

Ottawa, Friday, May 6, 1994

Appeal No. AP-93-026

IN THE MATTER OF an appeal heard on October 15, 1993,
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 February
15, 1993, with respect to a request for re-determination under
section 63 of the *Customs Act*.

BETWEEN

HOSPITAL & KITCHEN EQUIPMENT LIMITED

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Lise Bergeron

Lise Bergeron
Presiding Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member

Charles A. Gracey

Charles A. Gracey
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-93-026

HOSPITAL & KITCHEN EQUIPMENT LIMITED

Appellant

and

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

Respondent

The appellant manufactures commercial kitchen equipment. Between April 1991 and January 1992, the appellant imported into Canada from the United States staging cabinets for sale to McDonald's Restaurants of Canada Limited.

The appellant and the respondent agree that the staging cabinets are properly classified in heading No. 84.19. The issue in this appeal is whether the staging cabinets imported by the appellant are properly classified under tariff item No. 8419.81.90 as other machinery, plant and equipment for making hot drinks or for cooking or heating food, as determined by the respondent, or should be classified under tariff item No. 8419.89.40 as other mechanically operated machinery, plant and equipment, as claimed by the appellant.

HELD: *The appeal is dismissed. The Tribunal is of the view that, notwithstanding the fact that the staging cabinets have a humidifying function, they are in essence equipment for heating food. On that basis, the Tribunal finds that the staging cabinets fall in subheading No. 8419.81, which expressly contemplates equipment of that type.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: October 15, 1993
Date of Decision: May 6, 1994*

*Tribunal Members: Lise Bergeron, Presiding Member
Sidney A. Fraleigh, Member
Charles A. Gracey, Member*

Counsel for the Tribunal: John L. Syme

Clerk of the Tribunal: Janet Rumball

*Appearances: Barbara Holmes and Lynn Schmeeckle, for the appellant
Linda J. Wall, for the respondent*

Appeal No. AP-93-026

HOSPITAL & KITCHEN EQUIPMENT LIMITED

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE

Respondent

TRIBUNAL: LISE BERGERON, Presiding Member
SIDNEY A. FRALEIGH, Member
CHARLES A. GRACEY Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act) from decisions of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) dated February 15, 1993.

Between April 1991 and January 1992, the appellant imported into Canada from the United States staging cabinets (the cabinets) for sale to McDonald's Restaurants of Canada Limited. The appellant and the respondent agree that the cabinets are properly classified in heading No. 84.19 of Schedule I to the *Customs Tariff*.² The issue in this appeal is whether the cabinets imported by the appellant are properly classified under tariff item No. 8419.81.90 as other machinery, plant and equipment for making hot drinks or for cooking or heating food, as determined by the respondent, or should be classified under tariff item No. 8419.89.40 as other mechanically operated machinery, plant and equipment, as claimed by the appellant.

The relevant portions of the *Customs Tariff* are as follows:

84.19 *Machinery, plant or laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes.*

-Other machinery, plant and equipment:

8419.81 *--For making hot drinks or for cooking or heating food*

8419.81.90 *---Other*

8419.89 *--Other*

8419.89.40 *---Mechanically operated*

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. R.S.C. 1985, c. 41 (3rd Supp.).

Mr. Curtis Pinnow, Vice-President of Engineering of Carter-Hoffmann Corp., the company that manufactures the cabinets, gave evidence on behalf of the appellant. Mr. Pinnow testified that the cabinets are designed to hold uncovered, cooked food for extended periods of time (in the range of 30 minutes). The cabinets maintain food taste, temperature and appearance through two means: (1) electric heaters, which maintain the appropriate temperature in the cabinets; and (2) a vaporizing system, which maintains the appropriate level of humidity in the cabinets. The high level of humidity allows uncovered food to remain in the cabinets for prolonged periods of time without becoming dry. Mr. Pinnow testified that the humidity is generated by a flash heater system. The system intermittently pulses water against a heated metal plate and the water instantaneously vaporizes into the cabinets when it hits the plate. The frequency of the pulse may be altered to vary the humidity level in the cabinets. The cabinets also have a feature whereby, upon the access door being opened, additional vapor is generated (through the process described above) to compensate for any humidity loss resulting from the open door.

