



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2007-017

North American Tea & Coffee Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, February 11, 2009*

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IN THE MATTER OF an appeal heard on October 17, 2008, under subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated July 23, 2007, with respect to a request for review of an advance ruling, under subsection 60(4) of the *Customs Act*.

BETWEEN

NORTH AMERICAN TEA & COFFEE INC.

Appellant

AND

**THE PRESIDENT OF THE CANADA BORDER SERVICES
AGENCY**

Respondent

DECISION

The appeal is dismissed.

Diane Vincent
Diane Vincent
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Ellen Fry
Ellen Fry
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing:	Vancouver, British Columbia
Date of Hearing:	October 17, 2008
Tribunal Members:	Diane Vincent, Presiding Member James A. Ogilvy, Member Ellen Fry, Member
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PARTICIPANTS:**Appellant**

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STATEMENT OF REASONS

1. This is an appeal filed by North American Tea & Coffee Inc. (North American) under subsection 67(1) of the *Customs Act*¹ from a decision of the President of the Canada Border Services Agency (CBSA), dated July 23, 2007, made pursuant to subsection 60(4), in respect of an advance ruling made under paragraph 43.1(1)(c).

2. The goods in issue are the following four commercially available products: dill pickles, baby dill pickles, garlic dill pickles and polski ogorkie dill pickles.²

3. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 2001.10.00 of the schedule of the *Customs Tariff*³ as cucumbers and gherkins prepared or preserved by vinegar or acetic acid, as determined by the CBSA, or should be classified under tariff item No. 2001.90.90 as other vegetables prepared or preserved by vinegar or acetic acid, as submitted by North American.

PROCEDURAL HISTORY

4. On July 13, 2005, the CBSA made an advance ruling under paragraph 43.1(1)(c) of the *Act* concerning the tariff classification of, *inter alia*, the goods in issue. The CBSA ruled that the goods in issue were properly classified under tariff item No. 2001.10.00.

5. On October 6, 2005, pursuant to subsection 60(2) of the *Act*, North American requested that the CBSA review the advance ruling, arguing that the goods in issue should be classified under tariff item No. 2001.90.90.

6. On July 23, 2007, the CBSA issued a decision under subsection 60(4) of the *Act* confirming classification of the goods in issue under tariff item No. 2001.10.00.

7. On September 24, 2007, pursuant to subsection 67(1) of the *Act*, North American filed an appeal with the Canadian International Trade Tribunal (the Tribunal).

8. The Tribunal held a public hearing in Vancouver, British Columbia, on October 17, 2008.

9. Mr. Geert Van Marcke, Quality Assurance Manager, Intergarden Preserved Vegetables & Fruit, testified on behalf of North American. Mr. Dino Renaerts, Executive Chef/Sommelier, Metropolitan Hotel Vancouver, testified on behalf of the CBSA.

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

2. At the outset of this appeal, the goods in issue also included bread and butter pickles. However, at the hearing, North American conceded that the bread and butter pickles were properly classified by the CBSA under tariff item No. 2001.10.00. *Transcript of Public Hearing*, 17 October 2008, at 82-83.

3. S.C. 1997, c. 36.

GOODS IN ISSUE

10. North American filed physical exhibits of various examples of the goods in issue with the Tribunal.⁴ The ingredients of the goods in issue, as listed on their labels, are as follows:⁵

- dill pickles:	cucumbers, water, vinegar, salt, dillweed, spices, calcium chloride, polysorbate 80, flavour, colour (contains tartrazine)
- baby dill pickles:	cucumbers, water, vinegar, salt, dillweed, spices, calcium chloride, polysorbate 80, flavour, colour (contains tartrazine)
- garlic dill pickles:	cucumbers, water, vinegar, salt, garlic, calcium chloride, polysorbate 80, flavour, turmeric extractive
- polski ogorkie dill pickles:	cucumbers, water, vinegar, salt, dillweed, dill seed, calcium chloride, polysorbate 80, flavour, turmeric extractive

11. In addition to the goods in issue, North American filed samples of various ingredients that might be used in preparing various types of pickles.

