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Dr. Jonathan W. White,
Honeydata Corporation,
217 Hillside Drive,
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U.S.A. 77868

4503-2/89-170 (MVK)
(MVK:gmd)

April 15, 1992

Dear Dr. White:

Re: CITT Decision - Artificial Honey

Enclosed please find the decision of the Canadian International Trade Tribunal (CITT), concerning the tariff classification of dried honey products.

It is obvious from reading the decision that your evidence was very helpful. We very much appreciated your assistance to the Tribunal and to the Department prior to the hearing.

Yours truly,

Marlene Koehler,
Tariff Administrator,
Foodstuffs Unit,
Tariff Programs.
(613) 954-6893

Encl.

Canada

Department
of National Revenue
(Customs and Excise)

Ministère
du Revenu national
(Douanes et Accise)



Ottawa, Tuesday, March 10, 1992

Appeal No. AP-89-170

IN THE MATTER OF an appeal heard on
December 5, 1991, under section 67 of the *Customs Act*,
R.S.C., 1985, c. 1 (2nd Supp.), as amended;

AND IN THE MATTER OF two re-determinations dated
May 12, 1989, and September 20, 1991, made by the Deputy
Minister of National Revenue for Customs and Excise
pursuant to subsection 63(3) of the *Customs Act*.

BETWEEN

MLG ENTERPRISES LIMITED

Appellant

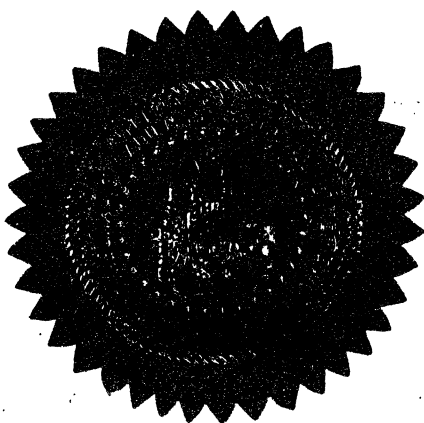
AND

THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.



Robert C. Coates, Q.C.
Presiding member

Arthur B. Trudeau
Member

Sidney A. Fraleigh
Member

Robert J. Martin
Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-89-170

MLG ENTERPRISES LIMITED

Appellant

and

**THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE**

Respondent

This is an appeal under section 67 of the Customs Act regarding two re-determinations dated May 12, 1989, and September 20, 1991, by the Deputy Minister of National Revenue for Customs and Excise, that classified Honi-Bake, Honi-Bake 705 and Sweet 'n' Neat 2000 Dry Honey Powder imported in Canada from the United States under heading No. 21.06 as "Food preparations not elsewhere specified or included." The appellant contends that Honi-Bake should be classified under tariff item No. 1702.90.10 as "Artificial honey ..." and that Honi-Bake 705 and Sweet 'n' Neat 2000 Dry Honey Powder should be classified under tariff item No. 0409.00.00 as "Natural honey."

HELD: *The appeal is dismissed. The Tribunal finds that the imported products were properly classified by the Deputy Minister of National Revenue for Customs and Excise.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: December 5, 1991
Date of Decision: March 10, 1992*

*Tribunal Members: Robert C. Coates, Q.C., Presiding Member
Arthur B. Trudeau, Member
Sidney A. Fraleigh, Member*

Counsel for the Tribunal: Robert Desjardins

Clerk of the Tribunal: Dyna Côté

*Appearances: Terry McCann, for the appellant
Howard A. Baker, for the respondent*



Appeal No. AP-89-170

MLG ENTERPRISES LIMITED

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE

Respondent

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
ARTHUR B. TRUDEAU, Member
SIDNEY A. FRALEIGH, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ from two re-determinations dated May 12, 1989, and September 20, 1991, made by the Deputy Minister of National Revenue for Customs and Excise. These re-determinations classified under tariff item No. 2106.90.90 Honi-Bake, Honi-Bake 705 and Sweet 'n' Neat 2000 Dry Honey Powder imported into Canada from the United States.

Honi-Bake, Honi-Bake 705 and Sweet 'n' Neat 2000 Dry Honey Powder are dry honey products, made from pure honey and converted to a free-flowing powder. These products contain substantial quantities of wheat starch - the carrying agent - as well as other substances, such as calcium stearate and hydroxylated lecithin. Unlike Honi-Bake 705 and Sweet 'n' Neat 2000 Dry Honey Powder, Honi-Bake contains high fructose corn syrup and corn syrup. Honi-Bake and Honi-Bake 705 are essentially used in bread and in other baked goods, whereas Sweet 'n' Neat 2000 Dry Honey Powder is used in dry food technology applications where various constraints would prevent the use of liquid honey.

