CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, September 24, 1998

Appeal No. AP-97-052

IN THE MATTER OF an appeal heard on May 6, 1998, 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 April 15, 1997, with respect to requests for re-determination under section 63 of the *Customs Act*.

BETWEEN

FLORA MANUFACTURING & DISTRIBUTING LTD. **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

Raynald Guay
Raynald Guay
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-97-052

FLORA MANUFACTURING & DISTRIBUTING LTD. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

This is an appeal under section 67 of the *Customs Act* of decisions of the Deputy Minister of National Revenue. The issue in this appeal is whether Floradix Floravit, Floradix Formula Herbal Iron Extract, Floradix Kindervital Multivitamin for Children and Floradix Epresat Herbal Multivitamin are properly classified under tariff item No. 2202.90.90 as other non-alcoholic beverages, not including fruit or vegetable juices of heading No. 20.09, as determined by the respondent, or should be classified under tariff item No. 3004.50.99 as other medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale, containing vitamins or other products of heading No. 29.36, as claimed by the appellant.

HELD: The appeal is dismissed. In the Tribunal's view, the evidence clearly shows that the goods in issue are tonic beverages. As such, they cannot be classified in Chapter 30 by virtue of Note 1 (a) to Chapter 30 of Schedule I to the *Customs Tariff*, which provides that "[t]his Chapter does not cover … [f]oods or beverages (such as … food supplements, tonic beverages and mineral waters)." Indeed, the manufacturer describes each of the goods in issue, either on the retail box or on the bottle, as a tonic. They were also referred to as tonics by some of the witnesses who testified at the hearing. In the Tribunal's view, the evidence clearly shows that the goods in issue are not medicaments of heading No. 30.04, but rather food supplements of either Chapter 21 or Chapter 22. Because the goods in issue all come in liquid form, they are properly classified in Chapter 22. The Tribunal agrees that the word "beverage" should be given its plain and ordinary meaning. The Tribunal notes that it is defined in *The New Lexicon Webster's Dictionary of the English Language* simply as "a drink." The word "drink" is defined as "a liquid to be swallowed." In the Tribunal's view, the goods in issue are clearly liquids to be swallowed. Therefore, on this basis, the Tribunal accepts that the goods in issue must be considered "beverages." The fact that the goods in issue do not contain any alcohol was not contested. Therefore, the Tribunal finds that the goods in issue are properly classified under tariff item No. 2202.90.90 as other non-alcoholic beverages, not including fruit or vegetable juices of heading No. 20.09.

Place of Hearing:	Vancouver, British Columbia
Date of Hearing:	May 6, 1998
Date of Decision:	September 24, 1998
Tribunal Members:	Charles A. Gracey, Presiding Member Raynald Guay, Member Robert C. Coates, Q.C., Member
Counsel for the Tribunal:	Joël J. Robichaud
Clerk of the Tribunal:	Margaret Fisher
Appearances:	Alan Morley, for the appellant Jan Brongers, for the respondent

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-97-052

FLORA MANUFACTURING & DISTRIBUTING LTD. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
RAYNALD GUAY, Member
ROBERT C. COATES, Q.C., Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*[1] (the Act) of decisions of the Deputy Minister of National Revenue dated April 15, 1997, and made under section 63 of the Act.

The issue in this appeal is whether Floradix Floravit (Floravit), Floradix Formula Herbal Iron Extract (Floradix Formula), Floradix Kindervital Multivitamin for Children (Kindervital) and Floradix Epresat Herbal Multivitamin (Epresat) are properly classified under tariff item No. 2202.90.90 of Schedule I to the *Customs Tariff*[2] as other non-alcoholic beverages, not including fruit or vegetable juices of heading No. 20.09, as determined by the respondent, or should be classified under tariff item No. 3004.50.99 as other medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale, containing vitamins or other products of heading No. 29.36, as claimed by the appellant.

