



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2007-025

Andrew Taylor

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, December 3, 2008*

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DECISION8

IN THE MATTER OF an appeal heard on August 21, 2008, 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 President of the Canada Border Services Agency, dated April 18, 2007, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

ANDREW TAYLOR

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Serge Fréchette
Serge Fréchette
Presiding Member

André F. Scott
André F. Scott
Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: August 21, 2008

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal pursuant to subsection 67(1) of the *Customs Act*¹ from a decision of the President of the Canada Border Services Agency (CBSA), dated April 18, 2007, under subsection 60(4).

2. The issue in this appeal is whether the CBSA properly classified a 17th-century Indian *Mughal katar* (the knife in issue) as a prohibited weapon under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*.²

PROCEDURAL HISTORY

3. The knife in issue was detained by the CBSA on February 5, 2007, at the time of entry into Canada. Following a request made by Mr. Andrew Taylor for a re-determination of the tariff classification of the knife in issue, the CBSA issued a decision, on April 18, 2007, under subsection 60(4) of the *Act*, confirming that the knife in issue was properly classified as a prohibited weapon under tariff item No. 9898.00.00 and was thus prohibited from importation into Canada.

4. On October 18, 2007, Mr. Taylor requested an extension of time to file an appeal with the Tribunal.³ On February 12, 2008, the Tribunal made an order under section 67.1 of the *Act* granting Mr. Taylor's application for an extension of time to file a notice of appeal and accepting the documents filed by Mr. Taylor on October 18 and 19, 2007, as a notice of appeal under subsection 67(1).⁴

5. The Tribunal decided to hold a hearing by way of written submissions in accordance with rules 25 and 25.1 of the *Canadian International Trade Tribunal Rules*.⁵

KNIFE IN ISSUE

6. The knife in issue⁶ is a roughly forged double-edged dagger with a swollen reinforced tip. It has an overall length of approximately 420 mm (16.5 in.), with a blade length of approximately 240 mm (9.4 in.). Its handle is H-shaped, in that it is made up of two parallel metal bars that extend from the base of the blade and are connected by a cross piece of metal, which is secured (forge-welded) to the two bars at a perpendicular angle. Given that it is designed in such a fashion, the knife in issue has a horizontal hand grip, which results in the blade sitting above the user's knuckles.

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

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

3. Pursuant to subsection 67(1) of the *Act*, a person aggrieved by a decision made by the CBSA under section 60 may appeal from the decision to the Tribunal by filing a notice of appeal in writing within 90 days after the time notice of the decision was given. Pursuant to section 67.1, if no notice of appeal has been filed within that 90-day period, a person may make an application to the Tribunal for an order extending the time within which a notice of appeal may be filed.

4. Tribunal Exhibit AP-2007-025-01.

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

6. The CBSA filed evidence suggesting that the knife in issue should be referred to as a *jamadhar*. See Tribunal Exhibit AP-2007-025-15A, tab 1 at para. 13 and tabs 2 to 6. However, it did not dispute that the knife in issue can also be properly referred to as a *katar*. See Tribunal Exhibits AP-2007-025-05A at para. 2 and AP-2007-025-05B, tab 1.

7. According to the evidence, *katars* ceased to be in common use in the 19th century. Typically, *katars* were used in close-range, hand-to-hand combat and were effective in armour piercing.⁷ The parties agree that the knife in issue is an antique knife. Moreover, the CBSA did not dispute Mr. Taylor's assertions that, for a *katara* to be used in battle or any type of fighting, it must be affixed to the wrist and forearm with straps or bindings.⁸

8. On August 21, 2008, the CBSA filed the knife in issue as a physical exhibit.

ANALYSIS

9. Following are excerpts of the relevant legislative and regulatory provisions in this appeal.

10. Subsection 136(1) of the *Customs Tariff* reads as follows:

The importation of goods of tariff item No. 9897.00.00, 9898.00.00 or 9899.00.00 is prohibited.	L'importation des marchandises des n ^{os} tarifaires 9897.00.00, 9898.00.00 ou 9899.00.00 est interdite.
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11. Tariff item No. 9898.00.00 reads, in part, as follows:

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	Armes à feu, armes prohibées, armes à autorisation restreinte, dispositifs prohibés, munitions prohibées et éléments ou pièces conçus exclusivement pour être utilisés dans la fabrication ou l'assemblage d'armes automatiques, désignés comme « marchandises prohibées » au présent numéro tarifaire, [...]
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

For the purposes of this tariff item,

Pour l'application du présent numéro tarifaire :

. . .

[...]

