



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2017-002

Lone Pine Supply Ltd.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, August 22, 2018*

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IN THE MATTER OF an appeal heard on May 3, 2018, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated January 5, 2017, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

LONE PINE SUPPLY LTD.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Rose Ritcey

Rose Ritcey

Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: May 3, 2018
Tribunal Panel: Rose Ritcey, Presiding Member
Support Staff: Courtney Fitzpatrick, Counsel
Michael Carfagnini, Counsel

PARTICIPANTS:**Appellant**

Lone Pine Supply Ltd.

Counsel/RepresentativesVictor Q. Truong
Benham A. Borojeni**Respondent**

President of the Canada Border Services Agency

Counsel/Representative

Carrie-Anne Bourassa

Please address all communications to:

The Registrar
Secretariat to the Canadian International Trade Tribunal
333 Laurier Avenue West
15th Floor
Ottawa, Ontario K1A 0G7
Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

INTRODUCTION

[1] This is an appeal by Lone Pine Supply Ltd. (Lone Pine) pursuant to subsection 67(1) of the *Customs Act*¹ from a re-determination by the President of the Canada Border Services Agency (CBSA) made pursuant to subsection 60(4) of the *Act* and dated January 5, 2017, in respect of certain woven polypropylene bags.

[2] The issue in this appeal is whether the goods in issue are classified under tariff item No. 9903.00.00 as articles for use in agricultural or horticultural machines of heading No. 84.36.

PROCEDURAL HISTORY

[3] The goods in issue were imported under tariff item No. 6305.33.00 in five transactions in 2011, 2014 and 2015.

[4] On November 6, 2015, pursuant to subsection 74(1) of the *Act*, Lone Pine requested refunds of duties paid on the basis that the goods qualify for duty-relief under tariff item No. 9903.00.00 as articles for use in agricultural or horticultural machines of heading No. 84.36.²

[5] On February 10, 2016, the CBSA denied the request for refunds prompting Lone Pine to request a re-determination pursuant to subsection 60(1) of the *Act*.³

[6] On January 5, 2017, the CBSA denied the refunds pursuant to subsection 60(4) of the *Act*.⁴

[7] On April 3, 2017, Lone Pine filed the present appeal with the Canadian International Trade Tribunal (the Tribunal), and requested that the appeal be held in abeyance pending the outcome of another matter before the Tribunal.⁵

[8] On May 3, 2017, the Tribunal granted the request to hold the appeal in abeyance.⁶

[9] On October 5, 2017, Mr. Kaylor, who was counsel to Lone Pine at that time, notified the Tribunal that Lone Pine intended to withdraw the appeal.⁷

[10] On October 6, 2017, Mr. Truong, co-counsel for Lone Pine, contacted the Tribunal seeking to rescind the notice of withdrawal.⁸

[11] On October 10, 2017, Mr. Kaylor contacted the Tribunal to confirm rescission of the notice of withdrawal, and to notify the Tribunal that he would no longer be representing Lone Pine in this appeal.⁹

1. R.S.C. 1985 (2nd Supp.), c. 1 [*Act*].
2. Exhibit AP-2017-16A at para. 6, Vol. 1A.
3. *Ibid.* at 204-207.
4. Exhibit AP-2017-002-12A at 13-16, Vol. 1.
5. Exhibit AP-2017-002-01 at 1, Vol. 1.
6. Exhibit AP-2017-002-05 at 1, Vol. 1.
7. Exhibit AP-2017-002-06 at 1, Vol. 1.
8. Exhibit AP-2017-002-07 at 1, Vol. 1.

[12] The Tribunal held a public hearing in Ottawa, Ontario, on May 3, 2018. Neither party called any witnesses.

DESCRIPTION OF THE GOODS IN ISSUE

[13] The goods in issue are 18 by 24 inch woven polypropylene bags, used to store and transport the sawdust produced at the Lone Pine facility. The bags attach directly to an automated bagger carousel, from which they are filled with sawdust, sewn shut and removed to be stacked on pallets. Uses of the sawdust include as a fertilizer component, an absorbent bedding for livestock and “Lost Circulation Material” (LCM) for mud engineers.

LEGAL FRAMEWORK

Tariff Classification Steps

[14] The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).¹⁰ The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

[15] Subsection 10(1) of the *Customs Tariff* provides that, subject to subsection 10(2), the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*¹¹ and the *Canadian Rules*¹² set out in the schedule.

[16] The *General Rules* comprise six rules. Classification begins with Rule 1, which provides that 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 other rules.

[17] Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*¹³ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,¹⁴ published by the WCO. While the classification opinions and the explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.¹⁵

9. Exhibit AP-2017-002-08 at 1, Vol. 1.

10. Canada is a signatory to the International Convention on the Harmonized Commodity Description and Coding System, which governs the Harmonized System.

