



Ottawa, Monday, April 9, 2001

Appeal No. AP-99-045

IN THE MATTER OF an appeal heard on July 21, 2000, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue dated May 13 and 19, 1999, with respect to a request for redetermination under section 63 of the *Customs Act*.

BETWEEN

PRINS GREENHOUSES LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed in part.

Richard Lafontaine

Richard Lafontaine
Presiding Member

Peter F. Thalheimer

Peter F. Thalheimer
Member

James A. Ogilvy

James A. Ogilvy
Member

Susanne Grimes

Susanne Grimes
Acting Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-99-045

PRINS GREENHOUSES LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

There are three issues in this appeal. The first issue is whether the goods in issue form an integrated greenhouse system and are properly classified under tariff item No. 8403.10.10 as central heating boilers other than those of heading No. 84.02, as determined by the respondent, or should be classified under tariff item No. 8436.80.10 as other agricultural or horticultural type of machinery, as claimed by the appellant. The second issue is whether the goods in issue, if classified under tariff item No. 8436.80.10, qualify for the benefits of Code 2000. The third issue is whether the flue gas condenser is properly classified under tariff item No. 8403.90.00 as parts of central heating boilers other than those of heading No. 84.02, as determined by the respondent, or should be classified under tariff item No. 8421.39.90 as other filtering or purifying machinery and apparatus for gases, as claimed by the appellant.

HELD: The appeal is allowed in part. With respect to the first issue, the evidence and testimony clearly indicate that the goods in issue are marketed and sold as a complete climate and environmental control system for greenhouses and not as individual components. The climate and environmental control system regulates CO₂ and heat to maximize plant growth and productivity. The components cannot fulfill this function without each other and are functionally linked within the system to ensure plant growth. The Tribunal is persuaded that the goods in issue form an integrated greenhouse system that is a “functional unit” as described in Part VII of the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to Section XVI and should be classified under tariff item No. 8436.80.10 as other agricultural or horticultural type of machinery.

For the goods in issue to qualify for duty relief, the Tribunal must determine whether the components that comprise the integrated greenhouse system are “articles”, whether they are “for use in” the integrated greenhouse system and whether the integrated greenhouse system is classified under a tariff item listed in that code. The Tribunal is persuaded that the goods in issue that form the integrated greenhouse system are “articles”. The Tribunal is also persuaded that the goods in issue are “for use in” the integrated greenhouse system, as they are functionally part of it. Therefore, as the integrated greenhouse system should be classified under tariff item No. 8436.80.10 and that tariff item is listed under Code 2000, the goods in issue qualify for duty relief.

With respect to the third issue, the Tribunal finds that the flue gas condenser is used to separate liquid particles from gases to recover a product of value, CO₂. The Tribunal is also convinced that the flue gas condenser is not essential to the functioning of the central heating boiler. Therefore, while the flue gas condenser may be attached to the central heating boiler, the Tribunal finds that it is not a part of the boiler. However, the Tribunal determines that the flue gas condenser is one of the imported components whose activity is essential to the basic functioning of the integrated greenhouse system and as such should be classified under tariff item No. 8436.80.10.

Place of Hearing: Vancouver, British Columbia
Date of Hearing: July 21, 2000
Date of Decision: April 9, 2001

Tribunal Members: Richard Lafontaine, Presiding Member
Peter F. Thalheimer, Member
James A. Ogilvy, Member

Counsel for the Tribunal: Michèle Hurteau

Clerk of the Tribunal: Anne Turcotte

Appearances: Michael Sherbo and Neal Hempstock, for the appellant
F.B. (Rick) Woyiwada, for the respondent



Appeal No. AP-99-045

PRINS GREENHOUSES LTD.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: RICHARD LAFONTAINE, Presiding Member
PETER F. THALHEIMER, Member
JAMES A. OGILVY, Member

REASONS FOR DECISION

BACKGROUND

This is an appeal pursuant to section 67 of the *Customs Act*¹ from decisions of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency) made on May 13 and 19, 1999, with respect to the importation of various components, namely, tube rail supports, a flue gas condenser for boiler system, forcas steel pipe, greenhouse heating boilers and ventilation fans. The components were imported in October 1996 and March 1997.

