



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER

Appeal No. AP-2014-046

D. S.

v.

President of the Canada Border
Services Agency

*Order issued
Monday, June 8, 2015*

*Corrigendum issued
Friday, June 12, 2015*

IN THE MATTER OF an appeal filed by D. S. on March 24, 2015, pursuant to subsection 67(1) of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a request made by the President of the Canada Border Services Agency on May 27, 2015, pursuant to subrule 23.1(1) of the *Canadian International Trade Tribunal Rules*, S.O.R./91-499, for an order allowing the appeal.

BETWEEN

D. S.

Appellant

AND

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

Respondent

ORDER

WHEREAS, on March 24, 2015, pursuant to subsection 67(1) of the *Customs Act* (the *Act*), D. S. filed an appeal in response to a re-determination of the President of the Canada Border Services Agency (CBSA) made under paragraph 60(4)(a) of the *Act*;

AND WHEREAS that decision classified the EnZo Birk 75 folding knife (the good in issue) as a prohibited weapon/device under tariff item No. 9898.00.00 of the Schedule to the *Customs Tariff*, S.C. 1997, c. 36;

AND WHEREAS, by letter dated May 27, 2015, the CBSA indicated that it agrees with the position taken by D. S. to the effect that the good in issue is not properly classified under tariff item No. 9898.00.00 as a prohibited weapon/device;

AND WHEREAS, under subparagraph 61(1)(a)(i) of the *Act*, the CBSA can only further re-determine the tariff classification of an imported good after a re-determination is made under paragraph 60(4)(a) of the *Act*, but before an appeal is heard under subsection 67(1) of the *Act*, if and only if the further re-determination would reduce duties payable on the good;

AND WHEREAS the change in tariff classification of the good in issue sought by the CBSA and D. S. in this matter would not result in a reduction of the duties payable as required by subparagraph 61(1)(a)(i) of the *Act*;

AND WHEREAS the CBSA is therefore statutorily incapable of effectuating the tariff classification of the good in issue that it is seeking to make for the benefit of D. S. by reason of the limitations contained in subparagraph 61(1)(a)(i) of the *Act* for the reasons explained above;

AND WHEREAS the intervention of the Canadian International Trade Tribunal is consequently required;

THEREFORE, at the request of the CBSA, the Canadian International Trade Tribunal hereby issues an order allowing the appeal.

Daniel Petit

Daniel Petit

Presiding Member

IN THE MATTER OF an appeal filed by D. S. on March 24, 2015, pursuant to subsection 67(1) of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a request made by the President of the Canada Border Services Agency on May 27, 2015, pursuant to subrule 23.1(1) of the *Canadian International Trade Tribunal Rules*, S.O.R./91-499, for an order allowing the appeal.

BETWEEN

D. S.

Appellant

AND

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

Respondent

CORRIGENDUM

The last sentence of the order should have read as follows:

THEREFORE, at the request of the CBSA, the Canadian International Trade Tribunal hereby allows the appeal.

By order of the Tribunal,

Daniel Petit
Daniel Petit
Presiding Member