CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, July 14, 1994

Appeal No. AP-93-128

IN THE MATTER OF an appeal heard on January 7, 1994, under section 67 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue dated May 28, 1993, with respect to a request for re-determination under section 63 of the *Customs Act*.

BETWEEN

HOOVER CANADA, A DIVISION OF MH CANADIAN HOLDINGS LIMITED **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

AND

DUSTBANE PRODUCTS LIMITED **Intervener**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-93-128

HOOVER CANADA, A DIVISION OF MH CANADIAN HOLDINGS LIMITED **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

and

DUSTBANE PRODUCTS LIMITED **Intervener**

The issue in this appeal is whether the "Powermatic" power nozzle assemblies imported by the appellant are properly classified under tariff item No. 8509.90.10 as parts "[o]f the vacuum cleaners of tariff item No. 8509.10.00," as determined by the respondent, or should be classified under tariff item No. 8509.80.00 as other "[e]lectro-mechanical domestic appliances, with self-contained electric motor," as claimed by the appellant.

***HELD:** The appeal is dismissed. There is no one universally applicable test to determine what constitutes a part. Each case must be determined on its merits. In this case, the evidence is that the power nozzles in issue are specifically designed for Hoover vacuum cleaners. In fact, even though it has its own self-contained motor, a power nozzle cannot perform its function unless connected to a vacuum cleaner. Moreover, although a vacuum cleaner can be used independently of a power nozzle, the function of the latter, which is to remove dirt, lint, hair, etc., from a carpet, enhances the cleaning function of a vacuum cleaner. In that sense, and since manufactured by or for the same company, the power nozzles are necessary for the functioning of the vacuum cleaners. In addition, the appellant's witness mentioned that a power nozzle would have to be ordered through Hoover's parts department.*

Place of Hearing:	*Ottawa, Ontario*
Date of Hearing:	*January 7, 1994*
Date of Decision:	*July 14, 1994*
Tribunal Members:	*Robert C. Coates, Q.C., Presiding Member* *W. Roy Hines, Member* *Charles A. Gracey, Member*
Counsel for the Tribunal:	*Gilles B. Legault*
Clerk of the Tribunal:	*Janet Rumball*
Appearances:	*Douglas J. Bowering, for the appellant* *Frederick B. Woyiwada, for the respondent* *Earl F. Burnett, for the intervener*

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-93-128

HOOVER CANADA, A DIVISION OF MH CANADIAN HOLDINGS LIMITED **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

and

DUSTBANE PRODUCTS LIMITED **Intervener**

TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member
W. ROY HINES, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*[1] from decisions of the Deputy Minister of National Revenue.[2] The issue in this appeal is whether the "Powermatic" power nozzle assemblies imported by the appellant are properly classified under tariff item No. 8509.90.10 of Schedule I to the *Customs Tariff*[3] as parts "[o]f the vacuum cleaners of tariff item No. 8509.10.00," as determined by the respondent, or should be classified under tariff item No. 8509.80.00 as other "[e]lectro-mechanical domestic appliances, with self-contained electric motor," as claimed by the appellant.

The goods in issue consist of a housing that contains an agitator equipped with a brush. The agitator is rotated through a shaft that is driven by a self-contained motor. The power nozzle is connected to the vacuum cleaner through an extension wand or a hose. The power nozzle also has a short connecting cord with a distinctive small two-pronged plug that must be connected to the electric cord of the hose or extension wand. It can be used with an ordinary vacuum, a central vacuum or a canister-type vacuum.

At the hearing, the appellant's representative called a witness, Mr. B.G. (Barry) Proulx, Eastern Provincial Manager for Hoover Canada, a Division of MH Canadian Holdings Limited. Mr. Proulx testified that the power nozzle is sold either as a component of a vacuum system or as an accessory. He added that there are a number of other tools that can be attached to the end of the vacuum hose, but that the power nozzle is the only attachment having a self-contained electric motor. Mr. Proulx indicated that an adaptor would be required for the "Powermatic" power nozzle to fit a vacuum system other than a Hoover. During cross-examination, Mr. Proulx admitted that the primary purpose of the power nozzle is to remove dirt, lint, hair, etc., from a carpet, a function that it cannot perform unless it is hooked up to a vacuum cleaner. Mr. Earl F. Burnett was called as a witness for Dustbane Products Limited, an intervener supporting the appellant in this case. Although, Dustbane Products Limited imports power nozzles that are very similar to the goods in issue, the Tribunal notes

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. See *An Act to amend the Department of National Revenue Act and to amend certain other Acts in consequence thereof*, S.C. 1994, c. 13, s. 7.
3. R.S.C. 1985, c. 41 (3rd Supp.).

that they are designed for industrial use and that heading No. 85.09 is limited to electro-mechanical domestic appliances.