ANALYSIS

Law

12. On appeals under section 67 of the *Act* concerning tariff classification matters, the Tribunal determines the proper tariff classification of the goods in accordance with prescribed interpretative rules.

13. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization.⁶ The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items. Sections and chapters may include notes concerning their interpretation. Sections 10 and 11 of the *Customs Tariff* prescribe the approach that the Tribunal must follow when interpreting the schedule in order to arrive at the proper tariff classification.

14. Subsection 10(1) of the *Customs Tariff* reads as follows: “. . . the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System^[7] and the Canadian Rules^[8] set out in the schedule.”

4. Exhibit A-03: Compliments “Garlic Dill Pickles”; Exhibit A-04: Western Family “Baby Dill Pickles with Extra Garlic”; Exhibit A-05: Safeway “Baby Dill Pickles with Garlic”; Exhibit A-07: Western Family “Polski Ogorki Pickles”.

5. Tribunal Exhibit AP-2007-017-1 and Respondent’s Brief, tab 4.

6. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.

7. S.C. 1997, c. 36, schedule [*General Rules*].

8. S.C. 1997, c. 36, schedule.

15. The *General Rules* comprise six rules structured in sequence so that, if the classification of the goods cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, and so on.⁹ Classification therefore begins with Rule 1, which reads as follows: “. . . for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.”

16. Section 11 of the *Customs Tariff* states the following: “In interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System^[10] and the Explanatory Notes to the Harmonized Commodity Description and Coding System,^[11] published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time.” Accordingly, unlike chapter and section notes, the *Explanatory Notes* are not binding on the Tribunal in its classification of imported goods. However, the Federal Court of Appeal has stated that these notes should be respected, unless there is a sound reason to do otherwise, as they serve as an interpretive guide to tariff classification in Canada.¹²

17. Once this process has led to classification of the goods in a single heading, the next step is to determine the appropriate subheading and tariff item, applying Rule 6 in the case of the former and the *Canadian Rules* in the case of the latter.

18. In this case, the parties agreed that the goods in issue fall under Chapter 20 of the *Customs Tariff* and that the appropriate heading is No. 20.01, which reads as follows: “**Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid.**” However, they disagree as to the appropriate subheading and tariff item.

19. The CBSA argued that the goods in issue are properly classified under tariff item No. 2001.10.00, which specifically provides for cucumbers and gherkins prepared or preserved by vinegar or acetic acid. North American, on the other hand, is of the view that the goods in issue should be classified under tariff item No. 2001.90.90 as other vegetables prepared or preserved by vinegar or acetic acid.

Relevant Provisions of the Customs Tariff and the Explanatory Notes

20. The relevant nomenclature of the *Customs Tariff* reads as follows:

Chapter 20

PREPARATIONS OF VEGETABLES, FRUIT, NUTS OR OTHER PARTS OF PLANTS

. . .

20.01	Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid.
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9. Rules 1 through 5 of the *General Rules* apply to classification at the heading level (i.e. to four digits). Pursuant to Rule 6 of the *General Rules*, Rules 1 through 5 are applicable to classification at the subheading level. Similarly, the *Canadian Rules* make Rules 1 through 5 of the *General Rules* applicable to classification at the tariff item level.

10. World Customs Organization, 2d ed., Brussels, 2003.

11. World Customs Organization, 3d ed., Brussels, 2002 [*Explanatory Notes*].

12. Canada (Attorney General) v. Suzuki Canada Inc., 2004 FCA 131 (CanLII), paras. 13, 17.

2001.10.00 -Cucumbers and gherkins

10 - - - -Put up for retail sale

90 - - - -Other

2001.90 -Other

2001.90.10 00 - - -Onions

2001.90.90 - - -Other

10 - - - -Fruit and nuts

20 - - - -Olives

30 - - - -Relishes

- - - -Other:

91 - - - -Pickles

99 - - - -Other

...

21. The Tribunal notes that the schedule to the *Customs Tariff* contains no specific section or chapter notes relating to the goods in issue.

22. The relevant *Explanatory Notes* are those to heading No. 20.01, which state as follows:

...