11. S.C. 1997, c. 36, schedule [*General Rules*].

12. S.C. 1997, c. 36, schedule.

13. WCO, 4th ed., Brussels, 2017.

14. WCO, 6th ed., Brussels, 2017.

15. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131, at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that the explanatory notes be respected unless

[18] The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the *General Rules* as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. It is only where Rule 1 does not conclusively determine the classification of the goods that the other general rules become relevant to the classification process.¹⁶

[19] Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to use a similar approach to determine the proper subheading.¹⁷ The final step is to determine the proper tariff item.¹⁸

[20] Chapter 99 of the *Customs Tariff*, which includes tariff item No. 9903.00.00, provides special classification provisions that allow certain goods to be imported into Canada duty-free. As each heading of Chapter 99 has only one subheading and one tariff item number, the Tribunal need only consider, as the circumstances may require, Rules 1 through 5 of the *General Rules* in determining whether goods may be classified in that chapter. Moreover, since the Harmonized System reserves Chapter 99 for special classifications (i.e. for the exclusive use of individual countries), these provisions are not standardized at the international level and there are no classification opinions or explanatory notes to consider with regard to these tariff items.

POSITIONS OF THE PARTIES

Lone Pine

[21] Lone Pine argues that the “host good” with which the goods in issue are used is the combination of the various machines used by Lone Pine at its facility, which are fitted together to form a “wood processor”. Lone Pine argues that this “wood processor”, whether considered a composite machine or a functional unit, constitutes an agricultural or horticultural machine of heading No. 84.36 because wood is an agricultural product and the resulting sawdust can be used for agricultural applications.

CBSA

[22] The CBSA submits that the host good is actually the bagging machine to which the goods in issue directly attach, which is classifiable in heading No. 84.22 and therefore not an agricultural or horticultural machine of heading No. 84.36. The CBSA disputes that the host good should be considered to be the entire wood-processing facility, and argues that the facility is neither a

there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to the classification opinions.

16. *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) at para. 21.

17. Rules 1 through 5 of the *General Rules* apply to classification at the heading level. Rule 6 of the *General Rules* provides that “the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to [Rules 1 through 5] . . .” and that “the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

18. Rule 1 of the *Canadian Rules* provides that “the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the [*General Rules*] . . .” and that “the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires.” Classification opinions and explanatory notes do not apply to classification at the tariff item level.

composite machine nor a functional unit. In the alternative, should the Tribunal accept that the Lone Pine facility is a composite machine or functional unit, the CBSA argues that it is excluded from classification in heading No. 84.36 because it is designed for industrial use. In the further alternative, the CBSA argues that even if the host good were a wood processor of heading No. 84.36, it is not an “agricultural or horticultural type” machine of that heading and therefore would not qualify for relief under tariff item No. 9903.00.00.

TRIBUNAL’S ANALYSIS

Evidentiary Framework and Burden of Proof

[23] The parties agree that, as the appellant, Lone Pine bears the burden of demonstrating that the CBSA’s classification of the goods was incorrect.¹⁹ The following analysis and conclusions are based largely on the Tribunal’s finding that Lone Pine has not met this burden of proof.

[24] As the Tribunal has stated many times, appeals before the Tribunal are on a *de novo* basis. This means that the Tribunal can accept new evidence and hear new arguments as part of an appeal.²⁰ The appellant is not confined to the facts and arguments that were initially presented to the CBSA. The appellant must nevertheless meet the burden of proof set out in subsection 152(3) of the *Customs Act*, which applies here since tariff classification is a question “relating to” the payment of duties on goods, within the meaning of paragraph 152(3)(c).

[25] To meet its burden in a case such as this one, the appellant is expected to submit evidence that provides a solid factual basis for the Tribunal to find that the record demonstrates that the goods in issue are articles for use in agricultural or horticultural machines of heading No. 84.36. Because Lone Pine is primarily asking the Tribunal to make findings of fact and apply meaning to those findings on the basis of evidence, it is vital that Lone Pine bring a well-founded case before the Tribunal.

[26] In particular, when an appellant asks the Tribunal to find that the host good is a composite machine or functional unit within the meaning of the section notes and explanatory notes to Section XVI, it is asking the Tribunal to make a finding involving the intended use and nature of the component parts of such a machine. In order to gauge whether these characteristics are such that the host good may be classified as a composite machine or functional unit, the Tribunal needs concrete factual evidence, which could take the form of documentation or witness testimony, of the design, marketing, importation, and/or use of those goods.²¹

