



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2017-011

J. Fersch

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Friday, January 19, 2018*

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IN THE MATTER OF an appeal heard on November 7, 2017, 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 March 8, 2017, with respect to a dispute pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**J. FERSCH**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is dismissed.

Ann Penner  
Ann Penner  
Presiding Member

Place of Hearing: Ottawa, Ontario  
Date of Hearing: November 7, 2017  
Tribunal Panel: Ann Penner, Presiding Member  
Support Staff: Amélie Cournoyer, Counsel

**PARTICIPANTS:****Appellant**

J. Fersch

**Respondent**

President of the Canada Border Services Agency

**Counsel/Representative**

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## STATEMENT OF REASONS

### BACKGROUND

1. This is an appeal filed by Mr. J. Fersch on May 10, 2017, pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision of the President of the Canada Border Services Agency (CBSA), dated March 8, 2017, pursuant to subsection 60(4), concerning the value for duty of a 2016 Allegro Bus 37AP (the good in issue) imported by Mr. Fersch.
2. The issue in this appeal is whether the trade-in allowance of a 2015 Entegra Anthem motorhome (the 2015 motorhome) should be deducted from the value for duty of the good in issue, as claimed by Mr. Fersch.

### PROCEDURAL HISTORY

3. On October 24, 2014, Mr. Fersch purchased the 2015 motorhome in Red Deer County, Alberta.
4. On May 5, 2016, Mr. Fersch purchased the good in issue in Missoula, Montana. Mr. Fersch traded in his 2015 motorhome and obtained a trade-in allowance for it.
5. On May 6, 2016, Mr. Fersch imported the good in issue into Canada from the United States. At the time of entry into Canada, the CBSA assigned a value for duty which reflected the full purchase price of the good in issue without an adjustment for the trade-in allowance for the 2015 motorhome, converted to Canadian dollars, less the balance of personal exemptions. Mr. Fersch paid the applicable duties and taxes, including the goods and services tax (GST).
6. On June 15, 2016, Mr. Fersch filed a request for a refund of the GST paid on the portion of the purchase price of the good in issue represented by the trade-in allowance for the 2015 motorhome. In essence, Mr. Fersch was requesting that the value for duty of the good in issue be calculated by deducting the trade-in allowance for the 2015 motorhome from the full purchase price of the good in issue.
7. On July 21, 2016, the CBSA denied Mr. Fersch's request for a refund. This denial was considered a re-determination under subsection 59(1) of the *Act*.
8. On August 22, 2016, Mr. Fersch requested a further re-determination of the value for duty of the good in issue pursuant to subsection 60(1) of the *Act*.
9. On March 8, 2017, pursuant to subsection 60(4) of the *Act*, the CBSA denied the request for further re-determination and confirmed its previous re-determination.
10. On May 10, 2017, pursuant to subsection 67(1) of the *Act*, Mr. Fersch filed the present appeal with the Canadian International Trade Tribunal (the Tribunal).
11. By letter dated May 12, 2017, the Tribunal indicated that Mr. Fersch was to file his brief, pursuant to rule 34 of the *Canadian International Trade Tribunal Rules*,<sup>2</sup> by July 10, 2017, and indicated that it decided to hear the matter based on written submissions only in accordance with Rules 25 and 25.1 of the *Rules*.

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

2. SOR/91-499 [*Rules*].

12. By letter dated July 12, 2017, the Tribunal advised Mr. Fersch that it had not yet received his brief, that his brief should be submitted immediately or otherwise file a notice of discontinuance, and that the Tribunal could dismiss the appeal if no written communication was received by July 19, 2017.

13. By letter dated July 20, 2017, the Tribunal advised Mr. Fersch that it had not yet received his brief, directed him to show cause by August 3, 2017, why the appeal should not be dismissed, and warned Mr. Fersch that failure to show cause might result in the appeal being dismissed without any further proceedings.

14. On July 24, 2017, the Tribunal received correspondence from Mr. Fersch indicating that he wished to have the notice of appeal and attachments filed with the Tribunal on May 10, 2017, considered as the appellant's brief. The Tribunal considers these to be the appellant's brief in the present appeal.

15. On September 21 and 22, 2017, the CBSA filed the public and protected respondent's brief.

16. By letter dated September 25, 2017, the Tribunal indicated that Mr. Fersch had the opportunity to make further written comments on the respondent's brief before the Tribunal considered the appeal and that his additional submissions should be filed by October 23, 2017.