For purposes of this appeal, the relevant tariff nomenclature reads as follows:

22.02	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of heading No. 20.09.
2202.90	-Other
2202.90.90	---Other
30.04	Medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.
3004.50	-Other medicaments containing vitamins or other products of heading No. 29.36
3004.50.99	----Other

Four witnesses testified on behalf of the appellant. The first witness, Mr. Volker Kutscher, a pharmacist employed with Salus-Haus, the German manufacturer of the goods in issue, explained that Floradix Formula is an iron supplement used in the prevention of anemia. He testified that Floradix Formula contains vitamins B_1, B_2, B_6, B_{12} and C. It also contains an active iron ingredient, various extracts, such as yeast extract, wheat germ dry extract, fruit juice concentrates, honey, a natural aroma and purified water. He noted that Floradix Formula is described on the retail box as an iron tonic. He explained that the purpose of

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

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this product and the others in issue is prevention rather than treatment. He also explained that it is recommended that the goods in issue be taken in small dosages because the scientific evidence indicates that it is better to take iron this way, since it is very difficult to absorb. Mr. Kutscher testified that Floradix Formula is an iron supplement fortified with vitamins B and C and that it is used in the prevention of anemia. He noted that Floradix Formula is registered in Germany and several other countries as a medicine. He explained that its purpose is to help prevent iron deficiency, to compensate for a high loss of iron, for example, during pregnancy, when growing up or when convalescing after a disease, and for general strengthening, especially to increase the power of athletes or sports enthusiasts in general. He noted that diseases can result from iron deficiencies. He explained that, because of the limited dosages in which the goods in issue must be taken, they cannot be considered to be drinks or beverages.

Mr. Kutscher explained that Floravit is the yeast-free version of Floradix Formula. This means that it contains iron, vitamins B and C, a decoction of herbs, but no yeast, sugar, honey or preservatives. Its purpose is essentially the same as that of Floradix Formula, i.e. to help prevent iron deficiency. He explained that Epresat contains eight vitamins, including vitamins A and D. Because it contains vitamins A and D, which are classified in Germany and Australia as pharmaceuticals, Epresat must be registered as a medicine. He explained that Epresat also contains plant extracts. It also has preventive effects. Finally, Mr. Kutscher explained that Kindervital contains a decoction of several plants with digestive effects. He explained that Kindervital improves the appetite, which, in turn, improves the digestive process. Kindervital also contains calcium, magnesium and different vitamins. He testified that, because children have a smaller skin surface than do adults, they need additional vitamin D, especially in the winter. They can obtain the necessary intake of vitamin D by taking Kindervital. Mr. Kutscher also explained that, because it contains magnesium and calcium, Kindervital also helps prevent diseases, such as rickets. It also strengthens the bones, especially in growing children.

In cross-examination, Mr. Kutscher acknowledged that the goods in issue are tonics. He also admitted that the goods in issue have to be drunk. He referred to this process as "oral intake." He said that he, personally, drinks the goods in issue from a drinking cup. Mr. Kutscher did not agree, however, that the goods in issue are tonic beverages, because of the limited dosages in which they are consumed. He also did not agree that humans can obtain all the necessary vitamins and minerals that they need to sustain life by simply eating ordinary foods. He said that there are situations in life where a person needs something more. It might be when falling ill, in order to strengthen the body or to compensate for some intolerances, for example, milk intolerance. In his view, normal food is not enough to supply the whole body with a specific amount of minerals and vitamins. He explained that, sometimes, the body needs more than what it gets from normal food.

In answering questions from the Tribunal, Mr. Kutscher explained that, for him, a tonic is a kind of medication which is used for prevention or strengthening, while a medicament refers to strong tablets or other preparations to treat severe diseases. He explained that, to prevent diseases or to fight against mild diseases, one needs a special kind of medicament, namely, "*Tonika*," which is German for "tonic." He testified that the term "non-medicinal" means that the effect of a product is not so strong that it must be sold by prescription.

