CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, March 10, 1992

Appeal Nos. 2871 and 2908

IN THE MATTER OF two appeals heard on November 26, 1991, under section 47 of the *Customs Act*, R.S.C., 1970, c. C-40, as amended;

AND IN THE MATTER OF two re-determinations of the Deputy Minister of National Revenue for Customs and Excise dated July 31, 1987, related to requests for re-determination under the *Customs Act*.

BETWEEN

I-D FOODS CORPORATION **Appellant**

AND

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

DECISION OF THE TRIBUNAL

Before the hearing, the parties jointly filed two agreed statement of facts and proposed orders with respect to these appeals. Having examined both requests, the Tribunal concludes that the de-alcoholized red and white wines in issue are classified as "Wines of all kinds, n.o.p. ... " under tariff item 16310-1 of the *Customs Tariff*, R.S.C., 1970, c. C-41, while the de-alcoholized sparkling white wine in issue is classified as " ... other sparkling wines ... " under tariff item 16501-1.

Michèle Blouin
Michèle Blouin
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Charles A. Gracey
Charles A. Gracey
Member

Robert J. Martin
Robert J. Martin
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, March 10, 1992

Appeal Nos. AP-90-176 and AP-90-178

IN THE MATTER OF an appeal heard on November 26, 1991, under section 81.19 of the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended;

AND IN THE MATTER OF a notice of decision of the Minister of National Revenue dated October 29, 1990, relating to a notice of objection served under section 81.17 of the *Excise Tax Act*.

BETWEEN

I-D FOODS CORPORATION **Appellant**

AND

THE MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeals are allowed in part. The red, white and rosé de-alcoholized wines imported by the appellant are non-carbonated fruit juice beverages containing more than 25 percent of a natural fruit juice within the meaning of subparagraph 1(*d*)(i), Part V, Schedule III of the *Excise Tax Act* while the de-alcoholized sparkling wines fall within the meaning of paragraph 1(*c*) as carbonated beverages.

Michèle Blouin
Michèle Blouin
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Charles A. Gracey
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Member

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal Nos. AP-90-176 and AP-90-178

I-D FOODS CORPORATION **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

These are two appeals under section 81.19 of the Excise Tax Act from the decisions of the Minister of National Revenue denying the appellant's notices of objection with respect to determinations by the Deputy Minister. The appellant presented two refund claims stating that the de-alcoholized wines it imported were neither wines nor alcoholic beverages subject to excise and sales taxes under the Excise Tax Act. The goods in issue are red, white, rosé and sparkling de-alcoholized wines.

HELD: *The appeals are allowed in part. The Tribunal finds that the goods in issue, except for the sparkling wines, are non-carbonated fruit juice beverages containing more than 25 percent of a natural fruit juice within the meaning of subparagraph 1(d)(i), Part V, Schedule III of the Excise Tax Act. The de-alcoholized sparkling wines fall within the meaning of paragraph 1(c) as carbonated beverages and, therefore, are not exempted from sales tax although they are not subject to the excise tax imposed on wine.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*November 26, 1991*
Date of Decision:	*March 10, 1992*
Tribunal Members:	*Michèle Blouin, Presiding Member* *W. Roy Hines, Member* *Charles A. Gracey, Member*
Counsel for the Tribunal:	*Gilles B. Legault*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*Donald Batterton, for the appellant* *Rosemary Millar, for the respondent*
Case Cited:	*Grantham Foods Ltd. v. Her Majesty The Queen, Federal Court of Canada, Trial Division, November 8, 1991, File No. T-1824-90, appealed on November 15, 1991, File No. A-1156-91.*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal Nos. AP-90-176 and AP-90-178

I-D FOODS CORPORATION **Appellant**

and

THE MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
W. ROY HINES, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

These are two appeals under section 81.19 of the *Excise Tax Act*[1] (the Act) against the decisions of the Minister of National Revenue confirming determinations made with respect to two sales tax refund claims.

The appellant imports red, white, rosé and sparkling de-alcoholized wines from Carl Jung GmbH, Germany. On September 23, 1987, and July 6, 1988, the appellant filed two refund claims based on Schedule III of the Act that exempts certain types of goods from sales tax. On November 13, 1987, and August 22, 1988, respectively, the claims were disallowed because the goods imported by the appellant were considered alcoholic beverages, excluded from Part V, Schedule III of the Act and subject to sales tax. On November 23, 1987, and October 18, 1988, respectively, the appellant objected to the determinations. The appellant contended that the goods were non-alcoholic wines containing less than 0.5 percent alcohol by volume and, therefore, were neither wines nor alcoholic beverages. On October 29, 1990, the Minister of National Revenue (the Minister) issued two decisions confirming the determinations. According to the Minister, the goods are the product of a fermentation process with a residual alcohol content and are, therefore, subject to both the excise and the federal sales tax under the Act. On January 21, 1991, the decisions were appealed to this Tribunal.