There are three issues in this appeal. The first issue is whether the goods in issue form an integrated greenhouse system and are properly classified under tariff item No. 8403.10.10 of Schedule I to the *Customs Tariff*² as central heating boilers other than those of heading No. 84.02, as determined by the respondent, or should be classified under tariff item No. 8436.80.10 as other agricultural or horticultural type of machinery, as claimed by the appellant. The second issue is whether the goods in issue, if classified under tariff item No. 8436.80.10, qualify for the benefits of Code 2000. The third issue is whether the flue gas condenser is properly classified under tariff item No. 8403.90.00 as parts of central heating boilers other than those of heading No. 84.02, as determined by the respondent, or should be classified under tariff item No. 8421.39.90 as other filtering or purifying machinery and apparatus for gases, as claimed by the appellant.

For the purposes of this appeal, the relevant tariff nomenclature is as follows :

84.03	Central heating boilers other than those of heading No. 84.02.
8403.10	-Boilers
8403.10.10	---Of a kind used for heating buildings, other than domestic
8403.90.00	-Parts
84.21	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases.
8421.10	-Centrifuges, including centrifugal dryers:
8421.30	-Filtering or purifying machinery and apparatus for gases:
8421.39.90	---Other

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

- 84.36 Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders.
- 8436.80 -Other machinery
- 8436.80.10 ---Agricultural or horticultural type

Code 2000 reads, in part:

Articles for use in :

Goods of tariff item No.:

8436.80.10

The parties agreed that the goods in issue fall within the term “article”, as that term is defined,³ and within the meaning of the phrase “for use in”.⁴ The parties also agreed that the goods in issue are “for use in” the system, whatever that system may be.

EVIDENCE

Mr. Peter Reus, President of Prins Greenhouses Ltd., and Mr. Brian Mauza, a consultant to the horticulture industry in the Lower Mainland area of British Columbia, testified on behalf of the appellant. Mr. Mauza was qualified as a horticulturist experienced in the greenhouse production systems in issue.

Mr. Reus testified that the appellant specializes in the construction and installation, on a turnkey basis, of an integrated system for growing commercial greenhouse crops. Mr. Reus explained that, once the greenhouse is built and equipped, the appellant hands over the key to the grower who can bring in plants and start growing them. Mr. Reus testified that the goods that were imported to assemble an integrated greenhouse system consist of the shell, boilers, condensers, carbon dioxide (CO₂) extractors, pipes, supports for the pipes, mixing valves, sensors and computers. He stated that the major function of the boilers, in terms of benefit and cost, is to produce CO₂, which helps plants grow. He also stated that the boiler represents less than 10 percent of the cost of the system.

In cross-examination, Mr. Reus testified that some pipes distribute CO₂, while others distribute hot and cold water. The hot water comes from the boiler and gradually cools down as it goes through the pipes. The integrated system itself has no cooling function. Mr. Reus testified that the flue gas condenser, which is attached to the end of the boiler, is equipped with screens that filter the condensed water, which is then returned to the integrated greenhouse system. The screens do not filter out gaseous particles. He further testified that the ventilation and irrigation systems, both of which he regards as parts of the integrated greenhouse system, regulate humidity in the greenhouse by either adding or removing moisture. The ventilation system is connected to the boiler system by means of sensors and the computer. Mr. Reus testified that the greenhouse is a solar device which accumulates heat, and that therefore the boiler’s function of producing CO₂ for growing plants is more important than the function of producing heat. Mr. Reus agreed that CO₂ production will always be part of or combined with the boiler heating system. The boiler system includes the tank and the burner, the latter being imported separately.

3. “Article” means any finished or semi-finished product which is not considered to be a material. This includes items which are classified as parts, but is not limited to parts. Customs Notice N-278, *Administrative Policy Tariff Item No. 9948.00.00*, Department of National Revenue, 27 April 1999.

4. *Supra* note 2, ss. 2(1).

In response to the Tribunal's questions, Mr. Reus testified that the flue gas condenser takes the flue gases, cools them and thereby separates the gases from the water. He further testified that the flue gas condenser would not be needed for heating the greenhouse; its purpose is strictly to produce CO₂. If there were a separate heating system, Mr. Reus testified, some other system would be needed to produce CO₂. Mr. Reus described the flue gas condenser as having thousands of heat exchanger plates, through which hot flue gases are cooled, and screens that filter the water.

