

Winnipeg, Manitoba
Monday, October 29, 1990

Appeal No. 2802

IN THE MATTER OF an application heard on
October 29, 1990, under section 47 of the *Customs Act*,
R.S.C., 1970, c. C-40 as amended;

AND IN THE MATTER OF a Notice of Decision of the
Deputy Minister of National Revenue for Customs and Excise
dated December 12, 1986, made pursuant to section 46(4) of
the *Customs Act* in respect of a request for redetermination
filed pursuant to section 46(3) of the *Customs Act*.

BETWEEN

CARGILL LIMITED

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed and the Tribunal concludes that the goods in issue imported under the trade name "PELL-A-FIRM" from Vylactos Laboratories in St. Paul, Minnesota between the period of April 10, 1985 to October 3, 1985 under entry numbers E001321, E015761, E012561, E020494 and E028840 should be classified under tariff item 6928-2 as ingredients for use in animal and poultry feeds, n.o.p.

Michèle Blouin
Michèle Blouin
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. 2802

CARGILL LIMITED

Appellant

and

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

Respondent

Customs tariff - whether a product for use in animal feeds is properly classifiable under tariff item 6928-2 - Agreement of the Parties.

This is an appeal from the classification of the Deputy Minister of National Revenue for Customs and Excise that a product, imported under the trade name "PELL-A-FIRM" should be classified under tariff item 93806-1 as concentrated sulphite lye. The appellant contended that the goods should be classified under tariff item 6928-2 as ingredients for use in animal and poultry feeds, n.o.p. Following a decision of the Federal Court of Appeal in Deputy Minister of National Revenue for Customs and Excise v. Cooperative Federée de Québec of Montreal (Unreported; A-130-85), the respondent now agrees with the appellant's classification.

Held: *The appeal is allowed.*

Place of Hearing: Winnipeg, Manitoba

Date of Hearing: October 29, 1990

Date of Decision: October 29, 1990

Tribunal Members: Michèle Blouin, Presiding Member

Arthur B. Trudeau, Member

Sidney A. Fraleigh, Member

Clerk of the Tribunal: Nicole Pelletier

Appearances: Jon Sigurdson, for the appellant

Geoffrey Lester, for the respondent

Cases Cited: Deputy Minister of National Revenue for Customs and Excise v. Cooperative Federée de Québec of Montreal (Unreported; A-130-85)

Statutes Cited: Customs Act R.S.C., 1970, c. C-40, ss. 46(3); Customs Tariff, R.S.C., 1970, c. C-41, Schedule A, tariff items 6928-2 and 93806-1.

Appeal No. 2802

CARGILL LIMITED

Appellant

and

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

Respondent

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
ARTHUR B. TRUDEAU, Member
SIDNEY A. FRALEIGH, Member

REASONS FOR DECISION

This case is an appeal from a decision of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) made on December 12, 1986 regarding the tariff classification of PELL-A-FIRM; a product for use in animal feed. The goods were classified by customs officials, and subsequently, on December 12, 1986 by the Deputy Minister, under tariff item 93806-1 as concentrated sulphite lye. The appellant challenged this classification, claiming the goods should be classified under tariff item 6928-2 as ingredients for use in animal and poultry feeds, n.o.p. Hence an appeal was filed with the Tariff Board on January 9, 1987, and thus, the Canadian International Trade Tribunal (the Tribunal).

The respondent has now changed its position on the interpretation of tariff item 6928-2, and has decided not to contest the appeal. The change in position is based on the Federal Court of Appeal decision in the *Deputy Minister of National Revenue for Customs and Excise v. Cooperative Federée de Québec of Montreal* (Unreported; A-130-85). However, this change in position did not come within two years of the date of entry of the goods in issue and thus, pursuant to subsection 46(4) of the *Customs Act* (the Act), the Deputy Minister no longer has the jurisdiction to make the re-determination. In the result, both parties, relying on the Federal Court of Appeal decision in *Cooperative Federée (supra)*, ask the Tribunal to classify the goods under tariff item 6928-2 as ingredients for use in animal feed.

The Tribunal has examined the documents and evidence placed on file in this appeal. The Tribunal has also considered the Federal Court of Appeal decision in *Cooperative Federée (supra)*. According to this case, as the "n.o.p. clause" in tariff item 6928-2 qualifies the phrase "ingredients for use therein", the only ingredients that are excluded from the item by the "n.o.p. clause" are those that fall within more specific tariff items dealing expressly with goods imported for use in animal and poultry feeds. There being no such tariff item, the Tribunal considers that the principles enunciated in the Federal Court of Appeal decision apply to the present appeal.

Thus, the Tribunal agrees with the common position of the parties. The appeal is allowed and the Tribunal concludes that the goods in issue should be classified under tariff item 6928-2 as ingredients for use in animal and poultry feeds, n.o.p.

Michèle Blouin
Michèle Blouin
Presiding Member

Arthur B. Trudeau
Arthur B. Trudeau
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member