

Ottawa, Friday, December 17, 1999

**Appeal No. AP-98-078**

IN THE MATTER OF an appeal heard on May 4, 1999, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue dated September 17, 1998, with respect to a request for re-determination under subsection 63(3) of the *Customs Act*.

**BETWEEN**

**CLASSIC CHEF CORP.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**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-98-078**

**CLASSIC CHEF CORP.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

This is an appeal under section 67 of the *Customs Act* from a decision of the Deputy Minister of National Revenue (now the Commissioner, Canada Customs and Revenue Agency) dated September 17, 1998, with respect to the importation of a garlic shredder/slicer. The issue in this appeal is whether the product in issue is properly classified under tariff item No. 8205.51.90 as other hand tools (including glaziers' diamonds), not elsewhere specified or included, as determined by the respondent, or should be classified under tariff item No. 8210.00.00 as a hand-operated mechanical appliance, weighing 10 kg or less, used in the preparation, conditioning or serving of food or drink, as claimed by the appellant.

The garlic shredder/slicer in issue is composed of three pieces: a two-sided metal blade with parallel rails on either side and plastic feet at the bottom; a plastic carriage; and a plastic plug that fits into the carriage. One surface of the metal blade has a slicing edge, and the other has a shredding edge. When used, a clove of garlic is placed into the carriage. The plug is placed in the carriage, and hand pressure is applied to the plug, pressing the garlic against the blade surface. By use of the hand, a vertical motion of the carriage is then applied to press the clove of garlic over the desired blade edge. The result is sliced or shredded garlic. The device is operated by hand, weighs less than 10 kg and is used in the preparation of food.

**HELD:** The appeal is dismissed. While the Tribunal acknowledges that the garlic shredder/slicer may be composed of a moving part, the carriage, and of a stationary part, the blade, it is not persuaded that the two pieces are "mechanically operated" by the mere combination of force or pressure applied on the carriage and of the back and forth hand motion to slide the carriage over the blade. For the garlic shredder/slicer to be considered a "mechanical appliance" or a "mechanism", there must be a resulting effect caused from the movement of one part on the other. In the case of the garlic shredder/slicer, the first action, that is the pressure or force on the carriage, does not result in the shredding or slicing of garlic. The first action needs a second action, that of the hand moving the carriage back and forth on the blade, to obtain a result, that being shredded or sliced garlic. Therefore, the simple action of applying pressure on the carriage which contains a clove of garlic and then moving it by hand across the blade of the garlic shredder/slicer does not meet the meaning of "mechanism" or "mechanical appliance".

The Tribunal is of the view that the goods in issue do not meet the terms and conditions of "such mechanisms as crank-handles, gearing, Archimedean screw-actions, pumps, etc.; a simple lever or plunger action . . . 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.", as provided for in the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to heading No. 82.10.

Finally, the Tribunal examined whether the goods in issue could be classified as a hand tool not elsewhere specified or included, as provided for in heading No. 82.05. The Tribunal is persuaded that the goods in issue are a hand tool within the meaning of heading No.82.05. In reaching this conclusion, the

Tribunal considered General Note (E)(1) of the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to heading No. 82.05, which states: “**Other hand tools (including glaziers’ diamonds)** [which] includes: (1) A number of household articles, including some with cutting blades but **not including** mechanical types (see the Explanatory Note to **heading 82.10**), having the character of tools and accordingly not proper to heading 73.23, such as . . . graters for cheese, etc.”. The evidence clearly shows that the goods in issue are hand-held household tools, made up of a carriage and two cutting blades, which are not a mechanical type.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	May 4, 1999
Date of Decision:	December 17, 1999
Tribunal Member:	Peter F. Thalheimer, Presiding Member
Counsel for the Tribunal:	Michèle Hurteau
Clerk of the Tribunal:	Margaret Fisher
Appearances:	Douglas J. Bowering, for the appellant Lysanne K. Lafond, for the respondent

