Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal AP-2021-023

M. Quinn

v.

President of the Canada Border Services Agency

Decision and reasons issued
Friday, November 25, 2022

Corrigendum issued
Tuesday, January 2, 2024

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IN THE MATTER OF an appeal heard by means of a file hearing on July 27, 2022, pursuant to section 67 of the *Customs Act*;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated August 23, 2021, with respect to a request for refund of duties paid pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

M. QUINN **Appellant**

AND

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

DECISION

The appeal is dismissed, as the goods were properly assessed for duty by the Canada Border Services Agency.

Frédéric Seppey

Frédéric Seppey
Presiding Member

IN THE MATTER OF an appeal heard by means of a file hearing on July 27, 2022, pursuant to section 67 of the *Customs Act*;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated August 23, 2021, with respect to a request for refund of duties paid pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

M. QUINN **Appellant**

AND

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

CORRIGENDUM

Paragraph 41 of the Statement of Reasons should read as follows:

Accordingly, the Tribunal finds that the vehicle is not eligible for a tariff exemption under tariff item No. 9805.00.00.

By order of the Tribunal,

Frédéric Seppey

Frédéric Seppey
Presiding Member

Place of Hearing:	File hearing
Date of Hearing:	July 27, 2021
Tribunal Panel:	Frédéric Seppey, Presiding Member
Tribunal Secretariat Staff:	Nadja Momcilovic, Counsel Kaitlin Fortier, Registry Officer

PARTICIPANTS:

Appellant	**Counsel/Representative**
M. Quinn	Self-represented
Respondent	**Counsel/Representative**
President of the Canada Border Services Agency	Sarah Rajguru

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STATEMENT OF REASONS

OVERVIEW

[1] Mr. Quinn is a Canadian Citizen who had sojourned in Florida for extended periods of times over the years until July 2015, when Mr. Quinn received an order of deportation from US authorities and returned to Canada.[1] Upon his departure from Florida, Mr. Quinn left behind three motor vehicles he had purchased over the years in the US.[2]

[2] Subsequently, Mr. Quinn was allowed to return to the US to dispose of his Florida property and to bring back his vehicles to Canada.[3] Between May 15 and August 8, 2019, Mr. Quinn imported three vehicles into Canada, all declared as "casual good" or goods for personal use:[4]

- 2014 Hyundai Genesis: Upon entry on May 15, 2019, it was assessed as benefitting from the US tariff and allowed to be imported duty free.[5]

- 2012 Hyundai Genesis (the good in issue): Upon entry on June 19, 2019, it was classified under tariff item No. 8703.24.00 as "other vehicles, principally designed for the transport of persons, with only spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 3,000 cc" and assessed as being subject to the most-favoured-nation (MFN) tariff treatment and, accordingly, charged a duty of 6.1%, amounting to $568.39.[6]

- 2006 Hyundai Sonata: Upon entry on August 8, 2019, it was assessed as benefitting from the US tariff and allowed to be imported duty free.[7]

[3] On December 20, 2019, Mr. Quinn submitted a claim to the Canada Border Services Agency (CBSA), seeking a refund of duties paid on the good in issue, under section 74 of the *Customs Act* (the Act).[8]

[4] On November 26, 2020, a CBSA officer wrote to Mr. Quinn to inform him that his request was still being assessed. The officer also explained that Mr. Quinn could be entitled to an exemption of duty under tariff item 9805.00.00, which allows a former resident returning to Canada after having resided not less than one year in another country to import goods into Canada for personal use free of duties. The CBSA officer asked Mr. Quinn for any additional information he may have that would demonstrate that his intent in 2015 was to have his personal goods follow him later.[9]

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1 Exhibit AP-2021-023-01 at 1.
2 *Ibid.* at 2; Exhibit AP-2021-023-04 at 1.
3 Exhibit AP-2021-023-04 at 12.
4 Exhibit AP-2021-023-01 at 1; Exhibit AP-2021-023-04 at 12.
5 Exhibit AP-2021-023-01A at 13.
6 *Ibid.* at 12.
7 *Ibid.* at 11.
8 R.S.C., 1985, c. 1 (2nd Supp.); Exhibit AP-2021-023-23 at 33.
9 Exhibit AP-2021-023-23 at 35–36.

