



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2006-050

Eric Shenker

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Monday, September 17, 2007*

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IN THE MATTER OF an appeal heard on August 9, 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 November 9, 2006, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

ERIC SHENKER

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Ellen Fry

Ellen Fry
Presiding Member

Hélène Nadeau

Hélène Nadeau
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: August 9, 2007

Tribunal Member: Ellen Fry, Presiding Member

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STATEMENT OF REASONS

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 November 9, 2006, under subsection 60(4) of the *Act*.

2. The issue in this appeal is whether the CBSA properly classified the two knives in issue as prohibited weapons under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*.² The knives in issue are two identical “Klaww” fantasy knives (Item No. TA-59) produced by Master Cutlery, Inc.

3. The knives in issue were detained by the CBSA on October 3, 2006, at the time of their importation, by mail, into Canada. On October 5, 2006, Mr. Eric Shenker requested a review of the CBSA’s determination regarding the admissibility of the knives in issue. On November 9, 2006, the CBSA confirmed that, in its view, the knives in issue were properly classified as prohibited weapons under tariff item No. 9898.00.00 and were thus prohibited from importation into Canada. On January 10, 2007, Mr. Shenker 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 [Act].

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

(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

8. The CBSA filed the knives in issue as a physical exhibit. The knives in issue each have a dual-blade handle that is attached to a parallel rubberized grip by two posts. Both the handle and the mounted grip are approximately 15 cm in length, with the grip having a chrome conical 3-cm spike projecting from each end. Beneath the rubberized grip, and located between the two posts, is a T-shaped lever which the user grips with one hand. When the T-shaped lever, which is directly connected to the handle, is moved towards the grip through hand pressure, the stainless steel blades open proportionally to how far the lever is moved. When fully opened with their 9.5-cm blades pointing in opposite directions, the knives measure approximately 34 cm in length. The blades are opened and closed by a spring gear mechanism. The blades do not lock in place in the open position—they close as soon as the hand pressure is released or lessened on the lever.

ARGUMENT

9. Mr. Shenker submitted that the knives in issue do not meet the *Criminal Code* definition of a prohibited weapon because their blades cannot spring open automatically when a button is pushed as with a switchblade mechanism. He submitted that, instead, the blades open by manually pulling on the T-shaped lever in order to operate the spring gear. According to Mr. Shenker, this spring gear mechanism is similar to that commonly used in gardening tools, such as pruning shears and tree branch loppers, which allows the blades to be positioned back in the closed position once the handle is released. Mr. Shenker added that the definition of “prohibited weapon” found in the *Criminal Code* is so wide that a common box cutter knife that has a button to slide the blade out for use would qualify as a prohibited weapon. Mr. Shenker also submitted that the knives in issue are marketed in a way that creates the misleading impression that they are far more dangerous than they actually are and added that, in fact, there are many similarly manufactured items available in thousands of stores across Canada.

10. The CBSA disagreed, submitting that the definition of “prohibited weapon” under subsection 84(1) of the *Criminal Code* specifically applies to the knives in issue. In its view, the knives in issue have dual blades that open automatically by hand pressure applied to the lever that is attached to the handle of the knife. The CBSA argued that it is the spring opening mechanism in the handle that renders these knives prohibited weapons. Furthermore, it argued that the fact that the lever under the handle must be squeezed in order for the internal mechanism to open the blades is irrelevant in determining whether the knives in issue are prohibited weapons. In support of its position that an additional manual operation does not preclude the knives from being prohibited weapons, the CBSA cited the Supreme Court of Canada’s decision in *R. v. Vaughan*.⁵ The

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

5. [1991] 3 S.C.R. 691.

CBSA also submitted that the marketing and advertising⁶ of the knives in issue reveal that they are clearly designed and intended to be used as weapons and that this fact strongly supports their classification as prohibited weapons under tariff item No. 9898.00.00.

DECISION

11. In order to determine whether the knives in issue are properly classified under tariff item No. 9898.00.00, the Tribunal must determine if they meet the definition of “prohibited weapon” under subsection 84(1) of the *Criminal Code*.

12. Based on a careful examination of the knives in issue, the Tribunal concludes that they have blades that open automatically by hand pressure applied to a device attached to the handle of the knife. While no springs are used to open the blades (the springs in the gear mechanism only serve to close the blades), the Tribunal is of the view that the operation of the gear mechanism itself, which minimizes the amount of hand movement required to open the blades, results in the blades being automatically opened. Stated differently, the Tribunal believes that, since the T-shaped lever needs only to be moved using hand pressure over a very short distance in order for the two blades to simultaneously open a full 180 degrees, the opening of the blades is automatic. Accordingly, the knives in issue meet the *Criminal Code* definition of “prohibited weapon”.

13. With respect to Mr. Shenker’s argument that many similarly manufactured items are available in thousands of stores across Canada, the Tribunal notes, as it did in *Wayne Ericksen v. Commissioner of the Canada Customs and Revenue Agency*⁷, that this does not constitute a basis upon which the governing law permits it to make its classification decision.

14. 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 136(1) of the *Customs Tariff*.

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

Ellen Fry

Ellen Fry
Presiding Member

6. The CBSA made reference to the Web site of Mr. Shenker’s supplier (www.selfdefensesupply.com), as well as another Web site which also advertises the knives in issue (www.bladeplay.com).

7. (3 January 2002), AP-2000-059 (CITT).