Mr. Mauza provided information on plant photosynthesis, stating that it is essentially a process whereby a plant converts light energy into chemical energy, then uses the chemical energy to make sugars from CO₂. The sugars provide the plant with the nutrients to grow. Mr. Mauza identified what he considered to be three important functions of the greenhouse system in promoting photosynthesis: (1) the generation of CO₂; (2) the control processes and sensors, and the computer system that links the components; and (3) the heating system, which needs to be regulated for plant growth. He stated that the purpose of the system is to maximize plant growth and productivity and minimize the cost of inputs. To maximize growth, one needs to control CO₂, maintain heat in the proper growing range throughout the day and night, adjust the climatic conditions, and control diseases through the use of the heating system. The heating pipes also contribute to productivity in their use as a rail system to transport product and workers in the greenhouse.

Mr. Mauza explained that the products of the combustion of natural gas, i.e. the fuel used in the greenhouse boiler, are CO₂, heat and water vapour. These pass through the flue gas condenser, which acts as a heat exchanger to transfer heat from the gas to the water and to extract warm water as a condensate from the vapour component of the hot flue gases. The heated water may be used to heat the greenhouse or stored for further use.

Mr. Mauza stated that a very high proportion of the available CO₂ is typically recovered for use in the greenhouse. He further testified that, whereas the natural CO₂ content of the atmosphere is approximately 350 ppm, the target level in greenhouses is in the range of 600-1200 ppm. Mr. Mauza stated that it would be the shortage of CO₂, not heat, that would trigger the system to ignite the boiler; if a surplus were created by the process, it would be a surplus of heat rather than CO₂. At the same time, a drop in temperature would affect the amount of CO₂ required to maintain plant growth.

In response to the Tribunal's questions, Mr. Mauza agreed that, if one wanted heat only, there would be no need for a flue gas condenser. The most efficient and economical way of providing both CO₂ and heat is through the use of such a device. With regard to the system as a whole, Mr. Mauza stated that the components would be of little use individually, but were functionally linked within the system and had to be tied to each other to provide the proper degree of control for plant growth.

ARGUMENTS

Appellant's Arguments

With respect to the integrated greenhouse system, the appellant submitted that it consists of the goods in issue – the six imported components - which are interconnected by piping and cables to sensors and a computer and which, together, function as a whole. The goods in issue are not sold as individual components, such as piping, tubing or boilers, but they are marketed and sold as a complete climate or environmental control system. The function of the integrated greenhouse system is to monitor and distribute CO₂ and heat to ensure optimal plant growth. Without each component, the integrated greenhouse system would not function as a whole.

The appellant argued that Note 4 of the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁵ to Section XVI provides for the classification of systems. Note 4 states :

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.

The appellant relied on Part VII of the Explanatory Notes to Section XVI, entitled “Functional Units”, to argue that the integrated greenhouse system is a functional unit, as it consists of separate components, such as a boiler, a computer, piping, pumps, valves and a flue gas condenser, which are interconnected by piping and electric cables. Moreover, the goods in issue are “intended to contribute together to a clearly defined function”, which is to control and regulate the complete environment or climate of a greenhouse and to provide the conditions for optimal plant growth. The appellant argued that the system falls within the definition of machine found in Notes 4 and 5 of the Explanatory Notes to Section XVI, which is anything listed in one of the headings of Chapter 84. The appellant submitted that the system falls within the definition of agricultural or horticultural type of machinery. Consequently, the integrated greenhouse system is a machine, which should be classified as other agricultural or horticultural type of machinery found at tariff item No. 8436.80.10.

The appellant argued that the integrated greenhouse system functions as a system that generates CO₂, produces heat and controls the environment to ensure optimal plant growth. The goods in issue cannot be classified in heading No. 84.03 as a central heating boiler, as the integrated greenhouse system is much more than a boiler. It submitted that a CO₂ generator would be classified under classification No. 8405.10.00.10 as CO₂ generators to be employed in controlling the atmosphere in greenhouses or in storage plants for fresh fruit or fresh vegetables. The appellant further submitted that there is no classification for a complete integrated greenhouse system as there is for CO₂ generators to control the atmosphere in greenhouses. Heading No. 84.36, it argued, basically covers what this system does.