In essence, the appellant contends that Honi-Bake should be classified under tariff item No. 1702.90.10 as "Artificial honey ..." and that Honi-Bake 705 and Sweet 'n' Neat 2000 Dry Honey Powder, as "extensions" of liquid honey, should be classified under tariff item No. 0409.00.00 as "Natural honey."

The appellant's first witness, Mr. Jean-Jacques Mathieu from Ogilvie Mills Ltd. in Montréal, Quebec, submitted to the Tribunal that, in his view, the products imported by MLG Enterprises Limited were not of the same nature as the various products found under tariff item No. 2106.90.90. Answering a question of the Tribunal, Mr. Mathieu also stated that these products are considered by the trade or users as food ingredients, i.e., products used in the preparation of food products. The appellant's second witness, Mr. Charles A. Morris, who works for Ogilvie Mills, Inc. as Technical Service Manager - Food Ingredients, explained to the Tribunal the development of the imported products and underlined their use in a wide range of ingredients in finished food products. Mr. Morris, who works in Minnetonka, Minnesota, agreed with the proposition put forth by counsel for the respondent that the products are intermediate

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

goods used in the preparation of foods. He also told the Tribunal that the products, which are marketed as honey solids and not as artificial honey, were not designed to go into a liquid state in order to be used as liquid honey; as he explained, water added to them would only bring about a "slur."

The respondent's expert witness was Dr. Jonathan W. White, President of Honeydata Corporation, Navasota, Texas. Dr. White has, since the 1950s, written extensively on the subject of honey. His expertise was acknowledged by the appellant. Dr. White explained that artificial honey which, incidentally, is not a recognized article of commerce in the United States, first appeared in Europe at the beginning of this century. It appears that artificial honey is still used in some Eastern European countries. According to Dr. White, artificial honey is a manufactured sugar product with certain characteristics that are necessary to make it resemble natural honey. In liquid form, these characteristics are invert sugar and sucrose concentration that permit a stable non-crystalline syrup of solids content of about 82 percent, as well as additives to provide honey-like flavour and colour. As to the semi-solid form, the characteristics are a stable spreadable texture without requiring the addition of any material and the property, as with honey, of returning to a clear liquid form by the application of heat. Artificial honey does not contain starch. Dr. White added that artificial honey has, until now, never been available in powder form. The respondent's expert witness does not consider Honi-Bake an artificial honey, as it contains starch and cannot be returned to a liquid form merely by adding water.

Having examined the evidence and reviewed the arguments, the Tribunal is of the opinion that the appeal should be dismissed. The Explanatory Note² to heading No. 04.09 of Schedule I to the *Customs Tariff*³ is to the effect that natural honey covers honey produced by bees or by other insects, centrifuged or in the comb, provided that neither sugar nor any other substance has been added. It has been well established during the hearing that Honi-Bake 705 and Sweet 'n' Neat 2000 Dry Honey Powder contain, in addition to honey, other substances such as wheat starch. Thus, for the purpose of tariff classification, these products cannot be considered natural honey. As to Honi-Bake, the Tribunal has found compelling Dr. White's expert opinion. Honi-Bake, for the reasons stated in his written report and reiterated during the hearing, cannot be regarded as an artificial honey. Suffice it here to underline again that artificial honey contains no starch and can be returned to a clear liquid state upon application of heat. These features are not shared by Honi-Bake. At this point, the Tribunal also wishes to note that counsel for the appellant, during the presentation of his arguments, explicitly expressed his agreement with Dr. White's testimony that the imported products, including Honi-Bake, were not artificial honey.

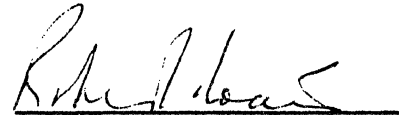
Finally, with respect to the respondent's classification of the imported products under heading No. 21.06 as "Food preparations not elsewhere specified or included," the Tribunal considers that the appellant has not adduced evidence to demonstrate that such classification has been made incorrectly. Pursuant to the relevant Explanatory Note, heading No. 21.06 covers preparations made wholly or entirely of foodstuffs, used in the preparation or making of beverages or food preparations for human consumption. As indicated by the appellant during the hearing, Honi-Bake, Honi Bake 705 and Sweet 'n' Neat 2000 Dry Honey Powder are products used by the food industry and are generally regarded in the professional trade as food

2. Explanatory Notes, Harmonized Commodity Description and Coding System, Customs Co-operation Council, Brussels, 1986.

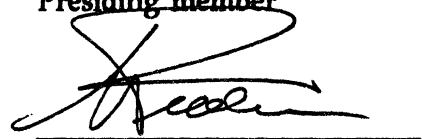
3. R.S.C., 1985, c. C-54.

ingredients used in the preparation of food products, such as bakery products. As these products are, under the present *Customs Tariff*, neither natural honey nor artificial honey and are known and used essentially as food intermediates, they have been correctly classified by the respondent.

