



**TC01860**

**Appeal number: TC/2011/02595**

*Customs Duties – Endangered species – Restoration – Export unsupported by CITES permits – Whether refusal to restore unreasonable and disproportionate – No – Appeal dismissed – CEMA 1979 s.152(b)*

**FIRST-TIER TRIBUNAL**

**TAX**

**VERNON YIP**

**Appellant**

**- and -**

**DIRECTOR OF BORDER REVENUE**

**Respondents**

**TRIBUNAL: DR K KHAN (Judge)  
SONIA GAMBLE**

**Sitting in public in London on 31 January 2012**

**Kim McDonald and Pauline McDonald of Taxidermy Law, for the Appellant**

**Rupert Jones, counsel, for the Respondents**

## DECISION

### Introduction

1. The disputed decision of the Respondents is contained in a letter dated 7  
5 March 2011. In that letter the Appellant was notified that following a departmental  
review, his goods – five rhinoceros (“rhino”) horns would only be restored if a valid  
CITES permit was provided by the Animal Health & Veterinary Laboratories Agency  
 (“Animal Health”) which is an executive agency of the Department of Environment,  
 Food and Rural Affairs (“DEFRA”), and presented to the Respondents. CITES means  
10 the Convention on International Trade in Endangered Species.

2. The rhino horns were initially detained on 27 July 2010 at Heathrow Airport  
 and formally ceased on 6 August 2010 as a result of their failure to match their  
 description contained in their re-export certificates.

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3. In terms of the chronology there are in fact three decisions of the UK Border  
 Agency (“UKBA”). The first is the 9 December 2010. This was a decision in which  
 points a request for review of the decision of the UKBA dated 29 September 2010 not  
 to restore the rhino horns. There was a further decision on 7 March 2010 which was  
20 made after further representations were made by the Appellant on 28 February 2012  
 in which a request was made to alter the decision of 29 September. The  
 representations at that time which were made by the Appellant stated that he now  
 wish the rhino horns as part of his UK collection. The third decision was made on 4  
 April in which further representations were made concerning the decision of 29  
25 September 2010 not to restore the rhino horns. Again the original decision was

upheld. The officer, Mr David Harris, stated that it is “only on production of the correct CITES documentation” would the goods be restored.

### Background

5 4. On 27 July 2010, at the outbound controls at Heathrow, Terminal 4 the Appellant presented the UKBA with three CITES re-export permits which had been issued for five rhino horns which he was taking with him in his luggage to Australia. The Respondents examined the rhino horns against a description on the re-export certificate. The officers concluded that the goods did not match the descriptions  
10 contained in Box 8 of the re-export certificate, in that they were not mounted on wooden plaques as required under the terms of those certificates. The rhino horns were therefore detained pending further enquiries.

5. In order to lawfully re-export certain “worked specimens” a valid CITES  
15 permit is required. Such permit could only be considered valid if the goods fully match the descriptions on those permits. In this case, Box 8 of the permit indicated that the goods were mounted on wooden plaques. As the goods had in fact been removed from the plaques prior to their re-export they no longer match the description on the permits. The permits were therefore considered to be invalid.

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6. The goods were seized under section 139(1) of the Customs and Excise Management Act 1979 (“CEMA”) as liable to forfeiture under section 68(1)(b) of CEMA in that the goods were presented for export contrary to the prohibition or restriction contained in Article 5 of the Council Regulation (EC) 338/97. The

Appellant was issued with a “Notice of Seizure” (dated 6 August 2010) and a Customs Notice 12A (“Goods and/or Vehicles Seized by Customs”). The Notice explained that the Appellant could challenge the legality of the seizure in a Magistrates’ Court by sending a notice of claim within one month of the date of seizure.

7. The Appellant did not challenge the legality of the seizure of the goods within the prescribed time limit and as a result, with the passage of time, the goods were condemned as forfeit under paragraph 5 of Schedule 3 of CEMA (“Deemed Condemnation”) and their ownership passed to the Crown. In August 2010 the Appellant retain the services of advisers (Kim McDonald, taxidermy law), who though not legally qualified, made representations on behalf of the Appellant. They requested restoration of the items.

