

Ottawa, Monday, January 11, 1999

Appeal No. AP-97-111

IN THE MATTER OF an appeal heard on June 11, 1998, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue dated September 4, 1997, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

HONDA CANADA INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

AND

MTD PRODUCTS LTD.

Intervener

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Raynald Guay
Raynald Guay
Member

Richard Lafontaine
Richard Lafontaine
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-97-111

HONDA CANADA INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

and

MTD PRODUCTS LTD.

Intervener

This is an appeal pursuant to subsection 67(1) of the *Customs Act* from a decision of the Deputy Minister of National Revenue dated September 4, 1997. The goods in issue are Honda H2013SC lawn tractors manufactured by Honda Inc. in the United States and imported by the appellant, a wholly owned subsidiary of Honda Inc. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8433.11.00 as powered mowers for lawns, parks or sports grounds, with the cutting device rotating in a horizontal plane, as determined by the respondent, or should be classified under tariff item No. 8701.90.19 as other tractors, as claimed by the appellant.

HELD: The appeal is dismissed. The Tribunal is of the view that the evidence shows that the goods in issue are constructed essentially for use with mower decks for mowing lawns. The Tribunal is also of the view that the goods in issue come within the wording of heading No. 84.33 and the relevant Section and Chapter Notes.

Place of Hearing: Ottawa, Ontario
Date of Hearing: June 11, 1998
Date of Decision: January 11, 1999

Tribunal Members: Pierre Gosselin, Presiding Member
Raynald Guay, Member
Richard Lafontaine, Member

Counsel for the Tribunal: Hugh J. Cheetham

Clerk of the Tribunal: Margaret Fisher

Appearances: Donald J. Goodwin, for the appellant
Christopher Rugar, for the respondent
Michael A. Kelen, for the intervener

Appeal No. AP-97-111

HONDA CANADA INC.

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

and

MTD PRODUCTS LTD.

Intervener

TRIBUNAL: PIERRE GOSSELIN, Presiding Member
RAYNALD GUAY, Member
RICHARD LAFONTAINE, Member

REASONS FOR DECISION

This is an appeal pursuant to subsection 67(1) of the *Customs Act*¹ from a decision of the Deputy Minister of National Revenue dated September 4, 1997.

The goods in issue are Honda H2013SC lawn tractors manufactured by Honda Inc. in the United States and imported by the appellant, a wholly owned subsidiary of Honda Inc. The goods in issue originally entered under tariff item No. 8701.90.19 of Schedule I to the *Customs Tariff*² as tractors. The appellant subsequently requested that they be reclassified under tariff item No. 8433.11.00 as riding mowers. The respondent granted this request. The appellant subsequently requested that the goods be reclassified under tariff item No. 8701.90.19 as tractors. By decision dated September 4, 1997, the respondent maintained the classification of the goods in issue under tariff item No. 8433.11.00 on the basis that the appellant had requested that the goods in issue be given the same consideration as the goods in *Steen Hansen Motorcycles Ltd. v. The Deputy Minister of National Revenue*³ because they were similar in nature. Furthermore, the respondent concluded that, although a snowblower could be attached to the goods in issue, they are constructed essentially to cut grass and not to push many different types of implements.

The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8433.11.00 as powered mowers for lawns, parks or sports grounds, with the cutting device rotating in a horizontal plane, as determined by the respondent, or should be classified under tariff item No. 8701.90.19 as other tractors, as claimed by the appellant

There was one intervener in this case, MTD Products Ltd. (MTD), which appeared in support of the respondent.

The appellant's representative called one witness, Mr. William Rising, Product Planning Co-ordinator in the Power Equipment Division of Honda Canada Inc. In this capacity, he is involved in the

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. R.S.C. 1985, c. 41 (3rd Supp.).
3. Canadian International Trade Tribunal, Appeal No. AP-95-065, May 12, 1997.

development and design of new products for the Canadian market and the bringing of new products to the market. Mr. Rising has held this position for three years. Previously, he was a district service manager and service engineer with Honda Canada Inc. Prior to this, he was a Honda dealer for approximately nine years. Mr. Rising stated that he and Honda R&D Americas, located in North Carolina, are responsible for the design of the Honda line of lawn tractors sold in North America. More specifically, he is responsible for the final design and specifications for the Canadian market.

