

UNITED STATES COURT OF INTERNATIONAL TRADE

CIBA-GEIGY CORPORATION,

Plaintiff,

v.

UNITED STATES,

Defendant.

Before: WALLACH, Judge
Court No.: 95-09-01128

ORDER

Upon consideration of Defendant's Motion To Amend The Judgment, the Court having reviewed the pleadings and papers on file herein, and good cause appearing therefor, it is hereby

ORDERED, ADJUDGED and DECREED that Defendant's Motion To Amend The Judgment is granted, and it is further

ORDERED, ADJUDGED and DECREED that the Court's Judgment of December 29, 1998, is hereby amended by deleting the following paragraphs:

ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Summary Judgment be, and hereby is, granted with respect to the classification of the Pergascripts within HTSUS Headings 3204 and 3215, but that Defendant's Motion for Summary Judgment is denied to the limited extent that it has failed to demonstrate that its ultimate classification of the Pergascripts within Heading 3204 was, in fact, correct; and it is further

ORDERED, ADJUDGED AND DECREED that the parties may apply, as necessary, for any additional reasonable discovery period needed to demonstrate the correct classification of the Pergascripts within Heading 3204.

In their place, the following paragraphs are hereby substituted:

ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Summary Judgment be, and hereby is, granted, and it is further

ORDERED, ADJUDGED AND DECREED that this case is

Note: Pursuant to the court's Procedures for Publication of Opinions and Orders, the court's unpublished order entered on March 30, 1999 is being published by the Clerk's Office as Slip Op. 99-33 on April 6, 1999.

dismissed.

And it is further

ORDERED, ADJUDGED and DECREED that the decision of this Court in *Ciba-Geigy Corporation v. United States*, Slip Opinion 98-168, is hereby amended as follows:

- Page 1 (caption). The following paragraph is deleted:

[On classification of five varieties of synthetic organic coloring matter, partial summary judgment for Defendant concerning classification within Headings 3204 and 3215. The Court denies Defendant's Motion, however, to the limited extent that it has failed to demonstrate that its ultimate classification within Heading 3204 was, in fact, correct.]

In its place, the following paragraph is hereby substituted:

[On classification of five varieties of synthetic organic coloring matter, summary judgment for Defendant concerning classification within Headings 3204 and 3215.]

- Page 2. The following paragraph is deleted:

Currently before the Court is Defendant's Motion for Summary Judgment. The Court finds that as there is no genuine issue of material fact relevant to the classification of the Pergascripts within Heading 3215, this case is ripe for partial summary disposition pursuant to USCIT R. 56. Further, the Court finds that by operation of Note 1(a) to Chapter 32, HTSUS ("Note 1(a)"), the Pergascripts were properly classified by Customs under Heading 3204. There are, however, insufficient facts before the Court to verify that Customs' classification of the Pergascripts within Heading 3204 was correct. Accordingly, the Court denies Defendant's Motion to that limited extent.

In its place, the following paragraph is hereby substituted:

Currently before the Court is Defendant's Motion for Summary Judgment. The Court finds that as there is no genuine issue of material fact relevant to the question of whether the Pergascripts may be classified in Heading 3215, this case is ripe for summary disposition pursuant to USCIT R. 56. Further, the Court finds that by operation of Note 1(a) to Chapter 32, HTSUS ("Note 1(a)"), the Pergascripts were properly classified by Customs under Heading 3204. Accordingly, the Court grants Defendant's Motion For Summary Judgment.

- Page 4: The title "**Partial Summary Judgment Is Appropriate Because There Is No Genuine Issue As To Any Material Fact**" is hereby amended to read "**Summary Judgment Is Appropriate Because There Is No Genuine Issue As To Any Material Fact.**"
- Pages 13-16: Section III(C) of the Court's Slip Opinion, entitled "**Notwithstanding The Fact That the Pergascripts Were Properly Classified Under Heading 3204, It Has Not Been Demonstrated That The Pergascripts Were Properly Classified Under Subheadings 3204.19.40 And 3204.19.50,**" is hereby deleted in its entirety (including footnote 9).
- Page 16: The following paragraph is deleted:

For the foregoing reasons, Defendant's Motion For Summary Judgment is partially granted and denied to the extent set forth herein. The parties may apply, as necessary, for any additional reasonable discovery period needed for the limited purposes set forth herein.

In its place, the following material is hereby substituted:

For the foregoing reasons, the Court finds that, as the Pergascripts constitute separate chemically defined compounds, Note 1(a) to Chapter 32 precludes them from classification in Heading 3215. Accordingly, Defendant's Motion For Summary Judgment is granted, and this case is dismissed.

Evan J. Wallach, Judge

Dated: March 29, 1999
New York, New York