

Ottawa, Wednesday, October 17, 2001

Appeal No. AP-2000-035

IN THE MATTER OF an appeal heard on July 10, 2001, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Commissioner of the Canada Customs and Revenue Agency dated July 19, 2000, with respect to a request for redetermination under subsection 60(4) of the *Customs Act*.

BETWEEN

ABRAHAM I. GOLDRICH

Appellant

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY**

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Zdenek Kvarda
Zdenek Kvarda
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Ellen Fry
Ellen Fry
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-2000-035

ABRAHAM I. GOLDRICH

Appellant

AND

THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY

Respondent

This is an appeal under section 67 of the *Customs Act* from a decision of the Commissioner of the Canada Customs and Revenue Agency, dated July 19, 2000, pursuant to subsection 60(4) of the *Customs Act*. This matter was heard by way of written submissions in accordance with Section 36.1 of the *Canadian International Trade Tribunal Rules*. The issue in this appeal is whether two knives that the appellant attempted to import into Canada are properly classified as prohibited weapons under tariff item No. 9898.00.00. The appellant, a resident of the United States, had to surrender the knives in issue to customs officials when he attempted to enter Canada on May 27, 2000, allegedly for the purpose of a fishing trip in Northern Ontario.

HELD: The appeal is allowed. The Tribunal agrees with the appellant that the knives in issue require several coordinated manipulations or body movements before they can be completely opened and reasonably functional. The Tribunal rejects the respondent's contention that the knives in issue open automatically by gravity. Consequently, the Tribunal considers that the knives in issue do not fall within the definition of "prohibited weapon" as set out in subsection 84(1) of the *Criminal Code* and, hence, do not meet the conditions and requirements set out in tariff item No. 9898.00.00. Because the appellant is not seeking to import the knives in issue into Canada, but requesting their return to his place of residence in the United States, the Tribunal is not required to classify them elsewhere in the schedule to the *Customs Tariff*.

Place of Hearing: Ottawa, Ontario
Date of Hearing: July 10, 2001
Date of Decision: October 17, 2001

Tribunal Members: Zdenek Kvarda, Presiding Member
Peter F. Thalheimer, Member
Ellen Fry, Member

Counsel for the Tribunal: Eric Wildhaber

Parties: Abraham I. Goldrich, for the appellant
Elizabeth Richards and Ritu Banerjee, for the respondent

Appeal No. AP-2000-035

ABRAHAM I. GOLDRICH

Appellant

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY**

Respondent

TRIBUNAL: ZDENEK KVARDA, Presiding Member
PETER F. THALHEIMER, Member
ELLEN FRY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ from a decision of the Commissioner of the Canada Customs and Revenue Agency (the Commissioner), dated July 19, 2000, pursuant to subsection 60(4) of the Act. The issue in this appeal is whether two knives that the appellant attempted to import into Canada are properly classified as prohibited weapons under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*,² which reads, in part, as follows:

9898.00.00 Firearms, prohibited weapons, 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, but does not include the following:

For the purposes of this tariff item,

(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.³

Subsection 84(1) of the *Criminal Code*⁴ defines “prohibited weapon” as follows:

“prohibited weapon” means

(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

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

The knives in issue were filed as physical exhibits with the Tribunal.

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].

2. S.C. 1997, c. 36.

3. In paragraph (b), the terms prohibited weapon and restricted firearm, unlike all the other terms listed, are purposely not in quotation marks; this respects the manner in which these terms appear in the schedule to the *Customs Tariff* and were adopted by Parliament.

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

One of the knives in issue has two black plastic handles, one of which is marked with the following inscription: “HELUVA® KNIFE USA”. The blade, which appears to be of metal, is approximately six inches long and has one sharp side only. When closed, the plastic handles fold over the blade, thereby containing the blade when not in use. When fully opened, the two plastic handles come together to form a single handle that can be gripped in order to allow the knife to be used. A rotating metal latch extends through and from the end of one of the plastic handles; when the knife is closed, this latch can be brought over the end of the other plastic handle and secured there into a groove designed to receive the latch. Once in place in this manner, the latch prevents the knife from opening by securing the two plastic handles together.

The other knife in issue is very similar to the one described above but is approximately two thirds its size. It has a metal blade (one sharp edge, the other serrated), and two black plastic handles, without industrial or proprietary markings, that fold over the blade in the closed position and come together to form a single handle in the opened position. It also has a latch mechanism for closing.

