



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2014-034

Synnex Canada Ltd.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, October 7, 2015*

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IN THE MATTER OF an appeal heard on August 11, 2015, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated November 21, 2014, with respect to a request for re-determination pursuant to subsection 60(2) of the *Customs Act*.

BETWEEN

SYNNEX CANADA LTD.

Appellant

AND

**THE PRESIDENT OF THE CANADA BORDER SERVICES
AGENCY**

Respondent

DECISION

The appeal is dismissed.

Peter Burn
Peter Burn
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: August 11, 2015

Tribunal Members: Peter Burn, Presiding Member

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STATEMENT OF REASONS

INTRODUCTION

1. This appeal, filed by Synnex Canada Ltd. (Synnex), concerns an advance ruling issued by the President of the Canada Border Services Agency (CBSA) with regard to the classification of the SuperTooth DISCO 2 Bluetooth® wireless speaker (the good in issue).

2. The good in issue is a portable device. It incorporates two speakers, along with electronic circuitry enabling various functions, such as on/off, volume and fast forward. It also incorporates Bluetooth® technology. The Bluetooth® component enables it to wirelessly deliver music playback by syncing with a separate apparatus, such as a smart phone. The good in issue is packaged with, and is capable of utilizing, a stereo audio input wire, for pairing with an apparatus that does not possess Bluetooth® capabilities.¹

3. Both parties agree that the good in issue is properly classified in Chapter 85 of the schedule to the *Customs Tariff*² but disagree as to the heading applicable to the good in issue. Specifically, the CBSA believes that the good in issue is properly classified in heading No. 85.18 and under tariff item No. 8518.22.00, while Synnex asserts that it should be classified in heading No. 85.27 and under tariff item No. 8527.13.10.

PROCEDURAL HISTORY

4. On June 14, 2013, Synnex submitted a request to the CBSA for an advance ruling, requesting that the good in issue be classified in subheading No. 8517.62 as machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus.

5. On October 8, 2013, the CBSA determined that the good in issue was properly classified under tariff item No. 8518.22.00 as multiple loudspeakers, mounted in the same enclosure.

6. On March 11, 2014, Synnex requested that the CBSA reconsider its position and advanced the option of classifying the good in issue under tariff item No. 8527.19.00 as other reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock, capable of operating without an external source of power.

7. On September 19, 2014, the CBSA responded by way of a preliminary decision and maintained its position that the good in issue was properly classified under tariff item No. 8518.22.00.

8. On October 7, 2014, Synnex submitted its response to the preliminary decision and advanced a new option, that of classifying the good in issue under tariff item No. 8527.13.10 as other domestic reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock, capable of operating without an external source of power.

9. On November 21, 2014, the CBSA issued its final decision, maintaining its position that the good in issue was properly classified under tariff item No. 8518.22.00.

10. On February 9, 2015, Synnex filed this appeal with the Canadian International Trade Tribunal (the Tribunal).

1. Exhibit AP-2014-034-04A at 6, appendixes 6, 7, Vol. 1.

2. S.C. 1997, c. 36.

STATUTORY FRAMEWORK

11. The tariff nomenclature is set out in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System developed by the World Customs Organization (WCO).³ The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items. Sections and chapters may include notes concerning their interpretation.

12. Subsection 10(1) of the *Customs Tariff* provides that the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*⁴ and the *Canadian Rules*⁵ set out in the schedule.

13. The *General Rules* comprise six rules. Classification begins with Rule 1, which provides that 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 other rules.

14. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*⁶ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,⁷ published by the WCO. While the *Classification Opinions* and the *Explanatory Notes* are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.⁸

15. The Tribunal must therefore first determine whether the good in issue can be classified at the heading level according to Rule 1 of the *General Rules* as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant *Classification Opinions* and *Explanatory Notes*. If the good in issue cannot be classified at the heading level through the application of Rule 1, then the Tribunal must consider the other rules.⁹

16. Once the Tribunal has used this approach to determine the heading in which the good in issue should be classified, the next step is to use a similar approach to determine the proper subheading.¹⁰ The final step is to determine the proper tariff item.¹¹

3. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.

