



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal Nos. AP-2005-005,  
AP-2005-010, AP-2005-011 and  
AP-2005-020

Arctic Cat Sales Inc.

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Friday, January 20, 2006*

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IN THE MATTER OF appeals heard on October 25 and 26, 2005, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the President of the Canada Border Services Agency dated May 13, June 2 and July 8, 2005, with respect to requests for redetermination under subsection 60(4) of the *Customs Act*.

**BETWEEN**

**ARCTIC CAT SALES INC.**

**Appellant**

**AND**

**THE PRESIDENT OF THE CANADA BORDER SERVICES  
AGENCY**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeals are dismissed.

James A. Ogilvy  
James A. Ogilvy  
Presiding Member

Ellen Fry  
Ellen Fry  
Member

Meriel V. M. Bradford  
Meriel V. M. Bradford  
Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: October 25 and 26, 2005

Tribunal Members: James A. Ogilvy, Presiding Member  
Ellen Fry, Member  
Meriel V. M. Bradford, Member

Counsel for the Tribunal: Philippe Cellard

Clerk of the Tribunal: Valérie Cannavino

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## STATEMENT OF REASONS

1. These are appeals pursuant to section 67 of the *Customs Act*<sup>1</sup> from decisions of the President of the Canada Border Services Agency (CBSA) dated May 13, June 2 and July 8, 2005, made under subsection 60(4) of the *Act*.

2. The goods in issue are all-terrain vehicles (ATVs) that were imported between June 30, 1999, and February 6, 2003. The issue in these appeals is whether the ATVs are properly classified under tariff item No. 8703.21.90 as motor vehicles principally designed for the transport of persons, as determined by the CBSA, or should be classified under the applicable tariff items of heading No. 87.11 as motorcycles and cycles fitted with an auxiliary motor, as claimed by Arctic Cat Sales Inc. (Arctic Cat).

3. The relevant nomenclature from the *Customs Tariff*<sup>2</sup> is as follows:

...

87.03 Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02), including station wagons and racing cars.

-Other vehicles, with spark-ignition internal combustion reciprocating piston engine:

...

8703.21 --Of a cylinder capacity not exceeding 1,000 cc

...

8703.21.90 ---Other

...

87.11 Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars.

...

8711.20.00 -With reciprocating internal combustion piston engine of a cylinder capacity exceeding 50 cc but not exceeding 250 cc

...

8711.30.00 -With reciprocating internal combustion piston engine of a cylinder capacity exceeding 250 cc but not exceeding 500 cc

...

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1. R.S.C. 1985 (2nd Supp.), c. 1 [*Act*].

2. S.C. 1997, c. 36.

4. The following excerpts from the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>3</sup> are relevant to these appeals:

...

[*Explanatory Notes* to heading No. 87.03]

The heading also includes:

...

- (6) **Four-wheeled motor vehicles** with tube chassis, having a motor-car type steering system (e.g., a steering system based on the Ackerman principle).

...

[*Explanatory Notes* to heading No. 87.11]

The heading **excludes**:

- (a) Four-wheeled motor vehicles, for the transport of persons, with tube chassis, having a motor-car type steering system (e.g., a steering system based on the Ackerman principle) (**heading 87.03**).

...

[*Explanatory Notes* to heading No. 87.12]

This heading covers non-motorised cycles, i.e., pedal-operated vehicles equipped with one or more wheels (e.g., bicycles (including those for children), tricycles and quadricycles).

...

The heading also **excludes**:

...

- (b) Cycles fitted with an auxiliary motor (**heading 87.11**).

...

5. Classification Opinion 8703.21<sup>4</sup> is also relevant to these appeals and reads as follows:

- 8703.21 1. Four-wheeled (two wheel-driven) All Terrain Vehicle (“A.T.V.”) with tube chassis, equipped with a motorcycle type saddle, handlebars for steering and off-the-road balloon tyres. Steering is achieved by turning the two front wheels and is based on a motor-car type steering system (Ackerman principle). The vehicle is fitted with an automatic transmission with reverse gear, chain-driven rear-axle, and front and rear drum brakes. It is powered by a four-stroke single cylinder engine of a cylinder capacity of 124 cc. It is not fitted with cargo racks or with a trailer hitch.

## EVIDENCE

6. This section is a summary of some of the key testimony by the witnesses at the hearing. In addition to the testimony, the evidence filed by the parties consists of all exhibits, documents, expert reports and other items in the Tribunal’s record.

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

4. *Compendium of Classification Opinions*, Customs Co-operation Council, 1st ed., Brussels, 1987 [*Classification Opinions*].

7. Arctic Cat called as a witness Mr. Theodore G. Bettin, Director of Engineering, Arctic Cat, and the Tribunal qualified him as an expert in the engineering and design of ATVs.

