



Ottawa, Thursday, November 21, 1991

Appeal No. AP-89-281

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

AND IN THE MATTER OF decisions of the Deputy Minister
of National Revenue for Customs and Excise dated
January 3, 1990, with respect to a request for re-determination
pursuant to section 63 of the *Customs Act*.

BETWEEN

WINDSOR WAFERS, DIVISION OF BEATRICE FOODS INC.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed. The Tribunal declares that the front and rear sections of an automatic wafer-baking machine, type SWAKI 72G, imported into Canada from Richmond, Virginia, United States, under entry numbers 41632-00001513-2 and 41632-00001512-1, should be classified under tariff item No. 8438.10.10.90 as "Bakery machinery ... Other."

W. Roy Hines

W. Roy Hines
Presiding Member

John C. Coleman

John C. Coleman
Member

Charles A. Gracey

Charles A. Gracey
Member

Robert J. Martin

Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-89-281

WINDSOR WAFERS, DIVISION OF BEATRICE FOODS INC. Appellant

and

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

Whether the front and rear sections of an automatic wafer-baking machine, type SWAKI 72G, imported into Canada from Richmond, Virginia, United States, under entry numbers 41632-00001513-2 and 41632-00001512-1, should be classified under tariff item No. 8417.20.00 as "Bakery ovens ..." or, as claimed by the appellant, under tariff item No. 8438.10.10.90 as "Bakery machinery ... Other."

HELD: *The appeal is allowed.*

Place of Hearing: *Ottawa, Ontario*
Date of Hearing: *October 1, 1991*
Date of Decision: *November 21, 1991*

Tribunal Members: *W. Roy Hines, Presiding Member*
John C. Coleman, Member
Charles A. Gracey, Member

Counsel for the Tribunal: *Clifford Sosnow*

Clerk of the Tribunal: *Janet Rumball*

Appearances: *W. Learn, for the appellant*
J.B. Edmond, for the respondent

Appeal No. AP-89-281

WINDSOR WAFERS, DIVISION OF BEATRICE FOODS INC. Appellant

and

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

TRIBUNAL: W. ROY HINES, Presiding Member
 JOHN C. COLEMAN, Member
 CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act* from two decisions of the Deputy Minister for National Revenue for Customs and Excise (the Deputy Minister), classifying the front and rear sections of an automatic wafer-baking machine imported into Canada from the United States under tariff item No. 8417.20.00 as "Bakery ovens.... "

The issue in this appeal is whether the imported goods should be classified in their own right, i.e., as stand alone components or, as claimed by the appellant, as parts of a functional unit, classifiable under tariff item No. 8438.10.10.90 as "Bakery machinery ... Other."

In March 1988, the appellant, located in Cambridge, Ontario, imported what it describes as a total automatic wafer production line consisting of a number of components from Franz Haas Machinery of America, Inc. (Franz Haas), Richmond, Virginia, United States. A shipment on March 4, 1988, consisted of an automatic spreading machine, a connecting conveyer and a wafer book distribution table. These goods were imported under entry number 41632-00001510-9. This was followed by a shipment on March 21, 1988, under entry numbers 41632-00001513-2 and 41632-00001512-1, which consisted of a wafer book combining table, a turbo cream mixer, an interconnecting transport conveyer, a collecting conveyer and the subject goods (the wafer-baking machine, SWAKI 72G). The appellant accepted the Revenue Canada's tariff classification in respect of all of these goods (tariff item No. 8438.10.10.90) except for the wafer-baking machine. The appellant claimed that the latter was a component of a complete functioning unit and should be admissible under the same tariff item as the other goods involved.

Mr. D. Thompson, a professional engineer and employee of Beatrice Foods Inc., testified on behalf of the appellant. Mr. Thompson explained that in 1986 and early 1987, a decision was taken to acquire new wafer-making machinery and that the most practical layout to achieve the desired production was to install two wafer-sheet machines and to combine their output into one spreader and the rest of the line. This decision was discussed with the supplier of the equipment, Franz Haas, who was not able to produce the two wafer-sheet machines immediately. This led to the decision to split the line into two phases, with the first phase being delivered in 1987 and the second, in March 1988. The 1987 shipments, which included "an oven," a cooling tunnel, related conveyors and the loan of a temporary cream spreading line, enabled the firm to produce wafers at about half the capacity of that intended for

the eventual total line. The second phase, which consisted of the shipments noted above, would, as stated by Mr. Thompson, "permit the merging of the two outputs of the oven into one direction, one flow and through a properly sized cream spreader that would handle the double capacity. These books, as we call them, would then proceed through the cooling tunnel."

