



Ottawa, Friday, January 25, 2002

Appeal No. AP-2000-022

IN THE MATTER OF an appeal heard on November 27, 2000,
under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Commissioner of
the Canada Customs and Revenue Agency dated May 8, 2000,
made pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

CLARIANT (CANADA) INC.

Appellant

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY**

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Richard Lafontaine
Richard Lafontaine
Member

Zdenek Kvarda
Zdenek Kvarda
Member

Michel P. Granger
Michel P. Granger
Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-2000-022

CLARIANT (CANADA) INC.

Appellant

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY

Respondent

This is an appeal pursuant to section 67 of the *Customs Act* from a decision of the Commissioner of the Canada Customs and Revenue Agency dated May 8, 2000, made pursuant to subsection 60(4) of the *Customs Act*. The product in issue is Sandostab® P-EPQ (Sandostab), a phosphonite antioxidant processing stabilizer for plastics. The issue in this appeal is whether the product in issue is properly classified under tariff item No. 3812.30.90 as other anti-oxidizing preparations and other compound stabilizers for rubber or plastics, as determined by the respondent, or should be classified under tariff item No. 2931.00.91 as other organo-inorganic compounds, as claimed by the appellant.

HELD: The appeal is allowed. The Tribunal must classify the product in issue according to Rule 1 of the *General Rules for the Interpretation of the Harmonized System* and must determine its classification according to the terms of the headings and any relative Section or Chapter Notes. In accordance with the Notes to Chapter 38, it is only if Sandostab is not a separate chemically defined compound that its classification in heading No. 38.12 is allowed, since such compounds are excluded from this chapter by Note 1(a). Note 1(a) to Chapter 29 provides that the headings of this chapter apply only to separate chemically defined organic compounds. The Tribunal finds that Sandostab is a separate chemically defined compound, which contains permissible impurities in accordance with Note 1(a) to Chapter 29 and the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to that chapter. Sandostab is more specifically defined under Note 1(b) to Chapter 29 as a mixture of two or more isomers of the same organic compound (whether or not containing impurities).

Accordingly, the product in issue should be classified under tariff item No. 2931.00.91 as other organo-inorganic compounds, for use as petroleum refining catalysts, or for use in the manufacture of animal or poultry feeds, glues or adhesives, optical fibres or optical fibre bundles or cables, typewriter or similar ribbons, polymers in primary forms or profile shapes or sheets of plastics.

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 27, 2000
Date of Decision: January 25, 2002

Tribunal Members: James A. Ogilvy, Presiding Member
Richard Lafontaine, Member
Zdenek Kvarda, Member

Counsel for the Tribunal: Marie-France Dagenais
Dominique Laporte

Clerk of the Tribunal: Margaret Fisher

Appearances: Sydney Martin, for the appellant
Jean-Robert Noiseux and Louis Sébastien, for the respondent



Appeal No. AP-2000-022

CLARIANT (CANADA) INC.

Appellant

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY

Respondent

TRIBUNAL: JAMES A. OGILVY, Presiding Member
RICHARD LAFONTAINE, Member
ZDENEK KVARDA, Member

REASONS FOR DECISION

INTRODUCTION

This is an appeal pursuant to section 67 of the *Customs Act*¹ from a decision of the Commissioner of the Canada Customs and Revenue Agency dated May 8, 2000, made pursuant to subsection 60(4) of the Act. The product in issue, Sandostab® P-EPQ (Sandostab), a phosphonite antioxidant processing stabilizer for plastics, was imported into Canada on June 4, 1999.

The issue in this appeal is whether the product in issue is properly classified under tariff item No. 3812.30.90 of the schedule to the *Customs Tariff*² as other anti-oxidizing preparations and other compound stabilizers for rubber or plastics, as determined by the respondent, or should be classified under tariff item No. 2931.00.91 as other organo-inorganic compounds, as claimed by the appellant.