-
19. Subsection 152(3) of the *Act*; *Costco Wholesale Canada Ltd. v. President of the Canada Border Services Agency* (23 May 2014), AP-2011-033 (CITT) at para. 25; *Canada (Border Services Agency) v. Miner*, 2012 FCA 81 (CanLII) at paras. 7, 21; *Jakks Pacific Inc. v. President of the Canada Border Services Agency* (30 March 2016), AP-2015-012 (CITT) at para. 33; *J. Cheese Inc. v. President of the Canada Border Services Agency* (13 September 2016), AP-2015-011 (CITT) [*J. Cheese*] at para. 63.
 20. *Canadian Tire Corporation, Limited v. President of the Canada Border Services Agency* (12 June 2014), AP-2013-042 (CITT) at para. 23; *Canac Marquis Grenier Ltée v. President of the Canada Border Services Agency* (22 February 2017), AP-2016-005 (CITT) at para. 27.
 21. See e.g. *P.L. Light Systems Canada Inc. v. President of the Canada Border Services Agency* (4 November 2011), AP-2008-012R (CITT) [*P.L. Light Systems*] at paras. 30-34, where industry witnesses provided useful insight into the design, use and sales of the goods in issue that were articles that entered into the cost of manufacture of host

Analytical Framework

[27] Lone Pine is asking that the goods in issue be classified in Chapter 99 of the schedule to the *Customs Tariff*. Goods classified in that chapter enter Canada duty-free if they meet certain conditions set out in that chapter. But before examining whether such conditions are met, goods must first be classified under Chapters 1 to 97 (note 3 to Chapter 99).

[28] In regard to classification under Chapters 1 to 97, the parties agree that the goods in issue are classified under tariff item No. 6305.33.00 as sacks and bags.

[29] This matter therefore centers on whether the goods in issue meet certain conditions of Chapter 99, specifically those of tariff item No. 9903.00.00. To be classified in tariff item No. 9903.00.00 goods must be “articles and materials that enter into the cost of manufacture or repair” or “articles for use in” various prescribed host goods. Specifically, Lone Pine argues that the host goods in which the goods in issue are used are “agricultural or horticultural machines of heading No. 84.36”.

[30] As such, tariff relief under tariff item No. 9903.00.00 requires that the goods in issue be:

- a. articles
- b. for use in
- c. agricultural or horticultural machines of heading No. 84.36.

[31] There is no dispute that the first criterion is met. In regard to the second, the CBSA did not contest that the goods in issue are for use in the host good.²² Therefore, the sole issue in this appeal is whether the host good is an agricultural or horticultural machine of heading No. 84.36.

[32] Resolving this issue is a two-step process.

[33] First, the Tribunal must identify the host good. Lone Pine argues that the host good is a composite machine or functional unit made up of the various machinery comprising its facility. The CBSA argues that the host good is simply the bagger carousel: the goods in issue attach directly to the bagger carousel.

[34] Second, the Tribunal must then determine if the host good is an agricultural or horticultural machine of heading No. 84.36. As stated by the Tribunal in *Contech Holdings Canada*, this analysis requires goods to satisfy very specific criteria as there is nothing in tariff item No. 9903.00.00 which indicates that all things agricultural were intended to be covered.²³

goods, which were found to be functional units constituting agricultural or horticultural machines of heading No.84.36.

22. Exhibit AP-2017-002-16A at paras. 13-15, Vol. 1A.

23. *Contech Holdings Canada Inc. v. President of the Canada Border Services Agency* (17 May 2012), AP-2010-042 (CIIT) at para. 56.

[35] In the analysis that follows, the Tribunal determines that Lone Pine's facility is neither a composite machine nor a functional unit; rather, the host good is the bagger carousel, which is not an agricultural or horticultural machine of heading No. 84.36. On that basis the appeal is denied.

Is the Host good a Composite Machine or a Functional Unit?

The Host Good Is Not a Composite Machine

[36] Lone Pine argues that the host good is a composite machine on the basis of note VI of the explanatory notes to Section XVI, which provides, in relevant part, as follows:

Composite machines consisting of two or more machines or appliances of different kinds, fitted together to form a whole, consecutively or simultaneously performing **separate** functions which are generally complementary and are described in different headings of Section XVI, are also classified according to the principal function of the composite machine.

...

For the purposes of the above provisions, machines of different kinds are taken to be **fitted together to form a whole** when incorporated one in the other or mounted one on the other, or mounted on a common base or frame or in a common housing.

Assemblies of machines should not be taken to be fitted together to form a whole unless the machines are designed to be permanently attached either to each other or to a common base, frame, housing, etc. This **excludes** assemblies which are of a temporary nature or are not normally built as a composite machine.

[37] Lone Pine submits that its entire facility is in fact a composite wood-processing machine composed of various machines fitted together by a series of sealed conveyors, ending with the bagger carousel through which sawdust is packaged into the goods in issue.

[38] The Tribunal finds that Lone Pine has not established that the machines at its facility have been fitted together to form a whole.

