

Ottawa, Friday, February 14, 1997

Appeal No. AP-95-254

IN THE MATTER OF an appeal heard on November 14, 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 November 23, 1995, with respect to a
request for re-determination under section 63 of the *Customs Act*.

BETWEEN

**GRINNELL CORP. OF CANADA LTD.
DBA GRINNELL FIRE PROTECTION**

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Lyle M. Russell
Lyle M. Russell
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-95-254

**GRINNELL CORP. OF CANADA LTD.
DBA GRINNELL FIRE PROTECTION**

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal heard by way of video conference in Hull, Quebec, and Vancouver, British Columbia, under section 67 of the *Customs Act* from a decision of the Deputy Minister of National Revenue under subsection 63(3) of the *Customs Act*. The issue in this appeal is whether fabricated pipe assemblies comprising a number of components, including pipe, pipe fittings, sprinkler heads and valves, ultimately to be incorporated into or used in the installation of a fire sprinkler system, are properly classified under various tariff items in Chapters 34, 38, 39, 40, 74, 82, 83 and 85 according to their nature or material content, as determined by the respondent, or should be classified under tariff item No. 8424.89.00 as other mechanical appliances for projecting, dispersing or spraying liquids or powders, as claimed by the appellant.

HELD: The appeal is allowed. Relying on Rule 2 (a) of the *General Rules for the Interpretation of the Harmonized System*, which allows for the inclusion in a heading of articles named in the heading which are presented unassembled, and on Part (E) of the *Explanatory Notes to the Harmonized Commodity Description and Coding System* (the Explanatory Notes) to heading No. 84.24, which specifies that irrigation systems, consisting of various components linked together by underground piping, are to be treated as functional units within the meaning of Note 4 to Section XVI, the Tribunal is persuaded that the goods in issue may be treated as an entity in heading No. 84.24. Having made that determination, the Tribunal must consider whether they constitute “fire extinguishers” or “[m]echanical appliances ... for spraying liquids.”

The Tribunal noted that the Explanatory Notes to heading No. 84.24 provide that it covers only fire extinguishers of “the kind which use foam-producing or other charges.” The reference to “charges” suggested to the Tribunal that a fire extinguisher in heading No. 84.24 is a self-contained unit and not a system like that under appeal which is supplied with water from a municipal water main. For this reason, and because nowhere in the technical literature submitted in relation to automatic fire extinguishing sprinkler systems are they called simply “fire extinguishers,” the Tribunal finds that the goods in issue should not be classified as fire extinguishers in heading No. 84.24.

The Tribunal referred to the Explanatory Notes to heading No. 82.10, which, like heading No. 84.24, covers certain mechanical appliances, and, in particular, to the following definition of “mechanical appliance”: “an appliance is regarded as mechanical if it has such mechanisms as crank-handles, gearing, Archimedean screw-actions, pumps, etc.” Based on this definition, the evidence that at least some of the components of the fire extinguishing system and, in particular, the valves, if not the sprinkler heads, could be considered mechanical appliances in their own right, and the fact that the system as a whole is akin to the irrigation systems, which are clearly intended to fall under the provision for mechanical appliances in heading No. 84.24, the Tribunal concludes that the goods in issue should be classified as mechanical appliances for spraying liquids.

Places of Video Conference

Hearing: Hull, Quebec, and Vancouver, British Columbia
Date of Hearing: November 14, 1996
Date of Decision: February 14, 1997

Tribunal Members: Lyle M. Russell, Presiding Member
Arthur B. Trudeau, Member
Charles A. Gracey, Member

Counsel for the Tribunal: Shelley Rowe

Clerks of the Tribunal: Anne Jamieson and Margaret Fisher

Appearances: Douglas J. Bowering, for the appellant
Ian McCowan, for the respondent

**GRINNELL CORP. OF CANADA LTD.
DBA GRINNELL FIRE PROTECTION**

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: LYLE M. RUSSELL, Presiding Member
ARTHUR B. TRUDEAU, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal heard by way of video conference in Hull, Quebec, and Vancouver, British Columbia, under section 67 of the *Customs Act*¹ (the Act) from a decision of the Deputy Minister of National Revenue under subsection 63(3) of the Act. The issue in this appeal is whether fabricated pipe assemblies comprising a number of components, including pipe, pipe fittings, sprinkler heads and valves, ultimately to be incorporated into or used in the installation of a fire sprinkler system, are properly classified under various tariff items in Chapters 34, 38, 39, 40, 74, 82, 83 and 85² of Schedule I to the *Customs Tariff*³ according to their nature or material content, as determined by the respondent, or should be classified under tariff item No. 8424.89.00⁴ as other mechanical appliances for projecting, dispersing or spraying liquids or powders, as claimed by the appellant. The appellant's representative conceded that, if the Tribunal did not find that the goods in issue should be classified as a complete fire sprinkler system, he would not dispute the various tariff items used by the respondent.