[5] On January 6, 2021, the CBSA denied the request, which was treated as a re-determination under subparagraph 59(1)(a)(ii) of the Act. The CBSA indicated that the good in issue did not meet the conditions of tariff item No. 9805.00.00.[10]

[6] On May 3, 2021, Mr. Quinn requested a further re-determination under subsection 60(1) of the Act, indicating that he failed to submit the documentation on time (i.e. within 90 days of the January 6, 2021, decision) because of personal hardship, claiming that the good in issue was clearly part of his personal effects.[11] In his request, Mr. Quinn especially questioned why two of his three cars were granted duty-free treatment, whereas the good in issue was not. Mr. Quinn attributed this difference in treatment by different customs officers as a lack of empathy for the circumstances that forced him to bring back the good in issue in Canada.

[7] On August 23, 2021, the CBSA upheld its previous decision under subsection 60(4) of the Act, confirming that the good in issue was properly classified under tariff item 8703.24.00 and the MFN tariff treatment attracting a 6.1% rate of duty.[12]

[8] On November 15, 2021, Mr. Quinn filed the present appeal with the Tribunal, under subsection 67(1) of the Act.[13] On March 19, 2022, Mr. Quinn submitted his brief on the matter under appeal.[14]

[9] On April 20, 2022, the CBSA filed a motion to dismiss the appeal on the basis that Mr. Quinn's submissions contained no arguments regarding the correct tariff classification and tariff treatment of the good in issue.[15]

[10] On April 26 and May 12, 2022, the Tribunal requested further submissions from the parties, which were filed between May 10, 2022, and May 24, 2022.

[11] On June 16, 2022, the Tribunal issued an order denying the CBSA's motion to dismiss the appeal and requested further submissions from the parties on the issue of appropriate tariff treatment.[16]

[12] Both parties filed their final submissions by June 29, 2022. The Tribunal held a file hearing on July 27, 2022, during which it considered the matter on the basis of evidence submitted by the parties.

[13] After careful review of the evidence on record and for the reasons that follow, the Tribunal has to dismiss the appeal. The good in issue is properly classified under tariff item 8703.24.00 and the MFN rate of duty of 6.1% applies.

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10 Exhibit AP-2021-023-23 at 38.
11 *Ibid.* at 40–41.
12 *Ibid.* at 43–44.
13 Exhibit AP-2021-023-01.
14 Exhibit AP-2021-023-04.
15 Exhibit AP-2021-023-08.
16 Exhibit AP-2021-023-15.

GOOD IN ISSUE

[14] The good in issue is a 2012 Hyundai Genesis. It bears a vehicle identification number (VIN) indicating that it originates from South Korea. The CBSA describes the good in issue as a "4-door sedan with a 5-liter engine and with 5-person seating capacity".[17]

[15] At the time of importation, the good in issue was assessed under tariff item No. 8703.24.00, as other vehicles, principally designed for the transport of persons, with only spark-ignition combustion reciprocating piston engine, of a cylinder capacity exceeding 3,000 cc.[18] At the same moment, the CBSA determined that the good in issue was subject to MFN tariff treatment and applied a tariff of 6.1%.

PRELIMINARY ISSUE: THE TRIBUNAL'S JURISDICTION AND CBSA'S MOTION TO DISMISS THE APPEAL

[16] As a preliminary matter, the Tribunal had to consider the motion presented by the CBSA on April 20, 2021, requesting an order to dismiss the appeal pursuant to Rule 23.1 of the CITT rules, on the ground that it "discloses no reasonable cause of action".[19] On June 16, 2022, the Tribunal dismissed the CBSA's motion for the reasons that follow.

