



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2018-020

T. Brown

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Monday, June 17, 2019*

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IN THE MATTER OF an appeal heard on March 25, 2019, 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 June 21, 2018, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

T. BROWN

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Rose Ann Ritcey
Rose Ann Ritcey
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: March 25, 2019
Tribunal Member: Rose Ann Ritcey, Presiding Member
Support Staff: Heidi Lee, Counsel
Anja Grabundzija, Counsel

PARTICIPANTS:**Appellant**

T. Brown

Respondent

President of the Canada Border Services Agency

Counsel/Representative

Sarah Chênevert-Beaudoin

Please address all communications to:

The Registrar
Secretariat to the Canadian International Trade Tribunal
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

BACKGROUND

1. This is an appeal filed with the Canadian International Trade Tribunal pursuant to subsection 67(1) of the *Customs Act*¹ of a decision made on June 21, 2018, by the President of the Canada Border Services Agency (CBSA) under subsection 60(4).

2. The issue in this appeal is whether 16 Ganzo model G7413 GR WS folding knives (the goods in issue), imported by Mr. T. Brown, are properly classified under tariff item No. 9898.00.00 as prohibited weapons, as determined by the CBSA, and therefore prohibited from importation into Canada pursuant to subsection 136(1) of the *Customs Tariff*.²

PROCEDURAL HISTORY

3. Mr. Brown imported the goods in issue in two transactions, which were detained by the CBSA on March 23 and March 29, 2018, pursuant to section 101 of the *Act*. At the time of detention, CBSA officers determined that on five out of five attempts, the knives opened automatically by centrifugal force.³

4. On May 2, 2018, the CBSA issued decisions pursuant to subsection 58(1) of the *Act* with respect to both transactions, which determined that the goods in issue are prohibited weapons under tariff item No. 9898.00.00 and thereby prohibited from importation into Canada.

5. On May 9 and 11, 2018, Mr. Brown requested a re-determination of both decisions.

6. On June 21, 2018, the CBSA issued a decision pursuant to section 60 of the *Act* denying both requests. In doing so, the CBSA further tested the goods in issue and maintained that they opened automatically by centrifugal force.

7. Mr. Brown filed the present appeal with the Tribunal on July 10, 2018.

8. On March 25, 2019, the Tribunal heard the matter in Ottawa, Ontario, by way of written submissions, in accordance with rules 25 and 25.1 of the *Canadian International Trade Tribunal Rules*.⁴ The goods in issue were made available and were examined by the Tribunal during the hearing.

GOODS IN ISSUE

9. Each knife measures 20.5 centimetres in length when the blade is open and 12 centimetres when closed. The knife is ambidextrous and has a thumb stud on both sides of the blade, which enables the opening of the blade using one hand. The knife also has an axis-lock bar that prevents the blade from closing, and which can facilitate opening of the blade when actuated.

LEGAL FRAMEWORK

10. Subsection 136(1) of the *Customs Tariff* provides as follows:

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1. R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].
 2. S.C. 1997, c. 36.
 3. Exhibit AP-2018-020-06A at para. 18, Vol. 1.
 4. SOR/91-499.

The importation of goods of tariff item No. 9897.00.00, 9898.00.00 or 9899.00.00 is prohibited.

[Emphasis added]

11. 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*; . . .

12. 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* 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.”

13. According to the *Customs Tariff*, a “prohibited weapon” includes any items defined as a “prohibited weapon” in subsection 84(1) of the *Criminal Code*.⁵ The relevant provision in this appeal is paragraph 84(1)(a), which provides as follows:

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 . . .

14. 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*.

15. According to subsection 152(3) of the *Act* and section 12 of the *Customs Tariff*, Mr. Brown bears the burden of proving that the goods in issue are *not* prohibited weapons.⁶

TRIBUNAL ANALYSIS

16. The CBSA submits that the goods open automatically by centrifugal force and does not argue that the goods are prohibited weapons on any other basis. The issue before the Tribunal is therefore to determine whether the knives at issue have a blade that opens automatically by centrifugal force.

17. For the reasons that follow, the Tribunal finds that Mr. Brown has not met his burden and concludes that the goods are prohibited weapons under paragraph 84(1)(a) of the *Criminal Code* on the grounds that

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

6. As reaffirmed by the Federal Court of Appeal in *Canada (Border Services Agency) v. Miner*, 2012 FCA 81 (CanLII), at paras. 21-22.

the blade opens automatically by centrifugal force. Accordingly, the goods in issue are prohibited from importation into Canada pursuant to subsection 136(1) of the *Customs Tariff*.

The legal tests for whether a blade opens automatically by centrifugal force

18. The Tribunal has consistently held that a blade opens automatically by centrifugal force if “a simple and brisk outwardly flick of the wrist releases the blade out of the handle into the fully ejected and locked position, making the knife in issue ready for use”,⁷ also referred to as a “flick test”.⁸

19. At the time of detention, the CBSA conducted this examination five times and found that the goods opened with centrifugal force each time. Mr. Brown argues that the axis-lock mechanism resists this type of opening as it creates a bias toward closure.

