



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2009-052

A.M.A. Plastics Ltd.

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Thursday, September 23, 2010*

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IN THE MATTER OF an appeal heard on July 27, 2010, pursuant to subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated June 8, 2009, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**A.M.A. PLASTICS LTD.**

**Appellant**

**AND**

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

**Respondent**

**AND**

**GRODAN INC.**

**Intervener**

**DECISION**

The appeal is allowed.

André F. Scott  
André F. Scott  
Presiding Member

Dominique Laporte  
Dominique Laporte  
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	July 27, 2010
Tribunal Member:	André F. Scott, Presiding Member
Research Director:	Audrey Chapman
Counsel for the Tribunal:	Eric Wildhaber
Research Officer:	Denise Bergeron
Assistant Secretary and Registrar:	Gillian Burnett
Registrar Officer:	Véronique Frappier

**PARTICIPANTS:****Appellant**

A.M.A. Plastics Ltd.

**Counsel/Representative**

Gary D. Graham

**Respondent**

President of the Canada Border Services Agency

**Counsel/Representative**

Paul Battin

**Intervener**

Grodan Inc.

**Counsel/Representatives**Michael Sherbo  
Martha Kirby**WITNESSES:**Tommy Wingreen  
Professor, Department of Horticulture  
Algonquin College, and  
President of PlantPro InternationalAndrew Lee  
Business Support Manager  
Grodan Inc.

Please address all communications to:

The Secretary  
Canadian International Trade Tribunal  
Standard Life Centre  
333 Laurier Avenue West  
15th Floor  
Ottawa, Ontario  
K1A 0G7Telephone: 613-993-3595  
Fax: 613-990-2439  
E-mail: [secretary@citt-tcce.gc.ca](mailto:secretary@citt-tcce.gc.ca)

## STATEMENT OF REASONS

### BACKGROUND

1. This is an appeal filed by A.M.A. Plastics Ltd. (A.M.A.) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision made by the President of the Canada Border Services Agency (CBSA) pursuant to subsection 60(4). Grodan Inc. (Grodan) was granted intervener status by the Tribunal.

2. The issue in this appeal is whether certain rock wool (the goods in issue), classified under tariff item No. 6806.10.90 of the schedule to the *Customs Tariff*,<sup>2</sup> qualify for the benefits of tariff item No. 9903.00.00 as articles for use in agricultural or horticultural machines of heading 84.36, as submitted by A.M.A., or as sprinkle or trickle irrigation systems and parts thereof, for use in greenhouses, as submitted by Grodan.

### PROCEDURAL HISTORY

3. The goods in issue were imported on March 22, 2005, under tariff item No. 6806.10.90.

4. On January 30, 2009, A.M.A. requested a re-determination of the tariff classification of the goods in issue asking for entitlement to the benefits of tariff item No. 9903.00.00 under subsection 60(2) of the *Act*.

5. In its decision dated June 8, 2009, pursuant to subsection 60(4) of the *Act*, the CBSA denied the request that the goods in issue be classified under tariff item No. 9903.00.00.<sup>3</sup>

6. On September 4, 2009, A.M.A. appealed the CBSA's decision to the Tribunal, pursuant to subsection 67(1) of the *Act*.<sup>4</sup>

7. On December 29, 2009, Grodan was granted intervener status by the Tribunal, pursuant to subrule 41(2) of the *Canadian International Trade Tribunal Rules*.<sup>5</sup>

8. On May 17, 2010, A.M.A. requested the Tribunal to proceed by way of written submissions. On May 19, 2010, the CBSA requested that a public hearing be held as it intended to call a witness. On July 6, 2010, Grodan indicated its intention to call a witness. Given the above, the Tribunal held a public hearing on July 27, 2010, in Ottawa, Ontario.

9. A.M.A. did not present a witness at the hearing. Mr. Tommy Wingreen, President of PlantPro International and professor at the Horticulture Department of Algonquin College, testified on behalf of the CBSA. The Tribunal qualified Mr. Wingreen as an expert with respect to horticultural science. Dr. Andrew Lee, Business Support Manager at Grodan, testified on behalf of Grodan. The Tribunal qualified Dr. Lee as an expert with respect to rock wool and trickle irrigation systems.

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

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

3. Tribunal Exhibit AP-2009-052-01.

4. *Ibid.*

5. S.O.R./91-499.

## GOODS IN ISSUE

10. The goods in issue are various sizes of blocks of rock wool.<sup>6</sup> The blocks are impregnated with a wetting agent to allow for water absorption and retention, and encased in a plastic covering. The goods in issue are manufactured to function as inert, pathogen-free hydroponic substrate, to be used as a growing medium for plants.

