



Ottawa, Monday, September 17, 2001

Appeal No. AP-2000-028

IN THE MATTER OF an appeal heard on March 21, 2001, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Commissioner of the Canada Customs and Revenue Agency dated April 13, 2000, with respect to a request for redetermination under subsection 60(4) of the *Customs Act*.

BETWEEN

ALLIANCE RO-NA HOME INC.

Appellant

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY**

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Peter F. Thalheimer
Peter F. Thalheimer
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-2000-028

ALLIANCE RO-NA HOME INC.

Appellant

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY

Respondent

This is an appeal under section 67 of the *Customs Act* from a decision of the Commissioner of the Canada Customs and Revenue Agency. The issue in this appeal is whether the tape dispensers imported by the appellant, which are packaged alone or with one or two rolls of cellophane tape, are properly classified under tariff item No. 8205.59.90 as other hand tools, not elsewhere specified or included, as determined by the respondent, or should be classified under tariff item No. 8422.30.99 as other machinery for sealing boxes, as claimed by the appellant.

HELD: The appeal is dismissed. Classification of those goods consisting of a tape dispenser packaged for retail sale with one or two rolls of cellophane tape will be determined according to the tariff item under which the tape dispensers are classified because they are the components that give the whole their essential character. In light of various dictionary definitions and the *Explanatory Notes to the Harmonized Commodity Description and Coding System* and after having examined the tape dispenser, the Tribunal is satisfied that it is a tool and that it is a hand-held device that aids in accomplishing a task, precisely that of taping. The dispenser acts as nothing more than a holder and a guide for the easy application of the tape; it is a mere tool that mimics or replaces the hand and arm actions that one can alternatively use for applying the tape. The fact that the tape dispenser comprises components that could qualify as simple machines is not sufficient for it to be classified in heading No. 84.22 as a machine. Rather, a hand tool can comprise various simple mechanisms without it necessarily being excluded from being a hand tool. In this case, the simple mechanics at play are not sufficient to make the dispenser a machine, whether or not loaded with a roll of tape. A machine must be capable of some sort of transmission of force from one component to another. In this instance, none of the components of the tape dispenser has a dynamic mechanical interaction with any other; each of the moving parts in the dispenser turns on itself or acts independently from the others.

Place of Hearing: Ottawa, Ontario
Date of Hearing: March 21, 2001
Date of Decision: September 17, 2001

Tribunal Member: Peter F. Thalheimer, Presiding Member

Counsel for the Tribunal: Eric Wildhaber

Clerk of the Tribunal: Margaret Fisher

Appearances: Peter E. Kirby and David T. Reilly, for the appellant
Jean-Robert Noiseux, for the respondent



Appeal No. AP-2000-028

ALLIANCE RO-NA HOME INC.

Appellant

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY

Respondent

TRIBUNAL: PETER F. THALHEIMER, Presiding Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ from a decision of the Commissioner of the Canada Customs and Revenue Agency (CCRA), dated April 13, 2000, pursuant to subsection 60(4) of the Act. The issue in this appeal is whether the tape dispensers imported by the appellant, which are packaged alone or with one or two rolls of cellophane tape, are properly classified under tariff item No. 8205.59.90 of the schedule to the *Customs Tariff*² as other hand tools, not elsewhere specified or included, as determined by the respondent, or should be classified under tariff item No. 8422.30.99 as other machinery for sealing boxes, as claimed by the appellant. The goods in issue were imported between June 5 and September 1, 1998.

The tape dispenser comprises several metal and plastic components mounted on a metal body. A plastic handle allows the user to hold the tape dispenser and to apply pressure and motion in the sealing action. A plastic roller rotates to apply the tape to an object; this roller is the point of contact in applying the tape to another surface. A metal lever guide helps to reduce the uneven application of the tape to the surface. The tape holder has a rotating drum, a pressure bar and a spring tension adjuster; the spring tension brake can be adjusted either clockwise or counterclockwise to increase or decrease the resistance of the tape feed, thereby providing a controlled and even feed for the tape while in operation. A metal cutting blade allows the tape to be severed from the roll.

