

Ottawa, Tuesday, August 19, 1997

Appeal No. AP-96-043

IN THE MATTER OF an appeal heard on March 7, 1997, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue dated May 13 and 15, 1996, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

WEIL COMPANY LIMITED

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-96-043

WEIL COMPANY LIMITED

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

This is an appeal under section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue dated May 13 and 15, 1996. The goods in issue are certain corkscrews and “strongboys” for opening jars and bottles. The two issues in this appeal are: (1) whether the corkscrews in issue are properly classified under tariff item No. 8205.51.00 as household tools, as determined by the respondent, or should be classified under tariff item No. 8210.00.00 as hand-operated mechanical appliances, weighing 10 kg or less, as claimed by the appellant; and (2) whether the strongboys in issue are properly classified under tariff item No. 8205.70.90 as other vices, clamps and the like, as determined by the respondent, or should also be classified under tariff item No. 8210.00.00, as claimed by the appellant.

HELD: The appeal is allowed. In considering the terms of heading No. 82.10, the Tribunal is of the view that the corkscrews and strongboys in issue should be classified in this heading as “[h]and-operated mechanical appliances, weighing 10 kg or less, used in the preparation, conditioning or serving of food or drink,” as claimed by the appellant. The basis for the Tribunal’s decision is that it is persuaded that, besides meeting the expressed terms of the heading, the goods in issue have the mechanical features contemplated by the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to heading No. 82.10.

Accordingly, since the Tribunal finds that the corkscrews and strongboys in issue are classifiable in heading No. 82.10, it does not need to consider their possible classification in heading No. 82.05 because they were found to be elsewhere specified or included.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	March 7, 1997
Date of Decision:	August 19, 1997
Tribunal Member:	Arthur B. Trudeau, Presiding Member
Counsel for the Tribunal:	Heather A. Grant
Clerk of the Tribunal:	Anne Jamieson
Parties:	Douglas J. Bowering, for the appellant Lyndsay K. Jeanes, for the respondent

Appeal No. AP-96-043

WEIL COMPANY LIMITED

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member

REASONS FOR DECISION

This is an appeal, heard by one member of the Tribunal,¹ under section 67 of the *Customs Act*² from decisions of the Deputy Minister of National Revenue dated May 13 and 15, 1996. The goods in issue are certain corkscrews and “strongboys” for opening jars and bottles. The two issues in this appeal are: (1) whether the corkscrews in issue are properly classified under tariff item No. 8205.51.00 of Schedule I to the *Customs Tariff*³ as household tools, as determined by the respondent, or should be classified under tariff item No. 8210.00.00 as hand-operated mechanical appliances, weighing 10 kg or less, as claimed by the appellant; and (2) whether the strongboys in issue are properly classified under tariff item No. 8205.70.90 as other vices, clamps and the like, as determined by the respondent, or should also be classified under tariff item No. 8210.00.00, as claimed by the appellant.

The relevant tariff nomenclature reads, in part, as follows:

82.05	Hand tools ... not elsewhere specified or included; ... vices, clamps and the like, other than accessories for and parts of, machine tools.
8205.51	--Household tools
8205.70	-Vices, clamps and the like
8205.70.90	---Other
8210.00.00	Hand-operated mechanical appliances, weighing 10 kg or less, used in the preparation, conditioning or serving of food or drink.

This appeal proceeded by way of written submissions, under rule 25 of the *Canadian International Trade Tribunal Rules*,⁴ on the basis of the Tribunal’s record, including an agreed statement of facts and briefs submitted by the parties.

1. Section 3.2 of the *Canadian International Trade Tribunal Regulations*, added by SOR/95-27, December 22, 1994, *Canada Gazette* Part II, Vol. 129, No. 1 at 96, provides, in part, that the Chairman of the Tribunal may, taking into account the complexity and precedential nature of the matter at issue, determine that one member constitutes a quorum of the Tribunal for the purposes of hearing, determining and dealing with any appeal made to the Tribunal pursuant to the *Customs Act*.

2. R.S.C. 1985, c. 1 (2nd Supp.).

3. R.S.C. 1985, c. 41 (3rd Supp.).

4. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912, as amended.