[17] The CBSA argued that, in his brief, Mr. Quinn made no arguments with respect to the tariff classification of the good in issue or the imposition of resulting applicable duties, the two core elements of the CBSA decision appealed by Mr. Quinn. The CBSA also noted that the Tribunal is not a court of equity and, as such, does not have jurisdiction to grant the relief sought by Mr. Quinn. Accordingly, the appeal simply had no chance of success, justifying its dismissal.[20]

[18] In response, Mr. Quinn maintained that the "forced deportation of all my personal effects from my property in Florida in 2019, the forced sale of my property in Florida in 2020 and all the associated moving expenses in transporting my personal goods to Canada are all attributable to the actions of the CBSA in the first place, by conveying misinformation to the USCBP."[21] He considered that the CBSA's arguments in support of its motion "sidestep the bigger issue and focus on the minor issue regarding duty on one of my vehicles."[22]

[19] Before addressing the substance of the CBSA's motion, the Tribunal considers it important to explain its role and jurisdiction in hearing appeals of decisions made by the CBSA. Its jurisdiction is very well defined and stems from subsection 67(1) of the Act, which states the following:

> A person aggrieved by a decision of the President made under section 60 or 61 may appeal from the decision to the Canadian International Trade Tribunal by filing a notice of appeal in writing with the President and the Canadian International Trade Tribunal within ninety days after the time notice of the decision was given[23].

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17 Exhibit AP-2021-023-23 at para. 4.
18 *Ibid.* at 24.
19 Exhibit AP-2021-023-08 at 1.
20 *Ibid.* at 2–3.
21 Exhibit AP-2021-023-13.A at para. 9.
22 *Ibid.* at para. 10.
23 Subsection 67(1) of the Act, online: <https://laws-lois.justice.gc.ca/eng/acts/c-52.6/page-11.html>.

[20] In considering an appeal filed under subsection 67(1), the Tribunal must limit itself to the questions related to the issues falling within the authority of the CBSA pursuant to either section 60 or 61, namely the origin, the tariff classification, the value for duty or the marking of imported goods.[24] It does not and cannot extend its jurisdiction further.

[21] As stated on several occasions, the Tribunal is not a court of equity, meaning that it must apply the law as it is written and that it does not have jurisdiction to grant relief based on fairness or equity, which would go beyond what is provided by law.[25] The Tribunal can only agree with the CBSA on this specific point. While the Tribunal appreciates how Mr. Quinn feels about the hardship he faced with respect to his forced return to Canada and having to leave his personal effects in the US, the Tribunal cannot consider, in the context of this appeal, the actions or events that preceded the importation of the good in issue into Canada.

[22] That being said, and in response to the motion brought forward by the CBSA, the Tribunal considers that it has jurisdiction to look at the issue raised in the notice of appeal submitted by Mr. Quinn. The notice clearly states that it aims to appeal "the levied duty on the involuntary import of my Hyundai vehicle on June 19, 2019".[26] Moreover, the notice justifies its recourse to an appeal because "precedent was established by an agent of the CBSA to allow a similar car into Canada without duty two months previous to the time in question". Mr. Quinn concludes his notice of appeal with the following: "I respectfully ask for the rebate of the duty paid ($568.39 plus interest) on the 2012 Hyundai Genesis car".[27]

[23] The Tribunal considers that Mr. Quinn sought to, in his own words, contest the tariff treatment applied to the good in issue in his notice of appeal. The tariff treatment of an imported good is function of the tariff classification of a good and its origin.[28] As the Tribunal has jurisdiction to hear appeals related to both tariff classification and origin, it can also hear an appeal with respect to the tariff treatment applied to the good imported by Mr. Quinn. It is on this ground that the Tribunal denied the motion brought forward by the CBSA to dismiss the appeal for lack of jurisdiction.

LEGAL FRAMEWORK

[24] With regard to the imposition and payment of customs duties, subsection 20(1) of the *Customs Tariff* provides as follows:

> 20 (1) Unless otherwise indicated in Chapter 98 or 99 of the List of Tariff Provisions, in addition to any other duties imposed under this Act or any other Act of Parliament relating to customs, there shall be levied on all goods set out in the List of Tariff Provisions, at the time

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24 *Customs Act*, subsections 60(1) and 61(1).

