



Ottawa, Monday, January 27, 2003

Appeal No. AP-2001-090

IN THE MATTER OF an appeal heard on October 31, 2002,
under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Commissioner of the
Canada Customs and Revenue Agency dated December 4, 2001,
with respect to a request for redetermination under section 60 of
the *Customs Act*.

BETWEEN

EUROTRADE IMPORT-EXPORT INC.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Patricia M. Close
Patricia M. Close
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-2001-090

EUROTRADE IMPORT-EXPORT 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 decisions of the Commissioner of the Canada Customs and Revenue Agency. The issue in this appeal is whether the product described as “VEGETA” is properly classified under tariff item No. 2104.10.00 as soups and broths and preparations therefor, as determined by the respondent, or should be classified under tariff item No. 2103.90.20 as mixed condiments and mixed seasonings, as claimed by the appellant.

HELD: The appeal is dismissed. Although the product in issue is used extensively as a seasoning, the essential question in this appeal is whether it also constitutes a preparation for broths. On the basis of the testimony of the expert witness and the fact that the main characteristics of broths referred to in the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to heading No. 21.04 are found in the product in issue, the Tribunal finds that it is properly classified in heading No. 21.04 as soups and broths and preparations therefor. The fact that the packaging of the product in issue no longer contains any mention of soup mix or directions to prepare a soup does not prevent its classification as a preparation for broths.

Place of Hearing: Ottawa, Ontario
Date of Hearing: October 31, 2002
Date of Decision: January 27, 2003

Tribunal Member: Patricia M. Close, Presiding Member

Counsel for the Tribunal: Philippe Cellard

Clerk of the Tribunal: Margaret Fisher

Appearances: Frank Caruso, for the appellant
Lynn Marchildon, for the respondent



Appeal No. AP-2001-090

EUROTRADE IMPORT-EXPORT INC.

Appellant

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY

Respondent

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member

REASONS FOR DECISION

This is an appeal pursuant to section 67 of the *Customs Act*¹ from decisions of the Commissioner of the Canada Customs and Revenue Agency, dated December 4, 2001, made under subsection 60(4) of the Act. The issue in this appeal is whether the product described as “VEGETA”, imported by the appellant between January 14, 1998, and February 8, 2000, is properly classified under tariff item No. 2104.10.00 of the schedule to the *Customs Tariff*² as soups and broths and preparations therefor, as determined by the respondent, or should be classified under tariff item No. 2103.90.20 as mixed condiments and mixed seasonings, as claimed by the appellant.

The relevant tariff nomenclature is as follows:

- 21.03 Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard.
- 2103.90 -Other
- 2103.90.20 ---Mixed condiments and mixed seasonings
- 21.04 Soups and broths and preparations therefor; homogenized composite food preparations.
- 2104.10.00 --Soups and broths and preparations therefor

In addition, the *Explanatory Notes to the Harmonized Commodity Description and Coding System*³ to heading No. 21.03 provide, in part:

Besides the products of **Chapters 9** and **20** mentioned above, the heading **does not cover**:

- (b) Soups and broths and preparations therefor (**heading 21.04**).

For their part, the Explanatory Notes to heading No. 21.04 provide, in part:

(A) SOUPS AND BROTHS AND PREPARATIONS THEREFOR

This category includes:

- (1) Preparations for soups or broths requiring only the addition of water, milk, etc.

1. R.S.C. 1985 (2d. Supp.), c. 1 [hereinafter Act].
2. S.C. 1997, c. 36.
3. Customs Co-operation Council, 2d ed., Brussels, 1996 [hereinafter Explanatory Notes].

(2) Soups and broths ready for consumption after heating.

These products are generally based on vegetable products (flour, starches, tapioca, macaroni, spaghetti and the like, rice, plant extracts, etc.), meat, meat extracts, fat, fish, crustaceans, molluscs or other aquatic invertebrates, peptones, amino-acids or yeast extract. They may also contain a considerable proportion of salt.

They are generally put up as tablets, cakes, cubes, or in powder or liquid form.

EVIDENCE

Ms. Catherine R. Copeland, Senior Chemist, Organic and Inorganic Products Section, Laboratory and Scientific Services Directorate, Canada Customs and Revenue Agency, testified as an expert witness on behalf of the respondent. Her expertise is in the analysis of organic and food products. Ms. Copeland indicated that salt, sugar and monosodium glutamate were the main ingredients of the product in issue. She found that the mixture of ingredients was the same as the one that she found when analyzing the product in issue in *Eurotrade Import-Export Inc. v. DMNR*.⁴ However, she testified that the indications found on the packaging of the products were not the same. The packaging of the product in issue in *Eurotrade 1997* described the product as “food seasoning and soup mix”, mentioned that the product made a good soup by itself and displayed directions to make a soup. The packaging of the product in issue in this appeal describes the product as food seasoning. It no longer mentions that the product can make a good soup by itself nor does it display directions to make a soup.

