CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Monday, December 2, 1996

**Appeal No. AP-94-307**

IN THE MATTER OF an appeal heard on March 7, 1996, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue dated September 23, 1994, with respect to a request for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**NORTHERN ALBERTA PROCESSING CO.** **Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE** **Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed in part.

Anita Szlazak
Anita Szlazak
Presiding Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Desmond Hallissey
Desmond Hallissey
Member

Michel P. Granger
Michel P. Granger
Secretary

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

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**UNOFFICIAL SUMMARY**

**Appeal No. AP-94-307**

**NORTHERN ALBERTA PROCESSING CO.** **Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE** **Respondent**

The appellant is a rendering company that carries on business in Edmonton, Alberta. It takes animal by-products and reduces them into inedible tallow, oils and meat meal. The product in issue is a machine which the appellant uses in its production process. More specifically, it is used to cool hot tankage (i.e. the solids derived from the production process) before milling, by circulating ambient air through the machine. The issue in this appeal is whether the machine in issue is properly classified under tariff item No. 8438.80.99 as other machinery, not specified or included elsewhere in Chapter 84, for the industrial preparation or manufacture of food or drink, as determined by the respondent, or should be classified under tariff item No. 8419.89.40 as other mechanically operated machinery, plant or laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, drying or cooling, as claimed by the appellant. If the machine in issue should be classified in heading No. 84.19, the Tribunal will then consider whether it qualifies for the benefits of Code 0300 as "[g]oods which enter into the cost of manufacture of fertilizers."

**HELD:** The appeal is allowed in part. The Tribunal considers that the machine in issue should be classified under tariff item No. 8419.89.40. The machine in issue treats the tankage, which involves the cooling of that material. Therefore, the Tribunal finds that the machine in issue does meet the description of heading No. 84.19. However, the machine in issue does not qualify for the benefits of Code 0300. The evidence shows that it is used to manufacture meat meal, not fertilizer. The Tribunal agrees, therefore, with counsel for the respondent that, as the appellant itself does not manufacture fertilizer, the machine in issue does not enter into the cost of manufacture of fertilizers for purposes of Code 0300.

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| Place of Hearing: | Edmonton, Alberta |
| Date of Hearing: | March 7, 1996 |
| Date of Decision: | December 2, 1996 |
| Tribunal Members: | Anita Szlazak, Presiding Member<br>Robert C. Coates, Q.C., Member<br>Desmond Hallissey, Member |
| Counsel for the Tribunal: | Hugh J. Cheetham |
| Clerk of the Tribunal: | Anne Jamieson |
| Appearances: | Wendy Stayko and John Armstrong, for the appellant<br>Frederick B. Woyiwada, for the respondent |

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

**Appeal No. AP-94-307**

**NORTHERN ALBERTA PROCESSING CO.** **Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE** **Respondent**

TRIBUNAL: ANITA SZLAZAK, Presiding Member
ROBERT C. COATES, Q.C., Member
DESMOND HALLISSEY, Member

## REASONS FOR DECISION

This is an appeal under subsection 67(1) of the *Customs Act*[1] from a decision of the Deputy Minister of National Revenue.

The appellant is a rendering company that carries on business in Edmonton, Alberta. It takes animal by-products and reduces them into inedible tallow, oils and meat meal. The product in issue is a "Scott Continuous Cooler/Drier," a machine which the appellant uses in its production process. More specifically, it is used to cool hot tankage (i.e. the solids derived from the production process) before milling, by circulating ambient air through the machine by means of a rotating drum fitted with fans.

The machine in issue was imported in August 1992. At the time of importation, it was classified under tariff item No. 8479.20.00 of Schedule I to the *Customs Tariff*[2] as machinery for the extraction or preparation of animal or fixed vegetable fats or oils, thereby qualifying for the benefits of Code 0300 of Schedule II to the *Customs Tariff* as "[g]oods which enter into the cost of manufacture of fertilizers." The respondent subsequently classified the machine in issue under tariff item No. 8479.89.90, to which Code 0300 does not apply. The appellant filed a request for re-determination which was rejected. The appellant subsequently filed a further request for re-determination and, by way of a notice of decision dated September 23, 1994, the respondent classified the machine in issue under tariff item No. 8438.80.99 as a machine used in the manufacture of animal feed, to which Code 0300 does not apply.

