



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

Ottawa, Thursday, February 12, 2004

**Appeal No. AP-2003-007**

IN THE MATTER OF an appeal heard on October 16, 2003,  
under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Commissioner of  
the Canada Customs and Revenue Agency dated February 18 and  
April 4, 2003, with respect to a request for re-determination under  
section 60 of the *Customs Act*.

**BETWEEN**

**BLACK & DECKER CANADA INC.**

**Appellant**

**AND**

**THE COMMISSIONER OF THE CANADA CUSTOMS AND  
REVENUE AGENCY**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

Zdenek Kvarda  
Zdenek Kvarda  
Presiding Member

Michel P. Granger  
Michel P. Granger  
Secretary

333 Laurier Avenue West  
Ottawa, Ontario K1A 0G7  
Tel.: (613) 990-2452  
Fax.: (613) 990-2439  
www.citt-tcce.gc.ca

333, avenue Laurier ouest  
Ottawa (Ontario) K1A 0G7  
Tél. : (613) 990-2452  
Fax. : (613) 990-2439  
www.tcce-citt.gc.ca



## UNOFFICIAL SUMMARY

Appeal No. AP-2003-007

**BLACK & DECKER CANADA INC.**

**Appellant**

**AND**

**THE COMMISSIONER OF THE CANADA CUSTOMS AND  
REVENUE AGENCY**

**Respondent**

This is an appeal pursuant to section 67 of the *Customs Act* from decisions of the Commissioner of the Canada Customs and Revenue Agency dated February 18 and April 4, 2003, regarding the classification of grass catchers that attach to Lawn Hog 19-inch mulching mowers, rear-bagging lawn mowers sold by Black & Decker Canada Inc. The issue in this appeal is whether the goods in issue are properly classified in heading No. 59.11 as textile products and articles, for technical uses, as determined by the Commissioner of the Canada Customs and Revenue Agency, or should be classified under tariff item No. 8433.90.00 as parts of lawn mowers, as claimed by Black & Decker Canada Inc.

**HELD:** Appeal is allowed. The grass catcher forms a complete unit with the lawn mower; it has no alternative function; it is marketed and shipped with the lawn mower; it is necessary for the safe and prudent use of the lawn mower; and it is committed to be used with the lawn mower. Therefore, the Tribunal is satisfied that the goods in issue are parts of lawn mowers and, since lawn mowers are classified in heading No. 84.33, the grass catchers are classified under tariff item No. 8433.90.00. The grass catchers are not textile products and articles, for technical uses, since the grass catchers consist of not only a textile bag but also a metal frame, fittings and a plastic weight-bearing component, which are not contemplated by heading No. 59.11.

Place of Hearing: Ottawa, Ontario  
Date of Hearing: October 16, 2003  
Date of Decision: February 12, 2004

Tribunal Member: Zdenek Kvarda, Presiding Member

Counsel for the Tribunal: John Dodsworth

Clerk of the Tribunal: Margaret Fisher

Appearances: Michael A. Sherbo, for the appellant  
Lynn Marchildon, for the respondent



**Appeal No. AP-2003-007**

**BLACK & DECKER CANADA INC.**

**Appellant**

**AND**

**THE COMMISSIONER OF THE CANADA CUSTOMS AND  
REVENUE AGENCY**

**Respondent**

TRIBUNAL: ZDENEK KVARDA, Presiding Member

**REASONS FOR DECISION**

**INTRODUCTION**

This is an appeal pursuant to section 67 of the *Customs Act*<sup>1</sup> from decisions of the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) dated February 18 and April 4, 2003, regarding the classification of grass catchers that attach to Lawn Hog 19-inch mulching mowers, rear-bagging lawn mowers sold by Black & Decker Canada Inc. (Black & Decker). The issue in this appeal is whether the goods in issue are properly classified in heading No. 59.11 of the schedule to the *Customs Tariff*<sup>2</sup> as textile products and articles, for technical uses, as determined by the Commissioner, or should be classified under tariff item No. 8433.90.00 as parts of lawn mowers, as claimed by Black & Decker.

The tariff nomenclature relevant to this appeal is as follows:

59.11 Textile products and articles, for technical uses, specified in Note 7 to this Chapter.

5911.90 -Other

5911.90.90 ---Other

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 84.37.

[8433.10.00] -Mowers for lawns, parks or sports-grounds:

8433.90.00 -Parts

**EVIDENCE**

Mr. Murray Hunter, Senior Design Engineer, Black & Decker Canada Inc., testified on behalf of Black & Decker. At the hearing, Mr. Hunter was qualified as an expert witness in the design, manufacture and function of Black & Decker lawn mowers.

