



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2012-072

R. Christie

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, January 15, 2014*

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DECISION 10

IN THE MATTER OF an appeal heard on September 26, 2013, pursuant to subsection 67(1) of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated February 13, 2013, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

R. CHRISTIE

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Jason W. Downey
Jason W. Downey
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: September 26, 2013
Tribunal Member: Jason W. Downey, Presiding Member
Counsel for the Tribunal: Laura Little
Anca Petrescu (student-at-law)
Manager, Registrar Programs and Services: Lindsay Vincelli
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PARTICIPANTS:**Appellant**

R. Christie

Respondent

President of the Canada Border Services Agency

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Mr. R. Christie with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ from a decision made on February 13, 2013, by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4).

2. The issue in this appeal is whether four knives imported by Mr. Christie are properly classified under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*² as “prohibited weapons” and are therefore prohibited from importation into Canada pursuant to subsection 136(1).

3. The knives in issue were manufactured in China by United Cutlery and include the following: one “Gil Hibben Claw II” stainless steel knife with boot clip sheath, model GH2028SS (the Claw knife); and one “Godfather Style Assisted Opening Stiletto” knife, model YC-S-1111-CH-C, and two “Godfather Style Assisted Opening Stiletto” knives, model YC-S-1112-BK-C (the Stiletto knives in issue).

PROCEDURAL HISTORY

4. On or about November 15, 2012, Mr. Christie purchased the knives in issue along with some other goods from “wildbillwholesale.com”, an online store, and attempted to import them via mail. On November 22, 2012, the CBSA detained the shipment for further inspection before entry into Canada.

5. On November 26, 2012, pursuant to subsection 59(1) of the *Act*, the CBSA issued a decision classifying the four knives in issue (and two other items not subject to this appeal) as prohibited weapons under tariff item No. 9898.00.00. This classification was based on the CBSA’s determination that the Claw knife was a “push dagger” and that the three Stiletto knives in issue had blades that opened automatically by gravity or centrifugal force.

6. In the same decision, the CBSA permitted the importation of several other items from the same transaction, including nine other Stiletto knives with blades that, as determined by the CBSA, did not open automatically by gravity or centrifugal force and that, therefore, were not classified as prohibited weapons.

7. On December 5, 2012, pursuant to subsection 60(1) of the *Act*, Mr. Christie requested a re-determination of the CBSA’s decision.

8. On February 13, 2013, pursuant to subsection 60(4) of the *Act*, the CBSA re-affirmed its original determination with regard to the tariff classification of the knives in issue.

9. On February 21, 2013, Mr. Christie filed the present appeal with the Tribunal, pursuant to subsection 67(1) of the *Act*.

10. On June 24, 2013, the Tribunal granted the CBSA’s request for an extension of time to file its brief. On July 12, 2013, the CBSA filed its brief and two export reports prepared by Constable Rick McIntosh of the Ottawa Police Service.

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

2. S.C. 1997, c 36.

11. On September 18, 2013, upon request by the Tribunal, the CBSA filed additional submissions addressing an allegation by Mr. Christie as to a certain inconsistency in the CBSA's rationale for the classification of the Stiletto knives in issue as prohibited weapons. On September 23, 2013, Mr. Christie filed a reply to the CBSA's additional submissions.

12. The Tribunal decided to hold a hearing by way of written submissions in accordance with rules 25 and 25.1 of the *Canadian International Trade Tribunal Rules*,³ to which the parties did not object. The hearing was held in Ottawa, Ontario, on September 26, 2013. The knives in issue were made available and examined by the Tribunal during the file hearing.

KNIVES IN ISSUE

13. Essentially, the knives in issue can be separated into two categories for the purposes of the Tribunal's analysis. The first category applies to the Claw knife, and the second category covers the three Stiletto knives in issue.

Claw Knife

14. The Claw knife measures 6 inches overall, including a 2.75-inch plain edged blade.⁴ It is composed of a single piece of stainless steel, with a curved handle that has two prongs at its base. Inset in the handle are four round openings of varying sizes, the largest of which appears to be designed to have a finger fit through it. The inner edge of the handle is scalloped, and the outer edge is plain with two serrated grip surfaces—one near the blade and the other on the prong that protrudes from the base of the handle.