## ANALYSIS

### Statutory Framework

11. In appeals pursuant to section 67 of the *Act* concerning tariff classification matters, the Tribunal determines the proper tariff classification of the goods in issue in accordance with prescribed interpretative rules.

12. 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.<sup>7</sup> 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. Sections 10 and 11 of the *Customs Tariff* prescribe the approach that the Tribunal must follow when interpreting the schedule in order to arrive at the proper tariff classification of goods.

13. Subsection 10(1) of the *Customs Tariff* provides as follows: "... the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System<sup>[8]</sup> and the Canadian Rules<sup>[9]</sup> set out in the schedule."

14. The *General Rules* comprise six rules structured in sequence so that, if the classification of the goods cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, and so on.<sup>10</sup> Classification therefore begins with Rule 1, which provides as follows: "... for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions."

15. Section 11 of the *Customs Tariff* provides as follows: "In interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System<sup>[11]</sup> and the Explanatory Notes to the Harmonized Commodity

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6. Note that various dictionaries contain the compound-word spelling "rockwool". Chapter 68 of the schedule, however, uses the two-word spelling "rock wool". The Tribunal has adopted the latter.

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

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

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

10. Rules 1 through 5 of the *General Rules* apply to classification at the heading level (i.e. to four digits). Pursuant to Rule 6 of the *General Rules*, Rules 1 through 5 apply to classification at the subheading level (i.e. to six digits). Similarly, the *Canadian Rules* make Rules 1 through 5 of the *General Rules* applicable to classification at the tariff item level (i.e. to eight digits).

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

Description and Coding System,<sup>[12]</sup> published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time.” Accordingly, unlike chapter and section notes, the *Explanatory Notes* are not binding on the Tribunal in its classification of imported goods. However, the Federal Court of Appeal has stated that these notes should be applied, unless there is a sound reason to do otherwise.<sup>13</sup>

16. Chapter 99 of the *Customs Tariff*, which includes tariff item No. 9903.00.00, provides special classification provisions that allow certain goods to be imported into Canada with tariff relief. As none of the headings of Chapter 99 are divided at the subheading or tariff item level, 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.<sup>14</sup> 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.

### Tariff Classification Issues

17. Whether or not goods qualify for the benefits of a tariff item in Chapter 99 is a question of tariff classification. In this respect, Note 3 to Chapter 99, in particular, expressly states the following:

3. Goods may be classified under a tariff item in this Chapter . . . 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.

18. The CBSA classified the goods in issue under tariff item No. 6806.10.90 as other rock wool. A.M.A. has not disputed this tariff classification.

19. The relevant provisions concerning heading No. 68.06 of the schedule to the *Customs Tariff* are as follows:

- |                |  |
|----------------|--|
| <b>68.06</b>   | <b>Slag wool, rock wool and similar mineral wools; exfoliated vermiculite, expanded clays, foamed slag and similar expanded mineral materials; mixtures and articles of heat-insulating, sound-insulating or sound-absorbing mineral materials, other than those of heading 68.11 or 68.12 or of Chapter 69.</b> |
| <b>6806.10</b> | <b>-Slag wool, rock wool and similar mineral wools, (including intermixtures thereof), in bulk, sheets or rolls</b>  |
| ...            |  |
| 6806.10.90     | - - -Other   |

20. The relevant *Explanatory Notes* to Chapter 68 and heading No. 68.06 are as follows:

**Slag wool and rock wool** (e.g., of granite, basalt, limestone or dolomite) are obtained by melting one or more of these constituents and converting a stream of the resulting liquid into fibres, usually by centrifugal action and stream or air blast.

...

12. World Customs Organization, 3d. ed., Brussels, 2002 [*Explanatory Notes*].

13. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII), paras. 13, 17.

14. However, Note 1 to Chapter 99 provides that the rule of specificity in Rule 3 (a) of the *General Rules* does not apply to the provisions of Chapter 99. This reflects the fact that classification in Chapters 1 to 97 and Chapter 99 is not mutually exclusive.

All the above materials are incombustible and excellent heat-insulating, sound-insulating, or sound-absorbing products. The heading includes them even when in bulk.

...

The heading includes articles, usually of low density, made from the above products or mixtures (e.g., blocks, sheets, bricks, tiles, tubes, cylinder shells, cords, pads). These articles may be artificially coloured in the mass, impregnated with fireproof substances, faced with paper, or reinforced with metal.