The tariff nomenclature relevant to the issue in this appeal is as follows:

2931.00	Other organo-inorganic compounds.
2931.00.91	---Aqueous solutions of the tetrasodium salt of 1-hydroxyethylidene-1, 1-diphosphonic acid; Other organo-inorganic compounds, for use as petroleum refining catalysts, or for use in the manufacture of animal or poultry feeds, glues or adhesives, optical fibres or optical fibre bundles or cables, typewriter or similar ribbons, polymers in primary forms or profile shapes or sheets of plastics
38.12	Prepared rubber accelerators; compound plasticizers for rubber or plastics, not elsewhere specified or included; anti-oxidizing preparations and other compound stabilizers for rubber or plastics.
3812.30	-Anti-oxidizing preparations and other compound stabilizers for rubber or plastics
3812.30.90	---Other

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].
2. R.S.C. 1985 (3d Supp.), c. 41.

EVIDENCE

Dr. Klaus H. Stoll, Research Leader, Polymer Additives, at Clariant S.A. in France, gave evidence on the appellant's behalf. Dr. Stoll was qualified by the Tribunal as an expert in chemistry, more specifically, in the industrial process relating to the manufacture of Sandostab. Dr. Stoll described the product in issue as a processing stabilizer for plastics, which is also referred to as a secondary anti-oxidant. Dr. Stoll indicated that the first step in the manufacturing process of Sandostab involved a Friedel-Crafts reaction. In a second step, intermediate products are converted into the final product by reaction with a phenolic compound. Dr. Stoll further explained that, once the solvents are removed, the product is pelletized or ground and is sold in that form.

Dr. Stoll described Sandostab as a stabilizing additive used in the polyolefin industry, which stabilizes polymers during the melting process and prevents their degradation. He explained that Sandostab was a phosphonite, developed 25 years ago. He indicated that Sandostab was an organic compound that contained phosphorus, carbon and oxygen. Sandostab was described in the appellant's brief and supporting materials as a product made up of seven components, which the parties numbered I to VII, for convenient reference. Dr. Stoll indicated that components I, II and III were isomeric di-phosphonites that share the same empirical formula. He testified that components IV to VI were byproducts that result directly from the manufacturing process, while component VII is an unconverted raw material. Dr. Stoll explained that, while most of the processing stabilizer activity is focused on components I to III, components IV, V and VI contribute to the stabilizing effect and are not just inert impurities. He also stated that components IV, V and VI were not required for Sandostab to fulfil its purpose as a secondary anti-oxidant process stabilizer. When asked if it was possible to remove components IV, V and VI, Dr. Stoll testified that, even if some highly sophisticated laboratory techniques existed, economic reasons limit the methods that can be applied in a large-scale production environment. There are no other reasons, he testified, for leaving components IV, V and VI in Sandostab. He further testified that the product in issue is not a better stabilizer due to the presence of component V, although it is a chemical compound that appears on the market as a stabilizer under a number of trade names.

Mr. Phil G. St. Amour, Senior Chemist, Organic and Inorganic Products Section of the Laboratory & Scientific Services Directorate at the Canada Customs and Revenue Agency, gave evidence on the respondent's behalf. The Tribunal qualified Mr. St. Amour as an expert in chemistry, with a specialty in the analysis of organic products. Mr. St. Amour shared Dr. Stoll's conclusions on the use and composition of Sandostab. He testified that, by using a separation technique known as gel permeation chromatography, it would be possible to remove components IV, V and VII based on their molecular weight. Mr. St. Amour indicated that this technique could be applied on an industrial scale. He later indicated that it would more likely be used in the pharmaceutical industry than in the polymer industry. He also stated that component VI has a molecular weight close to that of components I, II and III and would, therefore, be very difficult to separate by a technique based on molecular weight.

Mr. St. Amour testified that components I, II and III are isomers of the same compound. They have the same molecular weight and the same molecular formula. The remaining components are different compounds and are not isomers of the first three. He further testified that the first three components appear to be the main components, but that the proportion of the other components is substantial. Mr. St. Amour also stated that component V was the same chemical compound as the one known as Irgafos 168, another processing stabilizer for plastics. In Mr. St. Amour's view, component V has anti-oxidizing or stabilizing properties and, therefore, contributes to the effectiveness of Sandostab. When asked if Sandostab was a separate chemically defined compound (SCDC), Mr. St. Amour testified that the product, as a whole, was

not an SCDC. However, if components I to III were present alone, he added, the three isomers would be considered an SCDC, i.e. a pure compound without other things mixed with it.

