

Ottawa, Thursday, July 26, 1990

Appeal No. 3027

IN THE MATTER OF an appeal heard on February 15, 1990, 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 June 24, 1988, with respect to a notice of objection filed pursuant to section 63 of the *Customs Act*.

**BETWEEN**

**NOVA AQUA SEA LIMITED**

**Appellant**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed. The Tribunal finds that the goods at issue are properly classified under tariff item 44000-1 as a floating structure.

W. Roy Hines  
W. Roy Hines  
Presiding Member

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

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

Michel Granger  
Michel Granger  
Acting Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. 3027**

**NOVA AQUA SEA LIMITED**

**Appellant**

**and**

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

**Respondent**

*Customs Act - Customs Tariff - Whether the JaMek fish farm equipment should be classified under tariff item 44000-1 as "...floating, submersible or semi-submersible structures ...", under tariff item 40924-1 as "... agricultural implements or agricultural machinery, n.o.p." or under tariff item 44022-1 as "Manufactures of iron, brass or other metal, of a class or kind not made in Canada, for use exclusively in the construction or equipment of the goods enumerated in tariff items 44000-1 ... " - Meaning of the word "implements" in tariff item 40924-1.*

**DECISION:** *The appeal is dismissed. The Tribunal finds that the goods at issue are properly classified under tariff item 44000-1 as a floating structure.*

*Place of Hearing: Halifax, Nova Scotia*

*Date of Hearing: February 15, 1990*

*Date of Decision: July 26, 1990*

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

*Clerk of the Tribunal: Nicole Pelletier*

*Appearances: David A. Cooper, for the appellant  
John B. Edmond, for the respondent*

**Cases Cited:** *J.P. Soubry Distribution Representation Limited v. The Deputy Minister of National Revenue for Customs and Excise, 11 T.B.R., 448; Beekeepers' Supply Co. v. The Deputy Minister of National Revenue for Customs and Excise, 12 T.B.R., 209; Orville Schmidt v. The Deputy Minister of National Revenue for Customs and Excise, 12 T.B.R., 218; Frank Lawson and Sons Ltd. v. The Deputy Minister of National Revenue for Customs and Excise, 3 T.B.R., 277.*

**Statutes Cited:** *Customs Tariff R.S.C., 1970, c. C-41; Customs and Excise Offshore Application Act, S.C. 1984, c. 17.*

**Other References Cited:** *The World Book Encyclopedia; The Dictionary of the Environment; The Canadian Encyclopedia.*

**Appeal No. 3027**

**NOVA AQUA SEA LIMITED**

**Appellant**

**and**

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

**Respondent**

TRIBUNAL: W. ROY HINES, Presiding Member  
ROBERT J. BERTRAND, Q.C., Member  
SIDNEY A. FRALEIGH, Member

**REASONS FOR DECISION**

**SUMMARY**

This is an appeal pursuant to section 67 of the *Customs Act* (the Act) from a decision of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) classifying component parts of a fish farm under tariff item 44000-1 as a floating structure.

The appellant, Nova Aqua Sea Limited, is a corporation that carries on the business of growing, harvesting, processing and selling fish at a cage fish farm on Bras d'Or Lake, Nova Scotia. The fish farm components were imported from Norway and accounted for upon entry into Canada under tariff item 44603-1 as "Manufactures ... of which iron or steel or both are the component materials of chief value, n.o.p." The appellant then requested a redetermination on the basis that the subject goods should be classified under tariff item 40924-1 as "... agricultural implements or agricultural machinery, n.o.p." The tariff classification of the goods was subsequently redetermined by the Deputy Minister under tariff item 44000-1 as a floating structure. On appeal to the Canadian International Trade Tribunal, the appellant further requested that classification of the goods be considered under tariff item 44022-1 as "Manufactures of iron, brass or other metal, of a class or kind not made in Canada, for use exclusively in the construction or equipment of the goods enumerated in tariff items 44000-1.... "

In several decisions, the Tariff Board held that goods that are passive in nature and do not have an active, functioning, mechanical character may not be classified as agricultural implements or machinery. In the present case, the imported goods are assembled to create a structure that houses fish until their maturity. In their passive character, the goods are indistinguishable from pens for calves, hives for bees or feeders for poultry, and are clearly distinguishable from implements or machinery. The Tribunal thus concludes that the fish farm components at issue do not have the necessary characteristics to be considered under tariff item 40924-1. The Tribunal further finds that the goods are not eligible for consideration under tariff item 44022-1 as the appellant did not satisfy the burden of proof that like goods were not made in Canada at the time the fish farm components were imported.