8. In September 2010, Animal Health quite separate from the Respondents prepared guidance, on re-interpreting the existing law, and stating that applications to re-export products made from rhino horns would only be granted if they met one of the following criteria:

- (a) The individual item is of such artistic value that it exceeds its potential value on the legal medicine market;
- (b) The item is part of a genuine exchange of cultural goods between reputable institutions (i.e. museums);
- (c) The item has not been sold and is an heirloom moving as part of a family relocation; or
- (d) The item is part of a bona fide research project.

9. The Appellant could only have come within (a) of the above categorisations.

10. On 29 September 2010, the Respondents wrote to the Appellant to inform them that their request for restoration had been refused. This is the original non-restoration decision. On 27 October 2010, the Appellant's representatives wrote to the Respondents asking that the decision to refuse restoration of 29 September 2010  
5 be reviewed and making additional representations. On 9 December 2010 the Respondents wrote to the representatives of the Appellant to inform them that, following a review of the decision, the original decision had been varied. The varied decision was that the rhino horns should be restored upon production of the correct CITES permits.

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11. On 18 February 2011, Animal Health, implemented European Commission guidelines making it illegal to sell mounted, but otherwise unaltered, rhino horns in the UK. This effectively put a stop to the trade or export of rhino horns.

15 12. On 7 March 2011, the Respondents wrote to the representatives of the Appellant confirming the 9 December 2010 review decision to restore the goods but only upon production of the correct CITES permits.

20 13. On 4 April 2011, the Respondents sent a further letter to the representatives of the Appellant outlining the need to provide the correct documentation and notifying them of their further right of appeal but re-affirming the review decision.

14. It should be noted that Animal Health is a separate agency from UKBA and an application for a permit has to be made to Animal Health. There are separate and

independent considerations relating to that permit and there is a separate appeal procedure should a permit not be given. There can also be judicial review of the decisions of Animal Health. The Appellant has not made a further application to obtain CITES certificates from Animal Health which would fall within their new  
5 guidelines for the issue of such certificates.

### The Law

15. Section 68(1) CEMA provides:

10 Offences in relation to exportation of prohibited or restricted goods

(1) If any goods are –

- 15 (a) exported or shipped as stores; or  
(b) brought to any place in the United Kingdom for the purpose of being exported or shipped as stores,

20 and the exportation or shipment is or would be contrary to any prohibition or restriction for the time being in force with respect to those goods under or by virtue of any enactment, the goods shall be liable to forfeiture and the exporter or intending exporter of the goods and any agent of his concerned in the exportation or shipment or intended exportation or shipment shall each be liable on summary conviction to a penalty of three times the value of the goods or [level 3  
25 on the standard scale], whichever is the greater.

16. Section 139(1) CEMA provides:

30 (1) Any thing liable to forfeiture under the customs and excise Acts may be seized or detained by any officer or constable or any member of Her Majesty's armed forces or coastguard.

17. Section 152 CEMA provides:

35 The Commissioners may, as they see fit –

...

40 (b) restore, subject to such conditions (if any) as they think proper, any thing forfeited or seized under those Acts ...

Commission Regulation No.338/97 (as amended by Council Regulation No. 709/2010), implements CITES in the EU. Rhino horns are listed in Annex A and are afforded the highest level of protection available. Annex A covers all species of rhinos (with the exception of certain populations of southern white rhino), and would include the good seized from the Appellant.

18. Article 2(w) of Commission Regulation 338/97 provides:

worked specimens that were acquired more than 50 years previously shall mean specimens that were significantly altered from their natural raw state for jewellery, adornment, art, utility, or musical instruments, more than 50 years before the entry into force of this Regulation and that have been to the satisfaction of the management authority of the Member State concerned, acquired in such conditions. Such specimens shall be considered as worked only if they are clearly in one of the aforementioned categories and require no further carving, crafting or manufacture to effect their purpose.

