

**TOMATOES AND TOMATO PRODUCTS**

**24077. Canned tomatoes.** (F. D. C. No. 40249. S. No. 65-430 M.)

**QUANTITY:** 254 cases, 24 cans each, at Youngstown, Ohio.

**SHIPPED:** 3-29-57, from Bethlehem, Md., by A. W. Sisk & Son.

**LABEL IN PART:** "Edgebrook Tomatoes Contents 1 Lb. 12 Oz."

**LIBELED:** 5-13-57, N. Dist. Ohio.

**CHARGE:** 403 (h) (1)—The quality of the article, when shipped, fell below the standard of quality for canned tomatoes since the drained weight of the contents of the container of the article was less than 50 percent of the weight of water required to fill the container, and the label of the article failed to bear a statement that it fell below such standard.

**DISPOSITION:** 7-8-57. Consent—claimed by James L. Christopher, Preston, Md., and relabeled.

**24078. Tomato paste (4 seizure actions).** (F. D. C. Nos. 37371, 37502, 37511, 37593. S. Nos. 66-468 L, 4-903 M, 4-911/4, M, 5-723 M.)

**QUANTITY:** 1,500 cases (Civil No. 54-C-1754), 1,464 cases (Civil No. 54-C-1820), 5,951 cases (Civil No. 55-C-70), and 1,463 cases (Civil No. 54-C-1833) at Chicago, Ill. Each case contained 6 No. 10 cans.

**SHIPPED:** Between 10-8-54 and 11-2-54, from Clearfield, Utah, by Smith Canning Co.

**LIBELED:** Between 11-23-54 and 1-13-55, N. Dist. Ill. Amended libels filed on 6-27-55 against the 1,463 case lot and 1,464 case lot.

**CHARGE:** 402 (a) (3)—the 1,464 case lot contained insect fragments, and such lot and the 1,463 case lot contained decomposed tomato material; and 402 (a) (4)—all lots had been prepared under insanitary conditions.

**DISPOSITION:** The Smith Canning Co. appeared as claimant in each of the above mentioned libel actions. Pursuant to motion filed by the claimant and granted by the court on 2-14-55, the Government filed a more definite statement with respect to the charge of insanitary conditions alleged in the action against the 1,500 case and 5,951 case lots. Answers were filed by the claimant in each action denying that the article was adulterated as alleged, and subsequently an order was entered consolidating the four libel actions for trial. The trial commenced on July 26, 1955, before the court without a jury and was concluded on August 5, 1955. On August 12, 1955, the court made its findings of fact and conclusion of law and entered judgment in each action directing that the article be returned to the claimant, except for a small portion of the lot of 1,464 cases which was ordered condemned. A notice of appeal to the United States Court of Appeals for the 7th Circuit was thereupon filed, and on 8-18-55, an order was entered by that court staying the execution of the judgment of the lower court pending determination of the appeal. On July 13, 1956, after considering the arguments and briefs of counsel, the following opinion was handed down by the court of appeals [236 F. 2d 208]:

SWAIM, *Circuit Judge:* "This is an appeal by the United States from the judgments in the combined prosecution of four libels (designated in the District Court as 54-C-1754, 54-C-1820, 54-C-1833 and 55-C-70) condemning approximately 10,370 cases of tomato paste as 'adulterated' within the meaning of 21 U. S. C. A. Section 334 (a). The paste was canned by the Smith