The Tribunal thus concludes that the imported goods are best described under tariff item 44000-1 as a floating structure. While the fish farm was imported in an unassembled state, there is no question from the evidence that it was designed, engineered, manufactured, packaged and sold as a complete unit, which is both floating and semi-submersible. The appeal is dismissed.

## THE LEGISLATION

For the purpose of this appeal, the relevant statutory provisions are as follows:

### Customs Tariff

40924-1        ...  
                  *All other agricultural implements or agricultural machinery,  
                  n.o.p.;*

*Parts of all the foregoing*

...  
*Ships, vessels, dredges, scows, yachts, boats and other water borne  
craft and floating, submersible or semi-submersible structures  
such as docks, caissons, pontoons, coffer-dams, production  
platforms, drilling ships, drilling barges, drilling rigs, jack-up  
drilling platforms and other drilling platforms; combinations of all  
the foregoing; all of the foregoing whether or not self-propelled,  
assembled or complete:*

44000-1        *Other than the following*

...  
44022-1        *Manufactures of iron, brass or other metal, of a class or kind not  
made in Canada, for use exclusively in the construction or  
equipment of the goods enumerated in tariff items 44000-1 ...*

...  
*Manufactures, articles or wares, of iron or steel or of which iron or steel or both  
are the component materials of chief value, n.o.p.:*

44603-1        *Other than the following*

## THE FACTS

This is an appeal pursuant to section 67 of the *Customs Act* (the Act), from a decision of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister), dated June 24, 1988.

Nova Aqua Sea Limited is a corporation that carries on the business of growing, harvesting, processing and selling fish at a cage fish farm on Bras d'Or Lake, Nova Scotia. The fish farm equipment at issue was imported by the appellant from JaMek Industri AS of Norway, on May 29, 1987, under entry number A004735. The goods were described on the commercial invoice as follows:

"JaMek Fishfarm Equipment:"

1 x 16 cage unit, US 3086, consisting of:  
9 main bridges  
18 outriggers  
16 intermediate sections  
16 x 16 handrails  
9 sets of autoguards  
1 access bridge 1.8 x 20 m w/catamaran  
Mooring equipment

Nova Aqua Sea Limited accounted for the equipment upon entry into Canada under tariff item 44603-1 as "Manufactures ... of which iron or steel or both are the component materials of chief value, n.o.p." The appellant subsequently requested a redetermination on the basis that the subject goods should be classified under tariff item 40924-1 as " ... agricultural implements or agricultural machinery, n.o.p." The Halifax Regional Tariff and Values Administrator redetermined the tariff classification of the subject goods, pursuant to subsection 60(3) of the Act, under tariff item 44000-1 as a floating structure. The appellant requested a further redetermination of the tariff classification pursuant to paragraph 63(1)(a) of the Act on the same grounds. The classification of the subject goods, under tariff item 44000-1 as a floating structure, was confirmed by the Deputy Minister.

Shawn MacDonald, finance manager for Nova Aqua Limited, gave evidence for the appellant. Mr. MacDonald stated that Nova Aqua Sea Limited was one of three wholly owned subsidiaries of Nova Aqua Limited. The Nova Aqua Group operates three fish farms in the Cape Breton area, and Nova Aqua Sea Limited operates a cage farm on Bras d'Or Lake at the mouth of the Atlantic Ocean. In May of 1987, the appellant imported the equipment at issue from JaMek of Norway, which consisted of 16 steel cage units. These were assembled on Bras d'Or Lake in Cape Breton and were fixed to the shore line in close proximity to a fish processing plant also owned by the Nova Aqua Group. The appellant subsequently purchased automated fish feeding equipment that is permanently fixed to the fish farm unit and forms an integral part of the system.

Mr. MacDonald stated that one reason the company purchased the fish farm equipment from JaMek was that the company had an established reputation in the building of fish farms that could withstand adverse weather conditions. The primary reason for purchasing the JaMek system was that it had "drive-on" capability that was unique in comparison to fish farms manufactured in Canada. A drive-on system is designed to support a forklift and other heavy equipment on the access bridge. This feature makes it more efficient to harvest and process the fish. Other systems, stated Mr. MacDonald, require that the fish farm be moored further from the shore and that a barge be used to carry the heavy equipment around the circumference of the cages. In the view of Mr. MacDonald, the JaMek equipment was determined to be more cost efficient.