25 *G. Thériault v. President of the Canada Border Services Agency* (12 March 2013), AP-2012-013 (CITT) at para. 35; *R. Christie v. President of the Canada Border Services Agency* (15 January 2014), AP-2012-072 (CITT) at para. 63; *T. Shannon v. President of the Canada Border Services Agency* (30 January 2008), AP-2006-059 (CITT) at para. 15; *W. Ericksen v. President of the Canada Border Services Agency* (3 January 2002), AP-2000-059 (CITT) at 3; and *R. L. Klaasen v. President of the Canada Border Services Agency* (18 October 2005), AP-2004-007 (CITT) at 2.

26 Exhibit AP-2021-023-01 at 1.

27 *Ibid.* at 3–4.

28 *Bri-Chem Supply Ltd. v. President of the Canada Border Services Agency* (2 October 2015), AP-2014-017 (CITT) at para. 5.

> those goods are imported, and paid in accordance with the Customs Act, a customs duty at the rates set out in that List, the "F" Staging List or section 29 that are applicable to those goods.

[25] Tariff item No. 9805.00.00 provides a tariff exemption on imported casual goods for residents or former residents of Canada returning to Canada to resume residence after having been resident of another country for a period of not less than one year. It reads as follows:

> Goods imported by […] a resident returning after an absence from Canada of not less than one year, and acquired by that person for personal or household use and actually owned, possessed and used abroad by that person for at least six months prior to that person's return to Canada and accompanying that person at the time of their return to Canada.

[26] In the present appeal, the CBSA classified the good in issue under tariff item No. 8703.24.00, having determined that it cannot be classified under tariff item No. 9805.00.00.

[27] The relevant tariff classification provisions are as follows:

TARIFF CLASSIFICATION OF THE GOOD IN ISSUE

Tariff Item	**Description of the Goods**	**MFN Tariff**	**Applicable Preferential Tariffs**
87	**Vehicles other than railway or tramway rolling-stock, and parts and accessories thereof**		
87.03	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02), including station wagons and racing cars.		
8703.24.00	- - Of a cylinder capacity exceeding 3,000 cc	6.1%	AUT, NZT, CCCT, LDCT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT, HNT, KRT: Free GPT: 6% CEUT: 3.8% UAT: 3.8% CPTPT: 5%

[28] As previously indicated, the good in issue was imported into Canada as a casual good. Unless a good is entitled to preferential tariff treatment, the MFN tariff applies.[29] In the present appeal, the good in issue was manufactured in South Korea and was subsequently exported to the US, where it was purchased by Mr. Quinn prior to 2020.[30]

[29] The origin of goods determines the tariff rate and entitlement to tariff preferences.[31] In order for the vehicle imported by Mr. Quinn to be entitled to preferential treatment under the Canada-Korea Free Trade Agreement (CKFTA) or the North American Free Trade Agreement (NAFTA), the Tribunal must determine whether the following provisions apply to the good in issue:

[30] Article 3.16 of the CKFTA provides as follows:

> **Article 3.16: Transit and Transhipment**
> An originating good that is transported through the territory of a non-party is non-originating unless it can be demonstrated that the good:
>
> (a) undergoes no further production or other operation in the territory of that non-party, other than unloading, splitting up of loads for transport reasons, reloading, or any other operation necessary to preserve it in good condition;
> (b) remains under the customs control while outside the territory of one or both of the Parties; and
> (c) does not enter into trade or consumption in the territory of that non-party.

[31] Article 1(c) of the *CKFTA Rules of Origin Regulations* (CKFTA Regulations)[32] gives force of law, in Canada, to articles 3.8 to 3.17 of the CKFTA. Accordingly, Article 3.16 of the CKFTA is applicable in Canada.

[32] Section 2 of the *CKFTA Rules of Origin for Casual Goods Regulations* (CKFTA Casual Goods Regulations)[33] provides as follows:

> **2** Casual goods that are acquired in Korea are considered to originate in that country and are entitled to the benefit of the Korea Tariff if
>
> **(a)** the marking of the goods is in accordance with the marking laws of Korea and indicates that the goods are the product of Korea or Canada; or
>
> **(b)** the goods do not bear a mark and nothing indicates that the goods are not the product of Korea or Canada.