In their agreed statement of facts, the parties set out descriptions of the goods in issue. According to the parties, the corkscrew in issue is used to extract the cork from a wine bottle. It is placed down over the neck of the bottle. Then, the button on the side of the corkscrew is depressed, which causes a small blade to protrude against the foil covering the top of the bottle. The corkscrew or bottle is then rotated by hand in that position for a full revolution, which severs the foil covering. Once the foil covering is removed, the corkscrew's metal screw is turned clockwise into the cork. Once the metal screw is fully inserted into the cork, the corkscrew continues to be turned in a clockwise manner, which draws the cork upwards onto the screw and out of the bottle.

The strongboys in issue are described by the parties as gripping devices on a handle which are used to remove small twist type jar lids or bottle caps. To use this device, the spring steel ring on one end of the handle is fitted onto the top of the jar or bottle. The rotating knob on the end of the strongboy is turned to tighten the steel ring (gripping band). Once the steel ring is secured, the lever arm is rotated to assist in twisting off the cap or lid.

In his brief, the appellant's representative submitted that both goods in issue should be classified as hand-operated mechanical appliances, each weighing less than 10 kg. Both are marketed in kitchen appliance departments and are used in the preparation or serving of food. The working edge or working parts of each product are, moreover, made of base metal, as contemplated by Note 1(a) to Chapter 82 of Schedule I to the *Customs Tariff*. The corkscrews and strongboys in issue furthermore meet the requirements of the *Explanatory Notes to the Harmonized Commodity Description and Coding System*⁵ (the Explanatory Notes) to heading No. 82.10.⁶

In reference to the *General Rules for the Interpretation of the Harmonized System*⁷ (the General Rules), the appellant's representative contended that the terms of tariff item No. 8210.00.00 are more precise than those of either of the two tariff items under which the goods in issue have been classified. In the representative's view, the fact that both products are used to serve drinks means that the terms of the tariff items under which each has been classified are less precise than those of the tariff items suggested by the appellant. In particular, in respect of the strongboy in issue, the representative submitted that it is more than simply a clamp, in that its arm provides mechanical leverage to turn the cap of the bottle, whereas a clamp is used as a stationary device. In support of his position, the representative referred the Tribunal to its decisions in *Canadian Tire Corporation Ltd. v. The Deputy Minister of National Revenue*⁸ and *Bazaar & Novelty Co., A Division of Bingo Press & Specialty Limited v. The Deputy Minister of National Revenue*.⁹

5. Customs Co-operation Council, 1st ed., Brussels, 1986.

6. The relevant Explanatory Notes to heading No. 82.10 read as follows:

For the purposes of this heading an appliance is regarded as mechanical if it has such mechanisms as crank-handles, gearing, Archimedean screw-actions, pumps, etc.; a simple lever or plunger action is not in itself, however, regarded as a mechanical feature involving classification in this heading unless the appliance is designed for fixing to a wall or other surface, or is fitted with base plates, etc., for standing on a table, on the floor, etc.

7. *Supra* note 3, Schedule I.

8. Appeal No. AP-94-157, October 12, 1995.

9. Appeal No. AP-95-120, April 10, 1996.

The appellant's representative also referred the Tribunal to a definition of the term "clamp"¹⁰ in which no mention is made of an attached handle to which leverage is applied. The representative argued that, since the strongboys in issue are composed of stationary and moving parts and do work through the modification of force and motion, they must be considered to be mechanical appliances. With respect to the corkscrews in issue, the representative similarly submitted that they meet the definition of mechanical appliances. The representative also pointed out that mechanical type corkscrews are excluded from classification in heading No. 82.05 pursuant to the Explanatory Notes to that heading.

In her brief, counsel for the respondent submitted that the corkscrews in issue are properly classified under tariff item No. 8205.51.00 as household tools based, in part, on Note (E) of the Explanatory Notes to heading No. 82.05, which provides that, among the group of "[o]ther hand tools" classifiable in that heading, "[a] number of household articles," such as "[f]lat irons ... bottle openers, cork screws," are included in that group. As corkscrews are specifically described in heading No. 82.05, counsel submitted that, in applying Rule 3 of the General Rules, this heading should be preferred to heading No. 82.10.