19. Article 5(1-3) of Commission Regulation 338/97 provides:

Article 5

Export or re-export from the Community

1. The export or re-export from the Community of specimens of the species listed in Annex A shall be subject to completion of the necessary checks and the prior presentation, at the customs office at which the export formalities are completed, of an export permit or re-export certificate issued by a management authority of the Member State in which the specimens are located.

2. An export permit for specimens of the species listed in Annex A may be issued only when the following conditions have been met:

(a) the competent scientific authority has advised in writing that the capture or collection of the specimens in the wild or their export will not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species;

(b) the applicant provides documentary evidence that the specimens have been obtained in accordance with the legislation in force on the protection of the species in question; where the application is made to a Member State other than the Member State of origin, such documentary evidence shall be furnished by means of a certificate stating that the specimen

was taken from the wild in accordance with the legislation in force on its territory;

(c) the management authority is satisfied that;

5 (i) any live specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment; and

10 (ii)- the specimens of species not listed in Annex 1 to the Convention will not be used for primarily commercial purposes, or

- in the case of export to a State party to the Convention of specimens of the species referred to in Article 3(1)(a) of this Regulation, an import permit has been issued,  
15 and

(d) the management authority of the Member State is satisfied following consultation with the competent scientific authority, that there are no other factors relating to the conservation of the species which militate against issuance of the export permit.  
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3. A re-export certificate may be issued only when the conditions referred to in paragraph 2© and (d) have been met and when the applicant provides documentary evidence that the specimens:  
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(a) were introduced into the Community in accordance with the provision f this Regulation;

30 (b) if introduced into the Community before the entry into force of this Regulation, were introduced in accordance with the provisions of Regulation (EEC) No.362/82; or

(c) if introduced into the Community before 1984, entered international trade in accordance with the provisions of the Convention; or

35 (d) were legally introduced into the territory of a Member State before the provisions of the Regulations referred to in 9a) and (b) or of the Convention became applicable to them, or become applicable in that member State.

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6. The conditions for the issuance of an export permit or re-export certificate as referred to in paragraph 2(a) and (c), (d) shall not apply to:  
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(i) worked specimens that were acquired more than 50 years previously; or

5 (ii) dead specimens and parts and derivatives thereof for which the applicant provides documentary evidence that they were legally acquired before the provisions of the Regulation or of Regulation (EEC) No.3626/82 or of the Convention became applicable to them.

20. Article 10 of Commission Regulation 338/97 provides:

10 Article 10

Certificates to be issued

15 On receiving an application, together with all the requisite supporting documents, from the person concerned and provided that all the conditions governing their issuance have been fulfilled, a management authority of a member State may issue a certificate for the purposes referred to in Article 5(2)(b), 5(3) and (4), Article 8(3) and Article 9.

21. Section 14(2) of the Finance Act 1994 provides:

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Any person who is –

25 (a) a person whose liability to pay any relevant duty or penalty is determined by, results from or is or will be affected by any decision to which this section applies.

(b) a person in relation to whom or on whose application, such a decision has been made, or

30 (c) a person on or to whom the conditions, limitations, restrictions, prohibitions or other requirements to which such a decision relates are or are to be imposed or applied, may by notice in writing to the Commissioners require them to review that decision.

22. Section 15(1) of the Finance Act 1994 provides:

35 Where the Commissioners are required in accordance with [section 14 or 14A] to review any decision, it shall be their duty to do so and they may, on that review, either –

40 (a) confirm the decision; or

(b) withdraw or vary the decision and take such further steps (if any) in consequence of the withdrawal or variation as they may consider appropriate.

23. Section 16(4-6) of the Finance Act 1994 provides:

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(4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal

under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say

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(a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;

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(b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, [a review or further review as appropriate] of the original decision; and

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(c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by [a review or further review as appropriate], to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.

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(5) In relation to other decisions, the powers of an appeal tribunal on an appeal under this section shall also include power to quash or vary any decision and power to substitute their own decision for any decision quashed on appeal.