The relevant tariff nomenclature is as follows:

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| 82.05 | Hand tools (including glaziers' diamonds), not elsewhere specified or included; blow lamps; vices, clamps and the like, other than accessories for and parts of, machine tools; anvils; portable forges; hand or pedal-operated grinding wheels with frameworks. -Other hand tools (including glaziers' diamonds): |
| 8205.59 | --Other |
| 8205.59.90 | ---Other |
| 84.22 | Dish washing machines; machinery for cleaning or drying bottles or other containers; machinery for filling, closing, sealing, or labelling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar |

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].
2. S.C. 1997, c. 36.

| | |
|------------|---|
| | containers; other packing or wrapping machinery (including heat-shrink wrapping machinery); machinery for aerating beverages. |
| 8422.30 | -Machinery for filling, closing, sealing, or labelling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; machinery for aerating beverages |
| 8422.30.91 | ---Automatic bagging systems; Capping machines; Closing machines; Cotton wool inserting machines; Filling machines, excluding rotary vacuum type; For labelling, with a capacity not exceeding 1,200 containers per minute; Tablet cleaners |
| 8422.30.99 | ---Other |

EVIDENCE

Physical exhibits of the goods in issue were filed with the Tribunal.

The appellant did not call any witnesses.

Mr. Jan Wojcik, Senior Appeals Officer, Trade Administration Dispute Resolution Division, CCRA, testified on behalf of the respondent. Mr. Wojcik stated that the tape dispensers are commonly found in offices, mail rooms, warehouses, shipping docks and homes. He stated that their main purpose is to apply tape in order to seal cartons and boxes. Mr. Wojcik described the tape dispensers as consisting of a metal frame bent at a 90° angle. Attached thereto by screws are a plastic pistol hand grip, a plastic reel on which the tape is placed and a plastic grooved knob with a spring. Mr. Wojcik testified that the plastic reel moves less freely when the knob is turned clockwise, whereas it moves more freely when the knob is turned counterclockwise. Mr. Wojcik further stated that a small metal guide that is loosely fitted into a groove in the lower portion of the metal frame is used to keep the tape in place and flat. He also stated that the tape rests against a free-spinning plastic roller that is attached to the upper portion of the metal frame when the tape is being pulled along the object that is being taped. Mr. Wojcik further testified that the tape dispensers are also equipped with a serrated metal cutting blade and a plastic shield that are used to cut and separate the tape that is being applied to an object from the tape on the reel.

Mr. Wojcik demonstrated how the tape dispensers work while the plastic tension knob is turned both completely clockwise (maximum tension) and completely counterclockwise (minimum tension). Mr. Wojcik attempted to show that the reel moves quite freely when the plastic knob is turned completely counterclockwise, while it does not move at all when the knob is turned completely clockwise. In his testimony, Mr. Wojcik opined that neither the action of turning the plastic reel nor that of turning the plastic roller has any effect on any other part of the tape dispenser. Mr. Wojcik demonstrated how to place a roll of tape in the tape dispenser, an action that is accomplished by sliding the tape onto the plastic reel with the tape rolling from the top of the roll. Mr. Wojcik further demonstrated that, once the roll of tape is placed in the tape dispenser, an additional step by the user is required before the tape dispenser is ready for use, that is, pulling the tape off the roll of tape and sliding it between the plastic roller and the metal guide. Mr. Wojcik further opined that, aside from the action of sealing boxes, the tape dispensers can be used for any number of sealing operations, for example, wrapping tape around objects that one wishes to bundle together. Finally, Mr. Wojcik demonstrated how to apply tape using the dispenser. In his demonstration, he pressed the plastic roller holding the tape down against the object, then pulled the tape dispenser along the length of the surface

and moved the tape dispenser forward in order to twist the tape against the serrated metal edge in order to make the desired cut.

