



Ottawa, Friday, December 21, 2001

Appeal No. AP-2000-020

IN THE MATTER OF an appeal heard on October 15, 2001,
under subsection 67(1) of the *Customs Act*, R.S.C. 1985
(2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Commissioner of
the Canada Customs and Revenue Agency dated March 30, 2000,
with respect to a request for re-determination under
subsection 60(4) of the *Customs Act*.

BETWEEN

BRYCE ROLLINS

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Peter F. Thalheimer
Peter F. Thalheimer
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-2000-020

BRYCE ROLLINS

Appellant

AND

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

Respondent

This is an appeal heard by way of video conference in Hull, Quebec, and Calgary, Alberta, under subsection 67(1) of the *Customs Act* from a decision of the Commissioner of the Canada Customs and Revenue Agency, dated March 30, 2000, pursuant to subsection 60(4) of the *Customs Act*. The issue in this appeal is whether an electric-powered Airsoft pellet gun (the gun in issue) is properly classified under tariff item No. 9898.00.00. The gun in issue was detained by the respondent on February 22, 2000, at the time of entry into Canada.

HELD: The appeal is dismissed in accordance with section 46 of the *Canadian International Trade Tribunal Rules* because the appellant failed to appear at the hearing and discharge his burden of proving the allegations that he made in his application to the Tribunal. Moreover, the Tribunal heard evidence and submissions from the respondent and is satisfied that the classification of the gun in issue should be maintained.

Place of Video Conference

Hearing: Hull, Quebec, and Calgary, Alberta
Date of Hearing: October 15, 2001
Date of Decision: December 21, 2001

Tribunal Member: Peter F. Thalheimer, Presiding Member

Counsel for the Tribunal: Reagan Walker
Eric Wildhaber

Clerks of the Tribunal: Margaret Fisher
Anne Turcotte

Appearance: Lynn Marchildon, for the respondent

Appeal No. AP-2000-020

BRYCE ROLLINS

Appellant

AND

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

Respondent

TRIBUNAL: PETER F. THALHEIMER, Presiding Member

REASONS FOR DECISION

This is an appeal heard by way of video conference in Hull, Quebec, and Calgary, Alberta, under subsection 67(1) of the *Customs Act*¹ from a decision of the Commissioner of the Canada Customs and Revenue Agency dated March 30, 2000, pursuant to subsection 60(4) of the Act. The issue in this appeal is whether an electric-powered Airsoft pellet gun (the gun in issue) is properly classified under tariff item No. 9898.00.00² as a prohibited device. The gun in issue was detained by the respondent on February 22, 2000, at the time of entry into Canada.

The relevant excerpt of tariff item No. 9898.00.00 is as follows:

9898.00.00 Firearms, prohibited weapons, restricted weapons, prohibited devices, prohibited ammunition and components or parts designed exclusively for use in the manufacture of or assembly into automatic firearms, in this tariff item referred to as prohibited goods [...]

For the purposes of this tariff item,

(a) “firearms” and “weapon” have the same meaning as in section 2 of the Criminal Code;

(b) “automatic firearm”, “licence”, “prohibited ammunition”, “prohibited device”, “prohibited firearm”, prohibited weapon, restricted firearm and “restricted weapon” have the same meanings as in subsection 84(1) of the Criminal Code.^[3]
[emphasis added]

The appellant did not appear at the hearing that was held by videoconference at Hull, Quebec, and Calgary, Alberta. Several attempts were made to contact the appellant. By regular mail dated September 14, 2001, the Tribunal sent to the appellant Notice of Hearing No. HA-2001-005 that appeared the next day in the September 15, 2001, issue of the *Canada Gazette*. The *Transcript of Public Hearing* into this matter recorded that, on the morning of the hearing, having noted that the appellant was not present, the Tribunal’s Registrar in Calgary, Alberta, telephoned the appellant at his residence at approximately 8:35 a.m. Mountain time and inquired as to whether he would be appearing in this matter. The *Transcript of*

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].
2. As found in the Schedule of the *Customs Tariff*, S.C. 1997, c. 36 [hereinafter *Customs Tariff*].
3. In paragraph (b), the terms “prohibited weapon” and “restricted firearm”, unlike all the other terms listed, are purposely not in quotation marks; this respects the manner in which these terms appear in the Schedule, *Customs Tariff*, and were adopted by Parliament.

Public Hearing further recorded that the Tribunal's Registrar in Calgary, Alberta, was told by the appellant that he would not be attending the hearing.

The respondent sought and obtained leave from the Tribunal that Mr. Deryk V. R. Penk, Forensic Specialist with the Royal Canadian Mounted Police, Central Forensic Laboratory, be qualified as an expert witness in the area of firearms and toolmark identification. The Tribunal heard fulsome and credible evidence from Mr. Penk in support of the position taken by the respondent. The appellant being absent, this evidence was not challenged.

Section 46 of the *Canadian International Trade Tribunal Rules*⁴ reads as follows: "Where, at a hearing, a party fails to appear, the Tribunal may allow the appeal, dismiss the appeal or give such other direction as is just."

In an appeal under subsection 67(1) of the Act, it is well established that the appellant must, at the very least, present a *prima facie* case to show that the respondent has incorrectly classified the gun in issue.⁵

The appellant submitted a brief to the Tribunal, but, because he did not attend the hearing, the arguments raised in that document cannot be afforded much weight, if any. Indeed, any evidence that may have been contained in the appellant's brief was not properly before the Tribunal because it was not sworn to, nor was it open to cross-examination by the respondent. Nevertheless, the Tribunal considered the contents of the appellant's brief. The Tribunal is not persuaded by the appellant's submissions.

Rather, the Tribunal accepts the evidence put forward by the respondent's expert witness and is convinced by the arguments that were very ably presented by counsel for the respondent to the effect that the gun in issue is properly classified under tariff item No. 9898.00.00.

Accordingly, for the foregoing reasons, the appeal is dismissed.

Peter F. Thalheimer
Peter F. Thalheimer
Presiding Member

4. S.O.R./91-499.

5. *Unicare Medical Products v. DMNR* (30 April 1990), 2437, 2438, 2485, 2591, 2592 (CITT). Once a *prima facie* case is made, the Tribunal is not bound, however, by competing classifications suggested by the parties. See, *inter alia*: *Reha Enterprises v. DMNR* (28 October 1999), AP-98-053, AP-98-054 (CITT); *Research Products/Blankenship of Canada v. DMNRCE* (30 January 1992), AP-90-174 (CITT); *Norton Christensen Canada v. DMNRCE* (9 December 1985), 10 T.B.R. 280.