Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2017-013

Apple Canada Inc.

v.

President of the Canada Border Services Agency

Decision and reasons issued Wednesday, January 10, 2018

Canada

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IN THE MATTER OF an appeal heard on December 4, 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 March 6, 2017, with respect to a request for review of an advance ruling on tariff classification pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

APPLE CANADA INC. **Appellant**

AND

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

DECISION

The appeal is allowed.

Serge Fréchette
Serge Fréchette
Presiding Member

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	December 4, 2017
Tribunal Panel:	Serge Fréchette, Presiding Member
Support Staff:	Dustin Kenall, Counsel

PARTICIPANTS:

Appellant	**Counsel/Representatives**
Apple Canada Inc.	Michael Sherbo Andrew Simkins
Respondent	**Counsel/Representative**
President of the Canada Border Services Agency	Gabrielle White

WITNESS:

John Richey
Senior Product Manager
Apple Inc.

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STATEMENT OF REASONS

INTRODUCTION

1. This is an appeal filed on May 30, 2017, by Apple Canada Inc. (Apple) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*[1] from a decision rendered by the President of the Canada Border Services Agency (CBSA) dated March 6, 2017, concerning an advance ruling on tariff classification.

2. The issue in this appeal is whether the iPad Air 2 Smart Case (the good in issue), which the parties agree is properly classified under tariff item No. 4202.91.90 of the schedule to the *Customs Tariff*[2] as a case with an outer surface of leather, also meets the requirements of tariff item No. 9948.00.00 as an article for use in automatic data processing machines (ADP machine) or for use in a part of an ADP machine, which would entitle it to a preferential, duty-free tariff rate.

PROCEDURAL HISTORY

3. On March 17, 2016, Apple filed a request for an advance ruling on tariff classification of the good in issue, pursuant to section 43.1 of the *Act*.

4. On July 6, 2016, the CBSA issued an advance ruling classifying the good under tariff item No. 4202.91.90 but denying Apple's request for eligibility under tariff item No. 9948.00.00.

5. On August 18, 2016, Apple filed, pursuant to subsection 60(2) of the *Act*, a request for a review of the advance ruling.

6. On March 6, 2017, the CBSA, pursuant to subsection 60(4) of the *Act*, issued its decision affirming the advance ruling.

7. On May 30, 2017, Apple filed the present appeal.

8. On December 4, 2017, the Tribunal held a public hearing, at which the appellant called one witness, John Richey, a senior product manager at Apple Inc., who testified by videoconference. The respondent called no witnesses.

DESCRIPTION OF THE GOOD IN ISSUE

9. There is no disagreement between the parties as to the physical description of the good in issue. It is a case designed to hold, protect and carry the iPad Air 2, a handheld portable computing device, commonly known as a tablet.

10. The front cover of the good has an outer surface of leather, while the back cover (which acts as a tray into which the iPad is inserted) is lined with microfiber material. The good in issue keeps the iPad clean and protects it from scratches. It also has articulated folds so that it can be positioned to serve as a stand for the iPad, in order to facilitate typing, web browsing, viewing videos and other applications. When it is

1. R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].
2. S.C. 1997, c. 36.

closed over the display screen, the iPad senses magnets in the cover and reacts as if the user had pressed the "Sleep/Wake" button along the top edge of the iPad to put it in sleep mode.[3]

LEGAL FRAMEWORK

Tariff Classification Steps

11. 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).[4] 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.

12. Subsection 10(1) of the *Customs Tariff* provides that, subject to subsection 10(2), the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*[5] and the *Canadian Rules*[6] 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*[7] and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,[8] published by the WCO. While classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.[9]

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. 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.[10]

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3. Exhibit AP-2017-013-12A, Appendix 3 at 40-42, Vol. 1.
4. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.
5. S.C. 1997, c. 36, schedule [*General Rules*].
6. S.C. 1997, c. 36, schedule [*Canadian Rules*].
7. WCO, 2nd ed., Brussels, 2003 [*Classification Opinions*].
8. WCO, 5th ed., Brussels, 2012 [*Explanatory Notes*].
9. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131, 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*.
10. *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) at para. 21.

