



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2018-060

M. Abbas

v.

President of the Canada Border
Services Agency

*Decision issued
Wednesday, November 13, 2019*

*Reasons issued
Friday, November 29, 2019*

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DECISION 12

IN THE MATTER OF an appeal heard on July 16, 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 November 2, 2018, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

M. ABBAS

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Susan D. Beaubien

Susan D. Beaubien
Presiding Member

The statement of reasons will be issued at a later date.

Place of Hearing: Ottawa, Ontario
Date of Hearing: July 16, 2019
Tribunal Panel: Susan D. Beaubien, Presiding Member
Support Staff: Heidi Lee, Counsel

PARTICIPANTS:**Appellant**

M. Abbas

Respondent

President of the Canada Border Services Agency

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STATEMENT OF REASONS

BACKGROUND

1. Mr. M. Abbas appeals to the Tribunal from a decision made by the President of the Canada Border Services Agency (CBSA) with respect to two folding knives, of the same type and model, both branded “CRKT”, that Mr. Abbas sought to import into Canada.
2. Upon initial inspection by the CBSA at its International Mail Processing Centre, a Notice of Detention was issued on or about May 4, 2018, for the purpose of assessing whether the goods were admissible for importation into Canada.¹
3. At issue are two knives of the same type and model. For ease of reference, the knives will be referred to herein collectively as “CRKT Knife”. The CBSA determined that both items were prohibited weapons, as defined by the *Criminal Code*,² and notified Mr. Abbas of this decision on July 3, 2018.³ The CBSA also issued a Notice of Seizure with respect to the goods.⁴
4. The CBSA classified the CRKT Knife under tariff item 9898.00.00 of the *Customs Tariff*.⁵ Goods that are classified under tariff item 9898.00.00 are prohibited from being imported into Canada.
5. Mr. Abbas disagreed with the CBSA’s decision and sought reconsideration from the Recourse Directorate of the CBSA.⁶ He expressed concern that the correspondence sent to him contained little to no explanation or reasons for the seizure of the goods, which were only described by the CBSA as “2x CRKT Folding Knives (“Automatic”)”.
6. In contesting the CBSA’s finding, Mr. Abbas submitted that the CRKT Knife is not “automatic” because the opening of the knife is not spring-assisted. There is “no spring, button or other opening mechanism” to assist with the opening of the knife. Thumb pressure applied to a protrusion on the blade causes the knife to open. Mr. Abbas contended that this is the usual method of opening for a permissible, folded knife which uses a pivot. He asserted that the protrusion on the CRKT Knife is no different, as a practical matter, than a hole in the blade or a nail line which is used on other types of folding knives for the purpose of enabling the opening of the knife.
7. On November 2, 2018, the CBSA issued a decision which maintained the classification of the CRKT Knife as a prohibited weapon.⁷
8. Mr. Abbas now appeals to the Tribunal pursuant to subsection 67(1) of the *Customs Act*.⁸

¹ Exhibit AP-2018-060-01A, p. 36, Vol. 1.

² R.S.C., 1985, c. C-46.

³ Exhibit AP-2018-060-01A, p. 39, Vol. 1.

⁴ Exhibit AP-2018-060-01A, p. 37, Vol. 1.

⁵ S.C. 1997, c. 36.

⁶ Exhibit AP-2018-060-01A, p. 43-44, Vol. 1.

⁷ Exhibit AP-2018-060-01A, p. 19, Vol. 1.

⁸ R.S.C., 1985, c. 1 (2nd Supp.) [Act]; Exhibit AP-2018-060-01, Vol. 1; Exhibit AP-2018-060-01A, Vol. 1.

The CBSA's Decision

9. The CBSA examined the CRKT Knife⁹ and noted that the knife features a protrusion (or “flipper”) on the spine of the knife which protrudes outwardly from the side of the knife's handle. One side of the blade is marked CRKT and the other side bears the notation “8Cr13MoV”. When slight pressure was applied to the protrusion, the blade opened automatically to the fully extended position. The CBSA concluded that the CRKT Knife opens automatically “by hand pressure applied to a button, spring or other device in or attached to the handle of the knife.”