**Appeal No. AP-98-078**

**CLASSIC CHEF CORP.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: PETER F. THALHEIMER, Presiding Member

**REASONS FOR DECISION**

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> from a decision of the Deputy Minister of National Revenue (now the Commissioner, Canada Customs and Revenue Agency), dated September 17, 1998, with respect to the importation of a garlic shredder/slicer. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8205.51.90 of Schedule I to the *Customs Tariff*<sup>2</sup> as other hand tools (including glaziers' diamonds), not elsewhere specified or included, as determined by the respondent, or should be classified under tariff item No. 8210.00.00 as a hand-operated mechanical appliance, weighing 10 kg or less, used in the preparation, conditioning or serving of food or drink, as claimed by the appellant.

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

- |            |  |
|------------|--|
| 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. |
| 8205.51    | --Household tools  |
| 8205.51.90 | ---Other   |
| 8210.00    | Hand-operated mechanical appliances, weighing 10 kg or less, used in the preparation, conditioning or serving of food or drink.  |

**EVIDENCE**

In their agreed statement of facts,<sup>3</sup> the parties set out the description of the goods in issue. The garlic shredder/slicer is composed of three pieces: a two-sided metal blade with parallel rails on either side and plastic feet at the bottom; a plastic carriage; and a plastic plug that fits into the carriage. One surface of the metal blade has a slicing edge, and the other has a shredding edge. The plastic carriage attaches to and rides on the parallel rails. When used, a clove of garlic is placed into the carriage. The plug is placed in the carriage, and hand pressure is applied to the plug, pressing the garlic against the blade surface. By use of the hand, a vertical motion of the carriage is then applied to press the clove of garlic over the desired blade edge. The result is sliced or shredded garlic. The device is operated by hand, weighs less than 10 kg and is used in the preparation of food.

- 
1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter *Act*].
  2. R.S.C. 1985 (3d Supp.), c. 41.
  3. Exhibit A-1.

The appellant's representative did not call any witnesses and had no preliminary comments. Counsel for the respondent called Ms. Rosemary Copeland-Jones, Tariff Administrator, Trade Administration Dispute Resolution Division of the Department of National Revenue (now Canada Customs and Revenue Agency), to demonstrate how the garlic shredder/slicer<sup>4</sup> is used. Ms. Copeland-Jones testified that, essentially, the user removes the stopper or plug, places the clove of garlic inside the carriage and inserts the plug into the carriage. The user then moves the carriage back and forth, causing the clove of garlic to slide over the blade. Ms. Copeland-Jones testified that the action of moving the carriage back and forth is a separate hand action and, therefore, does not involve a mechanical feature.

Ms. Copeland-Jones provided a vegetable and cheese slicer/grater/shredder<sup>5</sup> similar to the goods in issue. She explained that the principle of this device is the same as that of the goods in issue. As demonstrated by Ms. Copeland-Jones, the plug is removed and the cheese or vegetable is placed into the carriage, and the plug is then inserted on top of the food. She testified that there is no action at this point. One must make a separate hand motion to slide the carriage back and forth in order for the vegetable or cheese to be shredded, grated or sliced. She testified that this device, as with the garlic shredder/slicer, is a simple household appliance involving no mechanism.

Counsel for the respondent asked Ms. Copeland-Jones to define the terms "machine", "mechanism" and "mechanical". She cited the definitions of these terms as found in *The Concise Oxford Dictionary of Current English*.<sup>6</sup> She also testified that the *McGraw-Hill Dictionary of Scientific and Technical Terms*<sup>7</sup> defines the term "mechanism" as "[t]hat part of a machine which contains two or more pieces so arranged that the motion of one compels the motion of others". She explained that the Department of National Revenue usually follows the general or ordinary definition found in dictionaries in classifying goods.