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29 See subsection 30(1) of the *Customs Tariff* S.C. 1997, c. 36. The MFN tariff treatment is granted to goods originating from the 164 member countries of the World Trade Organization. Where there is no trade agreement between Canada and another country, the general tariff rate of 35 percent applies. See M. Prabhu, *Canada's Laws on Import and Export: an Overview* (Toronto: Irwin Law, 2014), 229–231.

30 NAFTA was in force when the good in issue was imported into Canada. The Canada–United States–Mexico Agreement only entered into force on July 1, 2020.

31 Prabhu at 224.

32 S.O.R. / 2014-299.

33 S.O.R. / 2014-300.

[33] Paragraph 3(a) of the *NAFTA Rules of Origin for Casual Goods Regulations* (NAFTA Casual Goods Regulations)[34] provides as follows:

> **3** Casual goods that are acquired in the United States
>
> > **(a)** are deemed to originate in the United States and are entitled to the benefit of the United States tariff if
> >
> > > **(i)** the marking of the goods is in accordance with the marking laws of the United States and indicates that the goods are the product of the United States or Canada, or
> >
> > > **(ii)** the goods do not bear a mark and there is no evidence to indicate that the goods are not the product of the United States or Canada; …

[34] In the present appeal, the Tribunal will consider whether the good in issue

- is eligible for a tariff exemption under tariff item No. 9805.00.00;
- is properly classified under tariff item No. 8703.24.00;
- can benefit from a preferential tariff treatment, rather than the MFN Tariff treatment, namely:
  - the US tariff treatment, pursuant to the North American Free Trade Agreement (NAFTA) Rules of Origin for Casual Goods Regulations; or
  - the Korea tariff treatment, pursuant to the Canada-Korea Free Trade Agreement (CKFTA) Rules of Origin for Casual Goods Regulations and the CKFTA Rules of Origin Regulations.

ANALYSIS

The good in issue is not eligible for a tariff exemption under tariff item No. 9805.00.00

[35] Mr. Quinn asked to be exempted from payment of the duties and taxes on the good in issue because he forcefully had to import his vehicles and other belongings due to his deportation from the US.

[36] The Tribunal must therefore determine if Mr. Quinn is entitled to an exemption under subsection 20(1) of the *Customs Tariff*, which indicates that exemptions to customs duties are applicable to goods falling within Chapter 98 or 99.

[37] The CBSA submits that when considering Mr. Quinn's re-determinations under sections 59 and 60 of the Act, it considered whether the exemption set out in tariff item No. 9805.00.00, which reads as follows, applied in Mr. Quinn's case:[35]

> Goods imported by […] a resident returning after an absence from Canada of not less than one year, and acquired by that person for personal or household use and actually owned, possessed and used abroad by that person for at least six months prior to that person's return to Canada and accompanying that person at the time of their return to Canada.

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34 S.O.R. / 93-593.

35 Exhibit AP-2021-023-23 at para. 35.

[38] The CBSA submits that Mr. Quinn had not been absent from Canada for at least one year when he imported the good in issue on June 19, 2019. Moreover, the CBSA argues that Mr. Quinn did not provide evidence to prove that he was eligible for this exemption.[36]

[39] In his submissions of June 29, 2022, Mr. Quinn submits that he was deported from the US on July 7, 2015. As such, he was only able to enter the US to retrieve his personal belongings as of February 6, 2019.[37]

[40] The Tribunal must give effect to the words of the provision of tariff item No. 9805.00.00 and apply the law to the facts. There is no possibility for the Tribunal to take into account other factors that may have prevented Mr. Quinn from meeting the requirements in tariff item No. 9805.00.00 and benefit from the exemption. Given that Mr. Quinn lived in Canada between July 7, 2015, and February 6, 2019, the Tribunal is of the view that he had not been absent from Canada for at least one year when he imported the good in issue into Canada. Consequently, Mr. Quinn does not meet the conditions to be entitled to the exemption provided by law.

[41] Accordingly, the Tribunal finds that the vehicle is not eligible for a tariff exemption under tariff item No. 8703.24.00.

