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Our File:
Notre dossier: 9624574

May 29, 2019

Federal Court of Appeal
90 Sparks Street
Ottawa, Ontario
K1A 0H9

Attention: The Registrar

Dear Sirs/Mesdames:

Re: **HOCIUNG, Radu v. CANADA (Public Safety and Emergency Preparedness)**
Court dockets: A-101-18 and A-102-18

These appeals were heard on May 23, 2019 at Toronto before Justices Gauthier, Webb and Rivoalen. The panel directed counsel for the Respondent to serve and file a letter by May 29, 2019 providing the text and citation for the personal exemptions available to travelers returning to Canada.

The personal exemptions are found in the Schedule to the *Customs Tariff* (and not in the regulations made under the *Customs Act*, as counsel mentioned during the hearing). The general description of the goods at issue is found in Tariff Item 98.04 which provides:

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, and reported by that person at time of return to Canada.

The Schedule then provides a detailed series of exemptions for certain goods based on the amount of time the traveler was outside Canada. The complete text dealing with these exemptions in the Schedule is enclosed. The official online version of the Schedule is found at <https://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/2019/01-99/01-99-t2019-1-eng.pdf>. (The complete Schedule is 1,622 pages long.)

By way of additional resources, the panel may also wish to refer to two documents prepared by the Canada Border Services Agency: first, Memorandum D2-3-1 – Personal Exemptions for Residents Returning to Canada, which is available online at <https://www.cbsa-asfc.gc.ca/publications/dm-md/d2/d2-3-1-eng.html>, and second, the Guide for residents returning to Canada, which is available online at <https://www.cbsa-asfc.gc.ca/travel-voyage/declare-eng.html# s8>.

It should be noted that the reporting obligation on travelers does not arise only in cases where the value of the goods exceeds the relevant exemptions. In all cases where a traveler wishes to benefit from the exemptions, the traveler is required to make a report. Subsection 12(1) of the *Customs Act* provides that all goods, whether purchased or otherwise acquired abroad, must be reported at the time of importation. Where the traveler received a gift while abroad, the fair market value of the gift must be declared where that value exceeds the relevant exemptions. The text of subsection 12(1) is as follows:

12 (1) Subject to this section, all goods that are imported shall, except in such circumstances and subject to such conditions as may be prescribed, be reported at the nearest customs office designated for that purpose that is open for business.

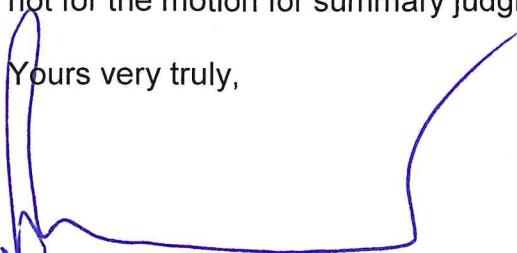
In accordance with subsection 12(1), the obligation is on the traveler/importer to report all goods, and then if applicable, the traveller/importer may benefit from the exemptions which effectively alleviate the need to pay duties and taxes to whatever extent applicable.

Here, it is worthwhile to note that that the \$800 exemption that the Appellant raised specifically does not apply to him as he was a same day traveller, and also as he did not report the goods in the first place.

The panel was also concerned about an apparent typographical error in paragraph 53 of Justice Gleason's decision. The Federal Court registry corrected that paragraph on November 22, 2018, by replacing the word "Customs" with "Proceeds". This corrected version is found on the Federal Court's website at: <https://decisions.fct-cf.gc.ca/fccf/decisions/en/308072/1/document.do>.

Finally, the panel asked counsel for the Respondent to confirm whether the internal bulletin attached as an exhibit to the affidavit of Tara-Lee Fraser was before Justice Gleason. It was not. That affidavit was filed for the Defendant's motion to strike the claim, not for the motion for summary judgment.

Yours very truly,


Eric Peterson
Crown Counsel
National Litigation Sector
EP/dr
Encl.

Copy by mail and email to the Appellant with encl.



Canada Border
Services Agency

Agence des services
frontaliers du Canada



Departmental Consolidation of the *Customs* *Tariff* 2019

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represented by the Minister of Public Safety and Emergency Preparedness, 2019

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This document is available in alternative formats upon request.