During cross-examination by the appellant, Mr. Wojcik demonstrated the taping action of the dispenser with the plastic tension knob turned both completely counterclockwise (minimum tension) and completely clockwise (maximum tension). The appellant asked Mr. Wojcik whether the tightening and loosening of the plastic knob tension screw modified the force that he was exerting on the dispenser. In response to this query, Mr. Wojcik opined that such actions did not modify the force that he had exerted, but did affect the efficacy of the use of the dispenser. The appellant then suggested to Mr. Wojcik that he was exerting the same amount of force, but that the effect of that force was different. In response, Mr. Wojcik retorted that he probably used even less force when demonstrating the taping action of the dispenser in the maximum tension position and remarked that, in that instance, the tape simply lifted off the area that he was attempting to tape; indeed, Mr. Wojcik testified that, in that circumstance, he could not pull too hard because, as soon as he exerted some force, the tape lifted off the object that he was attempting to tape. The appellant asked Mr. Wojcik to confirm his earlier assertion that the main purpose of the dispenser is to apply tape in order to seal cartons and boxes. Mr. Wojcik confirmed that he had made this assertion. The appellant asked Mr. Wojcik if he had had prior involvement in the decision-making concerning the classification of the goods in issue. Mr. Wojcik replied that he had not taken part in such activity.

POSITION OF PARTIES

Appellant

The appellant submitted that the tape dispensers should be classified in heading No. 84.22 according to Rule 1 of the *General Rules for the Interpretation of the Harmonized System*.³ It was argued that the tape dispensers are mechanical appliances pursuant to the Supplementary Note to Section XVI of the *Customs Tariff*, which states that “the term ‘mechanically operated’ refers to those goods which are comprised of a more or less complex combination of moving and stationary parts and do work through the production, modification or transmission of force and motion.” As such, it was the appellant’s submission that the tape dispensers are a less complex combination of moving parts that work through the transmission of force and motion, the motion of the roller compelling the motion of the tension adjuster, which, in turn, provides a controlled feed of the tape through the roller. The appellant further submitted that this view of the tape dispensers is in accordance with Tribunal jurisprudence in both Appeal Nos. AP-98-078⁴ and AP-94-157.⁵ In support of its position, and while recognizing their non-binding nature, the appellant cited certain customs rulings in the United States that held that goods purportedly similar to the goods in issue were mechanical appliances classifiable in Chapter 84.

Accordingly, the appellant argued that, because the tape dispensers are mechanical appliances, they are therefore excluded from classification in Section XV by virtue of Note 1(f) of the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁶ to that section, which excludes “[a]rticles of Section XVI (machinery, mechanical appliances and electrical goods)”. In support of this assertion, the appellant indicated that the Explanatory Notes to Chapter 82 state that this chapter covers goods that are not machinery or appliances of Section XVI. As such, it was argued that the tape dispensers cannot be

3. *Ibid.*, schedule [hereinafter General Rules].

4. *Classic Chef v. DMNR* (17 December 1999) [hereinafter *Classic Chef*].

5. *Canadian Tire Corporation v. DMNR* (12 October 1995).

6. Customs Co-operation Council, 2d ed., Brussels, 1996 [hereinafter Explanatory Notes].

considered as other hand tools of Chapter 82 because they are mechanical appliances specifically provided for in Chapter 84.

Finally, the appellant submitted that the only relevant tariff items of subheading No. 8422.30 are tariff item Nos. 8422.30.91 and 8422.30.99, but that the goods in issue must be classified under the latter.

