

Ottawa, Friday, November 5, 1999

Appeal Nos. AP-97-063, AP-97-067, AP-97-077, AP-97-079,
AP-97-084, AP-97-085, AP-97-096, AP-97-103,
AP-97-115 and AP-97-136

IN THE MATTER OF appeals heard on May 5 and 6, 1999,
under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Deputy Minister of
National Revenue dated August 1 and 29, September 15 and 25,
and October 7 and 22, 1997, with respect to requests for
re-determination under section 63 of the *Customs Act*.

BETWEEN

AYP (CANADA) INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

AND

MTD PRODUCTS LIMITED

Intervener

DECISION OF THE TRIBUNAL

The appeals are dismissed.

Peter F. Thalheimer

Peter F. Thalheimer
Presiding Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

**Appeal Nos. AP-97-063, AP-97-067, AP-97-077, AP-97-079,
AP-97-084, AP-97-085, AP-97-096, AP-97-103,
AP-97-115 and AP-97-136**

AYP (CANADA) INC.

Appellant

and

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Intervener

These are appeals pursuant to section 67 of the *Customs Act* from decisions of the Deputy Minister of National Revenue dated August 1 and 29, September 15 and 25, and October 7 and 22, 1997. The goods in issue are various models of lawn tractors manufactured by American Yard Products. The issue in these appeals 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 appeals are dismissed. The Tribunal is of the view that the evidence demonstrates that the goods in issue are not constructed essentially for hauling or pushing another vehicle, appliance or load and, therefore, cannot be classified under tariff item No. 8701.90.19. The Tribunal is of the view that the principal purpose of the goods in issue is to mow grass. The Tribunal, therefore, finds that the goods in issue are properly classified under tariff item No. 8433.11.00.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: May 5 and 6, 1999
Date of Decision: November 5, 1999

Tribunal: Peter F. Thalheimer, Presiding Member

Counsel for the Tribunal: Tamra Alexander
Marie-France Dagenais

Clerk of the Tribunal: Anne Turcotte

Appearances: Neil E. Bass, for the appellant
Elizabeth Richards, for the respondent
Michael A. Kelen, for the intervener

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AYP (CANADA) INC.

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TRIBUNAL: PETER F. THALHEIMER, Presiding Member

REASONS FOR DECISION

INTRODUCTION

These are appeals under section 67 of the *Customs Act*¹ from decisions of the Deputy Minister of National Revenue dated August 1 and 29, September 15 and 25, and October 7 and 22, 1997, made under section 63 of the *Act*. The goods in issue are various models of lawn tractors manufactured by American Yard Products² (AYP) and imported by the appellant. The issue in these appeals is whether the goods in issue are properly classified under tariff item No. 8433.11.00 of Schedule I to the *Customs Tariff*³ 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 the appeals, MTD Products Limited (MTD), which appeared in support of the respondent's position.

The tariff nomenclature relevant to the issue in these appeals is as follows:

84.33	Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading No. 84.37. -Mowers for lawns, parks or sports-grounds:
8433.11.00	--Powered, with the cutting device rotating in a horizontal plane
87.01	Tractors (other than tractors of heading No. 87.09)
8701.90	-Other ---Powered by an internal combustion engine:
8701.90.19	----Other

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter *Act*].
2. Now Frigidaire Home Products.
3. R.S.C. 1985 (3d Supp.), c. 41.

EVIDENCE

Mr. Dan Nielsen, Vice-President Technology, Major Appliances and Outdoor Products, Frigidaire Home Products (FHP), Mr. Gerry Coons, Director of Engineering, FHP, and Mr. Rod Casemore, Sales Manager, FHP, gave evidence on the appellant's behalf. Mr. Nielsen explained that FHP is the successor name to AYP and that the appellant is a subsidiary of FHP. Mr. Nielsen provided the Tribunal with a brief history of the development of the lawn tractor at AYP. He stated that lawn tractors evolved from garden tractors and that lawn tractors do not fall within the same "design envelope" as riding mowers. In determining the design envelope for the lawn tractor, Mr. Nielsen stated that AYP looked at all the functions that the lawn tractor had to accomplish and then used those functions, which placed the most load or stress on the product and required the most effort and power from the product, to determine the boundaries of the design envelope. Mr. Nielsen stated that the snow thrower and snow blade were used as the boundaries for AYP's design of the lawn tractor. Mr. Nielsen testified that, if the design of the lawn tractor could not handle the snow thrower or snow blade, it would not be developed. Mr. Nielsen testified that, as the mower deck places little load on the lawn tractor, it is not a consideration in the design of the chassis, frame and steering.

