



Ottawa, Thursday, January 10, 2002

Appeal No. AP-2000-013

IN THE MATTER OF an appeal heard on November 5, 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 17, 2000,
with respect to a request for redetermination under
subsection 60(4) of the *Customs Act*.

BETWEEN

REBECCA WIGOD

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Ellen Fry
Ellen Fry
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-2000-013

REBECCA WIGOD

Appellant

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY

Respondent

This is an appeal under subsection 67(1) of the *Customs Act* from a decision of the Commissioner of the Canada Customs and Revenue Agency made under subsection 60(4) of the *Customs Act* on March 17, 2000. The issue in this appeal is whether a wooden blowpipe which was detained by the respondent on January 9, 2000, is properly classified under tariff item No. 9898.00.00 as a prohibited weapon.

HELD: The appeal is dismissed. The product in issue meets the statutory definition of a prohibited weapon. The Tribunal finds that it is a device similar to a Yaqua Blowgun, as described in the *Regulations Prescribing Certain Firearms and other Weapons, Components and Part of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*, because it is a tube or pipe that is designed for the purpose of shooting arrows or darts by the breath. Therefore, the product in issue is properly classified under tariff item No. 9898.00.00.

Places of

Videoconference Hearing: Hull, Quebec, and Vancouver, British Columbia
Date of Hearing: November 5, 2001
Date of Decision: January 10, 2002

Tribunal Member: Ellen Fry, Presiding Member

Counsel for the Tribunal: Eric Wildhaber

Clerks of the Tribunal: Anne Turcotte
Margaret Fisher

Appearances: Douglas Harrison and Steve Berry, for the appellant
Michael Roach, for the respondent

Appeal No. AP-2000-013

REBECCA WIGOD

Appellant

AND

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

Respondent

TRIBUNAL: ELLEN FRY, Presiding Member

REASONS FOR DECISION

This is an appeal under subsection 67(1) of the *Customs Act*¹ from a decision of the Commissioner of the Canada Customs and Revenue Agency made under subsection 60(4) of the Act on March 17, 2000. The issue in this appeal is whether a wooden blowpipe, which was detained by the respondent on January 9, 2000, is properly classified under tariff item No. 9898.00.00 of the schedule of the *Customs Tariff*² as a prohibited weapon.

Tariff item No. 9898.00.00 reads, in part, 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, but does not include the following:

For the purposes of this tariff item,

(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]

Subsection 84(1) of the *Criminal Code*⁴ defines “prohibited weapon” as follows:

“prohibited weapon” means

(b) any weapon, other than a firearm, that is prescribed to be a prohibited weapon.

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

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

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 of the *Customs Tariff* and were adopted by Parliament.

4. R.S.C. 1985, c. C-46.

Section 117.15 of the *Criminal Code* provides the Governor in Council with the power to make regulations prescribing what weapons are to be prohibited weapons.⁵ This power was exercised in adopting section 4 of the *Regulations Prescribing Certain Firearms and other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*,⁶ which reads as follows:

4. The weapons listed in Part 3 of the schedule are prohibited weapons for the purposes of paragraph (b) of the definition “prohibited weapon” in subsection 84(1) of the *Criminal Code*.

Part 3 of the schedule of the Regulations contains section 12, which reads as follows:

12. The device commonly known as “Yaqua Blowgun”, being a tube or pipe designed for the purpose of shooting arrows or darts by the breath, and any similar device.

The product in issue was introduced as Exhibit B-1. It consisted of two hollow pieces of wood that were attached together to form a tube of approximately 150 cm in length. A metal spear of approximately 19 cm was attached to one end of the tube with woven rattan. The tube had openings at each end, one designed to receive a dart and be brought to the mouth for blowing, the other to allow the dart to exit. Two pointed objects had been inserted into one end of the tube. The appellant⁷ testified that the two pointed objects were not part of the blowpipe that was to be imported. No evidence was led by the respondent as to what these pointed objects were or how they came to be filed as exhibits together with the blowpipe. This was not helpful to the Tribunal. The appellant and the respondent agreed that Exhibit B-1, excluding the pointed objects of unknown origin, was the product that the appellant attempted to import into Canada on January 9, 2000.

The appellant submitted that the product in issue was purchased while on vacation in Borneo. It was purchased as a decorative ornament for display purposes, not as a weapon subject to the Regulations. The appellant submitted that the product in issue is sold as a souvenir to tourists and not as a weapon to hunters, nor does it fall within the normal, everyday meaning of a weapon. The appellant argued that, because the product in issue is designed as an ornament, it is not intended to be fired or, at most, it could be used to blow air and a projectile through it as could be done when using a piece of copper tubing.

