



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2005-009

Gordon Schebek

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Thursday, May 18, 2006*

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STATEMENT OF REASONS1

IN THE MATTER OF an appeal heard on February 17, 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 14, 2005, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

GORDON SCHEBEK

Appellant

AND

**THE PRESIDENT OF THE CANADA BORDER SERVICES
AGENCY**

Respondent

DECISION

The appeal is allowed.

Ellen Fry
Ellen Fry
Presiding Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: February 17, 2006

Tribunal Member: Ellen Fry, Presiding Member

Counsel for the Tribunal: Eric Wildhaber

Registrar Officer: Valérie Cannavino

Parties: Gordon Schebek, for the appellant
Joanna Hill, for the respondent

Please address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

Telephone: (613) 993-4717

Fax: (613) 990-2439

E-mail: secretary@citt-tcce.gc.ca

STATEMENT OF REASONS

1. This is an appeal under subsection 67(1) of the *Customs Act*¹ from a decision of the President of the Canada Border Services Agency (CBSA), dated March 14, 2005, pursuant to subsection 60(4) of the *Act*.

2. The parties did not respond to three separate invitations by the Tribunal to comment on this matter proceeding by way of written submissions. Having received no objection, the Tribunal decided to proceed in this manner pursuant to rules 25, 25.1 and 36.1 of the *Canadian International Trade Tribunal Rules*.²

3. The issue in this appeal is whether a knife that was imported by Mr. Gordon Schebek and detained by the CBSA at the time of entry into Canada is properly classified as a prohibited weapon under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*,³ the relevant part of which reads as follows:

9898.00.00 . . . prohibited weapons, . . .

For the purposes of this tariff item,

. . .

(b) . . . prohibited weapon . . . [has] the same [meaning] as in subsection 84(1) of the Criminal Code.⁴

4. Paragraph 84(1)(b) of the *Criminal Code*⁵ defines “prohibited weapon” as follows:

“prohibited weapon” means « arme prohibée »

. . .

(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.
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. . .

5. The CBSA argued that the knife in issue is a “push-dagger” prescribed to be a prohibited weapon under section 9 of Part 3 of the Schedule to the *Regulations Prescribing Certain Firearms and other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*⁶ (section 9). Mr. Schebek argued that it is an 18th century “Mughal Katar” from India⁷ that is not covered by section 9.

6. On January 13, 2006, the Tribunal wrote to the parties, indicating that it had made an initial review of the materials filed by the parties and requested the following:

. . . additional submissions, including evidence (e.g. material from specialized publications), to indicate what constitutes a “knife commonly known as a ‘push dagger’”.

. . .

Mr. Schebek did not file a response to this letter. The CBSA filed a letter containing argument dated January 20, 2006.

1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].

2. S.O.R./91-499.

3. S.C. 1997, c. 36.

4. In paragraph (b) of the English version only, the term prohibited weapon, unlike all the other terms listed in the full text, is purposely not in quotation marks; this respects the manner in which the term appears in the schedule to the *Customs Tariff* and was adopted by Parliament.

5. R.S.C. 1985, c. C-46.

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

7. The CBSA did not dispute that the knife in issue is a “Katar”. See Detailed Adjustment Statement dated March 14, 2005 (Exhibit No. AP-2005-009-1).

7. On February 2, 2006, the Tribunal wrote again to the parties, indicating the following:

The Tribunal notes that neither party has provided evidence (e.g. material from specialized publications) to indicate what constitutes a “knife commonly known as a ‘push dagger’,” as requested by the Tribunal. The Tribunal repeats its request for such evidence.

The CBSA did not file a response to this letter. Mr. Schebek filed a letter dated February 9, 2006, attaching copies of material on the definition of a “Katar” and on items called “push-daggers” that can be purchased on-line.

8. The knife in issue was examined by the Tribunal. It is approximately 15 1/2 inches in length, and its blade is approximately 8 inches in length.

9. The knife in issue would be a “prohibited weapon” if it were a good prescribed to be a prohibited weapon under section 9, which reads as follows:

<p>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.</p>	<p>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 ».</p>
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10. In the Tribunal’s view, there are two ways for a knife to meet the requirements of section 9: first, a knife would fall within section 9 if it is were both (a) a knife that is “. . . commonly known as a ‘push-dagger’ . . .” and (b) “. . . designed in such a fashion that the handle is placed perpendicular to the main cutting edge of the blade. . . .”

