



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2009-080R

M. Miner

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Friday, July 20, 2012*

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IN THE MATTER OF an appeal heard on October 12, 2010, pursuant to subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Federal Court of Appeal dated March 9, 2012, which set aside the decision of the Canadian International Trade Tribunal in Appeal No. AP-2009-080 made on January 20, 2011, and remitted the matter to the Canadian International Trade Tribunal.

**BETWEEN**

**M. MINER**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is dismissed.

Jason W. Downey

Jason W. Downey  
Presiding Member

Gillian Burnett

Gillian Burnett  
Acting Secretary

Tribunal Member: Jason W. Downey, Presiding Member

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**PARTICIPANTS:**

**Appellant**

M. Miner

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**Respondent**

President of the Canada Border Services Agency

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## STATEMENT OF REASONS

1. This remand is further to a judgment<sup>1</sup> of the Federal Court of Appeal (the Court) dated March 9, 2012, concerning a decision of the Canadian International Trade Tribunal (the Tribunal) in *M. Miner v. President of the Canada Border Services Agency*.<sup>2</sup> In its decision, the Tribunal allowed the appeal and held that two wooden tubes (the goods in issue) were not prohibited weapons and, therefore, did not fall under the prohibition set out in section 136 of the *Customs Tariff*.<sup>3</sup> The Canada Border Services Agency (CBSA) appealed the Tribunal's decision before the Court.
2. Paragraphs 22 and 23 of the Court's judgment provide as follows:
  22. . . . in reaching its decision that the goods were not properly classified under tariff item No. 9898.00.00 as prohibited weapons, the Tribunal ignored relevant evidence and, contrary to paragraph 152(3)(d) of the *Customs Act*,<sup>[4]</sup> imposed the burden of proof on the CBSA. By virtue of this, its decision is unreasonable.
  23. For these reasons, I would allow the appeal, set aside the decision of the [Tribunal] and refer the matter back to the [Tribunal] for redetermination in a manner consistent with these reasons.
3. Moreover, the Court concluded that Mr. Miner had failed to establish that the goods in issue were, at the time of importation, incapable of allowing a dart or arrow to be shot.<sup>5</sup>
4. In light of the Court's judgment, the Tribunal finds that Mr. Miner failed to establish that the goods in issue were not designed for the purpose of shooting arrows or darts by the breath. Given that the evidence presented by Mr. Miner on this point was indeterminate, he failed to meet the onus of establishing that the goods in issue were not prohibited weapons, as required by paragraph 152(3)(d) of the *Act*.
5. Accordingly, the appeal is dismissed.

Jason W. Downey  
Jason W. Downey  
Presiding Member

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1. *President of the Canada Border Services Agency v. Mike Miner*, 2012 FCA 81 (CanLII) [*Miner*].
2. (20 January 2011), AP-2009-080 (CITT).
3. S.C. 1997, c. 36.
4. R.S.C. 1985 (2d Supp.). c. 1 [*Act*].
5. *Miner* at para. 21.