



Ottawa, Tuesday, October 29, 2002

Appeal No. AP-2001-089

IN THE MATTER OF an appeal heard on September 16, 2002,
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
November 21, 2001, with respect to a request for redetermination
under subsection 60(4) of the *Customs Act*.

BETWEEN

ANTO BOZIC

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Zdenek Kvarda
Zdenek Kvarda
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary



UNOFFICIAL SUMMARY

Appeal No. AP-2001-089

ANTO BOZIC

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. The issue in this appeal is whether a switchblade knife is properly classified as a prohibited weapon under tariff item No. 9898.00.00 and, as such, prohibited from importation into Canada under subsection 84(1) of the *Criminal Code* and subsection 136(1) of the *Customs Tariff*.

HELD: The appeal is dismissed. A switchblade knife is properly classified as a prohibited weapon under tariff item No. 9898.00.00 and, as such, prohibited from importation under subsection 84(1) of the *Criminal Code* and subsection 136(1) of the *Customs Tariff*.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	September 16, 2002
Date of Decision:	October 29, 2002
Tribunal Member:	Zdenek Kvarda, Presiding Member
Counsel for the Tribunal:	Lynne M. Soublière
Clerk of the Tribunal:	Anne Turcotte
Appearances:	Marko Bozic, for the appellant John Unrau, for the respondent

Appeal No. AP-2001-089

ANTO BOZIC

Appellant

AND

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

Respondent

TRIBUNAL: ZDENEK KVARDA, Presiding Member

REASONS FOR DECISION

INTRODUCTION

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 issue in this appeal is whether a switchblade knife (the knife in issue) is properly classified as a prohibited weapon under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*² and, as such, prohibited from importation under subsection 84(1) of the *Criminal Code*³ and subsection 136(1) of the *Customs Tariff*.

On July 14, 2001, the respondent detained the knife in issue upon the appellant's entry into Canada. On August 18, 2001, the respondent advised the appellant that the knife in issue was a prohibited weapon and that its importation into Canada was prohibited under the *Customs Tariff*. The appellant appealed this decision. On November 21, 2001, the respondent determined, pursuant to subsection 60(4) of the Act, that the knife in issue was properly classified as a prohibited weapon under tariff item No. 9898.00.00. The respondent's decision was appealed to the Tribunal on February 20, 2002.

The relevant tariff nomenclature reads 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:

- (a) prohibited goods imported by
 - (i) a public officer in the course of the public officer's duties or employment, or
 - (ii) an individual on behalf of and under the authority of a police force, the Canadian Forces, a visiting force or a department of the Government of Canada or of a province;
- (b) prohibited goods imported by a business that holds a licence authorizing it to acquire and possess those goods, or prohibited goods that are being shipped in transit through Canada by a business that does not carry on business in Canada;

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].
2. S.C. 1997, c. 36.
3. R.S.C. 1985, c. C-46.

- (c) prohibited goods, or any class of prohibited goods, that, under regulations made by the Governor in Council, are exempted from the provisions of this tariff item;
- (d) any weapon that, under subsection 84(3) of the Criminal Code, is deemed not to be a firearm;
- (e) any firearm, other than a restricted firearm or a prohibited firearm, imported by
 - (i) a non-resident,
 - (ii) an individual who holds a licence to acquire and possess that kind of firearm, who is a resident of Canada and who acquired the firearm outside Canada, or
 - (iii) an individual who is a resident of Canada and who did not acquire the firearm outside Canada;
- (f) any restricted firearm imported by
 - (i) a non-resident who holds an authorization to transport,
 - (ii) an individual who holds a licence to acquire and possess that kind of firearm and an authorization to transport, who is a resident of Canada and who acquired the firearm outside Canada, or
 - (iii) an individual who is a resident of Canada, who holds an authorization to transport and who did not acquire the firearm outside Canada;
- (g) any prohibited firearm, imported by an individual who is a resident of Canada, who holds an authorization to transport and who did not [acquire] the firearm outside Canada;
- (h) arms, ammunition, implements or munitions of war, army, naval or air stores and any articles deemed capable of being converted into any such things or made useful in the production of any such things, imported with a permit issued under section 8 of the Export and Import Permits Act;
- (i) arms, military stores, munitions of war and other goods eligible for entry under tariff item No. 9810.00.00 or 9811.00.00; and
- (j) arms, military stores, munitions of war, or classes thereof, that under regulations made by the Governor in Council, are exempted from the provisions of this tariff item.

For the purposes of this tariff item,

- (a) “firearms” and “weapon” have the same meaning as in section 2 of the Criminal Code;
- (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;
- (c) “public officer” has the same meaning as in subsection 117.07(2) of the Criminal Code;
- (d) “authorization to transport”, “business”, “carrier” and “non-resident” have the same meanings as in subsection 2(1) of the Firearms Act; and
- (e) “visiting force” has the same meaning as in section 2 of the Visiting Forces Act.

