



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## ORDER

Appeal AP-2023-022

Q. Hofer

v.

President of the Canada Border  
Services Agency

*Order issued  
Tuesday, June 25, 2024*

IN THE MATTER OF an appeal filed by Q. Hofer on February 17, 2024, pursuant to section 67 of the *Customs Act*;

AND IN THE MATTER OF a request made by the President of the Canada Border Services Agency on June 12, 2024, pursuant to subrule 23.1(1) of the *Canadian International Trade Tribunal Rules*, for an order allowing the appeal.

**BETWEEN**

**Q. HOFER**

**Appellant**

**AND**

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

**Respondent**

**ORDER**

WHEREAS, on February 17, 2024, pursuant to subsection 67(1) of the *Customs Act* (the Act), Q. Hofer filed an appeal from a decision made by the President of the Canada Border Services Agency (CBSA) on November 30, 2023, under paragraph 60(4)(a) of the Act;

AND WHEREAS that decision classified the Sound Mitigation Equipment – Lightweight device, manufactured by Witt Machine & Tool Co. (the good in issue), as a prohibited device under tariff item 9898.00.00 of the schedule to the *Customs Tariff*;

AND WHEREAS, by letter dated June 12, 2024, the CBSA indicated that it elected not to contest this matter and agreed that the good in issue was incorrectly classified under tariff item 9898.00.00, as it did not meet the definition of a prohibited device within the meaning of subsection 84(1) of the *Criminal Code*;

AND WHEREAS there is no longer a live dispute between the CBSA and Q. Hofer as to whether the good in issue is properly classified as a prohibited device under tariff item 9898.00.00;

AND WHEREAS the CBSA indicated that the good in issue is admissible for importation into Canada and should have been classified under a tariff item in Chapter 93;

AND WHEREAS, under subparagraph 61(1)(a)(i) of the Act, the CBSA can only further re-determine the tariff classification of an imported good after a re-determination is made under paragraph 60(4)(a) of the Act, but before an appeal is heard under subsection 67(1) of the Act, if and only if the further re-determination would reduce duties payable on the good;

AND WHEREAS the change in tariff classification of the good in issue sought by the CBSA in this matter would not result in a reduction of the duties payable as required by subparagraph 61(1)(a)(i) of the Act;

AND WHEREAS the CBSA is therefore statutorily incapable of re-determining the tariff classification of the good in issue that it is seeking to make for the benefit of Q. Hofer by reason of the limitations contained in subparagraph 61(1)(a)(i) of the Act for the reasons explained above;

AND WHEREAS the intervention of the Canadian International Trade Tribunal is consequently required;

THEREFORE, at the request of the CBSA, the Tribunal allows the appeal.

Cheryl Beckett  

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Cheryl Beckett  
Presiding Member