



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2002-114

MilArm Co. Ltd.

v.

Commissioner of the Canada  
Customs and Revenue Agency

*Decision and reasons issued  
Wednesday, July 12, 2006*

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IN THE MATTER OF an appeal heard on June 5, 2006, under subsection 67(1) 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 December 13, 2002, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

**BETWEEN**

**MILARM CO. LTD.**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is dismissed.

Zdenek Kvarda  
Zdenek Kvarda  
Presiding Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

Place of Hearing: Ottawa, Ontario  
Date of Hearing: June 5, 2006  
Tribunal Member: Zdenek Kvarda, Presiding Member  
Research Manager: Paul R. Berlinguette  
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## REASONS FOR DECISION

1. This is an appeal pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision of the Commissioner of the Canada Customs and Revenue Agency (CCRA) (now the President of the Canada Border Services Agency [CBSA]), dated December 13, 2002, under subsection 60(4) of the *Act*.

2. The issue in this appeal is whether the CCRA properly classified the knives in issue as prohibited weapons of tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*<sup>2</sup>. The knives in issue are two Timberline Worden tactical pocket knives.

3. 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*.<sup>3</sup> A notice to this effect was published in the May 20, 2006, edition of the Canada Gazette.<sup>4</sup>

4. Subsection 136(1) of the *Customs Tariff* reads as follows:

The importation of goods of tariff item No. 9897.00.00, 9898.00.00 or 9899.00.00 is prohibited.	L'importation des marchandises des n <sup>os</sup> tarifaires 9897.00.00, 9898.00.00 ou 9899.00.00 est interdite.
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5. Tariff item No. 9898.00.00 reads as follows:

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 . . . .

. . . .

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* . . . .

6. Subsection 84(1) of the *Criminal Code*<sup>5</sup> 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.

« arme prohibée »

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

## EVIDENCE

7. MilArm Co. Ltd. (MilArm) attempted to import the knives in issue via mail. They measure approximately 14 cm in length in the closed position and have a single-edged stainless steel blade that measures approximately 10 cm. One knife has a wooden handle, and the other has a black Zytel handle.

1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].
2. S.C. 1997, c. 36.
3. S.O.R./91-499.
4. C. Gaz. 2006.I.1231.
5. R.S.C. 1985, c. C-46.

Both have a pocket or belt clip for carriage. One side of the blade of each knife in issue has a thumb stud, which is normally used to open them.

8. The CBSA filed the knives in issue as physical exhibits, and the Tribunal examined them.

9. The CBSA filed an expert report prepared by Mr. Kenneth Doyle of the Ottawa Police Service. Mr. Doyle's qualifications as a weapons expert were not questioned by MilArm. The Tribunal accepted Mr. Doyle as an expert in prohibited weapons. Mr. Doyle reported that, in his expert opinion, the knives in issue meet the criteria of prohibited weapons.

## ARGUMENT

10. MilArm submitted that the knives in issue are of a design that does not contravene section 84 of the *Criminal Code*. It argued that "centrifugal force" is not defined in the *Criminal Code* and that, therefore, the meaning of this expression is vague and imprecise and should not be used to define a prohibited device, as applied by Canada Customs. In support of its position, MilArm submitted a document prepared by a forensics laboratory analyst with the Royal Canadian Mounted Police that states that centrifugal force does not exist and cannot be used to release a knife blade. It submitted that the Tribunal should rule that centrifugal force cannot be used in determining whether a knife can or cannot legally be imported. Furthermore, MilArm argued that both knives in issue can be "... opened with both hands, one grasping the knife and the other drawing the blade outward from its closed position or one handed with the knife held in the palm of the hand and upward pressure being directed to one of the thumb studs, and a rolling motion applied until the lock engages . . . ."

11. The CBSA submitted that the determining factor in classifying the knives in issue is that they open automatically by gravity or centrifugal force. In this regard, the CBSA submitted that the knives in issue open by grasping the handle of the knife and then flicking it outward away from the user until the blade swings to an open position. According to the CBSA, this meets the definition of "centrifugal force" provided in various dictionaries. Although these definitions may suggest that "centrifugal force" does not have a precise scientific basis, the CBSA submitted that this does not undermine the intent of the *Criminal Code* provision, which is to prohibit knives that open automatically.<sup>6</sup> Furthermore, it argued that the courts and the Tribunal have generally applied a layperson's definition of "centrifugal force". The CBSA also argued that, when the courts have considered whether a knife is a prohibited weapon, they look for evidence as to whether the blade can be opened by a "flick of the wrist".<sup>7</sup> Based on the evidence, it submitted that the knives in issue open automatically by a "flick of the wrist" and are therefore prohibited weapons.

12. The CBSA also argued that, although the knives in issue have a stud on the blade to facilitate opening, this does not take the knives in issue out of the *Criminal Code* definition of "prohibited weapon". At most, the stud may assist in the opening of the knife using a flipping motion (application of centrifugal force), similar to a butterfly knife, and, therefore, makes the goods in issue simpler to open than the knife that was considered in *R. v. Vaughn*.<sup>8</sup>

## DECISION

13. The Tribunal rejects MilArm's argument that centrifugal force is a vague and imprecise concept that cannot be used to define a prohibited device. In previous decisions, the Tribunal has accepted that

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6. In support of this claim, the CBSA relied on *R. v. Vaughan*, [1991] 3 S.C.R. 691.

7. In support of this argument, the CBSA relied on *Wayne Ericksoen v. CCRA* (3 January 2002), AP-2000-059 (CITT).

8. [1991] 3 S.C.R. 691.

centrifugal force was at play in knives that open automatically with “. . . a simple and brisk outwardly flick of the wrist . . .” This has not been successfully challenged in the courts. In the present appeal, the Tribunal is convinced that the knives in issue have blades that open automatically by centrifugal force. Indeed, Mr. Doyle confirmed that, when held in the hand, a quick flick of the wrist released the blade from the handle into the fully ejected and locked position. He stated that this was done without the thumb stud opener being utilized.

14. Upon examination, the Tribunal also determined that the blades of the knives in issue could be released with a quick flick of the wrist, without the use of the thumb stud opener. That action is automatic and accomplished through the use of what is commonly known as centrifugal force, thereby meeting the *Criminal Code* definition of “prohibited weapon”. The Tribunal also noted that the ergonomic design features of the knives in issue facilitated this action.

15. Accordingly, the Tribunal finds that the knives in issue are properly classified as prohibited weapons 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*.

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

Zdenek Kvarda  
Zdenek Kvarda  
Presiding Member