[39] Note VI of the explanatory notes to Section XVI provides that machines of different kinds are taken to be fitted together to form a whole when incorporated one in the other or mounted one on the other, or mounted on a common base or frame or in a common housing. The Tribunal is also mindful that composite machines exclude "assemblies which are of a temporary nature or are not normally built as a composite machine." Taken together, the Tribunal interprets these explanatory notes as requiring a high degree of integration, of a nature that is more than temporary, and including at least an element of design intent, before machines of different kinds can be considered a composite machine. In other words, simply because machines may work together does not mean that they have been fitted together or incorporated one in the other to the extent required to be classified as a composite machine.

[40] Lone Pine is essentially arguing that the various machines that make up its facility have been incorporated into a whole (or individually one in the other) because they are connected by conveyor belts. The photographs provided by Lone Pine purport to show connectivity through so-called

“sealed conveyors”.²⁴ The Tribunal finds this evidence to be inconclusive because it did not show Lone Pine’s entire facility and it did not give a clear indication as to how the conveyors and the machines are attached or if they are mounted on a common base. Therefore, the Tribunal is unable to conclude that all of the machines are fitted together to form a whole, as required by the explanatory notes.

[41] Moreover, even if the Tribunal were to accept that all of the various machines are connected by sealed conveyors, Lone Pine has not established that these connections are permanently installed. Nor has it provided any sales or marketing materials or other evidence to establish that these machines are normally built as a composite machine. For example, the hammer mill used in the facility is marketed for the processing of various materials with multiple applications.²⁵ While the Tribunal acknowledges that the hammer mill can be used with wood, there is insufficient evidence suggesting it or any other machinery at Lone Pine’s facility is normally built, marketed or sold with the intention of forming part of a composite wood-processing machine.

[42] Instead, the Tribunal agrees with the CBSA that the facility comprises distinct machines which are used together for manufacturing purposes.

[43] For these reasons the Tribunal finds that Lone Pine has not met the burden of establishing that its wood-processing facility is a composite machine.

The Host Good Is Not a Functional Unit

[44] At the hearing Lone Pine emphasized its view that the host good is a functional unit as described in note VII of the explanatory notes to Section XVI,²⁶ which provides as follows:

This Note applies when a machine (including a combination of machines) consists of separate components which are **intended to contribute together to a clearly defined function** covered by one of the headings in Chapter 84 or, more frequently, Chapter 85. The whole then falls to be classified in the heading appropriate to that function, whether the various components (for convenience or other reasons) remain separate or are interconnected by piping (carrying air, compressed gas, oil, etc.), by devices used to transmit power, by electric cables or by other devices.

[45] Lone Pine submits that the machines of its facility constitute a functional unit, as they are intended to contribute together to a clearly defined function, namely, the production of sawdust.

[46] In response, the CBSA refers to the Tribunal’s decision in *Komatsu International (Canada) Inc.*, where the Tribunal considered the language in note VII of the explanatory notes to Section XVI, which provides that, in functional unit cases, “*the whole then falls to be classified in the heading appropriate to that function*”²⁷ [emphasis in original]. In this regard, the Tribunal found that “[i]n view of the fact that only imported goods are subject to tariff classification . . . classification on a

24. Exhibit AP-2017-12A at paras. 31, 39 and 17-22, Vol. 1; *Transcript of Public Hearing*, 3 May 2018, at 10.

25. Exhibit AP-2017-002-16A at 183-187, Vol. 1A.

26. *Transcript of Public Hearing*, 3 May 2018, at 14-15.

27. *Komatsu International (Canada) Inc. v. President of the Canada Border Services Agency* (10 April 2012), AP-2010-006 (CITT) [*Komatsu*] at para. 78.

‘functional unit’ basis can only occur where the complete unit, that is, all essential components thereof, are imported, although not necessarily in a single consignment or from a single source.”²⁸

[47] In the present case, Lone Pine submitted no evidence that the machines comprising its facility were imported, or that they were marketed and/or sold with the intention to contribute together to a clearly defined function. Based on the Tribunal’s decision in *Komatsu*, such evidence would be necessary to classify the host good according to the principal function of a “functional unit” comprising multiple machines under the terms of Section XVI. Instead, as noted above, there is evidence that at least one of the machines, the hammer mill, is marketed for the processing of various materials with multiple applications, and thus is not strictly intended for wood processing.

[48] The Tribunal therefore finds that Lone Pine has not met the burden of establishing that its wood-processing facility is a “functional unit” according to the terms of the section notes and explanatory notes to Section XVI.

Summary

[49] Lone Pine has not established that the host good is either a composite machine or a functional unit comprising its wood-processing facility. The Tribunal considers the host good to be the bagger carousel to which the goods in issue attach when in use. The parties agree that the bagger carousel on its own is classifiable under tariff item No. 8422.00.00.²⁹ As such, the Tribunal finds that the goods in issue are not for use in agricultural or horticultural machines of heading No. 84.36.

[50] However, as elaborated below, the Tribunal would have reached the same conclusion even if the host good had been considered a composite machine or functional unit.