Respondent

The respondent submitted that the tape dispensers are properly classified pursuant to Rule 1 of the General Rules as other hand tools of tariff item No. 8205.59.90. In support of this assertion, the respondent indicated that one of the elements of the tape dispensers is a serrated metal cutting blade that meets the definition of “base metals” contained in Note 3 to Section XV. In accordance with Chapter Note 1(a) of the Explanatory Notes to Chapter 82, which provides that this chapter “covers only articles with a blade . . . of: . . . [b]ase metal”, classification of the goods is therefore permitted in this chapter. The respondent also submitted that the tape dispensers are generically described in heading No. 82.05 as “hand tools . . . not elsewhere specified or included”. Indeed, citing several dictionary definitions, the respondent advocated that the tape dispensers meet the definition of a tool and are designed for hand use; in other words, they are hand-held devices that aid in accomplishing a simple task, that of applying tape to an item. The respondent submitted that, because the tape dispensers can be classified in Chapter 82, they are thereby excluded from classification in Chapter 84 by virtue of Note 1(k) to Section XVI.

The respondent also argued that, while both heading Nos. 82.05 and 39.26 generically describe the tape dispensers, they comprise blades and working parts of base metal and, therefore, Note 1(a) of the Explanatory Notes to Chapter 82 supports classification in that chapter. With respect to the tape dispensers being packaged with one or two rolls of tape, the respondent submitted that Rule 3 (b) of the General Rules favours classification of the whole in heading No. 82.05 rather than in heading No. 39.19 because the tape dispenser gives the whole its essential character.

The respondent argued against classifying the tape dispensers in heading No. 84.22. Relying on a series of definitions found in widely published dictionaries, the respondent submitted that the tape dispensers are not machines or machinery, nor can they be considered to be mechanically operated, as required for classification in heading No. 84.22. The respondent pointed to similar definitions adopted by the Federal Court of Appeal.⁷ The respondent also pointed to the Tribunal’s decision in *Classic Chef*, where it was held that, to be considered a machine, the movement of one of its parts must have an effect on another; the respondent submitted that no such effect occurs in the operation of the tape dispensers. Indeed, it was the respondent’s submission that the production, modification or transmission of force or motion by a machine and the interaction of one of its parts with another are important factors that distinguish a machine from a hand tool. In the respondent’s contention, the tape dispensers do not produce, modify or transmit force or motion, as evidenced by the fact that no action of the tape dispenser causes the tape to unroll. Rather, the respondent argued that it is the action of the user that allows the tape to unroll, the parts of the tape dispensers being but passive elements in permitting the smooth unrolling and clean cutting of the tape. This action, the respondent submitted, is akin to simply holding a roll of tape in one hand and grabbing on to the loose end of the tape and pulling it with the other hand. There is no mechanical action by the tape dispenser, *per se*, and any suggestion, such as the one advanced by the appellant, that the tension spring of the tape dispenser is sufficient to qualify the whole as a machine is not properly substantiated. Similarly, the respondent contended that, in operating the tape dispenser, all of its parts are passive elements that do not control its operation.

7. *Ingersoll-Rand Hardware Canada v. DMNRCE* (1987), 80 N.R. 397.

The respondent suggested that, when the Tribunal compares the tape dispensers with the named goods listed in Chapter 82, it should conclude that the tape dispensers are akin to various hand tools incorporating simple mechanisms that are provided for in heading No. 82.05. The respondent added that various dictionary definitions support his contention that the tape dispensers should be viewed as containing nothing more than simple mechanisms. Moreover, it was the respondent's submission that the tension screw, the only simple mechanism in the tape dispenser, is insufficient to classify the tape dispenser as a machine of heading No. 84.22, which pertains, rather, to complex industrial and domestic machinery. The respondent argued that such an interpretation is in accordance with the Tribunal's decision in *Classic Chef*, which, in its view, qualifies a machine as such only when one of its parts has an effect on the other. In this case, when the tension screw is loosened, the packing tape still unrolls, and the action of applying the tape is not affected. It was also the respondent's contention that the presence of the tension screw was insufficient to exclude classification of the tape dispensers in Chapter 82, as both the chapter and heading No. 82.05 specifically provide for various hand tools with simple mechanisms. In support of the classification of the tape dispensers in Chapter 82, the respondent also pointed to heading No. 82.10, which provides for such goods as non-electric coffee or pepper grinders, hand mixers, mechanical can openers and fruit juicers. In opposition to classification of the tape dispensers under tariff item No. 8422.30.91, the respondent indicated that they can be used for purposes other than sealing boxes and that they are commonly known in industry and trade as hand tools. Finally, the respondent pointed to the fact that the Tribunal, in its decision in Appeal No. AP-97-122,⁸ found that a caulking gun containing a more complex simple mechanism than that found in the tape dispensers was nevertheless a hand tool.