With respect to the goods in issue, Mr. Rising stated that they are 13-horsepower units which have a maximum draw-bar towing weight of 500 lbs. They are designed to be used with a variety of appliances, of which the most common are grass-cutting decks and front-mounted snowblowers. These attachments are powered through a power take-off (PTO) that is engaged by the user. He testified that the PTO is not part of the transaxle and is designed to allow for the quick removal and attachment of appliances. He also testified that the design of the unit permits almost 100 percent of the power from the engine to be transmitted to the unit's wheels.

Mr. Rising testified that, on a national basis, one snowblower is sold for approximately every 10 units of the tractor, i.e. approximately 10 percent of the units are sold with snowblowers. These numbers vary by region, depending on weather conditions.

Turning to how the mower deck moves when attached to a unit, Mr. Rising stated that the units are designed so that a deck can either be lowered onto the ground and pushed using the wheels on the deck or be suspended. By contrast, a snowblower sits on the ground on skid plates and, then, the tractor pushes the snowblower, which is attached to the lawn tractor by means of fixed struts, through the snow.

In answer to the question of whether a mower deck is permanently attached to the unit and removed only for repair or maintenance, Mr. Rising stated that this was not the case and that the deck can be quickly removed for either pushing or hauling or the installation of another appliance. He then explained the steps in removing a mower deck. He stated that it is a very simple operation that the user can perform in approximately five minutes. He also explained how the snowblower is installed. It is a more involved procedure that requires two people because of the weight of the appliance.

Mr. Rising contrasted the goods in issue to the riding mowers made by Honda Inc., which are specifically designed and marketed to cut grass only and have a mower deck which is permanently attached. He also noted that the tires chosen to be used with the goods in issue are designed to provide optimum traction in a variety of circumstances, including in snow and on turf, gravel, pavement and other surfaces. Comparing the goods in issue with goods of similar horsepower, which are produced by other companies, such as MTD and The Murray Ohio Manufacturing Co. (Murray), Mr. Rising stated that there were differences in the price points at which these goods were sold, as the goods in issue retail for approximately twice as much as the others. He stated that the appellant considered that the goods in issue competed with goods that have 18 to 20 horsepower.

In cross-examination by counsel for the respondent, Mr. Rising agreed that the procedure to remove a deck, described in the owner's manual for the unit, contains 15 steps and that a first-time user may take more than five minutes to remove a mower deck. With respect to the fact that cutter decks are supplied with the unit, he acknowledged that cutting grass is one of the primary functions of the unit and reiterated that this was done for marketing reasons. He also stated that, while it was possible that a unit could be sold without a deck, he was not aware of such an instance. Mr. Rising agreed that the snowblower for the unit was not

available at the time of importation in March 1995. He explained that it was under development at that time and became available in the fall of 1995 and was, in fact, sold at that time.

When asked to whom the appellant sells the goods in issue, Mr. Rising indicated they are sold to owners of suburban lots, small rural lot owners and people with long driveways who want to move snow and, generally, to people with lot sizes from half an acre to an acre. He stated that the purpose of the rear suitcase weights, which are offered to purchasers of snowblowers, was to balance the tractor in the transport position and to enhance traction. With respect to the turf tires sold with the unit, he stated that they could be effective in winter conditions depending on the terrain of the driveway and, also, that the appellant offers snow chains as optional parts. He also testified that the appliances used with the goods in issue are the same types of appliances used with other lawn tractors.

In cross-examination by counsel for MTD, Mr. Rising stated that he did not know which transaxle is used in the goods in issue. He also clarified that, in previously speaking about draw bar pull, he was referring to the ability of the machine to pull 500 lbs. in a trailer over a flat surface. He also testified that he did not know the amount of power used by the mower deck in certain operational situations that were discussed. Finally, with respect to the sales figure that Mr. Rising offered in chief, he stated that he did not have the actual sales figures with him and that he was offering this testimony from memory.