In response to the question of counsel for the respondent as to why the definitions of these terms were important, Ms. Copeland-Jones stated that, in order for a device to have a mechanism, one thing must cause something else to happen. In her view, the action of putting a clove of garlic into the carriage and then inserting the plug does not cause something to happen. In other words, the clove of garlic is not shredded or sliced by simply being inserted in the carriage. In order for that to happen, the user must do a separate hand action, that is, glide the carriage across the blade, which, in turn, shreds or slices the clove of garlic. In summary, she testified that the combination of one action to put the clove of garlic in the carriage with a separate hand motion to move the carriage back and forth does not mean that the garlic shredder/slicer has a "mechanical feature" or is considered a "mechanism". In her view, the goods in issue have no mechanism, they are not a machine and they do not have mechanical parts within the meaning of the dictionary definitions.

To express the point more clearly, Ms. Copeland-Jones introduced "The Pepper Ball".<sup>8</sup> She testified that the purpose of "The Pepper Ball" is to grind pepper. She testified that "The Pepper Ball" is fitted with a stationary handle on one side and a spring on the other side. She demonstrated that, when the handle is

---

4. Exhibit B-1.

5. Exhibit B-2.

6. Eighth ed., s.v. "machine": "an apparatus using or applying mechanical power, having several parts each with a definite function and together performing certain kinds of work"; s.v. "mechanical": "of or relating to machines or mechanisms"; and s.v. "mechanism": "the structure or adaptation of parts of a machine. 2 a system of mutually adapted parts working together in or as in a machine".

7. Third ed., s.v. "mechanism".

8. Exhibit B-3.

squeezed, it causes or compels a further action which forces a lever inside to rise and grind the pepper, thereby giving “The Pepper Ball” a mechanical feature or mechanism. In other words, the action of squeezing the handle causes the grinding of the pepper.

In cross-examination, Ms. Copeland-Jones testified that the plastic feet on the garlic shredder/slicer would act as a support and did not need to rest on a table, but could rest in a glass or bowl. She acknowledged that putting pressure on the carriage and moving it up and down produced the slicing or shredding of the garlic glove. She added that the straight cutting process was not a mechanical action, but a hand action.

## **ARGUMENT**

The appellant’s representative argued that the only contest is whether the garlic shredder/slicer is a hand-operated mechanical appliance within the meaning of tariff item No. 8210.00.00.

To support his position, the appellant’s representative referred to three previous decisions of the Tribunal. The first was *Weil v. D.M.N.R.*,<sup>9</sup> where the Tribunal had to determine whether certain corkscrews and “strongboys”<sup>10</sup> were properly classified as household tools, under tariff item No. 8205.51.00, or should be classified as hand-operated mechanical appliances, weighing 10 kg or less, under tariff item No. 8210.00.00.

The appellant’s representative argued that, in *Weil*, the corkscrew is described as a standard type of screw that goes into a cork, with a little cutting blade that the user squeezes to cut the foil. The action of squeezing and turning provides a lifting operation whereby the corkscrew pulls the cork out of the bottle. In his submission regarding the strongboy, the representative argued that this device was basically a clamp similar to a hose clamp on a car. The strongboy has a screw that goes through the handle which tightens up on a bottle. The user applies force to the lever to turn the handle which opens the bottle.

The appellant’s representative argued that the garlic shredder/slicer works on the same principle as the corkscrew and the strongboy described in *Weil*, in that they combine two separate operations, applying force and motion to create a mechanical operation.

To further support his position that the goods in issue are “mechanically operated”, the appellant’s representative also relied, in his brief, on Supplementary Note 1 to Section XVI, which states:

In this Section 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.

The appellant’s representative argued that the garlic shredder/slicer is “mechanically operated”, as the term is defined in Supplementary Note 1 above. While in use, the cutting blade is stationary as the garlic carriage and plug are in motion. The blade has an open handle at one end and two feet designed to stand on a tabletop or counter at the other end. The user holds the steel blade on an horizontal angle and physically moves the carriage horizontally over the blade, along the rails, while applying vertical pressure on the carriage to press the clove of garlic against the blade. The representative argued that the goods in issue have stationary and moving parts, as per the definition of “mechanically operated”. The result, stated the

---

9. (19 August 1997), AP-96-043 (C.I.T.T.) [hereinafter *Weil*].

