



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2015-018

Délices de la Forêt Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Thursday, May 26, 2016*

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IN THE MATTER OF an appeal heard on February 16, 2016, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated June 10, 2015, with respect to a request for further re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

DÉLICES DE LA FORÊT INC.

Appellant

AND

**THE PRESIDENT OF THE CANADA BORDER SERVICES
AGENCY**

Respondent

DECISION

The appeal is dismissed.

Daniel Petit
Daniel Petit
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: February 16, 2016
Tribunal Member: Daniel Petit, Presiding Member
Counsel for the Tribunal: Anja Grabundzija
Student-at-law: Jessica Spina
Registrar Officer: Ekaterina Pavlova
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PARTICIPANTS:**Appellant**

Délices de la Forêt Inc.

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President of the Canada Borders Services Agency

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STATEMENT OF REASONS

OVERVIEW

1. This appeal was filed with the Canadian International Trade Tribunal (the Tribunal) by Délices de la Forêt Inc. (Délices de la Forêt), pursuant to subsection 67(1) of the *Customs Act*¹ regarding a decision of the President of the Canada Border Services Agency (CBSA), dated June 10, 2015, pursuant to subsection 60(4).

2. The issue in this appeal is the tariff classification of olives in brine (the goods in issue). The Tribunal must determine whether the goods in issue are properly classified under tariff item No. 2005.70.90 of the schedule to the *Customs Tariff*² as other olives, as determined by the CBSA, or whether they should be classified under tariff item No. 2005.70.10 as ripe olives in brine, as claimed by Délices de la Forêt.

GOODS IN ISSUE

3. The goods in issue are green olives and red olives of the Cerignola (or Bella di Cerignola) variety produced in Italy. Based on the description provided by Délices de la Forêt, the olives are harvested between September and November, washed, and, after a period of fermentation, preserved and imported in brine in glass jars.

PROCEDURAL HISTORY

4. The goods in issue were imported between October 2010 and April 2014 under tariff item No. 2005.70.10.

5. On June 9, 2014, the CBSA determined that the goods in issue should have been classified under tariff item No. 2005.70.90.

6. On October 1, 2014, Délices de la Forêt requested a re-determination of the classification of the goods in issue pursuant to subsection 60(1) of the *Act*.

7. On June 10, 2015, the CBSA confirmed the classification of the goods in issue under tariff item No. 2005.70.90 as other olives pursuant to subsection 60(4) of the *Act*.

8. On August 20, 2015, Délices de la Forêt filed this appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

9. The Tribunal held a public hearing on February 16, 2016. The CBSA called Dr. Farah Hosseinian, Associate Professor at Carlton University, as an expert witness in “food science, including food processing”. Délices de la Forêt did not dispute the qualification of Dr. Hosseinian in this field at the hearing³ and, given Dr. Hosseinian’s training and experience, as well as her willingness and ability to provide fair, objective and impartial testimony, the Tribunal qualified Dr. Hosseinian as a subject matter expert.⁴ Délices de la Forêt called no witnesses.

1. R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].

2. S.C. 1997, c. 36.

3. *Transcript of Public Hearing*, 16 February 2016, at 17-18.

4. *Ibid.* at 18.

LEGISLATIVE FRAMEWORK

10. In appeals pursuant to section 67 of the *Act* concerning tariff classification matters, the Tribunal determines the proper tariff classification of the goods in accordance with prescribed interpretive rules.

11. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).⁵ The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items. Chapter 99 is divided into tariff items only.

12. Subsection 10(1) of the *Customs Tariff* provides that the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*⁶ and the *Canadian Rules*⁷ set out in the schedule.

13. The *General Rules* comprise six rules structured in sequence so that it must first be determined whether the classification at the heading level may be determined by applying Rule 1, which provides that “. . . classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes . . .” If the classification of the goods cannot be determined in accordance with Rule 1, Rule 2 should be used, and so on, until classification is determined.