This heading covers vegetables (see Note 3 to this Chapter), fruit, nuts and other edible parts of plants prepared or preserved by means of vinegar or acetic acid, whether or not containing salt, spices, mustard, sugar or other sweetening matter. These products may also contain oil or other additives. They may be in bulk (in casks, drums, etc.) or in jars, bottles, tins or airtight containers ready for retail sale. The heading includes certain preparations known as pickles, mustard pickles, etc.

The goods covered by this heading differ from sauces of **heading 21.03** in that the latter are mainly liquids, emulsions or suspensions, which are not intended to be eaten by themselves but are used as an accompaniment to food or in the preparation of certain food dishes.

The principal products preserved by the methods described in this heading are cucumbers, gherkins, onions, shallots, tomatoes, cauliflowers, olives, capers, sweet corn, artichoke hearts, palm hearts, yams, walnuts and mangoes.

...

Classification at the Subheading Level

23. As previously noted, the parties agreed that the goods in issue fall under Chapter 20 of the *Customs Tariff* and that the appropriate heading is No. 20.01. The Tribunal agrees that the correct heading is No. 20.01. Therefore, the issue before the Tribunal is whether the goods in issue should be classified in subheading No. 2001.10 or in subheading No. 2001.90.

24. North American agrees that the goods in issue contain cucumbers and does not dispute that, if a cucumber preparation contained *only* salt, spices, mustard, sugar or other sweetening matter, oil or other additives, it would be classified in subheading No. 2001.10. However, in this case, it noted that, in addition to the cucumbers and other ingredients noted above, the goods in issue contain either dillweed or garlic.

North American argued that dillweed and garlic are not spices, but herbs or vegetables, and that this fact alone places the goods in issue in subheading No. 2001.90 as other vegetables prepared or preserved by vinegar or acetic acid.¹³ In this respect, North American argued that the goods in issue are something more than just cucumbers because of the additional ingredients, namely, garlic and dillweed. It argued that these additional ingredients transform the products into something other than only a preparation of cucumbers preserved by vinegar.

25. The CBSA argued that the goods in issue are properly classified as cucumbers under tariff item No. 2001.10.00 because they are specifically provided for by the terms of the tariff item. In this respect, it noted that the classification of goods in heading No. 20.01 depends on the type of vegetable prepared or preserved. Specifically:

- (a) cucumbers and gherkins are classified under tariff item No. 2001.10.00;
- (b) onions are classified under tariff item No. 2001.90.10; and
- (c) vegetables, other than cucumbers, gherkins or onions, are classified under tariff item No. 2001.90.90.¹⁴

26. The Tribunal notes that subheading No. 2001.10 does not contain the words “solely” or “only”. Furthermore, the Tribunal notes that the *Explanatory Notes* to heading No. 20.01 indicate that “[t]his heading covers vegetables . . . prepared or preserved . . . whether or not containing salt, spices, mustard, sugar or other sweetening matter. These products may also contain oil or other additives” By implication, this heading and subheading cover products that may contain other ingredients, such as spices or additives, as correctly observed by the CBSA. The *Explanatory Notes* to heading No. 20.01 also state that the heading “. . . includes certain preparations known as pickles”

27. The Tribunal is of the view that the goods in issue are distinct from certain other mixed pickled vegetables. Indeed, in contrast to the goods in issue, the Tribunal observes that “sweet mixed pickles”, which were also the subject of the CBSA’s decision dated July 23, 2007, comprise a mix of cucumbers, onions and cauliflowers, prepared or preserved in vinegar. The “sweet mixed pickles” also contain salt, spices and other additives. In that case, the CBSA noted that the “sweet mixed pickles” are a combination of vegetables, specifically, cucumbers, onions and cauliflowers. In the present case, however, the Tribunal notes that the overall proportion of dillweed or garlic in the goods in issue is very low, lower than salt, water or vinegar, and much less than cucumbers, which alone comprise more than 50 percent of the product by weight.¹⁵ Based on weight, the vegetable ingredient of greatest significance in the goods in issue is cucumber, while garlic cloves and dillweed represent less than 3 to 5 percent each of the product by weight and less than salt, water or vinegar. The Tribunal also notes that cucumbers are the first ingredient in the order of ingredients on the label. Mr. Van Marcke testified that ingredients are listed on product labels by order of importance (generally by weight of overall content).¹⁶ This was not disputed by North American.

