

BOKER et al. v. UNITED STATES.

(Circuit Court, S. D. New York. March 8, 1898.)

1. CUSTOMS DUTIES—CLASSIFICATION—NICKEL ALLOY.

Rods and plates of nickel alloy, incapable of practical use without further manipulation or manufacture, were dutiable as alloy in which nickel is the component material of chief value, under paragraph 167½ of the act of 1894, and not as manufactured articles composed in whole or in part of any metal, not specifically provided for.

2. SAME—NICKEL-ALLOY WIRE.

Wire composed of nickel alloy, imported in spools, and ready for use in the construction of rheostats, was dutiable as a manufactured ware not specifically provided for, composed wholly or in part of metal, under paragraph 177 of the act of 1894, and not as nickel alloy, under paragraph 167½.

This was an appeal by Hermann Boker & Co. from a decision of the board of general appraisers affirming the action of the collector of the port of New York in respect to the classification for duty of certain nickel alloy in the form of rods, sheets, and wire.

Albert Comstock, for importers.

H. D. Sedgwick, Asst. U. S. Atty.

TOWNSEND, District Judge (orally). The merchandise in question comprises certain nickel alloy, in the form of rods, sheets, and wire. The board of general appraisers, affirming the action of the collector, assessed all the articles for duty as manufactures of metal, at 35 per cent. ad valorem, under the provisions of paragraph 177 of the act of August, 1894, for "manufactured articles or wares, not specifically provided for, composed wholly or in part of any metal, and whether partly or wholly manufactured." The importer protested, claiming that they were dutiable at 6 cents per pound, under the provisions of paragraph 167½ of said act, as "nickel," or "alloy of any kind in which nickel is the component material of chief value." The first question involved is whether the alloy in these forms is raw material or a manufactured article. It seems clear that the rods and plates are not advanced from the condition of nickel alloy, and are therefore provided for under paragraph 167½. They are incapable of practical use without being subjected to further manipulation and manufacture. I think congress, by the provision for nickel alloy, itself a manufacture, must be presumed to have intended to provide for such alloy in its ordinary commercial forms as known at the passage of said act. The wire is a manufacture of metal, a complete merchantable article, imported in spools, and sold by the spool, to be used in the construction of rheostats, and dealt in commercially, in various sizes, adapted to the purposes for which it is wanted. The decision of the board of general appraisers is reversed as to the rods and plates, and affirmed as to the wire.

MEYER et al. v. UNITED STATES.

(Circuit Court, S. D. New York. March 8, 1898.)

1. CUSTOMS DUTIES—SARDELLES DE SCANDINAVIE.

Sardelles de Scandinavie packed in oil in quarter boxes were dutiable at 20 per cent. ad valorem, under paragraph 211 of the tariff act of 1894, as "fish in cans and packages made of tin, except anchovies and sardines," and were not dutiable at 2½ cents per box, under paragraph 208, as "anchovies or sardines."

2. SAME—KIELER SPRATS.

Kieler sprats packed in oil in quarter boxes, commercially known as "smoked sardines in oil," were dutiable at 2½ cents a box, under paragraph 208 of the tariff act of 1894, as "sardines packed in oil in quarter boxes," and were not dutiable at 20 per cent. ad valorem, under paragraph 211, as "fish in cases or packages made of tin, except anchovies and sardines."

This was an appeal from a decision of the board of general appraisers affirming the action of the collector of the port of New York in respect to the classification for duty of certain goods imported by Meyer & Lange, the appellants.

Albert Comstick, for appellants.

H. D. Sedgwick, Asst. U. S. Atty.

TOWNSEND, District Judge (orally). The merchandise in question comprises two varieties of fish packed in oil, and labeled, respectively, "Kieler Sprotten in Oil," and "Sardelles de Scandinavie." They were classified for duty at 2½ cents per box, under the provisions of paragraph 208 of the act of 1894 for "anchovies and sardines packed in oil in quarter boxes," and were claimed to be dutiable at 20 per cent. ad valorem, under the provisions of paragraph 211 of said act, as "fish in cases or packages made of tin, except anchovies and sardines." There is no competent evidence to support the finding of the board of general appraisers that the sardelles are commercially known as "anchovies," and nothing except dictionary definitions to support the argument of the attorney for the United States that they are sardines. When thus put up, they are commercially known as "sardelles," and are not commercially known or dealt in either as anchovies or sardines. The decision of the board of general appraisers as to the sardelles is reversed.

The other fish are called "Kieler sprats." They are probably neither genuine sardines nor anchovies. This point, however, is not material. The evidence shows that, when pickled and packed in half barrels, they are commercially known as "Norwegian anchovies"; if put up in tins, and labeled "sardines," they are commercially known as "smoked sardines"; and, if labeled "sprats," they are commercially known as sprats. The evidence before the board sufficiently supports the finding that these fish are commercially known as "smoked sardines in oil." The whole evidence tends to show that little fish of this general character, when thus put up in oil in tin boxes, are commercially recognized as belonging to the general class, "sardines," although this particular species, when labeled "sprats," are known as "Kieler sprats." The facts bring the case within the