11. The CBSA argued that the knife in issue need only fulfil criterion (b) in order to fall within section 9, presumably because the CBSA views criterion (b) as defining, in and of itself, that which is a knife “. . . commonly known as a ‘push-dagger’”

12. The Tribunal does not agree. In its view, the plain meaning of the words and grammar of section 9 establishes a cumulative requirement whereby both criterion (a) and criterion (b) must be fulfilled. The Tribunal notes that section 9 has a different grammatical construction from that of several adjacent sections of the *Regulations*. These sections read as follows:

<p>... <i>Former Prohibited Weapons Order, No. 2</i></p> <p>2. Any instrument or device commonly known as “nunchaku”, <i>being</i> hard non-flexible sticks, clubs, pipes, or rods linked by a length or lengths of rope, cord, wire or chain, and any similar instrument or device.</p> <p>3. Any instrument or device commonly known as “shuriken”, <i>being</i> a hard non-flexible plate having three or more radiating points with one or more sharp edges in the shape of a polygon, trefoil, cross, star, diamond or other geometrical shape, and any similar instrument or device.</p>	<p>... <i>Ancien Décret sur les armes prohibées (n° 2)</i></p> <p>2. L’appareil ou l’instrument communément appelé « nunchaku », <i>constitué</i> de bâtons, de gourdins, de tuyaux ou de verges durs et non flexibles, réunis par un ou plusieurs cordons, cordes, fils ou chaînes, ainsi que tout instrument ou dispositif semblable.</p> <p>3. L’appareil ou l’instrument communément appelé « shuriken », <i>constitué</i> d’une plaque dure et non flexible ayant au moins trois pointes qui rayonnent et possèdent au moins une arête vive d’aspect polygonal, tréflé, cruciforme, étoilé, carré ou d’une autre forme géométrique, ainsi que tout instrument ou dispositif semblable.</p>
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4. Any instrument or device commonly known as “manrikigusari” or “kusari”, *being* hexagonal or other geometrically shaped hard weights or hand grips linked by a length or lengths of rope, cord, wire or chain, and any similar instrument or device.

...

Former Prohibited Weapons Order, No. 4

8. The device known as the “Constant Companion”, *being* a belt containing a blade capable of being withdrawn from the belt, with the buckle of the belt forming a handle for the blade, and any similar device.

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.

10. Any device having a length of less than 30 cm and resembling an innocuous object but designed to conceal a knife or blade, including the device commonly known as the “knife-comb”, *being* a comb with the handle of the comb forming a handle for the knife, and any similar device.

Former Prohibited Weapons Order, No. 5

11. The device commonly known as a “Spiked Wristband”, *being* a wristband to which a spike or blade is affixed, and any similar device.

Former Prohibited Weapons Order, No. 6

12. The device commonly known as “Yaqua Blowgun”, *being* a tube or pipe designed for the purpose of shooting arrows or darts by the breath, and any similar device.

...

4. L’appareil ou l’instrument communément appelé « manrikigusari » ou « kusari », *constitué* de plusieurs poids durs ou poignées de forme hexagonale ou d’une autre forme géométrique, réunis par un ou plusieurs cordons, cordes, fils ou chaînes, ainsi que tout instrument ou dispositif semblable.

...

Ancien Décret sur les armes prohibées (n° 4)

8. L’appareil connu sous le nom de « Constant Companion », *soit* une ceinture contenant une lame amovible, et dont la boucle constitue la poignée de la lame, et tout autre appareil semblable.

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 ».

10. Tout appareil d’une longueur inférieure à 30 cm, qui ressemble à un objet inoffensif mais qui est conçu pour dissimuler un couteau ou une lame, notamment l’instrument communément appelé « peigne-couteau », *lequel est* un peigne dont le manche sert de poignée au couteau, et tout autre appareil semblable.

Ancien Décret sur les armes prohibées (n° 5)

11. L’instrument communément appelé « Spiked Wristband », *soit* un bracelet auquel est fixée une pointe ou une lame, et tout autre instrument semblable.