In response to questions from the Tribunal, Mr. Rising mentioned another attachment that can be used with the unit, a grass catcher, which is mounted on the rear of the unit. With respect to estimated sales of snowblowers, Mr. Rising stated that this was based on total sales of approximately 800 units. He also explained that the goods in issue, which are made in the United States, not Japan, were introduced at a new price point for the appellant to allow it to be more price competitive in North America. He agreed that, basically, this meant competition with MTD, Murray and AYP.

Counsel for the respondent called two witnesses. The first witness was Mr. Harold J. Schramm, of Downers Grove, Illinois, who is a principal in a consulting business and a teacher of quality management, project management and operations management at the University of Dubuque, Iowa. His current clients include J.I. Case Company, for whom he works in the tractor design area and acts as a consultant in analyzing new product designs for tractors. Mr. Schramm had a long career in the design and development of tractors and related vehicles at International Harvester Co. He stated that he has had no direct responsibility for lawn tractors since 1985. He is a member of a number of professional associations, including the American Society of Agricultural Engineers, the Society of Automotive Engineers and the American Society for Quality Control. The Tribunal accepted Mr. Schramm as an expert in tractor and lawn mower design.

In Mr. Schramm's opinion, goods such as those in issue were essentially designed and constructed to cut grass, as are rear-engine riding lawn mowers. He stated that the goods in issue are referred to as "lawn tractors" because consumers wanted a riding mower that looked like a tractor. The only thing that was done to make a riding mower a lawn tractor was that the position of the operator and the engine was interchanged. He was also of the opinion that the specifications for the early lawn tractors were almost identical to the specifications set out in the Honda literature. Mr. Schramm stated that what makes a tractor a tractor is the ability to provide full tractive power to the rear wheels and to have the chassis and power train handle that power through the range of speeds of the particular vehicle.

Mr. Schramm was asked to compare the goods in issue with the goods that were the subject of the appeals in *Marubeni Canada Ltd. v. The Deputy Minister of National Revenue*,⁴ *Ford New Holland Canada Ltd. v. The Deputy Minister of National Revenue*⁵ and *Steen Hansen*. He stated that the goods in issue are identical to those considered in *Steen Hansen* and different from the vehicles considered in the other two cases. The goods in issue are different from the goods in *Marubeni* and *Ford New Holland* in terms of chassis and drive train design and in terms of the fact that those vehicles are not designed so that only part of the tractive ability goes to the rear wheels and the rest, a majority, to power an attachment. Mr. Schramm also testified that the goods in issue are limited in their ability to pull and utilize the full power of the vehicle when operating. This is reflected in the design of the snowblower in terms of the heavy underchassis that attaches to the frame. He also testified that the appliances for the goods in issue are not easily attached or replaced and that they do not have true PTO because their PTO cannot be adapted interchangeably with other equipment.

With respect to whether the cutting decks are pushed or not by the unit, Mr. Schramm stated that they are not pushed, but rather are carried, and that the only place that the wheels come into play is when one is going over high spots and the wheels work to lift the mower over these spots so as to keep from scalping them.

In cross-examination, Mr. Schramm stated that he has not operated nor personally inspected the goods in issue. He acknowledged that he had previously designed a snowblower for use with a lawn tractor and that the snowblower's weight was on the ground during operation. In response to questions from the Tribunal, Mr. Schramm estimated that the goods in issue would use about 3 or 4 horsepower for moving the vehicle and that the rest would be available for the mower deck.