Mr. Nielsen stated that the lawn tractors are designed to work with a spreader, grass catcher, sweeper, dethatcher, roller, dump cart, aerator, tiller, snow blade and snow thrower. Mr. Nielsen stated that, in order to accommodate the various attachments, the lawn tractor was designed with many different mounting locations. Mr. Nielsen indicated that the rear hitch of the lawn tractor complies with the American Society of Agricultural Engineers' standard for tractors. Mr. Nielsen testified that the lawn tractor belt drive system was designed to put maximum tractive horsepower through the wheels of the tractor. Mr. Nielsen also testified that the frame of the lawn tractor was designed to absorb the full power of the attachments. Mr. Nielsen stated that the AYP lawn tractor frame is comparable to competitors' garden tractor frames.

Mr. Nielsen provided the Tribunal with a video demonstration of the removal of the mower deck from a lawn tractor. Mr. Nielsen testified that it would take a "rookie" a minute or two to read the instructions on removal of the mower deck and then an additional minute or two to remove the mower. Mr. Nielsen stated that the lawn tractor was designed so that the mower deck could be removed frequently and easily.

In cross-examination, Mr. Nielsen acknowledged that all AYP lawn tractors currently have mower decks attached to them which are carried by the lawn tractor. Mr. Nielsen also stated that most mower decks are attached to the lawn tractor in the factory and that most lawn tractors are shipped with the mower deck attached. Mr. Nielsen also acknowledged that the lawn tractor is priced to include the mower deck.

Mr. Coons stated that the snow thrower and snow blade are used in harsh conditions and expose the lawn tractor to the most severe load requirements and that, therefore, they are key elements of AYP product development criteria. Mr. Coons also stated that the mower deck does not represent any significant load requirement for the lawn tractor and is not considered in designing the lawn tractor, except in terms of the attachment points for hanging the mower deck. Mr. Coons provided the Tribunal with an index of the "duty cycle" tests which were performed on the lawn tractor. Tested features included draw bar pull, axle torque, circle track, snow thrower, snow blade and tilling. Mr. Coons testified that the duty cycle tests verify the ability of the lawn tractor to push and haul and to operate with various attachments. He indicated that the tests also ensure that the lawn tractor can take the impact shock and steady-state loads that it would

experience when operating with those attachments. Mr. Coons testified that, if the lawn tractor did not pass the duty cycle tests, it would not be developed.

Mr. Coons stated that it is a key AYP lawn tractor development criteria that, with full loading of the tractor, load be transmittable from the engine through the drive system and the transmission to the wheel slip point. Mr. Coons testified that the draw bar pull test on the lawn tractors (which measures the peak load ability of the tractor in terms of tractive ability to either push or pull attachments) revealed a range of 572 to 674 pounds.

Mr. Coons testified that the life cycle of a lawn tractor is 450 hours. Mr. Coons stated that life cycle testing is based on the lawn tractor being used with a snow thrower or snow blade for 60 hours, for mowing lawns for 340 hours and for towing implements through the draw bar for the remaining 50 hours. In addition, Mr. Coons stated that extended life tests and extended load tests are done to verify the durability of the lawn tractor under load for long periods of time. Mr. Coons testified that the circle track test, where the lawn tractor pulls a draw bar load, is run for 190 hours under varying loads.

Mr. Coons testified that AYP garden tractors and lawn tractors have similar requirements in terms of the work that they are expected to do and have similar construction in terms of the power take-off for driving the attachments. Mr. Coons testified that the garden tractors are, however, designed to take heavier loads than the lawn tractor and has a longer life cycle.