ARGUMENT

The appellant submitted that Sandostab should be classified under classification No. 2931.00.91.90, which applies to other organo-inorganic compounds for use in the manufacture of polymers in primary forms or profile shapes or sheets of plastics. It is the appellant's position that Sandostab is more specifically described under classification No. 2931.00.91.90 than under classification No. 3812.30.90.21, as it meets all the conditions for classification thereunder. More precisely, the appellant submitted that Sandostab is an organo-inorganic compound and a mixture of two or more isomers of the same organic compound that contains impurities.

The appellant submitted that, if the *General Rules for the Interpretation of the Harmonized System*³ were properly applied, Sandostab should be classified in heading No. 29.31 and not in heading No. 38.12, as claimed by the respondent. With respect to classification No. 3812.30.90.21, it is the appellant's contention that it covers a broad range of other compound stabilizers for plastics and is clearly less descriptive than classification No. 2931.00.91.90. The appellant argued that the use of the word "other" in heading No. 38.12 could only be interpreted as covering stabilizers not classified elsewhere in the *Custom Tariff*. The appellant further argued that the fact that Sandostab was a processing stabilizer for plastics and was advertised and marketed as such by the appellant could not be used as a sole criterion for classification.

The appellant referred to Note 1(b) to Chapter 29, which states, in part:

1. Except where the context otherwise requires, the headings of this Chapter apply only to:
 - (b) Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (Chapter 27).

It was the appellant's contention that the terms of heading No. 29.31 and Note 1(b) to Chapter 29 are much more descriptive than the terms of heading No. 38.12 and that there is, as a result, a *prima facie* indication that Sandostab should be classified in heading No. 29.31. The appellant noted that the respondent agreed, in his decision, that Sandostab was a mixture of two or more isomers of the same organic compound, as required by Note 1(b) to Chapter 29, but that he disagreed that the remaining four components were impurities.

The appellant also referred to Note 6 to Chapter 29, which describes the compounds of heading No. 29.31, and argued that Sandostab, being an organic compound containing oxygen and atoms of other non-metals (phosphorus) directly linked to carbon atoms, satisfies the requirement of Note 6 to Chapter 29.

The appellant also referred to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁴ to Chapter 29, in particular to part (A) of the General Notes, which give guidance in the interpretation of "impurities". They read, in part, as follows:

The term "impurities" applies exclusively to substances whose presence in the single chemical compound results solely and directly from the manufacturing process (including purification). These substances may result from any of the factors involved in the process and are principally the following:

3. *Supra* note 2, schedule [hereinafter General Rules].
4. Customs Co-operation Council, 2d ed., Brussels, 1996 [hereinafter Explanatory Notes].

- (a) Unconverted starting materials.
- (b) Impurities present in the starting materials.
- (c) Reagents used in the manufacturing process (including purification).
- (d) By-products.

It should be noted, however, that such substances are **not** in all cases regarded as “impurities” permitted under Note 1 (a). When such substances are deliberately left in the product with a view to rendering it particularly suitable for specific use rather than for general use, they are **not** regarded as permissible impurities. For example, a product consisting of methyl acetate with methanol deliberately left in with a view to improving its suitability as a solvent is **excluded (heading 38.14)**.

The appellant submitted that, according to Dr. Stoll’s testimony, three of the remaining components of Sandostab were byproducts and resulted solely and directly from the manufacturing process. The appellant argued that these components were not deliberately left in Sandostab, since, as indicated by Dr. Stoll, it was neither technically nor economically feasible to remove them. Regarding the last component, component VII, the appellant stated that it was more properly described as an unconverted starting material.

In reply to the respondent’s argument that heading No. 38.12 was more specific than heading No. 29.31, the appellant submitted that the Explanatory Notes to heading No. 38.17 provide that “[t]he heading **excludes** mixtures of isomers of **heading 29.02.**” The appellant also referred to one of the Tribunal’s decisions⁵ in which it was stated that the terminology used to explain which goods are covered by Chapter 37 seems to demonstrate that this chapter is a residual chapter dealing with chemical mixtures that cannot be classified elsewhere.

The respondent submitted that, from the testimony heard during the hearing, the nature of the product as advertised and the documents and literature on Sandostab, Sandostab was precisely described by the terms of heading No. 38.12 and is properly classified in this heading according to Rule 1 of the General Rules.

