



Ottawa, Tuesday, March 10, 1992

**Appeal No. AP-89-170**

IN THE MATTER OF an appeal heard on December 5, 1991,  
under section 67 of the *Customs Act*, R.S.C., 1985, c. 1  
(2nd Supp.), as amended;

AND IN THE MATTER OF two re-determinations dated  
May 12, 1989, and September 20, 1991, made by the Deputy  
Minister of National Revenue for Customs and Excise pursuant  
to subsection 63(3) of the *Customs Act*.

**BETWEEN**

**MLG ENTERPRISES LIMITED**

**Appellant**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Presiding member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-89-170**

**MLG ENTERPRISES LIMITED**

**Appellant**

**and**

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

**Respondent**

*This is an appeal under section 67 of the Customs Act regarding two re-determinations dated May 12, 1989, and September 20, 1991, by the Deputy Minister of National Revenue for Customs and Excise, that classified Honi-Bake, Honi-Bake 705 and Sweet 'n' Neat 2000 Dry Honey Powder imported in Canada from the United States under heading No. 21.06 as "Food preparations not elsewhere specified or included." The appellant contends that Honi-Bake should be classified under tariff item No. 1702.90.10 as "Artificial honey ..." and that Honi-Bake 705 and Sweet 'n' Neat 2000 Dry Honey Powder should be classified under tariff item No. 0409.00.00 as "Natural honey."*

**HELD:** *The appeal is dismissed. The Tribunal finds that the imported products were properly classified by the Deputy Minister of National Revenue for Customs and Excise.*

*Place of Hearing: Ottawa, Ontario  
Date of Hearing: December 5, 1991  
Date of Decision: March 10, 1992*

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member  
Arthur B. Trudeau, Member  
Sidney A. Fraleigh, Member*

*Counsel for the Tribunal: Robert Desjardins*

*Clerk of the Tribunal: Dyna Côté*

*Appearances: Terry McCann, for the appellant  
Howard A. Baker, for the respondent*

**Appeal No. AP-89-170**

**MLG ENTERPRISES LIMITED**

**Appellant**

**and**

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

**Respondent**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
ARTHUR B. TRUDEAU, Member  
SIDNEY A. FRALEIGH, Member

**REASONS FOR DECISION**

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> from two re-determinations dated May 12, 1989, and September 20, 1991, made by the Deputy Minister of National Revenue for Customs and Excise. These re-determinations classified under tariff item No. 2106.90.90 Honi-Bake, Honi-Bake 705 and Sweet 'n' Neat 2000 Dry Honey Powder imported into Canada from the United States.

Honi-Bake, Honi-Bake 705 and Sweet 'n' Neat 2000 Dry Honey Powder are dry honey products, made from pure honey and converted to a free-flowing powder. These products contain substantial quantities of wheat starch - the carrying agent - as well as other substances, such as calcium stearate and hydroxylated lecithin. Unlike Honi-Bake 705 and Sweet 'n' Neat 2000 Dry Honey Powder, Honi-Bake contains high fructose corn syrup and corn syrup. Honi-Bake and Honi-Bake 705 are essentially used in bread and in other baked goods, whereas Sweet 'n' Neat 2000 Dry Honey Powder is used in dry food technology applications where various constraints would prevent the use of liquid honey.

In essence, the appellant contends that Honi-Bake should be classified under tariff item No. 1702.90.10 as "Artificial honey ..." and that Honi-Bake 705 and Sweet 'n' Neat 2000 Dry Honey Powder, as "extensions" of liquid honey, should be classified under tariff item No. 0409.00.00 as "Natural honey."