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.[11] The final step is to determine the proper tariff item.[12]

17. Chapter 99 of the *Customs Tariff*, which includes tariff item No. 9948.00.00, provides special classification provisions that allow certain goods to be imported into Canada with tariff relief. As each heading of Chapter 99 has only one subheading and one tariff item number under it, the Tribunal need only consider, as the circumstances may require, Rules 1 through 5 of the *General Rules* in determining whether goods may be classified in that chapter. Moreover, since the Harmonized System reserves Chapter 99 for special classifications (i.e. for the exclusive use of individual countries), there are no classification opinions or explanatory notes to consider.

Relevant Tariff Nomenclature and Notes

18. The relevant tariff nomenclature and notes read as follows:

Section XXI

WORKS OF ART, COLLECTORS' PIECES AND ANTIQUES

. . .

Chapter 99

SPECIAL CLASSIFICATION PROVISIONS – COMMERCIAL

. . .

9948.00.00	***Articles for use in the following***:
	Automatic banknote dispensers; *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; Automatic word-processing machines; Chart recorders and other instruments for measuring or checking electrical quantities, designed for use with automatic data processing machines; Electronic calculating machines; Magnetic discs; Numerical control panels with built-in automatic data processing machines; Power supplies of automatic data processing machines and units thereof; Process control apparatus, excluding sensors, which converts analog signals from or to digital signals; Video games used with a television receiver, and other electronic games; *Parts and accessories of the foregoing*.

[Emphasis added]

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

12. 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." Classification opinions and explanatory notes do not apply to classification at the tariff item level.

19. There are no section notes to Section XXI.

20. Note 3 to Chapter 99 is relevant to the present appeal and provides as follows:

> 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.

21. In accordance with note 3, the good in issue may only be classified in Chapter 99 after classification under a tariff item in Chapters 1 to 97 has been determined. As indicated above, the parties accept the classification of the good in issue under tariff item No. 4202.91.90.[13] Further, the parties agree that there are no conditions or applicable relations to be met. Therefore, the conditions of note 3 to Chapter 99 have been met.

22. Accordingly, the sole remaining issue before the Tribunal is to determine whether the good in issue qualifies for the benefits of tariff item No. 9948.00.00, as either articles **for use** in an ADP machine or articles **for use** in a part or accessory of an ADP machine.[14] To that end, subsection 2(1) of the *Customs Tariff* defines "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.
>
> [Emphasis added]

23. Note 4 to Chapter 99 provides that the words and expressions used in Chapter 99 have the "same meaning" as in Chapters 1 to 97. With regard to the definition of an ADP machine, the following note to Chapter 84 explains:

> 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 a 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.

WITNESSES AND EVIDENCE

24. In addition to a sample of the good in issue, Apple filed marketing materials for the good; dictionary definitions of "complement", "contribute", "enhance", "main" and "primary"; and a signed declaration

13. Exhibit AP-2017-013-04 at para. 9, Vol. 1.
14. The Tribunal has interpreted the last sentence of tariff item No. 9948.00.00 ("Parts and accessories of the foregoing") as referring to "articles for use in parts and accessories of [a host good]", as opposed to parts and accessories of host goods. See *Jam Industries Ltd. v. President of the Canada Border Services Agency* (20 March 2006), AP-2005-006 (CITT) at para. 47, n. 10.

dated December 8, 2016, from Sean Corbin, a product design engineering manager at Apple, which discussed his involvement with the design of the goods.[15]

25. Apple called Mr. Richey as a witness. Mr. Richey testified that he is the product manager responsible for the accessories created and sold by Apple for use with the iPad Air 2. In that capacity, he has been responsible for the good in issue throughout its life, about five years.[16] He provided extensive testimony about the design and uses of the iPad and the good in issue.

26. The CBSA filed copies of two user guides for the iPad and internet-sourced descriptions of the iPad product and its sleep-mode and battery-saving features. The CBSA did not call any witnesses.