Subsection 84(1) of the *Criminal Code* reads, in part, as follows:

84. (1) In this Part and subsections 491(1), 515(4.1) and (4.11) and 810(3.1) and (3.11), “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.

Section 136 of the *Customs Tariff* reads as follows:

136. (1) The importation of goods of tariff item No. 9897.00.00, 9898.00.00 or 9899.00.00 is prohibited.

(2) Subsection 10(1) does not apply in respect of goods referred to in subsection (1).

EVIDENCE

Ms. Rosemary Copeland-Jones, of the Canada Customs and Revenue Agency, was sworn as a witness and introduced the knife in issue as an exhibit.⁴ She demonstrated to the Tribunal how the knife in issue operated and, more specifically, how the blade opened when one applied pressure to the button on the handle of the knife. She also demonstrated how to close the blade by releasing it from its locked position.

ARGUMENT

The appellant did not request that the knife in issue be classified under another tariff item; rather, he requested that it be returned to him.

The appellant submitted that he has never had a criminal record and that he has always been involved in the community and within the church. He further submitted that he had the knife in issue to open envelopes or to open the twist ties that he uses to close the zippers on his luggage. The appellant explained that he wants the knife in issue back for sentimental reasons. He explained that it belonged to his uncle in Bosnia and that it was given to him in 1991.

The appellant stated that the knife in issue was taken from him by airport authorities in Vienna. He explained that he was returning from summer vacation in Croatia. The appellant stated that the airport authorities in Vienna advised him that the knife in issue would be returned to him upon his arrival in Toronto, Ontario. He further submitted that, when he arrived in Toronto, the knife in issue was not returned to him.

In response to the respondent's argument, the appellant agreed that the importation of the knife in issue was illegal and contrary to the *Criminal Code*. However, the appellant submitted that he did not know this when he brought the knife in issue into Canada nor did he know that the knife in issue was a prohibited weapon. He further explained that he carried the knife in issue for the simple uses explained earlier.

The appellant concluded by stating that he had no intention of using the knife in issue for any purpose other than those explained earlier.

The respondent submitted that the knife in issue is properly classified under tariff item No. 9898.00.00. He argued that the knife in issue must be classified under this tariff item because it meets the definition of a prohibited weapon under the *Criminal Code*. The respondent referred to paragraph 84(1)(a) of the *Criminal Code*, which sets out the definition of a prohibited weapon. He emphasized the portion of the definition that states that a prohibited weapon means, in part, a knife that has 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".

4. Exhibit B-1.

The respondent submitted that, once goods meet the definition of “prohibited weapon”, no further inquiry is necessary for classification purposes. He argued that, once this requirement is met, subsection 136(1) of the *Customs Tariff* applies and prohibits the importation of goods of tariff item No. 9898.00.00.

The respondent concluded his argument by submitting that, because the knife in issue falls within section 84 of the *Criminal Code*, it cannot be imported. It is the respondent’s position that the appeal must consequently be dismissed.

TRIBUNAL’S DECISION

Section 10 of the *Customs Tariff* provides that the classification of imported goods under a tariff item shall be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*.⁵

The issue in this appeal is whether the knife in issue is properly classified as a prohibited weapon under tariff item No. 9898.00.00 and, as such, prohibited from importation under subsection 84(1) of the *Criminal Code* and subsection 136(1) of the *Customs Tariff*.

The appellant did not seek to have the knife in issue classified under another tariff item; rather, he sought to have it returned to him. The respondent, on the other hand, argued that the knife in issue was properly classified under tariff item No. 9898.00.00.

The Tribunal believes that the knife in issue is properly classified under tariff item No. 9898.00.00. The Tribunal recalls the demonstration that the knife in issue has a blade that opens automatically when hand pressure is applied to the button located on the handle of the knife. As such, it is the Tribunal’s opinion that the knife in issue meets the definition of “prohibited weapon”, pursuant to paragraph 84(1)(a) of the *Criminal Code*. Therefore, the Tribunal agrees with the respondent that the knife in issue is a prohibited weapon, as defined in the *Criminal Code*.

The Tribunal further agrees that, once goods are considered prohibited weapons under the *Criminal Code*, they must be classified under tariff item No. 9898.00.00, which provides for such goods. And, pursuant to subsection 136(1) of the *Customs Tariff*, the importation of goods of tariff item No. 9898.00.00 is prohibited in Canada. Consequently, because the knife in issue can only be classified under tariff item No. 9898.00.00 and in accordance with subsection 136(1) of the *Customs Tariff*, the knife in issue is a prohibited weapon that cannot be imported into Canada.

For the foregoing reasons, it is the Tribunal’s view that the knife in issue is properly classified as a prohibited weapon under tariff item No. 9898.00.00 and, as such, prohibited from importation into Canada under subsection 84(1) of the *Criminal Code* and subsection 136(1) of the *Customs Tariff*. The appeal is therefore dismissed.

Zdenek Kvarda
Zdenek Kvarda
Presiding Member

5. *Supra* note 2, schedule.