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CUSTOMS TARIFF - SCHEDULE

**AN ACT RESPECTING THE IMPOSITION OF, AND PROVIDING RELIEF AGAINST
THE IMPOSITION OF, DUTIES OF CUSTOMS AND CODING SYSTEM**

The complete *Customs Tariff Act* may be found on the Government of Canada - Justice Laws website at :

<http://laws-lois.justice.gc.ca/eng/acts/C-54.011/index.html>.

GENERAL RULES FOR THE INTERPRETATION OF THE HARMONIZED SYSTEM

Classification of goods in the Nomenclature shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.
2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.
 (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.
3. When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
 - (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
 - (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to Rule 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
 - (c) When goods cannot be classified by reference to Rule 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.
4. Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.
5. In addition to the foregoing provisions, the following Rules shall apply in respect of the goods referred to therein:
 - (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This Rule does not, however, apply to containers which give the whole its essential character.
 - (b) Subject to the provisions of Rule 5 (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.
6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

CANADIAN RULES

1. For legal purposes, the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the General Rules for the Interpretation of the Harmonized System, on the understanding that only tariff items at the same level are comparable. For the purpose of this Rule the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires.
2. Where both a Canadian term and an international term are presented in this Nomenclature, the commonly accepted meaning and scope of the international term shall take precedence.
3. For the purpose of Rule 5 (b) of the General Rules for the Interpretation of the Harmonized System, packing materials or packing containers clearly suitable for repetitive use shall be classified under their respective headings.

Chapter 98

SPECIAL CLASSIFICATION PROVISIONS - NON COMMERCIAL

Notes.

1. The provisions of this Chapter are not subject to the rule of specificity in General Interpretative Rule 3 (a). Goods which are described in any provision of this Chapter are classifiable in said provision if the conditions and requirements thereof and of any applicable regulations are met.
2. Goods which may be classified under the provisions of Chapter 99, if also eligible for classification under the provisions of Chapter 98, shall be classified in Chapter 98.
3. For each tariff item of this Chapter, the General Tariff rate is the Most-Favoured-Nation Tariff rate.
4. For the purpose of this Chapter, "duties" means duties or taxes levied or imposed on imported goods under Part 2 of this Act, the *Excise Act, 2001* (other than section 54), the *Excise Tax Act*, the *Special Import Measures Act* or any other Act of Parliament relating to customs.
5. Goods entitled to be classified under heading 98.01, 98.02, 98.03, 98.04 (other than tariff item No. 9804.30.00) or 98.05 shall be relieved from all duties, other than the customs duties imposed under Part 2 of this Act with respect to tariff item No. 9804.30.00, notwithstanding the provisions of this or any other Act of Parliament.

Subheading Notes.

1. For the purpose of subheading 9804.20, the relief from payment of duties granted shall not be combined with any relief from payment of duties granted under subheading 9804.10 with respect to the same trip abroad.
2. For the purpose of subheading 9804.40, the relief from payment of duties granted shall be extended only to a person who, at time of return to Canada, is not importing goods under another subheading of heading 98.04.

CUSTOMS TARIFF - SCHEDULE

Tariff Item	SS	Description of Goods	Unit of Meas.	MFN Tariff	Applicable Preferential Tariffs
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I. -RELIEF PROVISIONS