4. S.C. 1997, c. 36, schedule [*General Rules*].

5. S.C. 1997, c. 36, schedule.

6. World Customs Organization, 2d ed., Brussels, 2003 [*Classification Opinions*].

7. World Customs Organization, 5th ed., Brussels, 2012 [*Explanatory Notes*].

8. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that the *Explanatory Notes* be respected unless there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to the *Classification Opinions*.

9. Rules 1 through 5 of the *General Rules* apply to classification at the heading level.

10. Rule 6 of the *General Rules* provides that "... the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules [i.e. Rules 1 through 5] ..." and that "... the relative Section and Chapter Notes also apply, unless the context otherwise requires."

11. Rule 1 of the *Canadian Rules* provides that "... the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the [*General Rules*] ..." and that "... the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires." The *Classification Opinions* and the *Explanatory Notes* do not apply to classification at the tariff item level.

17. The text of the relevant section, chapter, headings, subheadings, tariff items and explanatory notes are set out below. They have been presented in a manner identifying the portions concerning which the parties are in agreement, as well as the portions in dispute.

Agreed Portions of the Tariff Nomenclature

18. There is no dispute between the parties with regard to classification in Section XVI. In the current context, notes 3 and 4 are relevant to the interpretation of that section. Further, there is no dispute between the parties with regard to classification in Chapter 85. The section, section notes and chapter read as follows:

Section XVI

MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT; PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES

...

3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.
4. 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.

...

Chapter 85

ELECTRICAL MACHINERY AND EQUIPMENT AND PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES

Portions of the Tariff Nomenclature and Explanatory Notes Proposed by the CBSA

19. In issuing its advance ruling, as well as in submissions made to the Tribunal, the CBSA relied on the following heading, subheading and tariff item within Chapter 85, as well as on the related explanatory notes:

85.18 Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets.

...

-Loudspeakers, whether or not mounted in their enclosures:

...

8518.22.00 - -Multiple loudspeakers, mounted in the same enclosure

[Explanatory Notes]

This heading covers microphones, loudspeakers, headphones, earphones and audio-frequency electric amplifiers of all kinds presented separately, regardless of the particular purpose for which such apparatus may be designed (e.g., telephone microphones, headphones and earphones, and radio receiver loudspeakers).

...

**(B) LOUDSPEAKERS, WHETHER OR NOT
MOUNTED IN THEIR ENCLOSURES**

The function of loudspeakers is the converse of that of microphones: they reproduce sound by converting electrical variations or oscillations from an amplifier into mechanical vibrations which are communicated to the air.

...

Matching transformers and amplifiers are sometimes mounted together with loudspeakers. Generally the electrical input signal received by loudspeakers is in analogue form, however in some cases the input signal is in digital format. Such loudspeakers incorporate digital to analogue converters and amplifiers from which the mechanical vibrations are communicated to the air.

Portions of the Tariff Nomenclature and Explanatory Notes Proposed by Synnex

20. In its submissions made to the Tribunal, Synnex relied on the following heading, subheading and tariff item within Chapter 85, as well as on the related explanatory notes:

- 85.27 Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock.**
- Radio-broadcast receivers capable of operating without an external source of power:**
- ...
- 8527.13 - -Other apparatus combined with sound recording or reproducing apparatus**
- 8527.13.10 - - -Domestic**

[Explanatory Notes]

The sound radio-broadcasting apparatus falling in this heading must be for the reception of signals by means of electro-magnetic waves transmitted through the ether without any line connection.

This group includes:

- (1) Domestic radio receivers of all kinds (table models, consoles, receivers for mounting in furniture, walls, etc., portable models, receivers, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock).
- (2) Car radio receivers.
- (3) Separately presented reception apparatus for incorporation in relay apparatus of **heading 85.25**.
- (4) Pocket-size radio cassette-players (see Subheading Note 1 to this Chapter).
- (5) Stereo systems (hi-fi systems) containing a radio receiver, put up in sets for retail sale, consisting of modular units in their own separate housing, e.g., in combination with a CD player, a cassette recorder, an amplifier with equaliser, loudspeakers, etc. The radio receiver gives the system its essential character.

