



Ottawa, Wednesday, January 31, 1990

Appeal No. 2689

IN THE MATTER OF an application heard September 12, 1989, pursuant to section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.) as amended;

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue for Customs and Excise dated October 17, 1986, with respect to an application filed pursuant to section 63 of the *Customs Act*.

BETWEEN

BASF CANADA INC.

Appellant

AND

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed. The Tribunal declares that Lutanol A25 imported under entry no. D073691, which was the subject of a duty paid on November 13, 1984, should be classified under tariff item 93902-1 as other polymerisation and copolymerisation products, without admixture, rather than under tariff item 93902-21 as such products, in organic solvents.

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

W. Roy Hines
W. Roy Hines
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. 2689

BASF CANADA INC.

Appellant

and

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

Customs Act - Whether Lutanol A25 imported from BASF Wyandotte Corporation of Holland, Michigan, United States, should be classified under tariff item 93902-21 as other polymerisation and copolymerisation products, in organic solvents or, as claimed by the appellant, under tariff item 93902-1 as such products, without admixture.

DECISION: *The appeal is allowed. Lutanol A25 is to be classified under tariff item 93902-1 as other polymerisation and copolymerisation products, without admixture.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: September 12, 1989
Date of Decision: January 31, 1990*

*Panel Members: Robert J. Bertrand, Q.C., Presiding Member
Sidney A. Fraleigh, Member
W. Roy Hines, Member*

*Counsel for the Tribunal: Danielle Bouvet
Clerk of the Tribunal: Janet Rumball*

Statutes Cited: *Customs Act, R.S.C. 1985, c. 1 (2nd Supp.); Customs Tariff, R.S.C. 1985, c. C-54; Canadian International Trade Tribunal Act, S.C. 1988, c. 56.*

Appeal No. 2689

BASF CANADA INC.

Appellant

and

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

TRIBUNAL: ROBERT J. BERTRAND, Q.C., PRESIDING MEMBER
SIDNEY A. FRALEIGH, MEMBER
W. ROY HINES, MEMBER

REASONS FOR DECISION

THE LEGISLATION

At the time of entry of the goods, the following tariff items were relevant:

93902 - Polymerisation and copolymerisation products (for example, polyethylene, polytetrahaloethylenes, polyisobutylene, polystyrene, polyvinyl chloride, polyvinyl acetate, polyvinyl chloroacetate and other polyvinyl derivatives, polyacrylic and polymethacrylic derivatives, coumarone-indene resins):

(a) Without admixture other than an agent necessary to prevent caking, including scrap and waste; aqueous emulsions, aqueous dispersions or aqueous solutions, without other admixture:

93902-1 Other than the following

...

(b) In organic solvents, where the weight of the solvent does not exceed 50 per cent of the weight of the solution, without other admixture:

93902-21 Other than the following

Although the appeal was originally commenced before the Tariff Board, it is taken up and continued by the Canadian International Trade Tribunal (the Tribunal) in accordance with subsection 54(2) and section 60 of the *Canadian International Trade Tribunal Act*.¹

1. S.C. 1988, c. 56.

THE FACTS

This is an appeal pursuant to section 67 of the *Customs Act* (the Act), from a decision of the respondent dated October 17, 1986, classifying Lutanol A25 imported under entry no. D073691 dated November 13, 1984, under tariff item 93902-21 as other polymerisation and copolymerisation products, in organic solvents. The appellant contends that this product should be classified under tariff item 93902-1 as such products, without admixture.

In view of the decision of the respondent, the appellant filed an appeal with the Tariff Board on December 10, 1986.

The goods in issue are Lutanol A25 imported from BASF Wyandotte Corporation of Holland, Michigan, United States.

Following the decision of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister), dated October 17, 1986, the appellant proceeded with an analysis of the product involved in the present appeal. On June 8, 1987, the appellant received the results of the test. The testing laboratories, Technitrol Canada Ltée/Ltd., had to measure the volatile matter by heating the sample in a forced air oven to drive off volatiles. The results are as follows:

| <u>Conditions</u> | <u>Percentage of Volatility</u> |
|-------------------|---------------------------------|
| 100°C for 1 h | 4.7 |
| 110°C for 2 h | 14.3 |

The first sample received by the testing laboratories was approximately 30 percent volatile. The Lutanol A50 is sold containing 30 percent solvent. The volatile substances they found in the Lutanol A25 are much less volatile than the solvents in Lutanol A50 and are probably residues from the manufacture of the Lutanol A50.

On June 22, 1987, Canada Customs confirmed verbally that their analysis indicated that Lutanol A25 contains manufacturing impurities only and they agreed with the appellant's position that the goods should be classified under tariff item 93902-1.

The Department of Justice informed the appellant verbally of its agreement to the classification of Lutanol A25 under tariff item 93902-1.

In view of the respondent's position, on February 3, 1989, the appellant requested that the Tribunal set a date for the hearing of this appeal.

THE ISSUE

The issue in this appeal is whether Lutanol A25 imported from BASF Wyandotte Corporation of Holland, Michigan, United States, should be classified under tariff item 93902-21 as other polymerisation and copolymerisation products, in organic solvents or, as claimed by the appellant, under tariff item 93902-1 as such products, without admixture.

Through a document submitted by counsel for the respondent on April 11, 1989, the respondent indicated that, for the purpose of this appeal, it admits the statement of facts set out in the appellant's submission.

DECISION

The Agreed Statement of Fact and Law indicates to the Tribunal that the respondent now takes the position that Lutanol A25 should be classified under tariff item 93902-1 as other polymerisation and copolymerisation products, without admixture.

The analysis of the product made after the Deputy Minister's decision indicated that Lutanol A25 contains manufacturing impurities only. Therefore, the Tribunal concurs with the position of the respondent that Lutanol A25 should be classified under tariff item 93902-1 as other polymerisation and copolymerisation products, without admixture.

CONCLUSION

In view of the foregoing, the Tribunal declares that Lutanol A25 should be classified under tariff item 93902-1 as other polymerisation and copolymerisation products, without admixture.

Accordingly, the appeal is allowed.

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

W. Roy Hines
W. Roy Hines
Member