14. With respect to subheadings, Rule 6 of the *General Rules* provides that, “[f]or legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules . . .” (that is, Rules 1 to 5). With respect to tariff items, Rule 1 of the *Canadian Rules* provides that the classification of goods is determined according to the terms of those tariff items and “. . . Supplementary Notes and, *mutatis mutandis*, to the General Rules . . .”

15. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*⁸ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,⁹ published by the WCO. While classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.¹⁰

RELEVANT PROVISIONS AND NOTES

16. Both parties agree that the goods in issue fall under Chapter 20 of the schedule to the *Customs Tariff*. The CBSA submitted that the goods in issue are properly classified under tariff item No. 2005.70.90, while Délices de la Forêt submitted that the goods in issue should be classified under tariff item No. 2005.70.10.

5. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.

6. S.C. 1997, c. 36, schedule [*General Rules*].

7. S.C. 1997, c. 36, schedule.

8. World Customs Organization, 2nd ed., Brussels, 2003. There are no classification opinions that apply in this case.

9. World Customs Organization, 5th ed., Brussels, 2012.

10. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that explanatory notes be respected unless there is a sound reason to do otherwise.

17. The relevant provisions of the *Customs Tariff* provide as follows:

Section IV

**PREPARED FOODSTUFFS; BEVERAGES, SPIRITS AND VINEGAR;
TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES**

...

Chapter 20

**PREPARATIONS OF VEGETABLES, FRUIT, NUTS
OR OTHER PARTS OF PLANTS**

...

20.05 Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 20.06.

...

2005.70 -Olives

2005.70.10 ---Olives sulphured or in brine but not in glass jars;
Ripe olives in brine

2005.70.90 ---Other

18. The relevant explanatory notes to heading No. 20.05 provide as follows:

Examples of preparations which fall in the heading are:

- (1) **Olives**, rendered edible by special treatment with soda solution or prolonged maceration in brine. (Olives merely preserved provisionally in brine remain classified in **heading 07.11** - see the Explanatory Note to that heading.)

19. Similarly, the following explanatory notes to heading No. 07.11 confirm in more detail that products that fall in Chapter 20, as opposed to those in heading No. 07.11, are products that can be immediately consumed:

This heading [07.11] applies to vegetables which have been treated solely to ensure their provisional preservation during transport or storage prior to use (e.g., by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), **provided** they remain unsuitable for immediate consumption in that state.

...

However *the heading excludes goods which, in addition to having been provisionally preserved in brine, have also been specially treated (e.g., by soda solution, by lactic fermentation); these fall in Chapter 20 (for example, olives, sauerkraut, gherkins and green beans).*

[Emphasis added]

POSITIONS OF PARTIES

Délices de la Forêt

20. Délices de la Forêt submitted that the goods in issue should be classified under tariff item No. 2005.70.10 because they are ripe and in brine, as indicated on the manufacturer's data sheets and on the harvesting and preparation process diagram for the goods in issue filed by Délices de la Forêt.¹¹

21. Délices de la Forêt's position is that a fruit (i.e. an olive) is ripe when it has reached its optimal size. It distinguishes this situation from that of the fruit that becomes completely ripe when it changes colour. According to Délices de la Forêt, the fact that an olive has not yet changed colour and has not yet reached its state of full ripeness does not mean that it is not ripe once it has reached its optimal size.¹² In addition, Délices de la Forêt specified that the *Customs Tariff* does not mention the colour of the olives nor does it mention a particular degree of ripeness, and stressed that it is not appropriate to add words to the legislation that were not included by the legislator.

CBSA

22. The CBSA maintained that the goods in issue are not ripe when they are imported and that they are imported in glass jars. Consequently, they are excluded from tariff item No. 2005.70.10 and are properly classified under tariff item No. 2005.70.90 as other olives.

23. The CBSA submitted that the goods in issue should be classified according to the colour of the olives because this is the fundamental element that determines whether an olive is "ripe" [translation] or "unripe" [translation]. Because the goods in issue are green olives (or made red by adding dye), they are not ripe.