98.01		Conveyances or containers of Chapters 86, 87, 88 or 89, engaged in the international commercial transportation of goods or passengers, including any ancillary equipment necessary to ensure the safety, security, containment and preservation of the goods or passengers.			
9801.10		-Conveyances and containers.			
9801.10.10	00 - -	<p>Conveyances, not including trailers and semi-trailers of subheading 8716.31 or 8716.39,</p> <p>(a) on condition that:</p> <ul style="list-style-type: none"> (i) in the case of vehicles, they are registered and licensed in a foreign country and operated in Canada with a vehicle licence issued by the appropriate provincial licensing authority; (ii) in the case of aircraft, they comply with the requirements of the Aeronautics Act and any regulations made thereunder; and (iii) in the case of vessels, they comply with the requirements of the Canada Shipping Act and Coasting Trade Act; and <p>(b) on condition that the conveyances:</p> <ul style="list-style-type: none"> (i) are owned or leased and imported by a person whose domicile is in a foreign country; (ii) leave from and return to the foreign country in the normal course of operation; (iii) are controlled from the foreign country; and (iv) are exported within 30 days of the date of their importation or for an additional period not exceeding 24 months where a customs officer is satisfied that the exportation of the conveyances is delayed because: <ul style="list-style-type: none"> (A) of adverse weather conditions; (B) the conveyances are being equipped, reconditioned, reconstructed, refurbished or repaired; (C) the conveyances have a major equipment breakdown; (D) the conveyances are detained under an order of a Canadian court, or under an Act of Parliament or the legislature of a province or any regulation made thereunder; or (E) the delivery of the goods to be loaded on or in the conveyances is delayed. <p>The conveyances provided for in this tariff item may engage in the transportation of goods from one point in Canada to another point in Canada where:</p> <ul style="list-style-type: none"> (a) that transportation is incidental to the international traffic of the goods; (b) the transportation does not occur outside the territorial limits of Canada; and (c) the conveyance has not entered Canada for the purpose of an in-transit movement through Canada to a point outside Canada. 	Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT, HNT, KRT, CEUT, UAT, CPTPT: Free	

CUSTOMS TARIFF - SCHEDULE

Tariff Item	SS	Description of Goods	Unit of Meas.	MFN Tariff	Applicable Preferential Tariffs
9801.10.20 00	--	<p>-Containers, on condition that:</p> <ul style="list-style-type: none"> (a) the ancillary equipment for the containers does not include vehicles, accessories, spare parts of vehicles or packaging, and (b) the containers: <ul style="list-style-type: none"> (i) are fully or partially enclosed to constitute a compartment intended for containing goods; (ii) are of a permanent character and suitable for repeated use; (iii) are designed to carry goods by one or more modes of transport without requiring intermediate reloading; and (iv) are 6.1 m or more in length or have an internal volume of 14 m³ or more; (v) leave from and return to a foreign country in the normal course of operation; and (vi) are exported within 365 days of the date of their importation or for an additional period not exceeding 24 months where a customs officer is satisfied that the exportation of the containers is delayed because: <ul style="list-style-type: none"> (A) of adverse weather conditions; (B) the containers are being equipped, reconditioned, reconstructed, refurbished or repaired; (C) the containers have a major equipment breakdown; (D) the containers are detained under an order of a Canadian court, or under an Act of Parliament or the legislature of a province or any regulation made thereunder; or (E) the delivery of the goods to be loaded in the containers is delayed. The containers provided for in this tariff item may engage in the transportation of goods from one point in Canada to another point in Canada where: <ul style="list-style-type: none"> (a) the transportation does not occur outside the territorial limits of Canada; and (b) the container has not entered Canada for the purpose of an in-transit movement through Canada to a point outside of Canada. 		Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT, HNT, KRT, CEUT, UAT, CPTPT: Free
9801.10.30 00	--	<p>-Trailers and semi-trailers of subheading 8716.31 or 8716.39, on condition that they:</p> <ul style="list-style-type: none"> (a) are registered and licensed in a foreign country and operated in Canada with a vehicle licence issued by the appropriate provincial licensing authority; (b) leave from and return to the foreign country in the normal course of operation; (c) are exported within 30 days of the date of their importation or for an additional period not exceeding 24 months where a customs officer is satisfied that the exportation of the trailers or semi-trailers is delayed because: <ul style="list-style-type: none"> (i) of adverse weather conditions; (ii) the trailers or semi-trailers are being equipped, reconditioned, reconstructed, refurbished or repaired; (iii) the trailers or semi-trailers have a major equipment breakdown; (iv) the trailers or semi-trailers are detained under an order of a Canadian court, or under an Act of Parliament or the legislature of a province or any regulation made thereunder; or (v) the delivery of the goods to be loaded on or in the trailer or semi-trailer is delayed. 			CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT, HNT, KRT, CEUT, UAT, CPTPT: Free