DECISION

With respect to the classification of goods, the Tribunal is guided by section 10 of the *Customs Tariff*, which directs that the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules and the *Canadian Rules*.⁹ Section 11 of the *Customs Tariff* provides, in part, that, in interpreting the headings and subheadings in the schedule, regard shall be had to the Explanatory Notes. Rule 1 of the General Rules provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes.

As indicated above, some of the goods imported by the appellant consist of a tape dispenser packaged alone; classification of such goods is dealt with below. Other goods imported by the appellant, however, consist of a tape dispenser packaged with one or two rolls of cellophane tape. As a preliminary matter, the Tribunal has considered how the General Rules direct it to classify such goods consisting of a tape dispenser packaged with one or two rolls of cellophane tape. Rules 1 and 2 of the General Rules are not determinative of classification in this instance. Rather, pursuant to Rule 3 (a), the Tribunal is of the view that it must regard at least two headings as being equally specific in relation to these goods because two or more headings each refer to part only of these items in a set put up for retail sale, namely, heading No. 39.19 for the cellophane tape (self-adhesive tape, of plastics, whether or not in rolls) and the appropriate heading (either 82.05 or 84.22) for tape dispensers as determined below. Accordingly, the Tribunal must turn to Rule 3 (b), which provides, *inter alia*, that "goods put up in sets for retail sale, which cannot be classified by reference to [Rule] 3 (a) [as is the case here], shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable." Pursuant to this rule, the Tribunal is of the view that the tape dispensers give those goods consisting of a tape dispenser and one or two rolls of cellophane tape packaged together for retail sale their essential character. Indeed, the

8. *Canadian Tire Corporation v. DMNR* (29 September 1998).

9. *Supra* note 2, schedule.

cellophane tape is but an accessory supply to the tape dispenser. Classification of those goods will therefore be determined according to the tariff item under which the tape dispensers are classified.

The Tribunal now turns to the classification of the tape dispensers, which centres on whether they are hand tools or machinery.

*The Oxford English Dictionary*¹⁰ defines “machinery” as “[m]achines, or the constituent parts of a machine, taken collectively; the mechanism or ‘works’ of a machine or machines.”¹¹ It defines “machine” as “[a]ny instrument employed to transmit force, or to modify its application.”¹² It distinguishes “simple” machines from “compound” machines, and one of the illustrative quotations given by the editors further explains the nature of these two broad categories of machine. Indeed, “*Simple Machines* are commonly reckoned to be Six in Number, viz. the Ballance, Leaver, Pulley, Wheel, Wedge, and Screw . . . *Compound Machines, or Engines, are innumerable.*”

A “tool”, on the other hand, is defined as “[a]ny instrument of manual operation’ . . . ; a mechanical implement for working upon something, as by cutting, striking, rubbing, or other process, in any manual art or industry; usually, one held in and operated directly by the hand (or fixed in position, as in a lathe), but also including certain simple machines, as the lathe; sometimes extended to simple instruments of other kinds”. The definitions provided by the respondent are similar to those contained in *The Oxford English Dictionary*.¹³

The Tribunal notes that the Explanatory Notes to Chapter 82 specifically indicate that, “[i]n general, the Chapter covers tools which can be used independently in the hand, whether or not they incorporate simple mechanisms such as gearing, crank-handles, plungers, screw mechanisms or levers.”