24. According to the CBSA, the growth of an olive and its ripening are two different things. Although a fruit must have reached its normal size before it is harvested, this is separate from the degree of ripeness that the fruit must attain before it is considered ripe. The CBSA maintained that the interpretation of the expression "ripe olives" used by Délices de la Forêt would remove any distinction between the two types of goods separated by a semi-colon in tariff item No. 2005.70.90.

ANALYSIS

25. In appeals under section 67 of the *Act*, the appellant bears the burden of showing that the CBSA incorrectly classified the goods.¹³ In this case, Délices de la Forêt must demonstrate that the goods in issue should be classified under tariff item No. 2005.70.10 rather than under tariff item No. 2005.70.90.

11. Exhibit AP-2015-018-04, tabs 2, 3, Vol. 1.

12. *Transcript of Public Hearing*, 16 February 2016, at 115-16, 122.

13. In this regard, subsection 152(3) of the *Act* provides as follows: "[I]n any proceeding under this Act, the burden of proof in any question relating to . . . (c) the payment of duties on any goods . . . lies on the person, other than Her Majesty, who is a party to the proceeding". This appeal was filed under subsection 67(1). Because the liability for duties on imported goods depends on their tariff classification, tariff classification is a question "relating" to the payment of duties on the goods under paragraph 152(3)(c). Since the conditions of paragraph 152(3)(c) have been met, Délices de la Forêt therefore bears the burden of proof. See, for example, *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (23 May 2014), AP-2011-033 (CITT) at para. 25; *Canada (Border Services Agency) v. Miner*, 2012 FCA 81 (CanLII).

26. Both parties agree that the goods in issue may be classified according to Rules 1 and 6 of the *General Rules* and according to Rule 1 of the *Canadian Rules*.¹⁴ The Tribunal agrees.

27. In order to determine whether the goods in issue should be classified under tariff item No. 2005.70.10, as argued by Délices de la Forêt, the Tribunal will begin by examining (1) the appropriate interpretation of the expression “ripe olives” within the context of tariff item No. 2005.70.10 and (2) whether the goods in issue are, at the time of importation, ripe olives within the meaning of tariff item No. 2005.70.10.

Interpretation of the expression “ripe olives”

28. As indicated above, tariff item No. 2005.70.10 provides as follows: “Olives sulphured or in brine but not in glass jars; Ripe olives in brine”. In this regard, the parties agree that the use of the semi-colon in the tariff item has the grammatical effect of describing separate goods.

29. Thus, the parties are in agreement, and the Tribunal accepts the view that “[o]lives sulphured or in brine but not in glass jars” are different products from “[r]ipe olives in brine” described in the second part of the tariff item.¹⁵ In this case, the Tribunal draws the following two inferences from this proposition: (1) that “[r]ipe olives in brine” in the second part of tariff item No. 2005.70.10 are not limited to those that are not imported in glass jars; and (2) that “ripe” olives in the second part of the tariff item are qualitatively different from the olives in the first part that are not described as “ripe”.

30. Because the goods in issue were imported in glass jars, the first part of the tariff item does not apply to them. The parties agree on this point. In addition, it is not disputed that the goods in issue are in brine.

31. The key issue in this appeal is therefore to determine what is meant by the expression “[r]ipe olives” within the context of tariff item No. 2005.70.10. Délices de la Forêt submitted that a ripe olive is an olive that has reached its optimal size without necessarily being completely ripe or having changed colour.

32. The Tribunal is of the view that the interpretation of the expression “ripe olives” put forward by Délices de la Forêt is not supported by the preponderance of the evidence or in the context of tariff item No. 2005.70.10. On the basis of the evidence, the Tribunal concludes that a ripe olive is an olive that was harvested when it was completely mature or almost mature, which can be noted by the olive’s characteristic black colour.

