



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2016-020

Sonos Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, October 24, 2017*

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IN THE MATTER OF an appeal heard on May 16, 2017, 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 June 2, 2016, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

SONOS INC.

Appellant

AND

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

Respondent

DECISION

The appeal is allowed in part.

Jean Bédard
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: May 16, 2017

Tribunal Panel: Jean Bédard, Presiding Member

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STATEMENT OF REASONS

INTRODUCTION

1. This appeal was filed by Sonos Inc. (Sonos) on August 26, 2016, pursuant to subsection 67(1) of the *Customs Act*¹ from a re-determination of tariff classification by the President of the Canada Border Services Agency (CBSA) pursuant to subsection 60(4) of the *Act*, dated June 2, 2016.
2. The appeal concerns the tariff classification of Sonos Play:1, Play:3 and Play:5 wireless speaker systems (the goods in issue).
3. The issue is whether the goods in issue are properly classified under tariff item No. 8518.22.00 as multiple loudspeakers, mounted in the same enclosure, as determined by the CBSA, or should be classified under tariff item No. 8517.62.00 as machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus, as claimed by Sonos.
4. This appeal also raises the question of whether the goods in issue may also be classified under tariff item No. 9948.00.00 as articles for use in automatic data processing machines and units thereof, or for use in one or more of the other host goods listed under tariff item No. 9948.00.00, and thereby benefit from duty-free treatment.

PROCEDURAL HISTORY

5. On March 20, 2014, the goods in issue were imported and accounted for under tariff item No. 8518.21.00 as single loudspeakers, mounted in their enclosures.
6. On May 21, 2014, Sonos applied for a refund of duties pursuant to subsection 74(1) of the *Act*, requesting that the goods in issue be classified under tariff item No. 8517.62.00 as machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus. On May 27, 2014, the CBSA granted the request as part of the B2 fast-track refund process, and it was treated as a re-determination pursuant to paragraph 59(1)(a) of the *Act*.
7. On December 1, 2014, on the basis of an audit, the CBSA further determined the tariff classification of the goods in issue under tariff item No. 8518.21.00 pursuant to paragraph 59(1)(b) of the *Act*.
8. On or about February 28, 2015, Sonos filed a request for re-determination with the CBSA pursuant to subsection 60(1) of the *Act*.
9. On June 2, 2016, the CBSA made a decision pursuant to subsection 60(4) of the *Act* denying Sonos' request for a re-determination and maintaining its initial position to classify the goods in issue under heading No. 85.18. However, based on additional information received from Sonos, the CBSA further determined the tariff classification of the goods in issue under tariff item No. 8518.22.00 as multiple loudspeakers, mounted in the same enclosure.
10. On August 26, 2016, Sonos filed this appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.
11. The Tribunal held a public hearing in Ottawa, Ontario, on May 16, 2017. Sonos called Dr. Jonathan Lang, Director of Innovation at Sonos, as a lay witness. The CBSA did not call any witnesses.

1. R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].

12. On June 19, 2017, the Tribunal invited the parties to provide additional submissions regarding the potential applicability of tariff item No. 9948.00.00 to the goods in issue.

13. On August 16, 2017, Sonos filed its additional submissions, arguing that the goods in issue satisfy the criteria for classification under tariff item No. 9948.00.00 as articles for use in ADP machines or units thereof.

14. On September 13, 2017, the CBSA filed its additional submissions, maintaining its position that the goods in issue are classified under tariff item No. 8518.22.00, but agreeing with Sonos that they are also eligible for duty-free benefits under tariff item No. 9948.00.00.²

DESCRIPTION OF THE GOODS IN ISSUE

15. The goods in issue consist of three models of wireless speakers (Play:1, Play:3 and Play:5). The three models differ primarily as to the number of speakers they possess (two, three and five respectively). They are equipped with speaker drivers (tweeters, mid- or sub-woofer as applicable), amplifiers, an Ethernet port, a bass radiator (Play:3), an auto-detecting audio line-in connection and auto-detecting headphone connection (Play:5 only), volume and play/pause buttons and other software and hardware components.

16. The hardware consists primarily of components for network data streaming and data conversion as well as a loudspeaker component. Each model is contained in a single housing/enclosure with a non-removable front grille and, upon importation, each model is individually packaged for sale.

