



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2003-044

Digital Canoe Inc.

v.

Commissioner of the Canada
Customs and Revenue Agency

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

TABLE OF CONTENTS

DECISION.....i
REASONS FOR DECISION.....1
 EVIDENCE.....2
 ARGUMENT.....2

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 November 13, 2003, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

DIGITAL CANOE INC.

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

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REASONS FOR DECISION

1. This is an appeal pursuant to subsection 67(1) of the *Customs Act*¹ 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 November 13, 2003, 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*². The knives in issue are two Kit Rae Fang of Baelin 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*.³ A notice to this effect was published in the May 20, 2006, edition of the Canada Gazette.⁴

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 ^{os} 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*⁵ 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.

7. 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*⁶ and section 9 of Part 3 of the schedule to the *Regulations* read as follows:

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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.
 6. S.O.R./98-462 [Regulations].

4. 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 *Criminal Code*.

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.

4. 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 *Code criminel*.

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 ».

EVIDENCE

8. Digital Canoe Inc. (Digital Canoe) attempted to import two Kit Rae Fang of Baelin knives via mail. The knives in issue have a cast aluminum handle painted black and shaped like a dragon finger with claws. The knives are U-shaped, with the handle being the bottom of the “U” and the blades being the uprights. The two curved blades extend outward perpendicularly to the handle. The knives are approximately 19 cm across the handle, and each side blade measures approximately 12 cm in length, with a sharp edge measuring approximately 9 cm. The sharp edges of the two blades face each other, and there is a dull pointed post in the middle of the handle. In use, this post would be between the middle and ring fingers. The knife is designed to be grasped by the handle in the fist of the hand so that the blades extend outward on each side of the fist.

9. The CBSA filed two physical exhibits: the knives in issue and a videotape that contains a demonstration of their use. The Tribunal examined the knives and viewed the videotape.

10. 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 Digital Canoe. 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

11. Digital Canoe submitted that the knives in issue do not meet the criteria for “prohibited weapons” set out in the *Regulations* because each blade forms only one right angle to the handle and not two right angles as does a push-dagger. In support of its position, Digital Canoe referred to the definition of “perpendicular”, i.e. “situated at right angles to a given line, plane or surface”, contained in the *Concise Oxford Dictionary*. It argued that a typical push-dagger has a blade that forms a “T” on the handle and is considered “perpendicular” because there are right angles on each side of the blade. Digital Canoe also submitted that to prohibit the knives on the basis of having one right angle would be tantamount to prohibiting the common carpet knife and axe since these items, it argued, form but one right angle with the blade.

12. The CBSA disagreed, submitting that the classification of the knives in issue accords entirely with the relevant legislation, rules, notes, opinions, jurisprudence and essential nature of the knives in issue. It relied on various dictionary definitions of “perpendicular” and “right angle”. In its view, the word “angles” in the definition of “perpendicular” cited by Digital Canoe refers to both lines that are needed to form one right angle and not to the need for the presence of two right angles. The CBSA submitted that, even if the Tribunal finds that, to be a push-dagger, a knife needs to have two right angles, the knives in

issue meet this criterion; specifically, even if the handle itself stops at the blade, forming a single right angle with each blade, there is a plane that continues out beyond the handle, forming a second right angle with the blade.

DECISION

13. The Tribunal believes that the knives in issue are properly classified as prohibited weapons under tariff item No. 9898.00.00. It rejects Digital Canoe's contention that the knives in issue do not meet the "prohibited weapons" criteria set out in the *Regulations*. In the Tribunal's view, the *Regulations* do not require a push-dagger to have a blade that necessarily forms two right angles on each side of its handle. In the Tribunal's view, the knives in issue are capable of functioning as push-daggers and are similar devices. This was clear in the demonstration and narration given by Mr. Doyle in the video evidence. Moreover, according to Mr. Doyle's expert report, a perpendicular angle can be found in the design of the knives in issue. In this regard, the Tribunal agrees with the CBSA that the definitions of the words "perpendicular" and "right angle" contained in various dictionaries support the argument that the word "angles" in the definition of "perpendicular" refers to both lines that are needed to form one right angle. In any event, the Tribunal further agrees that, while the handle of the knives in issue stops at the blade, forming a single right angle with each blade, the plane continues out beyond the handle forming a second right angle. It further notes that two right angles are present in the knives in issue because each blade forms one right angle at the base of the handle, thereby meeting the said criteria. Essentially, what the Tribunal has examined in this matter is a double-bladed push-dagger.

14. With respect to Digital Canoe's arguments relative to the common carpet knife and axe, the Tribunal is of the view that these devices are not commonly known as push-daggers and do not involve a "pushing" action, since the former require a pulling action and the latter involves a swinging 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