33. Relying on general definitions in common dictionaries, the Tribunal notes that a ripe olive seems to be an olive that is black in colour and that the adjective “ripe” denotes a fruit that has reached its full or complete development. The CBSA relied on the following definition of the word “ripe”: “1. Fully developed (of a fruit or grain) (► **ripening, ripeness**). *A fruit that is ripe, not ripe enough* (► **green**), *too ripe* (► **overripe**) . . . ■ **ANTONYM** Green, unripe . . .” [translation].¹⁶ Délices de la Forêt referred to a definition, according to which “ripe” refers to “[a] fully developed fruit or grain, ready to be harvested” [translation].¹⁷ The CBSA also referred to a common definition of the word “olive” as “. . . [f]ruit of the

14. Exhibit AP-2015-018-04 at para. 28, Vol. 1; Exhibit AP-2015-018-06A at para. 18, Vol. 1A.

15. Exhibit AP-2015-018-04 at para. 29, Vol. 1; Exhibit AP-2015-018-06A at para. 69, Vol. 1A; *Transcript of Public Hearing*, 16 February 2016, at 127. The Tribunal has previously acknowledged that using a semi-colon in this way may have the grammatical effect of describing two independent products. See, for example, *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (29 July 2013), AP-2012-041 and AP-2012-042 (CIIT) at para. 45; *Boss Lubricants v. Deputy M.N.R.* (3 September 1997), AP-95-276 and AP-95-307 (CITT); *Canadian Tire Corporation Ltd. v. President of the Canada Border Services Agency* (23 November 2011), AP-2010-069 (CITT) at para. 40, footnote 31.

16. Exhibit AP-2015-018-06A, tab 9, Vol. 1A.

17. Exhibit AP-2015-018-04, tab 10, Vol. 1.

olive tree, globular and oblong drupe, greenish in colour, then blackish when ripe, with smooth skin, from which oil is extracted”.¹⁸

34. In addition, the Tribunal accepts the clear, consistent and uncontradicted testimony of Dr. Hosseinian that a ripe olive is an olive that has reached its full ripeness, not merely its optimal size. Dr. Hosseinian clearly explained how the olive’s properties change during its ripening on the tree, for example, with respect to the growth of its flesh, its taste and its oil content. Most importantly, she testified that an easily observable, fundamental marker of an olive’s ripeness is its colour, which changes with each particular stage of the fruit’s ripening.

35. In her report and during the hearing,, Dr. Hosseinian referred to the following three types of olives normally recognized in the food science field: (a) unripe green olives; (b) semi-ripe olives (changing colour, purplish tinge); and (c) ripe, black olives.¹⁹ Dr. Hosseinian explained that all three types of olives are used in the industry and that green olives are most frequently used because of, among other things, their resistance to bruising.

36. Dr. Hosseinian’s expert testimony was supported by, among other things, documents from specialized international organizations including the International Olive Council and Codex Alimentarius.²⁰ Dr. Hosseinian testified that they are “. . . two solid, strong references that scientists use for classification of olives” based on globally obtained results.²¹

37. The “Trade Standard Applying to Table Olives” produced by the International Olive Council classifies table olives in one of the following categories, *according to their degree of ripeness*: “(a) **Green olives**: Fruits harvested during the ripening period, prior to colouring and when they have reached normal size; (b) **Olives turning colour**: Fruits harvested before the stage of complete ripeness is attained, at colour change; (c) **Black olives**: Fruits harvested when fully ripe or slightly before full ripeness is reached”.²² The Codex Alimentarius uses the same categories.²³ Furthermore, the International Olive Council’s glossary includes an entry for the term “ripe olive”, defined as “[o]live at the final stage of ripening when the skin and flesh are blackish in colour”.²⁴

38. Délices de la Forêt did not present expert or other testimony to contradict Dr. Hosseinian’s evidence or to otherwise support its position. In addition, even though Délices de la Forêt filed various excerpts from Web sites, such as Wikipedia, the Tribunal questions the credibility of several of these sources and gives them very little weight.

