



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2018-050

A. Savoie

v.

President of the Canada Border
Services Agency

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

TABLE OF CONTENTS

DECISION..... i

STATEMENT OF REASONS 1

 BACKGROUND 1

 PROCEDURAL HISTORY 1

 DESCRIPTION OF THE GOOD IN ISSUE 1

 LEGAL FRAMEWORK 2

 PARTIES' POSITIONS 3

 A. Savoie 3

 CBSA 3

ANALYSIS..... 3

CONCLUSION 5

DECISION 5

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

BETWEEN

A. SAVOIE

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: June 4, 2019
Tribunal Panel: Rose Ann Ritcey, Presiding Member
Support Staff: Laura Colella, Counsel
Sarah Perlman, Counsel

PARTICIPANTS:**Appellant**

A. Savoie

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

STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Mr. A. Savoie with the Canadian International Trade Tribunal pursuant to subsection 67(1) of the *Customs Act*¹ from a decision made by the President of the Canada Border Services Agency (CBSA) dated October 4, 2018, pursuant to subsection 60(4).

2. The issue in this appeal is whether the ring butcher knife (the good in issue) imported by Mr. Savoie is properly classified under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*² 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 *W. Spencer* (AP-2018-046). As the two appeals addressed highly similar issues, the reasons for both cases rely on the same analytic framework.

PROCEDURAL HISTORY

4. Mr. Savoie tried to import the good in issue into Canada on August 21, 2018. On August 27, 2018, the CBSA determined that the good in issue is a prohibited weapon pursuant to subsection 58(1) of the *Act*.

5. On September 10, 2018, Mr. Savoie 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 October 4, 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 December 7, 2018, Mr. Savoie filed this appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

8. On June 4, 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*.³ The good in issue was made available and was examined by the Tribunal during the file hearing.

DESCRIPTION OF THE GOOD IN ISSUE

9. The good in issue is a fixed blade knife measuring approximately nine inches, of which about four inches comprise the blade. The knife is described as an Andre de Villers Ring Butcher Knife, model S35VN. It is composed of a single piece of steel covered by two pieces of fibreglass laminate that make the handle. The handle has three finger grooves and a finger ring, which includes a protrusion.

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

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

3. SOR/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.

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*⁴ 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 “prohibited weapon” in subsection 84(1) of the *Criminal Code*.⁵ 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 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*, 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.

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

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

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

PARTIES' POSITIONS

A. Savoie

17. Mr. Savoie submitted that the good in issue is purely a utility knife with a ring. He submitted that the ring is present for utilitarian purposes and is not meant to be a brass knuckle. Mr. Savoie submitted that while there is a striker on the knife, it is meant to be used as a thumb rest for grip enhancement. He further submitted that “[s]ince the blade is straight, . . . even trying to use the ring as a weapon proves dangerous to the user no matter the grip used since it points the blade toward the user.”⁷

18. Mr. Savoie also submitted that any item, such as a pen, rock, book, newspaper or wrench, could be used as a weapon. In addition, Mr. Savoie submitted that the model of the good in issue has previously been shipped to Canada by a U.S. store without issue.

CBSA

19. The CBSA submitted that the knife is a prohibited weapon given that it fits the description and meets the criteria of a similar device to brass knuckles. The CBSA argued that the knife can be used to hit a victim when held in “reverse grip”, with the finger ring and the “protrusion” delivering force to the punch.⁸

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 single piece of steel 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 enfiler les doigts’)”⁹ [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.

ANALYSIS

21. As the appellant, Mr. Savoie bears the onus of demonstrating that the CBSA’s classification of the good in issue was incorrect.¹⁰ Mr. Savoie 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*.

7. Exhibit AP-2018-050-03, Vol. 1 at 4.

8. The CBSA submitted a video of a martial artist using the ring of a karambit knife (which is not the good in issue, but is a knife with a ring) to punch his sparring partner (Exhibit AP-2018-050-05A, Vol. 1 at 67).

9. Exhibit AP-2018-050-05A, Vol. 1 at 10. The CBSA noted that, although the Tribunal in *G. Bradford v. President of the Canada Border Services Agency* (12 September 2016), AP-2015-031 (CITT), recognized that protrusions are consistent with the common understanding of brass knuckles, this element is not part of the description of devices similar to brass knuckles.

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

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.¹¹

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.¹²

25. Further, the good in issue is a “similar device” to brass knuckles in that it can be used for punching with the finger 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.¹³ 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”.¹⁴

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 using a knife which also has a ring at its end. 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.¹⁵ The CBSA also filed a picture of the knife being held with the index finger inside the ring hole, which could be used to punch and inflict harm on another person.¹⁶

27. Mr. Savoie’s argument that anything can be used as a tool in aggressive acts and would be an illegal weapon must fail. Such items, although they may be used to inflict bodily harm, are not intended to do so, unlike the good in issue.¹⁷

28. Finally, Mr. Savoie’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

11. *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.

12. 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*.”

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

14. *Taylor* at para. 36.

15. Exhibit AP-2018-050-05A, Vol. 1 at 67.

16. *Ibid.* at 65.

17. 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.”

predecessors is irrelevant. The administrative action, or inaction, of the CBSA cannot change the law.”¹⁸ Although other exporters may have imported the model of the good in issue into Canada without issue, 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

18. *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.