Mr. Thompson explained the various components of the production line using a video and a detailed construction drawing of the plant layout of the line (Exhibit A-1), noting which of the components were imported in 1987 and which, in 1988. The evidence confirms that the 1987 imports, including the loaned cream spreader, permitted the appellant to produce wafers and the 1988 imports completed that line by the addition of various components to double its output capacity. While not an employee of the company at the time of the purchase of this equipment, the witness testified that all of the equipment involved in the 1987 and 1988 shipments was part of the original purchase order (Exhibits A-2 and A-3) placed in 1987 and constituted a total system. The only item not imported that was specified in the original purchase order was a rope conveyor which was subsequently found not to be necessary.

The Tribunal has no reason to doubt Mr. Thompson's testimony that the original intention was to import a total system involving the use of two wafer-sheet machines. Indeed, this is supported by Exhibits A-2 and A-3, the purchase orders, which clearly indicate that two "wafer-baking ovens" were involved in the purchase. Further, it is noted from Exhibit A-4 that in August 1988, Revenue Canada issued a ruling concerning the 1987 imports by the appellant which stated "Based on the policy on classifying entireties and the application (of) remission of duty for the complete wafer production line, the ovens and other equipment were classified under tariff item 42700-1." Thus, it would appear that the goods imported in 1987 were treated as an entity for tariff classification purposes rather than a series of separate components, and the package was entitled to a remission of duties as not being available from Canadian production. The new Harmonized System of tariff classification came into force in January 1988 and, accordingly, the imports in issue had to be classified in accordance with this new legislation.

As indicated above, the Tribunal is prepared to accept that the 1988 imports were, in fact, part of a single purchase by the appellant, the first part having been shipped in 1987. While the respondent does not contest the proposition that all goods involved in a single order need not be shipped at the same time, she argues, and the Tribunal agrees with her, that the legislation is not intended to allow future additions, upgrading or replacement of equipment ordered under the original importation. The issue, as the Tribunal sees it, is whether under the new tariff classification rules a complete functional unit, as in the present case, is properly classified in its entirety under tariff item No. 8438.10.10.90 or whether the various components must be classified in their own right as contended by Revenue Canada.

The two tariff items in issue are located in Section XVI, Schedule I to the *Customs Tariff*, Chapter 84. The applicable section and explanatory notes to this section provide that "Where a machine (including a combination of machines) consists of individual components ... intended to contribute together to a clearly defined function ... then the whole falls to be classified in the heading appropriate to that function." The related explanatory note defines the expression "intended to contribute together to a clearly defined function" as covering only machines and combinations of machines essential to the performance of the function specific to the functional unit as a whole and, thus, excludes machines or appliances fulfilling auxiliary functions.

Tariff item No. 8417.20.00 specifically provides for "Bakery ovens, including biscuit ovens"

whereas tariff item No. 8438.10.10.90 is a more general category providing for "Machinery, not specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink ... Bakery machinery ... Other." This heading specifically excludes baker's ovens since they are quite obviously provided for in tariff item No. 8417.20.00. In this connection, it should be noted that the Tribunal heard considerable evidence relating to whether the subject goods were, in fact, ovens rather than wafer-sheet machines. It agrees with the respondent that both the dictionary definitions and the manufacturer's published literature concerning these machines support the view that the wafer-baking machine, SWAKI 72G, is commonly held in the trade to be an oven.

In this case, the Tribunal cannot accept that the wafer-baking machine, SWAKI 72G, be classified as an oven *per se*. Clearly, it is the one component in contention, but only because it was classified differently than the other components that were imported at the same time. In the Tribunal's view, one must look behind the goods involved in this particular appeal to ascertain the true nature of the import transaction. This, the Tribunal has done and, based on the evidence, has concluded that while the 1988 imports taken together do not constitute a complete wafer-baking system, the ovens in question and the other 1988 imports were components of the much larger transaction which involved the importation of a complete wafer-baking system shipped into Canada over the two-year period, 1987 and 1988. In other words, the complete system, as originally contemplated by the appellant, consisted of a number of individual components intended to contribute together to the clearly defined function of producing wafers. The change in the tariff classification system to the Harmonized System on January 1, 1988, which occurred in the midst of this importation, did not cause the Tribunal to decide that the goods arriving after January 1, 1988, were part of a new importation.

CONCLUSION

Accordingly, the Tribunal finds that the subject goods should be classified under tariff item No. 8438.10.10.90 as a component of a functional unit designed to bake and produce wafers.

The appeal is allowed.

W. Roy Hines

W. Roy Hines
Presiding Member

John C. Coleman

John C. Coleman
Member

Charles A. Gracey

Charles A. Gracey
Member