Mr. Brian Chobotar, District Design Manager for Grinnell Fire Protection, appeared as a witness for the appellant in Vancouver. He explained that, once the design of the fire sprinkler system is complete, a fabrication list is computer generated, and the requisite pipes and fittings are prefabricated and assembled by a US company and imported into Canada in one shipment. Based on the fabrication list, the fabrication plant cuts the pipe to required lengths, puts the proper end treatments on the pipes, assembles fittings onto the pipes and bundles the pipes to be transported directly to the site where they will be installed. Every fire

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1. R.S.C. 1985, c. 1 (2nd Supp.).
 2. Tariff item Nos. 3403.19.90, 3820.00.00; 3823.90.90; 3920.99.00; 4016.93.00; 7020.00.90; 7306.30.00; 7308.90.90; 7315.89.20; 7318.15.00; 7318.16.00; 7326.90.99; 7307.19.90; 7307.91.91; 7307.92.10; 7307.93.10; 7307.99.91; 73.18.19.00; 7419.99.90; 8204.11.00; 8310.00.00; 8481.30.90; 8481.80.91; 8481.90.10; 8531.10.90; and 8536.50.99.
 3. R.S.C. 1985, c. 41 (3rd Supp.).
 4. 84.24 Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines.
...
-Other appliances:
...
8424.89.00 --Other

sprinkler system includes at least one butterfly valve and at least two check valves to shut off the main water supply and may include additional valves, such as isolation valves. He indicated that it would be impossible to preassemble all the components prior to importation. While the goods in issue could be used with foam, he stated that they were not intended to be used with foam.

Mr. Chobotar described the functioning of the sprinkler heads. In the solder-type sprinkler head, there is a two-piece, cup-like structure containing a solder. When the solder heats up and melts, the two pieces of the outside cup-like structure separate, and the water in the pipe forces a button and gasket away so that there is an open waterway. Similarly, with the bulb-type sprinkler head, the bulb when heated shatters, falls away and the water forces a button and gasket away. In cross-examination, he confirmed that the only moving parts in the sprinkler heads are the solder and bulb and the button and gasket.

Some of the components for the fire sprinkler system, such as electrical flow and pressure switches, are purchased locally. However, Mr. Chobotar confirmed that the fire sprinkler system would still function without the electronic monitoring components.

Dr. Peter Frise appeared on behalf of the appellant in Hull and was accepted by the Tribunal as an expert witness in the area of mechanical engineering. In referring to some literature on butterfly valves,⁵ which are a type of shut-off valve, and check valves,⁶ which control the direction of flow, Dr. Frise suggested that those or similar valves used in fire sprinkler systems to control the flow and rate of flow are mechanical appliances.

Dr. Frise indicated that he had examined both types of sprinkler head. He explained that both devices could be threaded onto the end of a pipe containing water at pressure and that they would stop the flow of the water unless either the little glass bulb burst on the bulb-type sprinkler head or the solder between the two metal pieces on the solder-type sprinkler head melted. Once the bulb bursts or the solder melts, as the case may be, the water, which is under pressure from an external municipal water supply, flows from the valve, and the water hits a plate in the sprinkler heads which causes it to spray all around. The sprinkler heads remain open and new sprinkler heads are, therefore, normally installed to make the system operational again after a fire. In Dr. Frise's view, both types of sprinkler head are appliances, within the meaning of "appliance" as "an instrument, apparatus or device for a particular purpose or use"⁷ provided by the appellant's representative, and are mechanical.

Dr. Frise was of the view that the solder-type sprinkler head met the description in the following opinion from the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*⁸ (the Classification Opinions) which provides that spray heads for fire extinguishing systems are classified in subheading No. 7419.99:

Spray heads for fire extinguishing systems, consisting of a brass casing with a tube screwing into the conduits of the systems, sealed by a metal capsule held in place by a calibrated eutectic alloy insert which melts when heated, thus allowing the capsule to fall away; water then spurts against a deflector plate under the head.

