



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2017-067

D. Wong

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Friday, September 14, 2018*

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DECISION 4

IN THE MATTER OF an appeal heard on August 30, 2018, 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 March 2, 2018, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

D. WONG

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Serge Fréchette
Serge Fréchette
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: August 30, 2018
Tribunal Panel: Serge Fréchette, Presiding Member
Support Staff: Michael Carfagnini, Counsel

PARTICIPANTS:**Appellant**

D. Wong

Respondent

President of the Canada Border Agency

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STATEMENT OF REASONS

BACKGROUND

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 March 2, 2018, by the President of the Canada Border Service Agency (CBSA) pursuant to subsection 60(4).

2. The issue in this appeal is whether two butterfly (Bali Song) training knives (the goods in issue) imported by D. Wong are properly classified under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*² as prohibited weapons and, therefore, prohibited from importation into Canada pursuant to subsection 136(1).

3. However, the CBSA now agrees with Mr. Wong that the goods in issue are not prohibited weapons and seeks a decision from the Tribunal declaring that the goods do not fall under tariff item No. 9898.00.00, so that the CBSA can further re-determine and release the goods.

PROCEDURAL HISTORY

4. On December 18, 2017, the goods in issue arrived in Canada and were detained by the CBSA under section 101 of the *Act*.³

5. On December 21, 2017, the CBSA determined, pursuant to subsection 58(1) of the *Act*, that the goods in issue are classified as prohibited weapons under tariff item No. 9898.00.00 and therefore prohibited from importation into Canada by virtue of subsection 136(1) of the *Customs Tariff*.⁴

6. On January 8, 2018, Mr. Wong filed a request for re-determination of the tariff classification of the goods in issue pursuant to subsection 60(1) of the *Act*.⁵

7. On March 2, 2018, the CBSA upheld its original determination pursuant to subsection 60(4) of the *Act*.⁶

8. On March 19 and 21, 2018, Mr. Wong filed the present appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.⁷

9. On August 30, 2018, the Tribunal heard the matter by way of written submissions, in accordance with rules 25 and 25.1 of the *Canadian International Trade Tribunal Rules*.⁸ The goods in issue were made available and were examined by the Tribunal during the file hearing.

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

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

3. Respondent's brief, Exhibit AP-2017-067-06A at 14, Vol. 1.

4. *Ibid.* at 15.

5. *Ibid.* at 16.

6. *Ibid.* at 17-19.

7. Notice of appeal, Exhibit AP-2017-067-01, Vol. 1.

8. SOR/91-499.

GOODS IN ISSUE

10. The description of the goods in issue provided by the CBSA is not contested by the parties.

11. The goods in issue are two butterfly (Bali song) training knives.⁹ The goods consist of a two-part handle made of metal which is attached to, and rotates around, a perforated piece of metal that is dull, not sharp, and has a rounded tip. The goods can be folded into a closed position so that the two parts of the handle enclose the dull, perforated piece of metal, and can be opened so that when the two parts of the handle are next to each other and the dull perforated piece of metal extends in a straight line from the handle. The goods can be adjusted from the closed position to the open position by holding one part of the handle and flicking the wrist to apply centrifugal force.

12. The goods in issue measure 22.5 cm when open and 13 cm when closed; the dull, perforated piece of metal attached to the handle has a thickness of 2.5 mm. The goods visually resemble, and open in the same manner as, an actual butterfly (Bali Song) knife. However, the goods differ from an actual butterfly (Bali Song) knife in that they do not contain a knife blade but instead contain a dull perforated piece of metal in its place.

LEGAL FRAMEWORK

13. 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.

14. Tariff item No. 9898.00.00 provides as follows:

Firearms, prohibited weapons, 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, . . . 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*;

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*¹⁰ do not apply. Furthermore, note 1 to Chapter 98 of the schedule to the *Customs Tariff* provides that "[g]oods which are described in any provision of Chapter 98 are classifiable in the said provision if the conditions and requirements thereof and of any applicable regulations are met."