The respondent's second witness was Mr. Don Theroux, National Accounts Manager for Murray Canada Inc. He described this position as a sales function dealing with mass merchants in the Canadian marketplace. His responsibilities include the sale of lawn tractors to the customers. Mr. Theroux noted that he had testified in *Steen Hansen*, which dealt with lawn tractors made by Murray and sold by Murray Canada Inc. He confirmed that he had reviewed a specifications sheet that compared one of the Murray units in that case with the goods in issue.⁶

Mr. Theroux testified that the goods in issue, and similar goods offered by Murray, MTD and AYP, are geared for residential homeowners with above-average size lots. He also confirmed Murray Canada Inc.'s sales figures for the period from May 1994 to April 1996, to which the Tribunal referred in *Steen Hansen*, show that less than 1 percent of users buy either a blade or a snowblower.⁷ He also filed new sales figures for the period from January 1 to June 5, 1998.⁸ These figures compare sales of vehicles and attachments for three types of vehicles: riding mowers, lawn tractors and garden tractors. They show that Murray sells a very small percentage of non-mower-related appliances with its riding mowers and lawn tractors.

4. Canadian International Trade Tribunal, Appeal No. AP-93-311, December 14, 1994.

5. Canadian International Trade Tribunal, Appeal No. AP-93-388, February 3, 1995.

6. Exhibit B-3.

7. These figures showed that Murray Canada Inc. sold over 3,500 lawn tractors, 28 blades and 19 snowblowers in this time period. *Supra* note 3 at 2.

8. Exhibit B-4.

Mr. Theroux stated that these vehicles are sold as grass-cutting machines. He also stated that the mower deck is rarely taken off by users, and, then, only for cleaning or maintenance, and that this was usually done by a dealer. With respect to the snowblower, he indicated that, although there are various problems with operating the unit and the snowblower in winter, they are still offered for sale because some people insist on having them and that Murray's competitors offer them. Finally, Mr. Theroux agreed with Mr. Schramm's view that the goods in issue are really riding mowers that have been redesigned for marketing purposes.

In cross-examination, Mr. Theroux explained that the sales figures that he filed included sales to both mass merchandisers and dealers. He also indicated that the retail price of Murray's units would be between \$1,500 and \$2,000.

Counsel for the intervener called one witness, Mr. David Robinson, Product Manager for MTD Products Limited. Among the products that he manages are the lawn tractors produced by MTD. He indicated that he has been an employee of the company for 20 years. To the best of his knowledge, MTD is the only Canadian manufacturer of lawn tractors.

Mr. Robinson testified that MTD makes a lawn tractor that has specifications very similar to those of the goods in issue, as well as to those of the Murray lawn tractors. In fact, MTD makes a range of lawn tractors with a 12.5 to 18.5 horsepower motor. He noted that MTD does not sell lawn tractors and mower decks separately, but rather sells them as one unit. He also stated that a mower deck is carried by the vehicle and that the anti-scalp wheels do not support the deck, but rather protect a lawn when the operator goes over a small hill.

Mr. Robinson provided the Tribunal with the MTD sales figures for attachments for its lawn tractors and riding mowers, including its 12.5 horsepower model, which were filed in *Steen Hansen*.⁹ These figures show that the combined number of snowblowers and blades sold by the company in 1995 represented 0.8 percent of the lawn tractors that it sold in that year.

In cross-examination, Mr. Robinson indicated that the retail price of a 12.5 horsepower MTD lawn tractor would be between \$1,300 and \$1,500. He stated that, at these prices, an MTD unit probably did not compete directly with the goods in issue. He also acknowledged that the transaxle used by Honda was slightly different from that used by MTD. In response to questions from the Tribunal, Mr. Robinson stated that the goods in *Marubeni* and *Ford New Holland* were much larger and much heavier than the goods in issue and also were commercial-type units. In re-examination, Mr. Robinson stated that, other than price, he saw no other basic differences between the goods in issue and comparable MTD lawn tractors.

In argument, the appellant's representative first addressed Mr. Schramm's testimony. He submitted that this evidence was general in nature and not specific to the goods in issue. He also submitted that Mr. Schramm indicated that lawn tractors pushed appliances and, in the case of snowblowers, that the majority of the weight of a snowblower was on the ground. Finally, Mr. Schramm admitted that he had not inspected a Honda transaxle and, therefore, did not know the limitations or capabilities of this part. With respect to the evidence of the witnesses for Murray and MTD, the representative submitted that this evidence related to the products of those companies and not to the goods produced by the appellant.