5. Exhibit A-1.

6. Exhibit A-2.

7. *Webster's Encyclopedic Unabridged Dictionary of the English Language* (New York: Portland House, 1989) at 73.

8. Customs Co-operation Council, 1st ed., Brussels, 1987.

In cross-examination, Dr. Frise was asked to opine whether three other goods, namely, residential plumbing, a silo and a ratchet tie-down, are mechanical appliances. In Dr. Frise's opinion, these goods are mechanical appliances.

With respect to the piping, Dr. Frise stated that its purpose is to conduct the fluid throughout the building to the sprinkler heads to make sure that all parts of the building have water. Dr. Frise was of the view that the pipes without the sprinkler heads and the sprinkler heads without the pipes would not constitute a fire sprinkler system. In his view, the valve at the end of the pipe is required to control the flow of water until it is needed, and the whole thing is a system. He was of the view that, until there is motion within the system, the system is not doing work, but that there is potential energy. He agreed that the sprinkler system is comprised of a more or less complex combination of moving and stationary parts. However, he also agreed with counsel for the respondent that, other than in the instance of fire, there were no moving parts.

Dr. Frise referred to various provisions in the *Fire Protection Handbook*⁹ relating to sprinkler systems. In particular, he cited the following from a portion of the book entitled "Standardizing Sprinkler Installations":

The terms sprinkler protection, sprinkler installations, and sprinkler systems usually signify a combination of water discharge devices (sprinklers), one or more sources of water under pressure, water-flow controlling devices (valves), distribution piping to supply the water to the discharge devices, and auxiliary equipment, such as alarms and supervisory devices.¹⁰

Dr. Frise also referred to the following description of a sprinkler system in the 1984 edition of NFPA 13D, *Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Mobile Homes*, prepared by the Technical Committee on Automatic Sprinklers:

An integrated system of piping connected to a water supply, with listed sprinklers which will automatically initiate water discharge over a fire area. When required, the sprinkler system also includes a control valve and a device for actuating an alarm when the system operates.¹¹

The appellant's representative argued that the goods in issue should be classified as a complete fire sprinkler system imported in an unassembled state and qualifying as a mechanical appliance for projecting, dispersing or spraying liquids or powders. In support of his position, he relied on Rule 2 (a) of the *General Rules for the Interpretation of the Harmonized System*¹² which allows for the inclusion in a heading of incomplete or unfinished goods which have the essential character of the finished goods, as well as a complete or finished article presented unassembled or disassembled. He further relied on the *Explanatory Notes to the Harmonized Commodity Description and Coding System*¹³ (the Explanatory Notes) to Section XVI. He referred to Part (V) of the Explanatory Notes to Section XVI which covers unassembled machines and refers to Rule 2 (a) of the General Rules. Part (V) states, in part, that, "[f]or convenience of transport many machines and apparatus are transported in an unassembled state. Although in effect the goods are then a collection of parts, they are classified as being the machine in question and not in any separate heading for parts." He also referred to Part (VII) which covers functional units and refers to Note 4 to Section XVI. Note 4 provides as follows:

9. Fifteenth ed. (Quincy, Mass.: National Fire Protection Association).

10. *Ibid.* at 17-4.

11. NFPA 13D, 1984 ed. at 13D-6.

12. *Supra* note 3, Schedule I.

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

Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.

Part (VII) provides as follows:

This Note applies when a machine (including a combination of machines) consists of separate components which are intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or, more frequently, Chapter 85. The whole then falls to be classified in the heading appropriate to that function, whether the various components (for convenience or other reasons) remain separate or are interconnected by piping (carrying air, compressed gas, oil, etc.), by devices used to transmit power, by electric cables or by other devices.

With respect to the term “mechanical appliance,” the appellant’s representative referred to the Supplementary Note to Section XVI which provides that, in Section XVI, “the term ‘mechanically operated’ refers to those goods which are comprised of a more or less complex combination of moving and stationary parts and do work through the production, modification or transmission of force and motion.” In *Canadian Tire Corporation Ltd. v. The Deputy Minister of National Revenue*,¹⁴ the Tribunal stated, in reference to this supplementary note, that “this wording is similar to the definition of the word ‘machine,’ which has been adopted by the Federal Court of Appeal.¹⁵” In the representative’s view, the finished article, the fire sprinkler system, is comprised of a more or less complex combination of moving and stationary parts and do work through the production, modification or transmission of force and motion and is, therefore, a mechanical appliance or apparatus.