The appellant's first witness, Mr. Jean-Jacques Mathieu from Ogilvie Mills Ltd. in Montréal, Quebec, submitted to the Tribunal that, in his view, the products imported by MLG Enterprises Limited were not of the same nature as the various products found under tariff item No. 2106.90.90. Answering a question of the Tribunal, Mr. Mathieu also stated that these products are considered by the trade or users as food ingredients, i.e., products used in the preparation of food products. The appellant's second witness, Mr. Charles A. Morris, who works for Ogilvie Mills, Inc. as Technical Service Manager - Food Ingredients, explained to the Tribunal the development of the imported products and underlined their use in a wide range of ingredients in finished food products. Mr. Morris, who works in Minnetonka, Minnesota, agreed with the proposition put forth by counsel for the

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1. R.S.C., 1985, c. 1 (2nd Supp.), as amended.

respondent that the products are intermediate goods used in the preparation of foods. He also told the Tribunal that the products, which are marketed as honey solids and not as artificial honey, were not designed to go into a liquid state in order to be used as liquid honey; as he explained, water added to them would only bring about a "slur."

The respondent's expert witness was Dr. Jonathan W. White, President of Honeydata Corporation, Navasota, Texas. Dr. White has, since the 1950s, written extensively on the subject of honey. His expertise was acknowledged by the appellant. Dr. White explained that artificial honey which, incidentally, is not a recognized article of commerce in the United States, first appeared in Europe at the beginning of this century. It appears that artificial honey is still used in some Eastern European countries. According to Dr. White, artificial honey is a manufactured sugar product with certain characteristics that are necessary to make it resemble natural honey. In liquid form, these characteristics are invert sugar and sucrose concentration that permit a stable non-crystalline syrup of solids content of about 82 percent, as well as additives to provide honey-like flavour and colour. As to the semi-solid form, the characteristics are a stable spreadable texture without requiring the addition of any material and the property, as with honey, of returning to a clear liquid form by the application of heat. Artificial honey does not contain starch. Dr. White added that artificial honey has, until now, never been available in powder form. The respondent's expert witness does not consider Honi-Bake an artificial honey, as it contains starch and cannot be returned to a liquid form merely by adding water.

Having examined the evidence and reviewed the arguments, the Tribunal is of the opinion that the appeal should be dismissed. The Explanatory Note<sup>2</sup> to heading No. 04.09 of Schedule I to the *Customs Tariff*<sup>3</sup> is to the effect that natural honey covers honey produced by bees or by other insects, centrifuged or in the comb, provided that neither sugar nor any other substance has been added. It has been well established during the hearing that Honi-Bake 705 and Sweet 'n' Neat 2000 Dry Honey Powder contain, in addition to honey, other substances such as wheat starch. Thus, for the purpose of tariff classification, these products cannot be considered natural honey. As to Honi-Bake, the Tribunal has found compelling Dr. White's expert opinion. Honi-Bake, for the reasons stated in his written report and reiterated during the hearing, cannot be regarded as an artificial honey. Suffice it here to underline again that artificial honey contains no starch and can be returned to a clear liquid state upon application of heat. These features are not shared by Honi-Bake. At this point, the Tribunal also wishes to note that counsel for the appellant, during the presentation of his arguments, explicitly expressed his agreement with Dr. White's testimony that the imported products, including Honi-Bake, were not artificial honey.

Finally, with respect to the respondent's classification of the imported products under heading No. 21.06 as "Food preparations not elsewhere specified or included," the Tribunal considers that the appellant has not adduced evidence to demonstrate that such classification has been made incorrectly. Pursuant to the relevant Explanatory Note, heading No. 21.06 covers preparations made wholly or entirely of foodstuffs, used in the preparation or making of beverages or food preparations for human consumption. As indicated by the appellant during the hearing, Honi-Bake, Honi Bake 705 and Sweet 'n' Neat 2000 Dry Honey Powder are products used by the food industry and are generally regarded in the professional trade as food ingredients used in the preparation of food products, such as bakery products. As these products are, under the present *Customs Tariff*, neither natural honey nor

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2. Explanatory Notes, Harmonized Commodity Description and Coding System, Customs Co-operation Council, Brussels, 1986.

3. R.S.C., 1985, c. C-54.

artificial honey and are known and used essentially as food intermediates, they have been correctly classified by the respondent.

The appeal is dismissed.

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Presiding member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
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