



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2016-052

J.-F. Allard

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Thursday, October 12, 2017*

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IN THE MATTER OF an appeal heard on September 14, 2017, 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 December 22, 2016, with respect to a request for re-determination pursuant to section 60 of the *Customs Act*.

BETWEEN

J.-F. ALLARD

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: September 14, 2017

Tribunal Panel: Daniel Petit, Presiding Member

Support Staff: Amélie Cournoyer, Counsel

PARTICIPANTS:**Appellant**

J.-F. Allard

Counsel/Representative**Respondent**

President of the Canada Border Services Agency

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STATEMENT OF REASONS

BACKGROUND

1. This appeal was filed with the Canadian International Trade Tribunal (the Tribunal) by Mr. J.-F. Allard pursuant to subsection 67(1) of the *Customs Act*¹ from a decision made on December 22, 2016, by the President of the Canada Border Services Agency (CBSA) pursuant to subsection 60(4).

2. This appeal involves the tariff classification of a handbag with a brass knuckle handle (the good in issue) imported by Mr. Allard. The issue is whether the good in issue is properly classified under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*² as a prohibited weapon and, therefore, as a good prohibited from importation into Canada by virtue of subsection 136(1).

PROCEDURAL HISTORY

3. On October 4, 2016, the CBSA detained the good in issue pursuant to section 101 of the *Act*.

4. On October 20, 2016, pursuant to subsection 58(1) of the *Act*, the CBSA rendered a decision classifying the good in issue under tariff item No. 9898.00.00 as a prohibited weapon. This classification is based on the CBSA's determination that the good in issue is a prohibited weapon within the meaning of subsection 84(1) of the *Criminal Code*.³

5. On November 14, 2016, Mr. Allard filed a request for re-determination of the tariff classification, in accordance with subsection 60(1) of the *Act*.

6. On December 22, 2016, the CBSA confirmed, pursuant to subsection 60(4) of the *Act*, that the good in issue was properly classified under tariff item No. 9898.00.00 as a prohibited weapon prohibited from importation into Canada.

7. On February 27 and March 16, 2017, Mr. Allard filed a notice of appeal of the CBSA's decision with the Tribunal pursuant to subsection 67(1) of the *Act*.

8. In accordance with rules 25 and 25.1 of the *Canadian International Trade Tribunal Rules*,⁴ the Tribunal decided to hear the appeal by way of written submissions. The appeal was heard in Ottawa, Ontario, on September 14, 2017. The good in issue was made available to the Tribunal, which examined it.

GOOD IN ISSUE

9. The good in issue is a handbag consisting of a hard shell covered in artificial leather topstitched with a diamond pattern. The shell is edged with a metal clasp to which is affixed a handle consisting of a band of metal with four holes. The handle is covered in decorative protuberances, namely, metal skulls and a fake diamond.

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

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

3. R.S.C. (1985), c. C-46.

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

LEGAL FRAMEWORK

10. 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]

11. For the classification of goods under tariff item No. 9898.00.00, subsection 136(2) of the *Customs Tariff* states that the *General Rules for the Interpretation of the Harmonized System*⁵ do not apply. Moreover, 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”.

12. 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*.

13. 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*.

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

(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.

15. 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*.

16. Section 15 of Part 3 of the schedule to the *Regulations* provides for the following, designating such goods as prohibited weapons:

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.	L'instrument communément appelé « coup-de-poing américain » et autre instrument semblable consistant en une armature métallique trouée dans laquelle on enfle les doigts.
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5. S.C. 1997, c. 36, schedule.

6. S.O.R./98-462 [*Regulations*].

POSITIONS OF PARTIES

Mr. Allard

17. Mr. Allard submitted that the CBSA's interpretation of section 15 of Part 3 of the schedule to the *Regulations* is absurd because many objects that are not weapons but that consist of a band of metal with one or more holes designed to fit over the fingers of the hand should be considered to be prohibited weapons and therefore be prohibited from importation.

18. Mr. Allard argued that even though the good in issue resembles a brass knuckle, it is not in itself a weapon. He submitted that the handbag in issue cannot injure anyone because if it were used to punch someone, the body of the handbag would prevent the impact force of the palm from being transferred to the band of metal. He also argued that anyone who would punch someone with their fingers inserted in the holes of the band of metal would break their hand rather than injure the other person.

19. Mr. Allard also noted that the finger holes are small and would not fit over a man's fingers.

CBSA

20. The CBSA submitted that the good in issue is a handbag whose handle is a device similar to a brass knuckle and that it meets the three conditions prescribed by the *Regulations*.