Mr. Casemore testified as to the marketing focus for AYP lawn tractors. He stated that the marketing focus is on the multi-functional use of the lawn tractor, in particular, that it can be used year-round. Mr. Casemore provided the Tribunal with statistics from Sears Canada Inc. (Sears) relating to its sales of attachments for lawn and garden tractors. Mr. Casemore designated the following products as attachments: aerators, bumpers, blades, blowers, carts, dethatchers, grass catchers, lawn rollers, sprayers, spreaders, sweepers, tillers, weights and chains. He testified that, in 1995, sales of attachments by Sears equalled 38 percent of its sales of lawn and garden tractors, that, in 1997, sales of attachments by Sears equalled 52 percent of its sales of lawn and garden tractors and that, in 1998, sales of attachments by Sears equalled 69 percent of its sales of lawn and garden tractors.⁴

Mr. Casemore also provided the Tribunal with information relating to sales of snow throwers by Bercomac Data L&G. The information indicated that, in 1997 and 1998, more than 50 percent of its sales were of snow throwers for AYP tractors.

Mr. Harold J. Schramm, a technical consultant, and Mr. Don Theroux, National Accounts Manager, Murray Canada Inc. (Murray), gave evidence on the respondent's behalf. Mr. Schramm was qualified by the Tribunal as an expert in lawn mower and tractor design. Mr. Schramm stated that any transmission is capable of pulling a heavy load for a short period of time. However, Mr. Schramm stated that, in his opinion, a tractor is a vehicle that can take the full tractive load that the engine is capable of producing throughout the entire life of the vehicle. It was his opinion that the attachments, which a lawn tractor is capable of using, are lightweight attachments that do not really call into play the tractive ability of the lawn tractor. It was his opinion that a lawn tractor is not a tractor because it is not capable of taking the full tractive load that the engine is capable of producing throughout the entire life of the lawn tractor. It was his opinion that a lawn tractor is essentially a riding mower that is configured to look like a tractor.

4. The sales of attachments in each year did not include catalogue sales, which run 10 percent to 12 percent of retail sales.

Mr. Theroux testified as to the marketing focus for Murray lawn tractors, which, he testified, were similar to AYP lawn tractors. Mr. Theroux stated that a riding mower and a lawn tractor are essentially the same and that the lawn tractor was developed after surveys indicated that the company could sell more riding mower products if they looked like tractors. Mr. Theroux testified that only about 3 percent of Murray customers purchase snow blowers or snow blades for use with their lawn tractors and garden tractors. He also testified that Murray lawn tractors cannot accept tillers, plows, cultivators, disk harrows or sleeve hitches.

Mr. Dave Robinson, Product Manager, MTD, gave evidence on the intervener's behalf. Mr. Robinson stated that, based on his comparison of the AYP lawn tractor and the MTD lawn tractor, there were no differences in the specifications which would make the AYP product superior to or different from the MTD product. Mr. Robinson stated that, while snow blades and snow blowers are available with the MTD lawn tractor, MTD does not encourage their use with the lawn tractor because they do not do a very good job. He testified that, in 1995, only 0.8 percent of MTD lawn tractors were sold with attachments. Mr. Robinson also testified that, in his experience, lawn tractor owners very rarely take the mower deck off the lawn tractor, other than for servicing. Finally, Mr. Robinson testified that he and Mr. Hans Hauser, President, Engineered Solutions, Inc., tested an AYP lawn tractor by tying a rope to the back of the lawn tractor and pulling back on the rope while the lawn tractor attempted to move forward. Mr. Robinson testified that Mr. Hauser was able to prevent the lawn tractor from going forward by pulling back on the rope.