21. Based on the evidence, the Tribunal accepts the classification of the goods in issue under tariff item No. 6806.10.90.

22. Since classification under a tariff item in Chapters 1 to 97 has been determined, the relevant precondition to classification in Note 3 to Chapter 99 has been satisfied. Therefore, the sole remaining issue before the Tribunal is to determine whether the goods in issue qualify for the benefits of tariff item No. 9903.00.00.

### **Do the Goods in Issue Qualify for the Benefits of Tariff Item No. 9903.00.00?**

23. As indicated above, the source of disagreement between the parties—and the issue in this appeal—is whether the goods in issue also fall within the scope of tariff item No. 9903.00.00 and are thereby entitled to duty-free treatment.

24. The relevant provisions concerning heading No. 99.03 of the schedule to the *Customs Tariff* are as follows:

#### **Chapter 99**

##### **SPECIAL CLASSIFICATION PROVISIONS - COMMERCIAL**

...

**9903.00.00 Articles and materials that enter into the cost of manufacture or repair of the following, and articles for use in the following:**

...

**Agricultural or horticultural machines of heading 84.36;**

...

**Sprinkle or trickle irrigation systems and parts thereof, for use on the farm or in greenhouses;**

...

25. The relevant chapter notes of Chapter 99 of the schedule to the *Customs Tariff* are as follows:

#### **Notes.**

1. The provisions of this Chapter are not subject to the rule of specificity in General Interpretative Rule 3 (a).

...

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.

### Position of Parties

26. A.M.A. claimed that the CBSA erred in misinterpreting the function of integrated greenhouse systems by limiting their use to that of climate control and regulation.

27. Relying on the Tribunal's decision in *Prins Greenhouses Ltd.*,<sup>15</sup> A.M.A. noted that that case clearly established that integrated greenhouse systems constituted agricultural and horticultural machines of heading No. 84.36 and that their function is to control climate and environment sought to optimize plant growth. Greenhouse systems were therefore classified under tariff item No. 8436.80.10 since they were determined to be functional units as found under General (VII) *Explanatory Notes* to Section XVI.

28. A.M.A. further claimed that the function of integrated greenhouse systems goes beyond mere climate environment control but also includes optimizing yield by integrating proper growth media, in this case, the goods in issue.

29. A.M.A. submitted that the goods in issue satisfy the criteria "for use in" as they are physically attached to and functionally joined to the greenhouse. Spikes, connected by tubing to the greenhouse water and nutrition management system, are inserted into the goods in issue in order to provide nutrients directly to the roots of the plants. Therefore, A.M.A. argued that physical connection satisfies the requirement that the goods in issue are "attached to" the greenhouse system.

30. Citing the Tribunal's decision in *Sony of Canada Ltd.*,<sup>16</sup> A.M.A. further nuanced its position by recalling that the physical attachment need not be permanent.

31. Finally, A.M.A. referred to the Tribunal's decision in *Agri-Pack*<sup>17</sup> to demonstrate that the use of the goods in issue need not be solely or exclusively for use in agricultural machinery to qualify for the benefits of tariff item No. 9903.00.00 as articles "for use in" agricultural or horticultural machines of heading 84.36 given that they also contribute to plant growth via the trickle irrigation system. In this respect, A.M.A. noted that the goods in issue are used to provide optimal hydration, nutrition, oxygen and support to plants and therefore contribute to the function of plant growth, as intended by integrated greenhouse systems.<sup>18</sup>

32. Grodan submitted that, in order for the goods in issue to qualify for the benefits of tariff item No. 9903.00.00, they must satisfy three conditions: first, they must be articles; second, they must be physically connected; and third, they must be functionally joined to a trickle irrigation system for use in greenhouses.<sup>19</sup>

33. With respect to the first condition, that the goods in issue be "articles" within the meaning of the *Act*, Grodan referred to the definition of "articles" contained in CBSA Customs Notice N-278, which states that "articles" are, *inter alia*, "any finished or semi-finished product which is not considered to be a material."<sup>20</sup>

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15. See *Prins Greenhouses Ltd. v. Deputy M.N.R.* (9 April 2001), AP-99-045 (CITT) [*Prins Greenhouses*].

16. See *Sony of Canada Ltd. v. Deputy M.N.R.* (12 December 1996), AP-95-262 (CITT) [*Sony*].

17. See *Agri-Pack v. Commissioner of the Canada Customs and Revenue Agency* (2 November 2004), AP-2003-010 (CITT) [*Agri-Pack*].