10. A “strongboy” is a device used for opening jars and bottles.

representative, is that work, i.e. cutting the clove of garlic, is being performed through the transmission of movement of the garlic over the cutting surface of the stationary blade. He, therefore, concluded that the garlic shredder/slicer meets the criteria of Supplementary Note 1 to Section XVI.

The second case mentioned was *Canadian Tire v. D.M.N.R.*<sup>11</sup> In that case, the goods in issue consisted of hose reels or hose reel carts which have a framework with a drum and a fixed handle attached to the drum. The user winds up a garden hose using the fixed handle. The Tribunal ruled that the goods in issue, in that case, were mechanical appliances under heading No. 84.79. The appellant's representative submitted that the *Canadian Tire* case indicated that a mechanical appliance could be simple and need not have motors or a lot of complex paraphernalia to have a mechanical feature.

The third case was *Record Tools v. D.M.N.R.*<sup>12</sup> The issue in that case was the meaning of "fitted into". In that case, the Tribunal agreed that the goods in issue were "interchangeable tools" as contemplated by the terms of heading No. 82.07, and it recognized as follows:

[F]or the most part, interchangeable tools for machine-tools classifiable in heading Nos. 84.57 through 84.65 would be "fitted into" the machine-tools, as described in the *Explanatory Notes to the Harmonized Commodity Description and Coding System* . . . However, because of the nature of wood turning, tools used with wood-turning lathes are not physically attached to the lathe, rather they lean against the tool rest when in use.<sup>13</sup>

The appellant's representative also agreed with the respondent's witness that the garlic shredder/slicer would not stand independently; even though it has two plastic feet, a separate hand is needed to support it. By analogy to *Record Tools*, he explained to the Tribunal that, while the two plastic feet on the garlic shredder/slicer were not permanently attached, they did fit onto a table or bench within the meaning of heading Nos. 84.57 through 84.65.

The appellant's representative also referred to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>14</sup> to heading 82.10 which state :

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.

The appellant's representative argued that the first part of the *Explanatory Notes* to heading No. 82.10 refers to a number of mechanisms, such as gearing and pumps. He submitted that the term "etc." at the end of the enumeration leads to the conclusion that the enumeration is not restricted to only those mechanisms. The representative further argued that there is no "etc." following the reference to "a simple lever or plunger action", thereby restricting the exclusions to only those two motion principles. In the representative's opinion, this suggests that the earlier terms (gearing and pumps, etc.) must include all types of mechanisms, no matter how simple or complex. Only the lever and plunger are excluded from the preceding requirement, and these do not apply to the goods in issue, which are neither a lever nor a plunger.

---

11. (12 October 1995), AP-94-157 (C.I.T.T.) [hereinafter *Canadian Tire*].

12. (16 September 1997), AP-96-225 (C.I.T.T.) [hereinafter *Record Tools*].

13. *Ibid.* Unofficial Summary.

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

Finally, the appellant's representative argued that, even if the goods in issue were deemed to perform "a simple lever or plunger action", they would still meet the criteria of heading No. 82.10, if "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.". He argued that the product in issue need not be fitted **only** with base plates for standing **only** on a table or on the floor, although he conceded that the garlic shredder/slicer does have two plastic feet which generally stand on a counter when in use.

In summary, the appellant's representative argued that each individual action might not be a mechanical action, but, when combined together, are a "mechanical appliance". He requested that the goods in issue be classified under tariff item No. 8210.00.00, as they cannot be classified in heading No. 82.05.