15. The curved handle of the Claw knife is designed to fit in the palm of the hand and can be held in either an upright or underhand position, depending on how it is grasped.

16. In the upright position, the user's little finger is easily looped through the largest hole, with the blade emerging between the thumb and index finger. The thumb rests on the serrated grip surface near the blade, with the other three fingers grasping the handle and resting on its scalloped inner edge.

17. When held in the underhand position, it is the index finger that finds its way looped through the largest hole, with the thumb resting on the serrated grip area on the prong at the base of the handle, the other three fingers grasping the handle and the blade emerging from below the little finger.

Stiletto Knives in Issue

18. The Stiletto knives in issue are folding blades that open out from the side of the handle through what appears to act as an assisted opening mechanism.⁵ Although they have different finishes (i.e. silver or black), all three knives are identical in their design, measuring 4.5 inches in the closed position and 8 inches in the open position, with a 3.75-inch surgical 440 stainless steel tip blade that has the word "Stiletto" etched on one side.

3. S.O.R./91-499.

4. Exhibit AP-2012-072-B-01.

5. Exhibits AP-2012-072-B-02, B-03 and B-04.

19. The assisted opening mechanism of the Stiletto knives in issue can be activated by slightly pressing either on a thumb lever located on the spine of the blade or, alternatively, on a thumb button located below the sharp edge of the blade.

20. In its additional submissions, the CBSA argued that the nine other Stiletto knives, which had previously been released to Mr. Christie, should also have been classified as prohibited weapons on the same basis as the three Stiletto knives in issue that were detained. However, the nine other Stiletto knives were not the subject of the CBSA's decision pursuant to subsection 60(4) of the *Act*.⁶ Accordingly, they are outside the scope of the present appeal, regardless of whether or not they are similar to the three Stiletto knives in issue.⁷ The Tribunal has therefore limited its analysis to the Claw knife and the three Stiletto knives in issue presented through the present appeal as subject to the CBSA's decision under section 60.

LEGAL FRAMEWORK

21. The following are excerpts of the relevant legislative and regulatory provisions in this appeal.

22. Section 136 of the *Customs Tariff* provides as follows:

<p>136.(1) The importation of goods of tariff item No. 9897.00.00, 9898.00.00 or 9899.00.00 is prohibited.</p>	<p>136.(1) L'importation des marchandises des n^{os} tarifaires 9897.00.00, 9898.00.00 ou 9899.00.00 est interdite.</p>
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<p>(2) Subsection 10(1) does not apply in respect of goods referred to in subsection (1).</p>	<p>(2) Le paragraphe 10(1) ne s'applique pas aux marchandises visées au paragraphe (1).</p>
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[Emphasis added]

23. When dealing with the classification of prohibited goods under tariff item No. 9898.00.00, subsection 136(2) of the *Customs Tariff* provides that the *General Rules for the Interpretation of the Harmonized System*⁸ and the *Canadian Rules*⁹ do not apply. This approach is reinforced by Note 1 to Chapter 98, which provides as follows:

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.

6. The CBSA's decision pursuant to subsection 60(4) of the *Act* clearly stated as follows: "... I have concluded that the (2) Manrikigusia Chains, (1) *Folding Knife YC-S-1111-CH-C*, (2) *Folding Knives YC-S-1112-BK-C*, and (1) Hibben Claw GH2028SS meet the definition of prohibited [weapons], as defined in subsection 84(1) of the *Criminal Code*. As such they are classified under tariff item 9898.00.00 and are prohibited from importation into Canada" [emphasis added]. See Exhibit AP-2012-072-10A, Vol. 1 at 20. The Tribunal notes that Mr. Christie did not dispute the CBSA's tariff classification of the Manrikigusia Chains in this appeal.

7. Subsection 67(1) of the *Act* specifically allows recourse to the Tribunal from decisions made by the CBSA under section 60 or 61. Thus, the Tribunal's jurisdiction is limited to the goods that were the subject of those decisions.