17. Each device contains a Wi-Fi module that sends and receives digital signals over the wireless network, which is how the sound data is ultimately transferred from an electronic device connected on the network to the goods in issue. The goods in issue are controlled by the Sonos application, which allows individuals to play music from internet-based radio stations or music services or from any computer or network-attached storage device on a home network.

LEGAL FRAMEWORK

18. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized 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.

19. 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 to the *Customs Tariff*.

2. The CBSA further specified that, contrary to the additional submissions of Sonos, smartphones, televisions and network devices may be considered ADP devices for the purposes of tariff item No. 9948.00.00, but that they are not classified as ADP machines for the purposes of Chapters 1 through 97. On September 25, 2017, Sonos filed further submissions in which it disagreed with the CBSA's assertion that products can be considered as ADP machines under tariff item No. 9948.00.00 without also being considered ADP machines under Chapters 1 through 97.

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.

20. The *General Rules* comprise six rules governing the classification of goods under the Harmonized System. The *General Rules* are hierarchical in the sense that any classification exercise must begin with Rule 1; it is only where Rule 1 does not conclusively determine the classification of the goods that the other general rules become relevant to the classification process.⁶

21. Rule 1 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.⁷ Where goods are unfinished, incomplete or where they are comprised of a mix of materials or substances (and where no heading specifically describes the goods as such), Rule 2 is applied in conjunction with Rule 1 to determine the heading classification of the goods.⁸ When the goods are *prima facie* classifiable under two or more headings by application of Rule 2(b) or otherwise, Rule 3 is applied to determine the heading classification of the goods.

22. 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*⁹ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*.¹⁰ While classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.¹¹

23. The Tribunal must therefore first determine whether the goods 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.

24. Once the Tribunal has used this approach to determine the heading in which the goods should be classified, the next step is to determine the proper subheading. 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 [Rules 1 through 5] . . .” and that “the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

25. Finally, the Tribunal must determine the proper tariff item classification. Classification opinions and explanatory notes do not apply to classification at the tariff item level.

26. In the case at hand, once classification in Chapter 1 to 97 is established, the Tribunal must also determine whether the goods may be classified in Chapter 99. Chapter 99, which includes tariff item No. 9948.00.00, provides for special classification provisions adopted by Canada that generally allow certain goods to be imported duty-free. The provisions of this chapter are not standardized at the international level. As none of the headings of Chapter 99 are divided at the heading and subheading level,

6. *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) [*Igloo Vikski*] at paras. 21, 29.

7. The relevant legal and explanatory notes are provided in the Appendix to these reasons.

8. *Igloo Vikski* at para. 22.

9. World Customs Organization, 2nd ed., Brussels, 2003.

10. World Customs Organization, 5th ed., Brussels, 2012.

11. The Supreme Court of Canada stated in *Igloo Vikski* at para. 8 that, while “the *Explanatory Notes* . . . are not binding, they must be at least considered in determining the classifications of goods imported into Canada.” The Federal Court of Appeal, in *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, interpreted section 11 of the *Customs Tariff* as requiring that explanatory notes be respected unless there is a sound reason to do otherwise. While those comments were made in relation to the WCO’s explanatory notes, the Tribunal is of the view that they are equally applicable to classification opinions.

the Tribunal need only consider, as the circumstances may require, Rules 1 through 5 of the *General Rules* in determining whether the goods may be classified in that Chapter.

TRIBUNAL'S ANALYSIS

27. In accordance with note 3 to Chapter 99, in order to examine whether the goods can benefit from the provisions of Chapter 99, the goods must first be classified under a tariff item in Chapters 1 to 97.¹² The parties agree that the goods are classified in Chapter 85; the disagreement is at the tariff heading level. The competing headings are set out below:

- 85.17 Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of headings 84.43, 85.25, 85.27 or 85.28.**
- 8517.62.00 - -Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus**
- 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.**
- 8518.22.00 - -Multiple loudspeakers, mounted in their enclosures**

Classification of the goods in issue in Chapter 85

28. Sonos argued in its oral and written submissions that the goods in issue are automatic data processing machines (ADP machines), although not classified under heading No. 84.71, and are therefore excluded from heading No. 85.18 by the explanatory note to that heading.