The appellant's second witness, Dr. David D. Kitts, Associate Professor in the Department of Food Science at the University of British Columbia, was qualified by the Tribunal as an expert in the differentiation of food and beverages from other substances. He testified that he had not performed any research on the goods in issue, but that, having read the recommendations on the labels concerning their intended uses, they would not fall within what he considers to be beverages. He explained that he considers the purpose of beverages to be primarily for quenching thirst and possibly to act as a stimulant. For example, a carbonated non-alcoholic beverage, such as a soda or water, would provide a replacement of fluids lost, while an

alcoholic beverage, such as wine, or a non-carbonated, non-alcoholic beverage, such as tea or coffee, can act as stimulants. However, they can also quench thirst to some degree. Based on the small dosages of the goods in issue that are recommended to be taken on a daily basis, Dr. Kitts testified that he could not consider them to be beverages.

Dr. Kitts testified that he considers food to be a complex mixture of both macronutrients and micronutrients, macronutrients being things like an identifiable protein source, an identifiable lipid source, a complex series of carbohydrates and simple carbohydrates, and micronutrients being sources of vitamins and minerals. Again referring to the labels on the goods in issue, he said that he sees primarily micronutrient constituents. Dr. Kitts testified that there could quite possibly be some macronutrient constituents from the herbs that are present, but that they are not identified. Furthermore, he would consider food to be something that is consumed in much larger quantities or that involves the use of additives to prevent microbial spoilage or loss of bioactive components of the ingredients. He testified that the duration period of two years on the labels of the goods in issue is quite long. In his view, food could not withstand quality problems for such a long period without any assistance of additives. Accordingly, Dr. Kitts testified that, in his view, the goods in issue are not foods or food supplements.

In cross-examination, Dr. Kitts acknowledged that the following two definitions potentially describe what can be considered to be a "beverage": (1) "Any liquid used or prepared for drinking is a beverage[3]"; and (2) "any of various liquid refreshments, usually excluding water.[4]" He agreed that a liquid would not be a beverage if, by taking it in order to get all of one's fluid requirements, one ran into toxicity problems. He testified that this situation applies to the goods in issue. He noted, for example, that the amount of vitamin A contained in the 20-mL recommended daily dosage of Epresat is five times the minimum recommended daily intake and four times the maximum recommended daily intake. Dr. Kitts explained that, if one attempted to obtain one's daily intake of vitamins from drinking this product, one would probably not be around for very long. For this reason, he testified that Epresat cannot be called a beverage. He testified that he was not sure whether this would also apply to vodka or scotch. The only thing that he could say with respect to the latter is that, in his view, they are alcoholic beverages because they provide a stimulant.

In answering questions from the Tribunal, Dr. Kitts testified that vitamins and minerals are components of food. He also testified that the main purpose for which most people consume beverages is to maintain or restore water balance. However, some people drink a lot of coffee to also maintain some degree of alertness and awareness. He said that a product like Gatorade, for example, can also be consumed to restore nutrient balance. He testified that, in his view, to "drink" means to "swallow."

In re-examination, Dr. Kitts was presented with the following definition of "beverage": "Beverages are consumed to replace body water, and for enjoyment.[5]" Dr. Kitts testified that a person may lose some body water by drinking too much vodka or scotch, but that there is an enjoyment factor in drinking such beverages. In his view, this definition would not apply to the goods in issue. He concluded by saying that the mere fact that something is a liquid does not make it a beverage.

The appellant's next witness, Dr. Zoltan P. Rona, a family physician, was qualified by the Tribunal as an expert in the identification, prevention and treatment of human diseases and ailments. He testified that he uses the goods in issue in his medical practice. He explained that many people would consider various vitamin deficiency syndromes to be diseases or ailments. He referred to diseases such as scurvy, beriberi, pellagra and rickets and to other inborn metabolic disorders. He testified that the established treatment for

3. Appellant's Brief, Appendix 2.
4. *Ibid.*
5. *Ibid.*

such diseases is to provide the patient with various vitamins or mineral supplements. Dr. Rona testified that he prescribes Floradix Formula, Floravit and Kindervital to patients who are interested in both the prevention and treatment of various deficiencies and that he has found them to be efficacious.