13. Pursuant to Rule 6 of the *General Rules*, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to Rules 1 to 5. In other words, in order to classify the goods in issue, the Tribunal must first examine the terms of the subheadings of heading No. 20.01 in application of Rule 1.

14. Respondent’s Brief, para. 15.

15. Where present, garlic, dill weed and salt each represent between 3 and 7 percent of the goods in issue by weight, whereas cucumbers represent from 50 to 55 percent of the goods in issue by weight, the rest being composed of the water/vinegar mixture. *Transcript of Public Hearing*, 17 October 2008, at 56-57.

16. *Transcript of Public Hearing*, 17 October 2008, at 67.

28. Dillweed or garlic cloves are added to the product for flavouring, as indicated by Mr. Van Marcke. However, North American does not agree with the qualification of dill weed and garlic as spices. Mr. Van Marcke testified that a spice is the seed of a plant and that an herb is a part of a plant. He stated that dillweed is an herb and is included in the pickle preparation to give flavour to the products, but that it can also be consumed by people, for example, when it is used in a vinaigrette to put on a salad. Mr. Van Marcke testified that, if its leaves are used, garlic can also be used as an herb.¹⁷ He further noted that, under labelling regulations, garlic must be mentioned separately on an ingredient list and that it cannot be accounted for under the general term “spice”, because, like an onion for example, it is a vegetable.¹⁸

29. North American further submitted that garlic and dillweed do not fall within any of the categories stated in the *Explanatory Notes* to heading No. 20.01. Specifically, they are not salt, mustard, sugar or sweetening matter, nor are they oil.¹⁹ North American also submitted that, based on common parlance and the testimony of Mr. Van Marcke, garlic and dillweed are not spices, but herbs or vegetables. In support of this contention, North American referred to the *Explanatory Notes* to Chapter 7, which covers “**EDIBLE VEGETABLES AND CERTAIN ROOTS AND TUBERS**”,²⁰ noting that garlic is classified in heading No. 07.03, cucumbers and gherkins in heading No. 07.07 and dill in heading No. 07.09.

30. North American submitted that the drafters of the *Explanatory Notes* to heading No. 20.01 chose to use the word “spice” and that meaning must be given to that choice. It submitted that the drafters were aware of the terms “flavouring” and “seasoning” because these terms are used elsewhere within the nomenclature.²¹ North American submitted that a spice must therefore be something different from a seasoning or a flavouring.

31. The CBSA argued that neither the dillweed nor the garlic contained in any of the goods in issue changes anything with respect to what they are, namely, pickled cucumbers of subheading No. 2001.10. The CBSA argued that the presence of other ingredients, such as garlic, dillweed, spices, sweetening matter or additives, in the vegetable preparations or preserves has no bearing on the classification of the goods in issue because the *Explanatory Notes* expressly provide for the inclusion of these types of “other ingredients”, i.e. “. . . whether or not containing salt, spices, mustard, sugar or other sweetening matter. These products may also contain oil or other additives” [Emphasis added]

32. The Tribunal acknowledges that fresh garlic and dillweed are listed as edible vegetables in Chapter 7. However, with respect to any distinction between spices and other vegetable-derived flavouring agents such as herbs, the Tribunal is of the view that there is insufficient evidence to demonstrate a distinct dividing line between spices and herbs. The *Explanatory Notes* offer no assistance in this regard, and dictionary definitions bear out the lack of such a distinction in common usage.

33. According to the *Canadian Oxford Dictionary*, “herb” is defined as “. . . any plant with leaves, seeds, or flowers used for flavouring, food, medicine, scent, etc. . . .”, and “spice” is defined as “. . . an aromatic or pungent vegetable substance used to flavour food”²² According to these definitions, both spices and herbs are used for flavouring, but the part of the plant used for the flavouring does not support a clearly delineated distinction between the two words. The Tribunal notes that these definitions do not

17. *Ibid.* at 59.

