



**TC 08312**

*Customs duty. Whether a solution of ammonium sulphide (also known as diammonium sulphide) 15% in water (a food flavouring) should be classified in heading 28309085 (attracting 5% duty) or in heading 33021090 (attracting nil duty) in the Schedule of Customs Duties in Part Two of Annex I to Council Regulation (EEC) 2658/87. Sportex GmbH & Co. v Oberfinanzdirektion Hamburg [1988] EUECJ R-253/87, [1988] ECR 3351, [1988] ECR III-3351, [1988] EUECJ R-253/87 considered. Held: (1) Neither heading provides a more specific description of the product than the other for the purposes of rule 3(a) of the General Rules of Interpretation in Part A of Section 1 of Part One of Annex I to Council Regulation (EEC) 2658/87. (2) For rule 3(b) of those rules, ammonium sulphide is the material or component which gives the product its essential character. That the ammonium sulphide is not added to, but arises in, the mixture makes no difference. Sportex does not require an imaginary reversal of the manufacturing process to extract back out the component in question. (3) The product is therefore to be classified in heading 28309085 and is subject to 5% duty.*

**Appeal number: TC/2016/00482**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**RIVERSIDE AROMATICS LTD**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S  
REVENUE & CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE RACHEL PEREZ  
CHRISTOPHER JENKINS**

**Sitting in public in Southampton on 14 October 2016**

Mr Peter Cannon and Dr David Rowe for the appellant

Ms Anna Lintner of counsel for HMRC

**SUMMARY DECISION**

1. This appeal is about whether a solution of ammonium sulphide (also known as diammonium sulphide) 15% in water (a food flavouring) should be classified in heading 28309085 or heading 33021090 in the Schedule of Customs Duties in Part Two of Annex I to Council Regulation (EEC) 2658/87. HMRC say it should be in

28309085 and so subject to duty at 5.5%. The appellants say it should be in 33021090 and so subject to no duty.

2. The parties supplied a series of post-hearing submissions and evidence. The final submission was dated 7 November 2017. We are grateful to both parties for their efforts.

3. The appeal is dismissed. Our summary reasons are below.

### **Summary reasons**

4. We find that the product “Ammonium Sulphide, Natural, 15% in Water, NA0200” (page 56, “the product”) is prima facie classifiable under both heading 2830 and heading 3302 (and under both heading 28309085 and heading 33021090).

#### GIR rule 3(a) – “most specific description”

5. We therefore have to consider which of those two headings provides the most specific description of the product, as required by rule 3(a) of the General Rules of Interpretation in Part A of Section 1 of Part One of Annex I to Council Regulation (EEC) 2658/87.

6. We find we are unable to classify the product, by reference to rule 3(a), in only one of 2830 and 3302. We find that 3302 does not provide a more specific description of the product than 2830. At best, 3302 provides a description that is only equally as specific as the description in 2830. Heading 3302 refers (so far as relevant) to a mixture with a basis of one or more odoriferous substances which, by virtue of note 2 to Chapter 33, are synthetic aromatics. Heading 2830 refers (so far as relevant) to a sulphide which, by virtue of note 5 to Chapter 28, is an ammonium salt or peroxy salt and which, by virtue of note 1(b) to Chapter 28, is dissolved in water. It was common ground that ammonium sulphide (referred to in 2830) is a synthetic aromatic (referred to in 3302). So 2830 refers to a sub-category of what 3302 refers to. That without more would make 2830 more specific than 3302, in our judgment. However, 3302 refers in addition to use. That, at best, only balances it back out again in our judgment, rather than tipping the scales in favour of 3302. So we find that neither heading is more specific than the other. A comparison between the sub-headings does not change this.

7. We say “at best” because a less generous weighing of the reference to use in 3302, as compared with the reference to the name of the sulphide in 2830 (by virtue of note 5 to Chapter 28), might even mean that 2830 is still more specific than 3302. But we have not needed to go that far in view of our finding on “essential character” below.

#### GIR rule 3(b) – “essential character”

8. Our finding that neither heading provides a more specific description of the product than the other means we have to attempt to classify by reference to rule 3(b).

9. We find that ammonium sulphide is the material or component which gives the product its essential character. *Sportex* does not require an imaginary reversal of the manufacturing process to extract back out the component in question after the product has been made. Paragraph 9 of the *Sportex* judgment shows that the court considered whether the product was “made” with the component in the first place. *Sportex* may not be quite on all fours with the present case; it seems that in *Sportex* the component

in question was added to the other components, whereas the appellants in the present case said the ammonium sulphide is not simply added to the water (although whether it can never be so added was unclear). We must primarily construe the wording of rule 3(b) itself. Rule 3(b) requires identification of the component which “gives” the product its essential character. This envisages the component being in the mixture, nothing more.

10. There is no dispute that the ammonium sulphide is in the mixture. And the appellants told us that it is the reaction of the ammonium sulphide with the water that creates the eggy/fishy note - which they said is the product’s essential character - by creating by-products. So on the appellant’s own submission, it is the ammonium sulphide which is ultimately responsible for creating those by-products and so for the product’s eggy/fishy note. We find that the ammonium sulphide is responsible for giving the product its eggy/fishy note.

11. So under rule 3(b), the product is classified as if it consisted of ammonium sulphide. This means the product is classified under 28309085 and not under 33021090.

**Appealing against this decision**

12. This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply, within 28 days of the date of release of this decision, to the tribunal for full written findings and reasons. When these have been prepared, the tribunal will send them to the parties and publish them on its website and either party will have 56 days in which to appeal. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**RACHEL PEREZ**

**TRIBUNAL JUDGE**

**RELEASE DATE: 13 FEBRUARY 2018**

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