



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2016-004

R. S. Abrams

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, December 21, 2016*

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IN THE MATTER OF an appeal heard on November 10, 2016, 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 January 28, 2016, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

R. S. ABRAMS

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: November 10, 2016
Tribunal Member: Jason W. Downey, Presiding Member
Counsel for the Tribunal: Dustin Kenall
Registrar Officer: Bianca Zamor

PARTICIPANTS:**Appellant**

R. S. Abrams

Respondent

President of the Canada Border Services Agency

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Mr. R. S. Abrams with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ from a decision made on January 28, 2016, by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4).

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

PROCEDURAL HISTORY

3. On July 23, 2015, the CBSA notified Mr. Abrams that it had detained the good in issue and determined that it was a prohibited weapon within the meaning of tariff item No. 9898.00.00.³

4. On August 12, 2015, Mr. Abrams contested this decision by filing a request for a re-determination pursuant to subsection 60(1) of the *Act*; however, on January 28, 2016, pursuant to subsection 60(4), the CBSA confirmed its original determination that the good in issue was a prohibited weapon.⁴

5. Mr. Abrams filed this appeal with the Tribunal on April 25, 2016.

6. Mr. Abrams filed his brief on June 15, 2016, and the CBSA filed its brief on August 15, 2016.

7. 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*,⁵ to which the parties did not object. The file hearing was held in Ottawa, Ontario, on November 10, 2016. The good in issue, as well as its packaging and an accompanying product pamphlet, was made available and was physically examined by the Tribunal during the file hearing.

GOOD IN ISSUE

8. The good in issue is a Zero Tolerance folding knife, model ZT 0300, manufactured by Kai USA Ltd. dba Zero Tolerance Knives, a subsidiary of Kershaw Knives. The knife employs a torsion bar assisted-opening mechanism that essentially functions like a spring at the base of the blade. This torsion bar mechanism initially secures the blade in the closed position; however, by pressing on the protrusion located on the spine of the blade, one overcomes the resistance of the torsion bar and engages the energy stored in the tensioning mechanism to force it along a half-moon track and deploy the blade into a locked, open position with great speed.⁶ In this manner, the torsion bar effectively acts like a spring. The knife measures

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

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

3. Exhibit AP-2016-004-07A, tab 1, Vol. 1.

4. *Ibid.*, tabs 2, 3.

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

6. Exhibit AP-2016-004-05A at 5, Vol. 1.

approximately 14 centimetres when closed and is equipped with a blade that is approximately 9 centimetres in length.⁷

LEGAL FRAMEWORK

9. 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]

10. 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 meaning as in subsection 84(1) of the *Criminal Code*⁸ 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 [...].
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...

For the purposes of this tariff item,

...

(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*;

[...]

Pour l'application du présent numéro tarifaire :

[...]

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]

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

(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

(b) any weapon, other than a firearm, that is prescribed to be a prohibited weapon;

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) toute arme — qui n'est pas une arme à feu — désignée comme telle par règlement.

7. Exhibit AP-2016-004-B-01, Vol. 1.

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

12. In sum, in order to determine whether the good in issue is properly classified as a prohibited weapon under tariff item No. 9898.00.00 and, therefore, as prohibited from importation into Canada, the Tribunal must determine whether it meets the definition of “prohibited weapon” in subsection 84(1) of the *Criminal Code*.

POSITIONS OF PARTIES

Mr. Abrams

13. Mr. Abrams argued that the good in issue is a torsion bar assisted-opening knife that does not fit the description of the goods listed in tariff item No. 9898.00.00 and subsection 84(1) of the *Criminal Code* because (1) it does not open automatically by gravity or by centrifugal force and (2) it does not open automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife.

14. Mr. Abrams further argued that, in finding that the good in issue is a prohibited weapon, the CBSA misapplied a prior decision of the Tribunal, *R. Christie v. President of the Canada Border Services*,⁹ and ignored the exception provided for torsion bar assisted-opening knives (including Speed-Safe[®] knives) provided for in the CBSA’s Memorandum D19-13-2¹⁰ and a national customs ruling (TRS Number 167287).

CBSA

15. The CBSA submitted that the good in issue is properly classified as a prohibited weapon because it has 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.

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

17. Further, the CBSA submitted that the flipper on the blade is a “device” within the meaning of section 84 of the *Criminal Code* and of the ordinary meaning of the term “device”, as it was designed specifically to open the good 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.

18. The CBSA further noted that the good in issue is very similar to the goods at issue in the Tribunal’s decisions in *Knife & Key Corner Ltd. v. President of the Canada Border Services Agency*¹¹ and *R. Christie*, which were found to be prohibited weapons and, in the case of the former decision, involved a torsion bar assisted-opening knife.

9. (15 January 2014), AP-2012-072 (CIIT) [*R. Christie*].

10. (23 January 2013), “Importing and Exporting Firearms, Weapons and Devices”.

11. (14 September 2015), AP-2014-030 (CIIT) [*Knife & Key*].