29. In order to carry out the classification of the goods in issue, the Tribunal must first dispose of this question and, accordingly, will begin by considering whether the goods in issue are excluded from heading No. 85.18

The goods in issue are not ADP machines of heading No. 84.71 and are not excluded from heading No. 85.18

30. Sonos submitted that the goods in issue are ADP machines because they meet the definition of note 5(A) and the conditions of note 5(C) to Chapter 84. Sonos further submitted that the goods in issue do not fall under heading No. 84.71 because, in accordance with note 5(E) to Chapter 84, “[m]achines incorporating or working in conjunction with an automatic data processing machine and performing a specific function other than data processing are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.”

31. For the reasons below, the Tribunal finds that goods cannot be considered as ADP machines for the purposes of Chapters 1 through 97 unless they are classified as ADP machines under heading No. 84.71.

12. *P.L. Light Systems Canada Inc. v. President of the Canada Border Services Agency* (16 September 2009), AP-2008-012 (CITT) at para. 23.

32. Furthermore, the Tribunal finds that, as the goods in issue are not classified under heading No. 84.71, they cannot be considered ADP machines for the purposes of Chapters 1 through 97.

33. The goods in issue are therefore not excluded from classification under heading No. 85.18.

The goods are not presented together with an ADP machine and are not excluded from heading No. 85.18

34. The explanatory notes to heading No. 85.18 provide that “[t]he heading includes loudspeakers designed for connection to an automatic data processing machine, when presented separately.”

35. Sonos argued that the effect of this explanatory note is to exclude the goods in issue from classification in heading No. 85.18, because they are ADP machines presented *together* with loudspeakers. Sonos argued that the goods in issue are excluded from heading No. 85.18, by virtue of the explanatory note to that heading, because they are presented “together” with the ADP machine, as opposed to separately. Sonos’ argument relies on the premise that the goods in issue are themselves ADP machines, albeit ones not classifiable under heading No. 84.71. For this proposition, Sonos sought to rely on the Tribunal’s decision in *Best Buy*¹³ that the term “automatic data processing machines” is to be interpreted broadly to include “all ADPs”, not simply those classified under heading No. 84.71.¹⁴

36. This argument misconstrues the scope of the Tribunal’s finding in *Best Buy*, which was explicitly and exclusively limited to the characterization of goods, though not classified under heading No. 84.71, as ADP machines in which subject goods may be used for the purposes of tariff item No. 9948.00.00 once they have been classified elsewhere in Chapter 1 to 97.

37. The Tribunal’s characterization of such goods as ADP machines for the purposes of tariff item No. 9948.00.00 in *Best Buy* does not apply to classification under Chapters 1 through 97 of the tariff schedule, nor to the interpretation of the section, heading, or explanatory notes of those chapters.

38. When it comes to the classification of goods under Chapters 1 through 97 of the tariff schedule, the Tribunal must use the reference to an ADP machine as defined in the nomenclature. If the goods in issue are excluded from heading No. 84.71, as is the case with the goods in issue, they are not to be classified as an ADP machine, including for the purpose of interpreting explanatory notes to Chapters 1 through 97.

39. Note 5(D) to Chapter 84 indicates that heading No. 84.71 does not cover certain items when presented separately from the ADP machine, even if they meet all of the conditions set forth in note 5(C). The list of items include “[a]pparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network)” as well as “[l]oudspeakers and microphones” [emphasis added].

13. *Best Buy Canada Ltd., P & F USA Inc. and LG Electronics Canada Inc. v. President of the Canada Border Services Agency* (27 February 2017), AP-2015-036 and AP-2016-001 (CITT) [*Best Buy*].

14. The Tribunal found Sonos’ arguments on this issue to be incongruous. Sonos itself led evidence that the goods in issue did not satisfy the definition of an ADP machine and its definition of an ADP machine was entirely based on the explanatory notes to heading No. 84.71. However, Sonos did not allege that the goods in issue were ADP machines of heading No. 84.71 or any other heading of Chapters 1 to 97. In fact, the expression “automatic data processing machine” does not occur in any other heading of Chapters 1 to 97.

40. Notes 5(D) and (E) to Chapter 84 therefore will have the effect of excluding the goods in issue from heading No. 84.71, if it finds that they are loudspeakers. For the reasons set out below, the Tribunal finds that they are loudspeakers and it is therefore impossible to classify them in any heading as “ADP machines”.

