



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2014-030

Knife & Key Corner Ltd.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Monday, September 14, 2015*

TABLE OF CONTENTS

DECISION.....	i
STATEMENT OF REASONS	1
GOODS IN ISSUE.....	1
STATUTORY FRAMEWORK.....	2
POSITIONS OF PARTIES.....	3
Knife & Key	3
CBSA	4
TRIBUNAL ANALYSIS.....	5
Do the Goods in Issue Open Automatically by Gravity or Centrifugal Force?	5
Do the Goods in Issue Open Automatically by Hand Pressure Applied to a Button, Spring or Other Device in or Attached to the Handle of the Knife?.....	5
Conclusion	8
DECISION.....	8

IN THE MATTER OF an appeal heard on June 11, 2015, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated October 30, 2014, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

KNIFE & KEY CORNER LTD.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Daniel Petit
Daniel Petit
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: June 11, 2015

Tribunal Member: Daniel Petit, Presiding Member

Counsel for the Tribunal: Kalyn Eadie
Anja Grabundzija

Senior Registrar Officer: Haley Raynor

PARTICIPANTS:**Appellant**

Knife & Key Corner Ltd.

Respondent

President of the Canada Border Services Agency

Counsel/Representative

Philippe Lacasse

Please address all communications to:

The Registrar
Canadian International Trade Tribunal Secretariat
333 Laurier Avenue West
15th Floor
Ottawa, Ontario K1A 0G7
Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

1. This appeal is filed by Knife & Key Corner Ltd. (Knife & Key) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ from a decision made on October 30, 2014, by the President of the Canada Border Services Agency (CBSA) pursuant to subsection 60(4).

2. The issue is whether the CBSA properly classified 16 knives, comprised of six different models of folding knives (collectively, 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*.

3. On December 8, 2014, Knife & Key filed the present appeal. The Tribunal decided to hear the matter by way of written submissions in accordance with rules 25 and 25.1 of the *Canadian International Trade Tribunal Rules*.³ The hearing was held on June 11, 2015.

4. The Tribunal requested the goods in issue from the CBSA and examined each of them at the hearing.

GOODS IN ISSUE

5. The goods in issue are described as follows:⁴

- one Zero Tolerance military folder knife, model ZT-0200: a folding knife measuring 13.3 cm when closed and equipped with a 10.2-cm coated steel blade, thumb stud affixed to the blade, thumb/finger “flipper”⁵ located on the spine of the blade, a black textured handle and liner lock;⁶
- three Tac Force frame lock knives, model TF-625BK: folding knives measuring 11.5 cm in the closed position and equipped with an 8.5-cm stainless steel partially-serrated tanto blade with blunt tip, dual thumb studs affixed to the blade, thumb/finger lever located on the spine of the blade, an extended tang, an integrated glass breaker, frame lock and steel pocket clip;⁷
- three Tac Force frame lock knives, model TF-625UC: folding knives measuring 11.5 cm in the closed position and equipped with an 8.5-cm stainless steel partially-serrated tanto blade with blunt tip, a thumb stud affixed to the blade, thumb-finger lever located on the spine of the blade, multi-coloured and textured handle, extended tang and integrated glass breaker;⁸

1. R.S.C., 1985, c. 1 (2nd Supp.).

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

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

4. Exhibit AP-2014-030-06A, Appendix A, Vol. 1.

5. *Ibid.*, tab 6.

6. Exhibit AP-2014-030-B-01.

7. Exhibit AP-2014-030-B-02.

8. Exhibit AP-2014-030-B-03.

- four Tac Force Speedster “Joker” knives, model TF-457B: folding knives measuring 11.5 cm in the closed position and equipped with a 9.0-cm black-coated stainless steel blade, black anodized aluminum handles, and a thumb/finger lever located on the spine of the blade and metal pocket clip;⁹
- two Zero Tolerance knives, model ZT-0350: folding knives measuring 11.7 cm in the closed position and equipped with coated stainless steel 8.25 cm blade, an ambidextrous thumb/finger “flipper”,¹⁰ located on the spine of the blade, a black textured G-10 handle, and liner lock;¹¹ and
- three Tac Force Skull Bat Wing Karambit liner lock knives, model TF-693BK: folding knives measuring 12.5 cm in the closed position and equipped with an 8.0-cm black-coated stainless hawksbill blade with thumb stud and extended tang, black anodized aluminum handles with cast aluminum skull bat wing onlay, full jimped spine and oversized ring pommel (finger ring).¹²