In cross-examination, Dr. Rona testified that, biochemically, the structure of the vitamins which are found in the goods in issue would be identical to the structure of those found naturally in ordinary food, such as oranges or liver. He explained that a person who is a vegetarian, and who would, therefore, have a deficiency of vitamin B_{12}, can prevent the onset of anemia by taking the goods in issue. He acknowledged that a person who has a deficiency of a particular vitamin can either take supplements, such as the goods in issue, or eat a lot of foods which contain that particular vitamin.

In answering questions from the Tribunal, Dr. Rona explained that he recommends that his patients purchase the goods in issue in a health food store or in a pharmacy. He explained that, as is the case for many products that are sold over the counter, such as antihistamines, decongestants, headache pills and anti-inflammatories, there is no need for a written prescription. He did say, however, that there are iron supplements with much higher dosages for which a formal prescription must be written. He testified that he recommends the goods in issue for both therapeutic and prophylactic uses. He explained that he prefers recommending the goods in issue as iron supplements for pregnant women, because they do not overdose the mother or the fetus. He said that he would not recommend the goods in issue for a patient suffering from severe anemia. Dr. Rona testified that a patient taking the goods in issue suffers virtually no side effects. He testified that, because the goods in issue have drug identification numbers, they are drugs according to the *Food and Drugs Act*.[6] He said that, while some people would consider the goods in issue to be food supplements, medical doctors consider them to be products that correct deficiencies, i.e. medical supplements.

The appellant's fourth and final witness, Dr. Ingrid Pincott, a licensed naturopath, was qualified by the Tribunal as an expert in the identification, prevention and treatment of human diseases and ailments of a vitamin or mineral deficiency nature. She testified that she has been prescribing the goods in issue for 12 years for the treatment and prevention of anemia in childbearing women. She testified that she prescribes Kindervital for children because they like the taste; therefore, they will take it. Furthermore, she finds the goods in issue to be efficacious in the prevention or treatment of vitamin and mineral deficiencies. She said that she has had good results.

In answering questions from the Tribunal, Dr. Pincott explained that she considers the goods in issue to be medicaments rather than tonics. She testified that, in her view, medicines can be used both as tonics to tonify the body and as medicines for the prevention and treatment of anemia.

One witness testified on behalf of the respondent, Dr. Sam Kacew, a toxicologist and professor of pharmacology at the University of Ottawa. He was qualified by the Tribunal as an expert in the field of pharmacology to give evidence on whether the documentary evidence presented by the appellant establishes that the goods in issue are medicaments with scientifically proven effects. He testified that, in his view, only one of the studies filed by the appellant actually deals with the goods in issue. He testified that the study does not provide scientific data which have been peer reviewed. It was not "double blind," and the parameters for the patient population were not scientifically acceptable because the study was run with individuals whose ages ranged from 18 to 70. He said that it is well known that there can be different types of anemia depending on the age of the patient. The study is also not reliable because it combines male and female patients, which is not scientifically acceptable, as males and females suffer from different types of anemia.

6. R.S.C. 1985, c. F-27.

He concluded that, because of the way that the data were compiled, one cannot tell from the study whether the goods in issue have any effect at all.

In cross-examination, Dr. Kacew testified that the way in which the protocol of the study was conducted is not accepted by the Department of Health. He testified that, in his view, there was no evidence presented in this appeal that showed that the goods in issue were efficacious. There was no evidence which showed that a patient who was suffering from a disorder was in a different state after taking one of the goods in issue. In his view, to simply say that it is prescribed to patients is not enough. There must be figures which show the iron concentration before and after taking the goods in issue.