The issue in these appeals is whether the goods imported by the appellant, namely, red, white and rosé de-alcoholized wines, are wines within the meaning of the Act or, as claimed by the appellant, drinks for human consumption, namely, fruit juice beverages. The Tribunal must also determine whether the definition of "wine" provided for the excise tax provisions (Part IV) should also apply for purposes of the sales tax provisions (Part VI) of the Act.

1. R.S.C., 1985, c. E-15, as amended.

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Section 25 of the Act defines wine as follows:

> *25. In this Part, "wine" includes spirituous liquors that are the products of fruits, vegetables, roots, herbs, grain, molasses, sugar or other fermentable substances and are obtained by the normal alcoholic fermentation of the juices or extracts therefrom and not by distillation.*
>
> (emphasis added)

Paragraphs 27(*a*) and 50(1.1)(*a*), impose an excise tax and a sales tax, respectively, on all wines imported in Canada. However, according to subsection 51(1) and subparagraph 1(*d*)(i), Part V, Schedule III of the Act, non-carbonated fruit juice beverages containing more than 25 percent of a natural fruit juice are exempted from sales tax. Wine, on the other hand, is explicitly excluded from the exempting provision.

Evidence reveals that the goods in issue are produced from base wines containing between 9 and 10 percent alcohol by volume and which are completely fermented. The de-alcoholization takes place in a special still that operates under vacuum and helps to bring down the distilling temperatures from approximately 80 C to 100 C to about 25 C. The process leaves less than 0.5 percent alcohol by volume.

At the hearing, Mr. Henry Fraiberg, who works for the appellant in the Inventory Management and Purchasing Unit, explained that the goods in issue are sold in pharmacies and groceries without any restriction or control by the provincial liquor boards. In cross-examination however, he acknowledged that the goods in issue are classified as wines for the purpose of tariff classification in the former *Customs Tariff*.[2] Another witness for the appellant, Mr. Daniel Steele, who owns the import rights to the goods, stated that the alcohol was removed from the wine through a vacuum distillation process, but he recognized, in cross-examination, that the remaining alcohol contained in the subject goods was still a product of fermentation.

As the Tribunal must determine whether the goods in issue are taxable wines within the meaning of the Act, it believes that their treatment with respect to retail sales or tariff classification is of less importance. In addition, the Tribunal is not ready to apply the definition of "wine" in section 25 for purposes of both the excise and the sales tax provisions of the Act. Indeed, as stated in section 25, that definition is only provided for the purpose of Part IV of the Act. In the Tribunal's view, it should not, therefore, be applied to paragraph 50(1.1)(*a*), Part VI of the Act, as well as to the exempting provision contained in Schedule III. The definition, in fact, broadens the ordinary meaning of that word. It includes spirituous liquors that are obtained by the fermentation not only of grapes but also of vegetables, roots, herbs, etc. The Tribunal notes that wine is defined in The Oxford English Dictionary,[3] as:

> *The fermented juice of the grape used as a beverage.*

It remains that, but for that difference, the rest of both definitions appears to be the same; both refer to the fermentation of a fruit. However, more important to the Tribunal is that section 25 clearly states that products obtained through distillation are excluded from the definition of wine, which seems

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2. R.S.C., 1970, c. C-41, as amended.
3. Second Edition, Clarendon Press, Oxford, 1989, p. 389.

in keeping with the ordinary meaning of wine. In the case at hand, distillation precisely occurred after the fermentation of the wine that was used as basic ingredient. The effect of that further distillation is therefore to exclude the goods in issue from the scope of both definitions. Moreover, that operation changes the characteristics of the basic wine and, in consequence, the de-alcoholized wine is no longer the type of wine contemplated by the Act. The Tribunal has therefore no difficulty in finding that the de-alcoholized wines in issue are not wines within the meaning of either section 25 or paragraph 50(1.1)(*a*) of the Act.

The case at hands departs from the Federal Court decision in *Grantham Foods*,[4] where the mere addition of salt to wines, resulting in their non potability, did not convince the Court that cooking wine was not "wine" within the meaning of section 25 of the Act.

In view of the evidence, the Tribunal accepts the appellant's arguments that the de-alcoholized red, white and rosé wines are non-carbonated fruit juice beverages containing more than 25 percent by volume of a natural fruit juice within the meaning of subparagraph 1(*d*)(i), Part V, Schedule III of the Act. As for the sparkling wine, the Tribunal agrees with the appellant's admission that this type of wine constitutes carbonated beverages specifically excluded from the exempting provision.

The Tribunal therefore allows the appeals in part and finds that the goods in issue, except for the sparkling wines, are non-carbonated fruit juice beverages containing more than 25 percent of a natural fruit juice within the meaning of subparagraph 1(*d*)(i), Part V, Schedule III of the Act. The de-alcoholized sparkling wines however, as admitted by the appellant, fall within the meaning of paragraph 1(*c*) as "carbonated beverages" and are therefore subject to sales tax.

Michèle Blouin
Michèle Blouin
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Charles A. Gracey
Charles A. Gracey
Member

4. *Grantham Foods Ltd. v. Her Majesty The Queen*, Federal Court of Canada, Trial Division, November 8, 1991, File No. T-1824-90, appealed on November 15, 1991, File No. A-1156-91.