8. S.C. 1997, c. 36, schedule.

9. *Ibid.*

24. Therefore, the question of whether the knives in issue are properly classified under tariff item No. 9898.00.00 must be determined in accordance with the terms of tariff item No. 9898.00.00 itself and the applicable provisions of the *Criminal Code*.¹⁰

25. Tariff item No. 9898.00.00 provides as follows:

Firearms, <i>prohibited weapons</i> , restricted weapons, prohibited devices, prohibited ammunition and components or parts designed exclusively for use in the manufacture of or assembly into automatic firearms, in this tariff item referred to as prohibited goods . . .	Armes à feu, <i>armes prohibées</i> , armes à autorisation restreinte, dispositifs prohibés, munitions prohibées et éléments ou pièces conçus exclusivement pour être utilisés dans la fabrication ou l'assemblage d'armes automatiques, désignés comme « marchandises prohibées » au présent numéro tarifaire, [...]
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For the purposes of this tariff item,

Pour l'application du présent numéro tarifaire :

...

[...]

(b) "automatic firearm", "licence", "prohibited ammunition", "prohibited device", "prohibited firearm", *prohibited weapon*, restricted firearm and "restricted weapon" have the same meanings as in subsection 84(1) of the *Criminal Code*

b) « arme à autorisation restreinte », « arme à feu à autorisation restreinte », « arme à feu prohibée », « arme automatique », « arme prohibée », « *dispositif prohibé* », « munitions prohibées » et « permis » s'entendent au sens du paragraphe 84(1) du Code criminel [...]

[Emphasis added]

26. Subsection 84(1) of the *Criminal Code* defines "prohibited weapon" as including the following:

(a) a knife that has a blade that opens automatically by gravity or centrifugal force or by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, or

a) Couteau dont la lame s'ouvre automatiquement par gravité ou force centrifuge ou par pression manuelle sur un bouton, un ressort ou autre dispositif incorporé ou attaché au manche;

(b) any weapon, other than a firearm, that is prescribed to be a prohibited weapon;

b) toute arme — qui n'est pas une arme à feu — désignée comme telle par règlement.

27. In order to determine whether the knives in issue are properly classified as prohibited weapons under tariff item No. 9898.00.00 and, therefore, as goods prohibited from importation into Canada by virtue of subsection 136(1) of the *Customs Tariff*, the Tribunal must determine whether they meet the definition of "prohibited weapon" in subsection 84(1) of the *Criminal Code*.

28. To be classified as a prohibited weapon, the knives in issue must either (a) have a blade that opens automatically by gravity or centrifugal force or by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, or (b) be prescribed as a prohibited weapon, other than a firearm.

10. R.S.C. 1985, c. C-46.

29. With respect to prescribed prohibited weapons, section 4 of the *Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*¹¹ provides as follows:

<p>The weapons listed in Part 3 of the schedule are prohibited weapons for the purposes of paragraph (b) of the definition “prohibited weapon” in subsection 84(1) of the <i>Criminal Code</i>.</p>	<p>Les armes énumérées à la partie 3 de l’annexe sont désignées des armes prohibées pour l’application de l’alinéa b) de la définition de « arme prohibée » au paragraphe 84(1) du <i>Code criminel</i>.</p>
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30. Part 3 of the schedule to the *Regulations* includes the relevant sections 9 and 15, which provide as follows:

<p>9. Any knife commonly known as a “push-dagger” that is designed in such a fashion that the handle is placed perpendicular to the main cutting edge of the blade and any other similar device other than the aboriginal “ulu” knife.</p>	<p>9. Tout couteau communément appelé « dague à pousser », conçu de telle façon que le manche est perpendiculaire au tranchant principal de la lame, ainsi que tout autre instrument semblable, à l’exception du couteau autochtone « ulu ».</p>
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...

[...]