18. Tribunal Exhibit AP-2009-052-05A, para. 30.

19. Tribunal Exhibit AP-2009-052-10, para. 17.

20. Customs Notice N-278, "Administrative Policy Tariff Item No. 9948.00.00", 27 April 1999.

34. With respect to the second condition, Grodan relied on the Tribunal's decision in *Sony*, where the Tribunal held that goods need not be permanently attached to a system to form part of the said system. Grodan submitted that, in the present case, the dripper heads of the trickle irrigation system meet the second condition of being physically connected.<sup>21</sup>

35. Finally, with respect to the third condition, Grodan submitted that the goods in issue are functionally joined to the trickle irrigation system since their function is to retain water and nutrients as they are being fully absorbed by the plant's roots.<sup>22</sup>

36. Given the above, Grodan submitted that all three conditions have been met and that the CBSA erred in denying the benefits of tariff item No. 9903.00.00 to the goods in issue.

37. The CBSA disagreed with both A.M.A. and Grodan on the grounds that the goods in issue fail to meet the test of being goods "for use in" agricultural or horticultural machines of heading No. 84.36 or trickle irrigation systems and parts thereof for use in greenhouses.

38. Pointing to the definition of "for use in" as provided in Part I, Section 2(1) of the schedule, the CBSA submitted that there was no evidence to suggest that the goods in issue are wrought or incorporated into, or attached to, integrated greenhouse systems. The CBSA noted that previous Tribunal decisions determined that "for use in" requires that the goods be both physically attached and functionally joined.<sup>23</sup> The CBSA submitted that a spike connected to the goods in issue does not satisfy the criteria of "functionally joined" in accordance with the Tribunal's finding in *Prins Greenhouses*. In the CBSA's submission, the goods in issue are simply a growing medium.<sup>24</sup>

39. Furthermore, relying on the Tribunal's finding in *Jam Industries*, the CBSA contended that the goods in issue must complement the function of the host good in order to meet the "for use in" criterion. In the CBSA's submission, the opposite is true: the functionality of the goods in issue is enhanced by the integrated greenhouse system.<sup>25</sup>

40. Finally, relying on the Tribunal's decision in *Farmer's Sealed Storage*,<sup>26</sup> the CBSA took exception to Grodan's position that the goods in issue are crucial to the operation of integrated greenhouse systems or trickle irrigation systems. The CBSA argued that the goods in issue are no different than any other growing medium, such as soil.<sup>27</sup>

41. The Tribunal is of the view that, in order for the goods in issue to qualify for the benefits of tariff item No. 9903.00.00, they must be (1) articles (2) for use in integrated greenhouse systems or sprinkle or trickle irrigation systems.

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21. Tribunal Exhibit AP-2009-052-10, paras. 21, 22.

22. *Ibid.*, para. 25.

23. *Imation Canada Inc. v. Commissioner of the Canada Customs and Revenue Agency* (29 November 2001), AP-2000-047 (CITT) [*Imation*]; *PHD Canada Distributing Ltd. v. Commissioner of Customs and Revenue* (25 November 2002), AP-99-116 (CITT) [*PHD*]; *Sony of Canada Ltd. v. Commissioner of the Canada Customs and Revenue Agency* (3 February 2004), AP-2001-097 (CITT); *Agri-Pack*; *Jam Industries Ltd. v. President of the Canada Border Services Agency* (20 March 2006), AP-2005-006 (CITT) [*Jam Industries*].

24. Tribunal Exhibit AP-2009-052-12A, para. 52.

25. *Ibid.*, para. 37.

26. See *Farmer's Sealed Storage v. The Deputy Minister of National Revenue* (9 September 1991), AP-2935 (CITT) [*Farmer's Sealed Storage*].

27. Tribunal Exhibit AP-2009-052-12A, para. 49.

### Articles

42. The goods in issue must be “articles”. All parties involved in the present appeal acknowledge that the goods in issue are articles within the meaning of the *Customs Tariff*.<sup>28</sup>

43. The Tribunal agrees with the parties in this case that the ordinary meaning of the word “article” is sufficiently broad to encompass the goods in issue.

### For use in integrated greenhouse systems or sprinkle or trickle irrigation systems

44. The goods in issue must be articles “for use in” integrated greenhouse systems or sprinkle or trickle irrigation systems.

45. Subsection 2(1) of the *Customs Tariff* defines the phrase “for use in” as follows:

“for use in”, 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.

46. In applying subsection 2(1) of the *Customs Tariff*, the Tribunal considered whether the goods in issue (1) contribute importantly to the performance of the host good<sup>29</sup> and (2) are physically connected and functionally joined to the host good.