Mr. MacDonald stated that he knew of only three fish farm manufacturers in Canada, none of which produced the drive-on type of equipment. Based on the information he had received from employees of Nova Aqua Limited who had investigated the available sources of fish farm equipment, the decision was made to purchase the JaMek system.

### THE ISSUE

The issue in this appeal is whether the imported fish farm equipment should be classified under tariff item 44000-1 as " ... floating, submersible or semi-submersible structures ... " or, as claimed by the appellant, under tariff item 40924-1 as " ... agricultural implements or agricultural machinery, n.o.p." or tariff item 44022-1 as "Manufactures of iron, brass or other metal, of a class or kind not made in Canada, for use exclusively in the construction or equipment of the goods enumerated in tariff items 44000-1.... "

The appellant argued that the fish farm equipment was better classified under tariff item 40924-1 as " ... agricultural implements or agricultural machinery, n.o.p." as the business of Nova Aqua Sea Limited is considered to be a farming operation, no different from chicken farming where chickens are raised in pens for harvesting and sale in the marketplace. In support of this interpretation, the appellant cited several sources providing definitions of the word "aquaculture."

The World Book Encyclopedia<sup>1</sup> states that "Aquaculture ... is the controlled raising of animals and plants that live in water. The primary goal of the industry is to produce food for people. Aquaculture takes place in enclosures built on land or in natural bodies of water, where the crop may be grown in nets or cages, or may be attached to rafts.... "

The Dictionary of the Environment<sup>2</sup> defines aquaculture as "The breeding and rearing of freshwater or marine fish in captivity. Fish farming or ranching."

The Canadian Encyclopedia<sup>3</sup> states that "Aquaculture is the human-controlled cultivation and harvest of freshwater and marine plants and animals. Synonyms include aquiculture, fish farming, fish culture, mariculture, fish breeding and ocean ranching."

The appellant argues that fish farming equipment is excluded from the application of tariff item 44000-1, as the wording of this tariff item came into effect as a direct result of the ~~EXTRAP V DGGI [FVH2 IIVKRHLS SSQFDWRO\$ FW2 IIVKRHLS SSQFDWRO\$ FW2]~~ which specifically applies to goods " ... permanently or temporarily attached to or resting on the continental shelf of Canada for the exploration, development, production or transportation of the mineral or other non-living natural resources thereof.... " <sup>4</sup> As the fish farm equipment is not used in connection with "non-living" renewable resources, the appellant argues that this tariff designation does not apply to it.

The appellant argues, in the alternative, that the imported equipment is more accurately classified under tariff item 44022-1 as "Manufactures of iron, brass or other metal, of a class or kind not made in Canada, for use exclusively in the construction or equipment of the goods enumerated in tariff items 44000-1.... " At the time of import, the appellant states, this particular type of installation was not being manufactured in Canada. The appellant adds that while the equipment was imported as a unit, it was entered into Canada as a series of parts. It did not comprise a complete fish farm at the time of importation as it required the installation of fish feeders, anchors and nets.

The respondent argues that the imported goods are properly classified under tariff item 44000-1, as this tariff item applies to all water borne craft and floating, submersible or semi-submersible structures in Canada, whether or not they are specifically named as one of the items enumerated under tariff item 44000-1.

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1. Volume 1, World Book, Inc.

2. Second Edition, Michael Allaby.

3. Volume 1, Second Edition, Hurtig Publishers, Edmonton, 1988.

4. From the definition of "designated goods" under subsection 2(1) of the *Customs and Excise Offshore Application Act*, S.C. 1984, c. 17.

The respondent states that the subject goods are designed to be assembled to form a complete floating structure of floats, frames, walkways, bridges and handrails that are installed on water or on land and water. These fish pens or cages are designed in modular components to lend themselves to shipping, expansion, relocation and easy assembly. The goods are also known in commercial parlance as "floating structures." The respondent submits that, although presented in an unassembled state, the goods consist of a complete floating structure and are therefore correctly classified as such under tariff item 44000-1.

In response to the appellant's claim, the respondent argues that while fish farming may be considered to be a type of farming activity, the basket provision in tariff item 40924-1 does not relate to all agricultural goods. The respondent argues, based on the jurisprudence, that goods that are passive in nature and lacking the active operational functions characteristic of "implements and machinery" may not be classified under tariff item 40924-1.

### DECISION

It is immediately apparent to the Tribunal that the JaMek fish farm equipment imported by the appellant does not fit easily within the description of any of the tariff items cited in this appeal. Indeed, evidence put forward by the appellant suggests that the respondent had classified goods of this nature according to the material composition of the various component parts before the passage of the *Offshore Application Act* and the related consequential amendments to the *Customs Tariff* in 1984.

