



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2007-005

Viqar Hasan

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, July 29, 2008*

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IN THE MATTER OF an appeal heard on December 18, 2007, 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 15, 2007, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

VIQAR HASAN

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Serge Fréchette
Serge Fréchette
Presiding Member

Randolph W. Heggart
Randolph W. Heggart
Acting Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: December 18, 2007
Tribunal Member: Serge Fréchette, Presiding Member
Counsel for the Tribunal: Georges Bujold
Research Officer: Jo-Anne Smith
Manager, Registrar Office: Gillian Burnett
Registrar Support Officer: Danielle Lanteigne

PARTICIPANTS:

Appellant	Counsel/Representative
Viqar Hasan	Viqar Hasan
Respondent	Counsel/Representative
President of the Canada Border Services Agency	Agnieszka Zagorska

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: 613-993-3595
Fax: 613-990-2439
E-mail: secretary@citt-tcce.gc.ca

STATEMENT OF REASONS

BACKGROUND

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 March 15, 2007, under subsection 60(4).

2. The issue in this appeal is whether the CBSA properly classified the knife in issue as a prohibited weapon under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*.² The knife in issue is a folding knife, model “Spec-Elite II” (Item No. SE18), manufactured by SOG Specialty Knives and Tools Inc. (SOG), which was exported from the United States.

3. The knife in issue was detained by the CBSA on December 21, 2006, at the time of its importation by mail into Canada. Mr. Viqar Hasan requested a review of the CBSA’s determination regarding the admissibility of the knife in issue. On March 15, 2007, the CBSA confirmed that, in its view, the knife in issue was properly classified as a prohibited weapon under tariff item No. 9898.00.00 and was thus prohibited from importation into Canada. On May 15, 2007, Mr. Hasan filed an appeal with the Tribunal.

4. 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

5. 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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6. 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	Armes à feu, armes prohibées, armes à autorisation restreinte, dispositifs prohibés, munitions prohibées et éléments ou pièces conçus exclusivement pour être utilisés dans la fabrication ou l’assemblage d’armes automatiques, désignés comme « marchandises prohibées » au présent numéro tarifaire, [...]
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For the purposes of this tariff item,

Pour l’application du présent numéro tarifaire :

. . .

[...]

(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

b) « arme à autorisation restreinte », « arme à feu à autorisation restreinte », « arme à feu prohibée », « arme automatique », « arme prohibée », « dispositif prohibé », « munitions prohibées » et « permis » s’entendent au sens du paragraphe 84(1) du Code criminel [...]

1. R.S.C. 1985 (2d Supp.), c. 1.

2. S.C. 1997, c. 36.

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

7. Subsection 84(1) of the *Criminal Code*⁴ 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.

8. The CBSA filed the knife in issue as a physical exhibit. The knife in issue has a reversible pocket/belt clip, the Arc-Lock™ mechanism and a black handle with stainless steel liners. According to the product literature, the Arc-Lock™ is “...one of the best locks in the world...”, was tested at over 1,000 lbs. of pressure without lock failure and provides “...lightning-quick, one-handed opening and closing capability...”⁵ The knife has dual thumb studs. The product literature indicates that “[s]pring-action provides fast and smooth one-handed opening...” The blade has a straight (non-serrated) edge made of stainless steel that locks in place. One side of the blade is marked “SOG Spec-Elite II”, while the other side is marked “Seki_Japan”. The knife measures approximately 273 mm (10.75 in.) when extended, and the blade measures 148 mm (5 in.).

9. In addition, the CBSA filed an expert report⁶ prepared by Mr. Kenneth Doyle of the Ottawa Police Service, as well as a DVD recording⁷ produced by Mr. Doyle which describes and demonstrates the operation of the knife in issue. Mr. Doyle’s qualifications as a weapons expert were not questioned by Mr. Hasan. The Tribunal accepted Mr. Doyle as an expert in prohibited weapons. Mr. Doyle reported that, in his expert opinion, the knife in issue is a prohibited weapon within the meaning of subsection 84(1) of the *Criminal Code*. According to the evidence provided by Mr. Doyle, the knife can be fully opened and locked without using the thumb studs or thumbscrews on the knife. Specifically, in his report, Mr. Doyle stated the following:

...