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(6) On an appeal under this section the burden of proof as to –

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(a) the matters mentioned in subsection (1)(a) and (b) of section 8 above;

(b) the question whether any person has acted knowingly in using any substance or liquor in contravention of section 114(2) of the Management Act, and

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(c) the question whether any person had such knowledge or reasonable cause for belief as is required for liability to a penalty to arise under section 22(1) or 23(1) of the Hydrocarbon Oil Duties Act 1979 (use of fuel substitute or road fuel gas on which duty not paid),

shall lie upon the Commissioners; but it shall otherwise be for the appellant to show that the grounds on which any such appeal is brought have been established.

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#### The Appellant's submissions

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24. The Appellant in his Notice of Appeal dated 4 April 2011 stated that he wished to appeal against the decision of the Respondents to offer restoration of the goods upon production of the correct CITES documentation. The Appellant stated:

5 “During the review procedure and before the above decision was notified, the UK Government alter their policy (decision announced 9 December 2010) and band the re-export of Rhino horn trophies. As a result, the UK Government would no longer issue a valid CITES permit, therefore such a document can no longer be presented to the UKBA as per the requirement ... re-exporting the goods was no longer an option and therefore all that was left was to sell the items to recoup some of the loss ...

10 We now seemed to be stock at a decision that states on one hand that “the goods should be restored” then on the other ask for paperwork that we, or for that fact, the UK Government, can no longer legally provide.

15 It is as stated, our clients wish in fact now his only option that the horns stay as part of his collection in the UK – an action which is perfectly acceptable as possession of such items is not subject to control.

20 As the horns can no longer be exported, and the horns can no longer be sold, they now have legally no value. We therefore ask that any “restoration fee” should take this into account”.

25. The Appellant has also indicated that he was treated unfairly because of his ethnic origin and there has been racial stereotyping. He said he is used as Chinese but in fact he is Australian. He said that the stereotyping is based on the fact that there is a commonly held belief that the Chinese are involved in an illegal trade in powdered rhino horns and consequently he has been tarred with that brush and the horns have been confiscated from him and his colleague Mr Fang, his travelling companion.

30 The Respondents’ submissions

26. The Respondents say that the decision to only offer restoration of the goods upon production of the appropriate documentation was a reasonable decision which was arrived at after following established guidelines and taking into account all policy consideration.

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27. The Respondents have applied the relevant policy and sought advice from Animal Health. The rhino horns did not match the details as stated in the re-export certificate which rendered the certificates invalid for the purposes of the re-exporting of the rhino horns. By taking the horns from the plaques there were no longer worked  
5 items defined in the relevant legislation.

28. The Respondents say that the Appellant has not applied for a permit from Animal Health and there is no blanket prohibition on the export in certain defined circumstances. The Appellant has not shown, to the satisfaction of the Tribunal, that  
10 Animal Health would have refused a re-export permit.

29. The Appellant has provided inconsistent accounts of what he intends to do with the goods and the Respondents are concerned as to what would happen to the goods should they be restored without any conditions.  
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30. The Respondents do not accept the Appellant's contention that, as the goods have no legal value, the UKBA should waive its stated policy of introducing a restoration fee.

20 Witness evidence

31. There were two witnesses. The Respondents called as their witness David Michael Harris, Higher Officer, UKBA. The Respondents called Mr Vernon Yip, the Appellant as their witness. Their evidence is summarised below.

Evidence of David Michael Harris

32. Mr Harris gave evidence as follows:

1. He confirmed his written statement where he explained his role as a Review Officer which includes undertaking reviews of decisions regarding restoration of items seized as a result of their improper importation.
2. In arriving at his decision he took into account representations made by the Appellant, review letters containing representations, email and other correspondences from the Appellant together with the case papers for detention/seizure and non-restoration decisions.
3. He stated that he relied on key elements of the law and the department's policy in relation to restoration of seized CITES goods.
4. He confirmed that it was his view that restoration should be allowed in this case providing the appropriate documentation relating to export of the goods could be produced. It was therefore required that the correct CITES documentation be produced.
5. He explained that he was applying UKBA policy and not the policy of any other department. He said he did not know the detail policies of Animal Health and the circumstances under which they would grant a permit under their new interpretation of the law. He was aware that the circumstances were limited.