An examination of the legislative history leaves little doubt that the *Offshore Application Act* and the consequential amendments to the *Customs Tariff*, including the amendments to tariff item 44000-1, were intended to bring within Canada Customs jurisdiction goods intended for use in mineral resource exploration and development. However, where the meaning of legislation is clear, there is no need for recourse to historical, extra-statutory sources as aids to interpretation. In this instance, the wording of tariff item 44000-1 is unambiguous, and a limitation of its application to offshore mineral resource exploration and development should not be implied from the fact it was introduced as part of the *Offshore Application Act*. Rather, in tariff item 44000-1, Parliament adopted a description of goods applicable in all circumstances and used the same description in a legislative scheme extending its customs reach to specific offshore activities.

There is no dispute between the parties as to the nature and description of the imported goods used in assembling the commercial fish farm on Bras d'Or Lake. The single issue in this appeal is the proper tariff classification of the goods.

With reference to tariff item 40924-1 and without commenting on the issue of whether a fish farm is agriculture in the ordinary sense and meaning of that word, the Tribunal notes that this tariff item does not relate to all agricultural goods but only to implements and machinery. In several decisions on the issue, the Tariff Board held that goods that are passive in nature and do not have an active, functioning, mechanical character may not be classified as agricultural implements or machinery.

In the case of *J.P. Soubry Distribution Representation Limited v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>5</sup> the Tariff Board found that feeders and waterers for poultry were not implements within the ordinary and common meaning of that word but were equipment, as they served in a passive manner. In *Beekeepers' Supply Co. v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>6</sup> the Tariff Board declared that plastic comb frames to house bees were goods that function only in a passive manner and therefore could not be considered agricultural machinery or implements. In *Orville Schmidt v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>7</sup> the Tariff Board also declared a calf shelter used in the rearing of calves in the winter to be passive goods, and denied the applicability of 40924-1. In *Frank Lawson and Sons Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*,<sup>8</sup> the Tariff Board considered the classification of a "Port-a-Feeder," a cage-like structure for feeding cattle. In that case, the Tariff Board made the following distinction between goods that can be classified as agricultural implements and machinery and those that cannot:

*It would seem that most pieces of agricultural apparatus or equipment which are actively employed are commonly known as implements; apparatus or equipment which, in its services or functions, is used more passively, is not so known.*

In the present case, the imported goods are assembled to create a structure that houses fish until their maturity. In their passive character, the goods are indistinguishable from pens for calves, hives for bees or feeders for poultry and are clearly distinguishable from implements or machinery. The Tribunal thus concludes that the imported fish farm components do not have the necessary characteristics to be considered under tariff item 40924-1.

Tariff item 44022-1 provides for goods used in the manufacture of the goods enumerated in tariff item 44000-1, and the imported goods may be classified under the former tariff item only if they are of a class or kind not made in Canada. The issue of whether the imported goods are made in Canada was not dealt with in a substantive manner at the hearing of the appeal. The witness stated that he did not have special knowledge of this aspect of the appeal and thus the Tribunal finds that the appellant did not satisfy the burden of proving that goods of a class or kind referred to in tariff item 44022-1 were not made in Canada at the time the fish farm components were imported. On this basis, the respondent chose not to present its own evidence on the issue.

The Tribunal thus concludes that the imported goods are best described under tariff item 44000-1 as a floating structure. While the fish farm was imported in an unassembled state, there is no question from the evidence that it was designed, engineered, manufactured, packaged and sold as a complete unit, which is both floating and semi-submersible.

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5. (1986), 11 T.B.R., 448 at 452.

6. (1987), 12 T.B.R., 209 at 217.

7. (1987), 12 T.B.R., 218 at 225.

8. (1965), 3 T.B.R., 277 at 279.



While counsel for the appellant also referred to tariff item 44603-1, a basket item covering manufactures of iron or steel, no evidence was submitted at the hearing to support the classification of the goods under this tariff item. In any event, there can be no recourse to a basket classification when another tariff item specifically describes the goods at issue. In light of the above decision, the Tribunal concludes that it is not necessary to consider this more general tariff classification.

### CONCLUSION

The appeal is dismissed. The Tribunal finds that the goods at issue are properly classified under tariff item 44000-1 as a floating structure.

W. Roy Hines  
W. Roy Hines  
Presiding Member

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

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member