The good in issue falls under tariff item No. 8703.24.00

[42] The CBSA classified the good in issue under tariff item No. 8703.24.00. Once the question of the eligibility of the good in issue for a tariff exemption has been disposed of, the matter of whether the good in issue falls under tariff item No. 8703.24.00 (leaving aside, for now, the issue of the *applicable* tariff treatment) is not contested. In his submissions, Mr. Quinn presented no evidence arguing in favour of a different classification. The Tribunal will therefore consider the good in issue as properly classified under tariff item No. 8703.24.00, as "other vehicles, principally designed for the transport of persons, with only spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 3,000 cc".

The good in issue is not entitled to a preferential tariff treatment

The Korea preferential tariff treatment does not apply

[43] The evidence on the record demonstrates that the good in issue was *manufactured* in South Korea. Mr. Quinn has acknowledged this as well.[38] Despite this fact, the good in issue is not subject to the Korea preferential tariff treatment, as the conditions set out in the CKFTA Regulations and the CKFTA Casual Goods Regulations for determining the *origin* of the good are not met.

[44] According to article 3.16 of the CKFTA,[39] an imported good which originated in South Korea is considered as *non-originating* if it is transported through the territory of a non-party, unless it can be demonstrated that the good, among other things, " … b. remains under the customs control while outside the territory of one or both of the Parties; and c. does not enter into trade or consumption in the territory of that non-party".

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36 *Ibid.* at para. 36.

37 Exhibit AP-2021-023-22 at para. 3.

38 Exhibit AP-2021-023-23 at 19, 21, 53.

39 As indicated above, Article 3.16 of the CKFTA has force of law in Canada pursuant to Article 1(c) of the CKFTA Regulations.

[45] The good in issue was transported to the US, a country that is not a party to the CKFTA. While in the US, the good in issue did not stay under the control of customs and was sold to Mr. Quinn as a used car. Accordingly, the good in issue was available for trade and consumption in a non-party country. Hence, the good in issue is considered, under article 3.16 of the CKFTA, as non-originating.

[46] Moreover, pursuant to section 2 of the CKFTA Casual Goods Regulations, given that the good in issue was not acquired by Mr. Quinn in Korea, it cannot be considered as originating in Korea.

[47] In light of the analysis above, the Korea tariff is not applicable as the good in issue does not originate in Korea.

The US preferential tariff treatment does not apply

[48] As the good in issue was purchased in the US by Mr. Quinn, one may think that the good could be entitled to be moved to Canada free of duty, having cleared customs in the US. This is not the case. Again, the US preferential tariff treatment is determined by application of the relevant provisions of the NAFTA Casual Goods Regulations.

[49] Looking at paragraph 3(a) of the NAFTA Casual Goods Regulations, goods are deemed to originate in the US if "**(i)** the marking of the goods … indicates that the goods are the product of the United States or Canada, or **(ii)** the goods do not bear a mark and there is no evidence that the goods are not the product of the United States or Canada …".

[50] The good in issue is marked with a South Korean VIN, indicating that it cannot be deemed to have originated in the US. Indeed, the good in issue, although acquired in the US, does not meet the criteria of paragraph 3(a) of the NAFTA Casual Goods Regulations. Accordingly, it cannot benefit from US preferential tariff treatment.

[51] In determining whether the US tariff was applicable, the CBSA only considered whether the NAFTA Casual Goods Regulations applied. Having received no arguments on this point from Mr. Quinn, and seeing no indication that the CBSA's reasoning is wrong, the Tribunal is satisfied that this issue merits no additional analysis.

[52] Accordingly, the Tribunal finds that no preferential tariff treatment is applicable to the good in issue.

The MFN tariff treatment is applicable

[53] The good in issue was classified under tariff item No. 8703.24.00 which attracts a rate of duty of 6.1% under the MFN tariff.

[54] Given that the preferential tariff treatments under the CKFTA Regulations, the CKFTA Casual Goods Regulations as well as the NAFTA Casual Goods Regulations do not apply, and since Mr. Quinn is not eligible for an exemption under tariff item No. 9805.00.00, the Tribunal considers the MFN tariff treatment applied to the good in issue was correct.

DECISION

[55] In light of the Tribunal's analysis, the appeal is dismissed.

Frédéric Seppey

Frédéric Seppey
Presiding Member