Mr. Pinnow testified that the cabinets are mechanically operated in that they employ a solenoid valve to meter water to be vaporized. He also expressed the view that the fact that the opening and closing of the cabinets' hinged doors activated the solenoid valve, and ultimately resulted in additional humidity being generated, was further evidence of mechanical operation.

During cross-examination, Mr. Pinnow explained that the solenoid valve consists of a cylindrical coil of wire with a plunger in its centre. When the coil is electrified, the valve opens, and water is pulsed against the heated metal plate. Mr. Pinnow agreed that the solenoid valve is controlled by a microprocessor. He also indicated that the heated metal plate is activated by the microprocessor. Finally, he indicated that, when the cabinet door is opened, a signal is sent to the microprocessor, which in turn sends a signal causing the solenoid valve to open.

On the question of whether the cabinets are used for heating food, Mr. Pinnow agreed that food, once placed in the cabinets, would tend to lose some heat due to the fact that the temperature outside the cabinets is lower than the temperature inside. He also agreed that any heat that the food loses must be restored. When asked whether, in constantly reheating food, the cabinets were not in fact "heating," Mr. Pinnow indicated that the cabinets "add temperature" to the food items placed in them.

In argument, the appellant's representatives submitted that the principal function of the cabinets is to maintain food quality in terms of taste, temperature and appearance by means of a mechanically controlled system of steam generation.

Counsel for the respondent argued that, as the cabinets fall in subheading No. 8419.81, which is a naming provision, the appellant's argument that they should be classified in subheading No. 8419.89, which is a residual provision, must fail. She also submitted that, before the Tribunal considers the appellant's arguments relating to whether the cabinets are mechanically operated, which is an argument that relates to the appropriate tariff item, it should first decide upon the appropriate subheading for the cabinets.

Counsel for the respondent submitted that the cabinets' primary function is to heat food. The fact that the cabinets have a feature which allows the level of humidity to be controlled is ancillary to this primary function. In counsel's submission, the humidifying function is merely a means to an end, which is to create warm food that is also attractive and palatable.

In determining the proper classification of the cabinets, the Tribunal must first determine the heading in which they fall. In this case, the appellant and the respondent agree that they fall in heading No. 84.19. The Tribunal agrees. The next step in determining the proper classification of the cabinets is to determine the appropriate subheading. The Tribunal agrees with counsel for the respondent that, if the cabinets fall in a naming provision, it cannot be argued successfully that they fall in a residual provision.

In making its decision on the appropriate subheading, the Tribunal carefully considered the testimony of the appellant's witness. He acknowledged that, in the normal course of events, food placed in the cabinets would tend to lose heat because the temperature outside the cabinets would be lower than the temperature inside. He also indicated that any heat lost would have to be restored. Finally, he attempted to distinguish between a heating function and the function which the cabinets carry out, on the basis that the cabinets add temperature to the food rather than heat it.

The Tribunal finds that the Deputy Minister was correct in deciding that the cabinets fall in subheading No. 8419.81. The Tribunal has reached this decision based on its view that the cabinets are equipment for heating food. The Tribunal recognizes that the cabinets do have a humidifying function, which some other types of cabinets for heating food do not. However, the Tribunal is of the view that the humidifying function simply allows the heating function to be carried out in such a way as to maintain food appearance, taste and texture. As suggested by counsel for the respondent, the humidifying function is a means to an end, but it does not alter the essential nature of the cabinets.

The Tribunal is also of the view that the Deputy Minister properly classified the cabinets under tariff item No. 8419.81.90. Accordingly, the appeal is dismissed.

Lise Bergeron
Lise Bergeron
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Charles A. Gracey
Charles A. Gracey
Member