<p>15. The device known as “Brass Knuckles” and any similar device consisting of a band of metal with one or more finger holes designed to fit over the fingers of the hand.</p>	<p>15. L’instrument communément appelé « coup-de-poing américain » et autre instrument semblable consistant en une armature métallique trouée dans laquelle on enfile les doigts.</p>
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POSITIONS OF PARTIES

Mr. Christie

31. Mr. Christie disputed the classification of the knives in issue under tariff item No. 9898.00.00 as “prohibited weapons”. In particular, he argued that the Claw knife is not a “push dagger” because the curved blade is a continuation of the curved handle, as opposed to being perpendicular to the handle as prescribed by the *Regulations*.

32. Mr. Christie submitted that the Stiletto knives in issue are not prohibited weapons on the basis that the blades do not open automatically by way of gravity or centrifugal force. He further argued that they are spring-assisted knives but not prohibited as such, given the fact that the thumb button used to activate the spring-assisted mechanism is located on the blade, not the handle.

33. Referring to the CBSA’s initial decision to permit the importation of the other nine Stiletto knives, Mr. Christie claimed that the same classification should have applied to the three Stiletto knives in issue.¹² According to Mr. Christie, the blade lock screws on the three Stiletto knives in issue were probably loosened at the time of importation, due to faulty design and/or manufacturer error, which caused the blades to open

11. S.O.R./98-462 [*Regulations*].

12. In particular, Mr. Christie noted that the CBSA’s decision made pursuant to subsection 59(1) of the Act provided a list of items that are “. . . not considered prohibited weapons . . .”, which included the other nine Stiletto knives, some of which are the same models as the three Stiletto knives in issue. See Exhibit AP-2012-072-10A, Vol. 1 at 25-26.

automatically by way of centrifugal force when they were inspected by the CBSA and which resulted in their improper classification as prohibited weapons.

34. Mr. Christie further relied on the fact that similar knives are available for sale in Canada to support his claim that the Stiletto knives in issue are not properly classified as prohibited weapons.

CBSA

35. In this appeal, the CBSA relied on different grounds than in its decision under section 60(4) of the *Act*, to support the classification of the knives in issue as “prohibited weapons”.

36. With respect to the Claw knife, the CBSA conceded that it is not a push dagger because (a) the handle is not perpendicular to the blade and (b) the knife is designed to be used in a swinging (as opposed to pushing) motion. Nevertheless, the CBSA submitted that the Claw knife remains properly classified as a prohibited weapon on the basis that it meets the definition of a “Brass Knuckle” as set out in section 15 of Part 3 of the schedule to the *Regulations*.¹³

37. The CBSA had previously determined that the Stiletto knives in issue were classified as prohibited weapons because they opened automatically by way of centrifugal force. In its written brief, however, it took the position that the Stiletto knives in issue were properly classified as prohibited weapons by reason of having a blade that opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife.¹⁴ In the CBSA’s view, both methods for activating the spring-assisted mechanism (i.e. the thumb lever and the thumb button) meet the requirements of paragraph 84(1)(a) of the *Criminal Code*.

38. The fact that the CBSA changed its arguments repeatedly throughout this case resulted in unnecessary complications for Mr. Christie, a self-represented party, in appealing the CBSA’s decision. For example, in the CBSA’s decision pursuant to subsection 59(1) of the *Act*, there was no clear distinction made between the three Stiletto knives in issue that were determined to be prohibited weapons and the nine other Stiletto knives that were released, which ultimately formed part of the basis for Mr. Christie’s appeal. In order to safeguard his procedural fairness rights, the Tribunal afforded Mr. Christie the opportunity to respond to the CBSA’s evolving position as to why the knives in issue were properly classified as prohibited weapons, as well as the scope of the knives subject to this appeal.

39. Considering that Mr. Christie was given every opportunity to fully make his case throughout the present appeal and in light of the unique characteristics of the knives in issue, the CBSA’s varying arguments did not ultimately have an impact on the present decision. The Tribunal, however, wishes to note that greater consistency in the CBSA’s approach, where possible, would have helped to avoid the situation where Mr. Christie was essentially dealing with “a moving target” in bringing forward this appeal.

