



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2009-002

Ivan Hoza

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, January 6, 2010*

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DECISION 6

IN THE MATTER OF an appeal heard on November 26, 2009, pursuant to 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 February 3, 2009, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

IVAN HOZA

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Diane Vincent
Diane Vincent
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 26, 2009
Tribunal Member: Diane Vincent, Presiding Member
Counsel for the Tribunal: Georges Bujold
Research Director: Audrey Chapman
Research Officer: Jo-Anne Smith
Manager, Registrar Office: Michel Parent
Registrar Officer: Lindsay Wright

PARTICIPANTS:**Appellant**

Ivan Hoza

Counsel/Representative

Ivan Hoza

Respondent

President of the Canada Border Services

Counsel/Representative

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 February 3, 2009, pursuant to subsection 60(4) of the *Act*.

2. The issue in this appeal is whether the CBSA properly classified the VL-06 “Twister” knives (the goods in issue) as prohibited weapons under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*² and, therefore, as goods prohibited from importation into Canada by virtue of subsection 136(1) of the *Customs Tariff*. According to the CBSA, the goods in issue are prohibited throwing weapons which possess the characteristics of a shuriken or a throwing star.

PROCEDURAL HISTORY

3. Two identical VL-06 “Twister” knives were detained on August 28, 2008, by the CBSA, at the time of their importation by mail into Canada.

4. On September 5, 2008, Mr. Ivan Hoza requested a review of the CBSA’s determination regarding the admissibility for importation into Canada of the goods in issue.

5. On February 3, 2009, the CBSA confirmed that, in its view, the goods in issue were properly classified as prohibited weapons under tariff item No.9898.00.00 and thus prohibited from importation into Canada.

6. On March 26, 2009, Mr. Hoza filed an appeal with the Tribunal.

7. On October 30, 2009, the CBSA filed an expert report³ prepared by Mr. Rick McIntosh, a detective with the Ottawa Police Service, as well as a DVD recording⁴ produced by Mr. McIntosh, which describes and demonstrates the operation of the goods in issue. Mr. McIntosh’s qualifications as an expert in knives were not questioned by Mr. Hoza. The Tribunal accepted Mr. McIntosh as an expert in knives.

8. On October 31, 2009, in reply to the expert report, Mr. Hoza acknowledged that the goods in issue are prohibited weapons in Canada,⁵ but nevertheless wanted to have the items back for reasons that will be elaborated in the following text.

9. 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*.⁶ On November 26, 2009, the date of the hearing, the CBSA filed the goods in issue as physical exhibits.

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

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

3. Tribunal Exhibit AP-2009-002-16A, tabs 1, 2.

4. Tribunal Exhibit AP-2009-002-16B.

5. Tribunal Exhibit AP-2009-002-017.

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

GOODS IN ISSUE

10. The goods in issue comprise two, three-bladed discs designed to be locked together to form a single unit. The unit can be twisted apart, and each part may then be used separately. Each part has a central hub made up of three arms. At the end of each arm is a curved folding blade. The blades are concave and have a sharpened edge on the side that folds into the hub and a half-inch serrated edge on the back side. When the two hubs are locked together, they form a six-bladed throwing weapon. When folded, the unit is 10 cm in diameter; with the blades out and locked, it is approximately 20 cm in diameter.

LEGAL FRAMEWORK

11. Following are excerpts of the relevant legislative and regulatory provisions in this appeal.

12. Subsection 136(1) of the *Customs Tariff* reads as follows:

<p>The importation of goods of tariff item No. 9897.00.00, 9898.00.00 or 9899.00.00 is prohibited.</p>	<p>L'importation des marchandises des n^{os} tarifaires 9897.00.00, 9898.00.00 ou 9899.00.00 est interdite.</p>
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13. Tariff item No. 9898.00.00 reads as follows:

<p>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</p>	<p>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, [...]</p>
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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 [...]