The respondent referred to the Explanatory Notes to heading No. 38.12, which read, in part, as follows:

For the purpose of this heading, the terms “compound”, “prepared” and “preparation” include:

- (i) deliberate mixtures and blends; and
- (ii) reaction mixtures including products produced from a homologous series such as fatty acids or fatty alcohols of heading 38.23.

(C) Anti-oxidising preparations and other compound stabilisers for rubber or plastics

This category covers anti-oxidising preparations for rubber or plastics (used, for example, in rubber manufacture to prevent hardening or ageing), such as mixed alkylated diphenylamines and preparations based on N-naphthylaniline.

This category also covers other compound stabilisers for rubber or plastics. Examples of this type of product include deliberate mixtures of two or more stabilisers as well as reaction mixtures such as mixed organotin compounds obtained from mixed fatty alcohols of heading 38.23. The main use of compound stabilisers for plastics is to inhibit the dehydrochlorination of certain polymers such as polyvinyl chloride. They may also be used as heat stabilisers for polyamides.

5. *Phosyn LPC* (13 April 2000), AP-99-010 (CITT).

It is the respondent's position that the above outlined statements of the Explanatory Notes specifically describe the product in issue. The respondent also referred to the appellant's own literature, which provides a description of Sandostab as a product which "contains several active components, contributing to its specific efficiency." In addition, the respondent argued that Sandostab was, as Mr. St. Amour testified, a chemical reaction mixture.

The respondent argued that heading No. 29.31 was a general heading that covers several other inorganic compounds that cannot be classified elsewhere. Reference was also made to Note 1(a) to Chapter 29 which states that the headings of this chapter apply only to: "(a) Separate chemically defined organic compounds, whether or not containing impurities". The respondent submitted that Mr. St. Amour's testimony indicated that Sandostab was not an SCDC and that it did not meet the requirements of Note 1(b) to Chapter 29 as components IV to VII were not isomers of components I to III.

With respect to components IV to VII, it was the respondent's contention that they are neither byproducts nor impurities, as described in the Explanatory Notes to Chapter 29. Indeed, the respondent submitted that these components are deliberately left in the product with a view to rendering it suitable for specific use, namely, an anti-oxidant stabilizer for plastics. This is supported, it contended, by the appellant's own literature and by the fact that one of the other four compounds is itself sold as an anti-oxidizing stabilizer.

DECISION

Section 10 of the *Customs Tariff* provides that the classification of imported goods under a tariff item shall be determined in accordance with the General Rules and the *Canadian Rules*.⁶ Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in the schedule, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*⁷ and the Explanatory Notes.

The General Rules are structured in cascading form. If the classification of an article cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, etc.

Rule 1 of the General Rules provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. Therefore, the starting point in classifying the product in issue is to consider the terms of heading Nos. 29.31 and 38.12 and any relative Chapter Notes and the Explanatory Notes, which may provide some guidance as to the appropriate interpretation of the terms of those headings.

Heading No. 29.31 covers other organo-inorganic compounds, while heading No. 38.12 covers anti-oxidizing preparations and other compound stabilizers for plastics. The Notes to Chapters 29 and 38 state, in part, the following:

[Chapter 29 – Organic Chemicals]

1. Except where the context otherwise requires, the headings of this Chapter apply only to:
 - (a) Separate chemically defined organic compounds, whether or not containing impurities;
 - (b) Mixtures of two or more isomers of the same organic compound (whether or not containing impurities).

6. *Supra* note 2, schedule.

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

6. The compounds of heading Nos. 29.30 and 29.31 are organic compounds the molecules of which contain, in addition to atoms of hydrogen, oxygen or nitrogen, atoms of other non-metals or of metals (such as sulphur, arsenic, mercury or lead) directly linked to carbon atoms.

Heading No. 29.30 (organo-sulphur compounds) and heading No. 29.31 (other organo-inorganic compounds) do not include sulphonated or halogenated derivatives (including compound derivatives) which, apart from hydrogen, oxygen and nitrogen, only have directly linked to carbon the atoms of sulphur or of a halogen which give them their nature of sulphonated or halogenated derivatives (or compound derivatives).

[Chapter 38 - Miscellaneous Chemical Products]

1. This Chapter does not cover:
 - (a) Separate chemically defined elements or compounds with the exception of the following.