9. Protected Exhibit C-3.

The appellant's representative submitted that the issue to be decided is what is a tractor. He referred to the definition of "tractor" in the *Explanatory Notes to the Harmonized Commodity Description and Coding System*¹⁰ (the Explanatory Notes) to Chapter 87, which provide that a tractor is essentially designed for hauling and pushing appliances, loads and implements. He also referred to a dictionary definition of "hauling" which, he said, is defined to mean "to push" and "to transport or furnish transportation."

To understand what a "lawnmower" is, the appellant's representative submitted that one has to turn to the Explanatory Notes to heading No. 84.33. These notes provide that a lawn mower has a permanently attached cutter deck. He submitted that there has been a lot of evidence about permanently attached cutter decks with respect to non-Honda products. However, with respect to the goods in issue, the evidence is that the cutter decks are easily removed so that they can be used with other appliances. Furthermore, the evidence is that the goods in issue were designed to push and pull or haul a cutter deck or snowblower. The evidence with respect to the goods in issue is also that the rear wheels take power from the engine through the transmission to drive the unit. The cutter deck and snowblower rest on the ground when operating and, therefore, are pushed. The decks rest on the ground through the anti-scalp wheels, when they are in the lowest or next to lowest position for cutting grass and the snowblower rests on the skid plates.

The appellant's representative submitted that the goods in issue are distinguishable from the goods considered by the Tribunal in *Steen Hansen*. First, the cutting deck used with the goods in issue is easily removed. Second, there is at least 1 snowblower sold for every 10 units sold. Third, the power to the appliances is not provided by a transaxle. Fourth, the goods in *Steen Hansen* were found to bear virtually no load when using an appliance. The evidence provided by Mr. Rising in this appeal was to the contrary. Fifth, there is the difference in price point. Sixth, the evidence shows that there is design flexibility in the goods in issue, design flexibility that allows them to push, pull and haul appliances.

The appellant's representative also submitted that there were similarities between the goods in issue and the goods considered by the Tribunal in *Marubeni* and *Ford New Holland*, in that the appliances used by these units rest on the ground and are pushed by the unit and that virtually all the power from the engine can be delivered to the wheels when required.

Counsel for the respondent also began his submissions by referring to Mr. Schramm's evidence. He submitted that, although Mr. Schramm admitted that he had not actually inspected the goods in issue, he had received the relevant specifications and listened to Mr. Rising's testimony and testified that it was clear from an engineering perspective that there was no engineering design difference between the Honda unit and the other vehicles in this class.

With respect to the snowblower, counsel for the respondent submitted that the evidence is clear that the undercarriage of the snowblower plays a key role in carrying the weight of the unit. He addressed the transaxle in a similar manner. Mr. Schramm testified that the transaxle used in the goods in issue could perform no function different from the other numerous transaxles with which he was familiar. Counsel submitted that any testimony of Mr. Rising on this subject should be considered as non-expert or hearsay evidence. He also submitted that the evidence of Mr. Theroux and Mr. Robinson provides an expanded view of a competitive marketplace in which, Mr. Rising agreed, Honda machines were involved.

Turning to whether the goods in issue push or pull appliances, or rather carry them, counsel for the respondent submitted that the evidence is clear that the appliances are not pushed or pulled. Instead, the

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

appliances are attached to the main chassis of the unit itself through various mechanisms. The result is that the appliances are carried on the underbelly of the unit, as can be seen in the diagrams of the unit submitted in evidence. With respect to the use of appliances with the goods in issue, counsel submitted that the Tribunal should consider the evidence that 1 snowblower was sold for every 10 units sold, in light of the fact that there is no evidence that they are ever sold without a mower deck.