The appellant, a resident of the United States, had to surrender the knives in issue to customs officials when he attempted to enter Canada on May 27, 2000, allegedly for the purpose of a fishing trip in Northern Ontario. The appellant argued that the knives in issue are not weapons, but common fishing knives. He submitted that, to be put into use, they require more manipulation than the common “jack-knife”. The appellant purported not to have been motivated by any criminal intent upon entering Canada with the knives in issue; in this respect, he submitted that they had been placed in the security box of the aircraft that brought him into Canada. The appellant suggested that he is a victim of contemporary security measures, for which he nonetheless understands the need.

The respondent argued that the knives in issue are prohibited weapons as defined in section 2 and subsection 84(1) of the *Criminal Code* and hence, are properly classified as prohibited weapons under tariff item No. 9898.00.00. The respondent referred to subsection 136(1) of the *Customs Tariff*, which provides, *inter alia*, that the importation of goods of tariff item No. 9898.00.00, is prohibited. He also pointed to subsection 136(2) of the *Customs Tariff*, which provides that subsection 10(1) of the *Customs Tariff* does not apply in respect of goods referred to in subsection 136(1). Consequently, in the respondent’s submission, the classification of goods under tariff item No. 9898.00.00 is subject to neither the *General Rules for the Interpretation of the Harmonized System*⁵ nor the *Canadian Rules*.⁶ The respondent submitted that the knives in issue are prohibited weapons because they open automatically by gravity. The respondent submitted that the goods in issue are commonly known as “butterfly knives”. Citing a decision of the Supreme Court of Canada⁷ and one of the Tribunal,⁸ the respondent further submitted that it has consistently been held that butterfly knives are prohibited weapons within the meaning of subsection 84(1) of the *Criminal Code*.

After having reviewed the written submissions from the parties, the Tribunal sought their comments on the possibility of this matter being heard by way of written submissions. The parties consented to proceeding in this manner. Accordingly, pursuant to section 36.1 of the *Canadian International Trade Tribunal Rules*,⁹ the Tribunal decided to hold a hearing by way of written submissions.¹⁰

5. *Supra* note 2, schedule.

6. *Ibid.*

7. *R. v. Vaughan*, [1991] 3 S.C.R. 691.

8. *Genesport Industries v. DMNRCE* (24 February 1993), AP-91-122 (CITT).

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

10. C. Gaz. I.2001.1777.

The Tribunal agrees with the appellant that the knives in issue require several manipulations before they can be completely opened. Indeed, for either of the knives to be opened, it is first necessary to disengage a security latch. Once this action is performed, the full opening of either knife comprises the following actions that involve coordinated movements: (1) taking one handle with one hand; (2) taking the other handle with the other hand; and (3) by wrist and arm action, bringing the knife into its open and functional position. In addition, a fourth action will be necessary if the opening of either of the knives begins with the security latch end of the handle pointing towards the body of the user. In such instances, an additional half-circle wrist and hand motion is needed in order to get the blade of the knife to point away from the body.

The Tribunal rejects the respondent's contention that the knives in issue open automatically by gravity. Gravity does not release the security latch. Once the latch is open, gravity can play a role in the opening of the knives, but this force is not sufficient in itself. Instead, as described above, several coordinated manipulations or body movements are necessary for the knives in issue to open fully. Moreover, in the Tribunal's view, the knives are not reasonably functional until fully opened. Furthermore, in the Tribunal's view, the knives in issue do not meet any of the conditions set out in subsection 84(1) of the *Criminal Code* with respect to "prohibited weapon". In particular, the Tribunal does not consider that either of the knives in issue opens due to centrifugal force. The knives are not equipped with any buttons, springs or devices that would allow the transmission of hand pressure. In addition, the knives in issue have not been prescribed to be prohibited weapons.

Note 1 to Chapter 98 reads, in part, as follows: "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." Because the knives in issue do not meet the conditions and requirements set out in tariff item No. 9898.00.00, they are not correctly classified under that tariff item.

Because the appellant is no longer seeking to import the knives in issue into Canada, but requesting their return to his place of residence in the United States, the Tribunal is not required to classify them elsewhere in the schedule to the *Customs Tariff*.

For the foregoing reasons, the appeal is allowed.

Zdenek Kvarda
Zdenek Kvarda
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Ellen Fry
Ellen Fry
Member