41. Therefore, the Tribunal finds that the goods in issue are not ADP machines classified in heading No. 84.71, and classification must proceed according to the primary function of the goods as outlined below.

The goods in issue are loudspeakers of heading No. 85.18

42. Note 5(E) to Chapter 84 provides as follows:

Machines incorporating or working in conjunction with an automatic data processing machine and performing a specific function other than data processing are to be classified in the headings appropriate to their respective function or, failing that, in residual headings.

43. The goods in issue perform a specific function other than data processing, whether it is to create a wireless network or to act as loudspeakers. Therefore, the goods in issue must be classified in the heading appropriate to their respective function, i.e. heading No. 85.17 or 85.18.

44. For the reasons below, the Tribunal finds that the goods in issue are loudspeakers of heading No. 85.18 incorporating ADP functions. The loudspeakers cannot function as such without access to a wireless network and a computer, phone or other device running the Sonos controller app. The speakers are sold separately from the network device or computer before they are so connected, and are presented separately at the time of importation.

45. The explanatory notes to heading No. 85.18 provide as follows:

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).

[Emphasis added]

46. Even if the goods in issue can be said to incorporate an ADP machine, note 5(E) to Chapter 84 provides that they are to be classified under the heading appropriate to the specific function they perform other than data processing. As outlined below, the specific function in question is that of a loudspeaker.

47. The evidence shows, and the Tribunal finds, that the goods in issue, presented as a combined product, serve as an apparatus that reproduces and projects sound. Whether the signal that is eventually reproduced and projected is provided by a wire, a Bluetooth system or a Wi-Fi environment does not change their primary function.

48. Changes in the underlying technology do not change the essential function of the goods in issue. The fact that the technology has moved from a stand-alone wire-based speaker to a more complex apparatus, which is a combination of two technologies, namely, sound amplification and data networking, does not detract from the primary function of the former.

49. Mr. Lang’s testimony indicated that one benefit for owners of the goods in issue who have more than one unit is that they can hear different music in different parts of the premises.¹⁵ According to Mr. Lang,

15. *Transcript of Public Hearing*, 16 May 2017, at 91.

it can also be used as a one-way communication device, as a sort of domestic public announcement system (such as to call the kids for dinner).¹⁶ Music would also not be interrupted by a phone call that would unexpectedly come to a cell phone being used as a controller for the goods in issue, unlike the case of a Bluetooth speaker playing music provided by a phone.

50. Further contrasting the goods in issue to a cell phone generating music or sound through a Bluetooth system, Mr. Lang referred to the “Beer Store test”: once directed to specific content by the controller, the goods in issue will continue to access and play that content regardless of where the cell phone controller happens to be, because they generate their own Wi-Fi signal and access content over this Wi-Fi system.¹⁷

51. What is noteworthy, however, is that, as Mr. Lang was attempting to emphasize the network capabilities of the goods in issue, the ultimate benefit for the consumer consistently returned to the enhanced listening experience provided by the underlying technology.¹⁸ The vast majority of the benefits offered by the goods in issue, indicated by both Mr. Lang and Sonos’ marketing, are oriented around the specific function of reproducing and projecting sound, whether in the form of music, other audio media, or one-way voice communication.

52. Regarding the marketing of the goods in issue, the Tribunal acknowledges that the marketing of the product cannot on its own drive the classification. An appellant cannot determine the case by relying solely or mainly on its own marketing. As pointed out by Sonos at the hearing, to do so would allow “commercial actors to change the law simply by altering the advertising and display of their products.”¹⁹ In other words, an appellant cannot bootstrap a customs classification by using its own marketing.

53. The Tribunal has determined on several occasions that the “marketing and distribution of the goods in issue may, in certain circumstances, assist the Tribunal in its analysis”, but that “they cannot drive the process.”²⁰ In this case, however, the CBSA and the Tribunal essentially agree with Sonos’ own marketing, while Sonos is attempting to downplay it. Sonos has failed to present any convincing argument that would lead the Tribunal to set aside Sonos’ own marketing material.

54. As to consumer usage, according to Mr. Lang’s testimony, there are approximately 7,000 households in Canada that are using an advanced networking feature of the goods in issue. This amount, however, represents a small proportion of the goods in issue presently used in Canada according to his testimony.²¹ Furthermore, this does not mean that these 7,000 households are not also, or primarily, using the goods in issue as speakers.