8. Mr. Bettin described how an ATV should be ridden. He also testified as to the mechanical differences between an ATV steering system and a motor-car steering system. He indicated that a motor-car steering system comprises six essential components (steering wheel, shaft, universal joints, gear box, tie rods and wheels), while an ATV steering system comprises four essential components (handlebars, shaft, tie rods and wheels). He testified that a motor-car steering system and an ATV steering system function differently.

9. During cross-examination, Mr. Bettin acknowledged that the ATVs in issue had four wheels and a tubular chassis and that their steering system employed the Ackerman principle.

10. In response to questions from the Tribunal, Mr. Bettin indicated that the designs of the ATVs in issue and the ATVs in *Suzuki Canada Inc. and Canadian Kawasaki Motors Inc. v. Commissioner of the Canada Customs and Revenue Agency*<sup>5</sup> are basically the same. He acknowledged that the description of an ATV found in the decision of the Federal Court of Appeal (the Court) in *Attorney General of Canada v. Suzuki Canada Inc. and Canadian Kawasaki Motors Inc.*<sup>6</sup> describes the ATVs in issue.

11. Arctic Cat called as witnesses Dr. David E. Kelly, Director of Engineering, TRW Canada Ltd., who was qualified as an expert in automotive engineering, with an emphasis on steering systems; Mr. Steven M. Kenner, Chief Engineer, Brake Systems Engineering, Ford Motor Company, who was qualified as an expert in automotive engineering; and Mr. Eleu Um, Manager, Vehicle Systems, Multimatic Technical Centre, who was also qualified as an expert in automotive engineering.

12. Dr. Kelly illustrated the Ackerman principle by reference to a vehicle with a fixed rear axle. In that application, the front wheels are rotated individually to create an angle on the inside of the turn that is different from the angle on the outside of the turn, in order to permit the vehicle to turn about a centre point. The expert witnesses testified that the Ackerman principle has a wide range of applications other than in motor-car and ATV steering systems.

13. The experts testified that an ATV steering system lacks two essential components of a motor-car steering system, that is, a steering wheel and a gear box. They testified that the fact that a steering system uses the Ackerman principle does not make it a motor-car type steering system. They testified that, given that the steering system of the ATVs in issue lacks two essential components of a motor-car steering system and functions differently from the latter, the steering system of the ATVs in issue does not constitute a motor-car type steering system.

14. Arctic Cat also called as a witness Dr. Joshua M. Mozersky, Assistant Professor and Canada Research Chair in Metaphysics and the Philosophy of Science, Queen's University, who was qualified as an expert in logic. Dr. Mozersky testified with respect to correct and incorrect logical representations of the phrase "for example".

15. The CBSA did not call any witnesses.

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5. (2 May 2003), AP-99-114, AP-99-115 and AP-2000-008 (CITT) [*Suzuki*].

6. 2004 FCA 131, para. 3 [*Suzuki (FCA)*].

## ARGUMENT

16. This section is an overview of some of the key elements of the parties' arguments. It is not a comprehensive statement of the arguments submitted by the parties in their briefs or at the hearing.

17. Arctic Cat submitted that the goods in issue are *prima facie* classifiable in both heading No. 87.03 as other motor vehicles principally designed for the transport of persons and heading No. 87.11 as motorcycles. It argued that the goods in issue are more specifically described as motorcycles, have the essential character of motorcycles and are more akin to motorcycles, and therefore, pursuant to Rule 3 (a), 3 (b) or 4 of the *General Rules for the Interpretation of the Harmonized System*,<sup>7</sup> should be classified in heading No. 87.11 as motorcycles.

18. Arctic Cat submitted that the goods in issue are classifiable as motorcycles because of the many characteristics that they share with two-wheeled motorcycles. Among the characteristics listed by Arctic Cat were the following: the goods in issue are steered like two-wheeled motorcycles by coordinating handlebar movement and shifting the driver's weight; they have parts that are interchangeable with two-wheeled motorcycles bearing the same part number; they are sold by motorcycle dealers; and they are straddled and ridden like a horse in a manner which is similar to two-wheeled and three-wheeled motorcycles. Arctic Cat referred to the fact that the ATVs are called restricted-use motorcycles, quad bikes, quads, bikes and quadricycles.

19. With respect to the *Explanatory Notes* to heading No. 87.11 that exclude from classification in that heading four-wheeled motor vehicles having a motor-car type steering system, Arctic Cat submitted that these notes are not applicable to the goods in issue. While Arctic Cat acknowledged that the steering system used in operating the goods in issue is based on the Ackerman principle referred to in these notes, it argued that the steering system nevertheless does not constitute a motor-car type steering system.