The appellant’s representative also referred to definitions of a “fire extinguisher”¹⁶ and submitted that the goods in issue, in their assembled state, are not fire extinguishers, as they are not filled with chemicals and are not a small or portable container.

The appellant’s representative accepted that Part (V) of the Explanatory Notes to Section XVI provides that “unassembled components in excess of the number required for a complete machine or for an incomplete machine having the characteristics of a complete machine, are classified in their own appropriate heading.” He submitted that the “number required” would qualify as components of the complete machine and that the importer would be liable to submit notice of diversion should there be an excess.

The appellant’s representative referred the Tribunal to Part (E) of the Explanatory Notes to heading No. 84.24 which covers irrigation systems and provides, in part, as follows:

These irrigation systems, consisting of various components linked together usually include:

- (i) a control station (mesh filters, fertiliser injectors, metering valves, non-return valves, pressure regulators, pressure gauges, air vents, etc.);
- (ii) an underground network (distribution lines and branchlines which carry the water from the control station to the irrigation zone); and

14. Canadian International Trade Tribunal, Appeal No. AP-94-157, October 12, 1995.

15. *Ibid.* at 4.

16. See *Transcript of Public Argument*, November 14, 1996, at 3-4: “A portable or wheeled apparatus for putting out small fires by ejecting fire-extinguishing chemicals”; and “A portable container, usually filled with special chemicals for putting out a fire.”

(iii) a surface network (dripper lines incorporating the drippers).

Such systems are classified in this heading as functional units within the meaning of Note 4 to Section XVI.

He observed that there is a similarity between the goods described in these notes and fire sprinkler systems comprised of the goods in issue and submitted that irrigation systems are akin to fire sprinkler systems. Since irrigation systems are included in heading No. 84.24, so too should the goods in issue.

In further support of classifying the goods in issue as fire sprinkler systems, the appellant's representative referred to the Tribunal's decision in *Frontier Distributing O/B 531442 Ontario Inc. v. The Deputy Minister of National Revenue for Customs and Excise*¹⁷ that an outer envelope, a return envelope, a return order card and a six-page advertising letter were properly classified under tariff item No. 4911.10.91 as advertising material rather than under tariff item No. 4907.00.90 as stamped envelopes. The Tribunal reasoned that "each item is essential to the package and that no single item has any apparent usefulness unless combined with the other items"¹⁸ and that "they represent part of an advertising package that was presented upon importation in an unassembled state."¹⁹

Counsel for the respondent also referred to the definition of "mechanical appliance" in *Canadian Tire*. However, he did not agree that the goods in issue are mechanical appliances. In counsel's view, the pipe assemblies in issue, which contain water under pressure supplied by the municipal water service, do not have moving parts and do not produce, modify or transmit force and motion. Once installed in a building, the goods in issue are passive and do not incorporate a pump or other machine which would cause them to be considered a mechanical apparatus. Counsel submitted that it is the water which does the work and that there is nothing within the system which does work. Counsel referred to the two states of the goods in issue: operational and operating. Counsel submitted that, when the goods in issue are operational, that is, not in operation, the only parts which could conceivably move are the valves. However, during most of the time that the goods in issue are operational, there is no movement. When the goods in issue are operating, there are only a few additional parts which move, for example, the solder, bulb and button. In counsel's view, the limited number of moving parts, combined with the fact that the goods in issue rarely, and sometimes, never operate, supports the conclusion that they are not mechanical appliances.

Counsel for the respondent submitted that the Tribunal should not accept the opinion of Dr. Frise that a mechanical appliance need not have moving parts, as it is contrary to the scheme of the *Customs Tariff* and the Explanatory Notes which require that there be moving parts. Moreover, counsel referred to the following opinion from the Classification Opinions which provides that spray heads for fire extinguishing systems are classified under subheading 7419.99:

Spray heads for fire extinguishing systems, consisting of a brass casing with a tube screwing into the conduits of the systems, sealed by a metal capsule held in place by a calibrated eutectic alloy insert which melts when heated, thus allowing the capsule to fall away; water then spurts against a deflector plate under the head.