In argument, counsel for the respondent stated that the goods in issue are properly classified in heading No. 82.05 and that the classification is consistent with the *General Rules for the Interpretation of the Harmonized System*<sup>15</sup> and the *Canadian Rules*.<sup>16</sup> Counsel argued that, pursuant to Rule 1 of the *General Rules*, the classification of goods is determined first according to the terms of the headings and then by any relevant Section or Chapter Notes. In applying this rule, counsel submitted that one has to look at the terms of heading No. 82.05, which provides for hand tools not elsewhere specified or included. Counsel further submitted that the phrase "not elsewhere specified or included" indicates that, if the goods are hand tools which do not fall within the specific description of a heading, they are to be classified in heading No. 82.05. The titles of Sections, Chapters and Sub-chapters are provided for ease of reference only.

Counsel for the respondent referred to Rule 6 of the *General Rules*, whereby the classification of goods is further determined according to the terms of subheadings and any related Section, Chapter or Subheading Notes. She drew the Tribunal's attention to subheading No. 8205.51, which provides for household tools, and to General Note (E)(1) of the *Explanatory Notes* to heading No. 82.05, which refers specifically to other hand tools that are household articles, including some with cutting blades but not including mechanical types. Counsel submitted that the elements of classification in heading No. 82.05 have been met, in that the garlic shredder/slicer is a hand tool and a household item and that it can have a blade and excludes mechanical items. She further submitted that the evidence supports this classification, as Ms. Copeland-Jones demonstrated that the garlic shredder/slicer is similar to the cheese slicer/grater/shredder, in that it is a hand tool mounted with a blade which is used in the kitchen for the preparation of food.

According to counsel for the respondent, the issue is whether the garlic shredder/slicer can be considered a mechanical appliance classifiable under item tariff No. 8210.00.00.

Counsel for the respondent argued that the *Explanatory Notes* to Chapter 82 provide that tools classified in heading No. 82.05 may include a simple gearing mechanism, such as a breast drill, referred to as follows:

Thus a breast drill which the worker uses freely in the hand, without support, is a tool classified in heading 82.05 although it includes a simple gearing mechanism.

In her argument, counsel for the respondent submitted that the goods in issue are not mechanical appliances, nor do they include a mechanism. Counsel relied on the definitions of "machine", "mechanical" and "mechanism", as provided by Ms. Copeland-Jones and argued how these definitions apply to the goods

---

15. *Supra* note 2 [hereinafter *General Rules*].

16. *Ibid.*



in issue. She submitted that, in order to be considered “mechanical” within the meaning of heading No. 82.10, the product in issue must have “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.”. In counsel’s view, the garlic shredder/slicer does not meet the terms and conditions of that heading and, as such, is not a hand-operated mechanical appliance. The simple action of the carriage being moved by hand across the blade of the garlic shredder/slicer is not sufficient to categorize it as a mechanical device, as no other force or further action or other moving parts are required to do the work. Unlike “The Pepper Ball”, where the evidence demonstrated that, when one pushes the lever, the pepper is ground automatically, the garlic shredder/slicer does not have such a simple mechanism. The evidence also shows that the goods in issue are not intended or designed for fixing to a wall or other surface, or fitted with base plates for standing on a table or the floor, as set out in heading No. 82.10.

Counsel for the respondent also argued that goods classified in heading No. 82.05 contemplate a simple gearing mechanism, which would include “The Pepper Ball”. Finally, in referring to other hand tools, General Note (E)(1) of the *Explanatory Notes* to heading No. 82.05 specifies: “[a] number of household articles, including some with cutting blades but **not including** mechanical types”. This, according to counsel, applies to cheese and vegetable slicers. As the goods in issue are similar to a cheese and vegetable slicer, it follows that the garlic shredder/slicer would fall in heading No. 82.05 as a hand tool, not specified or included in other headings of this chapter or elsewhere in the nomenclature.