18. *Ibid.* at 61.

19. *Ibid.* at 89.

20. Appellant’s Book of Authorities, tab 2.

21. *Transcript of Public Hearing*, 17 October 2008, at 95.

22. Second ed., s.v. “herb”, “spice”.

exclude one part of the plant, such as the leaves, from being a spice, nor does it restrict the use of the term “spice” to seeds only, as North American has argued. “Garlic” is defined as “. . . the strong-smelling pungent-tasting bulb of this plant, divided into cloves, used as a flavouring in cooking . . .”, and “dillweed” is defined as “. . . the leaves of the dill plant used as a seasoning.”²³ The Tribunal notes that these two vegetable substances are used for flavouring and could meet the dictionary definition of “spice”, which is consistent with the use of the term “spice” by the CBSA when referring to “aromatic food spices”.

34. North American suggested that the word “spice” was chosen, not flavouring or seasoning, for a purpose and that they are distinct terms. The Tribunal is of the view that, by their addition, spices and other additives are not the defining elements, i.e. they are not determinative of the classification in heading No. 20.01. Rather, the two elements that define the classification are the presence of vegetables and the method of preserving, not the type of flavouring ingredients. In this context, the Tribunal is of the view that the *Canadian Oxford Dictionary* definition of the term “spice” would allow garlic and dillweed to be described as spices, as provided for in the *Explanatory Notes* to heading No. 20.01.

35. The *Explanatory Notes* to heading No. 20.01 also state the following: “. . . These products may also contain oil or other additives . . .” [Emphasis added] In this respect, the Tribunal considered the following definition of “additive” in the *Canadian Oxford Dictionary*: “. . . a thing added, esp. a substance added to another so as to give it specific qualities (*food additive*) . . .”²⁴ Given the evidence on the record and the flavouring qualities that garlic and dill give to the goods in issue, the Tribunal is of the view that the term “or other additives” in the *Explanatory Notes* to heading No. 20.01 could also cover flavouring ingredients, such as garlic and dill in this case.

36. The parties made reference to certain labelling regulations and a document from the Department of Health (Health Canada) titled “Food Additive Dictionary”.²⁵ While the regulations for listing the product ingredients and Health Canada’s definition of a “food additive” may be of assistance in understanding the use of particular terms in technical or industry usage, they are not binding with regard to the tariff classification issue before the Tribunal. Furthermore, the Tribunal notes that there are certain inconsistencies between the *Explanatory Notes* and the list of food additives permitted for use in Canada. For example, in the *Explanatory Notes*, oil, in general, is considered to be an additive, whereas only specific types of oil are included in the list of additives permitted for use in Canada. Therefore, the Tribunal considers that the “Food Additive Dictionary” does not offer useful guidance in this case for tariff classification purposes.

37. In light of the evidence on the record, the Tribunal is of the view that garlic and dillweed are added to the goods in issue for flavouring and could be either spices or additives, as contemplated by the *Explanatory Notes*. There is no evidence on the record to indicate that the goods in issue are marketed as preserves of both cucumbers and dill, or cucumbers and garlic. Rather, the Tribunal understands that both dill and garlic flavour the vinegar, which in turn flavours the preserved cucumber. The Tribunal does not consider that the evidence before it indicates that consumers buy the goods in issue in order to obtain pickled dill or pickled garlic.

38. Therefore, having regard to the *Explanatory Notes* to heading No. 20.01, the Tribunal considers that garlic and dillweed are in the nature of spices, or other additives, which are present for their flavouring properties. The Tribunal is of the view that dillweed or garlic does not transform the goods in issue into something other than pickled cucumbers.

23. Second ed., s.v. “garlic”, “dillweed”.

24. Second ed., s.v. “additive”.

25. Respondent’s Brief, tab 6.

39. Given the evidence on the record, the Tribunal is of the view that the goods in issue are simply different preparations of a vinegar-preserved vegetable, i.e. cucumbers commonly known as dill pickles. Accordingly, for the purpose of customs classification, it is the Tribunal's view that the goods in issue are properly described as cucumber pickles.