The issue in this appeal is whether the machine in issue is properly classified under tariff item No. 8438.80.99 as other machinery, not specified or included elsewhere in Chapter 84, for the industrial preparation or manufacture of food or drink, as determined by the respondent, or should be classified under tariff item No. 8419.89.40 as other mechanically operated machinery, plant or laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, drying or cooling, as claimed by the appellant. If the machine in issue should be classified in heading No. 84.19, the Tribunal will then consider whether it qualifies for the benefits of Code 0300.

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

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

The relevant tariff nomenclature in Schedule I to the *Customs Tariff* reads as follows:

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| 84.19 | Machinery, plant or laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, ... drying ... or cooling, other than machinery or plant of a kind used for domestic purposes; |
| 8419.89 | --Other |
| 8419.89.40 | ---Mechanically operated |
| 84.38 | Machinery, not specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal or fixed vegetable fats or oils. |
| 8438.80 | -Other machinery |
| 8438.80.99 | ----Other |

The appellant called two witnesses. The first witness was Dr. Erick Schmidt. Dr. Schmidt is President and CEO of Genelytic Sciences Corporation. Dr. Schmidt has been involved with a number of companies concerned with the development of an organic fertilizer. These companies have, from time to time over the last 10 years, purchased meat-and-bone meal (MBM) from the appellant to use in the research, development and subsequent test marketing of an organic fertilizer. Dr. Schmidt testified that he had personal knowledge that the product that is bought from the appellant goes through the machine in issue in the course of its processing. Dr. Schmidt acknowledged that most of the MBM produced by companies like the appellant is used in the animal feed business.

In cross-examination, Dr. Schmidt stated that approximately 15 to 20 percent of the organic fertilizer which he makes is comprised of MBM. He also stated that he had purchased MBM from the appellant both before and after the appellant began using the machine in issue, although not in the last two years, as his company was using goods from inventory to produce fertilizer for test marketing. In response to questions from the Tribunal, he explained that what the appellant actually begins processing is tankage, i.e. the raw material of the rendering business, and that what the appellant ends up producing is MBM.

The appellant's second witness was Mr. Bertram Kooy, Plant Superintendent at Northern Alberta Processing Co. He has held this position with the appellant and predecessor companies for 27 years. Mr. Kooy testified that he was responsible for the purchase of the machine in issue in 1992. He explained that the purpose of the machine is to reduce the amount of moisture in the meal produced by the appellant. This helps in creating an end product that is of better quality and easier to handle and store, therefore also reducing the cost of processing tankage. Mr. Kooy stated that all the tankage processed by the appellant passes through the machine in issue.

In cross-examination, Mr. Kooy stated that, when the tankage leaves the cooker, before entering the machine in issue, it has a temperature of about 250°F. The product literature indicates that materials usually enter the machine in issue at between 178 and 190°F and, after having passed through the machine in issue, the temperature of the meal is reduced to between 118 and 130°F. Mr. Kooy also indicated that, by passing tankage through the machine in issue, the appellant is able to reduce the amount of moisture in the meal from 7.0 to 10.0 percent to approximately 4.5 percent. He confirmed that the appellant sells meal primarily to feed mills and that, to the best of his knowledge, Dr. Schmidt's company was the appellant's only customer

which used meal to produce fertilizer. He also confirmed that the machine in issue is specifically designed for use in processing animal by-products into meal.