(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*

b) « arme à autorisation restreinte », « arme à feu à autorisation restreinte », « arme à feu prohibée », « arme automatique », « arme prohibée », « dispositif prohibé », « munitions prohibées » et « permis » s'entendent au sens du paragraphe 84(1) du Code criminel [...]

12. Subsection 84(1) of the *Criminal Code*⁹ defines “prohibited weapon” as follows:

“prohibited weapon” means

« arme prohibée »

(a) a knife that has a blade that opens automatically by gravity or centrifugal force or by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, or

a) Couteau dont la lame s'ouvre automatiquement par gravité ou force centrifuge ou par pression manuelle sur un bouton, un ressort ou autre dispositif incorporé ou attaché au manche;

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

b) toute arme — qui n'est pas une arme à feu — désignée comme telle par règlement.

7. Tribunal Exhibit AP-2007-025-03, Appendices 1, 2, 3.

8. *Ibid.* at para. 2 and AP-2007-025-12 at para. 5.

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

13. The list of weapons prescribed as prohibited under subsection 84(1) of the *Criminal Code* appears in Part 3 of the Schedule to the *Regulations Prescribing Certain Firearms and other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted* (the *Regulations*). Section 9 of Part 3 of the Schedule to the *Regulations* is relevant to this appeal. It specifies that the following types of knives are prohibited weapons:

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9. Any knife commonly known as a “push-dagger” that is designed in such a fashion that the handle is placed perpendicular to the main cutting edge of the blade and any other similar device other than the aboriginal “ulu” knife. | 9. Tout couteau communément appelé « dague à pousser », conçu de telle façon que le manche est perpendiculaire au tranchant principal de la lame, ainsi que tout autre instrument semblable, à l’exception du couteau autochtone « ulu ». |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

14. In order to determine whether the knife in issue is properly classified under tariff item No. 9898.00.00 as a prohibited weapon, the Tribunal must determine if it meets the requirements of section 9 of Part 3 of the Schedule to the *Regulations*. In this respect, the Tribunal is of the view that there are two ways for a knife to meet these requirements. First, a knife would fall within section 9 and, thus, be prescribed as a prohibited weapon if it were both (a) a knife that is “. . . commonly known as a ‘push-dagger’ . . .” and (b) a knife that is “. . . designed in such a fashion that the handle is placed perpendicular to the main cutting edge of the blade . . .” Second, a knife would meet the requirements of section 9 if it were a “similar device” in relation to knives that fulfil criteria (a) and (b), but was not an aboriginal “ulu” knife.¹⁰

Is the Knife in Issue Commonly Known as a Push-dagger and is the Handle Perpendicular to the Main Cutting Edge?

15. The Tribunal will begin with its consideration of the first requirement, which consists of two criteria: whether the knife in issue is a knife that is (a) “. . . commonly known as a ‘push-dagger’ . . .” and (b) “. . . designed in such a fashion that the handle is placed perpendicular to the main cutting edge of the blade . . .”

16. Considering the second criterion first, the Tribunal notes that the CBSA submitted that the knife in issue is designed in such a fashion that the handle is placed perpendicular to the main cutting edge of the blade.

17. In particular, the CBSA argued that the main defining feature of a *katar* is that the handle is made up of two parallel bars connected by two or more cross pieces which form a right angle to the blade. It noted that, in this manner and as is visible from the photographs of the knife in issue, its handle is placed perpendicular to the main cutting edge of the blade.¹¹ Mr. Taylor did not dispute this point.

18. The Tribunal further notes that the *Canadian Oxford Dictionary* defines “handle” as “. . . the part by which a thing is held, carried, or controlled . . .”¹² Based on this definition and upon visual inspection of the knife in issue, the Tribunal finds that the placement of the handle of the knife in issue is indeed perpendicular to the main cutting edge of the blade.

10. *Gordon Schebek v. President of the Canada Border Services Agency* (18 May 2006), AP-2005-009 (CITT) [Schebek].

11. Tribunal Exhibit AP-2007-025-05A at paras. 20-22.

12. Second ed., s.v. “handle”.

19. The Tribunal will now consider whether the knife in issue is "...commonly known as a 'push-dagger'"

20. The CBSA argued that the knife in issue fulfils this criterion.¹³ In support of its position, the CBSA referred to information concerning push-daggers and *katars* obtained from Wikipedia, an Internet encyclopaedia, which was filed by Mr. Taylor. This information indicates that "... [a]n ancient variant [of a push-dagger] is the katar . . ."¹⁴ and that "... [a] similar style western weapon [to the *katar*] is the push dagger . . ."¹⁵ In addition, the CBSA provided various copies of pages from Web sites that show that antique dealers and sellers and buyers of antique weaponry refer to *katars* as "push-daggers".¹⁶

21. The CBSA also relied on an expert report¹⁷ prepared by Mr. Murray Smith, Manager of the Firearms Reference Table at the Royal Canadian Mounted Police. Based on an examination of the knife in issue, Mr. Smith stated that, in his opinion, the knife in issue meets the requirements of section 9 of the Schedule to the *Regulations* and is a prohibited weapon because it is a knife commonly known as a push-dagger, which is not an *ulu* knife.¹⁸ He also reported that the literature on knives uses the words "push", "thrust" and "punch" interchangeably.