POSITIONS OF THE PARTIES

27. The parties agree that the iPad Air 2 is an ADP machine, that the good is an article, and that it is not wrought or incorporated into the iPad but rather connected to it via a magnetic docking function. Therefore, according to them, the case turns on whether the good is "attached to" the iPad or a part thereof.[17] The Tribunal agrees.

28. The Tribunal and Federal Court of Appeal have interpreted the term "attached to" as used in subsection 2(1) of the *Customs Tariff* to mean that the goods must be (1) "physically connected" and (2) "functionally joined" to the host good; and (3) actually (not merely intended to be or potentially) used in the manner stipulated in the tariff item claimed.[18] In this case, the parties agree that the good is physically connected to the iPad and actually used with the iPad. The Tribunal has held that goods are functionally joined to other goods "when they enhance or complement the function of those other goods."[19]

29. Apple submits that the good enhances the iPad by improving the ease of use of the Sleep/Wake function, which saves battery power, thereby enabling the iPad to operate for a longer period of time without

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15. Exhibit AP-2017-013-04, Appendix 1 at 13-15, Vol. 1; *ibid.*, Appendix 4 at 107-112, Vol. 1; Exhibit AP-2017-013-16A (protected) at 4 and 9-10, Vol. 02.
16. *Transcript of Public Hearing*, 4 December 2017, at 5.
17. Apple raised two other arguments. First, Apple argued that the good in issue enhances or complements the iPad by functioning as a stand for typing or viewing videos hands-free. However, a case for a host good does not functionally interact with the latter simply by positioning it for ease of use. See *Curve Distribution Services Inc. v. President of the Canada Border Services Agency* (15 June 2012), AP-2011-023 (CITT) [*Curve*] at para. 68. Further, Apple's reliance on Appeal No. AP-2010-057 for the proposition that such a feature improves the convenience and effectiveness of a host good is misplaced, as that decision concerned whether armband cases were "accessories" for iPod Nanos under heading No. 85.22, not whether they were "for use in" an ADP machine (or a part thereof) under Chapter 99, two classifications entailing wholly separate and distinct tests. Second, Apple argued in the alternative that the good is an accessory under heading No. 84.73 as "[p]arts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 84.69 to 84.72." This argument too is untenable as (1) heading No. 84.73 excludes "covers, carrying cases and the like"; (2) even if not excluded, heading No. 42.02 (cases with an outer surface of leather) is more specific than heading No. 84.73 and, as such, to be preferred pursuant to Rule 3(a) of the *General Rules*; and (3) regardless, Apple has already expressly admitted that "[t]he Parties agree . . . [t]he goods are classified in Chapter 1-97, specifically 4202.91.90." Exhibit AP-2017-013-04 at para. 9, Vol. 1.
18. See for example *Best Buy Canada Ltd. v. President of the Canada Border Services Agency* (27 February 2017), AP-2015-034 (CITT) [*Best Buy*] at paras. 75-87, citing *Entrelec Inc. v. Canada (Minister of National Revenue)*, 2000 CanLII 16268 (FCA) at para. 4.
19. *Ubisoft Canada Inc. v. President of the Canada Border Services Agency* (28 January 2014), AP-2013-004 (CITT) [*Ubisoft*] at para. 59.

recharging. Apple relies on the Tribunal decision in Appel No. AP-2003-010 (*Agri-Pack*), in which it stated that "the concept of 'functionally joined' simply means that the goods 'for use in' the host goods have a functional relationship (be it active or passive) with the host goods."[20]

30. Apple argues that the CBSA took an unduly narrow interpretation of the Tribunal's case law and the *Customs Tariff* when it denied eligibility for duty-free treatment based on its conclusion that the enhancements provided by the good do not functionally join it to the iPad because they do not relate to the processing of data or the execution of programs. Apple argues that the enhancements do relate to the execution of programs vis-à-vis the Sleep/Wake function, which is activated by a software program in the iPad that is itself triggered when magnets in the front cover of the good in issue align with two sensors located inside the iPad itself.