47. The Tribunal finds that because of the composition, design and attributes of the goods in issue, they contribute significantly to the performance of integrated greenhouse systems and trickle irrigation systems used in greenhouses. Also, the Tribunal heard evidence from both experts that clearly establishes that the goods in issue are primarily used to grow vegetables in greenhouses.

48. Mr. Wingreen testified that the goods in issue are a growing media used with trickle irrigation systems. He stated that the goods in issue are inorganic, that they do not interact with fertilizers, that they have good water holding capacity and that the balance of water and air in the medium is controlled by how the fibres in the rock wool are made.<sup>30</sup> He said that the goods in issue can be mixed in soil to get better drainage and more aeration, used in slabs for the production of vegetables and used in small cubes for propagation.<sup>31</sup> Mr. Wingreen confirmed that the goods in issue are used in more than half of the production of greenhouse operations that grow vegetable crops, mainly tomatoes and cucumbers.<sup>32</sup>

49. Dr. Lee, who advises commercial greenhouse growers, explained that the goods in issue are manufactured with hydrophilic binders and fibres that facilitate the irrigation process by holding water and nutrients in a uniform way across the length and height of the plant. Dr. Lee confirmed that the goods in issue are used for commercial vegetable production in greenhouses and that due to the cost of the rock wool, the goods in issue are not generally used commercially outside of greenhouses. Dr. Lee emphasized that the goods in issue are designed to optimize the root zone environment of a plant while optimizing the climate that is achieved in a greenhouse environment.<sup>33</sup>

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28. Tribunal Exhibit AP-2009-052-05A, para. 18; Tribunal Exhibit AP-2009-052-10, para. 20; Tribunal Exhibit AP-2009-052-12A, para. 24.

29. *Imation; PHD; Sony of Canada Ltd. v. Commissioner of the Canada Customs and Revenue Agency* (3 February 2004), AP-2001-097 (CITT); *Agri-Pack; Jam Industries*.

30. *Transcript of Public Hearing*, 27 July 2010, at 42.

31. *Ibid.* at 13.

32. *Ibid.* at 45-46.

33. *Ibid.* at 58-60, 63-64.

50. Given these characteristics, the Tribunal is of the view that the goods in issue contribute significantly to the performance of integrated greenhouse systems and trickle irrigation systems used in greenhouses.

51. The Tribunal considered whether the goods in issue are physically attached to and functionally joined to integrated greenhouse systems or trickle irrigation systems for use in greenhouses. In the Tribunal's view this is the case. The evidence clearly indicates that the spigot of a trickle irrigation system is inserted into the goods in issue to ensure that nutrients flow directly to the roots of the plants.

52. Indeed, Mr. Wingreen testified that the tubing that feeds the plants is held in place at the opening to the growing medium in order to irrigate the goods in issue, thereby ensuring that the necessary water and nutrients get to the roots of the plants.<sup>34</sup> Dr. Lee confirmed that the spigot used in the irrigation system delivers the water and nutrients directly to the roots of the plant so that it is never water-stressed or nutrient-stressed and is able to grow in an optimal way.<sup>35</sup>

53. Because the spigot is inserted into the goods in issue for the duration of the production of the crop, the Tribunal finds that the spigot plays an enduring and significant role over the course of a growing cycle so as to contribute in a permanent and essential manner to the proper functioning of the trickle irrigation system.<sup>36</sup>

54. Given the above, and further to the criteria developed in the Tribunal's past decisions<sup>37</sup> where it found that the expression "for use in" required that the goods in issue must add to the functionality of the host good, the Tribunal finds that this condition is met in the present case.

55. The Tribunal finds that the evidence clearly establishes that the goods in issue enhance the host good, in this case the integrated greenhouse systems or trickle irrigation systems for use in greenhouses. The primary function of integrated greenhouse systems and trickle irrigation systems for use in greenhouses designed for the production of vegetables or flowers is complemented and enhanced by the presence of the goods in issue, which ensure that water and nutrients are absorbed directly by the roots of the plants.

## Conclusion

56. Therefore, the Tribunal finds that the goods in issue are entitled to the benefits of tariff item No. 9903.00.00.

## DECISION

57. The appeal is allowed.

André F. Scott  
André F. Scott  
Presiding Member

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34. *Ibid.* at 40.

35. *Ibid.* at 57.

36. *Ibid.* at 23, 67.

37. See *Jam Industries Ltd. v. The President of the Canada Border Services Agency*, 2007 FCA 210; *Jam Industries Ltd.*