



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2018-046

W. Spencer

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Tuesday, August 6, 2019*

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IN THE MATTER OF an appeal heard on May 21, 2019, 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 September 7, 2018, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**W. SPENCER**

**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: May 21, 2019  
Tribunal Panel: Rose Ann Ritcey, Presiding Member  
Support Staff: Sarah Perlman, Counsel

**PARTICIPANTS:****Appellant**

W. Spencer

**Respondent**

President of the Canada Border Services Agency

**Counsel/Representative**

Luc Vaillancourt

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](mailto:citt-tcce@tribunal.gc.ca)

## STATEMENT OF REASONS

### BACKGROUND

1. This is an appeal filed by Mr. W. Spencer with the Canadian International Trade Tribunal pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision made by the President of the Canada Border Services Agency (CBSA) dated September 7, 2018, pursuant to subsection 60(4).

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

3. This appeal is one of two cases recently heard by the Tribunal pertaining to the application of tariff item No. 9898.00.00 to goods said to be similar to brass knuckles, the other being *A. Savoie* (AP-2018-050). As the two appeals addressed highly similar issues, the reasons for both cases rely on the same analytic framework.

### PROCEDURAL HISTORY

4. Mr. Spencer tried to import the good in issue into Canada on or about July 18, 2018. On July 26, 2018, the CBSA determined that the good in issue is a prohibited weapon pursuant to subsection 58(1) of the *Act*.

5. On or about August 7, 2018, Mr. Spencer filed a request for re-determination of the tariff classification of the good in issue in accordance with subsection 60(1) of the *Act*.

6. On September 7, 2018, the CBSA confirmed the classification of the good in issue under tariff item No. 9898.00.00 pursuant to subsection 60(4) of the *Act*.

7. On November 21, 2018, Mr. Spencer filed this appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.<sup>3</sup>

8. On May 21, 2019, 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*.<sup>4</sup> The good in issue was made available and was examined by the Tribunal during the file hearing.<sup>5</sup>

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

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

3. Mr. Spencer originally filed a deficient notice of appeal on November 16, 2018. The Tribunal requested additional information on November 20, 2018, to which Mr. Spencer replied on November 21, 2018. Accordingly, the appeal is deemed filed as of November 21, 2018.

4. SOR/91-499.

5. Mr. Spencer had requested an oral hearing by way of videoconference or teleconference in his notice of appeal dated November 21, 2018. Correspondence from the Tribunal on that same day noted that appeals involving allegedly prohibited weapons are typically dealt with as file hearings and are conducted without the presence of parties. The letter stated that, if Mr. Spencer would like the Tribunal to consider holding an in-person or electronic hearing, a specific request should be made to the Tribunal, including the reasons why a hearing of that nature was necessary. As Mr. Spencer did not submit a specific request for an oral hearing following the Tribunal's letter of November 21, 2018, the Tribunal proceeded to hear the appeal by way of written submissions. Correspondence of the Tribunal dated January 22, March 22, April 17 and May 1, 2019, repeated that the appeal would be heard by way of written submissions, without the presence of parties.

## DESCRIPTION OF THE GOOD IN ISSUE

9. The good in issue is a fixed blade knife with a 2.5-inch blade, called “Max Venom DMaX II Fighter Karambit Neck Knife”. The knife is made of a single piece of steel, with a curved handle with three finger grooves and a ring at its end.

## 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.

11. Tariff item No. 9898.00.00 provides as follows, in relevant parts:

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*<sup>6</sup> 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. 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*.

14. According to the *Customs Tariff*, a “prohibited weapon” includes any items defined as a “prohibited weapon” in subsection 84(1) of the *Criminal Code*.<sup>7</sup> Subsection 84(1) of the *Criminal Code* defines “prohibited weapon” as follows, of which only paragraph (b) is relevant:

*prohibited weapon* means

...

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

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*

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

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

or *Non-Restricted*<sup>8</sup> 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*, which the CBSA relied upon in its classification of the good in issue, provides as follows:

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.

## PARTIES’ POSITIONS

### W. Spencer

17. Mr. Spencer argued that the good in issue is a knife, and that classification as a brass knuckle is incorrect. Mr. Spencer stated that a karambit knife is an Indonesian farm implement, and that the intent of the ring at the end of the handle is not to be used as brass knuckles, but to help with the retention of the tool. Mr. Spencer submitted that reliance on the ring is too general to classify the good in issue as brass knuckles, as this would lead to scissors or any ring to be considered a prohibited weapon.

18. In addition, Mr. Spencer submitted that similar knives are available in Canada, meaning that the law is not applied equally. Mr. Spencer also submitted that the supplier and designer of the good in issue are not aware of similar products being disallowed entry into Canada.

### CBSA

19. The CBSA submitted that the good in issue is a similar device to brass knuckles. The CBSA submitted that the good in issue can be used to hit a victim with the ring, delivered as a punch.<sup>9</sup>

20. The CBSA submitted that the good in issue clearly meets the first two criteria of “brass knuckles” set out in the *Regulations* in that it is comprised of a curved piece of steel (i.e. a band of metal) with a finger hole. The CBSA submitted that the third criterion, that a good be designed to fit over the fingers of the hand, is unclear in both English and French. According to the CBSA, “[w]hile the English version requires that the band of metal must be ‘designed to fit over the fingers’, the French version goes further by requiring that the band must be ‘designed to allow the fingers to go through’ (or ‘conçue pour y enfilet les doigts’)”<sup>10</sup> [emphasis in the original]. The CBSA noted that, whereas the English version provides that a single finger hole made for one finger suffices, the French version seems to require that more than one finger be allowed through. The CBSA suggested that the English version should be preferred according to the principles of bilingual interpretation because of its more restricted meaning. Accordingly, the CBSA submitted that the good in issue fits over at least two fingers and therefore meets the third criterion.