Heading No. 84.36

The Host Good Is Designed for Industrial Use

[51] The Tribunal finds that the host good (whether considered to be a composite machine, a functional unit, or the bagger carousel) is excluded from classification as an agricultural or horticultural machine of heading No. 84.36 because it is of a kind designed for industrial use.

[52] Heading No. 84.36 covers:

Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders.

[53] The explanatory notes to heading No. 84.36 provide as follows:

The heading covers machinery, **not falling in headings 84.32 to 84.35**, which is of the type used on farms (including agricultural schools, co-operatives or testing stations), in forestry,

28. *Komatsu* at paras. 77-80. See also *Prins Greenhouses Ltd. v. The Deputy Minister of National Revenue* (9 April 2001), AP-99-045 (CITT) [*Prins Greenhouses*] at 6.

29. Exhibit AP-2017-002-12A at paras. 22, 29, Vol. 1; Exhibit AP-2017-002-16A at paras. 34-38, Vol. 1A.

market gardens, or poultry-keeping or bee-keeping farms or the like. However, it **excludes** machines clearly of a kind designed for industrial use.

[54] The CBSA submits that the nature of Lone Pine's operations indicates that the machines it uses are clearly "of a kind designed for industrial use", and therefore that they are excluded from heading No. 84.36 by the terms of the explanatory notes. It relies on dictionary definitions of "industrial" as "of or relating to industry or industries", and of "industry" as "a branch of trade or manufacture" or "any particular branch of productive, esp. manufacturing" enterprise.³⁰ The CBSA submits that treating and processing wood to manufacture sawdust meets the definition of an industrial activity.

[55] On the basis of the evidence submitted, the Tribunal finds that the host good is of a kind designed for industrial use. Lone Pine acknowledges that its facility utilizes multiple machines performing different stages of processing to manufacture sawdust, which it sells for various uses, including as LCM in the oil and gas industry and for agricultural applications, such as ammonia-control absorbent bedding for livestock.³¹ The evidence also establishes that the product specifications and marketing materials of the hammer mill machine, which is used by Lone Pine to grind wood into sawdust, describe it as an industrial machine, referring to it as an "industrial grinder" or "industrial hammer mill".³² In addition, the bagger carousel is designed to be a high-volume automated packaging machine. Printouts from Lone Pine's website show that the bagging carousel is referred to as a "high-capacity volume bagger" incorporated into a packaging system to "produce skids of bagged [LCM] that are uniform and condensed."³³ These are characteristic of machines intended for industrial use.

The Host Good Is Not an Agricultural or Horticultural Machine

[56] As discussed above, the Tribunal finds that the host good (whether considered to be a composite machine, a functional unit or the bagging carousel) is excluded from classification in heading No. 84.36 by virtue of being designed for industrial use. However, even if the host good were not excluded from classification in heading No. 84.36 for that reason, the appeal still fails because the machine is not an agricultural or horticultural machine of that heading.

[57] The Tribunal recalls that the terms of heading No. 84.36 and tariff item No. 9903.00.00 are not co-extensive. Heading No. 84.36 lists multiple types of machinery that are included within the scope of that heading, e.g. machines for agriculture, forestry, bee-keeping, etc., whereas tariff item No. 9903.00.00 refers only to *agricultural and horticultural* machines of heading No. 84.36. Thus, the question that arises when considering tariff item No. 9903.00.00 is whether the host good is an *agricultural or horticultural* machine of heading No. 84.36.

[58] The terms "agricultural" and "horticultural" are not defined in the *Customs Tariff*. Lone Pine asked the Tribunal to interpret these terms by referring to the *Farm Products Marketing Act*³⁴ of

30. *Ibid.* at 170-171.

31. Exhibit AP-2017-12A at 17-22, Vol. 1; Exhibit AP-2017-002-16A at 173, Vol. 1A.

32. *Ibid.* at 183.

33. *Ibid.* at 173.

34. R.S.O. 1990, c. F.9, s. 1.

Ontario and the federal *Agricultural Products Marketing Act*;³⁵ those statutes consider wood as either a “farm” or “agricultural” product.³⁶

[59] The Tribunal was not convinced by that argument. The subject matter of those statutes concern areas wholly unrelated to classification under the *Customs Tariff*.³⁷ A similar attempt was rejected by the Tribunal in *J. Cheese*:

73. The [Dairy Farmers of Canada] argued, and the Tribunal agrees, that an approach by which domestic regulations govern tariff classification is inconsistent with the international nature of the harmonized nature of the tariff regime. Rather, the Tribunal should strive to arrive at a classification that is compatible with the international nature of the harmonized system. Accordingly, in the absence of an express or implied term within the *Customs Tariff* directing the Tribunal to set aside the explanatory notes and to apply the domestic regulations, the Tribunal is required to proceed with the classification exercise in the usual manner, relying on the guidance provided in the explanatory notes. While the Tribunal may consider the domestic regulations as informing its tariff classification exercise to the extent that they are relevant and helpful, in particular to understand technical or industry usage, they are not determinative, and they do not displace other potential sources of guidance. Were it otherwise, countries could easily thwart the international and standardized nature of the tariff through the adoption of domestic compositional standards.³⁸

[60] In the present case, the explanatory notes to heading No. 84.36 provide the necessary guidance as to what constitutes an agricultural or horticultural machine of that heading.

