



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2006-035

Tiffany Woodworth

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, September 11, 2007*

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IN THE MATTER OF an appeal heard on April 19, 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 December 28, 2005, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

TIFFANY WOODWORTH

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:	April 19, 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 December 28, 2005, under subsection 60(4) of the *Act*.

2. The issue in this appeal is whether the CBSA properly classified a necklace composed of a chain and a pendant containing a shaped knife as a prohibited weapon under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*.²

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

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 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 <i>Criminal Code</i>	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 [...] Pour l'application du présent numéro tarifaire : [...] 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 [...]
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6. 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.
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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. R.S.C. 1985, c. C-46.

7. Section 4 of the *Regulations Prescribing Certain Firearms and other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*⁵ reads as follows:

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| 4. The weapons listed in Part 3 of the schedule are prohibited weapons for the purposes of paragraph (b) of the definition “prohibited weapon” in subsection 84(1) of the <i>Criminal Code</i> . | 4. Les armes énumérées à la partie 3 de l’annexe sont désignées des armes prohibées pour l’application de l’alinéa b) de la définition de « arme prohibée » au paragraphe 84(1) du <i>Code criminel</i> . |
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8. Sections 9 and 10 of Part 3 of the schedule to the *Regulations* read as follows:

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| 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. | 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. 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. | 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. |

9. The good in issue is described in Axtion Bladez Conceptz product literature as “ABC-0203-Elvenspike Classic Necklace Knife-3” overall with 2”440 stainless steel double edged push dagger blade sheathed in pendant. Pendant is metal with silver coating. Beautiful specially made Aurora Borealis [genuine] European crystals adorn front. Comes with chain and in an elegant black velvet giftbox with cover. This is very popular with sci-fi, LOTR fans and the ladies!”⁶ The Tribunal measured the knife and observed that it is approximately 5.5 cm in total length (blade and handle) when sheathed and that the blade portion measures approximately 4.5 cm. The good in issue, taken as a whole (including the pendant and the chain), measures 35 cm in length.

10. Ms. Shereen Woodworth submitted that the good in issue is intended to be a collector’s item to be appreciated for its artistic merit and aesthetic beauty. She also submitted that it is not intended for use as a weapon. Ms. Woodworth requested that, should the appeal be dismissed, the good in issue be split into parts for classification, so that the removable knife is taken out and destroyed and the remainder of the necklace is allowed to enter the country.⁷ The CBSA indicated that there is no provision in the *Customs Act* permitting it to do a secondary re-classification of a prohibited weapon based on its disassembly and that, in any event, it would not be able to do so without performing further testing of the composition of the good in issue.

11. The CBSA submitted that the good in issue meets the requirements of sections 9 and/or 10 of Part 3 of the schedule to the *Regulations* and that it is therefore prohibited and properly classified under tariff item No. 9898.00.00.

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

6. Respondent’s brief, Tab 3 at 10.

7. Letter to the Tribunal dated January 18, 2007.

12. With respect to section 9 of the *Regulations*, the CBSA submitted that the good in issue fulfils both criteria, i.e. it is commonly known as a “push-dagger” and is designed in such a fashion that the handle is placed perpendicular to the main cutting edge of the blade. The CBSA also submitted that the manufacturer of the good in issue is a supplier of edged weapons and that its literature describes the good in issue as a “double edged push dagger blade”.

13. With respect to section 10 of the *Regulations*, the CBSA submitted that the good in issue is less than 30 cm in length and is designed in the form of a decorative pendant that conceals a knife blade. In this connection, the CBSA submitted that the good in issue is marketed as a concealed weapon that can be used by women in self-defence.

14. Regarding Ms. Woodworth’s arguments concerning the intended use of the good in issue, the CBSA submitted that these are equitable arguments that cannot form part of a determination of the law governing the classification of the necklace.

ANALYSIS

15. The Tribunal considers that the good in issue is properly classified as a prohibited weapon under tariff item No. 9898.00.00.