31. The CBSA argues that the good in issue only makes the iPad easier to use; that they do not enhance any function of the iPad. On this point, the CBSA observes that a user can activate the sleep mode herself by pressing the Sleep/Wake button on the iPad. Further, the Sleep/Wake function is already automated by a default setting that puts the iPad into Sleep mode if the iPad is left inactive for a predetermined period. Accordingly, the good in issue does not add any new capability to the iPad's main functions. The CBSA relies on the Tribunal's decision in Appeal No. AP-2011-023 (regarding cell phone cases) for the proposition that an article does not enhance or complement the function of a host good simply by making it more convenient to use — in that appeal, by holding, protecting and carrying cell phones.[21]

32. The CBSA acknowledges in its brief that the ability of the good in issue to trigger the Sleep mode may allow the iPad to be used longer without a recharge, but, it maintains, this only benefits the battery, not the iPad's main functions, such as internet browsing, sending and receiving e-mails, and playing games.[22] Based on this submission, the Tribunal asked the CBSA's counsel at the hearing whether, even if the CBSA's argument that the good in issue does not enhance the iPad itself is accepted, the good could nevertheless be classified under tariff item No. 9948.00.00 as an article for use in a *part* of an ADP machine — i.e. the battery or any other part of the iPad Air 2, such as the software or magnetic sensors, that relates to the triggering of the Sleep/Wake function. Counsel for the CBSA made the uncontested request to respond in writing rather than orally, which the Tribunal granted, allowing both parties to file written submissions on the question as well as responses to each other's submissions.

33. Counsel for Apple responded in the affirmative, submitting that the good in issue is physically connected to the battery via the magnets in the cover and the sensors in the iPad, and that it is for use in the battery and the sensors because it functionally interacts with both. Counsel for Apple argued that the good in issue is connected to the sensors directly via the magnets in the cover and to the battery indirectly via the sensors and software operations triggered by the sensors. Counsel for Apple cited the Tribunal's decision in Appeal No. AP-2008-012R as authority for the proposition that an article may be connected to a host good either directly or indirectly through a third item.[23]

34. Counsel for the CBSA responded in the negative. It conceded that the battery was a part of the iPad but submitted there was no evidence as to what other components within the iPad relate to the Sleep/Wake

20. *Agri-Pack v. Commissioner of the Canada Customs and Revenue Agency* (2 November 2004), AP-2003-010 (CITT) at para. 36.
21. *Curve* at para. 68.
22. Exhibit AP-2017-013-12A at para. 41, Vol. 1.
23. *P.L. Light Systems Canada Inc. v. President of the Canada Border Services Agency* (4 November 2011), AP-2008-012R (CITT) [*P.L. Light Systems Canada Inc.*] at paras. 23-25.

function. Counsel for CBSA further argued that there was no evidence that the good in issue is connected, either wired or wirelessly, to the battery. Counsel for the CBSA argued that the good in issue does not enhance or complement the function of a battery because it does "not increase the battery's existing capacity to store or supply energy".[24]

ANALYSIS

35. As mentioned previously, "[t]he concept of 'functionally joined' simply means that the goods 'for use in' the host goods have a functional relationship (be it active or passive) with the host goods."[25] It is well established that the definition of "for use in" "does not require that goods be for the sole or exclusive use in the host goods, nor is there a requirement for the attachment to be permanent."[26] The goods need only "help, in some measure, the host goods to execute their functions or allow them to acquire additional capabilities."[27]

36. The Tribunal finds that the good in issue helps the iPad to execute its functions and, as such, is functionally joined to it. The good in issue contains magnets that are specifically designed to be recognized by two Hall effect (magnetic) sensors within the iPad that then trigger software to switch the iPad into a low-power mode for the primary purpose of reducing battery use. The good in issue is much more than simply a physical accessory that improves user convenience. The evidence of Apple's witness and Mr. Corbin is that the case and the iPad were designed in tandem to interact specifically in this manner, requiring extensive testing to ensure that the magnets would not interfere with the iPad, and were appropriately matched with it in terms of alignment (to the millimetre) and weight.[28] There is a fundamental difference between the good in issue, whose magnets interface directly with several components of the iPad to efficiently regulate power use, and a regular carrying case that simply protects and positions an electronic device *without* engaging its programs through electromagnetic components.