[61] Considered together, the terms of the heading and the explanatory notes indicate that agricultural or horticultural machinery of heading No. 84.36 is machinery of the type used on farms (including agricultural schools, co-operatives or testing stations), in market gardens or the like and,

35. R.S.C. 1985, c. A-6, s. 1.1.

36. In its additional materials, Lone Pine also submitted excerpts from the federal *Agricultural Products Act* and provincial *Farming and Food Production Protection Act*. Although mentioned at the hearing, Lone Pine made no substantive written or oral submissions with regard to these statutes. See Exhibit AP-2017-002-20A at 17-24, Vol. 1B; *Transcript of Public Hearing*, 3 May 2018, at 32.

37. The Tribunal notes that the legislation cited by Lone Pine defines agricultural products extremely broadly; for example, fish are considered a farm product pursuant to section 1 of the Ontario *Farm Products Marketing Act*. Section 2 of the Ontario *Farm Products Marketing Act* states the purpose of that Act as “to provide for the control and regulation in any or all aspects of the producing and marketing within Ontario of farm products including the prohibition of such producing or marketing in whole or in part.” The preamble to the federal *Agricultural Products Marketing Act* lists such objectives as: improving the methods and practices of marketing agricultural products in Canada; cooperating with existing provincial legislation respecting the marketing of agricultural products in interprovincial and export trade; and facilitating such marketing “by authorizing the imposition of levies or charges for the equalization or adjustment among producers of the moneys realized from the marketing of the products.”

38. In *Holland Hitch of Canada Limited*, the Tribunal addressed the presumption that statutes enacted by the same government should be interpreted harmoniously, especially when they are closely related. It concluded that “[t]he key is that the statutes must relate to the same subject matter, since it can be hazardous to shift from one statute to another without accounting for contextual differences that may change the meaning of a particular word that appears in both laws.” See *Holland Hitch of Canada Limited* (18 January 2013), AP-2012-004 (CITT) at paras. 56-57.

as discussed above, exclude machines of a kind designed for industrial use.³⁹ Of these, the parties only submitted evidence and arguments as to whether the host good is of the type used on farms.

[62] At the hearing, Lone Pine asserted that its facility was situated on a farm.⁴⁰ However, when challenged on this point by the CBSA, Lone Pine admitted that it had no evidence to support its assertion.⁴¹ Lone Pine provided no other evidence that the host good is of a kind used on farms and made no submissions as to whether the host good is used in agricultural schools, co-operatives, testing stations, or market gardens.

[63] The parties agree that Lone Pine's wood-processing machines fall within the forestry sector.⁴² Lone Pine argued that there should be no distinction between forestry and agriculture as those terms are used in heading No. 84.36, and for the purpose of satisfying the claimed provision of tariff item No. 9903.00.00.⁴³

[64] The CBSA argued that there is a distinction between agriculture and forestry. To illustrate this the CBSA submitted dictionary definitions of "agriculture" as "[t]he science, art, or practice of cultivating soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products: farming"⁴⁴ and as "the cultivation of plants and animals to produce various products for human consumption";⁴⁵ of "horticulture" as "the science and art of growing fruits, vegetables, flowers, or ornamental plants";⁴⁶ of "forestry" as "the science or management of forests"; and of the French term "sylviculture" as "exploitation rationnelle des arbres forestiers...".⁴⁷ The Tribunal notes the emphasis on cultivation and production in both definitions of "agriculture" outlined above. This can be contrasted with the "management" and "exploitation" of forests in the definitions of forestry and "sylviculture", respectively.

[65] The Tribunal therefore finds that the ordinary meanings of "agriculture", "horticulture" and "forestry" refer to distinct practices: they are not synonymous. The Tribunal therefore does not accept Lone Pine's argument that forestry should be subsumed under agriculture, or that forestry machines should be considered agricultural machines, absent some clear indication that Parliament intended such a reading of tariff item No. 9903.00.00.

[66] Finally, Lone Pine argued that the host good is agricultural machinery because it produces sawdust, which, among other uses, is used in agriculture and horticulture as a fertilizer and artificial herbicide or as ammonia-control absorbent bedding for livestock.⁴⁸ The Tribunal is not persuaded by this argument. While sawdust may be used in certain agricultural or horticultural applications, this does not mean that wood-processing facilities or bagging carousels are agricultural or horticultural

39. The Tribunal has also previously determined that some integrated greenhouse systems are agricultural or horticultural machines of heading No. 84.36: *Grodan Inc. v. President of the Canada Border Services Agency* (7 June 2012), AP-2011-030 (CITT) at para. 42; *P.L. Light Systems* at paras. 15-17; *Prins Greenhouses* at 6, 8.