39. The Tribunal carefully examined Délices de la Forêt’s argument that, the olive industry does not define ripe olives on the basis of their colour or degree of ripeness, and that the legislator intended the expression “ripe olives” in tariff item No. 2005.70.10 to reflect the meaning that those terms have in the

18. Exhibit AP-2015-018-06A, tab 8, Vol. 1A.

19. Exhibit AP-2015-018-012A at 4, Vol. 1B; *Transcript of Public Hearing*, 16 February 2016, at 20-24.

20. The mission statement of the International Olive Council describes it as “. . . the world’s only international intergovernmental organisation in the field of olive oil and table olives . . . set up . . . in 1959, under the auspices of the United Nations”. Its members include the leading international producers and exporters of olive oil and table olives. One of its goals is “[e]ncouraging the expansion of international trade in olive oil and table olives, drawing up and updating product trade standards and improving quality”. Exhibit AP-2015-018-06A, tab 11, Vol. 1A. With respect to the Codex Alimentarius, of which Canada has been a member since its creation in 1963, its role is to guarantee food standards contributing to the safety, quality and “. . . fairness of this international food trade”. Exhibit AP-2015-018-06A, tab 17, Vol. 1A.

21. *Transcript of Public Hearing*, 16 February 2016, at 22.

22. Exhibit AP-2015-018-06A, tab 10, Vol. 1A.

23. *Ibid.*, tab 18.

24. *Ibid.*, tab 13.

industry, rather than their scientific meaning. Among other things, Délices de la Forêt commented that, in one instance, the Codex Alimentarius refers to a category of olives called “green ripe olives”²⁵ and that the expression “green ripe” is found in other excerpts from scientific literature supporting Dr. Hosseinian’s report. At the hearing Dr. Hosseinian clarified that the term “green ripe” may be used in the food industry by business people to refer to normal-size olives that are appropriate for harvesting, but that these are not ripe olives from a scientific standpoint.²⁶

40. Délices de la Forêt saw this as an argument in support of its position that an olive is considered ripe when it has reached an optimal size.²⁷ The Tribunal understands from the arguments put forward by Délices de la Forêt that, in its opinion, optimal size refers to the stage at which the olive has attained its full volume,²⁸ which, according to Dr. Hosseinian’s testimony, is the stage at which green olives normally become ready for harvesting for the preparation of green table olives.²⁹

41. Délices de la Forêt’s argument cannot be accepted in this case. The Tribunal accepts the general proposition that it is possible, in theory, that the *Customs Tariff* may have been developed to refer to the practices of a particular industry, which may not reflect the scientific definitions of the goods in issue. However, Délices de la Forêt did not provide expert evidence to clearly show the usage or terminology within the industry concerning the ripeness of olives. Dr. Hosseinian was not qualified as an expert in the olive industry. In addition, the testimony and documentary evidence before the Tribunal on which Délices de la Forêt relied concerned the specific expression “green ripe” olives. However, the Tribunal draws attention to the fact that tariff item No. 2005.70.10 refers to ripe olives, not green ripe olives.³⁰

42. Further, the position that an olive of an optimal size is a ripe olive is not consistent with the context of tariff item No. 2005.70.10. Given the evidence on the record, that interpretation would, for all practical purposes, make meaningless the distinction between *ripe* olives in the second part of the tariff item and the olives in the first part of the tariff item, which are not described by this adjective. The distinction between the two product descriptions in the tariff item is however noted through the use of the semi-colon, which was acknowledged in this case by both parties, and the fact that the legislator chose to include the word “ripe” in only one of the two product descriptions. Yet, if the word “ripe” refers to any olive harvested as soon as it has reached a size that makes it ready for harvesting, all table olives commercialized in the normal course of activities may be qualified as “ripe”. Délices de la Forêt did *not* suggest that olives harvested *before they have even reached an optimal size suitable for harvesting* are marketed or imported in the normal course of activities, nor did it file any evidence to that effect. On the contrary, the evidence on the record does not support that proposition.³¹

43. In addition, accepting the interpretation advanced by Délices de la Forêt would render meaningless the first part of the wording of tariff item No. 2005.70.10, which expressly excludes certain types of olives

25. *Ibid.*, tab 18; Exhibit AP-2015-018-15B, tab 2, Vol. 1C.