TRIBUNAL ANALYSIS

19. The parties agree that the assisted-opening mechanism used in this knife is the patented SpeedSafe system.¹² The term “SpeedSafe” is not written on the good in issue nor on its packaging, but the Tribunal has physically inspected the knife and finds that it opens in the same manner as the SpeedSafe knife examined in *Digital Canoe Inc. v. President of the Canada Border Services Agency*.¹³

20. Further, the online marketing material included in CBSA’s re-determination decision confirms that this same model and make of knife “. . . is equipped with the patented SpeedSafe assisted opening system.”¹⁴ The third fold of the pamphlet accompanying the good in issue, which the Tribunal examined, describes Zero Tolerance’s “assisted-opening folders”, and states that “[a]ll it takes is a little push on the thumbstud or pull on the flipper. . . . ZT’s assisted opening deploys the blade quickly and easily, and locks it into place.”¹⁵ Therefore, the Tribunal finds that the good in issue uses the SpeedSafe system, which is the same patented torsion bar assisted-opening mechanism considered and described by the Tribunal in *Digital Canoe*.¹⁶

21. On full review, the Tribunal finds that this case involves the same type of opening mechanism and arguments as the Tribunal recently considered in *Digital Canoe*, issued shortly after the parties’ briefs were filed in this case. The Tribunal will not normally depart from its earlier decisions, absent good reasons to do so, such as where distinguishing facts support a different outcome or the earlier decision is shown to be flawed.¹⁷ In this case, the parties’ briefs raise the same arguments on the same relevant facts as those already considered in *Digital Canoe*. No considerations warrant a re-evaluation of *Digital Canoe* or a different result here.

22. For the same reasons provided in *Digital Canoe*,¹⁸ the Tribunal finds that the good in issue opens “automatically” with minimal hand pressure applied via the flipper to a spring-tensioning mechanism located in and physically attached to the handle. The good in issue therefore meets the definition of “prohibited weapon”.

23. Regarding Mr. Abrams’s other arguments, the appeal in *R. Christie* involved different types of knives, to wit, a stiletto dagger with a different assisted-opening system and a push dagger. The Tribunal agrees that, as that appeal involved different goods and a different opening mechanism, *R. Christie* was therefore not conclusive as to any finding regarding the good in issue employing the patented SpeedSafe mechanism.

24. However, the torsion bar assisted-opening mechanism was previously examined and found to be part of a prohibited weapon by the Tribunal in *Knife & Key*,¹⁹ on which the CBSA reasonably relied in its re-determination decision²⁰. Moreover, the specific SpeedSafe patented torsion bar assisted-opening mechanism in this case was also examined in *Digital Canoe*, which the Tribunal recognizes that the parties did not have the benefit of considering at the time of filing. The Tribunal has examined the good in issue

12. Exhibit AP-2016-004-05A at 5, Vol. 1; Exhibit AP-2016-004-07A, tab 3 at 24, Vol. 1.

13. (22 August 2016), AP-2015-026 (CITT) [*Digital Canoe*].

14. Exhibit AP-2016-004-07A, tab 3 at 30-31, Vol. 1.

15. Exhibit AP-2016-004-B-01, Vol. 1.

16. At paras. 19, 20.

17. *Canada (Attorney General) v. Bri-Chem Supply Ltd.*, 2016 FCA 257 (CanLII) at paras. 44-48.

18. At paras. 20-24.

19. *Knife & Key* at paras. 34-45.

20. Exhibit AP-2016-004-07A, tab 3 at 24, Vol. 1.

and finds that it opens automatically in the same (prohibited) manner as the SpeedSafe knife in *Digital Canoe*; therefore, Mr. Abrams' point is moot.

25. Regarding the CBSA's Memorandum D19-13-2, as stated in *Digital Canoe*,²¹ such administrative policy statements represent the CBSA's interpretation of the law and how it intends to enforce it, but they are not legally binding on the Tribunal, which must independently interpret the law according to the relevant legislation and regulations; the Tribunal is not bound by CBSA policy.²²

26. Regardless, the CBSA represented in its re-determination decision that Memorandum D19-13-2 was out of date at the time of importation as a result of the Tribunal's decisions in *R. Christie and Knife & Key*, issued in 2014 and 2015, respectively, but that it would be updated soon.²³ In fact, the latest version of Memorandum D19-13-2 was issued on November 3, 2016, and has been revised to remove the exception for torsion bar assisted-opening knives, consistent with the Tribunal's latest decisions.²⁴

27. For the same reasons, Mr. Abrams' invocation of the CBSA's national customs ruling is not useful to the Tribunal's obligation to independently determine the tariff classification of goods. Moreover, appeals to the Tribunal under subsection 67(1) of the *Act* are heard *de novo*; thus, the Tribunal would not be bound by such prior determinations, even if they were relevant.²⁵

28. The Tribunal notes that the importation of the good at issue and subsequent appeal occurred during the general course of time where the interpretation of legal provisions with regard to torsion bar assisted-opening mechanisms was being considered by the Tribunal. Mr. Abrams is possibly a victim of unfortunate timing here, considering the concomitant issue of *Digital Canoe*. The Tribunal recognizes Mr. Abrams' *bona fide* arguments and position within, yet cannot legitimately give them further measure.

CONCLUSION

29. The Tribunal finds that the good in issue is properly classified under tariff item No. 9898.00.00 as a prohibited weapon, in accordance with the requirements of paragraph 84(1)(a) of the *Criminal Code*, as the good in issue opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife.

21. At para. 25.

22. *Digital Canoe* at para. 25; *Knife & Key* at paras. 26-27; *La Sagesse de l'Eau v. President of the Canada Border Services Agency* (13 November 2012), AP-2011-040 and AP-2011-041 (CITT) at para. 56.

23. Exhibit AP-2016-004-07A, tab 3 at 24, Vol. 1.

24. Online: <<http://www.cbsa-asfc.gc.ca/publications/dm-md/d19/d19-13-2-eng.html>>.

25. *Cargill Inc. v. President of the Canada Border Services Agency* (23 May 2014), AP-2012-070 (CITT) at para. 36; *Toyota Tsusho America, Inc. v. President of the Canada Border Services Agency* (27 April 2011), AP-2010-063 (CITT) at para. 8; *Smith v. Minister of National Revenue*, [1965] SCR 582, 1965 CanLII 59 (SCC); *Canada (Minister of National Revenue) v. Rollins Machinery Ltd.*, 1999 CanLII 8763 (FCA).

DECISION

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

Jason W. Downey

Jason W. Downey
Presiding Member