40. *Transcript of Public Hearing*, 3 May 2018, at 41.

41. *Ibid.* at 43-44.

42. *Ibid.* at 23; Exhibit AP-2017-002-16A at para. 29, Vol. 1A.

43. *Transcript of Public Hearing*, 3 May 2018, at 18-21.

44. Exhibit AP-2017-002-16A at 62, Vol. 1A.

45. *Ibid.* at 64.

46. *Ibid.* at 63.

47. *Ibid.* at 66, 68.

48. *Transcript of Public Hearing*, 3 May 2018, at 25-31, 53.

machines. The explanatory notes make clear that heading No. 84.36 is limited to non-industrial machinery of a type used directly in agriculture or horticulture, i.e. “on farms”, in “market gardens”, etc.; it does not apply to any machine with a tangential connection to agriculture or horticulture.

Conclusion

[67] On the basis of the foregoing, the Tribunal concludes that the host good is not an agricultural or horticultural machine of heading No. 84.36.

[68] First, the host good is not a composite machine or functional unit,⁴⁹ but is in fact the bagger carousel, which is to be classified individually.⁵⁰ Whether classified individually or collectively, however, the host good is excluded from heading No. 84.36 because it is of a kind designed for industrial use.

[69] Second, even if the host good were not of a kind designed for industrial use, it is not an agricultural or horticultural machine of heading No. 84.36 and, therefore, would not satisfy the requirements for classification in tariff item No. 9903.00.00.

[70] As Lone Pine has not met its burden of proving the host good to be an agricultural or horticultural machine of heading No. 84.36, the goods in issue do not qualify for conditional tariff relief under the claimed provision of tariff item No. 9903.00.00.

DECISION

[71] The appeal is dismissed.

Rose Ritcey

Rose Ritcey
Presiding Member

49. The Tribunal sees no need to determine an alternative classification of the wood-processing facility were the Tribunal to consider it a composite machine or a functional unit. However, the Tribunal notes that, at the hearing, the parties agreed that it would properly be classified as a composite machine or functional unit of heading No. 84.79 if it could not be classified as such under heading No. 84.36. *Transcript of Public Hearing*, 3 May 2018, at 63-66, 72.

50. The parties agree that when considered individually, the bagger carousel is classifiable in heading No. 84.22. Exhibit AP-2017-002-12A at para. 29, Vol. 1; Exhibit AP-2017-00216A at para. 35, Vol. 1A; *Transcript of Public Hearing*, 3 May 2018, at 14, 45, 50, 57.

**APPENDIX: TARIFF NOMENCLATURE AND SECTION, CHAPTER AND
EXPLANATORY NOTES**

Relevant Tariff Nomenclature

The relevant tariff nomenclature for subheading 6305.33.00 in the 2011, 2014 and 2015 *Customs Tariff* provides as follows:

Section XI

TEXTILES AND TEXTILE ARTICLES

Chapter 63

**OTHER MADE UP TEXTILE ARTICLES; SETS; WORN CLOTHING AND WORN
TEXTILE ARTICLES; RAGS**

63.05 Sacks and bags, of a kind used for the packing of goods.

6305.33.00 - -Other, of polyethylene or polypropylene strip or the like

The relevant tariff nomenclature for heading No. 84.36 in the 2011 *Customs Tariff* provides as follows:

Section XVI

**MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT;
PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION
IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND
ACCESSORIES OF SUCH ARTICLES**

Chapter 84

**NUCLEAR REACTORS, BOILERS, MACHINERY AND MECHANICAL
APPLIANCES; PARTS THEREOF**

**84.36 Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping
machinery, including germination plant fitted with mechanical or thermal equipment;
poultry incubators and brooders.**

8436.80 -Other machinery

8436.80.10 - - -Agricultural or horticultural type

- - -Other:

The relevant tariff nomenclature for heading No. 84.36 in the 2014 and 2015 *Customs Tariff* provides as follows:

Section XVI

**MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT;
PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION
IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND
ACCESSORIES OF SUCH ARTICLES**

Chapter 84

**NUCLEAR REACTORS, BOILERS, MACHINERY AND MECHANICAL
APPLIANCES; PARTS THEREOF**

**84.36 Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping
machinery, including germination plant fitted with mechanical or thermal equipment;
poultry incubators and brooders.**

8436.80.00 -Other machinery

The relevant tariff nomenclature for tariff item No. 9903.00.00 in the 2011, 2014 and 2015 *Customs Tariff* provides as follows:

Section XXI

WORKS OF ART, COLLECTORS' PIECES AND ANTIQUES

Chapter 99

SPECIAL CLASSIFICATION PROVISIONS – COMMERCIAL

**9903.00.00 Articles and materials that enter into the cost of manufacture or repair
of the following. And articles for use in the following:**

Agricultural or horticultural machines of heading 84.36;

Relevant Section, Chapter and Explanatory Notes

The relevant section notes to Section XVI provide as follows:

3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.
4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.