The appeal is dismissed.



Robert C. Coates, Q.C.
Presiding member



Arthur B. Trudeau
Member



Sidney A. Fraleigh
Member

Not for dissemination

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NATURAL, ADULTERATED, AND ARTIFICIAL HONEY:
DEFINITIONS AND CHARACTERISTICS

Jonathan W. White, Ph. D.

Honeydata Corporation, Navasota Texas 77868

The desirability and consumer appeal of natural honey has inspired efforts over many years to produce sweeteners imitating or replacing it at less cost or for greater ease in food processing operations. Before discussing these materials definitions are required.

HONEY: Most countries have legal definitions of honey or have accepted the Codex European or Worldwide Standards. The latter states "Honey is the natural sweet substance produced by honey bees from the nectar of blossoms or from secretions of living parts of plants or excretions of plant sucking insects on the living parts of plants which honeybees collect, transform and combine with specific substances of their own, store and leave in the honeycomb to ripen and mature" (Codex Alimentarius, 1987). Fasler (1975) lists national definitions and regulations of 16 countries; most generally resemble that given above, though with less detail. The United States has no official definition; The Canadian definition states that "Honey shall be derived entirely from the nectar of flowers and other sweet exudations of plants by the work of bees". All list compositional limitations and require that no other material be added.

ARTIFICIAL HONEY: This is recognized as an entity in many countries; Fasler (1975) gives definitions and general regulations as follows:

Austria: Artificial honey is a honey-like product based on inverted sucrose, to which a total of 20% of dextrose, or glucose syrup, or both, *plus flavoring and coloring substances* have been added. There must not be more than 22% water, 20% sucrose, 0.4% ash and 40 meq/kg acidity.

Federal Republic of Germany: The 1930 order on artificial honey is still in force and gives standards for this product. Artificial honey is defined as inverted sucrose which may contain other ingredients; it will always contain hydroxymethylfurfural. A list of acids permitted for the inversion is given. The product must contain no more than 22% water, at most 30% sucrose, a maximum of 0.4% ash, at most 20% glucose syrup, and its acidity must not be above 40 meq/kg.

Switzerland: Artificial honey is a sugar-containing product similar in appearance to honey. It must not contain more than 20% water. It may contain natural flavoring substances, and up to 40 ppm sulfur dioxide as a preservative.

Latin American Codex (six Latin American countries): A product to be called artificial honey should contain at the most 20% water, 1% ash, 100 meq/kg acid, and 50 ppm free sulfur dioxide. It may not contain artificial essences, preservatives or sweeteners.

Argentina: Artificial honey is defined as a syrup based on sucrose, invert sugar, etc. It must not contain more than 20% water, 1% ash, and 100 meq/kg acid. Colors are permitted, and up to 60 ppm sulfur dioxide, but must not contain any flavoring or preservatives.

Countries in which the use of the term artificial honey is not permitted:

Belgium, Netherlands, Luxembourg, France, Spain, and the states of New South Wales, Tasmania, Victoria, and Western Australia.

Countries without definitions, but permitting sale under general regulations: United Kingdom, Canada, United States, New Zealand. In these countries it is presumed to be a legal product if properly labelled and free from prohibited substances.

ADULTERATED HONEY AND TABLE SYRUPS:

None of the definitions for honey permit the addition of any materials without appropriate label declarations and/or name of product. Hence any honey to which other material (including water) has been added without declaration is considered adulterated and illegal.

Mixtures of honey and other sweeteners may be sold in the U. S. as table syrups, for which a standard exists, provided they conform to the labelling and compositional requirements. A mixture of honey and artificial honey could not be labelled as either component and would need to qualify as a table syrup.