37. In the face of the uncontroverted facts above regarding how the magnets in the good in issue interface with the iPad's sensors and programs, the CBSA has advanced an overly strict interpretation of the requirement that an article enhance or complement the function of a host good. The CBSA argues that the Sleep/Wake function is unconnected to the iPad's function, which it defines as "to process data, execute programs, and connect to the Internet".[29] The CBSA expressly concedes that the "sleep mode may allow the iPad's battery to last longer, but this benefit is to the battery, which is a hardware component. The length of battery life does not have any effect of the iPad's main functions, such as internet browsing, sending and receiving e-mails, or playing games".[30]

38. This submission is internally contradictory and unsupported by the evidence. First, the CBSA has not explained why the Sleep/Wake program should be distinguished from any other program or application that the iPad executes. The Sleep/Wake function is a software program designed by Apple and comes fully functional in the out-of-the-box iPad, which is executed through the sensors in the iPad recognizing the

24. Exhibit AP-2017-013-21 at 2, Vol. 1A.
25. *Imation Canada Inc. v. Commissioner of the Canada Customs and Revenue Agency* (29 November 2001), AP-2000-047 (CITT) at 4.
26. *Best Buy* at para. 78.
27. *Ubisoft* at para. 59.
28. Exhibit AP-2017-013-16A (protected) at 9, Vol. 2; *Transcript of Public Hearing*, 4 December 2017, at 12-14, 23-24.
29. Exhibit AP-2017-013-12A at para. 35, Vol. 1.
30. *Ibid.* at para. 41.

magnets in the goods and then triggering the Sleep/Wake software program.[31] Thus, even using the CBSA's own limited definition for the function of the iPad, the good in issue clearly interacts with it by executing a native iPad program.

39. Second, the CBSA relies on a false dichotomy between the battery and the iPad's functions. The function of the iPad is not simply the execution of software programs, which any computer can perform, but the execution of applications in a hand-held, portable format. Except for when its battery is dead, the iPad is not primarily intended to be used when plugged into a charger like a desktop computer or a video game console but rather to be used without being wired into a power source at all.[32] Further, the battery cannot be replaced when out of power, meaning that the iPad is non-functional if a user is away from home and unable to access a charging outlet with a USB cable.[33] Given that the most popular applications (gaming and videos) require substantial amounts of electricity through the use of the display screen, the efficient use and management of battery power, including the sleep function which, *inter alia*, deactivates the display, is crucial to the iPad's function.[34] Longevity of battery use is an important feature of the iPad as demonstrated by the testimony of Apple's witness, marketing materials, and the very inclusion by Apple in every iPad of a Sleep/Wake function with multiple means of utilization (button, inactivity, and magnetic sensors).[35]

40. Third, even if such a dichotomy (between enhancement of the iPad and enhancement of the battery) were viable, the good in issue would still be functionally joined to one or more parts of the iPad, specifically, the battery. As mentioned above, the CBSA expressly conceded in its brief that the sleep mode benefits the battery. In its post-hearing submissions, the CBSA now argues that there is insufficient evidence regarding how exactly the magnets and sensors interface with the software and battery. However, the appellant provided both a witness who supervised the design of the goods and testified under oath how its components worked in practice, and a written declaration from a product design engineer manager who also worked on the good in issue. The appellant also provided a sample of the good in issue for the Tribunal's examination. The CBSA presented no evidence to contradict the explanation of the appellant or to suggest an alternative method of interaction.