16. According to the *Customs Tariff*, a "prohibited weapon" includes any items defined as a "prohibited weapon" in subsection 84(1) of the *Criminal Code*.¹¹

17. In accordance with subsection 84(1) of the *Criminal Code*, "prohibited weapon" means the following:

9. Pictures of the goods in issue can be seen in the respondent's brief at 21-22.

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

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

(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;

18. The weapons referred to in paragraph (b) of the definition of “prohibited weapon” under subsection 84(1) of the *Criminal Code* are prescribed in Part 3 of the schedule 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*.¹²

19. Thus, in order to determine whether the goods in issue are properly classified as a prohibited weapon under tariff item No. 9898.00.00 and therefore prohibited from importation into Canada, the Tribunal must determine whether the goods meet the above definition in paragraph 84(1)(a) of the *Criminal Code* or any of the definitions prescribed in the *Regulations*.

TRIBUNAL ANALYSIS

Parties’ Position

20. The parties now agree that the goods in issue do not meet the definition of “prohibited weapon” in subsection 84(1) of the *Criminal Code*, are therefore not classifiable under tariff item No. 9898.00.00 and thus are not prohibited from importation into Canada.

21. However, due to the structure of the *Customs Act*, the CBSA requires a decision by the Tribunal in order to further re-determine the tariff classification of the goods in issue and release them to the taxpayer.

Analysis

Are the Goods in Issue Prohibited Weapons?

22. The CBSA agrees with the respondent that the goods in issue are not prohibited weapons.

23. The CBSA submits that none of the prohibited weapons prescribed by the *Regulations* include the goods in issue.

24. The CBSA further submits that paragraph 84(1)(a) of the *Criminal Code* does not apply because the goods in issue do not meet all the elements of the definition. Specifically, they are not knives and do not have a blade. The *Canadian Oxford Dictionary* defines a “knife” as “a metal blade used as a cutting tool with usually one long sharp edge fixed rigidly in a handle or hinged” or a “similar tool used as a weapon”.¹³ The same dictionary defines “blade” as “the flat part of a knife, chisel, etc. that forms the cutting edge”.¹⁴

25. The evidence suggests, and the parties agree, that the goods in issue do not have a sharp or cutting edge, and appear to be designed to prevent a user from crafting a blade from them by virtue of the perforated holes at intervals along the dull length of metal and also by the thickness of the metal. The CBSA submits that, even if a blade could possibly be fashioned on the goods in issue, doing so would require extensive craftsmanship and tools far beyond normal blade sharpening.

12. SOR/98-462 [*Regulations*].

13. *Canadian Oxford Dictionary*, 2nd ed., s.v. “knife”.

14. *Canadian Oxford Dictionary*, 2nd ed., s.v. “blade”.

26. The CBSA emphasized that this conclusion is based on the particular characteristics of these specific goods, and that other butterfly (Bali Song) training knives with different physical characteristics could be prohibited weapons within the meaning of tariff item No. 9898.00.00.

The CBSA Cannot Unilaterally Re-Determine the Tariff Classification of the Goods

27. The CBSA is seeking a decision from the Tribunal so that it can further re-determine the classification of the goods in issue. A Tribunal decision is required in this case due to the structure of the *Act*.

28. Paragraph 61(1)(a) of the *Act* provides as follows:

61 (1) The President may

(a) re-determine or further re-determine the origin, tariff classification or value for duty of imported goods

(i) at any time after a redetermination or further re-determination is made under paragraph 60(4)(a), but before an appeal is heard under section 67, on the recommendation of the Attorney General of Canada, if the redetermination or further re-determination would reduce duties payable on the goods,

...

(iii) at any time, if the redetermination or further redetermination would give effect to a decision of the Canadian International Trade Tribunal, the Federal Court of Appeal or the Supreme Court of Canada made in respect of the goods;

29. The CBSA therefore does not have the authority to unilaterally re-determine and release the goods under subparagraph 61(1)(a)(i) of the *Act*, because doing so would not reduce the duties owed on the goods. However, subparagraph 61(1)(a)(iii) enables the CBSA to further re-determine tariff classification in order to give effect to a decision of the Tribunal. It therefore requests that the Tribunal issue a decision that the goods are not prohibited weapons and do not fall within tariff item No. 9898.00.00 so that it can further re-determine and release the goods pursuant to subparagraph 61(1)(a)(iii).

Conclusion

30. Based on the evidence, the Tribunal sees no reason why it should not give effect to the agreed position of the parties. It therefore finds that the goods in issue do not meet the definition of “prohibited weapon” under subsection 84(1) of the *Criminal Code* and are therefore not classified under tariff item No. 9898.00.00.

DECISION

31. The appeal is allowed.

Serge Fréchette
Serge Fréchette
Presiding Member