POSITIONS OF PARTIES

Synnex

21. In its submissions, Synnex set out the manner of operation of the good in issue, indicating that, as a Bluetooth®-enabled device, the good in issue must first be paired with a compatible apparatus in order to operate as designed. Synnex noted that Bluetooth® is a technology that allows for the exchange of data over short distances using radio transmissions.¹² Synnex further noted that the good in issue can be paired with up to eight devices, although the good in issue can only be used by a single paired device at a time.¹³

22. Synnex relied on the explanatory notes to heading No. 85.18 with regard to its position that loudspeakers are only classified in that heading when they are “presented separately”. In support of this position, Synnex referred to a past appeal brought before the Tribunal, which was withdrawn due to a change in the position taken by the CBSA.¹⁴

23. In *Ingram Micro Inc.*,¹⁵ the CBSA, in reliance on Note 3 to Section XVI, had initially considered a speaker system to be a composite good, with the speakers within the good providing the principal function. As a result, the CBSA had classified the good under tariff item No. 8518.22.00 as multiple loudspeakers, mounted in the same enclosure. In changing its position, the CBSA noted that the good incorporated a device-docking and -charging station, an amplifier and speakers into a complete unit, so that heading No. 85.18 described only one function¹⁶ of the good. The good was ultimately reclassified in another heading within Chapter 85. The position taken by Synnex is that the good in issue is not presented separately but, rather, like the speaker system in *Ingram*, is made up of more than one component—loudspeakers and Bluetooth® technology.

24. In addition, Synnex took the position that a significant difference exists between a loudspeaker and a Bluetooth® wireless speaker, with the *function* of the former, as described in the explanatory notes to heading No. 85.18, being the reproduction of sound through the conversion of electrical variations or oscillations from an amplifier into mechanical vibrations, and the function of the latter being the reproduction of sound transmitted wirelessly from a compatible apparatus by way of a radio broadcast signal.¹⁷

25. Synnex took the position that the good in issue is advertised and displayed for sale as a Bluetooth® speaker rather than a traditional loudspeaker. In this regard, Synnex indicated that its search of an online electronic commerce portal resulted in the discovery of the following four distinct sales categories: (a) wireless or Bluetooth® speakers; (b) computer speakers; (c) tower speakers; and (d) bookshelf speakers.

12. Exhibit AP-2014-034-04A at 7, Vol. 1.

13. *Ibid.* at 8.

14. *Ibid.* at 6, 7.

15. (19 January 2009), AP-2008-009 (CITT) [*Ingram*].

16. In arriving at its initial position, the CBSA had relied on Note 3 to Section XVI. In changing its position, the CBSA indicated that “[h]eading 85.18 describes only one component of the good . . .”, Exhibit AP-2014-034-04A, at 45, Appendix 9, Vol. 1. Thus, the CBSA’s reference was to “component” rather than “function”. However, the Tribunal notes that Note 3 directs classification, in the case of composite or complementary machines, to the component or machine which performs the principal function. In essence, Note 3 establishes a function-based test, not a component-based test. As a result, in order to arrive at a different conclusion, the CBSA must have concluded that the good possessed more than one function, with none identified as principal, rather than more than one component.

17. Exhibit AP-2014-034-04A at 7, Vol. 1.

Synnex asserted that “[t]he need to use four separate and distinct categories for speakers confirms the different types of devices are categorized and marketed by their functionality.”¹⁸

26. Synnex argued that heading No. 85.27 describes the good in issue in its entirety, as a “[r]eception apparatus for radio-broadcasting” Synnex noted that neither the text of the heading nor the text of the related explanatory notes curtail the ambit of “radio-broadcasting” to specific types of signals, such as amplitude modulation (AM) or frequency modulation (FM) or place restrictions on the distance capabilities of the related radio signals. Synnex also took the position that, much like an AM/FM radio receiver, the good in issue is “. . . primarily designed to receive a radio broadcast signal”¹⁹