STATUTORY FRAMEWORK

6. Subsection 136(1) of the *Customs Tariff* provides 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.
---	---

[Emphasis added]

7. Among the list of prohibited goods, tariff item No. 9898.00.00 lists “prohibited weapons”. It further specifies that the expression “prohibited weapons” has the same meanings as in subsection 84(1) of the *Criminal Code* as follows:

Firearms, <i>prohibited weapons</i> , 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, <i>armes prohibées</i> , 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 [...].
. . .	[...]
For the purposes of this tariff item:	Pour l'application du présent numéro tarifaire :
. . .	[...]
(b) “automatic firearm”, “licence”, “prohibited ammunition”, “prohibited device”, “prohibited firearm”, <i>prohibited weapon</i> , restricted firearm and “restricted weapon” have the same meanings as in subsection 84(1) of the <i>Criminal Code</i>	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 [...].

[Emphasis added]

9. Exhibit AP-2014-030-B-04.

10. Exhibit AP-2014-030-06A, tab 6, Vol. 1.

11. Exhibit AP-2014-030-B-05.

12. Exhibit AP-2014-030-B-06.

8. In accordance with subsection 84(1) of the *Criminal Code*,¹³ “prohibited weapon” means:

- | | |
|---|---|
| <p>(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</p> <p>(b) any weapon, other than a firearm, that is prescribed to be a prohibited weapon;</p> | <p>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;</p> <p>b) toute arme — qui n’est pas une arme à feu — désignée comme telle par règlement.</p> |
|---|---|

9. In sum, in order to determine whether the goods in issue are properly classified as prohibited weapons under tariff item No. 9898.00.00 and, therefore, as goods prohibited from importation into Canada, the Tribunal must determine whether they meet the definition of “prohibited weapon” in subsection 84(1) of the *Criminal Code*.

10. Relevant to this appeal, the *Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*¹⁴ provide as follows:

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 *Criminal Code*.

...

PART 3

PROHIBITED WEAPONS

...

15. The device known as “Brass Knuckles” and any similar device consisting of a band of metal with one or more finger holes designed to fit over the fingers of the hand.

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 *Code criminel*.

[...]

PARTIE 3

ARMES PROHIBÉES

[...]

15. L’instrument communément appelé « coup-de-poing américain » et autre instrument semblable consistant en une armature métallique trouée dans laquelle on enfle les doigts.

POSITIONS OF PARTIES

Knife & Key

11. Knife & Key submitted that the goods in issue are torsion bar assisted-opening knives that do not fit the description of tariff item No. 9898.00.00 and subsection 84(1) of the *Criminal Code*. Rather, in Knife & Key’s view, they fall under the exemption for assisted-opening knives as set out in the CBSA’s Memorandum D19-13-2,¹⁵ which specifically provides that torsion bar assisted-opening knives that open by manual pressure to a thumb stud or other protrusion on the blade do not generally fall within the definition of “prohibited weapon”. Furthermore, the goods in issue are distinguishable from those found to be prohibited weapons by the Tribunal in *La Sagesse de l’Eau v. President of the Canada Border Services Agency*¹⁶ and *R. Christie v. President of the Canada Border Services Agency*.¹⁷

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

14. S.O.R./98-462 [*Regulations Prescribing Certain Weapons as Prohibited*].

15. (23 January 2013), “Importing and Exporting Firearms, Weapons and Devices”.

16. (13 November 2012), AP-2011-040 and AP-2011-041 (CITT) [*La Sagesse de l’Eau*].

17. (15 January 2014), AP-2012-072 (CITT) [*R. Christie*].