ARGUMENT

Counsel for the appellant submitted that, in classifying the goods in issue, the terms of the heading and Section and Chapter Notes are of paramount importance. He submitted that the goods in issue are not *prima facie* classifiable in Chapter 84. He submitted, however, that, should the Tribunal determine that the goods are *prima facie* classifiable in Chapter 84, as they are also classifiable in Chapter 87, Note 1(l) of Section XVI prohibits the goods in issue from being classified in Chapter 84.⁵

Counsel for the appellant submitted that the goods in issue are vehicles constructed essentially for hauling or pushing another vehicle, appliance or load. He argued that the evidence of Messrs. Nielsen and Coons was that the key development criterion for the lawn tractor was the ability of the lawn tractor to push or haul attachments and that the lawn tractor would not be developed if it could not push or haul attachments. Counsel submitted a number of definitions of "essential" in order to assist the Tribunal in interpreting the phrase "constructed essentially for". Counsel submitted that "essential" means "absolutely necessary; indispensable, requisite";⁶ "entering into the essence or nature of a thing";⁷ "absolutely necessary; indispensable";⁸ "in the absolute or highest sense . . . indispensably entering into its composition";⁹ "of or constituting the essence of a person or thing";¹⁰ and "important in the highest degree".¹¹ Counsel submitted that the evidence of Messrs. Nielsen and Coons was that the ability of the lawn tractor to push and haul was

5. Note 1(l) provides that Section XVI (which includes Chapter 84) does not cover articles of Section XVII (which includes Chapter 87).

6. *Webster's New World Dictionary*, 2d ed., s.v. "essential".

7. *The Living Webster Encyclopedic Dictionary of the English Language*, s.v. "essential".

8. *The Random House Dictionary of the English Language: The Unabridged Edition*, s.v. "essential".

9. *The Oxford English Dictionary*, 2d ed., s.v. "essential".

10. *The Canadian Oxford Dictionary*, 1998, s.v. "essential".

11. *Black's Law Dictionary*, 6th ed., s.v. "essential".

an indispensable requirement, absolutely necessary and of the highest importance in the construction of the lawn tractor.

Counsel for the appellant submitted that the Tribunal should disregard the evidence of Mr. Schramm as to the design and capabilities of the goods in issue, as he had no involvement in the design, construction or testing of the goods in issue. Counsel also submitted that Mr. Schramm's opinions were formed prior to his having completed any testing of the goods in issue and that they should, therefore, be disregarded. Counsel argued that the goods in issue, in fact, met the requirements for a tractor that Mr. Schramm set out in previous cases before the Tribunal.

Counsel for the appellant submitted that the Notes to Chapter 84 do not require pushing and hauling to be the primary use to which the goods are put and do not require that the loads, which the goods are able to push or haul, be heavy. Counsel made an analogy to a small versus a large pickup truck. While the former is lighter than the latter and may not be able to carry as large a load, it is, in counsel's submission, still a pickup truck.

Counsel for the appellant also submitted that the purpose of marketing and sales data relating to the attachments is to demonstrate that the goods in issue are effective for use with those attachments. Counsel submitted that the low volumes of sales of attachments by Murray and MTD demonstrate that their lawn tractors were not designed essentially to haul or pull. Counsel argued that the reason the sales of attachments for the goods in issue are higher is because the goods in issue were designed and constructed to work with attachments.

Counsel for the appellant submitted that the goods in issue cannot be classified as lawn mowers because they are not "basic machines" and do not have a permanently attached cutter, as required by the *Explanatory Notes to the Harmonized Commodity Description and Coding System*¹² to heading No. 84.33. Finally, counsel argued that, if there is any ambiguity in the interpretation of the issues before the Tribunal, the ambiguity should be resolved in favour of the appellant.

Counsel for the respondent submitted that the goods in issue cannot be classified as tractors in Chapter 87 and, therefore, that the Notes to Section XVI, which prohibit goods that are classifiable in Section XVII (which includes Chapter 87) from being classified in Section XVI (which includes Chapter 84), do not apply. Counsel submitted that the *Explanatory Notes* to heading No. 84.33 establish that the Tribunal should look at the principal function of the goods in issue in classifying them, as they state, in part:

Since their principal function is the mowing of lawns, they remain in this heading even if they have a coupling device for hauling or pushing light attachments such as a trailer.

Counsel for the respondent also argued that goods are "essentially constructed" to perform their principal function. She provided the Tribunal with additional definitions of "essential" for its consideration: "of or constituting the intrinsic, fundamental nature of something";¹³ and "[p]ertaining to, constituting, or entering into the essence or nature of a thing";¹⁴. Counsel argued that nothing could be more the "essence of a thing" than its principal function.