In further support of her position, counsel for the respondent submitted that the Explanatory Notes to heading No. 82.10 illustrate that the corkscrews in issue do not fall within heading No. 82.10. Specifically, counsel argued that the simple screw action of the corkscrews is not sufficient to categorize them as mechanical devices. Moreover, the screw action of the corkscrews is not the same type of action as Archimedean screw-action.¹¹ Counsel submitted that an Archimedean screw-action appliance is used to move material, such as water, like a conveyor in a straight line in a circular type manner from one point to another. By contrast, the corkscrews in issue embed themselves in material and do not move that material from one end to another. Counsel also submitted that the corkscrews in issue are not designed for fixing to a wall or other surface, nor are they intended to be fitted with base plates, etc., for standing on a table or floor, as suggested by the Explanatory Notes to heading No. 82.10 for items that only use a simple lever or plunger action that would not otherwise be included within that heading.

With respect to the strongboys in issue, counsel for the respondent submitted that they are properly classified in subheading No. 8205.70 as vices, clamps and the like, as the terms of that subheading are more precise than those of the subheading suggested by the appellant. Furthermore, the strongboys in issue are not mechanical, as contemplated by the Explanatory Notes to heading No. 82.10. In counsel's view, the strongboys in issue are simply clamps with handles; their simple lever action does not make them mechanical. The fact that the strongboy has a handle does not, in counsel's view, preclude it from being considered a clamp.

In determining the classification of goods, the Tribunal is cognizant that Rule 1 of the General Rules is of the utmost importance. Rule 1 provides that classification is first determined by the wording of the

10. The definition referred to by the appellant's representative is set out in *Webster's Third New International Dictionary of the English Language* (Springfield: Merriam-Webster, 1986) at 414: "**a**: a device ... designed to bind or constrict or to press two or more parts together so as to hold them firmly in their relative position **b**: any of various instruments or appliances ... for holding or compressing something."

11. Counsel for the respondent provided the Tribunal with the following definition of an "archimedes' screw" in support of her views: "a device consisting of a tube bent spirally around an axis or of a broad-threaded screw incased by a hollow open cylinder and used to raise water by rotating the apparatus when partly immersed in a slantwise direction," *ibid.* at 112.

heading and any relative Section or Chapter Notes. Section 11 of the *Customs Tariff* further provides that, in interpreting the headings and subheadings in Schedule I, regard shall be had to the Explanatory Notes.

The Tribunal notes that, given the exclusionary language of the terms of heading No. 82.05, specifically, that hand tools classifiable in this heading are “not elsewhere specified or included,” it cannot find that the corkscrews or strongboys in issue are *prima facie* classifiable in both of the headings suggested by the parties and then resolve the issue by determining which heading is more specific pursuant to Rule 3 of the General Rules. In other words, if the Tribunal finds that the goods in issue are classifiable in heading No. 82.10, then their classification in heading No. 82.05 is prohibited by the terms of this heading.

In considering the terms of heading No. 82.10, the Tribunal is of the view that the corkscrews and strongboys in issue should be classified in this heading as “[h]and-operated mechanical appliances, weighing 10 kg or less, used in the preparation, conditioning or serving of food or drink,” as claimed by the appellant. The basis for the Tribunal’s decision is that it is persuaded that, besides meeting the expressed terms of the heading, the goods in issue have the mechanical features contemplated by the Explanatory Notes to heading No. 82.10.

The Explanatory Notes to heading No. 82.10 indicate that “an appliance is regarded as mechanical if it has such mechanisms as crank-handles, gearing, Archimedean screw-actions, pumps, etc.” Although the corkscrews in issue do not appear to meet the definition of “archimedes’ screw” set out in the dictionary, the Tribunal notes that the list of mechanisms considered to be mechanical for the purposes of the Explanatory Notes to heading No. 82.10 is not exhaustive and provides for the inclusion of similar mechanisms. In the Tribunal’s view, the corkscrews in issue have mechanical features, such as the foil-cutting mechanism and the screw action, which, when considered together, are sufficiently complex to meet the definition of “mechanical appliance” in the Explanatory Notes. With respect to the strongboys in issue, the Tribunal is equally persuaded that their mechanical features, specifically the method by which the gripping band is secured onto the lid of a jar and the lever arm is rotated to remove the lid, are sufficiently complex for the strongboys in issue to be considered mechanical appliances as contemplated by the Explanatory Notes to heading No. 82.10.

Accordingly, since the Tribunal finds that the corkscrews and strongboys in issue are classifiable in heading No. 82.10 and, accordingly, under tariff item No. 8210.00.00, it does not need to consider their possible classification in heading No. 82.05 because they were found to be elsewhere specified or included.

In light of the foregoing, the Tribunal allows the appeal.

Arthur B. Trudeau
Arthur B. Trudeau
Presiding Member