Evidence of Vernon Yip

33. The evidence of Mr Yip can be summarised as follows:

1. he explained he was a retired chartered accountant who held Australian nationality and was a collector of taxidermy.
2. He bought taxidermy items at auction and sold these either at his shop or through a website. He was also a collector of these goods.
3. He said he was of Chinese origin but held an Australian passport and his colleague Mr Fang was also of Chinese extraction but held Canadian nationality. He objected to the UK Border Agency CITES alert number 12/10 which stated that they were "Chinese passengers" and he felt that because of this form of stereotyping there was the view that they were involved in the illegal rhino horns trade.
4. He gave various explanations as to what he now wish to do with the rhino horns. He said he intended to keep them as part of his UK collections, give them to friends or export them to Spain to be kept as part of a collection in that country.
5. He said he was a collector of taxidermy goods for over 35 years and a trader for a large part of those years.
6. He explained that he had previously exported rhino horns and similar products.

5 7. He agreed that the rhino horns had been taken out of their wooden plaque base but said this was required since he was transporting the horns in his hand luggage and the wooden plaques would have made the goods bulky and would also have exceeded the weight allocation for hand luggage. He had separately sent via freight the bases for the goods and intended to re-attach them at his final destination.

10 8. He accept that the confiscation was legal but he now seeks to have the horns restored.

15 9. He was advised that an application to Animal Health would have been unsuccessful and so this application was not made. He understood that any export of the rhino horns, under the new interpretation of the law, would not be allowed and that rhino horns on a had no artistic value. It was very unlikely therefore that he would obtain any export permit. It was now his intention to simply have the goods restored to him for personal use.

### Exhibits

20 34. Five rhino horns were brought into the Tribunal and were available for inspection. The Tribunal did inspect the goods which were without their wooden plaque bases.

### Discussion

#### The issue of restoration

25 35. The Tribunal does not believe that the seizure of the goods was unlawful. The export of rhino horns or any similar goods is subject to restrictions in CITES. If goods are to be exported then they must carry the necessary documentation. The goods, the rhino horns, did not have the appropriate documentation since they did not match the descriptions contained in Box 8 of the various re-export certificates. The goods had to be mounted on wooden plaques to satisfy the description in the certificates and the wooden plaques had been taken off. The UKBA cannot apply the policy of Animal Health which is the Department of Defra. The considerations

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relating to UKBA determination and that of Animal Health determination are completely separate matters. The Appellant has not applied to Animal Health for a certificate and therefore the Tribunal has no evidence that a certificate would not be granted. He has been advised by his representative, Mr Kim McDonald, that Animal Health will not grant a certificate on grounds of artistic value of the horns. The horns have no artistic value, in his view and therefore it is unlikely that any such certificate be obtained. He also confirmed that from his discussion with Animal Health, and given the value in the illegal market of the rhino horns which exceeds the value of the horns as artistic decorations, it was the policy of Animal Health not to grant export permits where the value in the illegal market exceeded the value in the artistic market. The Tribunal has not seen any written evidence to support these valuations and therefore the valuations suggested by Mr McDonald have not been used by the Tribunal.

36. The sole question therefore is whether the review officer acted reasonably in making the decision to restore only conditionally upon obtaining the CITES certification. It must be remembered that the decision of the review officer was to allow restoration but only on production of the correct CITES documentation.

37. It is the function of the Tribunal on an appeal under Finance Act 1994 section 16 to determine whether the decision was reasonable. The review officer's function, by contrast, is to look at all the relevant facts and to exclude from his decision making judgment any irrelevant material. It is the responsibility of the review officer to correctly interpret the relevant provisions of the any law and regulation. The Tribunal

must look to see whether the decision to conditionally restore was one that the Commissioners could not reasonably have arrived at within the meaning of the relevant statutory provisions. Mr Jones for the Respondents takes the view that the decision to conditionally restore was the correct decision since the importation of rhino horns and similar products is strictly controlled. He said that it was in the public interest to enforce the provisions dealing with such export and if a trader, as in this case, who is familiar with the procedures has previously exported similar products presents certification which is not valid then there can be no doubt that the goods should be forfeited. Given that there can be no guarantee as to what would become of the goods if they are returned to the Appellant, and there were very different reasons proffered by the Appellant as to what he now wish to do with the goods, then the decision not to restore without proper certification and an examination of the Appellant's reasons, was not an unreasonable decision.