Ancien Décret sur les armes prohibées (n° 6)

12. L’instrument communément appelé « Yaqua Blowgun », *soit* un tube ou tuyau conçu pour lancer des flèches ou fléchettes par la force du souffle, et tout instrument semblable.

...

[Emphasis added]

13. In considering these adjacent sections, the Tribunal compared, for example, the grammatical construction of the English version of section 9 to that of section 8 of Part 3 of the Schedule to the *Regulations* (section 8). In the Tribunal’s view, the use of the word “being” in section 8 makes it clear that the “. . . device known as the ‘Constant Companion’ . . .” is defined as “. . . a belt containing a blade . . .”, unlike section 9 in which the words “. . . that is designed in such a fashion . . .” merely describe a certain class of push-daggers. The Tribunal further notes that sections 2, 3, 4, 10, 11 and 12 of Part 3 of the Schedule to the *Regulations* (sections 2, 3, 4, 10, 11 and 12) have the same grammatical construction as section 8, i.e. they define various goods as *being* one thing or another, in contrast to the structure of section 9.

14. The Tribunal observed the same distinction when it compared the grammatical construction of the French version of the same sections: the use of “... *conçu de telle façon* ...” in section 9 can be contrasted with the use of the word “... *soit* ...” in sections 8, 11 and 12, or the word “... *constitué* ...” in sections 2, 3 and 4, and the expression “... *lequel est* ...” in section 10.

15. The first question that the Tribunal must therefore examine is whether the knife in issue is a “... knife commonly known as a ‘push-dagger’ ...”. As noted above, the Tribunal requested that both parties submit evidence on what constitutes a “push-dagger”, but only Mr. Schebek did so. The CBSA submitted argument, but no evidence, in response to the Tribunal’s request.⁸

16. The Tribunal notes that, where specified, the total length of the various push-daggers shown in the on-line sales information tendered in evidence by Mr. Schebek ranged from 5 to 7 1/2 inches. The length of the blade portion, where specified, ranged from 2 1/2 inches to 3 3/4 inches. As indicated above, the knife in issue has a blade that is approximately 8 inches in length and the knife is approximately 15 1/2 inches in total length. Thus, it is at least twice as long in both respects as the largest push-dagger in the information tendered in evidence before the Tribunal.

17. Accordingly, the evidence indicates that the knife in issue is significantly larger than the type of knife commonly known as a push-dagger and is therefore, in the Tribunal’s view, not a “... knife commonly known as a ‘push-dagger’ ...”.

18. Because the Tribunal has already found that the knife in issue does not meet criterion (a) (“... commonly known as a ‘push-dagger’”), the Tribunal does not need to consider whether it meets the design requirement set out in criterion (b).

19. The knife in issue would also meet the requirements of section 9 if it were “a similar device” in relation to knives that fulfil criteria (a) and (b) above, but were not an aboriginal “ulu” knife.

20. Given the evidence concerning the significant difference in size between “push-daggers” and the knife in issue, the Tribunal is not convinced that the knife in issue is a “similar device”.

21. For the foregoing reasons, the Tribunal finds that the knife in issue is not a prohibited weapon and, therefore, is not properly classified under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*. Consequently, the appeal is allowed. The Tribunal notes that this determination applies only to the particular knife in issue; the Tribunal has not drawn any conclusions on whether “Katars” in general are prohibited weapons.

Ellen Fry
Ellen Fry
Presiding Member

8. Letter from Ms. Joanna Hill to the Tribunal dated January 20, 2006, which states the following: “... The characteristic feature of these knives is the perpendicular handle that allows the dagger to be used in a forward thrusting ‘punching’ or ‘pushing motion’ with the blade acting as an extension of the person’s arm. These daggers may be distinguished from the typical knife which requires a stabbing or slicing motion where the blade is perpendicular or at an angle from the person’s wrist or arm. The above definition does not require that the handle be ‘immediately’ perpendicular to the main cutting edge of the blade and also includes ‘any other similar device’. The Katar’s ‘H handle’ is more ornate than common push daggers, but still meets the definition...” (Exhibit No. AP-2005-019-14).