Ms. Copeland testified that the product in issue in this appeal is similar to bouillon powders or cubes, in that they share the same basic ingredients. She testified that the product in issue can make a vegetable broth or stock and can also serve as a seasoning product. Ms. Copeland further testified that, both in *Eurotrade 1997* and in this appeal, the addition of one teaspoon of the product in issue to one cup of boiling water gave a slightly salty vegetable-flavoured broth. She testified that the taste was very similar to the one that is obtained with a vegetable stock powder.

ARGUMENT

The appellant submitted that the product in issue should be classified in heading No. 21.03 as mixed seasonings. The appellant argued that the composition of the product, its descriptive literature, its labelling and its use justify this classification. The appellant submitted that the product in issue is used to enhance the flavour of various food dishes and is seen by the producer, the importer and the end user as a food seasoning, not as a soup or a broth mix. The appellant submitted that a broth must contain some meat or chicken products. The appellant argued that, since the product in issue does not contain meat or chicken products, it cannot be classified as a broth.

The respondent submitted that the Tribunal should not decide this appeal on its merits and should dismiss it in accordance with the doctrine of *res judicata*. If the Tribunal were to decide the appeal on its merits, the respondent submitted that the product in issue is properly classified in heading No. 21.04 as a preparation for soup or broth. The respondent submitted that there was uncontroverted evidence that, while the product in issue can be used as a seasoning, simply adding water makes it a broth. The respondent argued that the composition of the product in issue is similar to that of other broth mixes and that to classify it as a broth is consistent with advertising of the product in issue on the Internet and in pamphlets and with the Tribunal’s decision in *Eurotrade 1997*. The respondent recalled that soups or broths or preparations therefor classifiable in heading No. 21.04 are excluded from classification in heading No. 21.03.

4. (2 June 1997), AP-96-031 [hereinafter *Eurotrade 1997*].

DECISION

Given that the packaging of the product in issue in this appeal is materially different from the packaging of the product in issue in *Eurotrade 1997*, the Tribunal has decided not to invoke the doctrine of *res judicata*.⁵ It will decide this appeal on its merits. The Tribunal is directed by section 10 of the *Customs Tariff* to classify goods in accordance with the *General Rules for the Interpretation of the Harmonized System*⁶ and the *Canadian Rules*.⁷ Rule 1 of the General Rules provides, in part, that “for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes”. The Tribunal is further directed by section 11 of the *Customs Tariff* to have regard to the Explanatory Notes in interpreting the headings and subheadings of the *Customs Tariff*.

There is no doubt that, as shown by the documents filed by the appellant, the product in issue is used extensively as a seasoning. However, the essential question in this appeal is whether it also constitutes a preparation for broths. On the basis of the testimony of Ms. Copeland, the Tribunal finds that it does. The Tribunal accepts her testimony that the addition of one teaspoon of the product in issue to one cup of boiling water gives a slightly salty vegetable-flavoured broth. The Tribunal notes that the main characteristics of broths referred to in the Explanatory Notes to heading No. 21.04 are found in the product in issue. First, as indicated by Ms. Copeland, the product in issue requires only the addition of water to make a broth. Second, the product in issue is based on vegetable products and contains a considerable proportion of salt. Third, it is put up in powder form.

The fact that the definition of broth provided to the Tribunal by the appellant indicates that a broth is based on meat or chicken products is not determinative of the issue of whether the product in issue is a broth. Ms. Copeland testified that a broth can be based on vegetables. This is confirmed by the Explanatory Notes to heading No. 21.04.

In *Eurotrade 1997*, the packaging of the product in issue described the product as a food seasoning and soup mix and displayed instructions to prepare a soup. The fact that the packaging of the product in issue in this appeal no longer contains any mention of soup mix or directions to prepare a soup does not prevent the classification of the product in issue as a preparation for broths. As acknowledged by the appellant, the composition of the product in issue in *Eurotrade 1997* and the composition of the product in issue in this appeal are the same. Given the foregoing analysis of the nature of the product in issue, it is the Tribunal’s view that, in this case as in *Eurotrade 1997*, the product in issue is classifiable as a preparation for broths. In addition, the Tribunal notes that the expression “gourmet seasoning & soup mix” was found on the packaging of a product shown on the Internet that was said by Ms. Copeland to be likely the same as the product in issue in this appeal.

As indicated above, the Tribunal accepts that the product in issue is used as a seasoning. Mixed seasonings are classifiable in heading No. 21.03. However, the Explanatory Notes to heading No. 21.03 specifically exclude from classification in this heading soups and broths and preparations therefor and indicate that they should be classified in heading No. 21.04. Therefore, the Tribunal determines that the product in issue is properly classified in heading No. 21.04 as soups and broths and preparations therefor.

5. *Res judicata* is defined as follows: “a thing decided. If the thing actually and directly in dispute has been already adjudicated upon, it cannot be litigated again.” (J.A. Yogis, *Canadian Law Dictionary* (Woodbury, N.Y.: Barron’s Educational Series, 1983)).

6. *Supra* note 2 [hereinafter General Rules].

7. *Ibid.*

Consequently, the appeal is dismissed.

Patricia M. Close
Patricia M. Close
Presiding Member