In argument, the appellant's representatives submitted that the *Explanatory Notes to the Harmonized Commodity Description and Coding System*[3] (the Explanatory Notes) to heading No. 84.19 provide that the heading covers "machinery ... designed to submit materials ... to a ... cooling process in order to cause a simple change of temperature." The evidence, they argued, shows that this is exactly what the machine in issue does. Furthermore, there is nothing in the Explanatory Notes that specifies how the machine must accomplish the cooling process. The Explanatory Notes only require that the machines cool materials and that the cooling process be the primary function of the machine. They submitted that the evidence shows that the machine in issue satisfies these requirements. The representatives also submitted that the machine in issue should be classified in heading No. 84.19 on the basis of Note 2 to Chapter 84 which provides that, subject to Note 3 to Section XVI, a machine that meets the description of one of heading Nos. 84.01 to 84.24 and, at the same time, that meets the description of one of heading Nos. 84.25 to 84.80 is to be classified in the appropriate heading of the former group and not the latter.

With respect to the machine in issue qualifying for the benefits of Code 0300, the appellant's representatives submitted that what was important was not whether the appellant manufactured fertilizer or animal feed, which the appellant has never asserted that it does, but whether the meal ever, in the words of the provision, "enter[s] into the cost of manufacture of fertilizers." In this regard, they submitted that Note 1 of the Explanatory Notes to heading No. 23.01 provides that "meals" of this heading are used mainly in animal feeding, but may also be used for other purposes. The example given in the Explanatory Notes is fertilizers. They also submitted that, while they conceded that the meal produced by the appellant does contain bones, these are not processed individually and that heading No. 23.01 allows for the processing of whole animals and thus, to some extent, it allows some amount of bone materials to be contained in the products classified in this heading.

Counsel for the respondent submitted that the Explanatory Notes to heading No. 84.38 make it clear that food or drink manufactured by machinery of that heading can be for human or animal consumption. He argued that the evidence indicates that the tankage used in the appellant's process is essentially for animal feed, as reflected in the testimony that the primary purchasers of the appellant's MBM are feed mills, which use it primarily as feed. Furthermore, the evidence is that the machine in issue is specifically designed to treat animal by-products, which are in turn used as food. Thus, heading No. 84.38 is the proper heading for the classification of the machine in issue.

With respect to heading No. 84.19, counsel for the respondent noted that the evidence indicates that the process through which the machine in issue puts the tankage is not only to change the temperature but also to dry the tankage. In addition, the machine in issue is called a "cooler/drier," and the drying function is clearly essential to the quality of the meal. He submitted that heading No. 84.19 is less specific than heading No. 84.38 because it relates to a variety of materials and only relates to a cooling function, not both a cooling and a drying function. Furthermore, as heading No. 84.38 is far more specific than heading No. 84.19, the Tribunal does not need to consider the issue of classifying on the basis of Note 2 to Chapter 84, i.e. preferring one heading over the other on the basis of which one appears earlier in the Chapter.

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3. Customs Co-operation Council, 1st ed., Brussels, 1986.

Turning to the possible application of Code 0300 to the machine in issue, counsel for the respondent submitted that the evidence does not show that the machine in issue enters into the cost of manufacture of fertilizer. First, the appellant does not manufacture fertilizer itself. Rather, it produces MBM from tankage, which is used primarily as animal feed, with only a small portion of the MBM possibly being used in fertilizer. Second, the meal that the appellant manufactures must be further processed before it becomes fertilizer and then, in the case of Dr. Schmidt's product, only about 15 percent is comprised of meal. Furthermore, Dr. Schmidt, the only customer purchasing meal to be used in fertilizer, stated in his testimony that he had not purchased MBM from the appellant since 1992, i.e. before the appellant began using the machine in issue. Therefore, counsel submitted, it is clear that the machine in issue did not enter into the cost of manufacture of fertilizer.

