



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2015-031

G. Bradford

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Monday, September 12, 2016*

TABLE OF CONTENTS

DECISION..... i

STATEMENT OF REASONS 1

 GOOD IN ISSUE 1

 PROCEDURAL HISTORY 1

 STATUTORY FRAMEWORK..... 2

 POSITIONS OF PARTIES..... 3

 ANALYSIS..... 3

 DECISION..... 5

IN THE MATTER OF an appeal heard on August 30, 2016, pursuant to subsection 67(1) 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 January 8, 2016, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

G. BRADFORD

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Jason W. Downey
Jason W. Downey
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: August 30, 2016
Tribunal Member: Jason W. Downey, Presiding Member
Counsel for the Tribunal: Elysia Van Zeyl
Registrar Officer: Sara Pelletier
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PARTICIPANTS:**Appellant**

G. Bradford

Respondent

President of the Canada Border Services Agency

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STATEMENT OF REASONS

1. This is an appeal filed with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ from a decision made on January 8, 2016, by the President of the Canada Border Services Agency (CBSA) pursuant to subsection 60(4).

2. The issue in this appeal is whether a knife (the good in issue) imported by Mr. G. Bradford is properly classified under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*² as a prohibited weapon and therefore prohibited from importation into Canada pursuant to subsection 136(1).

GOOD IN ISSUE

3. The good in issue was described by Mr. Bradford, a hobby collector of knives and swords, as a U.S. Navy Seals knife, Vietnam War era, 1962-1972. It is described by the CBSA as a “knuckle knife bayonet”.

4. The good in issue has an olive green scabbard and measures 298 mm in length, with the blade comprising 170 mm of that length. It features a fixed knife blade and metal handle. The hand guard component has two cut-outs or holes in a “B” shape. The first hole closest to the blade is circular and has the ability to accommodate one finger. The second hole is longer and oblong in shape, with moulded finger rests that accommodate the other three fingers. The outer ridge of the guard is undulated with four distinct points or prongs.

5. The good in issue also has a round horizontal opening at the top of the handle itself, designed to accommodate the barrel of a weapon, along with a clasping mechanism in its hilt, hence its description as a bayonet. Mr. Bradford described it as an experimental design tested by U.S. forces during the Vietnam War era for use by Navy Seals. Ultimately, the design was not retained as active service equipment.

PROCEDURAL HISTORY

6. Mr. Bradford purchased the good in issue in May 2013, along with two other knives which are not subject to this appeal, from an auction company in the United States.

7. On July 2, 2013, at the time of importation into Canada, a CBSA officer at the Toronto International Mail Processing Centre determined that the good in issue was prohibited and seized it pursuant to section 110 of the *Customs Act*.

8. On August 20, 2013, Mr. Bradford requested a decision of the Minister of Public Safety under subsection 129(1) of the *Act* concerning the seizure. The ministerial decision upholding the seizure was issued on May 14, 2014, pursuant to section 131. In that same decision, the Minister of Public Safety cancelled an enforcement action against Mr. Bradford, holding that Mr. Bradford had not contravened section 7.1 which requires that information provided to customs officers in the administration of their duties be “. . . true, accurate and complete.”

9. By letter dated September 16, 2015, the CBSA informed Mr. Bradford that the good in issue would be sent for an examination and a re-determination of the tariff classification.

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

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

10. On September 28, 2015, pursuant to subsection 58(1) of the *Act*, the CBSA issued a decision classifying the good in issue as a prohibited weapon under tariff item No. 9898.00.00. This classification was based on CBSA's determination that the good in issue was a brass knuckles handle knife.

11. On November 2, 2015, pursuant to subsection 60(1) of the *Act*, Mr. Bradford requested a further re-determination of the CBSA's decision.

12. On January 8, 2016, pursuant to subsection 60(4) of the *Act*, the CBSA confirmed its original determination with regard to the tariff classification of the good in issue.