26. *Transcript of Public Hearing*, 16 February 2016, at 29-35, 72-73.

27. *Ibid.* at 112-14.

28. Exhibit AP-2015-018-04 at paras. 34-35, 48-49, Vol. 1; *Transcript of Public Hearing*, 16 February 2016, at 121-22.

29. *Transcript of Public Hearing*, 16 February 2016, at 19-20, 30-32, 55, 72, 78, 106-107.

30. Concerning the category of “green ripe olives”, as further explained by Dr. Hosseinian, the goods in issue do not correspond to that category based on the description appearing in the Codex Alimentarius, which refers to “[o]lives ranging in colour from yellowish green or other greenish cast which may be mottled”, Exhibit AP-2015-018-06A, tab 18, Vol. 1A. The goods in issue are instead deep green (or made red by adding dye). Based on the evidence, it is therefore not clear that the category of green ripe olives directly relates to the goods in issue. *Transcript of Public Hearing*, 16 February 2016, at 30-31, 74, 82.

31. Based on the expert testimony, a fruit that is too small is not ready for harvesting, either for the production of table olives or of olive oil. *Transcript of Public Hearing*, 16 February 2016, at 19-20. Similarly, the International Olive Council and the Codex Alimentarius do not list a category consisting of table olives that have not even reached a normal size.

in brine in glass jars. In fact, according to the interpretation put forth by Délices de la Forêt, all olives in brine could be qualified as ripe olives in brine and classified in the second part of the wording of tariff item No. 2005.70.10, without regard to the type of container in which they are imported. This would render redundant the product description in the first part of tariff item No. 2005.70.10, “[o]lives. . . in brine *but not in glass jars*”. Délices de la Forêt provided no satisfactory explanation showing the consistency of its position with the wording of tariff item No. 2005.70.10, read as a whole.³²

44. In sum, the preponderance of the evidence establishes that a ripe olive is that which has reached complete maturity (or near complete maturity), which is indicated by, among other things, its black or blackish colour. Indeed, the evidence shows that colour is a fundamental criterion for distinguishing a ripe olive from an unripe one. This interpretation is also consistent with the context of tariff item No. 2005.70.10 and represents a clear and practical criterion for the application of the schedule to the *Customs Tariff*.

The goods in issue are not “ripe olives” of tariff item No. 2005.70.10

45. The Tribunal must now determine whether the goods in issue are ripe olives under tariff item No. 2005.70.10.

46. The goods in issue are green olives and red olives. The Tribunal accepts the uncontradicted expert testimony of Dr. Hosseinian and the documentary evidence indicating that the red olives in issue are green olives dyed red.³³ Dr. Hosseinian testified at length to the effect that the goods in issue are not ripe olives.³⁴

47. In sum, given the correct interpretation of tariff item No. 2005.70.10, the Tribunal determines that, since they are green olives and green olives dyed red, the goods in issue are not “ripe olives” and cannot be classified under tariff item No. 2005.70.10 as “ripe olives in brine”.

48. Since the goods in issue cannot be classified under tariff item No. 2005.70.10, the Tribunal finds, applying Rules 1 and 6 of the *General Rules* and Rule 1 of the *Canadian Rules*, that they are properly classified in tariff item No. 2005.70.90 as other olives.

DECISION

49. For the above-noted reasons, the appeal is dismissed.

Daniel Petit
Daniel Petit
Presiding Member

32. *Transcript of Public Hearing*, 16 February 2016, at 124-27.

33. *Ibid.* at 38-41; Exhibit AP-2015-018-04, tabs 2, 3, 4, Vol. 1.

34. *Transcript of Public Hearing*, 16 February 2016, at 62.