



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2004-047

Digital Canoe Inc.

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 September 28, 2004, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

DIGITAL CANOE INC.

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
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Parties:	Dave Favreau, for the appellant Sonia Barrette and Jennifer Francis, for the respondent

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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 President of the Canada Border Services Agency (CBSA), dated September 28, 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*.² The knife in issue is a Camillus LEV-R-LOK® Piranha blade version 5849 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*.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, in part, 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.

EVIDENCE

7. Digital Canoe Inc. (Digital Canoe) attempted to import the knife in issue via mail. It measures 10 cm in length in the closed position and has a 7-cm blade with both plain and serrated edges. It is equipped with the Piranha version of the patented LEV-R-LOK® blade-opening mechanism manufactured

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.

by Camillus Cutlery Company. It has a lever on one side of the handle that is used to open the blade. Thumb pressure applied to the lever forces the blade out of the handle until it finds the locked-open position. An unlocking mechanism at the bottom of the handle must be pressed to free the blade for return into the handle.

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 Digital Canoe. 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. Digital Canoe submitted that the knife in issue does not meet the *Criminal Code* definition of a prohibited weapon because, unlike a switchblade or butterfly knife, its blade does not open 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. In support of its position, Digital Canoe referred to the definitions of "manual" and "automatic" contained in the *Concise Oxford Dictionary*.⁶ It argued that, compared to a switchblade knife that opens automatically, the knife in issue has a lever to manually open the blade and that the blade opens proportionally to how far the lever is pressed. Digital Canoe submitted that, since the operation of the knife in issue involves continuous human intervention, it cannot be considered an automatic knife.

11. The CBSA disagreed, submitting that the knife in issue does indeed open in the manner set out in the *Criminal Code*. In its view, the knife's mechanism, when put in motion by thumb pressure on the lever, snaps the blade open automatically, and it is neither intended nor designed to stop before the knife is fully opened. The CBSA relied on various dictionary definitions of "centrifugal force", "automatic" and "mechanical" in support of its view that the knife in issue opens automatically.

12. The CBSA argued that the Tribunal should give the word "automatically" a meaning that best furthers the goals of the *Criminal Code* and Parliament's intent to ensure public safety. It further submitted that all the common prohibited types of knives, i.e. those that open by gravity or centrifugal force (flick open or butterfly) and switchblade knives, require some manipulation. In the CBSA's view, all those knives are still "automatic" opening knives within the meaning of the *Criminal Code*. In this regard, the CBSA cited the Supreme Court of Canada's decision in *R. v. Vaughan*⁷ as standing for the proposition that extra manipulations and a requirement for some skill do not prevent a knife from being a "prohibited weapon".

DECISION

13. The Tribunal is convinced that the knife in issue is a knife with a blade that opens 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.

6. Digital Canoe did not cite the edition of the dictionary upon which it relied for the following definitions that it quoted as follows: manual—"of a machine etc. worked by hand, not by automatic equipment . . . or, not automatically"; and automatic—"of a machine, device etc. working by itself, without direct human intervention".

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

Mr. Doyle showed that the knife in issue could also be opened by the thumb pressing down on the handle lever.

14. The Tribunal also notes that manufacturer promotional material provided by Digital Canoe describes the knife in issue as “[t]he fastest opening lockbacks ever designed, these revolutionary one-handers snap the blade to the open and locked position.”

15. Upon examination, the Tribunal also determined that, by applying slight pressure on the mechanism at the bottom of the handle, the blade of the knife in issue 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”. The Tribunal further notes that thumb pressure applied to the handle lever also opens the knife in issue automatically and thereby meets a second *Criminal Code* definition of “prohibited weapon”.

16. 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*.

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

Zdenek Kvarda
Zdenek Kvarda
Presiding Member