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

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

Mr. Hunter testified that the goods in issue are grass catchers that attach to Lawn Hog 19-inch mulching mowers, rear-bagging lawn mowers sold by Black & Decker. The grass catchers consist of a bag and metal frame and come with metal fittings designed for the installation on the mowers. The bags are made of a textile material, a woven nylon weave, together with a solid plastic sheet that provides support to carry the weight of the grass. The goods in issue are shipped with the lawn mowers for which they are designed.

Mr. Hunter described rear-bagging mowers as those for which the discharge chutes are at the rear, such that the cuttings are discharged directly back towards the operator. In addition to catching the cuttings, the grass catchers serve to protect the lawn mower operator from debris that is discharged. Mr. Hunter further testified that it is not safe to operate the lawn mowers without either the grass catchers or the mulch inserts. The grass catchers must, therefore, meet special structural integrity requirements.

The lawn mowers with which the goods in issue are used have both cutting and mulching functions. The grass catchers are used only when the lawn mowers are in the cutting mode. In order to operate the lawn mowers in the mulching mode, an insert must be placed in the rear-discharge opening, which prevents the grass from coming out the back. Mr. Hunter testified that the lawn mowers can also be operated with side discharge chutes, but that they must be purchased separately.

## ARGUMENT

Black & Decker argued that lawn mowers are classified in heading No. 84.33 and that the grass catchers are, therefore, classified under tariff item No. 8433.90.00 as parts of lawn mowers. Black & Decker submitted that the grass catchers satisfy the criteria for parts that are described in Memorandum D10-0-1.<sup>3</sup> Specifically, Black & Decker argued that the grass catchers form a complete unit with the mowers; have no alternative function; are marketed and shipped as a unit; are necessary for the safe and prudent use of the unit; and are committed to the use of the unit.

Black & Decker submitted that Tribunal jurisprudence<sup>4</sup> supports its position. In *Outboard Marine*, grass catchers were found to be parts of lawn mowers. Black & Decker argued that the facts in the Federal Court of Appeal decision in *Deputy M.N.R. v. Androck Inc.*,<sup>5</sup> in which the grass catchers at issue were found to be accessories, and the facts in the present case are different.

Black & Decker argued that there is no jurisprudence to support the Commissioner's argument that the grass catchers cannot be parts, since they are only used when the lawn mowers are in the cutting mode and not in the mulching mode.

Further, Black & Decker submitted that the Commissioner's proposed classification of the grass catchers in heading No. 59.11 as textile products and articles, for technical uses, is incorrect. It argued that the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>6</sup> to that heading make it clear that only textiles or textiles together with accessories made of "material" are contemplated. In contrast, the grass catchers in issue consist not only of textile material but include a metal frame and fittings.

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3. Department of National Revenue, D Memorandum, "Classification of Parts and Accessories in the *Customs Tariff*" (24 January 1994).

4. See *Outboard Marine Corporation of Canada Ltd. v. Deputy M.N.R.C.E.* (1981) 7 T.B.R. 423 [*Outboard Marine*].

5. (28 January 1987), 13 C.E.R. 239 [*Androck*].

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

Black & Decker also referred to three Tribunal decisions<sup>7</sup> in which air filters, together with a metal frame, were classified as parts and not as textiles for technical uses in heading No. 59.11.

The Commissioner argued that the grass catchers are textiles for technical uses and are properly classified in heading No. 59.11. The Commissioner referred to the *Explanatory Notes* to heading No. 59.11, which state that the heading includes a textile product used with a type of machinery. Further, the Commissioner notes that the *Explanatory Notes* specifically refer to bags for vacuum cleaners as being described by the heading and argues that bags for vacuum cleaners serve a function that is similar to that of grass catchers.

With respect to the classification of the grass catchers proposed by Black & Decker, the Commissioner referred to the Note 1(e) to Section XVI of the *Customs Tariff*, which states that the section does not cover textile material for technical uses. Therefore, since the grass catchers are of textile material for technical uses, the Commissioner argued that they cannot be parts of lawn mowers classified under tariff item No. 8433.90.00.

Regarding Black & Decker's reference, in support of its position that the grass catchers are parts, to the fact that they are sold with the lawn mowers, the Commissioner pointed out that this appeal deals with the importation of grass catchers by themselves, not the grass catchers together with the lawn mowers. While it may be true that, in Canada, the grass catchers are packaged and sold with the lawn mowers, the Commissioner submitted that the Tribunal must determine the classification of the grass catchers at the time of importation.