12. First, Knife & Key submitted that the goods in issue do not have blades that open automatically by gravity or by centrifugal force. Moreover, the goods in issue do not have blades that open “. . . by hand pressure applied to a button, spring or other device in or attached to the handle of the knife”

13. According to Knife & Key, the goods in issue open by pushing a protrusion on the blades of the knives. This protrusion is not part of the handle, but part of the blade itself, which distinguishes the goods in issue from the goods at issue in *La Sagesse de l'Eau* and *R. Christie*.

14. Further, Knife & Key submitted that the goods in issue do not use the same mechanism as the goods at issue in *La Sagesse de l'Eau* and *R. Christie*. Knife & Key argued that the protrusion on the goods in issue does not act in the same way as the “lever” or “finger actuator” that were found to assist in opening the knives in those two cases. Knife & Key submitted that the protrusion does not fit the dictionary definition of “lever”, which is “. . . a rigid bar pivoted about a fulcrum, used to transfer a force to a load and usually to provide a mechanical advantage.”¹⁸ Nor does the protrusion meet the definition of “actuator”, as it does not “put [anything] into action or mechanical motion”;¹⁹ instead, according to Knife & Key, the protrusion only moves the blade itself, and it is only after the blade moves that another part of the blade takes over to activate the torsion bar.

CBSA

15. The CBSA submitted that all models of the goods in issue are prohibited weapons. Specifically, all models of the goods in issue have a blade that opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife. The CBSA also submitted that the Zero Tolerance Military folder knife, model ZT-0200, can open automatically by centrifugal force through a quick flick of the wrist.

16. In the CBSA’s view, because the knives open rapidly, with minimal manipulation, to a fully open and locked position, they can be said to open “automatically”.

17. The CBSA also submitted that the protrusion on the blade of each knife is a “device” within the meaning of section 84 of the *Criminal Code*, as it was designed specifically to open the goods in issue. Furthermore, this device can be said to be “. . . in or attached to the handle . . .” because it “. . . moves into and passes through the handle” as the blade flips open. In this respect, the goods in issue are comparable to the Stiletto knives at issue in *R. Christie*.

18. In addition to the foregoing, the CBSA added that the Tac Force “Speedster” Skull Bat Wing Karambit liner lock knife, model TF-693BK is a prohibited weapon within the meaning of paragraph 84(1)(b) of the *Criminal Code*, as its handle comprises a ring that can cover either a baby finger or an index finger, which makes it a “brass knuckles” device.²⁰

19. Finally, regarding Memorandum D19-13-2, the CBSA submitted that it is well established that the Tribunal is not bound by the contents of these administrative memoranda.

18. Exhibit AP-2014-030-04 at 4, Vol. 1.

19. *Ibid.*

20. Prescribed as prohibited in the *Regulations Prescribing Certain Weapons as Prohibited*.

TRIBUNAL ANALYSIS

20. In order to determine whether the goods in issue are properly classified as “prohibited weapons”, the relevant definition is paragraph 84(1)(a) of the *Criminal Code*. Accordingly, the test requires that the blade opens automatically in one of two ways: (1) by gravity or centrifugal force, or (2) by hand pressure applied to a button, spring or other device in or attached to the handle of the knife.

Do the Goods in Issue Open Automatically by Gravity or Centrifugal Force?

21. The CBSA alleged that the model ZT-0200 knife opens automatically through a quick flick of the wrist. The Tribunal has confirmed, through its own examination, that the model ZT-0200 knife opens in this manner.

22. The Tribunal has repeatedly held that knives that open automatically through a quick flick of the wrist are considered capable of being opened by centrifugal force and are thus prohibited weapons within the meaning of paragraph 84(1)(a) of the *Criminal Code*.²¹ Accordingly, this model is prohibited, as it opens automatically by centrifugal force.

Do the Goods in Issue Open Automatically by Hand Pressure Applied to a Button, Spring or Other Device in or Attached to the Handle of the Knife?

23. In addition, the CBSA has claimed that all the goods in issue are prohibited on the grounds that they open automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife.