Counsel submitted that spray heads are essential parts of fire sprinkler systems and that such heads would have been classified in heading No. 84.24 as parts of mechanical appliances if the Customs Co-operation Council had considered fire extinguishing systems to be mechanical appliances for spraying liquids.

17. Appeal No. AP-92-206, December 20, 1993.

18. *Ibid.* at 3.

19. *Ibid.*

Counsel for the respondent referred to examples of other goods, namely, coffee silos and ratchet tie-downs, which, he submitted, are analogous to fire extinguishing systems, but which are not classified as mechanical appliances. There is an opinion from the Classification Opinions which indicates that goods which consist of “a steel container in the shape of a polyhedron partitioned vertically into cells, each cell being fitted at the base with a device (electro-magnetic or operated by a hand lever according to the type of silo) for closing and opening the orifice through which the coffee is distributed, but having no other mechanical equipment” are to be classified in heading No. 73.09. Heading No. 73.09 includes “[r]eservoirs, tanks, vats and similar containers for any material ..., of iron or steel, of a capacity exceeding 300 litres.” In *Canper Industrial Products Ltd. v. The Deputy Minister of National Revenue*,²⁰ the Tribunal found that ratchet tie-downs do not satisfy the elements of the definition of machine, i.e. a machine is comprised of a more or less complex combination of moving and stationary parts and works through the production, modification or transmission of force and motion.

Counsel for the respondent also referred to the Explanatory Notes to heading No. 82.10, which covers hand-operated mechanical appliances, for guidance. The Explanatory Notes provide that, for the purposes of that heading, “an appliance is regarded as mechanical if it has such mechanisms as crank-handles, gearing, Archimedean screw-actions, pumps, etc.; a simple lever or plunger action is not in itself, however, regarded as a mechanical feature ... unless the appliance is designed for fixing to a wall or other surface, or is fitted with base plates, etc., for standing on the table, on the floor, etc.” In counsel’s view, the goods in issue do not meet this description.

In the alternative, counsel for the respondent submitted that, if the Tribunal finds that the goods in issue should be classified in heading No. 84.24, they should be classified as fire extinguishers.

The Tribunal is directed by section 10 of the *Customs Tariff* to classify goods in accordance with the General Rules and the *Canadian Rules*.²¹ Rule 1 of the General Rules provides that classification is to 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 provisions set out in Rules 2 through 6, as well as the *Canadian Rules* which follow. The Tribunal is further directed by section 11 of the *Customs Tariff* to consider the Explanatory Notes as a guide to the interpretation of the headings and subheadings in Schedule I to the *Customs Tariff*. Thus, the Tribunal must first consider whether the goods in issue fall within heading No. 84.24 or the various headings proposed by the respondent, as interpreted with the aid of the relative Section or Chapter Notes and the Explanatory Notes.

Heading No. 84.24 covers “[m]echanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines.” The appellant’s representative has argued that the goods in issue fall within that portion of the heading covering mechanical appliances for projecting, dispersing or spraying liquids. Counsel for the respondent submitted that, if the Tribunal finds that the goods in issue should be classified in heading No. 84.24, they should be classified as fire extinguishers and not as mechanical appliances. In view of the specific reference to “fire extinguishers” in heading No. 84.24 and the Tribunal’s decision in *Integrated Protection Inc. v. The Deputy Minister of National Revenue*,²² which was issued after the Tribunal’s hearing in this appeal, the Tribunal will also consider whether the goods in issue fall under this provision.

20. Canadian International Trade Tribunal, Appeal No. AP-94-034, January 24, 1995.

21. *Supra* note 3, Schedule I.

22. Appeal No. AP-95-240, February 7, 1997.

There is no dispute between the parties that the goods in issue constitute all the components necessary to construct a functioning fire extinguishing system. The parties disagree on whether the fire extinguishing system should be treated as a single entity or appliance for customs purposes. The definition of “appliance” used by Dr. Frise, an apparatus for a particular purpose or use, does not limit the term to self-contained devices and would appear broad enough to encompass even very large fire sprinkler systems incorporating several kilometres of piping. Rule 2 (a) of the General Rules allows for the inclusion in a heading of articles named in the heading which are presented unassembled. Part (E) of the Explanatory Notes to heading No. 84.24 specifies that irrigation systems, consisting of various components linked together by underground piping, are to be treated as functional units within the meaning of Note 4 to Section XVI. All this persuades the Tribunal that the goods in issue may be treated as an entity for classification purposes. It remains to be determined whether they constitute “fire extinguishers” or “[m]echanical appliances ... for spraying liquids.”