13. Mr. Christie was given an opportunity to file a reply, but he did not respond to the CBSA’s new allegation that the Claw knife was prohibited on the basis of being a “Brass Knuckle”.

14. Exhibit AP-2012-072-16, Vol. 1A at 2.

ANALYSIS

CBSA's Expert Witness

40. The CBSA filed an expert report prepared by Constable McIntosh, in which he described the operation of the knives in issue.¹⁵ The CBSA asked the Tribunal to recognize Constable McIntosh as an expert in prohibited weapons. Mr. Christie did not object to this request.

41. Although Constable McIntosh has been recognized as such in similar cases in the past,¹⁶ this does not warrant his automatic qualification, especially in the case of a file hearing where an appellant is unrepresented. Having considered Constable McIntosh's résumé filed with his report and the unique facts of this case, and noting that there was no objection to either his expertise or the reports filed in the current proceedings, the Tribunal accepts Constable McIntosh's qualification as an expert in the functioning of weapons, particularly knives. However, it is well established that it is the Tribunal's mandate to determine the legal classification of the knives in issue, i.e. whether they are "prohibited weapons" for the purposes of subsection 84(1) of the *Criminal Code*.¹⁷ Therefore, the opinions expressed by Constable McIntosh in his reports, which go to the ultimate issue of whether the knives in issue are prohibited weapons, were considered subject to this condition.

Whether the Claw Knife is a Prohibited Weapon

42. In order to determine whether the knives in issue are properly classified as "prohibited weapons" under tariff item No. 9898.00.00 and, therefore, as goods prohibited from importation into Canada, the Tribunal must determine whether they are captured by the definition of "prohibited weapon" in subsection 84(1) of the *Criminal Code*. In the case of the Claw knife, the relevant part of that definition is paragraph 84(1)(b), which refers to "any weapon, other than a firearm, that is prescribed to be a prohibited weapon".

43. The Tribunal finds that the Claw knife is a prohibited weapon primarily on the basis that it qualifies as a "push dagger" in accordance with section 9 of Part 3 of the schedule to the *Regulations*. Section 15 also provides an additional ground for classifying the Claw knife as a prohibited weapon because its design further allows for use as a "Brass Knuckle" or similar device.

44. In particular, the Tribunal rejects the CBSA's submission that the Claw knife is not a "push dagger". Having carefully examined the Claw knife, the Tribunal concluded that a perpendicular angle is actually present in its design.¹⁸

45. Notwithstanding the Claw knife's curved profile, the line of the blade from its tip to its base forms a perfect right angle with the line of the handle. In fact, the perpendicular plane of the blade in relation to the

15. Exhibit AP-2012-072-10A, Vol. 1 at 36, 45.

16. For example, Constable McIntosh was recognized as an expert in the functioning of weapons in *La Sagesse de l'Eau v. President of the Canada Border Services Agency* (13 November 2012), AP-2011-040 and AP-2011-041 (CITT) at para. 35 [*La Sagesse de l'Eau*].

17. *La Sagesse de l'Eau* at para. 35.

18. The Tribunal has previously accepted that the term "perpendicular" ordinarily refers to two lines or planes situated to form a right angle. See *Digital Canoe Inc. v. Commissioner of the Canada Customs and Revenue Agency* (12 July 2006), AP-2003-044 (CITT) at paras. 11, 13.

plane of the handle is even more apparent when the Claw knife is held in both the underhand and upright positions described by Constable McIntosh in his export report.¹⁹

46. Furthermore, the Tribunal finds that the Claw knife is designed to be used as a “push dagger”, in accordance with the ordinary meaning of that term. The dictionary definition of the word “dagger” is a “short stabbing-weapon with a pointed and edged blade . . .”²⁰, and “push” is defined as: “**3 a.** . . . Thrust *at* with a pointed weapon, stick, etc.; tilt, fence; use a spear, short sword, etc. . . . **b.** . . . Stab with a weapon.”²¹

47. In the Tribunal’s view, the Claw knife is properly described as a short stabbing-weapon with a pointed and edged blade that is designed to be used with a “pushing” or thrusting motion, as opposed to serving as a “cutting” blade. For instance, when held in the upright position, the serrated grip surface near the base of the blade is clearly designed for the placement of the user’s thumb, with no other apparent function than to support the full force of the hand in a pushing motion, and where the tip of the blade is incidentally perpendicular to the handle.