24. Since the Tribunal has determined that the model ZT-0200 knife opens by centrifugal force, it is not necessary to determine whether it opens by hand pressure applied to a button, spring or other device in or attached to the handle.

25. With respect to the other five models of goods in issue, it is uncontested that they are assisted-opening knives that open through the action of either a spring or torsion bar located in the handle of the knife, which is activated through hand pressure to a thumb stud or finger lever located on the blade of the knife. The product literature submitted by Knife & Key describes the functioning of these knives as follows: “[t]o open the knife, the user applies manual pressure to the thumb stud or blade protrusion to overcome the resistance of the torsion bar. After the blade is out of the handle, the torsion bar moves along its half-moon track and takes over. The blade opens smoothly and locks into position, ready for use.”²²

21. *Wayne Ericksen v. Commissioner of the Canada Customs and Revenue Agency* (3 January 2002), AP-2000-059 (CITT) at 2-3; *MilArm Co. Ltd. v. Commissioner of the Canada Customs and Revenue Agency* (12 July 2006), AP-2002-114 (CITT) at para. 13; *Kenneth Lee v. President of the Canada Border Services Agency* (12 July 2006), AP-2003-054 (CITT) at para. 12; *Terry Shannon v. President of the Canada Border Services Agency* (30 January 2008), AP-2006-059 (CITT) at para. 13; *R. Christie* at paras. 59, 64; *T. Lysyshyn v. President of the Canada Border Services Agency* (14 July 2014), AP-2013-047 (CITT) at para. 29.

22. Exhibit AP-2014-030-04, Appendix B, Vol. 1.

26. It is true that this description corresponds to the description of torsion bar assisted-opening knives found at paragraph 22 of Memorandum D19-13-2, which states that these knives are generally not considered prohibited. However, the CBSA is correct that it is well established in Tribunal case law that this D-Memorandum is not binding.²³

27. D-Memoranda are administrative policy statements issued by the CBSA. While these memoranda often set out the CBSA's interpretation of the law, it is the Tribunal's responsibility to interpret and apply the relevant law in each appeal that comes before it. The Tribunal's task in this case is therefore strictly to determine whether the goods in issue fit the definition of "prohibited weapon" in the *Criminal Code*, regardless of the contents of the CBSA's D-Memorandum.

28. Similarly, whether the protrusion fits the definition of "finger actuator" or "lever" is not relevant to the issue that the Tribunal must resolve in this appeal, as these terms are not present in the definition of "prohibited weapon" found in the *Criminal Code*.

Button, Spring or Other Device

29. The CBSA submitted that the protrusion on the blades of the knives is a "device" similar to the "finger actuator" or "lever" that the Tribunal accepted as "devices" in previous cases. Neither party has submitted that the goods in issue open via a button or spring.

30. *Merriam-Webster's Collegiate Dictionary*²⁴ defines "device" as "... f : a piece of equipment or a mechanism designed to serve a special purpose or perform a special function"

31. The *Canadian Oxford Dictionary*²⁵ defines "device" as "... a thing made or adapted for a particular purpose, esp. a mechanical contrivance"

32. The Tribunal finds that the protrusions on the blades of the goods in issue are designed for the particular function of activating the spring or torsion mechanism. The product literature submitted with the goods in issue indicates that the sole purpose of the protrusion is to allow for the rapid opening of the knives through the activation of the spring or torsion bar mechanism.²⁶ Therefore, the protrusions can be considered "devices" within the meaning of paragraph 84(1)(a) of the *Criminal Code*.

33. Alternatively, the Tribunal finds that the assisted-opening system itself meets the definition of "device", as it is a "mechanism" or a "mechanical contrivance" that performs a particular purpose or function, which is to enable the "fast and easy" deployment of the blades of the goods in issue.²⁷

Opens Automatically by Hand Pressure

34. As argued by the CBSA, the Tribunal has previously found that a knife can be said to open "automatically" where it opens as a result of hand pressure on a "device" with minimal manipulation.²⁸

23. *La Sagesse de l'Eau* at para. 56.

