

Ottawa, Thursday, November 7, 1996

Appeal No. AP-95-001

IN THE MATTER OF an appeal heard on May 9, 1996, 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 dated January 5, 1995, with respect to requests for re-determination under section 63 of the *Customs Act*.

BETWEEN

AMBROSIA CHOCOLATE COMPANY

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Raynald Guay
Raynald Guay
Presiding Member

Susanne Grimes
Susanne Grimes
Acting Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-95-001

AMBROSIA CHOCOLATE COMPANY

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue dated January 5, 1995, pursuant to subsection 63(3) of the *Customs Act*. The issue in this appeal is whether the product known as “M-1 Chocolate Liquor/Cocoa Butter Blend” is properly classified under tariff item No. 1806.20.90 as other food preparations containing cocoa, as determined by the respondent, or should be classified under tariff item No. 1804.00.00 as cocoa butter, fat and oil, as claimed by the appellant.

HELD: The appeal is dismissed. According to the Tribunal, the evidence clearly shows that the product in issue, when it is imported, is a mixture of culinary ingredients or a food preparation containing cocoa. The Tribunal notes that the appellant admitted that its product contains cocoa. It is well established that the Tribunal must classify goods as they are at the time of importation. It is the Tribunal’s view, therefore, that the product in issue is named or described in heading No. 18.06 and, more specifically, under tariff item No. 1806.20.90 and that it is properly classified.

Place of Hearing:	Ottawa , Ontario
Date of Hearing:	May 9, 1996
Date of Decision:	November 7, 1996
Tribunal Member:	Raynald Guay, Presiding Member
Counsel for the Tribunal:	Joël J. Robichaud
Clerk of the Tribunal:	Anne Jamieson
Parties:	René Morissette, for the appellant Pascale O’Bomsawin, for the respondent

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AMBROSIA CHOCOLATE COMPANY

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: RAYNALD GUAY, Presiding 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 dated January 5, 1995, pursuant to subsection 63(3) of the Act. This appeal was heard by one member of the Tribunal.² The Tribunal disposed of the matter on the basis of the written documentation, in accordance with rule 25 of the *Canadian International Trade Tribunal Rules*,³ as supplemented by an agreed statement of facts and briefs filed by the parties.

The product known as “M-1 Chocolate Liquor/Cocoa Butter Blend” is a mixture of two direct subproducts of cocoa bean refining, cocoa butter and chocolate liquor, in the respective proportions of 56.14 percent and 43.86 percent. It was initially classified by the respondent under tariff item No. 1803.10.00 of Schedule I to the *Customs Tariff*⁴ as cocoa paste, not defatted. A subsequent decision by the respondent, under section 61 of the Act, classified the product in issue under tariff item No. 1806.20.90 as other food preparations containing cocoa. The appellant filed a request for re-determination pursuant to paragraph 63(1)(a) of the Act and requested that the product in issue be classified under tariff item No. 1804.00.00 as cocoa butter, fat and oil. However, the respondent’s decisions, regarding the product in issue, maintained the classification under tariff item No. 1806.20.90.

The issue in this appeal is whether the product in issue is properly classified under tariff item No. 1806.20.90, as determined by the respondent, or should be classified under tariff item No. 1804.00.00, as claimed by the appellant. For the purposes of this appeal, the relevant provisions of the tariff nomenclature are as follows:

1804.00.00	Cocoa butter, fat and oil.
18.06	Chocolate and other food preparations containing cocoa.

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

2. Section 3.2 of the *Canadian International Trade Tribunal Regulations*, added by SOR/95-27, December 22, 1994, *Canada Gazette* Part II, Vol. 129, No. 1 at 96, provides, in part, that the Chairman of the Tribunal may, taking into account the complexity and precedential nature of the matter at issue, determine that one member constitutes a quorum of the Tribunal for the purposes of hearing, determining and dealing with any appeal made to the Tribunal pursuant to the *Customs Act*.

3. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

4. R.S.C. 1985, c. 41 (3rd Supp.).

- 1806.20 -Other preparations in blocks, slabs or bars weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg
- 1806.20.90 ---Other

According to the appellant's representative, the product in issue cannot be classified in heading No. 18.06 because it is not a "preparation" within the meaning given to this term in the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁵ (the Explanatory Notes). According to the representative, "other food preparations containing cocoa" means "sugar confectionery containing cocoa in any proportion." He added that, since the product in issue does not contain any sugar or additive, it cannot be classified in heading No. 18.06. The representative claimed that, consequently, the product in issue should be classified in heading No. 18.04 as "[c]ocoa butter, fat and oil," considering the fact that cocoa butter is the main ingredient.

Counsel for the respondent claimed that, according to Rule 1 of the *General Rules for the Interpretation of the Harmonized System*⁶ (the General Rules), the product in issue should be classified in heading No. 18.06 because it is a food preparation containing cocoa. Counsel referred to the Explanatory Notes to heading No. 18.06, which provide that the heading includes "all food preparations containing cocoa." According to counsel, heading No. 18.04 applies to cocoa butter imported by itself. Counsel mentioned that it is not disputed that the product in issue is a mixture of two products. In addition, counsel maintained that the Explanatory Notes to heading No. 18.04, which define cocoa butter as being of yellowish-white colour and generally presented in slabs, make this heading inadequate for the classification of the product in issue, which appears in solid brown-coloured blocks.

For the purposes of classifying the product in issue in Schedule I to the *Customs Tariff*, the application of Rule 1 of the General Rules is of the utmost importance. This rule, in fact, provides that classification shall be determined first according to the terms of the headings and any relative Chapter Notes. As a result, the Tribunal must first decide whether the product in issue is named or described in general terms in a specific heading. If this is the case, it must be classified therein subject to any relative Chapter Notes. Section 11 of the *Customs Tariff* states that, in interpreting the headings and subheadings, the Tribunal must take into account the Explanatory Notes.

Heading No. 18.06 provides for the classification of "[c]hocolate and other food preparations containing cocoa." The product in issue is defined in the agreed statement of facts as being a mixture of two direct subproducts of cocoa bean refining, cocoa butter and chocolate liquor, in the respective proportions of 56.14 percent and 43.86 percent. The French term "*préparation*" (preparation) is defined in *Le Petit Robert 1*,⁷ in part, as follows: "*Préparation des mets ... Chose préparée ... Composition ... Préparations culinaires ... Préparation chimique, mélange de diverses substances préparées en laboratoire en vue d'une expérience*"⁸ ([translation] Preparation of dishes ... Something prepared ... Composition ... Culinary preparations ... Chemical preparation, mixture of various substances prepared in a

5. Customs Co-operation Council, 1st ed., Brussels, 1986.
6. *Supra* note 4, Schedule I.
7. (Montréal: Dictionnaires ROBERT - CANADA, 1990).
8. *Ibid.* at 1517.

laboratory for an experiment). According to the Tribunal, the evidence clearly shows that the product in issue, when it is imported, is a mixture of culinary ingredients or a food preparation containing cocoa. The Tribunal notes that the appellant admitted that its product contains cocoa. It is well established that the Tribunal must classify goods as they are at the time of importation.⁹ It is the Tribunal's view, therefore, that the product in issue is named or described in heading No. 18.06 and, more specifically, under tariff item No. 1806.20.90 and that it is properly classified. The Tribunal makes this decision taking into account the Chapter Notes and the Explanatory Notes to heading No. 18.06.

Consequently, the appeal is dismissed.

Raynald Guay
Raynald Guay
Presiding Member

9. See *The Deputy Minister of National Revenue for Customs and Excise v. Ferguson Industries Limited*, [1973] S.C.R. 21.