41. The CBSA further argues that the good in issue is not connected to the battery or sensors because there is no evidence to show how the good is connected to them. The Tribunal's case law recognizes that an article may be connected to a host good indirectly through a third item (here, the sensors and software) and that said connection may be impermanent.[36] The uncontroverted evidence is that the magnets create an electromagnetic field that triggers the sensors, which in turn prompts native, out-of-the-box software in the iPad to execute the Sleep/Wake function.[37] There is no evidence that the sensors serve any purpose other than to, when they recognize the magnets in a closed cover, trigger the Sleep/Wake function. Accordingly, the evidence demonstrates that the good in issue is functionally connected to the battery through the electromagnetic interaction of the magnets and sensors, which executes a software program to reduce battery power use.

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31. Exhibit AP-2017-013-16A (protected) at 9-10, Vol. 02; Exhibit AP-2017-013-12A, at para. 4 at 3 and Appendix 3 at 40, Vol. 1; *Transcript of Public Hearing*, 4 December 2017, at 30.
32. *Ibid.* at 15.
33. *Ibid.* at 25.
34. *Ibid.* at 6, 8-9 and 28; Exhibit AP-2017-013-16A (protected) at 10, Vol. 2.
35. *Transcript of Public Hearing*, 4 December 2017, at 12-13.
36. *P.L. Light Systems Canada Inc.* at paras. 23-25; *Best Buy* at para. 78.
37. *Transcript of Public Hearing*, 4 December 2017, at 30.

42. The CBSA also argues that the good in issue does not enhance the function of the battery because it "does not increase the battery's existing capacity to store or supply energy".[38] This objection mistakes the technical capacities and operation of a part (its engineering) with its function (its end-use applications). The function of the battery in the iPad is to provide portable power for long periods of time, to avoid having to use the iPad like a desktop computer with the charger plugged in. The Sleep/Wake function increases the longevity of a single battery charge by regulating the amount of power being drawn from the battery. By providing the user an efficient method of minimizing power use, the good in issue improves the longevity of the battery charge and, thereby, enhances the function of the battery.

43. Finally, the CBSA argues that the added functionality provided by the good in issue is insufficient in terms of the level of enhancement because the Sleep/Wake function is already accessible via a button on the iPad and the settings for automated sleep following a defined period of inactivity. This too sets the bar too high and ignores compelling evidence.

44. There is nothing in the *Customs Tariff* or the case law requiring an article to demonstrate a minimum level of enhancement before it can be deemed "functionally joined" with a host good.

45. Regardless, the Tribunal finds that the level of enhancement provided by the good in issue is singular and substantial. It is singular because the open/close method constitutes an entirely new means of putting the iPad into sleep mode or waking it up. Likewise, as Mr. Richey testified, it provides an additional, complementary function as well, in that it prevents the iPad from being inadvertently wakened (through jostling of the Sleep/Wake button, the volume button, touching the screen, etc.) when placed in a bag or otherwise stored for transport, a foreseeable event given its intended use as a portable device.[39] This is achieved not by the good in issue simply physically covering the iPad but through the interaction of the magnets, sensors and software. Providing a new or alternative method of using one of the functions of a host good enhances it.

46. Moreover, this enhancement is substantial because it provides a level of control that is immediate, effortless and natural. Waiting for the inactivity setting to put the iPad to sleep is less convenient because the iPad continues to run and consume battery power at a normal rate even when not in use. Triggering sleep through the top button is also less convenient because it requires finding then pressing a small button at the top edge of the tablet with a free finger. In contrast, using the good in issue to trigger the sleep function requires no extra hand gesture at all and is accomplished simply by doing what the user would naturally and anyway do when they are finished using the tablet — closing the cover.

47. For these reasons, the Tribunal finds that the good in issue is functionally joined with the host good and, consequently, meets the requirements of tariff item No. 9948.00.00 as an article for use in an ADP machine or, alternatively, for use in a part of an ADP machine, specifically the battery. Therefore, the appeal is allowed.

Serge Fréchette
Serge Fréchette
Presiding Member

38. Exhibit AP-2017-013-21 at 2, Vol. 1A.
39. *Transcript of Public Hearing*, 4 December 2017, at 12, 31.