20. Arctic Cat also argued that the goods in issue are quadricycles that have a motor and that the *Explanatory Notes* to heading No. 87.12 therefore apply to them and direct that they be classified in heading No. 87.11. It further argued that the classification of the goods in issue as restricted-use motorcycles for the purposes of the *Motor Vehicle Safety Regulations*<sup>8</sup> should lead to their classification as motorcycles under the *Customs Tariff*.

21. With respect to the effect of the decision in *Suzuki (FCA)* on these appeals, Arctic Cat submitted that the Tribunal must distinguish *Suzuki (FCA)* from the current appeals because, in the latter, new evidence had been presented, and new arguments had been made.

22. The CBSA submitted that Arctic Cat's arguments in these appeals are essentially the same as those that had been accepted by the Tribunal in *Suzuki*, but rejected on appeal in *Suzuki (FCA)*. The CBSA submitted that the Tribunal is bound by the Court's decision in *Suzuki (FCA)* to classify the goods in issue in heading No. 87.03, as they have four wheels, a motor, a tubular chassis and a steering system based on the Ackerman principle. The CBSA argued that the Tribunal must classify the goods in issue in accordance with the relevant *Classification Opinion* and *Explanatory Notes*, as they have been interpreted by the Court in *Suzuki (FCA)*. With respect to the *Explanatory Notes* to heading No. 87.12, the CBSA submitted that they

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7. *Supra* note 2, schedule [*General Rules*].

8. C.R.C., c. 1038, s. 2(1).



are not applicable to the goods in issue, given that the goods are not fitted with an auxiliary motor and that, on the contrary, their motor constitutes a fundamental part of the ATVs. With respect to the *Motor Vehicle Safety Act*<sup>9</sup> and the *Motor Vehicle Safety Regulations*, the CBSA submitted that they do not have the same purpose as the *Customs Tariff* and that, therefore, the definition of “restricted-use motorcycle” found in the *Motor Safety Vehicle Regulations* is not relevant for classification purposes under the *Customs Tariff*.

## ANALYSIS

23. Section 10 of the *Customs Tariff* provides that the classification of imported goods under a tariff item shall be determined in accordance with the *General Rules* and the *Canadian Rules*.<sup>10</sup> Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in the schedule, regard shall be had to the *Classification Opinions* and the *Explanatory Notes*.

24. The Tribunal dealt with the classification of ATVs in *Suzuki*. It found in that case that the ATVs should be classified in heading No. 87.11 as motorcycles.

25. On appeal, the Court reversed the Tribunal’s decision. For the purposes of its decision, the Court defined ATVs as follows:

...

An ATV is a four-wheeled, motorized, off-road vehicle with a tube chassis, and is used to transport a person and goods over rough terrain. Like virtually all other four-wheeled vehicles, the steering system on an ATV turns the inside wheels at a slightly sharper angle than the outside wheels so that the wheels track a straight line. This is known as the “Ackerman principle”. Handlebar movement and operator weight shift also contribute to steering an ATV.<sup>11</sup>

...

26. In the current appeals, when questioned by the Tribunal, Mr. Bettin acknowledged that the ATVs in issue possess all the characteristics listed in the Court’s definition of ATVs, including a steering system that utilizes the Ackerman principle.

27. In *Suzuki (FCA)*, the Court stated the following:

On a proper interpretation of the Explanatory Notes to heading 87.03 and heading 87.11, and based on the undisputed evidence that the steering system utilizes the Ackerman principle, the Tribunal acted unreasonably in concluding that the ATVs could be classified other than under heading 87.03. The mere fact that ATVs do not have three components of a motor car steering system as that term is used by industry engineers does not demonstrate that ATVs do not belong under heading 87.03, especially in view of the fact that these vehicles possess the components that have been identified in the Explanatory Notes as determinative for classification purposes.<sup>12</sup>

...

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9. S.C. 1993, c. 16.

10. *Supra* note 2, schedule.

11. *Suzuki (FCA)*, para. 3.

12. *Suzuki (FCA)*, para. 18.

28. Given that the goods in *Suzuki (FCA)* and the goods in issue are, for classification purposes, essentially the same, the Tribunal is bound by the decision in *Suzuki (FCA)*. Therefore, the Tribunal finds that the ATVs in issue are properly classified in heading No. 87.03, more specifically, under tariff item No. 8703.21.90 as motor vehicles principally designed for the transport of persons.

29. For the foregoing reasons, the appeals are dismissed.

James A. Ogilvy  
James A. Ogilvy  
Presiding Member

Ellen Fry  
Ellen Fry  
Member

Meriel V. M. Bradford  
Meriel V. M. Bradford  
Member