With respect to whether the goods in issue qualify for the benefits of duty relief under Code 2000, the appellant submitted that three conditions must be met for the goods in issue to benefit from duty relief: (1) the goods must be “articles”; (2) the goods must be “for use in”; and (3) the goods must be “articles for use in” an item listed in that code.⁶ It submitted that all three conditions were met, as the imported goods are “articles for use in”⁷ an integrated greenhouse system, which should be classified as other agricultural or horticultural type of machinery under tariff item No. 8436.80.10.

With respect to the classification of the flue gas condenser, the appellant submitted that some of the most important functions of the flue gas condenser were to cool the CO₂, so that it can be recirculated to the plants, and to recover heat in the form of liquid. The appellant relied on Part (II)(B) of the Explanatory Notes to heading No. 84.21, entitled “Filtering or purifying machinery, etc., for gases”, to argue that the flue gas condenser separates liquid particles from gases to recover heat, which is a product valuable to the integrated greenhouse system. Therefore, the flue gas condenser is more properly classified under tariff item No. 8421.39.90 as other filtering or purifying machinery and apparatus for gases. In response to the respondent’s argument that the flue gas condenser does not fall within heading No. 84.21 because it is not

5. Customs Co-operation Council, 2d ed., Brussels, 1996 [hereinafter Explanatory Notes].

6. See *Asea Brown Boveri v. DMNR* (21 December 1999), AP-97-137 (CITT); and *Sony of Canada v. DMNR* (12 December 1996), AP-95-262 (CITT).

7. *Supra* notes 4, 5 and 6.

complex enough, the appellant submitted that the complexity of the goods in issue is not the basis on which they should be classified and that nothing in the Explanatory Notes to that heading suggests that the goods in issue must be complex to be classified in heading No. 84.21. Further, if the flue gas condenser is a part of the central boiler, as argued by the respondent, the appellant submitted that, in classifying a part in either Chapter 84 or 85, one must rely on the section notes. Even if it were a part, based on Note 2(a) of the Explanatory Notes to Section XVI, it argued, the flue gas condenser remains classified as a filtering or purifying apparatus in heading No. 84.21. However, in order for a product to be a part, it has to be essential for the functioning of the machine, the appellant argued. The product might make the machine more efficient, but it is not required; if it is not required, the appellant submitted, the product is not a part.

Respondent's Arguments

The respondent argued that the integrated greenhouse system is a collection of components, which consists of a tank, a burner, pipes and a condenser, and is classifiable as both agricultural machinery and a central heating boiler system. The system's main function is to heat a greenhouse, which is what a central heating boiler does. The respondent relied on the Explanatory Notes to heading No. 84.03 to argue that the central heating boiler is used for heating greenhouses by circulation of water. The Explanatory Notes to heading No. 84.03 refer to greenhouse boilers and state, in part:

This heading includes **central heating boilers** of any size . . ., using any type of fuel . . ., for heating houses, flats, factories, workshops, greenhouses, etc., by circulation of water.

The secondary function of the central heating boiler system, the respondent submitted, is to produce CO₂, a by-product of the production of heat that helps plants grow. The respondent argued that, where a central heating boiler is used in a house or factory, the flue gases would be allowed to escape into the atmosphere and that no attempt would be made to collect the CO₂, as there would be no application for this by-product. The goods in issue do not have one clearly defined function, but rather two clearly defined functions and, as such, the classification would be governed by Note 2 to Chapter 84. The best case scenario for the appellant, in the respondent's submission, is that the goods in issue are both agricultural machinery classified under tariff item No. 8436.80.10 and a central heating boiler system classified under tariff item No. 8403.10.10. If the system is both agricultural machinery and a central heating boiler system, then Note 2 states that, where a machine or appliance answers to two different descriptions, the description of goods of heading Nos. 84.01 to 84.24 takes precedence over the description of goods of heading Nos. 84.25 to 84.80. Therefore, the goods would be classified as a central heating boiler system in heading No. 84.03, which takes precedence over agricultural machinery found at heading No. 84.36. The respondent argued that, if the goods were imported as an entire system, this system must be classified in the heading that best describes its functions, which, in this case, is a central heating boiler, the main component of an integrated greenhouse system used for heating greenhouses. Consequently, as the system falls within heading No. 84.03, which is not listed in Code 2000, the benefits of duty-free importation do not apply to the goods in issue.