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

9. The CBSA filed a printout of the American Shooting Journal website, which states that the ring of karambit knives can be used for punching (Exhibit AP-2018-046-07A, Vol. 1 at 78). In addition, the CBSA submitted a video of a martial artist using the ring of the previous version of the good in issue (the DMaX Karambit Neck Knife) to punch his sparring partner (Exhibit AP-2018-046-07A, Vol. 1 at 76).

10. Exhibit AP-2018-046-07A, Vol. 1 at 10.

## ANALYSIS

21. As the appellant, Mr. Spencer bears the onus of demonstrating that the CBSA's classification of the good in issue was incorrect.<sup>11</sup> Mr. Spencer has not met this burden for the reasons that follow.

22. 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 prohibited from importation into Canada, the Tribunal must determine whether the good meets the definition in section 15 of Part 3 of the schedule to the *Regulations*. Namely, the Tribunal must determine whether the good in issue is *brass knuckles or a similar device* which consists of:

1. a band a metal;
2. with one or more finger holes;
3. designed to fit over the fingers of the hand.

23. To be clear, the *Regulations* do not state that any device meeting the three criteria of section 15 of Part 3 of the schedule to the *Regulations* is prohibited; rather, only devices that are similar to brass knuckles and that present the three outlined characteristics are prohibited.<sup>12</sup>

24. In this case, the good in issue meets the three physical criteria: (i) it consists of a band of metal; (ii) there is one finger hole; and (iii) the band of metal is designed to fit over, in this case, **one** finger.<sup>13</sup>

25. Further, the good in issue is a "similar device" to brass knuckles in that it can be used for punching with the ring. As discussed in *Taylor*, the words "similar device" tend to broaden the definition of prohibited weapons, and convey the principle that the good in issue must be of the same general nature, kind or character as brass knuckles in order to be classified as a prohibited weapon.<sup>14</sup> As such, in order to determine whether a good is a "similar device", the Tribunal "should also take into account similarities in terms of intended applications or end uses".<sup>15</sup>

26. The good in issue not only shares physical similarities with brass knuckles, it also shares an end use, namely to inflict bodily harm. The CBSA submitted a video of a martial artist that participated in the design of a similar model of the good in issue.<sup>16</sup> In this video, the martial artist shows various ways in which the knife may be used, one of which is a punching motion with the ring. The CBSA also submitted an excerpt from the website "Shooting Journal", which describes karambit knives as follows:<sup>17</sup>

While it is primarily used in a slashing or hooking motion, karambit with a finger ring are also used in a punching motion hitting the opponent with the finger ring. Some karambit are designed to be

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11. Subsection 152(3) of the *Act*; *Canada (Border Services Agency) v. Miner*, 2012 FCA 82 (CanLII) at paras. 7, 21.

12. *J.F. Allard v. President of the Canada Border Services Agency* (12 October 2017), AP-2016-052 (CITT) [*J.F. Allard*] at paras. 21, 29.

13. In *R. Christie v. President of the Canada Border Services Agency* (15 January 2014), AP-2012-072 (CITT) at para. 50, the Tribunal found that "[a]lthough the three other holes inset in the Claw knife do not appear to be designed to fit over the fingers, because of their size, one finger hole is sufficient to meet the requirements of section 15 of Part 3 of the schedule to the *Regulations*."

14. *Andrew Taylor v. President of the Canada Border Services Agency* (3 December 2008), AP-2007-025 (CITT) [*Taylor*] at para. 35.

15. *Taylor* at para. 36.

16. Exhibit AP-2018-046-07A, Vol. 1 at 4-5.

17. *Ibid.* at 76.



used in a hammering motion. This flexibility of striking methods is what makes it so useful in self-defense situations. The finger guard makes it difficult to disarm and allows the knife to be maneuvered in the fingers without losing one's grip.

27. Mr. Spencer's argument that goods such as scissors or rings would also be considered similar devices to "brass knuckles" following the CBSA's interpretation must fail. Such goods, though they may meet the three physical criteria of brass knuckles, are not "similar devices" to brass knuckles as they do not share intended applications or end uses.<sup>18</sup>

28. Finally, Mr. Spencer's argument that similar devices are available in Canada has repeatedly been addressed by the Tribunal, which 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."<sup>19</sup> Although the supplier and designer may not be aware of similar goods being prohibited entry into Canada, this consideration has no bearing upon the Tribunal's determination of whether or not the good in issue is a prohibited weapon as defined in the *Criminal Code*.

## CONCLUSION

29. For the foregoing reasons, the Tribunal finds that the good in issue meets the definition in section 15 of Part 3 of the Schedule to the *Regulations*. This being the case, the Tribunal finds that the good in issue is properly classified as a prohibited weapon under tariff item No. 9898.00.00.

## DECISION

30. The appeal is dismissed.

Rose Ann Ritcey  
Rose Ann Ritcey  
Presiding Member

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18. The Tribunal has previously addressed a similar argument in *J.F. Allard*, para. 29, where it stated 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."

19. *Ivan Hoza v. President of the Canada Border Services Agency* (6 January 2010), AP-2009-002 (CITT) at para. 30, citing *Romain L. Klaasen v. President of the Canada Border Services Agency* (18 October 2005), AP-2004-007 (CITT) at 2.