22. Mr. Taylor submitted that the knife in issue is *not* "...commonly known as a 'push-dagger' . . ." and, as such, disagreed with the CBSA that the knife in issue meets the requirements of section 9 of Part 3 of the Schedule to the *Regulations*. Mr. Taylor submitted that the knife in issue is simply commonly known as a *katar*.¹⁹ He stated that push-daggers are small weapons that are easily hidden. He described a push-dagger as a small double-edged blade attached to a T-bar handle where the blade extends between the ring finger and the middle finger when the hand is clenched in a fist.²⁰

23. Mr. Taylor submitted that the knife in issue does not have the characteristics of a push-dagger. Specifically, in Mr. Taylor's view, the knife in issue does not resemble a push-dagger because it is much longer and has an H-shaped handle. He argued that, unlike a push-dagger, the knife in issue is too large to be carried covertly and is unstable to use unless it is strapped to the forearm.

24. Mr. Taylor relied on the Tribunal's decision in *Schebek* and noted that, in that decision, which concerned the tariff classification of a *katar*, the Tribunal stated the following:

...

Accordingly, the evidence indicates that the knife in issue is significantly larger than the type of knife commonly known as a push-dagger and is therefore, in the Tribunal's view, not a "... knife commonly known as a 'push-dagger'"²¹

13. Tribunal Exhibit AP-2007-025-05A at paras. 20-22.

14. Tribunal Exhibit AP-2007-025-03, Appendix 1.

15. *Ibid.*, Appendix 2.

16. Tribunal Exhibits AP-2007-025-05A at para. 21 and AP-2007-025-05B, tab 5.

17. Tribunal Exhibit AP-2007-0205-15A.

18. *Ibid.* at para. 17.

19. Tribunal Exhibit AP-2007-025-12 at para 3.

20. Tribunal Exhibit AP-2007-025-03 at para. 5 and Appendix 1 at 1.

21. *Schebek* at para. 17.

25. In Mr. Taylor's submission, the same facts that were before the Tribunal in *Schebek* are present in this case. He submitted that, in that decision, the Tribunal concluded that a *katar* was not a knife "... commonly known as a 'push-dagger' ...". He argued that this decision confirms that a *katar* is not a push-dagger.

26. In reply to the CBSA's submissions, Mr. Taylor acknowledged that a *katar* may sometimes be called a punch-dagger. However, in his view, this is not because the blow is delivered as a punch, but rather because the tip of the *katar* was used to punch through light metal armour or chain mail armour.

27. Mr. Taylor also submitted that the Wikipedia descriptions of *katars* relied upon by the CBSA are not accurate.²² He submitted that the Wikipedia reference to *katars* has been revised and no longer refers to *katars* as push-daggers.²³ Mr. Taylor further submitted that a more authoritative reference for these knives is *A Glossary of the Construction, Decoration and Use of ARMS AND ARMOR in All Countries and in All Times*, by George Cameron Stone, a reference book which was first published in 1934. Mr. Taylor noted that this glossary describes *katars* without referring to them as push-daggers or punch-daggers.

28. As stated in *Schebek*, the Tribunal considers the fact that a knife designed in such a fashion that the handle is placed perpendicular to the main cutting edge of the blade does not necessarily imply that it is a knife "... commonly known as a 'push-dagger' ...". The Tribunal is of the view that the inclusion of the adjectival phrase "... commonly known as a 'push-dagger' ..." in section 9 of Part 3 of the Schedule to the *Regulations* limits the kinds of knives with handles perpendicular to the main cutting edge of the blade which are subject to prohibition.

29. The Tribunal notes that there is conflicting evidence on the record with respect to whether the knife in issue is commonly known as a push-dagger. As outlined above, the CBSA adduced evidence that indicated that *katars* are sometimes referred to as push-daggers. On this issue, the CBSA also relied on Mr. Smith's opinion and the additional secondary source materials that it filed in evidence. Mr. Taylor questioned the accuracy and credibility of the information from the Internet and pointed out that nowhere in the materials that purportedly support Mr. Smith's opinion are *katars* described as push-daggers. He also highlighted that *katars* are not properly described as push-daggers, given that they are different from push-daggers in several important respects.