55. Those numbers indicate that, for the vast majority of users, the goods in issue are used as speakers albeit using different technology than the wired speaker or the Bluetooth speaker. The underlying technology of the goods in issue does not change their primary function as a speaker.

16. *Transcript of Public Hearing*, 16 May 2017, at 36-37.

17. *Ibid.* at 55-56.

18. *Ibid.* at 18-19, 53, 68, 69, 75,

19. *Ibid.* at 94. See also *Synnex Canada Ltd. v. President of the Canada Border Services Agency* (7 October 2015), AP-2014-034 (CITT) at para. 53.

20. *Unitool Inc. v. President of the Canada Border Services Agency* (4 December 2014), AP-2013-060 (CITT) at para. 66. See also *PartyLite Gifts Ltd. v. Commissioner of the Canada Customs and Revenue Agency* (16 February 2004), AP-2003-008 (CITT) at 8.

21. *Transcript of Public Hearing*, 16 May 2017, at 17, 106; *Transcript of In Camera Hearing*, 16 May 2017, at 4.

56. For these reasons, the Tribunal finds that the primary function of the composite goods in issue is that of a loudspeaker. Even were this not the case, the Tribunal would not be persuaded that the primary function of the goods in issue is that of a mesh network router and extender for which sound reproduction and enhancement is a secondary feature. The evidence does not support this conclusion.²²

57. The Tribunal is therefore satisfied that, based on the evidence before it, the goods in issue are properly classified under tariff item No. 8518.22.00.

Classification of the goods in Chapter 99

58. Chapter 99 of the *Customs Tariff* provides special classification provisions adopted by Canada that allow certain goods to be imported with tariff relief. The Harmonized System reserves Chapter 99 for special classifications for the exclusive use of individual countries; the provisions are not standardized at the international level.²³ However, note 4 to Chapter 99 provides that the “words and expressions used in this Chapter have the same meaning as in Chapters 1 to 97.”

59. In accordance with the Tribunal’s decision in *Best Buy*, in order for the goods in issue to qualify for the benefits of tariff item No. 9948.00.00, they must be (1) articles (2) for use in (3) ADP machines or units thereof, or one of the other host items identified in tariff item No. 9948.00.00.²⁴ The Tribunal is satisfied that the goods in issue comply with all three conditions. In particular, Sonos has adduced sufficient evidence to show on the balance of probabilities that the goods in issue are in fact for use in one or several host goods listed under tariff item No. 9948.00.00.

60. As set out above, tariff item No. 9948.00.00 provides duty-free treatment for articles for use in the following host goods:

9948.00.00 Articles for use in the following:

Automatic data processing machines and units thereof, magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data;

The goods are “articles”

61. The first condition is not in issue, as there was no dispute in this case that the goods in issue are “articles”. The Tribunal will review the remaining conditions.

The goods are “for use in”

62. Subsection 2(1) of the *Customs Tariff* defines the expression “for use in” as follows: “wherever it appears in a tariff item, in respect of goods classified in the tariff item, means that the goods must be wrought or incorporated into, or attached to, other goods referred to in that tariff item.”

63. The Tribunal has long applied a two-prong test to determine whether goods are “attached to” other goods. First, the goods must be physically connected to the host goods; second, the goods must be

22. In the alternative that no primary function could be discerned, the Tribunal would have to resort to the other rules of interpretation, which would eventually lead to classifying the goods in issue under Rule 3(c) in the last tariff provision available which, in any event, would turn out to be heading No. 85.18.

23. *Best Buy* at para. 21.

24. *Ibid.* at para. 62.

“functionally joined” to the host goods. This has been understood to mean that the goods must enhance or complement the function of the host goods, by helping the host goods to execute their functions or allow them to acquire additional capabilities.²⁵

64. It is also well established that, unless otherwise provided in a tariff item, the definition of the phrase “for use in” does not require that goods be for the sole or exclusive use in the host goods,²⁶ nor is there a requirement for the attachment to be permanent.²⁷

65. The goods in issue use wireless technology to connect to a computer, phone, other digital device or each other through a mesh network. Although invisible, this digital connection is a real and effective connection and enables the goods to function. Moreover, the goods in issue all have an Ethernet port, which can be used to connect a router directly to the goods.