The appellant's representative argued that the evidence clearly showed that the goods in issue are not beverages. Therefore, they are not excluded from Chapter 30, by virtue of Note 1 (a) to Chapter 30 of Schedule I to the *Customs Tariff*, which provides that "[t]his Chapter does not cover … [f]oods or beverages (such as … food supplements, tonic beverages and mineral waters)." Such goods are to be classified in Section IV of Schedule I. In support of his argument that the goods in issue are not beverages, the representative referred to the evidence which showed that they must be ingested in very limited dosages and that they are not designed or capable of being used as a source of replenishment for the body's fluid requirements. He argued that the fact that the goods in issue are in liquid form is incidental to their use. Furthermore, he argued that the evidence clearly showed that the goods in issue are not foods. He referred to the evidence which showed that they are defined as drugs under the *Food and Drug Regulations*.[7]

The appellant's representative submitted that the evidence showed that the goods in issue are medicaments. In particular, the evidence showed that the deficiency of certain vitamins and iron in the human body can lead to certain ailments or diseases and that the appropriate therapy or prophylaxis for those ailments or diseases is to supplement the body's intake of vitamins and iron. He referred to the testimony of Drs. Rona and Pincott who have used the goods in issue in treating their patients. Because the goods in issue are medicaments, the representative noted that they are excluded from Chapter 22 by virtue of Note 1 (e) to that chapter. In support of the appellant's position, the representative referred to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*,[8] where a similar preparation, described as a liquid preparation containing iron, vitamins, alcohol and raspberry flavouring, intended for the treatment and prevention of various forms of anemia, was considered to be properly classified as a medicament in subheading No. 3004.50, rather than as a beverage in heading No. 22.02 or as a food supplement in heading No. 21.06.

Counsel for the respondent argued that the evidence clearly showed that the goods in issue are tonic beverages. Accordingly, by virtue of Note 1 (a) to Chapter 30 and the Tribunal's decision in *Hung Gay Enterprises Ltd.* v. *The Deputy Minister of National Revenue*,[9] they cannot be classified as medicaments in Chapter 30 and, indeed, must be classified in heading No. 22.02 as non-alcoholic beverages. In particular, counsel referred to the evidence which showed that the goods in issue are vitamin and iron tonics sold in beverage form. They are liquid preparations which contain vitamins, iron and herbal ingredients and which are designed to be ingested orally by means of drinking, not eating. Further, counsel noted that the goods in issue do not contain any alcohol. He also noted that the packages in which the goods in issue are sold indicate that they are to be taken orally and that they maintain vitality and general good health by providing the body's necessary intake of vitamins and iron. They also identify the goods in issue as tonics or as food supplements. Counsel pointed to the evidence which showed that the vitamins and iron which are necessary for good health can also be obtained by eating ordinary foods.

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7. C.R.C. 1978, c. 870.
8. Customs Co-operation Council, 1st ed., Brussels, 1987.
9. Appeal No. AP-96-044, June 5, 1997.

According to counsel for the respondent, there is no doubt that the goods in issue can be classified in heading No. 22.02, because they are non-alcoholic beverages. In particular, counsel argued that the goods in issue are properly classified under tariff item No. 2202.90.90 because they are not mentioned elsewhere in heading No. 22.02. Counsel argued that, even if the Tribunal were to find that the goods in issue have some medicinal effect, they would still be excluded from Chapter 30, by virtue of Note 1 (a), which provides that tonic beverages are not covered in that chapter. Referring to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*[10] (the Explanatory Notes), counsel argued that the goods in issue are not medicaments. Rather, they are tonic beverages containing some nutritional substances, namely, vitamins and minerals, which are put up for the purpose of maintaining general health or well-being, and there is no indication that they are used for the prevention or treatment of any disease or ailment. Counsel submitted that, because the goods in issue are in liquid form, they must be classified in heading No. 22.02 rather than in heading No. 21.06.

Counsel for the respondent argued that the Explanatory Notes to heading No. 22.08, which provide that this heading includes "[s]pirituous beverages, sometimes referred to as 'food supplements', designed to maintain general health or well-being. They may, for example, be based on extracts from plants, fruit concentrates, lecithins, chemicals, etc., and contain added vitamins or iron compounds," clearly describe the goods in issue, except for the fact that they do not contain any alcohol. In counsel's view, the Explanatory Notes to heading No. 22.08 show that the goods in issue are intended to be classified in Chapter 22.