24. Eleventh ed., s.v. "device".

25. Second ed., s.v. "device".

26. Exhibit AP-2014-030-04, Appendix B, Vol. 1; Exhibit AP-2014-030-06A, tab 6, Vol. 1.

27. Exhibit AP-2014-030-04, Appendix B, Vol. 1.

28. *La Sagesse de l'Eau* at paras. 46-49.

35. The product literature for the Zero Tolerance knives claims that “[a]ll it takes is a little push on the thumbstud or pull on the flipper” to open the knife and that “ZT’s assisted opening deploys the blade quickly and easily, and locks it into place.”²⁹ The purpose of assisted-opening systems is also described as to “[enable] smooth and easy one-handed opening . . .” of the knife.³⁰

36. The Tribunal’s own examination of the goods in issue confirmed that all of them (not only the Zero Tolerance knives) open in the manner described above; i.e. that minimal hand pressure to the protrusion on the blade causes each of them to open rapidly into a fully open and locked position, through engagement of the assisted-opening system. Therefore, minimal manipulation is required to open the goods in issue.

37. Further, it is clear that the goods in issue open by direct hand pressure to the protrusion, which has already been determined to be a “device”. Alternatively, the hand pressure can be said to be applied *indirectly* through the protrusion to the assisted-opening system, which is also a “device” as discussed above.

38. In regards to the latter, the wording of paragraph 84(1)(a) of the *Criminal Code* does not appear to require that the hand pressure be applied directly to the device, as it refers to a device that is “. . . in or attached to the handle . . .”; logically, if a device is completely contained “in” the handle, the hand pressure cannot be applied directly to it. In addition, the Tribunal has previously commented that the requirements of paragraph 84(1)(a) could be met where a spring inside the handle was attached to a “slider” on which the user could push to engage the assisted-opening mechanism, because it could be said, in such a case, that hand pressure was applied *indirectly* to a spring within the meaning of paragraph 84(1)(a).³¹

39. The goods in issue can therefore be said to open “automatically” by hand pressure applied, whether directly or indirectly, to a “device”.

In or Attached to the Handle

40. Knife & Key submitted that, because the protrusion is located on the blade of the knife, not on the handle, the goods in issue do not meet the definition of “prohibited weapon” in paragraph 84(1)(a) of the *Criminal Code*.

41. The Tribunal has previously interpreted the “attached to” requirement broadly, as it found that the thumb lever and thumb button on the goods in issue in *R. Christie*, both of which were located on the blade, were nevertheless “attached” to the handle of the knife in some way.³²

42. Through its careful examination of the goods in issue, the Tribunal determined that pressing on the protrusion engages the torsion bar or spring system, which is integrated into the handle. Accordingly, it can be said that the knives open by pressing a device attached to the handle, as the protrusion must be attached to the spring or torsion bar mechanism in order to activate it.

43. Alternatively, if the torsion bar or spring system is itself considered to be the “device”, then the evidence clearly shows that it is located within the handle.

29. Exhibit AP-2014-030-06A, tab 6, Vol. 1.

30. Exhibit AP-2014-030-04, Appendix B, Vol. 1.

31. *La Sagesse de l’Eau* at para. 44.

32. *R. Christie* at paras. 19, 60.

44. As a result, the Tribunal finds that the blades of the remaining five models of goods in issue open by hand pressure applied to “. . . a button, spring or other device in or attached to the handle of the knife”

45. Finally, since the Tribunal has already found that all the goods in issue are prohibited in accordance with paragraph 84(1)(a) of the *Criminal Code*, it is not necessary to address the CBSA’s subsidiary argument that one of the knives is prohibited on the grounds that it is a brass knuckles device.

Conclusion

46. The Tribunal finds that the goods in issue are properly classified under tariff item No. 9898.00.00 as prohibited weapons, in accordance with the requirements of paragraph 84(1)(a) of the *Criminal Code*, as the goods in issue open automatically either by centrifugal force or by hand pressure applied to a button, spring or other device in or attached to the handle of the knife.

DECISION

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

Daniel Petit
Daniel Petit
Presiding Member