66. The Tribunal is therefore satisfied that the goods in issue are “for use in” the listed host goods because they must be functionally joined to them in order to function.

The host goods include ADP machines

67. The goods in issue must be connected to a network and to a controller (mobile phone or computer) in order to function.²⁸ At the hearing, Mr. Lang testified that the goods in issue can be used with several devices, such as a mobile phone that is network-connected or a laptop or PC.²⁹

68. The parties did not disagree that the goods in issue are designed to connect to laptops and PCs or that laptops and PCs are ADP machines of Chapter 84. The parties did disagree as to whether all of the above devices are ADP machines of Chapter 84, although a laptop or PC would likely be such an ADP machine.³⁰ However, the CBSA conceded that the goods in issue can be classified in tariff item No. 9948.00.00.³¹ The Tribunal accepts that concession from the CBSA and concurs with it.

25. See *Andritz Hydro Canada Inc. and VA Tech Hydro Canada Inc. v. President of the Canada Border Services Agency* (21 June 2013), AP-2012-022 (CITT) at para. 36, affirmed in *Andritz Hydro Canada Inc. v. Canada (Border Services Agency)*, 2014 FCA 217 (CanLII); *Ubisoft Canada Inc. v. President of the Canada Border Services Agency* (28 January 2014), AP-2013-004 (CITT) at para. 59, affirmed in *Ubisoft Canada Inc. v. Canada (Border Services Agency)*, 2014 FCA 254 (CanLII); *Kverneland Group North America Inc. v. President of the Canada Border Services Agency* (30 April 2010), AP-2009-013 (CITT); *Jam Industries Ltd. v. President of the Canada Border Services Agency* (20 March 2006), AP-2005-006 (CITT), affirmed in *Jam Industries Ltd. v. Canada (Border Services Agency)*, 2007 FCA 210; *Sony of Canada Ltd. v. Commissioner of the Canada Customs and Revenue Agency* (3 February 2004), AP-2001-097 (CITT); *Imation Canada Inc. v. Commissioner of the Canada Customs and Revenue Agency* (29 November 2001), AP-2000-047 (CITT); *Agri-Pack v. Commissioner of the Canada Customs and Revenue Agency* (2 November 2004), AP-2003-010 (CITT) [*Agri-Pack*], affirmed in *Canada (Customs and Revenue Agency) v. Agri Pack*, 2005 FCA 414 (CanLII).

26. *Best Buy* at para. 78; *Beckman Coulter Canada Inc. v. President of the Canada Border Services Agency* (17 January 2012), AP-2010-065 (CITT) at para. 27; *Entrelec Inc. v. Canada (Minister of National Revenue)*, 2000 CanLII 16268 (FCA).

27. *Best Buy* at para. 78; *Agri-Pack* at paras. 19-20, 33-35.

28. *Transcript of Public Hearing*, 16 May 2017, at 42.

29. *Ibid.* at 42-48, 74-77, 91, 98.

30. *Best Buy* at para. 70; Exhibit AP-2016-020-21 at para. 3, Vol. 1D.

31. The CBSA also stated that “smartphones . . . and network devices may be considered ADP devices for the purposes of tariff item No. 9948.00.00 . . .”

69. For those reasons, the Tribunal is therefore satisfied that the goods in issue are articles for use in ADP machines for the purposes of classification under tariff item No. 9948.00.00 and finds that they should be classified accordingly.

DECISION

70. The appeal is allowed in part.

Jean Bédard
Presiding Member

APPENDIX: TERMS OF HEADINGS AND SECTION, CHAPTER AND EXPLANATORY NOTES

TARIFF NOMENCLATURE

Section XVI

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

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**

SECTION, CHAPTER AND EXPLANATORY NOTES

Section XVI explanatory notes:

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.
5. For the purposes of these Notes, the expression “machine” means any machine, machinery, plans, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.

GENERAL

(VI) MULTI-FUNCTION MACHINES AND COMPOSITE MACHINES

(Section Note 3)

In general, multi-function machines are classified according to the principal function of the machine.

...