17. By letter dated October 24, 2017, the Tribunal advised Mr. Fersch that it had not yet received his additional submissions and that they should be submitted as soon as possible, and by no later than October 31, 2017.

18. On October 30, 2017, Mr. Fersch filed a short additional submission with the Tribunal, reiterating that he was requesting a refund of the GST paid on the portion of the purchase price of the good in issue represented by the trade-in allowance for the 2015 motorhome.

19. The file hearing was held in Ottawa, Ontario, on November 7, 2017.

## LEGAL FRAMEWORK

20. The *Act* requires that a value be attributed to imported goods for the purposes of the imposition of duties on such goods. Section 46 of the *Act* states that this value for duty is to be determined according to the various methods set out in sections 47 to 55. In addition, subsection 47(2) sets out the order in which the aforementioned methods must be considered.

21. Sections 47 and 48 of the *Act* set out the transaction value method as the first for consideration with regard to the determination of the value for duty of imported goods. Subsection 48(1) provides that "... the value for duty of goods is the transaction value of the goods if the goods are sold for export to Canada to a purchaser in Canada and the price paid or payable for the goods can be determined..." In addition, the "price paid or payable", as defined in subsection 45(1), relates to "the sale of goods for export to Canada". Subsection 48(4) provides for certain adjustments to the price paid or payable of imported goods.

22. It is only to the extent that the value for duty of imported goods cannot be appraised on the basis of their transaction value that any subsidiary bases of appraisal, as outlined in sections 49 to 53, can be considered.

## ANALYSIS

23. Mr. Fersch's position was that the trade-in allowance of the 2015 motorhome should be deducted from the value for duty of the good in issue and that, consequently, he was entitled to a refund of a portion of the GST paid when he imported the good in issue. In support of his position, he submitted that he had, in the past, obtained a refund of the GST paid on a motorhome that he imported to Canada for the trade-in value of a vehicle he had traded in.

24. For its part, the CBSA argued that Mr. Fersch had not cited any legal basis to support his claim and that the Tribunal has previously considered and rejected this type of claim in other cases. The CBSA further submitted that the applicable legislation does not permit the value of a trade-in to be deducted from the value for duty of an imported vehicle on which GST is assessed.

25. The Tribunal dealt with a similar issue as the one in this case in *Draganiuk*,<sup>3</sup> i.e. whether the trade-in allowance of a 1991 automobile should be deducted from the value for duty of a used 2000 automobile that the appellant had imported into Canada. The Tribunal found that not all the requirements of section 48 were strictly met because the value of a trade-in could not be objectively determined. The Tribunal also found that none of the subsidiary appraisal methods set out in sections 49 to 52 were applicable. Applying the residual method under section 53, the Tribunal found that the transaction value method described in section 48 remained applicable because it required the least amount of adjustment. The Tribunal further found that even when the flexible approach described in section 53 was applied, no adjustment for the trade-in could be made because, while the *Act* provides for certain adjustments to the price, it did not provide for an adjustment for a trade-in allowance. It therefore concluded that the value for duty of the imported automobile had been properly assessed by the CBSA as the full purchase price of the automobile, without any adjustment for a trade-in allowance, and dismissed the appeal.<sup>4</sup>

26. The circumstances in this case are similar to those in *Draganiuk*. There is no evidence on the record to convince the Tribunal that the value for duty of the good in issue was not properly determined by the CBSA. In addition, Mr. Fersch provided no evidence with regard to a previous transaction where he allegedly received the deduction that he is seeking in the present case, nor whether it was properly allowed by the CBSA. The Tribunal therefore finds that Mr. Fersch has not discharged his burden of proof.<sup>5</sup>

## DECISION

27. The appeal is dismissed.

Ann Penner  
Ann Penner  
Presiding Member

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3. *John Draganiuk v. President of the Canada Border Services Agency* (27 September 2006), AP-2005-040 (CITT) [*Draganiuk*].

4. *Draganiuk* at paras. 12-19.

5. In accordance with subsection 152(3) of the *Act*, Mr. Fersch bears the burden of proving that the value for duty of the good in issue was not determined in accordance with the provisions of the *Act* by the CBSA.