27. Synnex argued that Note 4 to section XVI is not applicable to the good in issue. In brief, Note 4 provides that, where a machine consists of individual components intended to contribute together to a clearly defined function covered by one of the headings within Chapter 84 or 85, the machine is to be classified in the heading appropriate to that function. Synnex took the position that the good in issue “. . . does not consist of individual components . . .” but, instead, is a “. . . complete, self-contained device.”²⁰

28. Synnex relied upon Memorandum D10-14-57 that states that “Bluetooth®-enabled radio receivers for public broadcasts are normally classified under heading 85.27.”²¹

29. With submissions concerning classification in heading No. 85.27 in place, Synnex noted that the competing options for classification at the subheading level are subheading No. 8527.13, which pertains to other apparatus combined with sound recording or reproducing apparatus, and subheading No. 8527.19, which is a residual provision that simply indicates “Other”. Synnex argued for classification in the former of the two.²²

CBSA

30. The CBSA argued that the good in issue cannot be classified in heading No. 85.27, since that heading pertains to goods that enable the reception of radio broadcasts, a function of which the CBSA asserts the good is incapable.

31. In support of its position, the CBSA referred to dictionary and statutory definitions with regard to the meaning of the term “radio-broadcasting”, asserting that it involves radio transmissions to a large audience or the general public.²³ The CBSA noted that the good in issue does not contain a radio reception

18. *Ibid.* at 8.

19. *Ibid.* at 13.

20. *Ibid.* at 14.

21. *Ibid.*

22. *Ibid.* at 14, 15. Both the subheadings mentioned by Synnex are two-dash subheadings under the one-dash category of heading No. 85.27 that pertains to radio-broadcast receivers capable of operating without an external source of power. It is noteworthy that the category actually lists a third two-dash subheading not mentioned by Synnex, subheading No. 8527.12, pocket-size radio cassette-players.

23. Exhibit AP-2014-034-06A at 6-8, Vol. 1. Among other sources, the CBSA made reference to a definition of “radio broadcasting” in the *McGraw-Hill Dictionary of Scientific and Technical Terms*, which termed it as “radio transmission intended for general reception”, Exhibit AP-2014-034-06A at 7, Vol. 1. The CBSA also made reference to subsection 2(1) of the *Broadcasting Act*, S.C. 1991, c. 11, in which “radio broadcasting” is defined as “. . . any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus”, Exhibit AP-2014-034-06A at 7, Vol. 1. The CBSA noted that, while a definition from another act is not binding in the context of the *Customs Tariff*, it is persuasive in light of the current context.

device which would enable tuning in to a radio broadcast meant for a large audience or the general public, such as that produced by a radio station.

32. In addition, the CBSA noted that, while the good in issue has been designed and is marketed primarily to integrate with an apparatus using Bluetooth[®] technology, it does have a stereo audio input cable for pairing with an apparatus that does not possess Bluetooth[®] capabilities.²⁴ When used with that cable, the good in issue acts as a traditional, wired loudspeaker.

33. Lastly, the CBSA argued that the good in issue is a loudspeaker and is thus properly classified in heading No. 85.18. In this regard, the CBSA makes the case that the good in issue is "... designed to receive an input signal from either a Bluetooth-enabled device or directly through the audio input jack and to convert that signal to sound as mechanical vibrations of air",²⁵ a function that fits the description set out in the explanatory notes to heading No. 85.18. In addition, the CBSA notes that those explanatory notes include "radio receiver loudspeakers" within the ambit of heading No. 85.18 and, as such, the Bluetooth[®] component of the good in issue, which utilizes radio transmissions, is not a bar to classification in that heading.

TRIBUNAL ANALYSIS

34. 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. Thus, in determining the proper classification for the good in issue, the Tribunal must consider the terms of the headings in contention, as well as Notes 3 and 4 to Section XVI to the extent relevant. Further to section 11 of the *Customs Tariff*, and since there is no sound reason to do otherwise, the Tribunal must also consider the explanatory notes relative to those headings.