When classifying goods in Schedule I to the *Customs Tariff*, the application of Rule 1 of the *General Rules for the Interpretation of the Harmonized System*[11] is of the utmost importance. This rule states that classification is first determined according to the terms of the headings and any relative Chapter Notes. Therefore, the Tribunal must determine whether the goods in issue are named or generically described in a particular heading. If they are, then they must be classified therein, subject to any relative Chapter Note. Section 11 of the *Customs Tariff* provides that, in interpreting the headings or subheadings, the Tribunal shall have regard to the Explanatory Notes.

In the Tribunal's view, the evidence clearly shows that the goods in issue are tonic beverages. As such, they cannot be classified in Chapter 30 by virtue of Note 1 (a), which provides that "[t]his Chapter does not cover … [f]oods or beverages (such as … food supplements, tonic beverages and mineral waters)." Indeed, the manufacturer describes each of the goods in issue, either on the retail box or on the bottle, as a tonic. They were also referred to as tonics by some of the witnesses who testified at the hearing.

The Explanatory Notes to heading No. 30.04 provide that "[t]he provisions of the heading text do not apply to foodstuffs or beverages such as … tonic beverages … which fall to be classified under **their own appropriate headings**. This is essentially the case as regards food preparations containing only nutritional substances. The major nutritional substances in food are proteins, carbohydrates and fats. Vitamins and mineral salts also play a part in nutrition.… Further this heading **excludes** food supplements containing vitamins or mineral salts which are put up for the purpose of maintaining health or well-being but have no indication as to use for the prevention or treatment of any disease or ailment. These products which are usually in liquid form but may also be put up in powder or tablet form, are generally classified in **heading 21.06** or **Chapter 22**." In the Tribunal's view, the Explanatory Notes to heading No. 30.04 describe the goods in issue.

The Tribunal notes that the manufacturer describes the goods in issue on the retail box as follows: (1) Floradix Formula: "A natural sources food supplement with organic iron, yeast, herbs, fruits and honey -

10. Customs Co-operation Council, 1st ed., Brussels, 1986.
11. *Supra* note 2, Schedule I.

Helps prevent iron deficiency"; (2) Floravit: "Yeast-Free - Iron and Vitamin Supplement in a non-medicinal herbal base - Helps prevent iron deficiency"; (3) Kindervital: "particularly beneficial in winter in areas where sunshine is limited, and for children whose diets may be deficient in vitamins, especially vitamin D"; and (4) Epresat: "A dietary supplement containing a balanced combination of herb extracts and vitamins which are essential in maintaining vitality and good health." In the Tribunal's view, the evidence clearly shows that the goods in issue are not medicaments of heading No. 30.04, but rather food supplements of either Chapter 21 or Chapter 22. Because the goods in issue all come in liquid form, they are properly classified in Chapter 22. The Tribunal does not accept that an iron deficiency is a disease or an ailment. It may lead to a disease or an ailment; however, this is not what is contemplated by Chapter 30. In the Tribunal's view, the main reason for taking the goods in issue is to maintain general health or well-being.

The Tribunal agrees with counsel for the respondent that the word "beverage" should be given its plain and ordinary meaning. The Tribunal notes that it is defined in *The New Lexicon Webster's Dictionary of the English Language*[12] simply as "a drink.[13]" The word "drink" is defined as "a liquid to be swallowed.[14]" In the Tribunal's view, the goods in issue are clearly liquids to be swallowed. Therefore, on this basis, the Tribunal accepts that the goods in issue must be considered "beverages." The fact that the goods in issue do not contain any alcohol was not contested.

For the above reasons, the Tribunal finds that the goods in issue are properly classified under tariff item No. 2202.90.90 as other non-alcoholic beverages, not including fruit or vegetable juices of heading No. 20.09.

Accordingly, the appeal is dismissed.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Raynald Guay
Raynald Guay
Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

12. (New York: Lexicon Publications, 1988).
13. *Ibid*. at 94.
14. *Ibid*. at 285.