CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, September 3, 1997

Appeal Nos. AP-95-276 and AP-95-307

IN THE MATTER OF appeals heard on June 20, 1997, under section 67 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 December 4, 1995, and February 26, 1996, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

BOSS LUBRICANTS **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeals are dismissed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal Nos. AP-95-276 and AP-95-307

BOSS LUBRICANTS **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

These are appeals under section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue pursuant to section 63 of the *Customs Act*. The issue in these appeals is whether the oil imported by the appellant is properly classified under tariff item No. 2710.00.20 as other lubricating oils put up in packings for retail sale; oils and preparations thereof, having a viscosity of 7.44 mm^2/sec. or more at 37.8°C, other than white oils, as determined by the respondent, or should be classified under tariff item No. 2710.00.90 as other petroleum oils and oils obtained from bituminous minerals, as claimed by the appellant.

HELD: The appeals are dismissed. The Tribunal is not persuaded that the first clause in tariff item No. 2710.00.20, which refers to oils "put up in packings for retail sale," served to modify or otherwise limit the second clause in that tariff item. In other words, the two clauses in tariff item No. 2710.00.20 describe two distinct types of goods, only one of which need be put up in packings for retail sale. Having reached that view, the argument of counsel for the appellant that the goods in issue could not be classified under tariff item No. 2710.00.20 because they were imported in bulk and were, thus, not in packings for retail sale cannot be sustained.

Places of Videoconference Hearing:	Hull, Quebec, and Calgary, Alberta
Date of Hearing:	June 20, 1997
Date of Decision:	September 3, 1997
Tribunal Member:	Charles A. Gracey, Presiding Member
Counsel for the Tribunal:	John L. Syme
Clerks of the Tribunal:	Margaret Fisher and Anne Jamieson
Appearances:	Paul A. Kazakoff, for the appellant Janet Ozembloski, for the respondent

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Appeal Nos. AP-95-276 and AP-95-307

BOSS LUBRICANTS **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member

REASONS FOR DECISION

These are appeals, heard by one member of the Tribunal,[1] under section 67 of the *Customs Act*[2] (the Act) from decisions of the Deputy Minister of National Revenue pursuant to section 63 of the Act. The appeals concern the proper tariff classification of certain oil and preparations thereof imported by the appellant. The parties have agreed that the goods in issue are properly classified in heading No. 27.10 of Schedule I to the *Customs Tariff*,[3] "Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations." The issue in these appeals is whether the oil imported by the appellant is properly classified under tariff item No. 2710.00.20 as other lubricating oils put up in packings for retail sale; oils and preparations thereof, having a viscosity of 7.44 mm^2/sec. or more at 37.8°C, other than white oils, as determined by the respondent, or should be classified under tariff item No. 2710.00.90 as other petroleum oils and oils obtained from bituminous minerals, as claimed by the appellant.

The relevant tariff nomenclature is as follows:

2710.00	Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations.
2710.00.20	---Other lubricating oils put up in packings for retail sale; oils and preparations thereof, having a viscosity of 7.44 mm^2/sec. or more at 37.8°C, other than white oils
2710.00.90	---Other

The evidence is not contested that the goods in issue were imported in bulk form and were, therefore, not "[o]ther lubricating oils put up in packings for retail sale." The appellant's position is that, since it is agreed that the goods were not for retail sale, they cannot be classified under tariff item No. 2710.00.20. The respondent contends that, since the two product descriptions within tariff item No. 2710.00.20 are separated by a semicolon, the two are discrete and independent product descriptions. In other words, "oils

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

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and preparations thereof, having a viscosity of 7.44 mm^2/sec. or more at 37.8°C, other than white oils," may be classified under tariff item No. 2710.00.20 notwithstanding the fact that they are not put up in packings for retail sale.

There being no dispute about the nature of the goods in issue, the hearing proceeded immediately to argument which centred on the purpose of the semicolon in tariff item No. 2710.00.20.

Counsel for the appellant argued that the interpretation of the tariff item in question should be based on the ordinary meaning of the words and punctuation contained therein. Counsel argued that the first clause in tariff item No. 2710.00.20 is the main clause and refers to lubricating oils put up in packings for retail sale and that what follows the semicolon simply provides additional particulars. Therefore, in counsel's submission, to be classified under tariff item No. 2710.00.20, goods would have to be, among other things, "put up in packings for retail sale."