With respect to *Steen Hansen*, counsel for the respondent submitted that the goods in issue should be seen as being on all fours with the goods considered in that appeal. They are the same size and have the same weight, the same transmission drive and the same attachments; they are goods of the same class. As to the issue of price point, counsel submitted that this was irrelevant, as what matters is whether one is dealing with one class of goods, not where one may fit within that class. In addition, price has no effect on the function of the goods in issue. The principal function of the goods in issue is to cut grass and, therefore, they fall under tariff item No. 8433.11.00. Finally, counsel contrasted the goods in issue from the goods considered by the Tribunal in *Marubeni* and *Ford New Holland* in terms of size, function, design and the market into which they are sold, which is commercial in nature, in contrast to the residential and suburban market into which the goods in issue are sold.

Counsel for MTD submitted that there were two additional differences between the goods in issue and the goods considered in *Marubeni* and *Ford New Holland*, namely, weight and the evidence in *Marubeni* to the effect that 56 percent of purchasers bought implements other than or in addition to mower decks. He also submitted that the technical or engineering evidence submitted by the appellant was not reliable. There was no technical expert brought as a witness and no reliable information regarding the transaxle. This was reflected in the fact that, while Mr. Rising thought that it was a Dana transaxle, he did not know whether it was a typical lightweight transaxle that would be used for a lawn tractor. He submitted that, although the goods in issue look like lawn tractors and their technical specifications are the same as those of other lawn tractors, the appellant is suggesting that these are not lawn tractors because of price.

Counsel for MTD submitted that the law is that goods are to be classified at the time of entry. This is important in light of Mr. Rising's testimony because the evidence shows that, at the time of entry in 1995, the appellant did not sell a snowblower attachment for this unit. In addition, he submitted that there was really no evidence that the appellant was actually marketing attachments for the goods in issue and, again, they have an onus to prove this. Turning to evidence relating to sales, he submitted that the Tribunal should consider the precise figures in evidence about sales by MTD and Murray in the period surrounding the time of importation, which show that sales of attachments other than mower decks were less than 1 percent. There was more recent information relating to sales by Murray, and this showed that the percentage was still under 1 percent. Counsel contrasted this evidence with the information provided by Mr. Rising. He submitted that the appellant's evidence in this regard was not the best evidence and that the appellant should have provided exact information on sales.

Turning to the wording of heading No. 84.33 and the relevant subheadings, counsel for MTD submitted that this wording describes mowers for lawns. The evidence is that lawn tractors are used 99 percent of the time for cutting grass, and the heading provides for that. He also noted that the Explanatory Notes to heading No. 84.33 provide that the lawn mowers classified in this heading are to have a "permanently attached cutter, i.e., one which is removed only for repair or maintenance." He submitted that, by their very wording, these notes provide that that the cutter can be removed for repair or maintenance, but that it is generally permanently attached. He submitted that the evidence shows that the mower decks sold with lawn tractors are difficult to remove and even more difficult to put back on. Therefore, the decks should

be considered permanently attached, except for repair and maintenance. Furthermore, the evidence shows that other attachments are used with less than 1 percent of lawn tractors. With respect to Note 2 to Chapter 87, counsel submitted that the evidence shows that the goods in issue are not constructed essentially for hauling or pushing, but rather are designed primarily for cutting grass, which the appellant admits in its own marketing information.

In reply, the appellant's representative submitted that, with respect to the purpose of the goods in issue, Mr. Rising gave evidence that he works with the design and engineering people at Honda and testified that the purpose of the goods in issue was to push and pull cutter decks and snowblowers, which are both appliances. Therefore, he submitted that the evidence shows that the goods in issue are designed to do the things for which Note 2 to Chapter 87 provides.

The Tribunal considers that the goods in issue are properly classified under tariff item No. 8433.11.00 as powered mowers for lawns, parks or sports grounds, with the cutting device rotating in a horizontal plane. The Tribunal comes to this conclusion bearing in mind that it is the legislation and the principles applicable to the interpretation of the legislation, including those set out in the *General Rules for the Interpretation of the Harmonized System*¹¹ (the General Rules), that must govern the classification of the goods in issue. As noted by the Tribunal in *York Barbell Company Limited v. The Deputy Minister of National Revenue for Customs and Excise*,¹² Rule 1 of the General Rules is of the utmost importance when classifying goods under the *Harmonized Commodity Description and Coding System*.¹³ Rule 1 states that classification is first determined by the wording of the tariff headings and any relative Section or Chapter Notes.