38. The review officer stated in evidence that he was aware of the applicable law and had taken into account the relevant policy considerations. He operated within the guidelines of the UKBA in making decisions on request for restoration of items seized due to a breach of the CITES regulation. In particular Mr Harris pointed out that it was not allowed for the rhino horns to be removed from their wooden plaques. If they had been altered in this way they would no longer be a "worked item" and the original permit can no longer be considered valid. It is a fundamental policy of UKBA that the goods would not be restored without proper documentation. For this reason, and on grounds of fairness, he made a decision to have a conditional restoration as he considered this to be fair in the circumstances. He understood that rhinos are

endangered species and protected species and to restore the goods without the appropriate accompanying documentation would be a breach of the CITES requirements.

5 39. Mr Harris explained that he had sought and applied the policy advice from Animal Health. They confirmed that the rhino horns did not match the re-export certification. They advice that “had the horns been taken from the plaques and then an application been made for re-export, they would have still have had to have met the definition of worked items as defined in Article 2(w) of Regulation 338/97. Pursuant  
10 to Article 5(6) Regulation 338/97, in order for Animal Health to issue a re-export permit allowing the commercial use of such specimens, appropriate documentary evidence would have to be produced”.

40. The Respondents have made clear that the CITES provisions were drafted to  
15 ensure that it is a proper separation between the policy established by, and legislation negotiated by, Animal Health, and that established by and negotiated by UKBA. Mr Jones made clear that the considerations for both departments were separate. The matter of seizure allows for an appeal process through the condemnation proceedings initiated by the Magistrates’ Court while the issue of restoration is dealt with by the  
20 tribunal and there are further appeals against the decisions by Animal Health on the issue of their permits. The different strands of government operate differently. Mr McDonald for the Appellant said his client was an honest man. He sought to apply for permits as required by law and made no attempt to hide or smuggle the goods in question. He said his client found himself in an administrative impasse where the

policy had changed after the conditional restoration decision had been made which made it very difficult to obtain permits for the export of rhino horns. He said that Animal Health had revised their policy in September 2010 regarding the issue of permits for the export of rhino horns and imposed stricter measures for the application  
5 for CITES permits. It was unfortunate that this new interpretation of the law arose after the conditional restoration decision was made. The European Commission had introduced new guidelines on the sale of mounted rhino horns, the effect of which would be to prevent mounted or removed rhino horns from being issued with permits under Article 10 of Regulation 338/97. He acknowledged that the rhinos are an  
10 endangered and protected species and this is reflected in the CITES classifications and while acknowledging also that they are threatened by poaching and the horns are used for use in traditional Chinese medicines where they fetch very high prices, he said his client was a bona fide collector and dealer who operated within the law. He explained that he has spoken to Animal Health (Caroline Riggs) who confirmed that it is very  
15 unlikely that a permit would be obtained given the facts of his clients' case. The Tribunal has enormous sympathy for this position and must restrict itself to looking at the reasonableness of the review officer's decision.

41. The Tribunal notes that the Appellant has not actually made an application to  
20 Animal Health for a re-export permit and therefore does not know if one will be issued. The Tribunal understands, from the interpretation of the new Animal Health policy, that there is no complete prohibition on the export of rhino horns. It is certainly more difficult to obtain permits for the export of rhino horns but not impossible. It will be up to the Appellant to show that they have met the conditions

laid out in the new regulations. Mr Harris in awarding a conditional restoration was applying the principles of UKBA and was not acting in an unreasonable or arbitrary manner. He was operating within what he understood to be law and policy consideration. It was not his duty to apply the policy of Animal Health. If it turns out  
5 that the condition required for restoration cannot be fulfilled then this does not show that the conditional restoration decision was unreasonable.