The appellant referred to a letter from the Malaysian consulate in Vancouver, British Columbia, that takes the position that the product in issue is intended as a souvenir and not a weapon. The appellant put forward the position that the product in issue is an art object and not a real Yaqua Blowgun. Rather, the appellant submitted that the *bona fide* Yaqua Blowguns that led to the 1978 prohibition were made of highly polished precision-machined aluminum and came with spring steel darts and nicotine sulphate poison; they were advertized as capable of killing small animals; their pipes had handgrips, a mouthpiece, a sling and a carrying case; and some were telescopic, so as to easily fold away to become a concealed weapon. In support of this position, the appellant relied upon various documents on file that were obtained through an access to information request. The appellant further submitted that the product in issue is not capable of projecting a dart at high velocity, as is a real Yaqua Blowgun that was found, in tests performed in support of the 1978 prohibition, to be capable of blasting a 3-in. dart through 1/4-in. plywood. Conversely, the

5. Section 117.15 reads, in part, as follows:

117.15 (1) Subject to subsection (2), the Governor in Council may make regulations prescribing anything that by this Part [Part III of the *Criminal Code*] is to be or may be prescribed.

6. S.O.R./98-462 [hereinafter Regulations].

7. The appellant’s counsel, Mr. Harrison, also testified for the appellant. Reference to the “appellant” is to Mr. Harrison in his capacity as appellant’s counsel or appellant’s witness, as the context requires.

product in issue is not a sophisticated weapon and the darts that it is designed to receive are nothing more than wooden meat skewers.

The appellant submitted that it would be unjust for the product in issue not to be returned because Mr. Tom Matthews of North Hatley, Quebec, had been allowed to import a similar blowpipe, as evidenced by an affidavit of Mr. Matthews on file in this appeal.⁸ The appellant further argued that any number and variety of pipes commonly found in the market could serve as a more efficient blowpipe than the product in issue. Indeed, in the appellant's submission, various copper, plastic and vinyl tubing can fire darts. The appellant referred to several documents filed with the Tribunal that relate to discussions that occurred in preparation of the 1978 ban of Yaqua Blowguns; the appellant argued that the intent of the Regulations had not been to ban souvenir blowpipes of the sort represented by the product in issue. Finally, the appellant argued that the *Criminal Code* states that a barrelled weapon is not a firearm unless it can fire a projectile at a muzzle velocity of more than 153 metres per second, which is a speed well above what could possibly be attained by the product in issue.

The respondent did not call any witnesses. The respondent argued that the issue in this appeal is whether the product in issue meets the definition of a Yaqua Blowgun, or of a device similar to a Yaqua Blowgun, as found in the Regulations. The respondent submitted that the appellant has not discharged the burden of proving that the respondent was incorrect in the classification decision and that the intention in buying the product in issue is not a relevant factor in this appeal. The respondent submitted that the appellant has admitted certain facts: that the product in issue is a tube or a pipe; and that it is a blowpipe that can fire darts that could possibly cause injury. The respondent argued that the words "any similar device" in section 12 of Part 3 of the Regulations should be given a broad interpretation and that the product in issue meets the definition of that section because it is a tube or a pipe that is designed for the purpose of shooting arrows or darts by the breath. The other pipe or tubing filed by the appellant with the Tribunal does not meet this definition. Indeed, in the respondent's view, Exhibits A-2 and A-3 (a brake cable lining and a chrome-plated lavatory connector respectively) were not designed for the purpose of shooting arrows or darts, but for other purposes. The respondent further submitted that muzzle velocity was not relevant to this proceeding nor was the case involving Mr. Matthews' blowpipe because that matter cannot be viewed as a precedent. Finally, the respondent submitted that a product similar to the product in issue would be permitted to enter Canada if it was permanently disabled and could no longer function as a blowpipe.

The Tribunal accepts the appellant's position that the intended use of the product in issue was as an ornamental art object rather than as a weapon. Nevertheless, the Tribunal finds that the product in issue is a prohibited weapon because it meets the statutory definition of a device similar to a Yaqua Blowgun in accordance with section 12 of Part 3 of the Regulations. The appellant admitted that the product in issue is a tube or a pipe designed for the purpose of shooting arrows or darts by the breath. As such, it is a device similar to a Yaqua Blowgun. The Tribunal notes that Mr. Harrison testified that he was, himself, able to shoot darts through the product in issue by the breath. However, contrary to the appellant's position, muzzle velocity is not relevant to the product in issue because it is not part of the definition of "Yaqua Blowgun", as prescribed by the Regulations. Furthermore, the appellant's argument that a similar blowpipe could be made with any number of tubular products available in Canada is not pertinent because the Tribunal's jurisdiction in this appeal is solely to examine the classification of the product in issue. The Tribunal agrees with the respondent's position that the product in issue would no longer be designed for the purpose of shooting arrows or darts by the breath if it were permanently disabled.

8. Appellant's Brief, Document No. AP-2000-013-6.1 at 3.

Accordingly, the Tribunal finds that the product in issue is properly classified under tariff item No. 9898.00.00.

For the foregoing reasons, the appeal is dismissed.

Ellen Fry
Ellen Fry
Presiding Member