48. Accordingly, the Tribunal finds that the Claw knife meets the definition of a “push dagger” for the purposes of section 9 of Part 3 of the schedule to the *Regulations* and, therefore, is properly classified as a prohibited weapon under tariff item No. 9898.00.00.

49. With respect to the second basis for classifying the Claw knife as a prohibited weapon, section 15 of Part 3 of the schedule to the *Regulations* applies to “[t]he device known as ‘Brass Knuckles’ and any similar device consisting of a band of metal with one or more finger holes designed to fit over the fingers of the hand.”

50. It is clear from the Tribunal’s examination of the Claw knife and the photos attached to Constable McIntosh’s report that the largest hole in the handle of the knife is designed to fit over a finger, with two prongs protruding, like a knuckle, from above that finger hole.²² Although the three other holes inset in the Claw knife do not appear to be designed to fit over the fingers, because of their size, one finger hole is sufficient to meet the requirements of section 15 of Part 3 of the schedule to the *Regulations*. Furthermore, as stated in Constable McIntosh’s report, the prongs, like the tip of the blade itself, are capable of inflicting injury.²³

51. Therefore, the Tribunal finds that the Claw knife qualifies as a “Brass Knuckle” or similar device, which serves to confirm its proper classification under tariff item No. 9898.00.00 as a prohibited weapon.

Whether the Stiletto Knives in Issue are Prohibited Weapons

52. In order to determine whether the Stiletto knives in issue are properly classified as “prohibited weapons”, the relevant definition is set out in paragraph 84(1)(a) of the *Criminal Code*. Accordingly, the test requires that the blade open automatically in one of the following two ways: (1) by gravity or centrifugal force; or (2) by hand pressure applied to a button, spring or other device in or attached to the handle of the knife.

19. Exhibit AP-2012-072-10A, Vol. 1 at 31, 33, 34.

20. *Shorter Oxford English Dictionary*, 5th ed., s.v. “dagger”.

21. *Ibid.*, s.v. “push”.

22. Exhibit AP-2012-072-10A, Vol. 1 at 33, 34.

23. *Ibid.* at 42, 43.

53. The Tribunal finds that the blades of all three Stiletto knives in issue open by hand pressure applied to “a button, spring, or other device in or attached to the handle of the knife”. In addition, two of the Stiletto knives in issue examined by the Tribunal also open by centrifugal force.

54. The Tribunal’s careful examination of the Stiletto knives in issue confirms Constable McIntosh’s evidence with respect to the design and function of these knives.²⁴

55. In terms of design, the assisted opening mechanism relies on a small internal spring lever arm, which assists the deployment of the blade out of the handle when pressure is applied. This spring lever arm is built into the handle itself and lies along the back of the blade. It is central to the function of opening these blades. Since there is a constant pressure being applied to the back of the blade, by the spring, when stored in the handle, any actuation of the knife itself will release the energy stored in the spring lever arm and propel the blade open; first, however, it must overcome the internal device that otherwise holds the blade closed.

56. The blade is designed to be secured in the closed position by way of a node (or bump) on the interior of the handle that fits within a pin-sized depression (pin hole) at the base of the blade, where it is encased within the handle. This node is intended to hold the blade closed until the assisted opening mechanism is activated by slight pressure applied on either the thumb lever or the thumb stud. Yet, to say that the node design actually holds the blade either “closed” or “secure” is an overstatement.

57. The size of the node is so small and the pressure holding the node in place within the depression is so slight that it can be easily overcome by any movement or other actuation of the knife, causing the blade to automatically open by way of the released spring lever arm.

