



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2003-054

Kenneth Lee

v.

President of the Canada Border  
Services 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 President of the Canada Border Services Agency dated March 5, 2004, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

**BETWEEN**

**KENNETH LEE**

**Appellant**

**AND**

**THE PRESIDENT OF THE CANADA BORDER SERVICES  
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  
Counsel for the Tribunal: Eric Wildhaber  
Registrar Officer: Stéphanie Doré  
Parties: Kenneth Lee, for the appellant  
Catherine A. Lawrence, for the respondent

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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 President of the Canada Border Services Agency (CBSA), dated March 5, 2004, under subsection 60(4) of the *Act*.

2. The issue in this appeal is whether the CBSA properly classified the knife in issue as a prohibited weapon of tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*.<sup>2</sup> The knife in issue is a Camillus Cuda Junior folding knife.

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	« arme prohibée »
(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.

## EVIDENCE

7. Mr. Kenneth Lee attempted to import the knife in issue via mail. It measures approximately 10.5 cm in length in the closed position and has a single-edged tanto style blade that measures approximately 7.0 cm. It has a metal disk button in a slot on one side of the handle that, when pushed by the thumb, releases the blade. The button is connected to inner mechanical linkages between the disk and the blade; these linkages

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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.

are put in motion by depressing the button to force the blade out of the handle and into the opened and locked position.

8. The CBSA filed two physical exhibits: the knife in issue and a videotape that contains a demonstration of its use. The Tribunal examined the knife and viewed the videotape.

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 Mr. Lee. The Tribunal accepted Mr. Doyle as an expert in prohibited weapons. Mr. Doyle reported that, in his expert opinion, the knife in issue meets the criteria of a prohibited weapon.

## ARGUMENT

10. Mr. Lee submitted that the knife in issue is not a prohibited weapon because the adjustable pivot screw of the knife offers some resistance that prevents the knife from being easily opened with a flick of the wrist. According to Mr. Lee, the knife in issue is new and may have left the factory with the pivot screw not tightened to specification. Mr. Lee also submitted that identical knives are available for sale in Canada.

11. The CBSA submitted that the determining factor in classifying the knife in issue is that it opens automatically by gravity or centrifugal force. In its view, the knife in issue opens with a flick of the wrist, or by centrifugal force<sup>6</sup> and, therefore, is a "prohibited weapon" within the meaning of subsection 84(1) of the *Criminal Code*. The CBSA also submitted that, although the knife in issue is designed with a metal disk in a slot to lock the blade in place, the inner linkages are not sturdy enough to stop the knife from opening with a flick of the wrist. Furthermore, it argued that, even if some manipulation may be required to release the blade by centrifugal force, the knife in issue falls within the definition of a prohibited weapon. In this regard, the CBSA cited the Supreme Court of Canada's decision in *R. v. Vaughan*<sup>7</sup> as standing for the proposition that extra manipulations and a requirement for some skill do not prevent a knife from being a "prohibited weapon". It submitted that the manufacturer's Web site describes the knife in issue as a "quick-open knife, ready for action". Citing the Tribunal's decision in *Eriksen*, the CBSA further submitted that it is irrelevant whether other examples of the same knife are available for sale in Canada.<sup>8</sup>

## DECISION

12. The Tribunal is convinced that the knife in issue is a knife with a blade that releases automatically by centrifugal force. Indeed, the demonstration and narration given by Mr. Doyle in the video evidence confirmed that, when held in the hand, a simple and brisk outwardly flick of the wrist releases the blade from the handle into the fully ejected and locked position, making the knife in issue ready for use. Upon examination, the Tribunal determined that the adjustable pivot screw of the knife in issue did not offer any resistance to this action and that the blade could be released with a quick flick of the wrist. 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".

13. As noted earlier, Mr. Lee argued that the adjustable pivot screw of the knife in issue may not have been tightened according to the manufacturer's specifications. This does not constitute a determining factor

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6. The CBSA indicated that, in *Wayne Eriksen v. CCRA* (3 January 2002), AP-2000-059 (CITT) [*Eriksen*], the Tribunal accepted that a knife that opens with an outward flick of the wrist opens by centrifugal force.

7. [1991] 3 S.C.R. 691.

8. The CBSA relied on *Eriksen*, where the Tribunal held that goods should not be classified based on whether similar or identical goods have entered Canada.

in classifying the knife in issue, as the Tribunal typically takes into consideration the condition of the goods at the time at which they are imported. Moreover, based on its own examination of the knife in issue, the Tribunal is of the view that the pivot screw can easily be tightened or loosened.

14. With respect to Mr. Lee's argument that identical knives are available for sale in Canada, the Tribunal recalls its decision in *Eriksen* that this is irrelevant.

15. Accordingly, the Tribunal finds 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*.

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

Zdenek Kvarda  
Zdenek Kvarda  
Presiding Member