30. First, in examining the question of whether the knife in issue is commonly known as a push-dagger, the Tribunal notes that the following considerations, which all relate to the physical characteristics of the knife in issue, suggest that it is not commonly known as a push-dagger:

- Length. Whereas the knife in issue has a blade length of approximately 240 mm and an overall length of 420 mm, the evidence on the record indicates that push-daggers are typically shorter. According to the information and pictures submitted by Mr. Taylor, a typical push-dagger is "... a short knife with a 'T' handle ...".²⁴ This evidence is consistent with that filed in *Schebek*, where the Tribunal noted that the total length of various push-daggers shown in on-line sales information ranged from 5.0 to 7.5 in.²⁵

22. Tribunal Exhibit AP-2007-025-12 at paras. 8-10.

23. *Ibid.* at para. 8.

24. Tribunal Exhibit AP-2007-025-03, Appendix 1.

25. *Schebek* at para. 16.

- Blade position. Whereas a push-dagger is typically designed to be grasped by the hand so that the blade protrudes from the front of the user's fist (between the ring finger and the middle finger), the blade in the knife in issue sits above the user's knuckles.²⁶
- Concealability. Unlike the typically small push-dagger, the knife in issue, because of its larger size, is not easily concealable.
- Stability. Whereas the typical T-shaped handle of a push-dagger provides a very strong grip, the knife in issue is unstable if grabbed by its handle unless it is strapped to the user's forearm.²⁷

31. Second, the Tribunal examined the other evidence supplied by Mr. Taylor and the CBSA. The Tribunal considers that the information found on the Internet that was filed in evidence, which suggests that the knife in issue can be referred to as a push-dagger, is inconclusive, since this documentary evidence does not consistently describe *katars* as push-daggers. Moreover, the Tribunal agrees with Mr. Taylor on the fact that such information may not be accurate or reliable. In this respect, while sellers of antique weapons may refer to *katars* as push-daggers, it is unclear from this evidence that *katars* are commonly known as push-daggers by potential buyers or collectors. In addition, the Tribunal notes that none of the excerpts from reference books on weapons and knives that were filed in evidence describes *katars* as push-daggers or otherwise suggests that *katars* are commonly known as push-daggers.²⁸ The Tribunal is of the view that this evidence, which undermines the CBSA's contention that the knife in issue is commonly known as a push-dagger, must be given more weight than the Internet references relied upon by the CBSA.

32. Third, with respect to the expert report prepared by Mr. Smith, the information on the record indicates that Mr. Smith's expertise relates mainly to firearms. Other than indicating that Mr. Smith has appeared before courts or parliamentary committees as an expert on firearms and "other weapons", his curriculum vitae does not elaborate on his credentials or expertise in respect of knives or edged weapons. The Tribunal further notes that the information provided in Mr. Smith's report lacked substantiation of opinion and did not provide sufficient details or explanations regarding why, in his view, the knife in issue is commonly known as a push-dagger. As well, the Tribunal is not convinced that the additional secondary source materials, upon which Mr. Smith apparently relied, actually support his opinion. For example, as discussed above, the source materials filed with Mr. Smith's report merely refer to *katars* as punch-daggers and do not identify them as push-daggers. On this issue, it is true that Mr. Smith opined that these terms are used interchangeably, but, again, this opinion is not substantiated by explicit reference to the literature on knives and weapons filed in evidence, nor is it corroborated by the other evidence on the record. In view of these considerations, while the Tribunal is prepared to accept Mr. Smith as an expert in prohibited weapons, it finds that his report has little probative value.

33. Therefore, on balance, after a careful review of the totality of the evidence on this issue, the Tribunal is unable to conclude that the knife in issue is "... commonly known as a 'push-dagger' ..."

Is the Knife in Issue a Similar Device Other Than the Aboriginal *Ulu* Knife?

34. Having found that the knife in issue does not meet the first requirement set out under section 9 of Part 3 of the Schedule to the *Regulations*, the Tribunal will now examine whether it is a "... similar device other than the aboriginal "ulu" knife ..."

26. Tribunal Exhibit AP-2007-025-03, Appendices 1, 2.

27. *Ibid.* at para. 2 and AP-2007-025-12 at para. 5.

28. Tribunal Exhibit AP-2007-025-12 at paras. 12-16. See, also, Tribunal Exhibit AP-2007-0205-15A, tabs 3-6. This documentary evidence merely refers to *katars* as punch-daggers and not as push-daggers.

designed in such a fashion that the handle is placed perpendicular to the main cutting edge of the blade. If it is determined to be such a “similar device”, the knife in issue would be prescribed as a prohibited weapon under section 9 of Part 3.