The relevant explanatory notes to Section XVI provide as follows:

Section XVI

MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT; PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES

(VI) MULTI-FUNCTION MACHINES AND COMPOSITE MACHINES

(Section Note 3)

In general, multi-function machines are classified according to the principal function of the machine.

...

Composite machines consisting of two or more machines or appliances of different kinds, fitted together to form a whole, consecutively or simultaneously performing **separate** functions which are generally complementary and are described in different headings of Section XVI, are also classified according to the principal function of the composite machine.

...

For the purposes of the above provisions, machines of different kinds are taken to be **fitted together to form a whole** when incorporated one in the other or mounted one on the other, or mounted on a common base or frame or in a common housing.

Assemblies of machines should not be taken to be fitted together to form a whole unless the machines are designed to be permanently attached either to each other or to a common base, frame, housing, etc. This **excludes** assemblies which are of a temporary nature or are not normally built as a composite machine.

...

(VII) FUNCTIONAL UNITS

(Section Note 4)

This Note applies when a machine (including a combination of machines) consists of separate components which are **intended to contribute together to a clearly defined function** covered by one of the headings in Chapter 84 or, more frequently, Chapter 85. The whole then falls to be classified in the heading appropriate to that function, whether the various components (for convenience or other reasons) remain separate or are interconnected by piping (carrying air, compressed gas, oil, etc.), by devices used to transmit power, by electric cables or by other devices.

...

The following are examples of functional units of this type within the meaning of Note 4 to this Section:

(1) ...

(7) Asphalt plant consisting of separate components, such as feed hoppers, conveyors, dryers, vibrating screens, mixers, storage bins and control units, placed side by side (heading 84.74).

(8) . . .

The relevant explanatory notes to heading No. 84.36 provide as follows:

The heading covers machinery, **not falling in headings 84.32 to 84.35**, which is of the type used on farms (including agricultural schools, co-operatives or testing stations), in forestry, market gardens, or poultry-keeping or bee-keeping farms or the like. However, it **excludes** machines clearly of a kind designed for industrial use.

**(I) OTHER AGRICULTURAL, HORTICULTURAL OR FORESTRY MACHINERY;
GERMINATION PLANT**

These include:

(A) . . .

(H) **Forestry Machines**, such as:

(1) **Tree uprooters**, equipped with jaws which grip the trunk and uproot it by the action of hydraulic jacks.

(2) **Tree-felling machines** with hydraulic shears or saws, whether or not equipped with delimiting and bucking devices or with grapples for handling and piling the trunks, and tree-fellers designed for mounting on tractors, operating by means of a plough which cuts the roots and a telescoping boom which amplifies the tractor power

(3) **Tree transplanters**, equipped with root-balling blades and capable, if necessary, of transporting the trees over short distances.

(4) **Stump removers** which break up stumps to a certain depth below the surface by means of knived discs.

(5) **Machines for chipping branches, twigs, etc.**, following pruning, delimiting, etc., using chipping blades. The chips are discharged by a blower unit.

The relevant explanatory notes to heading No. 84.79 provide as follows:

This heading is **restricted to** machinery having individual functions, which:

(a) Is not excluded from this Chapter by the operation of any Section or Chapter Note.

and (b) Is not covered more specifically by a heading in any other Chapter of the Nomenclature.

and (c) Cannot be classified in any other particular heading of this Chapter since:

(i) No other heading covers it by reference to its method of functioning, description or type.

and (ii) No other heading covers it by reference to its use or to the industry in which it is employed.

or (iii) It could fall equally well into two (or more) other such headings (general purpose machines).

...

(II) MACHINERY FOR CERTAIN INDUSTRIES

This group includes:

(A) . . .

(C) **Machinery for treating wood or similar materials**, e.g.:

(1) Barking drums in which logs are stripped of their bark by scraping against each other.

(2) Special presses for agglomerating wood fibre, wood chips, sawdust or cork dust.

(3) Wood hardening presses.

(4) Machines for impregnating wood under pressure.

The relevant notes to Chapter 99 provide as follows:

3. Goods may be classified under a tariff item in this Chapter and be entitled to the Most-Favoured-Nation Tariff or a preferential tariff rate of customs duty under this Chapter that applies to those goods according to the tariff treatment applicable to their country of origin only after classification under a tariff item in Chapters 1 to 97 has been determined and the conditions of any Chapter 99 provision and any applicable regulations or orders in relation thereto have been met.