



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2015-008

E. Wallace

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Monday, November 30, 2015*

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IN THE MATTER OF an appeal heard on November 26, 2015, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated May 13, 2015, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

E. WALLACE

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Daniel Petit
Daniel Petit
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 26, 2015

Tribunal Member: Daniel Petit, Presiding Member

Counsel for the Tribunal: Peter Jarosz

Senior Registrar Officer: Lindsay Vincelli

PARTICIPANTS:**Appellant**

E. Wallace

Respondent

President of the Canada Border Services Agency

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STATEMENT OF REASONS

INTRODUCTION

1. This is an appeal filed by Mr. E. Wallace with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ from a decision made by the President of the Canada Border Services Agency (CBSA) dated May 13, 2015, pursuant to subsection 60(4).

2. Mr. Wallace purchased a reproduction of a painting during his 20-day trip with his wife to Hawaii. The reproduction, costing US\$595, was too large to accompany him in his luggage upon his return to Canada. Instead, he mailed it to his residence in Canada.

3. Upon returning to Canada, Mr. Wallace filled out a declaration card which showed that he was claiming an exemption for \$400 worth of goods (and another \$400 for his wife) but neither declared any unaccompanied goods.

4. The CBSA's decision was that Mr. Wallace's importation of the painting was not eligible for the duty and tax exemption for travellers returning to Canada after an absence of seven days or more, according to the terms of tariff item No. 9804.20.00 of the schedule to *Customs Tariff*.² The CBSA therefore assessed a total of \$94.12, consisting of \$84.17 in goods and services tax (GST)³ and \$9.95 for Canada Post handling fees, on the painting when it was imported into Canada.

5. Mr. Wallace and the CBSA both filed briefs.

6. The Tribunal held a file hearing on November 26, 2015.

LEGAL FRAMEWORK

7. Tariff item No. 9804.20.00 provides duty-free⁴ treatment to the following:

98.04	Goods acquired abroad by a resident or temporary resident of Canada or by a former resident who is returning to Canada to resume residence, for the personal or household use of that person or as souvenirs or gifts, but not bought on commission or as an accommodation for any other person or for sale, <i>and reported by that person at time of return to Canada.</i>
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...

9804.20.00	-Valued at not more than eight hundred dollars, whether or not included in the baggage accompanying the person returning from abroad after an absence from Canada of not less than seven days.
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For the purpose of this tariff item:

(a) goods may include either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding 1.14 litres, and tobacco not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, if included in the baggage accompanying the person at the time of return to Canada; and

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

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

3. No customs duty was assessed since the goods are duty-free.

4. For the purposes of these provisions, "duty" also refers to the GST as per Note 4 to Chapter 98.

(b) if goods (other than alcoholic beverages, cigars, cigarettes, tobacco sticks and manufactured tobacco) acquired abroad are not included in the baggage accompanying the person, they may be classified under this tariff item *if they are reported by the person at time of return to Canada.*

[Emphasis added]

8. Goods which are to be the subject of such an exemption from duties and taxes must be reported, in writing, by travellers upon their return to Canada. Subsection 2(1) of the *Returning Persons Exemption Regulations*⁵ provides as follows:

2(1) Subject to subsections (2) and (3), any person returning to Canada shall, *at the time of the person's return, report in writing the goods in respect of which an exemption is claimed* and express the value of those goods in Canadian dollars.

[Emphasis added]

9. For travellers returning to Canada by air, this report is done on a declaration card (Form E311). This form includes a statement as to whether any “unaccompanied items”, that is, items which are not in the traveller’s luggage, are to be part of the exemption. A record of this reporting on Form E24, “Personal Exemption CBSA Declaration”, is issued by the CBSA to the traveller in order to enable the traveller to claim or prove the exemption upon delivery or claim of the posted item.⁶

POSITIONS OF PARTIES

10. Mr. Wallace argued that he was entitled to claim a personal exemption for the painting. He stated that he did not realize that he had to indicate on the declaration card, which he duly completed upon his return, that the painting was being mailed to him. He further argued that there was sufficient value remaining in his exemption to be applied to the painting.