35. The Tribunal notes that the parties have not addressed this issue in their submissions. However, the Tribunal is of the view that the words “. . . any other similar device . . .” tend to broaden the definition of prohibited weapons in section 9 of Part 3 of the Schedule to the *Regulations*. In this respect, these words make it clear that certain knives which have a handle perpendicular to the main cutting edge of the blade, *other than* those which are commonly known as push-daggers, may also be prohibited under that provision.

36. The *Canadian Oxford Dictionary* defines “similar” as follows: “. . . of the same nature or kind; alike . . .”²⁹ Obviously, “similar” does not mean “identical.” Thus, despite the fact that there are some physical differences between the knife in issue and goods commonly known as push-daggers, the knife in issue may still be considered a similar device. The Tribunal is of the view that the use of the word “similar” in this context was intended to convey the principle that knives must be of the same general nature, kind or character as goods commonly known as push-daggers. In this respect, in view of the definition of the word “similar”, the reference to “. . . any other similar device . . .” in the legislation means more than simply considering the similarities of a physical nature. The Tribunal considers that, in order to determine whether the knife in issue is a similar device, it should also take into account similarities in terms of intended applications or end uses between the knife in issue and push-daggers.

37. Applying these criteria to the facts of this appeal, the Tribunal first notes that both knives have double-edged blades. In addition, the Tribunal has already determined that, similar to a push-dagger, the handle of the knife in issue is perpendicular to the main cutting edge of the blade. As such, the two are grasped in essentially the same manner, with the hand perpendicular to the blade, unlike in the case of conventional knives. Thus, the knife in issue and push-daggers share certain physical characteristics, which suggests that they are “. . . of the same nature or kind . . .”

38. In the Tribunal’s view, intended use is also a relevant factor in assessing the similarity of two items. Therefore, in addition to physical characteristics, the Tribunal examined the design features of the knife in issue and those of push-daggers. A well-established axiom holds that “form follows function”, and it is clear, upon physical inspection of the knife in issue and the evidence on the record, that an important common feature of push-daggers and the knife in issue is that they were not designed for benign applications, such as in the case of a kitchen knife, utility knife or wood carving knife. Rather, push-daggers and the knife in issue were intentionally designed for the similar purpose of inflicting grievous bodily harm. In this regard, whether intended for pushing, punching, stabbing, slashing or puncturing, and despite the fact that one is shorter and easier to conceal than the other, the Tribunal finds that such differences are not sufficient to render the knife in issue dissimilar. In the Tribunal’s opinion, two items that have such important common features can be similar devices even if they are not of the same size and do not share identical physical characteristics.³⁰ Accordingly, the Tribunal finds that the knife in issue is “. . . of the same nature or kind . . .” as a push-dagger, that is, a similar device within the meaning of section 9 of Part 3 of the Schedule to the *Regulations*.

29. Second ed., s.v. “similar”.

30. The Tribunal is aware that, in *Schebek*, it ruled that the “katar” that was at issue was not a “similar device” based on its difference in size with push-daggers. However, its finding was based on the evidence that was filed in that appeal, and the Tribunal expressly confined its finding to the facts of that case and stated the following: “. . . The Tribunal notes that this determination applies only to the particular knife in issue; the Tribunal has not drawn any conclusions on whether ‘Katars’ in general are prohibited weapons . . .”, *Schebek* at para. 21.

39. Section 9 of Part 3 of the Schedule to the *Regulations* excludes one type of similar device from the scope of the prohibition: the aboriginal *ulu* knife. Since the knife in issue is an antique knife from India, it is clearly not an aboriginal *ulu* knife. As such, it is not covered by this exception.

40. Finally, while the Tribunal recognizes that the knife in issue is an antique collectible, this cannot be a consideration in the determination of the tariff classification of the knife in issue, given the relevant provisions of the legislation and the *Regulations*. Accordingly, the Tribunal has no discretion on this issue, as the legislative and regulatory framework does not provide for the exclusion of antique knives from the scope of the prohibition.

41. Given the above, the Tribunal concludes that the knife in issue is properly classified as a prohibited weapon under tariff item No. 9898.00.00 and, as such, is prohibited from importation into Canada under subsection 136(1) of the *Customs Tariff*.

DECISION

42. For the foregoing reasons, the appeal is dismissed.

Serge Fréchette
Serge Fréchette
Presiding Member

André F. Scott
André F. Scott
Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member