13. On January 26, 2016, Mr. Bradford 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 August 30, 2016.

STATUTORY FRAMEWORK

14. 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.
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[Emphasis added]

15. When dealing with the classification of goods under tariff item No. 9898.00.00, subsection 136(2) of the *Customs Tariff* provides that the *General Rules for the Interpretation of the Harmonized System*⁴ do not apply. Furthermore, Note 1 to Chapter 98 provides that “[g]oods 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.”

16. The question of whether the good in issue is properly classified under tariff item No. 9898.00.00 must therefore be determined according to the terms of that tariff item and the applicable provisions of the *Criminal Code*.⁵

17. The list of prohibited goods in tariff item No. 9898.00.00 includes “prohibited weapons”. For the purposes of tariff item No. 9898.00.00, the expression “prohibited weapons” has the same meaning as in subsection 84(1) of the *Criminal Code*.

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

4. S.C. 1997, c. 36, schedule.

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

18. Subsection 84(1) of the *Criminal Code* defines “prohibited weapon” as follows, of which only paragraph (b) is relevant:

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

19. Section 4 of the *Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted or Non-Restricted*⁶ provides that weapons listed in Part 3 of the schedule to those regulations are considered to be “prohibited weapons” under subsection 84(1) of the *Criminal Code*.

20. Section 15 of Part 3 of the schedule to the *Regulations Prescribing Certain Weapons as Prohibited* provides for the following, designating such goods as prohibited weapons:

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| <p>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.</p> | <p>L’instrument communément appelé « coup-de-poing américain » et autre instrument semblable consistant en une armature métallique trouée dans laquelle on enfile les doigts.</p> |
|--|---|

POSITIONS OF PARTIES

21. Mr. Bradford argued that the good in issue cannot be characterized as brass knuckles. Instead, he described the good in issue as a bayonet or combat knife. He submitted that the handle of the good in issue is not a brass knuckle because a brass knuckle has a space or spaces designed to fit, meaning to stay on, one’s fingers. He claims that the good in issue does not have this feature as, although the handle has holes, these holes do not enable the good in issue to fit, or stay on, the fingers. He also argued that the *Criminal Code* does not expressly prohibit a bayonet with brass knuckles, as no such thing exists.

22. The CBSA acknowledges that the good in issue would not be considered a prohibited weapon, but for the handle, which, in its view, falls within the scope of what would be considered brass knuckles. The CBSA submitted that, in order to be considered brass knuckles, the good in issue must meet three criteria based on the language in section 15 of Part 3 of the schedule to the *Regulations Prescribing Certain Weapons as Prohibited*. Specifically, the good in issue must (1) be a band of metal (2) with one or more finger holes (3) designed to fit over the fingers of the hand. The CBSA submits that all three criteria are met by the good in issue.

ANALYSIS

23. It is clear that the knuckle guard of the knife is a band made of metal.

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

24. It is also clear that the knuckle guard has two holes in it through which the fingers are placed in order to grip the knife. The holes have indentations where the fingers rest on the handle, as well as outer nodules (where the knuckles of the hand would be) designed for inflicting additional damage in the case of impact.

25. The dispute between the parties in this case centres on whether the good in issue is designed to fit over the fingers of the hand. Mr. Bradford argues that the goods do not “fit” on the fingers, as the one large hole is intended to accommodate a scuba diver’s glove, but is too large to fit snugly over an individual’s bare fingers.⁷ In contrast, the CBSA argued that the word “fit” denotes suitability for an end or design and should not be interpreted as requiring a “snug” fit.

26. The *Canadian Oxford Dictionary* defines “fit” as follows:

adjective . . . **1 a** well adapted or suited

. . .

verb . . . be of the right shape and size for⁸

27. Similarly, *Merriam-Webster’s Collegiate Dictionary* defines “fit” as follows:

adj . . . adapted to an end or design

. . .

vb . . . to be suitable for or . . . to harmonize with . . . to conform to a particular shape or size; *also*: to be accommodated <will we all ~ into the car?>⁹

28. The concept of how the brass knuckles should “fit” (whether snug or not) is not specifically described in the *Regulations Prescribing Certain Weapons as Prohibited*. However, the Tribunal agrees with the CBSA that the term “fit”, as used in the definition of brass knuckles, signals suitability for a particular purpose or a more general concept of accommodation. It does not, as Mr. Bradford suggests, require the good in issue to be moulded exactly to the size and shape of an individual’s hand. Indeed, whether or not a particular good fits snugly over one’s fingers will vary greatly depending on the size of the persons and, more specifically, the size of their hands. More space may be needed where the device is designed to be used by an individual wearing a thick glove, such as that worn by a scuba diver.¹⁰ Surely, this variability based on the individual user should not affect the tariff classification of the good in issue.