With respect to the flue gas condenser, the respondent argued that it cannot be classified in heading No. 84.21 as filtering or purifying machinery or apparatus for liquids or gases, because it lacks the complexities and characteristics of purifying or filtering machinery for gases, as described in the Explanatory Notes to heading No. 84.21. Part (II)(B) of those notes states, in part :

These gas filters and purifiers are used to separate solid or liquid particles from gases, either to recover products of value . . ., or to eliminate harmful materials.

The respondent argued that the flue gas condenser neither filters nor purifies and is not covered by the Explanatory Notes, as the flue gas condenser is not used to separate solid or liquid particles from gases

to recover products of value. Its purpose is to cool the CO₂. Although a natural by-product of the cooling process is water condensation that must be disposed of, the respondent argued that that is not the purpose of the machine. Further, the CO₂ enters the flue gas condenser and does not need to be extracted. In the respondent's submission, the flue gas condenser must be classified as a part of the central heating boiler, as it is attached to the boiler and is part of the functioning of the central heating boiler. The respondent also relied on Note 2(b) of the Explanatory Notes to Section XVI, which states that parts that are for use solely with a particular kind of machine are to be classified with the machine of that kind, to argue that the goods ought to be classified in heading No. 84.03.

DECISION

The Tribunal is guided by sections 10 and 11 of the *Customs Tariff*. Section 10 provides that the classification of imported goods under a tariff item shall be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*⁸ and the *Canadian Rules*.⁹ Section 11 provides that, in interpreting the headings and subheadings in Schedule I, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*¹⁰ and the Explanatory Notes.

The first issue to be addressed by the Tribunal is whether the goods in issue form an integrated greenhouse system that should be classified under tariff item No. 8403.10.10 as central heating boilers other than those of heading No. 84.02 or under tariff item No. 8436.80.10 as other agricultural or horticultural type of machinery. The evidence shows that the integrated greenhouse system consists of imported components that include a flue gas condenser, greenhouse heating boilers, steel pipes and ventilation fans, which are interconnected by piping and cables to sensors and a computer. The testimony and evidence also clearly indicate that the goods in issue are marketed and sold as a complete climate and environmental control system for greenhouses and not as individual components. The witnesses testified that the climate and environmental control system regulates CO₂ and heat to maximize plant growth and productivity. In Mr. Mauza's expert opinion, the components cannot fulfill this function without each other and are functionally linked within the system to ensure plant growth. The Tribunal is persuaded by the evidence and the testimony that the goods in issue form an integrated greenhouse system and that the system is a machine within the meaning of the term "machine" found in Notes 4 and 5 of the Explanatory Notes to Section XVI. The Tribunal finds that the integrated greenhouse system is a machine that consists of the goods in issue, which are interconnected by piping, cables and other devices intended to contribute together to a clearly defined function. Based on the evidence and testimony, the Tribunal finds that the clearly defined function of the integrated greenhouse system is to control and regulate the climate and environment of a greenhouse to ensure optimal plant growth. Therefore, the Tribunal is persuaded that the integrated greenhouse system is a "functional unit" as described in Part VII of the Explanatory Notes to Section XVI and should be classified under tariff item No. 8436.80.10 as other agricultural or horticultural type of machinery.

The respondent argued that, as the integrated greenhouse system could be classified as either agricultural or horticultural type of machinery in heading No. 84.36 or as a central heating boiler system in heading No. 84.03, it should be classified as a central heating boiler system pursuant to Note 2 to Chapter 84 wherein "a machine or appliance which answers to a description of one or more of the heading Nos. 84.01 to 84.24 and at the same time to a description in one or other of the heading Nos. 84.25 to 84.80 is to be classified under the appropriate heading of the former group and not the latter". The Tribunal is not

8. *Supra* note 2, Schedule I [hereinafter General Rules].

9. *Supra* note 2, Schedule I.

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

persuaded by the argument that the integrated greenhouse system is a central heating boiler whose primary function is to heat the greenhouse by the circulation of hot water and whose secondary function is to produce CO₂. The Tribunal is persuaded by the testimony and the evidence that both functions are an integral part of regulating the climate and controlling the environment of the greenhouse.