It is the appellant's contention that Sandostab meets all of the prerequisite conditions for classification under classification No. 2931.00.91.90, as Sandostab is (i) an organo-inorganic compound; and (ii) a mixture of two or more isomers of the same organic compound that contains impurities. The appellant submitted that Sandostab could not be classified in heading No. 38.12, since Note 1(a) to Chapter 38 and Note (C) of the Explanatory Notes to heading No. 38.12, specifically exclude "separate chemically defined compounds".⁸ On the other hand, the respondent argued that Sandostab does not meet the requirements of Notes 1(a) and 1(b) to Chapter 29, as it is neither an SCDC nor a mixture of isomers of the same compound.⁹

Before going any further, the Tribunal must determine whether Sandostab is an SCDC. In order to meet the definition of a "separate chemically defined compound" in Note (A) of the Explanatory Notes to Chapter 29, a substance must first consist of one molecular species whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram. Mr. St. Amour testified that the structures (the molecules) of components I, II and III of Sandostab are the same, being a mixture of two or more isomers of the same organic compound and each having the same molecular structure.¹⁰ Mr. St. Amour also explained that, if components I to III were present alone, the three isomers would be considered an SCDC.¹¹

Where the parties disagree is with respect to the nature of the other components that form part of Sandostab, namely, components IV, V, VI and VII, and whether they are allowable impurities under the definition of a "separate chemically defined compound". The Explanatory Notes to Chapter 29, as quoted above, describe the term "impurities".

The key issue, here, is whether components IV to VII constitute "impurities" in light of that description. To answer this question in the affirmative, the Tribunal must be satisfied that: (1) their presence in the chemical compound results solely and directly from the manufacturing process; and (2) they are not deliberately left in the product with a view to rendering it particularly suitable for specific use rather than for general use.

8. *Transcript of Public Argument*, 27 November 2000, at 8.

9. *Ibid.* at 26.

10. *Transcript of Public Hearing*, 27 November 2000, at 91.

11. *Ibid.* at 85.

The Tribunal is satisfied by the evidence that components IV to VII result solely and directly from the manufacturing process.¹² This was not in dispute at the hearing. The next question that the Tribunal must address is whether components IV to VII are deliberately left in Sandostab with a view to rendering it particularly suitable for specific use rather than for general use.

With respect to component VII, the evidence was clear that it is an unconverted raw material that does not contain any phosphorus and does not contribute to the stabilizing effect of Sandostab.¹³ The appellant urged the Tribunal to find that components IV to VI were byproducts that fall under the definition of “permissible impurities”. The appellant argued, among other things, that these components were not deliberately left in Sandostab, as it was neither technically nor economically feasible to remove them. Based on the expert testimony, it argued that they were not required for Sandostab to perform as a secondary anti-oxidant since roughly 90 percent of the activity was achieved by components I, II and III. The appellant’s witness further testified that component V, which is commercially sold on its own as an anti-oxidizing stabilizer, was in fact diluting the effectiveness of components I, II and III.¹⁴

The respondent submitted that components IV to VII were deliberately left in Sandostab with a view to rendering it suitable for specific use, namely, an anti-oxidizing stabilizer for plastics. The respondent submitted that the testimony of Mr. St. Amour showed that components IV to VII could be removed using a technique based on molecular weight. In the respondent’s view, the fact that it is not economically feasible to remove them is not relevant to the tariff classification. In addition, the respondent submitted that the appellant’s literature, which advertises Sandostab as containing several active components contributing to its specific efficiency, supports his position that there are other active components that form part of Sandostab. The respondent further argued that component V was “necessarily” left in Sandostab with a view to rendering it more suitable for specific use, as component V is sold on its own as an anti-oxidant.