Note 2 to Chapter 87 reads as follows:

For the purpose of this Chapter, "tractors" means vehicles constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contain subsidiary provision for the transport, in connection with the main use of the tractor, of tools, seeds, fertilisers or other goods.

With respect to the phrase "constructed essentially for," the Tribunal is not persuaded that the evidence shows that the goods in issue are constructed essentially for pushing¹⁴ different types of implements,¹⁵ but rather that they are constructed essentially for use with mower decks for cutting grass. As noted above, such goods are specifically provided for in heading No. 84.33. In coming to this view, the Tribunal finds it useful to refer to the comparison of the goods in issue with the goods considered by the Tribunal in *Steen Hansen*, as reflected in Exhibit B-3. This comparison shows that the goods share very similar characteristics in terms of, for instance, weight, horsepower and tire size. While these characteristics may allow the goods in issue to operate, to some degree, with a snowblower attachment, this does not establish that they were constructed essentially for such a purpose. Furthermore, the characteristics of the goods in issue referenced above are quite different from those of the commercial machines considered by the Tribunal in *Marubeni* and *Ford New Holland* in terms of, for instance, size, weight, horsepower and the market segment to which they are sold. In addition, the manner in which appliances are put on and taken off

11. *Supra* note 2, Schedule I.

12. Appeal No. AP-90-161, August 19, 1991.

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

14. As in *Steen Hansen* and *Ford New Holland*, the Tribunal adopts the understanding of the words "haul" and "appliance" set out in *Marubeni*, *supra* note 4 at 8-9.

15. *Ibid.*

the goods in issue contrasts greatly with the easy front-end hitch mechanism used in the commercial tractors considered by the Tribunal in *Marubeni* and *Ford New Holland*. Finally, the Tribunal cannot ignore the fact that the evidence shows that, before the Tribunal's decision was issued in *Steen Hansen*, the appellant had requested that the respondent classify the goods in issue in the same way because of their similarity.

With respect to the evidence relating to sales of appliances other than those relating to the cutting of grass, i.e. sales of snowblowers, the Tribunal finds the appellant's evidence problematic. It is difficult for the Tribunal to find Mr. Rising's evidence compelling on this point, in light of the fact that actual sales figures, which presumably could have been provided, were not provided. Furthermore, the evidence submitted by other producers about their sales of snowblowers used with similar machines, which Mr. Rising agreed were in the same market segment, does not show significant use of those machines for purposes other than mowing lawns. In any event, the evidence about use does not approach the amount of use of different appliances reflected in *Marubeni* or *Ford New Holland*. Regarding evidence of the selling price of the goods in issue, while such evidence may be of assistance in determining classification, it would rarely be determinative of the issue, particularly, as in this case, where the preponderance of the evidence leads to a different conclusion.

In determining the classification of the goods in issue, the Tribunal also considered the Explanatory Notes to heading No. 84.33. As noted, the Explanatory Notes to this heading provide that goods classified in this heading have "a permanently attached cutter, i.e., one which is removed only for repair or maintenance." The evidence in this case shows that most purchasers use the goods in issue for cutting grass. The Tribunal notes that there is little evidence about actual use of the goods in issue by purchasers. However, there is evidence that purchasers of similar machines that compete with the goods in issue do not usually detach their mower decks, except for maintenance and repair, and that even this is a very rare occurrence. In the Tribunal's view, the preponderance of the evidence indicates that the goods in issue are, in fact, riding mowers. Thus, the Tribunal is of the view that the goods in issue come within the wording of heading No. 84.33 and the relevant Explanatory Notes.

Accordingly, the appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Raynald Guay
Raynald Guay
Member

Richard Lafontaine
Richard Lafontaine
Member