29. The Tribunal’s decision in *R. Christie v. President of the Canada Border Services Agency*¹¹ involved a good that is similar in many respects to the good in issue. In that case, it was clear from the Tribunal’s visual inspection of the Claw knife that a hole in the handle was designed to fit over a finger, with two prongs protruding, like a knuckle, from above the finger hole. Although the three other holes inset in the Claw knife did not appear to be designed to fit over the fingers because of their size, the Tribunal held that one finger hole was sufficient to meet the requirements of section 15 of Part 3 of the schedule to the *Regulations Prescribing Certain Weapons as Prohibited*.

7. Exhibit AP-2015-031-08 at 1, Vol. 1.

8. Second ed., s.v. “fit”.

9. Eleventh ed., s.v. “fit”.

10. Exhibit AP-2015-031-08 at 1, Vol. 1.

11. (15 January 2014), AP-2012-072 (CITT).

30. Similarly, it is clear from the Tribunal's visual inspection of the good in issue that the hand guard component of the good in issue is a brass knuckle, meeting all three elements of the definition. It is a metal band, comprised of one or more finger holes, specifically designed to fit over the fingers of the hand; its design is quite simple and evident.

31. The Tribunal also noticed the presence of four distinct prongs or protrusions above where each of the knuckles of the hand is located, as one grips the handle of the knife. As argued by the CBSA, it is clear that these were designed for inflicting injury. The Tribunal recognizes that such protrusions *are not* incorporated in the definition of "brass knuckles" provided for by section 15 of Part 3 of the schedule to the *Regulations Prescribing Certain Weapons as Prohibited*, even though such protrusions are consistent with the common understanding of "brass knuckles". The Tribunal did not need to take this conceptual element into consideration as the three constituent elements of definition of "brass knuckles" in the *Regulations Prescribing Certain Weapons as Prohibited* were already met in this case.

32. Finally, Mr. Bradford argued that the hand guard component of the good in issue is no different from the hand guard which can be found on a sword or other edged weapon (supplying some pictures in support¹²) which would not necessarily attract prohibited status from the legislation. Considering the definition provided in section 15 of Part 3 of the schedule to the *Regulations Prescribing Certain Weapons as Prohibited*, there is an important distinction to be made between the good in issue and the edged weapons to which Mr. Bradford referred. The illustrations provided do not demonstrate goods that meet the three-part test of the definition of "brass knuckles", whereas, as described above, the good in issue does. Accordingly, these are not comparable goods with comparable characteristics.

33. With respect to Mr. Bradford's assertion that knives similar to the good in issue are available for purchase from shopping malls and flea markets in Canada, the Tribunal refers to its decision in *Romain L. Klaasen v. President of the Canada Border Services Agency*,¹³ where the Tribunal stated 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." The CBSA did not dispute Mr. Bradford's contention that goods similar to the good in issue may be acquired in Canada. As explained by the Tribunal in previous decisions, this dichotomy in the marketplace can understandably lead to confusion for the general public.

34. The Tribunal sympathizes with Mr. Bradford who appears to have purchased the good in issue without full knowledge of the legal implications that such an importation might entail. However, the Tribunal must apply the law as it stands and does not have the power to dispense equity in such a matter.¹⁴

DECISION

35. The appeal is dismissed.

Jason W. Downey

Jason W. Downey

Presiding Member

12. Exhibit AP-2015-031-08B (protected), Vol. 2.

13. (18 October 2005), AP-2004-007 (CITT) at para. 7.

14. *Wayne Erikson v. Commissioner of the Canada Customs and Revenue Agency* (3 January 2002), AP-2000-059 (CITT) at 3.