

Ottawa, Monday, June 2, 1997

**Appeal No. AP-96-031**

IN THE MATTER OF an appeal heard on March 5, 1997, 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 February 21 and April 12, 1996, with respect to a request for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**EUROTRADE IMPORT-EXPORT INC.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Charles A. Gracey

Charles A. Gracey  
Presiding Member

Michel P. Granger

Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-96-031**

**EUROTRADE IMPORT-EXPORT INC.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

The issue in this appeal is the tariff classification of VEGETA food seasoning and soup mix. VEGETA is a powdered product that is used to make soup or to add flavour to food. The ingredients include salt, flavour enhancers, dehydrated vegetables, carbohydrates and spices. The appellant claimed that VEGETA should be classified in heading No. 21.06 as food preparations not elsewhere specified or included. The respondent classified the goods in heading No. 21.04 as soups and broths and preparations therefor.

**HELD:** The appeal is dismissed. As VEGETA may be described as “[s]oups and broths or preparations therefor,” it is excluded from classification in heading No. 21.03 by the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to that heading. In addition, as heading No. 21.06 encompasses “[f]ood preparations not elsewhere specified or included,” VEGETA is not classified in that heading, as it is included in heading No. 21.04. As such, the Tribunal finds that VEGETA is properly classified in heading No. 21.04.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	March 5, 1997
Date of Decision:	June 2, 1997
Tribunal Member:	Charles A. Gracey, Presiding Member
Counsel for the Tribunal:	David M. Attwater
Clerk of the Tribunal:	Anne Jamieson
Parties:	Barry P. Korchmar, for the appellant Josephine A.L. Palumbo, for the respondent

**Appeal No. AP-96-031**

**EUROTRADE IMPORT-EXPORT INC.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

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TRIBUNAL: CHARLES A. GRACEY, Presiding Member

**REASONS FOR DECISION**

This is an appeal under section 67 of the *Customs Act*,<sup>1</sup> which was heard by one member of the Tribunal.<sup>2</sup> The appellant imported two separate shipments of goods described as “VEGETA,” which is marketed and labelled as a food seasoning and soup mix. The goods in issue were classified at the time of importation under tariff item No. 2104.10.00 of Schedule I to the *Customs Tariff*<sup>3</sup> as soups and broths and preparations therefor. The appellant sought re-determinations of this classification, requesting that the goods in issue be classified under tariff item No. 2103.90.20 as mixed condiments and mixed seasonings or, in the alternative, under tariff item No. 2106.90.10 as vegetable preparations for use as flavouring. The respondent confirmed the original classification and, hence, the appellant appealed the respondent’s decisions to the Tribunal.

The issue in this appeal is the tariff classification of VEGETA food seasoning and soup mix. The appeal proceeded by way of written submissions based on an agreed statement of facts, the submissions of the parties and other information contained in the file. The relevant tariff nomenclature reads as follows:

- |            |   |
|------------|---|
| 21.03      | Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard. |
| 2103.90.20 | ---Mixed condiments and mixed seasonings  |
| 21.04      | Soups and broths and preparations therefor; homogenized composite food preparations.                                  |
| 2104.10.00 | -Soups and broths and preparations therefor   |
| 21.06      | Food preparations not elsewhere specified or included.  |
| 2106.90.10 | ---Vegetable preparations for use as flavouring   |

VEGETA is a powdered product that is used to make soup or to add flavour to food. The ingredients are salt, flavour enhancers (monosodium glutamate), dehydrated vegetables (carrots, onions and parsnip), carbohydrates and spices. The package label also includes sugar and cornstarch as ingredients. Salt forms a significant percentage by weight of the product.

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

The appellant's representative asserted that VEGETA is a pre-packaged product imported from Croatia for use in traditional Croatian and other ethnic recipes. The representative argued that the goods in issue should be classified according to their essential character, which is that of a food seasoning. Several recipes for meal entrees and appetizers, that called for one or two tablespoons of VEGETA seasoning, were submitted. The representative acknowledged that use of the product as a soup was possible, but that this was a secondary use. VEGETA is not a soup mix in itself, but can be added as a seasoning to various soup dishes.

The appellant's representative contended that Note (2) to Part (A) of the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>4</sup> (the Explanatory Notes) to heading No. 21.04 is sufficient to exclude VEGETA from that heading. Note (2) to Part (A), it is submitted, implies that, if goods are not soups or broths for consumption after heating, they are not classified in heading No. 21.04. It would be "stretching classification to the extreme" to classify VEGETA in any heading of Chapter 21 other than heading No. 21.06, which includes "[f]ood preparations not elsewhere specified or included." Specifically, the goods in issue are properly described as "[v]egetable preparations for use as flavouring" under tariff item No. 2106.90.10.

Counsel for the respondent notes that the appellant sought a tariff classification that was a miscellaneous category for food products not elsewhere specified or included. In arguing the "essential character" of VEGETA, the appellant is relying on Rule 3 (b) of the *General Rules for the Interpretation of the Harmonized System*<sup>5</sup> (the General Rules), a rule that is not invoked unless the goods cannot be classified pursuant to Rules 1, 2 and 3 (a). The package label expressly refers to VEGETA as a soup mix and provides simple directions on how to prepare an instant soup with the addition of only hot water.

The Explanatory Notes to heading No. 21.03 state that "[s]oups and broths and preparations therefor" are excluded from that heading. Furthermore, they indicate parenthetically that such goods are classified in heading No. 21.04. As to heading No. 21.06, its terms indicate that it is a miscellaneous category for "[f]ood preparations not elsewhere specified or included." Counsel for the respondent submitted that the goods in issue are properly classified in heading No. 21.04 and excluded from heading No. 21.06.

It is clear to the Tribunal from the extensive examples of recipes submitted by the appellant that the goods in issue, VEGETA food seasoning and soup mix, are used extensively as a seasoning in food preparations. Indeed, the name mentions food seasoning first. But it is equally evident from the package label that VEGETA is a mix that can be added to hot water to make soup.

As a food seasoning, VEGETA could be described as "mixed condiments" or "mixed seasonings" as provided for in heading No. 21.03. However, as noted by counsel for the respondent, the Explanatory Notes to heading No. 21.03 provide that "[s]oups and broths and preparations therefor" are excluded from that heading. Furthermore, the Explanatory Notes indicate that such goods are classified in heading No. 21.04, which expressly provides for such goods.

In understanding what goods are contemplated as "[s]oups and broths and preparations therefor," the Tribunal referred to the Explanatory Notes to heading No. 21.04, which indicate that this category includes "[p]reparations for soups or broths requiring only the addition of water, milk, etc." The Explanatory Notes add that the products are generally based on such things as vegetable products, that they may contain a

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4. Customs Co-operation Council, 1st ed., Brussels, 1986.

5. *Supra* note 3, Schedule I.

considerable proportion of salt and that they may be put up for sale in powder form. Based on this description, the Tribunal is of the view that VEGETA may be described as a soup or broth or preparation therefor as contemplated in heading No. 21.04.

As VEGETA may be described as “[s]oups and broths or preparations therefor,” it is excluded from classification in heading No. 21.03 by the Explanatory Notes to that heading. In addition, as heading No. 21.06 encompasses “[f]ood preparations not elsewhere specified or included,” VEGETA is not classified in that heading, as it is included in heading No. 21.04. As such, the Tribunal finds that VEGETA is properly classified in heading No. 21.04.

Accordingly, the appeal is dismissed.

Charles A. Gracey  
Charles A. Gracey  
Presiding Member