42. The other consideration which the Tribunal must take into account is whether the decision was proportionate. This means that the decision must be appropriate and  
10 sufficient given the gravity of the infringement. This must be balanced against the Appellant's property rights. The Tribunal feels that the decision to have a conditional restoration was proportionate in the circumstances. It does not mean that the Appellant is completely deprived of the goods but rather their return would be subject to an administrative discretion where a department of the government would review  
15 the reasons and evidence for granting a permit and if reasonable to do so would grant the permit under the specific heads allowed for doing so. It must be proportionate in the circumstances that the correct permits be obtained. The Appellant would be given an opportunity to make representations to obtain that permit and while the circumstances for the grant of the permit are restrictive it is important that they are  
20 observed. It must be remembered that the regulation and CITES convention created obligations on the States in order to regulate the traffic in endangered species. The approach taken in the CITES is a rational approach which is founded on co-operation between the authorities of exporting and importing States and strict compliance with those rules is required in order to allow co-operation between the parties. It is not in

the power of one national authority to relax the rules and for another to apply it in the more rigid manner. The rules must be applied fairly in order to protect the integrity and purpose of the regulations.

5 43. It is known that the Appellant is a trader in these and operates in the world of business. It is also known that the goods can be part of an illegal market and fetch significantly higher prices than their value as artistic goods. It is this public interest versus private property rights which must be balanced. What is clear however is that if the Appellant recognises, as their advisers have recognise, that the export of the  
10 rhino horns cannot take place unless valid permits are obtained then it is not unreasonable to ask that those permits be obtained. It is also not unreasonable that the goods were confiscated in the first instance if they did not meet the requirements of the permits which were issued for their export.

15 44. The Tribunal therefore does not feel that the decision which was made was an unreasonable one or one which the Commissioners, considering all the facts, policy and law would reasonably have arrived at.

#### Prejudice

20 45. Mr Yip makes the point that he has been prejudiced because of his ethnic origin. He draws reference to the UKBA CITES alert number 12/10 where he is described as “a Chinese passenger”. He said the implication of that statement is that there is racial stereotyping and the implication that he is involve in the illegal trade in rhino horns. He has taken great exception to being so classified and stated in his oral

evidence that he had been victimised and “that is why he has taken up this challenge”, a reference to the appeal.

46. The Tribunal would concern itself with a decision of Mr Harris. Mr Yip  
5 himself accepts that there is nothing wrong with Mr Harris’ decision and this is also  
the view of his adviser Mr McDonald. The Tribunal can find nothing in the  
determination of Mr Harris to suggest that any extraneous considerations such as race  
or nationality was considered in making his decision. In the circumstances therefore  
the Tribunal can find no unreasonableness in that decision on these grounds.

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47. The Appellant acknowledges that he had been careless in dealing with the  
goods and that he is in no way dishonest. The Tribunal accepts that the Appellant is  
not dishonest and in fact took steps to obtain the appropriate export licence and made  
frank and full disclosures to the Customs authorities. The Tribunal accepts that these  
15 are not the actions of a man who is intent on being dishonest.

### Conclusion

48. The Appellant finds himself in a difficult situation. In the period between  
when the goods were confiscated and the appeal, the law, or at least interpretation of  
20 the law by Animal Health, has changed which has made it very difficult to re-export  
licence. The decision of Mr Harris was reasonable in all the circumstances and the  
Tribunal can find nothing wrong with that decision. In fact, Mr Harris felt that  
restoration should be the remedy provided that the appropriate documentation can be  
obtained. It will prove difficult to obtain that documentation now given the new

approach taken by Animal Health. For this reason, Mr Yip can feel suitably aggrieved. However, there is nothing in the decision of the officer which is unreasonable and the Tribunal's function is to look at the review officer's decision only. There was nothing considered in making that decision it should not have been considered and in the circumstances therefore the Tribunal believes that the appeal should be dismissed.

49. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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**DR K KHAN**  
**TRIBUNAL JUDGE**  
**RELEASE DATE: 28 February 2012**