Having determined that the integrated greenhouse system should be classified under tariff item No. 8436.80.10, the Tribunal must now decide whether the goods in issue qualify for the benefits of Code 2000. For the goods in issue to qualify for duty relief, the Tribunal must determine whether the components that comprise the integrated greenhouse system are “articles”, whether they are “for use in” the integrated greenhouse system and whether the integrated greenhouse system is classified under a tariff item listed in that code. The parties have agreed that the goods in issue are articles and that they are articles “for use in”. The Tribunal is persuaded that the goods in issue that form the integrated greenhouse system are “articles”.¹¹ The Tribunal is also persuaded that the goods in issue are “for use in” the integrated greenhouse system, as they are functionally part of it. On the evidence given, the Tribunal is also convinced that the goods in issue are essential to the basic functioning of the integrated greenhouse system, which is to regulate and control the climate and environment to ensure optimal plant growth.¹² As the Tribunal has found that the integrated greenhouse system should be classified under tariff item No. 8436.80.10 as other agricultural or horticultural type of machinery and as that tariff item is listed under Code 2000, the Tribunal finds that the goods in issue qualify for duty relief under that code.

Finally, the Tribunal must determine whether the flue gas condenser is a part of the central heating boiler or is other filtering or purifying machinery and apparatus for gases. The respondent argued that the flue gas condenser does not qualify as filtering or purifying machinery and apparatus for gases under subheading No. 8421.30 because it lacks the complexities and characteristics relating to that type of machinery. In the respondent’s submission, the flue gas condenser neither filters nor purifies and is not used to separate solid or liquid particles from gases to recover products of value. The flue gas condenser simply cools the CO₂. A natural by-product of the cooling process is the condensation of water that must be disposed of. However, the purpose of the flue gas condenser is not, according to the respondent’s submission, to dispose of the water. Further, CO₂ would be produced with or without a flue gas condenser. As the flue gas condenser neither filters nor purifies, it cannot be classified in heading No. 84.21 and must be classified as a part of the central heating boiler, as the flue gas condenser is attached to the boiler and is part of the functioning of the central heating boiler.

The Tribunal is not persuaded by the respondent’s arguments. On the strength of the evidence and the testimony of the witnesses, the Tribunal finds that the flue gas condenser is used to separate liquid particles from gases to recover a product of value, CO₂. Part II(B) of the Explanatory Notes to heading No. 84.21, entitled “Filtering or purifying machinery, etc. for gases”, states, in part:

These gas filters and purifiers are used to separate solid or liquid particles from gases, either to recover products of value (e.g., coal dust, metallic particles, etc., recovered from furnace flue gases), or to eliminate harmful materials (e.g., dust extraction, removal of tar, etc., from gases or smoke fumes, removal of oil from steam engine vapours).

The Tribunal agrees with the appellant that nowhere in the Explanatory Notes is there an obligation that, for the flue gas condenser to qualify as filtering or purifying machinery and apparatus for gases, it need be complex or have complex characteristics. The Tribunal is of the view that it is the function of the apparatus, not its complexity, that determines whether or not it separates solid or liquid particles from gases

11. *Supra* note 4.

12. *Supra* note 7.

to recover products of value. The Tribunal is also convinced that the flue gas condenser is not essential to the functioning of the central heating boiler. Therefore, while the flue gas condenser may be attached to the central heating boiler, the Tribunal finds that it is not a part of the boiler. However, the Tribunal is of the view that, even if the flue gas condenser were a part of the boiler, it would be classified in heading No. 84.21, given Note 2(a) of the Explanatory Notes to Section XVI, which provides, in part, that “[p]arts which are goods included in any of the headings of Chapters 84 and 85 [except in certain headings] are in all cases to be classified in their respective headings”.

While the Tribunal is of the opinion that the flue gas condenser would normally be classified under tariff item No. 8421.39.90 as other filtering or purifying machinery and apparatus for gases, the Tribunal determines, based on the evidence and testimony, that the flue gas condenser is one of the components whose activity is essential to the basic functioning of the integrated greenhouse system. Therefore, given that the Tribunal has determined that the integrated greenhouse system is a functional unit classified under tariff item No. 8436.80.10, the flue gas condenser, which, as the Tribunal stated, is essential to the functioning of that unit as a whole, must also be classified under the same tariff item as the integrated greenhouse system.

For the above reasons, the appeal is allowed in part.

Richard Lafontaine

Richard Lafontaine
Presiding Member

Peter F. Thalheimer

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