On the 6th of December 2007 I displayed the operation of the above-described knife to [CBSA representatives]. Upon completion of my description I then displayed the knife and provided them a demonstration of its operation utilizing the thumbscrews attached to the base of the blade area as well as the operation without utilizing the thumbscrews. The knife opened easily and effectively as well as repeatedly without utilization of the attached thumbscrews. Centrifugal force was the only manner utilized to open the knife repeatedly. A digital recording device was used to provide documentation of the knife and shows me operating the knife from a closed position to a fully open and locked position using centrifugal force as well as the operation utilizing the thumbscrews.

...

4. R.S.C. 1985, c. C-46.
5. Respondent’s brief, tab 3.
6. Tribunal Exhibit AP-2007-005-15A.
7. Tribunal Exhibit AP-2007-005-15B.

10. Mr. Hasan argued that SOG makes no claim that the knife flips or is centrifugally operated. He submitted that his understanding was that there is a tightening screw on the knife which, if kept properly tightened, will prevent the knife from centrifugally opening. Mr. Hasan also argued that the same knife is available in Canadian retail stores. He stated that this situation results in disparity or dual standards and that the knife should either be banned for everyone or released to him.

11. The CBSA submitted that the knife in issue is a prohibited weapon within the meaning of subsection 84(1) of the *Criminal Code* because it has a blade that opens automatically by centrifugal force or hand pressure applied to a spring or other device in or attached to the handle of the knife. In support of its position, the CBSA relied on a dictionary definition of “centrifugal force”, on the expert opinion of Mr. Doyle and on the Tribunal’s decision in *Digital Canoe Inc. v. President of the Canada Border Services Agency*⁸ where it was found that a similar folding knife was properly classified under tariff item No. 9898.00.00.

12. With respect to Mr. Hasan’s argument that identical knives are available for sale in stores in Canada, the CBSA referred to the Tribunal’s decision in *Wayne Ericksen v. Commissioner of the Canada Customs and Revenue Agency*⁹ where it was held that this argument did not constitute a basis upon which the Tribunal could classify goods.

ANALYSIS

13. In order to determine whether the knife in issue is properly classified under tariff item No. 9898.00.00, the Tribunal must determine if it meets the definition of “prohibited weapon” under subsection 84(1) of the *Criminal Code*. To be considered prohibited, a weapon must either be (1) 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 (2) any weapon, other than a firearm, that is prescribed to be a prohibited weapon.

14. Based on a careful examination of the evidence, the Tribunal is convinced that the knife in issue is a knife that has a blade that opens automatically by centrifugal force. Indeed, the demonstration and narration given by Mr. Doyle in the DVD recording 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. Mr. Doyle’s demonstration also made it clear that there are several methods of opening the knife in issue using various flicking motions, without the need to utilize the thumbscrews at the base of the blade area. The Tribunal is of the view that this action is automatic and accomplished through the use of what is commonly known as centrifugal force, thereby meeting the definition of “prohibited weapon” under subsection 84(1) of the *Criminal Code*.

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, is prohibited from importation into Canada under subsection 136(1) of the *Customs Tariff*.

8. (12 July 2006), AP-2004-047 (CITT).

9. (3 January 2002), AP-2000-059 (CITT) [*Ericksen*].

16. With respect to the argument that identical knives are available for sale in stores in Canada, the Tribunal refers to its decisions in *Ericksen* and *Romain L. Klaasen v. President of the Canada Border Services Agency*¹⁰ where the Tribunal stated that it is “. . . not a court of equity and must apply the law as it is . . .”¹¹ and that “. . . any previous shipments . . . not intercepted by the CBSA or its predecessors is irrelevant. The administrative action, or inaction, of the CBSA cannot change the law . . .”¹²

DECISION

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

Serge Fréchette
Serge Fréchette
Presiding Member

10. (18 October 2005), AP-2004-007 (CITT) [*Klaasen*].

11. *Ericksen* at 3.

12. *Klaasen* at 2.