Manufacture and Characterization of Artificial Honey

Artificial honey has been manufactured for at least 100 years; the early European scientific literature has hundreds of references to its properties and manufacture e. g. Herzfeld, (1907), Paschen,(1908), and to the development of methods to distinguish it from natural honey (Utz

1909). Its manufacture was greatly accelerated in Europe by the first World War. Paul (1916a) published very precise directions for its preparation by inversion on sugar with lemon juice *with subsequent addition of color and flavor*. He further stated (Paul, 1916b) that the inversion of sucrose from cane or beet sugar and *the addition of artificial aroma and coloring matter* permitted the preparation of an artificial honey which could not be distinguished from the natural in food value, looks, odor, or taste. Beythien (1919) described honey adulterated with sucrose, artificial honey, and honey substitutes that were made in Germany in great quantities during the war. Many honey powders were made from *colored, aromatized* sucrose and citric or tartaric acid. Borries (1920) noted that artificial honey could be made in solid form. The effect of composition on this property was discussed. He gave the average composition of 10 artificial honeys as: invert sugar 73.8%, sucrose 4.5%, total sugars 78.4%, solids 82.0%, non-sugar solids 3.6%, water 18.0%. After the war, it was considered necessary to recommend regulations for artificial honey in Germany (Beythien, 1921). The chief requirement was that the artificial honey must be made by the inversion of pure beet sugar with a polarization of at least +99, must contain at least 78% dissolved solids, and the unchanged sugar content must not exceed 10%. The current German regulation for artificial honey dates from March 1930.

Examination of the technical literature makes it quite clear that artificial honey (Kunsthonig) as an article of commerce originated in Germany at least a century ago. Their directions for preparing it make it quite clear that it contains no natural honey but depends upon the addition of flavor and coloring materials to imitate natural honey. In general it seems reasonable that the term "artificial honey" describes a manufactured sugar product with certain characteristics that are necessary to make it resemble natural honey. These are:

1. In the liquid form: a) Invert sugar and sucrose concentration that permits a stable, non-crystalline syrup of ^{solids}~~moisture~~ content of about 82%, and b) Additives to provide honey-like flavor and color, including appropriate level of acidity.

2. In the "solid" form: a) A stable, spreadable texture without requiring the addition of any material; resembling honey in this attribute,

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and b) The property, as with honey, of returning to a clear liquid form by the application of heat.

It is clear that the product "Honi-Bake" cannot be considered a dehydrated artificial honey since it contains starch and cannot be returned to a liquid form simply by adding water. Nor can it be a dehydrated natural honey since it contains other syrup products as well as starch and cannot be made into a natural honey by adding water. It cannot be considered an adulterated honey for the same reasons; nor could it be a table syrup.

This product (Honi-Bake) is a useful and valuable baking ingredient, but in the opinion of the writer it cannot be correctly described as a "dry honey" or a "dried artificial honey" since about 35% of the solids are composed of the required drying adjunct (gelatinized wheat starch and soy flour). Further, honey composes less than half of the sweetener content; it contains more corn syrup than honey. Indeed, the product contains more starch and flour than it does honey. In technical descriptions it is described as a "dry honey product" (Glabe *et al.* 1963, Magnuson, 1984), but in promotional material, simply as a "dry honey" or "dry honey powder" (Anon. 1986).

It also is the opinion of the writer that such products as high-fructose corn syrup alone or mixed with conventional corn syrup can not be considered "artificial honey" despite a contention that such would pass as honey to the non-expert. It is clear from the italicized passages in the literature described above that artificial honey requires flavor and aroma additions and is not simply a sweet, flavorless syrup.

In conclusion:

1. Honi-Bake and Honi-Bake 705 are not artificial honeys and are not manufactured from artificial honey.
2. Corn-based sweeteners without appropriate additions are not artificial honey.

REFERENCES

- Anon. (1986) Dry Honey and Molasses Sweeteners. *Food Technology* 98, January.
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- inventions]. *Z. Nahr. Genuss.* 38: 159-165.
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- Fasler, A. (1975) Honey standards legislation. Chapter 13 in "*Honey a Comprehensive Survey*", E. Crane, Ed. Heinemann, London.
- Herzfeld, A. (1907) [The manufacture of artificial honey]. *Deutsch. Zuckerind.* 31: 1988-90.
- Magnuson, K. (1984) Liquid to dry ingredient form affects processing ease. *Bakers Digest* Sept. 20-21.
- Paschen, E. (1908) [Manufacture of artificial honey...] German patent 216,408 (Dec. 9).
- Paul, T. (1916a) [Preparation of artificial honey]. *Suddeutsch. Apoth. Ztg.* 56: 272-273.
- Paul, T. (1916b) [The preparation of artificial honey with citric acid as the inverting agent]. *Münch. med. Wochschr.* 63: 858-859.
- Utz (1909) [Fiehe reaction for distinguishing artificial and natural honey]. *Z. Angew. Chem.* 21: 2315-2316.

HONEYDATA CORPORATION
Jonathan W. White, Ph. D., President

November 7, 1991