Counsel for the respondent referred to the appellant’s brief and to Supplementary Note 1 to Section XVI to determine whether the garlic shredder/slicer is a mechanical appliance. She also distinguished the *Weil* case from the present matter before the Tribunal. Counsel argued that the same analysis can be made, even though the definition of “mechanical appliance” found at Supplementary Note 1 is different. In order for something to be considered mechanical, counsel submitted, whether the operation consists of one or two actions, every action, such as applying a force on one part, must automatically result in a motion. In *Weil*, there is nothing in the decision to indicate that the Tribunal relied on Supplementary Note 1 to Section XVI to define “mechanical appliance”. Counsel further argued that the corkscrew is a mechanical appliance, in that the first action consists of depressing one side, thereby exerting pressure which causes a small blade to protrude against the foil. A second action occurs when the bottle is rotated and severs the foil. Once again, counsel argued, there is a force and a result. A third action is the insertion of the metal screw into the cork. As the corkscrew is turned, it draws the cork upward out of the bottle. In conclusion, counsel submitted that the effect of lifting the cork out of the bottle results from the application of pressure and the rotation of the bottle. In *Weil*, the Tribunal was of the opinion that the foil-cutting feature and the “screw action” were sufficiently complex to meet the definition of “mechanical appliance”. Therefore, counsel contended that, in the case of the garlic shredder/slicer, one cannot form an entity or mechanical appliance by simply putting two things together. One has to look at the effect of one piece on the other. Finally, counsel submitted that the appellant had not discharged the onus of showing that the classification of the garlic shredder/slicer was incorrect. She concluded by saying that the goods in issue should be classified in heading No. 82.05 as hand tools, not included in other headings of this chapter or elsewhere in the nomenclature.

## DECISION

With respect to the classification of the goods in issue, the Tribunal is guided by section 10 of the *Customs Tariff*, which provides 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*, as set out in schedule I to the *Customs Tariff*. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in Schedule I, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*<sup>17</sup> and 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.

The Tribunal first considered whether the goods in issue could be classified in subheading No. 8210.00 as a hand-operated mechanical appliance, weighing 10 kg or less, used in the preparation, conditioning or serving of food and drink. In determining the meaning of “mechanical appliance”, the Tribunal reviewed the definitions of “machine”, “mechanism” and “mechanical”. The Tribunal notes that one of the main meanings, as found in dictionaries, ascribed to the terms “mechanical” and “mechanism” is: “of or relating to machines” and “the structure or adaptation of parts of a machine”. The Tribunal is persuaded that these terms are closely related and analogous to each other. The Tribunal also considered whether “mechanical appliance” is analogous to the term “machine”. The Tribunal maintains its position described in *Canper Industrial Products v. D.M.N.R.*,<sup>18</sup> where it held that those terms were analogous, in that “one of the main meanings ordinarily ascribed to the word ‘mechanical’, as found in dictionaries, is that of ‘having to do with machinery’ . . . the words ‘machines’ and ‘mechanical appliances’ are closely related in terms of the nature of the goods falling within their ambit”.<sup>19</sup>

To support his position that the goods in issue are hand-operated mechanical appliances, the appellant’s representative referred to the meaning of “mechanically operated”, as the term is defined in Supplementary Note 1 to Section XVI, which reads: “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”. While the Tribunal acknowledges that the garlic shredder/slicer may be composed of a moving part, the carriage, and of a stationary part, the blade, it is not persuaded that the two pieces are “mechanically operated” by the mere combination of the transmission of force or pressure on the carriage and of the back and forth hand motion to slide the carriage over the blade. For the garlic shredder/slicer to be considered a “mechanical appliance” or a “mechanism”, the Tribunal accepts counsel for the respondent’s argument that an effect must result from the movement of one part on the other. In the case of the garlic shredder/slicer, the first action, that is the pressure or force on the carriage, does not result in the shredding or slicing of garlic. The first action needs a second action, that of the hand moving the carriage back and forth on the blade, to obtain the result of shredded or sliced garlic. Unlike “The Pepper Ball”, where the action of pushing on the lever automatically produces the grinding of pepper, the garlic shredder/slicer does not provide such a result. Finally, in the Tribunal’s view, the simple fact that the carriage is removable and that it glides along rails does not, in and of itself, make it a “mechanical appliance” or “mechanism”.