35. The CBSA has argued for classification in heading No. 85.18, describing the good in issue as a "loudspeaker" mounted in its own enclosure. Synnex has argued for classification in heading No. 85.27, describing the good in issue as a reception apparatus for radio-broadcasting which is combined in the same housing with a sound reproducing apparatus and which is capable of operating without an external source of power.

36. The Tribunal will commence by comparing the description of the good in issue with the terms of the headings put forward by the CBSA.

37. With regard to heading No. 85.18, the Tribunal notes that the explanatory notes to that heading provide for the inclusion of "radio receiver loudspeakers" within the ambit of the heading.

38. The consumer manual for the good in issue describes it as a "... portable, wireless stereo speaker ..." and remarks that it "... kicks out 16 watts ... audio power, with two speakers on the front and a high efficiency bass reflex system situated at the back of the unit".²⁶ Thus, the Tribunal has a firm basis for concluding that the good in issue is a loudspeaker.

39. In addition, there is no disagreement between the parties that, as a Bluetooth[®]-enabled device, the good in issue reproduces sound by exchanging data over short distances using radio transmissions, negating the need for wires.

24. Exhibit AP-2014-034-06A at 2, Vol. 1.

25. *Ibid.* at 9.

26. Exhibit AP-2014-034-04A, Appendix 7, Vol. 1.

40. Thus, the good in issue fits the description of a “radio receiver loudspeaker”. It is manufactured to act as a loudspeaker, and it includes Bluetooth[®] capabilities to enable the fulfillment of that purpose without the use of wires.

41. Next, the Tribunal will consider Note 4 to Section XVI, which is particularly instructive with regard to the classification of the good in issue. The note provides in part that, where a machine consists of individual components intended to contribute together to a clearly defined function covered by one of the headings in Chapter 85, the machine is to be classified in the heading appropriate to that function.

42. The Tribunal has already concluded that the good in issue is a loudspeaker. As such, its function is the reproduction of sound.²⁷ Its Bluetooth[®] capabilities merely aid in the execution of that function, and there is no evidence on the record that the good in issue possesses any other function.

43. It is worth noting here that the utilization of the Bluetooth[®] capabilities of the good in issue is optional. In general terms, Bluetooth[®] capabilities are predicated on pairing between products that contain Bluetooth[®] technology.²⁸ As not all products contain this technology, the good in issue is also designed for and packaged with a stereo audio input wire, ensuring its function can be fulfilled regardless of Bluetooth[®] pairing.

44. Thus, the components of the good in issue—its speakers, Bluetooth[®] componentry, and stereo audio input²⁹—are intended to contribute together to a single clearly defined function, which is the reproduction of sound.

45. The heading which is appropriate to this function is heading No. 85.18.

46. That classification in heading No. 85.18 is appropriate is reinforced by a comparison of the description of the good in issue with the terms of the heading put forward by Synnex. There is no indication made in the consumer manual for the good in issue that it is meant for or capable of receiving radio broadcasts, which is an indispensable function for a good argued to be a “reception apparatus for radio-broadcasting”.

47. To remedy this deficiency in its position, Synnex tried to characterize the short distance exchange of data by Bluetooth[®]-enabled devices as “broadcasting”. The Tribunal, however, cannot accept such an interpretation of that term, but instead accepts the dictionary definitions advanced by the CBSA and finds the definition within the *Broadcasting Act* persuasive.

48. To broadcast by radio is to transmit radio signals for reception at multiple localities simultaneously and, typically, that entails public reception. The reception is accomplished in each instance by a device specifically designed to receive radio broadcasts, and the control of each device can only be undertaken by the individuals at the receiving end.

49. In comparison, Bluetooth[®] pairing enables the transmission of radio signals to one or a few devices in a single locality and, typically, that entails private reception. The sole feature similar to radio broadcasts is

27. Reference can be had in this regard to the first paragraph of Part (B) of the explanatory notes to heading No. 85.18.

