dismissed.

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Zdenek Kvarda

Zdenek Kvarda  
Member