ANALYSIS

21. According to section 15 of Part 3 of the schedule to the *Regulations*, to be considered a device similar to a brass knuckle, the good in issue must satisfy three criteria: it must (1) consist of a band of metal (2) with one or more finger holes (3) designed to fit over the fingers of the hand.

22. The Tribunal notes that the parties agree that the good in issue meets the first two conditions. Indeed, the Tribunal has no difficulty concluding that the handle of the handbag consists of a band of metal with four holes.

23. However, Mr. Allard challenged the third condition, namely, that the device is designed to fit over the fingers of the hand.

24. First, Mr. Allard submitted that the holes in the handle are not big enough to fit over a man's fingers. Yet, the Tribunal's examination of the good in issue clearly reveals that the holes in the metal band are big enough to fit over a woman's fingers.

25. The Tribunal notes that nothing in the regulatory definition or other applicable legislation seems to exclude from the scope of prohibition brass knuckles or a similar device that was designed for small hands, for example those of a woman or child. The Tribunal also notes that it does not know of any clear definition of "men's fingers"; in fact there exist many sizes of fingers, regardless of the sex or age of a person.

26. Similarly, the Tribunal determined in *R. Christie*⁷ that a knife qualified as brass knuckle or similar device even though three of the four holes of the knife in issue did not appear to be designed to fit over the fingers because of their size. One finger hole was deemed sufficient to meet the requirements of section 15

7. *R. Christie v. President of the Canada Border Services Agency* (15 January 2014), AP-2012-072 (CITT) at para. 30.

of Part 3 of the schedule of the *Regulations*. Moreover, as the Tribunal noted in *G. Bradford*, variability based on the individual user should not have affect the tariff classification of the good in issue.⁸

27. As a result, the Tribunal agrees with the CBSA that the good in issue meets the third condition to be considered a device similar to the device commonly known as “brass knuckles”, namely, that is designed to fit over the fingers of the hand.

28. Second, Mr. Allard submitted that the strict application of the three prescribed conditions is absurd as it would mean that any object that is not dangerous that meets these three conditions would be prohibited from being imported, such as a ring, a snow shovel handle, scissors, a padlock, etc.

29. On this point, the Tribunal agrees with the CBSA on the fact that under section 15 of Part 3 of the schedule to the *Regulations*, the good must also be a device similar to the device commonly known as “brass knuckles”, which is not the case with scissors or a padlock, for example.

30. Moreover, the Tribunal notes that Mr. Allard admitted that the good in issue is similar to a brass knuckle.⁹

31. Finally, Mr. Allard alleged that the good in issue cannot be considered brass knuckles as it does not “meet the essential characteristics and intrinsic properties of the prohibited weapon known as ‘brass knuckles’”¹⁰ [translation]. Mr. Allard alleged that, to be considered as such, the metal piece must be designed to become the extension of the bony prominences of the knuckles and must rest in the palm of the hand. He then suggested that the good in issue does not meet these criteria.

32. The Tribunal notes that the only evidence presented in support of this claim were photos of devices commonly known as “brass knuckles”.¹¹ This is insufficient evidence for Mr. Allard to meet his burden of proof.¹² Moreover, the additional conditions Mr. Allard suggested do not appear in any relevant legislative or regulatory text and Mr. Allard did not convince the Tribunal that the device commonly known as “brass knuckles” or any similar device includes such precise criteria.

33. In sum, Mr. Allard did not demonstrate that the good in issue is not properly classified under tariff item No. 9898.00.00. Rather, the evidence shows that the good in issue meets the three requirements of the definition of “brass knuckles” or any similar device.

CONCLUSION

34. Given that the good in issue meets the conditions stated in section 15 of Part 3 of the schedule of the *Regulations*, the Tribunal finds that it is a prohibited weapon within the meaning of subsection 84(1) of the *Criminal Code*. As a result, the good in issue is properly classified under tariff item No. 9898.00.00 and, as such, is prohibited from importation into Canada pursuant to subsection 136(1) of the *Customs Tariff*.

8. *G. Bradford v. President of the Canada Border Services Agency* (12 September 2016), AP-2015-031 (CITT) at para. 28.

9. Exhibit AP-2016-052-07 at paras. 9, 12, Vol. 1.

10. Exhibit AP-2016-052-07 at para. 8, Vol. 1.

11. Exhibit AP-2016-052-07, Annex II.

12. Under subsection 152(3) of the *Act* and section 12 of the *Customs Tariff*, the appellant bears the burden of demonstrating that the classification of the imported good in issue is incorrect and thereby that it is not a prohibited weapon. See *Canada (Border Services Agency) v. Miner*, 2012 FCA 81 (CanLII) at para. 21.

DECISION

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

Daniel Petit

Daniel Petit

Presiding Member