40. The Tribunal believes that North American can find no support for its position by relying on Subheading Notes 1 and 2 to Chapter 20, which read as follows:

1. For the purpose of subheading 2005.10, the expression "homogenized vegetables" means preparations of vegetables, finely homogenised, put up for retail sale as infant food or for dietetic purposes, in containers of a net weight content not exceeding 250 g. For the application of this definition no account is to be taken of small quantities of any ingredients which may have been added to the preparation for seasoning, preservation or other purposes. These preparations may contain a small quantity of visible pieces of vegetables. Subheading 2005.10 takes precedence over all other subheadings of heading 20.05.
2. For the purpose of subheading 2007.10, the expression "homogenized preparations" means preparations of fruit, finely homogenised, put up for retail sale as infant food or for dietetic purposes, in containers of a net weight content not exceeding 250 g. For the application of this definition no account is to be taken of small quantities of any ingredients which may have been added to the preparation for seasoning, preservation or other purposes. These preparations may contain a small quantity of visible pieces of fruit. Subheading 2007.10 takes precedence over all other subheadings of heading 20.07.

41. North American submitted that these subheading notes illustrate how a small quantity of ingredients added for seasoning purposes can play a critical role in classification. It also submitted that these subheading notes illustrate that ingredients used for the purpose of seasoning are not considered part of the "preparation" itself. North American pointed to the fact that these subheading notes direct that no account is to be taken of seasoning ingredients in the classification of the preparations provided for under subheading Nos. 2005.10 and 2007.10, whereas no similar direction is given with respect to preparations of subheading No. 2001.10. In North American's view, this creates a "logical inference . . . that the addition of seasoning ingredients *must* be taken into account when classifying goods in the subheadings."²⁶

42. The Tribunal was not convinced by this argument. The text of the subheading notes specifically states that they are "[f]or the purpose" of subheading Nos. 2005.10 and 2007.10. Accordingly, the Tribunal believes that no "logical inference" should be drawn from the absence of similar direction elsewhere in the nomenclature.

43. In addition, North American submitted that the *Customs Tariff* provides specifically for "pickles" at the 10-digit statistical level under classification No. 2001.90.90.91 and that this supports classification in subheading No. 2001.90. The CBSA submitted that North American cannot find support for its position relative to subheading No. 2001.90 based on the statistical suffix item for "pickles", since classification is based exclusively on the nomenclature up to the 8-digit tariff item numbers only. The Tribunal agrees with the CBSA. Indeed, it is well established that 10-digit classification numbers have no bearing on classification which remains to be conducted pursuant to sections 10 and 11 of the *Customs Tariff*.

44. In its written submissions, North American argued that, in the alternative, the goods in issue could be viewed as mixtures and therefore classified pursuant to Rules 2 (b) and 3 (a) and (b) of the *General Rules*. According to this argument, the goods in issue would be made up of different components, including

26. Appellant's Brief, para. 18.

cucumbers and various ingredients added for the purpose of seasoning. In this respect, North American submitted that Rule 2 (b) requires that the goods in issue be classified in accordance with Rule 3. It argued that both subheading Nos. 2001.10 and 2001.90 should be considered equally specific under Rule 3 (a) in relation to the goods in issue because each subheading refers to only part of the mixture of the goods in issue. According to North American, pursuant to Rule 3 (b), it would follow that the goods in issue must be classified according to the component in the mixture which provides the goods in issue with their essential character, which, in this case, would be classified in subheading No. 2001.90.

45. The Tribunal, in finding that the goods in issue are essentially pickled cucumbers of subheading No. 2001.10, has arrived at its conclusion pursuant to Rule 1. Accordingly, the Tribunal did not need to address Rule 2 or 3.

DECISION

46. For the foregoing reasons, the Tribunal concludes that the goods in issue are properly classified under tariff item No. 2001.10.00.

47. The appeal is therefore dismissed.

Diane Vincent
Diane Vincent
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Ellen Fry
Ellen Fry
Member