20. The CBSA submits that, on examination, the goods also opened automatically with minimal manipulation of the thumb stud. It notes that while such manipulation is not necessary to open the blade, the fact that the goods *also* open automatically with minimal manipulation further supports their classification as prohibited weapons. The CBSA refers to the Tribunal’s decision in *T. LaPlante*, which noted that “it has also been repeatedly held . . . that a knife may still open automatically by centrifugal force even if it requires some manipulation or skill.”⁹

21. Mr. Brown submits that *T. LaPlante* does not apply to the goods in issue because the knives in that appeal had a “flipper”, i.e. a small protrusion on the spine of the blade that moves through the handle of the knife as the blade flips open, whereas the goods in issue have a thumb stud on the blade that does not pass through the handle as the blade opens.¹⁰ Instead, Mr. Brown submits that the goods in issue are analogous to those in *A. Cowan*, in which the Tribunal found that the goods were not prohibited weapons.¹¹

22. With respect Mr. Brown’s arguments on *T. LaPlante*, the Tribunal finds that the distinction between a knife having a thumb stud on the blade or a flipper on the spine is immaterial for the purposes of assessing *whether a blade opens automatically by centrifugal force*, which is the issue to be determined in the present appeal, as it was in *T. LaPlante*.

23. The Tribunal recognizes the similarities between the goods in issue and the knives in *A. Cowan*, which were assisted-opening knives that opened by way of a thumb stud on the blade and had a torsion bar, which kept the blade in the closed position. However, *A. Cowan* is of limited use in the present appeal. The issue in that case was whether the blade opened automatically *by hand pressure applied to a button, spring or other device in or attached to the handle of the knife*, as set out in the second part of paragraph 84(1)(a) of the *Criminal Code*. This is not the ground at issue, and therefore any similarity between the goods is not

7. *T. LaPlante v. President of the Canada Border Services Agency* (16 November 2017), AP-2017-012 (CITT) [*T. LaPlante*] at para 27. See also *W. Ericksen v. the Commissioner of the Canada Customs and Revenue Agency* (3 January 2002), AP-2000-059 (CITT).

8. See *T. Lysyshyn v. President of the Canada Border Services Agency* (14 July 2014), AP-2013-047 (CITT) at para. 28.

9. *T. LaPlante* at para 27. In denying the Mr. Brown’s requests for re-determination, the CBSA had relied on *T. LaPlante* to note that minimal manipulation may be used (Exhibit AP-2018-020-06A at p. 26, Vol. 1). See also *Digital Canoe Inc. v. President of the Canada Border Services Agency* (12 July 2006), AP-2004-047 (CITT) at paras. 12-13.

10. Exhibit AP-2018-020-04 at para. 10, Vol. 1.

11. *A. Cowan v. President of the Canada Border Services Agency* (22 August 2017), AP-2016-046 (CITT) [*A. Cowan*].

relevant for the consideration of this appeal. Furthermore, it was agreed between the parties in *A. Cowan* that the goods in that case could *not* open automatically by centrifugal force; by contrast, this is the crux of the present appeal.

The goods in issue open automatically by centrifugal force

24. The Tribunal closely examined and tested the goods in issue at the file hearing of this matter. This included inspecting the goods in their fully closed and open positions, as well as opening and closing the knives repeatedly.

25. Upon examination, the Tribunal found that the blade opens automatically to a fully open position with a quick outward flick of the wrist. The Tribunal conducted this test multiple times and found that the blade opened automatically on each attempt. The Tribunal also found that the blade opens automatically with minimal manipulation of the thumb stud; once the blade is ajar, it swings open into a fully locked position easily and swiftly with a simple flick of the wrist. Both methods of opening the blade can be accomplished in one single-handed movement.

26. On this basis, the Tribunal finds that the goods in issue open automatically by centrifugal force and are prohibited weapons under paragraph 84(1)(a) of the *Criminal Code*.

Other considerations

27. Mr. Brown contends that a screw in the goods may have become loosened and affected the intended function of the axis-lock mechanism to keep the blade closed. He also submits that the goods were intended to be gifts.

28. As the Tribunal has previously determined, considerations such as these can have no bearing upon the Tribunal's determination of whether or not the goods in issue as presented for importation are prohibited weapons as defined in the *Criminal Code*.¹²

CONCLUSION

29. The goods in issue are properly classified under tariff item No. 9898.00.00 as prohibited weapons, and are accordingly prohibited from importation into Canada.

DECISION

30. The appeal is dismissed.

Rose Ann Ritcey
Rose Ann Ritcey
Presiding Member

12. See *Kenneth Lee v. President of the Canada Border Services Agency* (12 July 2006), AP-2003-054 (CITT) at para. 13.