The Commissioner argued that the grass catchers are accessories, not parts, and that, since tariff item No. 8433.90.00 does not refer to accessories, the grass catchers are not classifiable under that tariff item. According to the Commissioner, an accessory is an article that performs a secondary or subordinate role not essential to the function, but that could improve the effectiveness of the host machine. The Commissioner referred to the Federal Court of Appeal decision in *Deputy M.N.R.C.E. v. Dannyco Trading Ltd.*<sup>8</sup> as standing for the proposition that, even if an item is shipped with the product with which it is to be used, it is an accessory if it is not essential to the function of that product.

The Commissioner argued that the grass catchers are not essential to the function of the lawn mowers, since they are not used when the lawn mowers are in the mulching mode or when the side discharge inserts are used. Further, the Commissioner noted that the lawn mowers are packaged with the mulching inserts, such that they are fully operational without the grass catchers. The main function of the lawn mowers is to cut grass. The bagging of grass is an extra function, not integral or necessary to the function of cutting grass.

## 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*

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7. *Bionaire Inc. v. Deputy M.N.R.* (29 June 1993), AP-92-110 (CITT); *Snydergeneral Canada Inc. v. Deputy M.N.R.* (19 September 1994), AP-92-091 (CITT); *Procedair Industries Inc. v. Deputy M.N.R.C.E.* (22 July 1993), AP-92-152 (CITT).

8. (28 April 1997), T-2084-94 (F.C.T.D.) [*Dannyco*].

*System*<sup>9</sup> and the *Canadian Rules*.<sup>10</sup> The *General Rules* are structured in a 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 following provisions.

According to section 11 of the *Customs Tariff*, in interpreting the headings and subheadings of the schedule, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*<sup>11</sup> and the *Explanatory Notes*.

The goods in issue are grass catchers, which consist of a textile bag, a metal frame and fittings, and a plastic weight-bearing component. Black & Decker claims that they should be classified under tariff item No. 8433.90.00. The Commissioner's position is that the goods in issue are properly classified under tariff item No. 5911.90.90. In the Tribunal's opinion, the grass catchers should be classified under tariff item No. 8433.90.00 as parts of lawn mowers and not in heading No. 59.11 as textile products and articles, for technical uses.

There was no dispute that lawn mowers are classified in heading No. 84.33, and the Tribunal is of the view that the grass catchers satisfy the criteria for parts.<sup>12</sup> The Tribunal is of the view that the grass catchers are integrated for use with a specific model of lawn mower sold by Black & Decker. While the grass catchers are not manufactured by Black & Decker, they are imported, marketed and sold by Black & Decker in Canada as a complete unit with the lawn mowers. The evidence indicates that the grass catchers are specifically designed to attach to the lawn mowers and that they form complete units with the mowers.

Further, the Tribunal finds that the grass catchers are necessary to the operation of the lawn mowers. The Tribunal accepts Mr. Hunter's testimony that, when operating the lawn mowers in the rear discharge function, the grass catchers serve to protect the lawn mower operator from debris that is discharged from the mowers. This testimony is supported by the instruction manual that comes with the lawn mowers, which warns the operator not to use the mowers while cutting (that is, not mulching) without the grass catchers. Also, in the event that the lawn mowers are operated in the mulching mode, an insert must be placed in the rear discharge chute to protect the operator from flying debris.

The Tribunal does not accept the Commissioner's position that, since the grass catchers are not used when the lawn mowers are in the mulching mode or with the inserts, they cannot qualify as parts. The fact that the lawn mowers can be operated in either the mulching mode or cutting mode does not make the grass catchers optional. What is key is that when the lawn mowers are operated in the cutting mode, the grass catchers are necessary to their safe operation. Further, and unlike the side discharge chute, the grass catchers are sold and shipped with the lawn mowers.

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

10. *Supra* note 2, schedule.

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

12. See *Dannyco*.

The Tribunal is of the view that the decision in *Androck*, in which the grass catchers at issue were found to be accessories, does not apply to the present circumstances. Significantly, the grass catchers at issue in *Androck* fit onto side-discharging lawn mowers, as opposed to rear-discharging lawn mowers in the present circumstances, and were not shipped with the lawn mowers as are the grass catchers in issue.

The Tribunal does not accept that the grass catchers are described by heading No. 59.11 as textile products and articles, for technical uses, as argued by the Commissioner. The Tribunal accepts Black & Decker's position that the heading does not include the grass catchers in issue, which consist not only of textile material, but includes a metal frame and fittings, and a plastic load-bearing component. The *Explanatory Notes* to that heading make it clear that only textiles, or textiles together with accessories made of material, are contemplated.<sup>13</sup>

Therefore, the appeal is allowed.

Zdenek Kvarda  
Zdenek Kvarda  
Presiding Member

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13. The *Explanatory Notes* to heading No. 59.11 included the following: "The textile articles of this heading may incorporate accessories in other material **provided** the articles remain essentially articles of textile."