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

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

15. The list of weapons, other than firearms, prescribed as prohibited pursuant to subsection 84(1) of the *Criminal Code* appears in 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*.⁸ Section 3 of Part 3 of the schedule to the *Regulations* is relevant to this appeal. It specifies that the following types of devices are prohibited weapons:

Any instrument or device commonly known as “shuriken”, being 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.	L’appareil ou l’instrument communément appelé « shuriken », constitué 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.
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16. In summary, in order to determine whether the goods 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*. 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. In this regard, section 3 of Part 3 of the schedule to the *Regulations* provides that the instrument or device commonly known as “shuriken” and any similar instrument or device are prohibited weapons for the purposes of paragraph 84(1)(b) of the *Criminal Code*.

POSITION OF PARTIES

17. Mr. Hoza submitted that he purchased the goods in issue as souvenirs while on vacation in Japan. In his initial submission, he argued that the goods in issue are not true shurikens because they are not pointed plates of metal. He also submitted that the goods in issue are available in Canada, as are other much more dangerous weapons. Mr. Hoza further submitted that he is a collector of items from East Asia and that the goods in issue would be safely displayed in his home in a secure display cabinet.

18. In reply to the CBSA’s submissions and expert evidence, Mr. Hoza acknowledged that the goods in issue are prohibited weapons in Canada.⁹ However, Mr. Hoza argued that, following the logic used by the CBSA’s expert witness, many other items are equally dangerous. In this regard, he used the example of a pair of scissors. He also argued that a person had to be an expert to use the goods in issue, which is not his case. Mr. Hoza further stated that he is a responsible person and would be willing to register his knives in the same way hunters register their weapons (firearms) in police stations, suggesting that he might keep the goods in issue in the same way as hunters are allowed. In addition, Mr. Hoza indicated that he would be willing to alter the six blades of the goods in issue so that they would no longer be dangerous.

19. The CBSA submitted that the goods in issue meet the definition of a prohibited weapon within the meaning of subsection 84(1) of the *Criminal Code* and that Mr. Hoza’s equity arguments are irrelevant for tariff classification purposes. The CBSA noted that Part 3 of the schedule to the *Regulations*, which lists weapons, other than firearms, that are prescribed to be prohibited weapons under paragraph 84(1)(b) of the *Criminal Code*, includes any instrument or device commonly known as “shuriken” and any similar instrument or device. The CBSA submitted that, in order to be considered similar to a shuriken, an instrument or device (1) must have three or more radiating points, (2) must have one or more sharp edges,

8. S.O.R. 98-462 [*Regulations*].

9. Tribunal Exhibit AP-2009-002-017.

and (3) must be in the shape of a polygon, trefoil, cross, star, diamond or other geometrical shape. The CBSA stated that the goods in issue have as many as six pointed arms radiating from the hub, that each of their six pointed arms are sharp and that the goods in issue are in the shape of a star when the blades are opened and locked. In the CBSA's view, given their configuration and characteristics, the goods in issue are instruments or devices that are similar to a shuriken and, therefore, prohibited weapons.

20. The CBSA also relied on the evidence submitted by Mr. McIntosh in support of its position. Mr. McIntosh reported that, in his expert opinion, the goods in issue are prohibited weapons within the meaning of subsection 84(1) of the *Criminal Code*. In his opinion, in any position (i.e. six separate blades, three double blades or two separate three-bladed knives), the goods in issue resemble a shuriken as they are utilized by grasping them by one blade and throwing them like a shuriken. Mr. McIntosh also demonstrated, using his DVD recording, that the blades of one hub of the goods in issue could be repeatedly opened by centrifugal force through a flip of the wrist.

21. Based on the evidence provided by Mr. McIntosh, the CBSA further submitted that the goods in issue are also prohibited weapons within the meaning of paragraph 84(1)(a) of the *Criminal Code* because the blades can be opened automatically by centrifugal force.

ANALYSIS

Are the Goods in Issue Shurikens or Similar Instruments or Devices?

22. As noted above, section 3 of Part 3 of the schedule to the *Regulations* provides that the following instruments or devices are weapons which are prescribed to be prohibited weapons under paragraph 84(1)(b) of the *Criminal Code*:

Any instrument or device commonly known as “shuriken”, being 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*.

[Emphasis added]

23. In order to determine whether the goods in issue are properly classified under tariff item No. 9898.00.00 as prohibited weapons pursuant to section 84(1) of the *Criminal Code*, the Tribunal considered whether they meet the requirements of this definition relating to a shuriken or any similar instrument or device.