12. First ed. (Brussels: Customs Co-operation Council, 1st ed., 1986) [hereinafter *Explanatory Notes*].

13. *Supra* note 6.

14. *Supra* note 7.

Counsel for the respondent submitted that the evidence before the Tribunal was uncontroverted that the principal function of the goods in issue is to mow grass. Counsel submitted that the evidence that the life cycle of the goods in issue was based on a duty cycle which assumed that the goods would be used for mowing grass 70 percent of the time demonstrates that the principal function of the goods in issue is to mow grass. As the mower deck is carried by the lawn tractor, counsel submitted that the principal function of the lawn tractor was not to push or haul.

Finally, counsel for the respondent did not dispute that the goods in issue were capable of pushing and hauling various attachments. However, she submitted that the possible uses of the goods in issue are not relevant to the issue before the Tribunal, only their principal function. In this respect, counsel submitted that, even if the Tribunal accepts the sales statistics for the attachments provided by the appellant at face value, they do not demonstrate a high enough degree of use for pushing and hauling to constitute the principal function of the goods in issue.

Counsel for the respondent submitted that the appellant had not significantly distinguished its goods from those goods which the Tribunal had previously determined should be classified as lawn mowers in *Steen Hansen Motorcycles v. D.M.N.R.*¹⁵ and *Honda Canada v. D.M.N.R.*¹⁶. Counsel submitted that the evidence before the Tribunal demonstrated that, except in rare cases, the mower decks were only removed from the goods in issue for repair and maintenance. Therefore, counsel submitted that, as the principal function of the goods in issue is to mow grass, they are properly classified as lawn mowers.

Counsel for the intervener submitted that the terms of subheading No. 8433.10, “[m]owers for lawns, parks or sports-grounds”, established an end use test for classification. In counsel’s view, if the goods in issue are used for cutting lawns, parks or sports-grounds, they are properly classified therein. Counsel submitted that the primary purpose of the goods in issue is to cut grass. He submitted that the goods in issue are similar to the goods in *Steen Hansen* and *Honda*, which were found to be lawn mowers. Counsel submitted that the evidence of Mr. Schramm was that the goods in issue were not strong enough in construction (frame, transmission, etc.) for pushing and hauling loads. He submitted that, as all the attachment sales documented by the appellant could have been sales of attachments for goods other than the goods in issue and as many of the attachments listed were carried, not pushed or hauled, there is no reliable evidence that consumers use the goods in issue with attachments for pushing or hauling. Finally, counsel submitted that the mower deck is not removed by customers in 99 percent of the cases.

DECISION

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 for the Interpretation of the Harmonized System*¹⁷ and the *Canadian Rules*¹⁸. 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*¹⁹ and the *Explanatory Notes*.

15. (12 May 1997), AP-95-065 (C.I.T.T.) [hereinafter *Steen Hansen*].

16. (11 January 1999), AP-97-111 (C.I.T.T.) [hereinafter *Honda*].

17. *Supra* note 3, Schedule I [hereinafter *General Rules*].

18. *Supra* note 3, Schedule I.

19. First ed. (Brussels: Customs Co-operation Council, 1987).

The *General Rules* are structured in cascading form. If the classification of an article cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, etc. Rule 1 provides the following:

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the [subsequent rules].

The competing headings in these appeals are as follows:

- 84.33 Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading No. 84.37.
- 87.01 Tractors (other than tractors of heading No. 87.09)

In the Tribunal's view, the goods in issue are not tractors, in the sense that the term is used in heading No. 87.01. The Tribunal comes to this conclusion after reviewing the terms of the heading and the Section and Chapter Notes. In particular, the Tribunal considered Note 2 to Chapter 87, which provides:

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.

The Tribunal received detailed submissions on how it should interpret the phrase "constructed essentially for hauling or pushing". It is the Tribunal's view that to construct goods "essentially for" a particular function means that the function in question represents the "essence or nature" of the goods. In the Tribunal's view, this requires that, at a minimum, in the design and construction of the goods in issue, hauling or pushing was to be their principal function.