The Tribunal concludes that the machine in issue should be classified under tariff item No. 8419.89.40 as other mechanically operated machinery, plant or laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, drying or cooling. The Tribunal comes to this conclusion bearing in mind that it is the legislation and the principles applicable to the interpretation of the legislation, including those set out in the *General Rules for the Interpretation of the Harmonized System*[4] (the General Rules), that must govern the classification of the machine in issue. The Tribunal is particularly cognizant of Rule 1 of the General Rules. As noted by the Tribunal in *York Barbell Co. Ltd.* v. *The Deputy Minister of National Revenue for Customs and Excise*,[5] Rule 1 of the General Rules is of the utmost importance when classifying goods under the *Harmonized Commodity Description and Coding System*.[6] Rule 1 states that classification is first determined by the wording of the tariff headings and any relative Section or Chapter Notes. In this case, the Tribunal must, therefore, first consider the wording of heading Nos. 84.19 and 84.38.

In considering the wording of heading No. 84.19, the evidence shows that, when the tankage passes through the machine in issue, the temperature of the tankage is reduced by roughly one third and that the moisture content is reduced by almost half. Thus, the machine in issue treats the tankage by means of a process which involves the cooling of that material. The Tribunal notes that the wording of heading No. 84.19 also contemplates a process of drying, which the machine in issue also performs. Therefore, the Tribunal finds that the machine in issue meets the description of the heading.

The Tribunal is of the view that the machine in issue is also described by the wording of heading No. 84.38, to the extent that the evidence shows that it is machinery that is used for the preparation or manufacture of food, i.e. animal feed. However, the wording of that heading includes the proviso that the product being classified is also not specified or included elsewhere in Chapter 84. As indicated above, the Tribunal is of the opinion that the machine in issue meets the description of heading No. 84.19. Thus, as the machine in issue is specified or included elsewhere in Chapter 84, it is not properly classified in heading No. 84.38.

Even if this proviso were not in heading No. 84.38, the Tribunal is of the view that the machine in issue should still be classified in heading No. 84.19 because of Note 2 to Chapter 84. This note states that,

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4. *Supra* note 2, Schedule I.
5. 5 T.C.T. 1150, Appeal No. AP-91-131, March 16, 1992.
6. Customs Co-operation Council, 1st ed., Brussels, 1987.

subject to Note 3 to Section XVI, a machine that meets the description of one of heading Nos. 84.01 to 84.24 and, at the same time, that meets the description of one of heading Nos. 84.25 to 84.80 is to be classified in the appropriate heading of the former group and not the latter. In this appeal, Note 3 to Section XVI is not applicable, as the Tribunal is not dealing with a composite machine, and, therefore, Note 2 to Chapter 84 directs that the machine in issue be classified in heading No. 84.19.

With respect to the machine in issue qualifying for the benefits of Code 0300, the Tribunal is of the view that, in general, Schedule II to the *Customs Tariff* reflects the intention of Parliament to provide concessions in specific cases to certain importers for specific goods that are enumerated in Schedule II. With respect to Code 0300, the intention is to provide a benefit in respect of goods that enter into the cost of manufacture of fertilizers. The Tribunal notes that the wording of this code specifically refers to the manufacture of fertilizers. The evidence shows that the machine in issue is used to manufacture MBM, not fertilizer. In these circumstances, the Tribunal agrees with counsel for the respondent that, as the appellant itself does not manufacture fertilizer, the machine in issue does not enter into the cost of manufacture of fertilizers for purposes of Code 0300. In addition, the evidence shows that the only company that has bought the appellant's MBM to make fertilizer from it, among other things, is Dr. Schmidt's company and then only for research, development and test marketing. Furthermore, it is the MBM, not the machine in issue, that enters into Dr. Schmidt's cost of manufacture. The Tribunal is of the view that the extent and nature of such use are too remote for the Tribunal to conclude that the appellant's MBM entered into the cost of manufacture of fertilizers sufficiently to come within the ambit of the Code 0300. Therefore, the Tribunal is of the opinion that the machine in issue does not qualify for the benefits of Code 0300.

Accordingly, the appeal is allowed in part.

Anita Szlazak
Anita Szlazak
Presiding Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Desmond Hallissey
Desmond Hallissey
Member