---

17. Customs Co-operation Council, 1st ed., Brussels, 1987.

18. (24 January 1995), AP-94-034 (C.I.T.T.).

19. *Ibid.* at 4.

The appellant's representative also relied on the *Explanatory Notes* to heading No. 82.10. In his argument, the representative argued that they refer to a number of mechanisms, such as gearing and pumps, and that this enumeration is not limiting because of the use of the term "etc.". He pursued his line of argument by stating that there are two specific exclusions, that is, "a simple lever or plunger action", since the term "etc." does not follow this phrase. The representative submitted that these exclusions are restricted to those two motion principles and that this suggests that the use of the earlier enumeration must include all types of mechanisms, no matter how simple or complex. The goods in issue, he submitted, are not a lever or plunger and, even if they were, they would fit into the definition of "mechanism", as the feet on the goods in issue are designed for standing on a table.

Respectfully, the Tribunal rejects this argument. There is no evidence before the Tribunal which would demonstrate that the pieces making up the goods in issue are either gearing, pumps, a simple lever or a plunger, unlike the evidence submitted in *Weil* and *Canadian Tire*. The Tribunal is not persuaded that the two plastic feet on the garlic shredder/slicer can "fit onto" a table or surface, as argued by the appellant's representative and as found in *Record Tools*. Furthermore, the evidence clearly shows that the two plastic feet are not fixed to any surface and that the garlic shredder/slicer must be hand-held. The Tribunal is, therefore, of the opinion that the goods in issue do not meet the criteria of "machine", "mechanism" or "mechanical appliance", as found in dictionaries, the various *Explanatory Notes* and the above-noted cases cited by the representative.

The Tribunal then considered whether the goods in issue are hand tools not elsewhere specified or included, as provided in heading No. 82.05. The Tribunal also reviewed counsel for the respondent's argument with respect to the meaning of "simple gearing mechanism" found in the *Explanatory Notes* to Chapter 82, which read:

Thus a breast drill which the worker uses freely in the hand, without support, is a tool classified in heading 82.05 although it includes a simple gearing mechanism.

The Tribunal is satisfied that the goods in issue do not have a simple gearing mechanism, as in a breast drill. The Tribunal is also of the view that the goods in issue do not meet the terms and conditions of heading No. 82.10, in that they do not have mechanisms, such as crank-handles, Archimedean screw-actions and pumps, is not a simple lever or plunger and was not intended to be fixed to a table or other surface. Further, the Tribunal is of the opinion that the simple action of applying pressure on the carriage, which encloses a clove of garlic, and then moving it by hand across the blade of the garlic shredder/slicer is not consistent with the definition of "mechanism" or "mechanical appliance".

Finally, the Tribunal is persuaded that the goods in issue are hand tools within the meaning of tariff item No. 8205.51.90. In reaching this conclusion, the Tribunal considered General Note (E)(1) of the *Explanatory Notes* to heading No. 82.05, which reads, in part: "A number of household articles, including some with cutting blades but **not including** mechanical types (see the Explanatory Note to **heading 82.10**), having the character of tools and accordingly not proper to heading 73.23, such as. . .graters for cheese, etc.". The evidence clearly shows that the goods in issue are hand-held household tools, made up of a carriage and two cutting blades, which are not mechanical types. Furthermore, the goods in issue are similar in type to the cheese graters mentioned in General Note (E)(1) of the *Explanatory Notes* to heading No. 82.05.

Therefore, the Tribunal is satisfied that the garlic shredder/slicer is properly classified under tariff item No. 8205.51.90 as other household hand tools, not elsewhere specified or included.

For the foregoing reasons, the appeal is dismissed.

Peter F. Thalheimer

Peter F. Thalheimer  
Presiding Member