



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2006-059

Terry Shannon

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Wednesday, January 30, 2008*

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IN THE MATTER OF an appeal heard on October 31, 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 19, 2006, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

**BETWEEN**

**TERRY SHANNON**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is dismissed.

Serge Fréchette  
Serge Fréchette  
Presiding Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

Place of Hearing: Ottawa, Ontario  
Date of Hearing: October 31, 2007  
Tribunal Member: Serge Fr chette, Presiding Member  
Counsel for the Tribunal: Alain Xatruch  
Research Officer: Jo-Anne Smith  
Registrar Officer: Danielle Lanteigne  
Parties: Terry Shannon, for the appellant  
Claudine Patry, 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: 613-993-3595  
Fax: 613-990-2439  
E-mail: [secretary@citt-tcce.gc.ca](mailto:secretary@citt-tcce.gc.ca)

## STATEMENT OF REASONS

### BACKGROUND

1. This is an appeal pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision of the President of the Canada Border Services Agency (CBSA), dated December 19, 2006, 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 under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*.<sup>2</sup> The knife in issue is a Kershaw Ken Onion “Spec Bump” (Model 1596) knife, which is manufactured in the United States by Kai USA Ltd. of Tualatin, Oregon.

3. The knife in issue was detained by the CBSA on October 27, 2006, at the time of its importation by mail into Canada. On November 6, 2006, Mr. Terry Shannon requested a review of the CBSA’s determination regarding the admissibility of the knife in issue. On December 19, 2006, 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 March 7, 2007, Mr. Shannon 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*.<sup>3</sup>

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 <sup>os</sup> 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*<sup>4</sup> 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 black textured-surface handle with a pocket clip and measures 12.5 cm in length when closed. The single-edged black-coloured blade measures 9.2 cm in length and features a recurve on the rear of the blade with a nearly straight section on the front of the blade. The knife incorporates Kershaw’s “Speedsafe” assisted opening system, which is described in the product literature<sup>5</sup> as relying on a torsion bar that pressures the knife closed. By pushing forward on the blade’s thumb stud or pulling back on the “Index Open” feature, the blade begins to open against the torsion bar pressure. Partway through the opening, the bar’s torque changes direction and opens the knife the rest of the way.

9. In addition, the CBSA filed an expert report<sup>6</sup> prepared by Mr. Kenneth Doyle of the Ottawa Police Service, as well as a DVD recording<sup>7</sup> 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. Shannon. 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*.

10. Mr. Shannon submitted that the knife in issue is not a prohibited weapon as defined in the *Criminal Code* because it can only be opened by first overcoming the torsion bar’s resistance which holds the blade in a closed position. In his view, this suggests that the blade cannot be opened by centrifugal force. Mr. Shannon also submitted that identical knives are available for sale in stores in Canada. He argued that the public availability of the knife in issue in Canada is proof that the CBSA has made a determination that the knife does not fall under tariff item No. 9898.00.00. Mr. Shannon also argued that the return option offered by the CBSA (i.e. the option to return or export the goods back to the sender) is not readily available due to difficulties in obtaining specific information from the CBSA regarding the process to be followed and that, in the event the appeal is dismissed, the Tribunal should order the CBSA to make the return option readily available to him and others who are in a similar position.

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 through a flick of the wrist. The CBSA argued that the knife in issue opens in an identical manner as the knife in issue in the Tribunal’s decision in *Wayne Ericksen v. Commissioner of the Canada Customs and Revenue Agency*<sup>8</sup> where it was found that the knife was properly classified under tariff item No. 9898.00.00. The CBSA also submitted that, while the knife in issue can be opened by pushing on the thumb stud or pulling back on the “Index Open” feature (i.e. the release lever), this does not negate the fact that it can also

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

5. Respondent’s brief, Tabs 2, 11; appellant’s reply brief, attachment.

6. Tribunal Exhibit AP-2006-059-14A.

7. Tribunal Exhibit AP-2006-059-14B.

8. (3 January 2002), AP-2000-059 (CITT) [*Ericksen*].

be opened in one flicking motion, through the application of centrifugal force. Regarding Mr. Shannon's argument to the effect that identical knives are available for sale in stores in Canada, the CBSA referred to the Tribunal's decision in *Ericksen* where it was held that this submission did not constitute a basis upon which the Tribunal could classify goods.

## ANALYSIS

12. 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.

13. Based on a careful examination of the evidence, 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 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. Moreover, Mr. Doyle's demonstration and the Tribunal's own examination of the knife in issue made it abundantly clear that the torsion bar's initial resistance, which serves to hold the blade in a closed position, could be overcome with a quick flick of the wrist. 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*.

14. 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*.

15. 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*<sup>9</sup> where the Tribunal stated that it is "... not a court of equity and must apply the law as it is ..."<sup>10</sup> 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 ..."<sup>11</sup>

16. The other argument raised by Mr. Shannon centred upon the disposal of the knife in issue. As previously stated in *Catherine Roozen v. Deputy M.N.R.*<sup>12</sup> and *Charles Leung v. Deputy M.N.R.*,<sup>13</sup> the Tribunal does not have the jurisdiction to deal with the question of the disposal of the goods. Should Mr. Shannon wish to pursue this issue, it is a matter to be dealt with by the CBSA or the courts.

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9. (18 October 2005), AP-2004-007 (CITT) [*Klaasen*].

10. *Ericksen* at 3.

11. *Klaasen* at 2.

12. (1 March 1999), AP-96-057 (CITT).

13. (27 February 2002), AP-99-080 (CITT).

**DECISION**

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

Serge Fréchette  
Serge Fréchette  
Presiding Member