28. Exhibit AP-2014-034-04A, Appendix 11, Vol. 1 states that “[w]hen someone says a product contains Bluetooth that means it includes a small computer chip containing the Bluetooth radio. But it also needs software to connect, via Bluetooth wireless technology, to other products.”

29. Exhibit AP-2014-034-04A at 6, Appendix 11, Vol. 1.

that Bluetooth® reception is accomplished in each instance by a device with radio signal reception capabilities. However, and importantly, the radio signal received is never in the form of a broadcast. Further, since a single individual is often the sender as well as the receiver, the control of each reception device is, in most instances, not beyond the capabilities of the sender.

50. As a result, the good in issue cannot be classified in heading No. 85.27, since the terms of that heading do not describe it. Nonetheless, it is important that the Tribunal examine and address the accompanying arguments made by Synnex.

51. Synnex argued that the good in issue is not “presented separately”. The Tribunal finds that the good in issue is in fact so presented. It is made up of components that contribute together to a clearly defined function, but importantly, it is not itself a single part of a larger mix of products presented together and possessing multiple functions. As an illustration, and in comparison, the good in *Ingram* possessed two functions—it reproduced sound and also served as a device-charging station.

52. Synnex also argued that a significant difference exists between a loudspeaker and a Bluetooth® wireless speaker. In making this argument, Synnex erroneously compared loudspeakers to Bluetooth® technology, ignoring the fact that the good in issue is itself a loudspeaker which simply receives its input by way of a radio signal. Ultimately, its output is in the form of mechanical vibrations communicated to the air, in keeping with the description contained in the explanatory notes to heading No. 85.18.

53. Further, Synnex argued that the good in issue is advertised and displayed for sale as a Bluetooth® speaker rather than as a traditional loudspeaker. There is no direct correlation between commercial categories and the tariff nomenclature. Were such a correlation to exist, it would be open for commercial actors to change the law simply by altering the advertising and display of their products. While commercial categorization may lend added weight to a classification properly undertaken in accordance with the *General Rules*, such categorization cannot independently serve as the basis for tariff classification.

54. In addition, in contending that the good in issue is a complete, self-contained whole (rather than a machine made up of individual components), Synnex argued for the non-applicability of Note 4 to Section XVI. The Tribunal has already concluded, in part on the basis of evidence provided in Synnex’s submissions, that the good in issue is made up of individual components and that Note 4 is applicable to the good in issue.

55. With regard to Memorandum D10-14-57, the Tribunal notes that it is settled jurisprudence that government administrative policies and interpretations, such as D memoranda, are entitled to weight, but are not determinative with regard to tariff classification.³⁰ In any event, it must be noted that Memorandum D10-14-57 is dated, having been replaced by Memorandum D10-14-64. The latter classifies speakers in heading No. 85.18 and is thus consistent with this decision.

56. Having concluded that the good in issue is properly classified in heading No. 85.18, the Tribunal must now address classification of the good in issue in a subheading and under a tariff item. The following three subheadings are available for that purpose:

- 8518.21.00** - -Single loudspeakers, mounted in their enclosures
- 8518.22.00** - -Multiple loudspeakers, mounted in the same enclosure
- 8518.29** - -Other

30. *DMG Trading Co. Ltd. v. Deputy M.N.R.* (28 August 1997), AP-96-076 (CITT).

- 8518.29.10 - - -Compression horn drivers or compression horn tweeters for use in the manufacture of speaker systems
- 8518.29.20 - - -Loudspeakers, without housings, having a frequency range of 300 Hz to 3.4 KHz and with a diameter not exceeding 50 mm, for telecommunications use
- 8518.29.90 - - -Other

57. As it is composed of two loudspeakers mounted in the same enclosure, the terms of subheading No. 8518.22.00 describe the good in issue. The subheading is conclusive with regard to classification, as it does not contain a distinct set of tariff items.

DECISION

58. The Tribunal finds, pursuant to Rule 1 of the *General Rules*, that the good in issue is properly classified under tariff item No. 8518.22.00 as multiple loudspeakers, mounted in the same enclosure.

59. The appeal is dismissed.

Peter Burn

Peter Burn

Presiding Member