16. As indicated above, the good in issue is to be classified as a prohibited weapon if it falls within section 9 or 10 of Part 3 of the schedule to the *Regulations*.

17. Because subsection 136(2) of the *Customs Tariff* provides that subsection 10(1) of the *Customs Tariff*⁸ “does not apply in respect of goods” of tariff item No. 9898.00.00, the *General Rules for the Interpretation of the Harmonized System*⁹ and the *Canadian Rules*¹⁰ do not apply. In addition, Note 1 of Chapter 98 of the *Customs Tariff* reads as follows: “The provisions of this Chapter are not subject to the rule of specificity in General Interpretative Rule 3(a). Goods which are described in any provision of this Chapter are classifiable in said provision if the conditions and requirements thereof and of any applicable regulations are met.” Accordingly, goods that are classifiable under tariff item No. 9898.00.00 must be classified under that tariff item.

18. The good in issue does not meet the definition of a concealed weapon pursuant to section 10 of the *Regulations* because it is over 30 cm in length.

19. However, the Tribunal agrees with the CBSA that the good in issue meets the requirements of section 9 of the *Regulations*. The two criteria to be met are that the good in issue be (a) “... 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...” With respect to the first criterion, both Ms. Woodworth and the manufacturer of the good in issue referred to it as a “push dagger”.¹¹ With respect to the second criterion, the Tribunal finds the good in issue has a handle that is placed perpendicular to the main cutting edge of the blade.¹²

8. Subsection 10(1) of the *Customs Tariff* reads as follows: “Subject to subsection (2), the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System and the Canadian Rules set out in the schedule.”

9. *Supra* note 2, schedule.

10. *Ibid.*

11. Tribunal Exhibit Nos. AP-2006-035-4 and AP-2006-035-7; respondent’s brief, Tab 3.

12. Respondent’s brief, Tab 3.

20. Although Ms. Woodworth submitted that the good in issue was intended to be used as an item of jewellery and not as a weapon, this cannot be a consideration in the determination of the tariff classification of the good in issue, given the relevant provisions of the legislation and *Regulations*.

21. With respect to Ms. Woodworth's request to split the good in issue into parts for classification purposes, the Tribunal notes the Supreme Court of Canada's decision in *Deputy M.N.R.C.E. v. MacMillan & Bloedel (Alberni) Ltd.*,¹³ which indicated that the time for determining tariff classification is at the time of entry into Canada of the goods subject to duty. The Supreme Court of Canada reached that conclusion based on the wording of Canada's customs legislation in 1955.¹⁴ In the Tribunal's view, the principle set out in *MacMillan Bloedel* is still valid today despite various amendments by Parliament to Canada's customs legislation in the years since that case.¹⁵ Consequently, it is not within the Tribunal's jurisdiction to classify parts of the good in issue separately. However, the Tribunal notes that the CBSA may have administrative procedures to de-activate the weapon and return the necklace to Ms. Woodworth once it has been de-activated.

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

Ellen Fry

Ellen Fry

Presiding Member

13. [1965] S.C.R. 366 [*MacMillan Bloedel*].

14. Subsection 43(1) of the *Customs Act*, R.S.C. 1952, c. 58, as amended by 3-4 Eliz. II, c. 32 (1955), reads as follows: "Subject to this section, a determination of the tariff classification or an appraisal of the value for duty of any goods, *made at the time of their entry*, is final and conclusive unless the importer, within sixty days of the date of entry, makes a written request in prescribed form and manner to a Dominion Customs Appraiser for a re-determination or a re-appraisal." [Emphasis added]

15. Subsection 17(1) of the *Customs Act* reads as follows: "Imported goods are charged with duties thereon *from the time of importation* thereof until such time as the duties are paid or the charge is otherwise removed." [Emphasis added] See, also, subsection 20(1) of the *Customs Tariff*, which reads as follows: "... there shall be levied on all goods set out in the [schedule], *at the time those goods are imported*, ... a customs duty at the rates set out in [the *Customs Tariff* and the schedule]" [Emphasis added]