After having considered the evidence and heard the arguments of both parties, the Tribunal is of the view that the appeal should be dismissed. In the Tribunal's view, the crux of this appeal is to determine the subheading of heading No. 85.09 under which the goods in issue fall and, more particularly, whether they are parts of vacuum cleaners as determined by the respondent. The Tribunal notes that, in accordance with section 11 of the *Customs Tariff*, in interpreting the headings and subheadings, regard shall be had to the Explanatory Notes to the Harmonized Commodity Description and Coding System[4] (the Explanatory Notes).

The Explanatory Notes to heading No. 85.09 indicate that parts of appliances covered by the heading are classified therein subject to the general provisions regarding the classification of parts in Section XVI of Schedule I to the *Customs Tariff*. Note 2 (b) to Section XVI provides that parts not encompassed by Note 2 (a), i.e. that are not listed in any heading of Chapter 84 or 85 and that are suitable for use solely or principally with a particular kind of machine or appliance,[5] are to be classified in the heading relevant to that appliance. The Tribunal considers that the criterion set forth in Note 2 (b) only applies if the article is a part in the first place; some accessories, for instance, may be suitable for use solely or principally with a product and still not be a part of that product. In fact, the word "part" is not defined in the Explanatory Notes. The Tribunal notes that, under the former *Customs Tariff*,[6] which also did not define the word "part," the Tariff Board adopted a commitment test to determine what constitutes a part. In *Robert Bosch (Canada) Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*,[7] this test was described as follows:

> *The true test of whether an article can properly be considered to be a part of goods when parts thereof are mentioned in the tariff item depends on whether it is committed for use with such goods. Whether it is so committed for use with the goods will depend in each case upon the scope of the description of the goods. An article that can be used with goods other than those described is regarded as not so committed and one that has no use other than with such goods and is necessary for their function is committed for use with them.*[8]
>
> (Emphasis added)

In *The Deputy Minister of National Revenue for Customs and Excise v. Androck Inc.*,[9] the Federal Court of Appeal distinguished between a part and an accessory in the following terms:

> *while we think it both unnecessary and undesirable to define the word "parts" in such a way that it might apply in any factual context, we are of the opinion that the goods in issue, to be classified as parts, must be related to the entity with which they will be used to form a necessary and integral part thereof and not simply as an optional accessory, as here.*[10]
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> (Emphasis added)

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4. Customs Co-operation Council, 1st ed., Brussels, 1986.
5. According to Note 5 to Section XVI of Schedule I to the *Customs Tariff*, the expression "machine" includes, *inter alia*, any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.
6. R.S.C. 1985, c. C-54.
7. (1985), 10 T.B.R. 110.
8. *Ibid*. at 110.
9. (1987), 13 C.E.R. 239, Federal Court of Appeal, File No. A-1491-84, January 28, 1987.
10. *Ibid*. at 242.

In *York Barbell Company Limited v. The Deputy Minister of National Revenue for Customs and Excise*,[11] an appeal dealing with the new tariff nomenclature, the Tribunal had the occasion to review and apply the *Androck* case. The Tribunal attached "considerable weight to the view that there is no one universally applicable test [to determine what constitutes a part and what constitutes an accessory] and that each case must be determined on its merits.[12]" The Tribunal was of the view that the criteria established in earlier cases for goods to be considered parts, i.e. that they must be essential to the operation of the other goods, be necessary and integral components of the other goods and be installed on the other goods in the course of the manufacture, are "not mutually exclusive nor must all of these tests be met in each case.[13]" The Tribunal added that common trade usage and practice are relevant to any determination of this kind.

In this case, the evidence is that the power nozzles in issue are specifically designed for Hoover vacuum cleaners. In fact, even though a power nozzle has its own self-contained motor, it cannot perform its function unless connected to the vacuum cleaner. Moreover, although a vacuum cleaner can be used independently of a power nozzle, the function of the latter, which is to remove dirt, lint, hair, etc., from a carpet, enhances the cleaning function of a vacuum cleaner. In that sense, and since manufactured by or for the same company, the power nozzles are necessary for the functioning of the vacuum cleaners. In addition, the appellant's witness mentioned that a power nozzle would have to be ordered through Hoover's parts department. In the Tribunal's view, the foregoing indicates that the goods in issue are properly classified under tariff item No. 8509.90.10 as parts of vacuum cleaners.

For all these reasons, the appeal is dismissed.

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Charles A. Gracey
Charles A. Gracey
Member

11. Canadian International Trade Tribunal, Appeal No. AP-90-161, August 19, 1991.
12. *Ibid.* at 6.
13. *Ibid.*