The Tribunal agrees with counsel for the respondent that, if fire sprinkler systems were intended to fall within heading No. 84.24, a logical place to look for some reference to them would be in the section of the Explanatory Notes dealing with fire extinguishers. It does not necessarily follow that the absence of such a reference means that they are excluded from other parts of the heading. The Explanatory Notes do not categorically support the view of the appellant’s representative that the only fire extinguishers covered by that term are self-contained or portable ones charged with chemicals. They do, however, make it clear that the expression “fire extinguishers” does not refer to all firefighting equipment nor, indeed, to all kinds of fire extinguishers. Fire extinguishing grenades and firefighting pumps with or without internal reservoirs are specifically excluded from the heading, and the only extinguishers covered are “the kind which use foam-producing or other charges.” The reference to “charges” suggested to the Tribunal that a fire extinguisher in heading No. 84.24 is a self-contained unit and not a system like that under appeal which is supplied with water from a municipal water main. For this reason, and because nowhere in the technical literature submitted in relation to automatic fire extinguishing sprinkler systems are they called simply “fire extinguishers,” the Tribunal cannot accept counsel’s argument that, if the goods in issue should be classified in heading No. 84.24, they should be classified under tariff item No. 8424.10.00.

While the term “mechanical appliance” is not specifically defined in the relative Section or Chapter Notes and the Explanatory Notes, these notes do provide some guidance. In particular, the Tribunal notes that Note 5 to Section XVI provides that, for the purposes of those notes, the expression “machine” means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85. This is significant because it means that any discussion in the notes concerning machines may apply equally to consideration of mechanical appliances. The appellant’s representative referred to several notes relating to machines, and counsel for the respondent drew to the Tribunal’s attention the fact that the term “mechanical appliance” also appears in heading No. 82.10, the Explanatory Notes to which state that “an appliance is regarded as mechanical if it has such mechanisms as crank-handles, gearing, Archimedean screw actions, pumps, etc.” In the context of heading No. 84.24, the Tribunal finds this note to be more to the point than the definition of “mechanically operated” in the Supplementary Note to Section XVI which has previously been applied by the Tribunal²³ and by the Federal Court of Appeal:²⁴ “a more or less complex combination of moving and stationary parts and do work through the production, modification or transmission of force and motion.”

23. *Jascor Home Products Inc. v. The Deputy Minister of National Revenue*, Appeal No. AP-95-277, December 3, 1996; *Canadian Tire*, *supra* note 14; and *Canper Industrial*, *supra* note 20.

24. *Ingersoll-Rand Door Hardware Canada Inc. v. The Deputy Minister of National Revenue for Customs and Excise*, 15 C.E.R. 47, File No. A-503-86, October 21, 1987.

Counsel for the respondent asserted that both definitions cited above imply a higher degree of mechanization than found in the fire extinguishing sprinkler systems under consideration in this appeal. However, the evidence of the expert witness was to the opposite effect. It is clear from the evidence that at least some of the components and, in particular, the valves, if not the sprinkler heads, could be considered mechanical appliances in their own right. The system as a whole is akin to the irrigation systems which are clearly intended to fall under the provision for mechanical appliances in heading No. 84.24 and, thus, the Tribunal concludes that the fire extinguishing sprinkler systems are also mechanical appliances within the meaning of that heading and should be classified under tariff item No. 8424.89.00. The Tribunal does not attach any weight to the opinion from the Classification Opinions cited by counsel to support classification of the sprinkler heads and other components in various headings according to their constituent material or individual nature because the context in which this opinion was rendered is not known. The computer-aided design technology which permits the appellant to order a ready-made sprinkler system from a foreign supplier is a fairly recent innovation, and it is not at all clear that the sprinkler head considered by the Customs Co-operation Council was presented to the relevant customs authority as part of such an integrated system.

Accordingly, the appeal is allowed.

Lyle M. Russell
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Presiding Member

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Charles A. Gracey
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