11. The CBSA argued that the exemption was not applicable since there was no declaration that such unaccompanied goods were to be part of the exemption—this declaration had to be made upon Mr. Wallace’s return to Canada. The CBSA further argued that lack of awareness of the proper declaration requirements was not a valid excuse for not declaring the item.

TRIBUNAL ANALYSIS

12. The parties agree that the only issue is whether Mr. Wallace’s failure to declare the unaccompanied goods prevents him from obtaining the personal exemption.

13. At the outset, the Tribunal notes that, in appeals under section 67 of the *Act*, the CBSA’s decisions are considered on a *de novo* basis;⁷ that is to say, the Tribunal can accept new evidence and hear new arguments. However, this does not change the fact that the Tribunal “. . . is not a court of equity and must apply the law as it is”⁸

5. S.O.R./98-61.

6. Exhibit AP-2015-008-08A at paras. 31-33, Vol. 1.

7. *Canadian Tire Corporation, Limited v. President of the Canada Border Services Agency* (12 June 2014), AP-2013-042 (CITT) at para. 23.

8. *Jockey Canada Company v. President of the Canada Border Services Agency* (20 December 2012), AP-2011-008 (CITT) at para. 292.

14. While the Tribunal sympathizes with Mr. Wallace and understands his disappointment with the CBSA's conduct, it finds that the provisions of the *Customs Tariff* and the related regulations clearly require specific written reporting of unaccompanied goods for a traveller to qualify for the exemption. Mr. Wallace's honest mistake in failing to comply with these requirements is nevertheless a mistake for which he must take responsibility.

15. Proper declarations upon return to Canada are necessary in order to ensure that the exemption is not applied to goods which have no connection to the required length of absence from Canada.

16. The Tribunal notes that the requirements for claiming this exemption are presented to the travelling public by the CBSA,⁹ and, as set out above, the declaration card requires that travellers indicate whether they "... have unaccompanied goods."¹⁰

17. In any event, the above observations do not change the Tribunal's conclusion that the goods were not declared in writing upon Mr. Wallace's return to Canada; if they had been, the goods would have been exempt from duties and taxes.

DECISION

18. Therefore, the Tribunal finds that the goods in issue do not qualify for treatment under the terms of tariff item No. 9804.20.00.

19. The appeal is dismissed.

Daniel Petit

Daniel Petit

Presiding Member

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9. See the following CBSA online publications: "Paying duty and taxes", <http://www.cbsa-asfc.gc.ca/travel-voyage/pdt-pdt-eng.html>, and "I Declare", <http://www.cbsa-asfc.gc.ca/publications/pub/bsf5056-eng.html#s2x8>. With respect to the exemption in question, these publications refer to the following: "7 days or more **Up to CAN\$800** ... goods will qualify for duty- and tax-free entry if they are declared at the initial return to Canada" and "When you return to Canada, you have to declare all of the goods you acquired while outside Canada, such as purchases, gifts, prizes or awards that you are bringing with you or are having shipped to you. ... If you are declaring goods claimed as part of your CAN\$800 (7 day) exemption that preceded or will follow your arrival in Canada, ask the border services officer for a Form E24, *Personal Exemption CBSA Declaration*. **You will need your copy of this form to claim these goods; otherwise, you may have to pay the regular duty and taxes on them**" [emphasis in original]. However, the forms that are given out to air travellers are not as clear or consistent with the above.
10. The Tribunal is by no means convinced that travellers understand that this phrase refers to goods such as the one in question which have been acquired by the traveller abroad and sent to Canada by mail, courier or otherwise. The Tribunal suggests that Form E311 be changed to better reflect the statutory provisions and to not mislead or confuse travellers. For example, the current text could be changed to "I/we have sent to Canada by mail, courier or otherwise, goods acquired abroad which are not with me/us or in my/our luggage" or "I/we have unaccompanied goods (which are goods acquired abroad and sent to Canada by mail, courier or otherwise, which are not with me/us or in my/our luggage)".