24. In this regard, the Tribunal observes that the goods in issue are not actual shurikens, given that they cannot be described as “hard non-flexible plate[s]” as the instrument or device known as “shuriken” is described in section 3 of Part 3 of the schedule to the *Regulations*. Rather, the goods in issue each comprise two discs that can be locked together, and each disc has three folding blades.

25. Section 3 of Part 3 of the schedule to the *Regulations* also covers any instrument or device that is similar to a shuriken. The *Canadian Oxford Dictionary* defines “similar” as follows: “of the same nature or kind; alike.”¹⁰ Obviously, “similar” does not mean “identical”. Thus, despite the fact that there is a physical difference between the goods in issue and the instrument or device commonly known as “shuriken”, the goods in issue may still be considered similar devices.

10. Second ed., s.v. “similar”.

26. In this respect, based on a careful examination of the evidence, the Tribunal is of the view that the goods in issue and the instrument or device known as “shuriken” share important characteristics and have common features. For example, based on the expert report, and upon examination of the goods in issue during the hearing, it is clear that they are shaped like a star, have six pointed arms radiating from the hub when completely opened and have more than one sharp edge, as each of the six arms radiating from the hub possesses a sharp-edged blade. The Tribunal further notes that the goods in issue have a locking mechanism to lock the blades in place once they are opened and are designed to be thrown as is the instrument or device known as “shuriken”. In short, the goods in issue closely resemble a shuriken, as this instrument or device is described in the schedule to the *Regulations*.

27. Accordingly, the Tribunal finds that the goods in issue are “of the same nature or kind” as a shuriken, that is, similar devices within the meaning of section 3 of Part 3 of the schedule to the *Regulations*. As such, the goods in issue are weapons, other than firearms, that are prescribed to be prohibited weapons under paragraph 84(1)(b) of the *Criminal Code*.

28. Given this finding, the Tribunal considers that it is not necessary to address the CBSA’s argument that the goods in issue are also prohibited weapons within the meaning of paragraph 84(1)(a) of the *Criminal Code* in order to dispose of this appeal.

CONCLUSION

29. Based on the foregoing analysis, the Tribunal concludes that the goods in issue are properly classified as prohibited weapons under tariff item No. 9898.00.00 and, as such, are prohibited from importation into Canada pursuant to subsection 136(1) of the *Customs Tariff*.

30. With respect to the argument that identical or similar devices are available for sale in Canada, the Tribunal refers to its decisions in *Wayne Ericksen v. Commissioner of the Canada Customs and Revenue Agency*¹¹ and *Romain L. Klaasen v. President of the Canada Border Services Agency*,¹² where the Tribunal stated that it is “. . . not a court of equity and must apply the law as it is”¹³ and that “. . . any previous shipments . . . not intercepted by the CBSA or its predecessors is irrelevant” and that “[t]he administrative action, or inaction, of the CBSA cannot change the law.”¹⁴ Similarly, while there is no basis to question Mr. Hoza’s statements that he is a responsible person who would treat the goods in issue as memorabilia from his trip to Japan and never use them as weapons, these considerations can have no bearing upon the Tribunal’s determination of whether or not the goods in issue are prohibited weapons as defined in the *Criminal Code*.

31. The other argument raised by Mr. Hoza was that he could alter the goods in issue. The Tribunal has previously addressed and consistently rejected similar requests in other cases. As a matter of law, the Tribunal does not have the jurisdiction to deal with the disposal of goods. As the Tribunal stated in *Terry Shannon v. President of the Canada Border Services Agency*,¹⁵ issues that concern the disposal of the goods in issue are matters to be dealt with by the CBSA or the courts.

11. (3 January 2002), AP-2000-059 (CITT) [*Ericksen*].

12. (18 October 2005), AP-2004-007 (CITT) [*Klaasen*].

13. *Ericksen* at 3.

14. *Klaasen* at 2.

15. (30 January 2008), AP-2006-059 (CITT).

DECISION

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

Diane Vincent
Diane Vincent
Presiding Member