Where it is not possible to determine the principal function, and where, as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretative Rule 3 (c)

Composite machines consisting of two or more machines or appliances of different kinds, fitted together to form a whole, consecutively or simultaneously performing **separate** functions which are generally complementary and are described in different headings of Section XVI, are also classified according to the principal function of the composite machine.

...

For the purposes of the above provisions, machines of different kinds are taken to be **fitted together to form a whole** when incorporated one in the other or mounted one on the other, or mounted on a common base or frame or in a common housing.

...

Note 3 to Section XVI **need not be invoked** when the composite machine is covered as such by a particular heading, for example, some types of air conditioning machines (heading 84.15).

...

Chapter 84

Chapter 84 note 5:

5. (A) For the purpose of heading 84.71, the expression “automatic data processing machines” means machines capable of:
- (i) Storing the processing program or programs and at least the data immediately necessary for the execution of the program;
 - (ii) Being freely programmed in accordance with the requirements of the user;
 - (iii) Performing arithmetical computations specified by the user; and,
 - (iv) Executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run.
- (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units.
- (C) Subject to paragraphs (D) and (E) below, a unit is to be regarded as being part of an automatic data processing system if it meets all of the following conditions:
- (i) It is of a kind solely or principally used in an automatic data processing system;
 - (ii) It is connectable to the central processing unit either directly or through one or more other units; and
 - (iii) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

Separately presented units of an automatic data processing machine are to be classified in heading 84.71.

However, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of paragraphs (C) (ii) and (C) (iii) above, are in all cases to be classified as units of heading 84.71.

- (D) Heading 84.71 does not cover the following when presented separately, even if they meet all of the conditions set forth in Note 5 (C) above:
- (i) Printers, copying machines, facsimile machines, whether or not combined;
 - (ii) Apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network);
 - (iii) Loudspeakers and microphones;
 - (iv) Television cameras, digital cameras and video camera recorders;
 - (iv) Monitors and projectors, not incorporating television reception apparatus.
- (E) Machines incorporating or working in conjunction with an automatic data processing machine and performing a specific function other than data processing are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.

Chapter 85

Explanatory notes to heading No. 85.17:

This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical wave flowing in a wired network or by electro-magnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks.

(II) OTHER APPARATUS FOR TRANSMISSION OR RECEPTION OF VOICE, IMAGES OR OTHER DATA, INCLUDING APPARATUS FOR COMMUNICATION IN A WIRED OR WIRELESS NETWORK (SUCH AS A LOCAL OR WIDE AREA NETWORK)

(G) Other communication apparatus.

This group includes apparatus which allows for the connection to a wired or wireless communication network or the transmission or reception of speech or other sounds, images or other data within such a network.

Communication networks include, *inter alia*, carrier-current line systems, digital-line systems and combinations thereof. They may be configured, for example, as public switched telephone networks, Local Area Networks (LAN), Metropolitan Area Networks (MAN) and Wide Area Networks (WAN), whether proprietary or open architecture.

This group includes:

- (1) Network interface cards (e.g., Ethernet interface cards).
- (2) Modems (combines modulators-demodulators).
- (3) Routers, bridges, hubs, repeaters and channel to channel adaptors.
- (4) Multiplexers and related line equipment (e.g., transmitters, receivers or electro-optical converters).
- (5) Codecs (data compressors/decompressors) which have the capability of transmission and reception of digital information.
- (6) Pulse to tone converters which convert pulse dialled signals to tone signals.

Explanatory notes to subheading No. 8517.62:

This subheading includes cordless handsets or base units, when presented separately.

Explanatory notes to heading No. 85.18:

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).

This heading also covers electric sound amplifier sets.

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

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

...

The heading includes loudspeakers designed for connection to an automatic data processing machine, when presented separately.

Chapter 99**Chapter 99****SPECIAL CLASSIFICATION PROVISIONS – COMMERCIAL****Notes.**

3. Goods may be classified under a tariff item in this Chapter and be entitled to the Most-Favoured-Nation Tariff or a preferential tariff rate of customs duty under this Chapter that applies to those goods according to the tariff treatment applicable to their country of origin only after classification under a tariff item in Chapters 1 to 97 has been determined and the conditions of any Chapter 99 provision and any applicable regulations or orders in relation thereto have been met.
4. The words and expressions used in this Chapter have the same meaning as in Chapters 1 to 97.