In light of these definitions and the Explanatory Notes and having examined the tape dispensers and having paid particular attention to their incorporated hand grip, which unquestionably denotes that they have been designed for hand use, the Tribunal is satisfied that they are tools. Indeed, they are hand-held devices that aid in accomplishing a task, precisely that of taping.

In the Tribunal’s view, a tape dispenser acts as nothing more than a holder and a guide for the easy application of the tape once a roll of tape is inserted into it; of course, the serrated cutting blade also allows the tape to be cut from the roll. It must also be noted that it is the adhesive properties of the tape that offer the resistance necessary for the proper use of the dispenser, not any part or action of the dispenser itself. In this sense, while certain mechanical forces may be transmitted by way of the adhesive properties of the tape applied to a surface, acting in combination with the action of pulling back on the dispenser, the dispenser itself is nothing more than a mere tool that mimics or replaces the hand and arm actions that one can alternatively use for applying the tape: (1) holding the roll of tape in one hand; (2) with the other hand, placing the tape on a surface; (3) pulling back on the roll of tape to the desired length with the arm of the hand that is holding the roll; (4) applying pressure as needed with the other hand on the length of the

10. Second ed.

11. *Ibid.*, s.v. “machinery”.

12. *Ibid.*, s.v. “machine”.

13. In particular, the Tribunal notes the following definitions cited by the respondent: *Encyclopædia Britannica*, on-line: <<http://www.britannica.com>>, “machine”: “device, having a unique purpose, that augments or replaces human or animal effort for the accomplishment of physical tasks. This broad category encompasses such simple devices as the **lever**, **wedge**, **wheel and axle**, **pulley**, and **screw** (. . . the five so-called simple machines) as well as such complex mechanical systems as the modern automobile”; *Merriam-Webster’s Collegiate Dictionary*, on-line: <<http://www.britannica.com>>, “tool”: “a handheld device that aids in accomplishing a task”.

unravelling tape to create a seal with the surface; and (5) cutting the tape off the roll with scissors or another device.

The fact that, as indicated above, the tape dispenser comprises components that could qualify as simple machines – indeed, it comprises two wheels (the plastic roller and the holding drum) and a screw (the tensioner) – is not sufficient for the tape dispenser to be classified in heading No. 84.22 as a machine. The Tribunal notes that, as indicated in the Explanatory Notes, a hand tool can comprise various simple mechanisms without it necessarily being excluded from being a hand tool. In this respect, the Tribunal also points to Note (E)(7) of the Explanatory Notes to heading No. 82.05, which describes several miscellaneous hand tools; in the Tribunal's view, the tape dispensers are such tools. The Tribunal does not consider that any simple mechanics at play, whether or not the dispenser is loaded with a roll of tape, are sufficient to make the dispenser a machine.

Rather, the Tribunal is of the view that, for it to consider that the tape dispenser is a machine, and in accordance with previous decisions on this subject, the tape dispenser in issue must be capable of some sort of transmission of force from one component to another.¹⁴ This is not the case in this instance. Instead, none of the components of the tape dispenser has a dynamic mechanical interaction with any other; each of the moving parts in the dispenser turns on itself or acts independently from the others.

In addition, because the tape dispenser has a blade of base metal, the condition of Note 1 of the Explanatory Notes to Chapter 82 is met.

Accordingly, pursuant to Rule 1 of the General Rules, classification at the heading level occurs in heading No. 82.05. Classification at the subheading level is directed to subheading No. 8205.59 because it is more descriptive than any other. Finally, since the Tribunal has determined that the tape dispensers are other hand tools not otherwise specified, the appropriate tariff item, as determined by the respondent, is tariff item No. 8205.59.90.

Consequently, the various tape dispensers, packaged alone or together with rolls of tape, are properly classified under tariff item No. 8205.59.90.

For the foregoing reasons, the appeal is dismissed.

Peter F. Thalheimer
Peter F. Thalheimer
Presiding Member

14. *Classic Chef, supra*, note 3, at 7; *Jascor Home Products v. DMNR* (3 December 1996), AP-95-277, at 3.