58. In fact, this amounts to a veritable “*hair trigger*” where the slightest touch to either the thumb lever or the thumb button will overcome the internal device and cause the blade to spring open. Even the simple action of squeezing the handle itself resulted in the full deployment of the blade. This creates a particularly dangerous situation when the knife is held in the closed position, as the blade could be unintentionally deployed at any time, with harmful consequences for the carrier or user.

59. In the case of two of the three Stiletto knives in issue, the application of a slight flick or movement of the wrist caused them to open. It is well established in the Tribunal’s jurisprudence that a knife with a blade that opens with a quick flick of the wrist is considered to open automatically by centrifugal force.²⁵

60. Although one of the Stiletto knives in issue did not open in this manner, it was clear to the Tribunal that all the Stiletto knives in issue opened automatically²⁶ by application of slight pressure to either the thumb lever or the thumb button, both of which are attached to the handle of the knife in some way. In this regard, the Tribunal was not persuaded by Mr. Christie’s assertion that the thumb button did not meet the requirements of paragraph 84(1)(a) of the *Criminal Code* because it was located on the blade.

24. *Ibid.*

25. See, for example, *Terry Shannon v. President of the Canada Border Services Agency* (30 January 2008), AP-2006-059 (CITT) [*Terry Shannon*] at para. 13; *Kenneth Lee v. President of the Canada Border Services Agency* (12 July 2006), AP-2003-054 (CITT) at para. 12.

26. The automaticity of the opening of the blade is not negated by the need for additional manipulations, as the wording of paragraph 84(1)(a) of the *Criminal Code* necessarily implies some degree of intervention, i.e. as a result of hand pressure. See *La Sagesse de l’Eau* at paras. 47, 48; *R. v. Vaughan*, [1991] 3 S.C.R. 691.

61. The Tribunal is satisfied that the thumb button constitutes a “button” within the meaning of the provision.²⁷ Furthermore, simple hand pressure applied to either the handle of the knife, or any part of the knife for that matter (i.e. such as simply squeezing the handle) effectively activates the “. . . spring or other device in or attached to the handle of the knife” Alternatively, the thumb lever also meets the requirements of the provision as a “device in or attached to the handle of the knife”.²⁸

62. In light of the above, the Tribunal finds that the Stiletto knives in issue are properly classified as “prohibited weapons”, pursuant to the definition in paragraph 84(1)(a) of the *Criminal Code*.

63. Finally, regarding Mr. Christie’s argument that knives similar to the ones in issue are available for sale in Canada, it is well established by the Tribunal’s jurisprudence that the Tribunal is not a court of equity and is bound by the applicable statutory laws²⁹ and that any previous importations not intercepted by the CBSA are irrelevant.

Conclusion

64. The Tribunal finds that the knives in issue are properly classified under tariff item No. 9898.00.00 as “prohibited weapons”, in accordance with the requirements of subsection 84(1) of the *Criminal Code*. Specifically, the Claw knife qualifies as a “push dagger” and also meets the definition of a “Brass Knuckle” or similar device, in accordance with the provisions of Part 3 of the schedule to the *Regulations*. The Stiletto knives in issue open automatically by hand pressure applied to a button, spring or other device in or attached to the handle or, in the case of two of these knives, by centrifugal force.

DECISION

65. For the foregoing reasons, the appeal is dismissed.

Jason W. Downey

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Presiding Member

27. In *La Sagesse de l’Eau*, at para. 41, the Tribunal accepted the following definitions in its interpretation of paragraph 84(1)(a) of the *Criminal Code*: “The *Canadian Oxford Dictionary* defines ‘button’ as ‘a knob on a piece of mechanical or electronic equipment which performs a particular function when pressed. It also defines ‘spring’ as ‘a resilient device usu. of bent or coiled metal having the ability to return to its original shape with the removal of force or pressure . . .’ and ‘device’ as ‘a thing made or adapted for a particular purpose, esp. a mechanical contrivance’” [footnote omitted].

28. The thumb lever falls within the ordinary meaning of the word “device”, as it is made for the particular function of activating the assisted opening mechanism of the Stiletto knives in issue.

29. See, for example, *Terry Shannon* at para. 15.