Counsel for the appellant noted that, in the respondent's brief and later in argument, counsel for the respondent made numerous references to other headings within Schedule I to the *Customs Tariff* in support of the respondent's position that the semicolon in tariff item No. 2710.00.20 served to create, in effect, two independent or mutually exclusive product descriptions. Counsel for the appellant suggested that, unless one were to go though Schedule I in its entirety and analyze the use and grammatical significance of semicolons in each instance where they are employed, the respondent's approach, which was selective, was inappropriate. He argued that the mere fact that the drafting in the tariff items which counsel for the respondent chose to highlight would lend itself to the respondent's interpretation does not mean that the same interpretation should apply in the instant case.

Counsel for the appellant next cited a definition of "semicolon" taken from *The Oxford English Dictionary*:[4]

> In present use it is the chief stop intermediate in value between the comma and the full stop; usually separating sentences the latter of which limits the former, or marking off a series of sentences or clauses of co-ordinate value.[5]

Using this definition and applying it to the two clauses in tariff item No. 2710.00.20, counsel for the appellant submitted that the first clause within that tariff item, "Other lubricating oils put up in packings or retail sale," modifies and limits the interpretation of the second clause within the tariff item, "oils and preparations thereof, having a viscosity of 7.44 mm^2/sec. or more at 37.8°C, other than white oils."

The Tribunal pointed out to counsel for the appellant that the definition that he cited included the words "the latter of which limits the former" (emphasis added). The Tribunal noted that counsel used this definition in support of his argument that the first clause (the former) in tariff item No. 2710.00.20 modifies and limits the interpretation of what follows (the latter). On this point, counsel made it clear as to the meaning which he believed should be given to the words "latter" and "former." In the following example, "A dog and a cat ran across the yard; the latter stopped," counsel stated that it was the dog that had stopped. Counsel stated that he had consulted both British and US dictionaries on this point and indicated that his construction of the words "former" and "latter" was based on the British approach, which was the reverse of the US approach.

4. Second ed. (Oxford: Clarendon Press, 1989).
5. *Ibid.* at 952.

Consulting *The Concise Oxford Dictionary of Current English*,[6] the Tribunal could find no support for counsel for the appellant's contention regarding the meaning of the words "former" and "latter." Indeed, the definition clearly states that "latter" means the "second-mentioned of two, … the last-mentioned of three or more.[7]" This being a minor issue in these appeals, it will not be further mentioned in these reasons.

Counsel for the appellant conceded that, if the semicolon in tariff item No. 2710.00.20 is intended to separate two distinct items, the respondent's position would be correct. However, he argued that there is, in tariff item No. 2710.00.20, "a patent ambiguity that affords two equal and cogent interpretations." He argued further that, where such an ambiguity exists, it should be resolved in favour of the appellant.

Counsel for the respondent argued that it was indeed appropriate to look to other tariff items to assist in determining the purpose of the semicolon in tariff item No. 2710.00.20. Using the example of heading No. 27.01, "Coal; briquettes, ovoids and similar solid fuels manufactured from coal," counsel pointed out the entirely distinct and separate nature of the goods separated by the semicolon.

Counsel for the respondent cited the Tribunal's decision in *John Martens Company* v. *The Deputy Minister of National Revenue for Customs and Excise*,[8] in support of the proposition that the semicolon in heading No. 42.02 separates two series of items, creating a complete distinction between them.

The Tribunal has no difficulty finding that the goods in issue are properly classified under tariff item No. 2710.00.20. In reaching this decision, the Tribunal finds that the description preceding the semicolon in tariff item No. 2710.00.20, "Other lubricating oils put up in packings for retail sale," has no bearing and does not qualify or limit in any way the relevant portion that follows the semicolon and pursuant to which the goods in issue are classified. While it is true that semicolons may have two different functions, only one of which is to separate independent clauses from one another, it is, in the Tribunal's view, evident upon a plain reading of tariff item No. 2710.00.20 that the semicolon in that tariff item is intended to serve that function.

It is worth noting that recourse to texts on proper grammatical construction and use, though helpful in this matter, are not determinative in light of the fact that such authorities contemplate the use of semicolons with sentences. The items within Schedule I to the *Customs Tariff* are, of course, made up of clauses or series of clauses. However, in the Tribunal's view, the absence of complete sentences lends support to the notion that succeeding clauses are independent from one another and are of equal and co-ordinate value. Indeed, in the instant case, if the intent had been that the first clause should have limited the second clause, tariff item No. 2710.00.20 could have been written as follows: "Other lubricating oils, oils and preparations thereof, other than white oils, having a viscosity of 7.44 mm^2/sec. or more at 37.8°C, put up in packings for retail sale."

Such a construction would have confirmed that the limitation "put up in packings for retail sale" applied to all of the goods.

Accordingly, the appeals are dismissed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

6. Eighth ed. (Oxford: Clarendon Press, 1990).
7. *Ibid.* at 669.
8. Appeal No. AP-92-022, May 10, 1993.