The Tribunal is satisfied that it may be possible to remove components IV to VI from Sandostab, under laboratory conditions. However, as it relates to this product, there was no evidence that such removal had been achieved in a large-scale production environment. The Tribunal is not convinced that the gel permeation chromatography process proposed by the respondent’s witness, and allegedly used in the pharmaceutical industry, could effectively be applied in the polymer industry with a product similar to Sandostab.¹⁵ Arguably, components IV to VI are deliberately left in Sandostab because it is not economically feasible to remove them. However, the Tribunal is not satisfied that it is with a view to rendering the product particularly suitable for specific use rather than for general use. The example given under the definition of “impurities” is informative as to when a substance is deliberately left in a product with a view to rendering it particularly suitable for specific use. It states, in part, that “a product consisting of methyl acetate with methanol deliberately left in with a view to improving its suitability as a solvent is **excluded**.” In order for a substance to render a product suitable for specific use rather than for general use, the Tribunal is of the opinion that the presence of the substance must enhance the product’s suitability for the specific purpose for which it is intended – in this instance, its suitability as an anti-oxidizing stabilizer for plastics. Put differently, the question that must be answered is whether the removal of the substance would increase or diminish the performance of the product.

The evidence does not indicate that the presence of components IV to VI increases the efficiency or effectiveness of Sandostab in its intended use. Dr. Stoll testified that, while components IV to VI are not

12. *Ibid.* at 23.

13. *Ibid.* at 26, 35, 119, 120.

14. *Ibid.* at 42.

15. *Ibid.* at 94-96, 101-02.

inert impurities, the removal of these components to get a product containing only components I, II and III would result in a improvement close to zero in terms of effectiveness.¹⁶ In his opinion, components IV to VI are not required for Sandostab to fulfil its purpose as a processing stabilizer.¹⁷ Dr. Stoll testified that these components are insignificant in the targeted end use of the product.¹⁸ For his part, Mr. St. Amour stated that the other compounds increased the effectiveness of Sandostab and were left in the product in order to give it additional properties. However, the Tribunal does not find persuasive the respondent's evidence on that point, as it was generally speculative in nature and unsupported by specific examples.¹⁹ In relation to the fact that Sandostab is advertised as "contain[ing] several active components, contributing to its specific efficiency", the Tribunal is unable to conclude from this statement that components IV to VI, in themselves, give Sandostab a specific use that it would not have if it were made only of components I, II and III, or that they would increase the product's efficiency. In the Tribunal's view, the product literature simply attempts to avoid the negative association that otherwise might be imparted by the term "impurities".

In light of the above, the Tribunal concludes that components IV to VI are not deliberately left in Sandostab with a view to rendering it particularly suitable for specific use rather than for general use. Therefore, components IV to VI and component VII, satisfy the description of impurities, being byproducts and unconverted starting materials respectively. The Tribunal finds that Sandostab is a separate chemically defined compound, which contains permissible impurities in accordance with Note 1(a) to Chapter 29 and the Explanatory Notes to Chapter 29. Sandostab is more specifically defined under Note 1(b) to Chapter 29 as a mixture of two or more isomers of the same organic compound (whether or not containing impurities). The Tribunal is of the view that the description of what constitutes "impurities" under the definition of "chemically defined compound" is also applicable to Note 1(b) to Chapter 29, especially since it deals, in the last paragraph, with mixtures of isomers of the same organic compound.

As already stated, it is only if Sandostab is not an SCDC that its classification in heading No. 38.12 is allowed, since such compounds are excluded from this chapter by Note 1(a). Having reached the conclusion that Sandostab is an SCDC, and more precisely a mixture of two or more isomers of the same organic compound, the Tribunal is left with no choice but to look at heading No. 29.31 to ensure that Sandostab meets the other requirements of this heading.

The evidence indicates that Sandostab is an organic compound containing phosphorus as a non-metal element, as well as oxygen. The phosphorus is also directly linked to a carbon atom. The Tribunal concludes that the requirements of Note 6 to Chapter 29 are met. In addition, Sandostab does not form part of the category of goods excluded from Chapter 29, in accordance with Note 2.

Accordingly, the product in issue, commercially known as Sandostab, should be classified under tariff item No. 2931.00.91 as other organo-inorganic compounds, for use as petroleum refining catalysts, or for use in the manufacture of animal or poultry feeds, glues or adhesives, optical fibres or optical fibre bundles or cables, typewriter or similar ribbons, polymers in primary forms or profile shapes, or sheets of plastics.

16. *Ibid.* at 33.

17. *Ibid.* at 34, 42.

18. *Ibid.* at 49.

19. *Ibid.* at 120-22.

For the foregoing reasons, the appeal is allowed.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Richard Lafontaine
Richard Lafontaine
Member

Zdenek Kvarda
Zdenek Kvarda
Member