The Tribunal accepts the evidence that the goods in issue are designed to be capable of pushing or hauling attachments, to a certain degree.²⁰ However, the evidence is clear that, during the testing of the design and construction of the goods in issue, they are required only to be capable of pushing or hauling attachments for less than half of the life cycle of the goods. Mr. Coons testified that the life cycle testing of the goods in issue required the goods to push a snow thrower or snow blade for 60 hours, tow implements for 50 hours and mow grass (during which the goods in issue carry the mower deck) for 340 hours. Therefore, out of the 450-hour life cycle of the goods in issue, they are only required to be able to push or haul for less than 25 percent of the time. Even the extended life testing done by AYP only required the goods in issue to be able to pull a load for 190 hours, which is less than half the life cycle of the goods. Given this, the Tribunal finds that the goods in issue were not designed or constructed so that their principal function or "essence or nature" would be to push or haul attachments. The Tribunal finds that the goods in issue are not constructed essentially for hauling or pushing and, therefore, that they should not be classified as tractors in heading No. 87.01.

The Tribunal must now consider whether the goods are properly classified as grass mowers in heading No. 84.33. With due respect to the submissions of the parties, the Tribunal finds that there is no requirement that the goods in issue be "basic machines" or that they have a permanently attached cutter in order to be classified in heading No. 84.33. The *Explanatory Notes* to heading No. 84.33 provide, in part:

20. The Tribunal adopts the interpretation of the word "haul" as including the concept of "pushing", as set out in *Marubeni Canada v. D.M.N.R.* (14 December 1994), AP-93-311 (C.I.T.T.).

This heading also covers lawn mowers, known as riding lawn mowers, consisting of three or four wheeled basic machines fitted with a driving seat and having a permanently attached cutter, i.e., one which is removed only for repair and maintenance. Since their principal function is the mowing of lawns, they remain in this heading even if they have a coupling device for hauling or pushing light attachments such as a trailer.

It is the Tribunal's view that the above provisions of the *Explanatory Notes* do not exclude goods, which do not fit the description provided, from classification in heading No. 84.33. The *Explanatory Notes* indicate that goods meeting the above criteria are to be included in the heading, but do not indicate that goods which do not meet these criteria cannot be so classified.

The Tribunal looked to the Notes to Chapter 84 in order to determine the classification of the goods in issue. Note 7 provides:

A machine which is used for more than one purpose is, for the purpose of classification, to be treated as if its principal purpose were its sole purpose.

This direction is consistent with the second sentence of the *Explanatory Notes*, set out above, which focuses on the principal function of the goods in issue for the purposes of classification. The evidence before the Tribunal is consistent; while the goods in issue are capable of performing many functions and have many purposes, their principal purpose is to mow grass. During testing of the design and construction of the goods in issue, over 70 percent of their life cycle is apportioned to mowing grass; all of the goods in issue are sold with a mower deck; most of the goods in issue are shipped with the mower deck attached; and, even putting the appellant's evidence in the best possible light, owners of less than half of the lawn tractors sold by the appellant purchase attachments which are not related to mowing grass. For these reasons, the Tribunal finds that the principal purpose of the goods in issue is to mow grass.

As the goods in issue are to be treated as though their principal purpose is their sole purpose, for the purposes of classification, the Tribunal finds that the goods in issue are grass mowers and are properly classified in heading No. 84.33.

In conclusion, the Tribunal finds that the goods in issue are properly classified under tariff item No. 8433.11.00. Consequently, the appeals are dismissed.

Peter F. Thalheimer

Peter F. Thalheimer
Presiding Member

Ottawa, Friday, November 26, 1999

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CORRIGENDUM

Footnote 20 should have read as follows: "The Tribunal adopts the interpretation of the word "haul" as including the concept of "pulling", as set out in *Marubeni Canada v. D.M.N.R.* (14 December 1994), AP-93-311 (C.I.T.T.)".

By order of the Tribunal

Michel P. Granger
Secretary of the Tribunal