CUSTOMS TARIFF - SCHEDULE

Tariff Item	SS	Description of Goods	Unit of Meas.	MFN Tariff	Applicable Preferential Tariffs
9801.10.30 00 Continued		(v) the delivery of the goods to be loaded on or in the trailer or semi-trailer is delayed. The trailers and semi-trailers provided for in this tariff item may engage in the transportation of goods from one point in Canada to another point in Canada where: (a) that transportation is incidental to the international traffic of the goods; (b) the transportation does not occur outside the territorial limits of Canada; and (c) the trailer or semi-trailer has not entered Canada for the purpose of an in-transit movement through Canada to a point outside of Canada.	-	Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT, HNT, KRT, CEUT, UAT, CPTPT: Free
9801.20.00 00		-Locomotives or railway rolling stock or miscellaneous railway equipment, regardless of tariff treatment entitlement or country of origin, owned or under the control of a railway company in the United States, temporarily engaged in the transportation of goods or passengers from a place in Canada to another place in Canada or imported on a temporary basis for the repair, testing or maintenance of railways in Canada.	-	N/A	UST: Free
9801.30.00 00		-Vessels engaged in international commercial transportation having a Canadian base of operation, other than those having both the departure and destination points situated on the St. Lawrence River or the Great Lakes.	-	Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT, HNT, KRT, CEUT, UAT, CPTPT: Free
9802.00.00 00		Conveyances temporarily imported by a resident of Canada to be employed in the international non-commercial transportation of that person and accompanying persons using the same conveyance.	-	Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT, HNT, KRT, CEUT, UAT, CPTPT: Free
9803.00.00 00		Conveyances and baggage temporarily imported by a person who is not a resident of Canada for use by that person in Canada.	-	Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT, HNT, KRT, CEUT, UAT, CPTPT: Free
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, and reported by that person at time of return to Canada.			
9804.10.00 00		-Valued at not more than eight hundred dollars and included in the baggage accompanying the person returning from abroad after an absence from Canada of not less than forty-eight hours. For the purpose of this tariff item, 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.	-	Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT, HNT, KRT, CEUT, UAT, CPTPT: Free

CUSTOMS TARIFF - SCHEDULE

Tariff Item	SS	Description of Goods	Unit of Meas.	MFN Tariff	Applicable Preferential Tariffs
9804.20.00 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. 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 (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.	-	Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT, HNT, KRT, CEUT, UAT, CPTPT: Free
9804.30.00 00		-Valued at not more than three hundred dollars and included in the baggage accompanying the person returning from abroad after an absence from Canada of not less than forty-eight hours. For the purpose of this tariff item, goods shall not include those which could otherwise be imported into Canada free of duties, nor alcoholic beverages, cigars, cigarettes, tobacco sticks or manufactured tobacco.	-	7%	CCCT, LDCT, GPT, UST, MT, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT, HNT, KRT, CEUT, UAT, CPTPT: Free
9804.40.00 00		-Valued at not more than two hundred dollars and included in the baggage accompanying the person returning from abroad after an absence from Canada of not less than twenty-four hours. For the purpose of this tariff item, goods shall not include alcoholic beverages, cigars, cigarettes, tobacco sticks or manufactured tobacco.	-	Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT, HNT, KRT, CEUT, UAT, CPTPT: Free
9805.00.00		Goods imported by a member of the Canadian Forces, by an employee of the Canadian government, or by a former resident of Canada returning to Canada to resume residence in Canada after having been a resident of another country for a period of not less than one year, or 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. "Goods" does not include goods that are sold or otherwise disposed of within twelve months after importation. For the purpose of this tariff item: (a) the provisions shall apply to 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 they are included in the baggage accompanying the importer, and no relief from payment of duties is being claimed in respect of alcoholic beverages or tobacco under another item in this Chapter at the time of importation; (b) if goods (other than alcoholic beverages, cigars, cigarettes, tobacco sticks and manufactured tobacco) are not accompanying the person returning from abroad, they may be classified under this item when imported at a later time if they are reported by the person at the time of return to Canada; and	-	Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT, COLT, JT, PAT, HNT, KRT, CEUT, UAT, CPTPT: Free