10. The CBSA then considered the definition of “prohibited weapon” in subsection 84(1) of the *Criminal Code* and the wording of tariff item 9898.00.00 of the *Customs Tariff*.

11. After considering previous decisions of the Tribunal, the CBSA concluded that the CRKT Knife could not be distinguished as being analogous to a folding knife that can be opened automatically by engaging a hole in the blade that is not otherwise designed to assist with the opening of the knife.

12. Accordingly, the CBSA held that the CRKT Knife meets the definition of “prohibited weapon” because the blade opens automatically as a result of pressure being applied to a device (protrusion or flipper). Consequently, it should be classified under tariff item 9898.00.00 as an item that is prohibited from importation into Canada.¹⁰

13. Mr. Abbas appealed the CBSA's decision by way of letter dated January 9, 2019,¹¹ which was supplemented by a formal notice of appeal received by the Tribunal on January 23, 2019.¹²

Mr. Abbas's Appeal

14. In support of his appeal, Mr. Abbas provided brief written submissions,¹³ copies of his previous correspondence with the CBSA¹⁴ and copies of previous decisions of the Tribunal.¹⁵

15. The CBSA filed a brief in response to Mr. Abbas. It comprised written submissions¹⁶ and a list of legislation and jurisprudence relied upon by the CBSA.¹⁷

16. Neither party filed any expert evidence.

17. The Tribunal held a hearing by way of written submissions, in accordance with rules 25 and 25.1 of the *Canadian International Trade Tribunal Rules*.¹⁸ The hearing was held on July 16, 2019.

18. At the request of the Tribunal, the CBSA delivered the CRKT Knife to the Tribunal for inspection at the hearing. The CRKT Knife was thereafter returned to the CBSA's custody.

⁹ Both of the knives sought to be imported were examined and described in the CBSA's decision.

¹⁰ Exhibit AP-2018-060-01A, p. 19, Vol. 1.

¹¹ Exhibit AP-2018-060-01, Vol. 1.

¹² Exhibit AP-2018-060-01A, Vol. 1.

¹³ Exhibit AP-2018-060-01, Vol. 1; Exhibit AP-2018-060-01A, p. 6, Vol. 1.

¹⁴ Exhibit AP-2018-060-01A, p. 19-23, 36-44, Vol. 1.

¹⁵ Exhibit AP-2018-060-01A, p. 12-18, 24-35, Vol. 1.

¹⁶ Exhibit AP-2018-060-07A, p. 2, Vol. 1.

¹⁷ Exhibit AP-2018-060-07A, p. 9, Vol. 1.

¹⁸ SOR/91-499 [*Rules*].

POSITIONS OF THE PARTIES ON APPEAL**Mr. Abbas**

19. Mr. Abbas cites the Tribunal's decision in *A. Cowan v. President of the Canada Border Services Agency*,¹⁹ which relied on the following definition of "automatic knife" as set out in CBSA Memorandum D19-13-2:

an automatic knife is one that houses a blade that will open automatically by applying pressure to a button, spring lever, or other device in or attached to the handle of the knife, including knives that have a button, spring, lever, or other device in or attached to the handle of the knife, including knives that have a button, spring, lever, or other device, located in the spine of the handle . . . and attached to the inner part of the blade.²⁰

20. Mr. Abbas asserts that knives having "a thumb stud attached to the blade of the blade, that is independent of the handle (not protruding from the handle in the closed or folded position)" and that open "automatically" as a result of applying pressure to the thumb stud are generally not considered to be a "prohibited weapon" within the meaning of paragraph 84(1)(a) of the *Criminal Code*, unless such a knife opens by gravity or by the application of centrifugal force.

21. In order to open the CRKT Knife, pressure is applied to the butt end of the blade. The butt end of the blade is slightly extended so that it protrudes above the handle when the knife is closed. Mr. Abbas stresses that there is no spring, lever, or other device in or attached to the handle. Nothing is attached to the handle of the CRKT Knife but the blade itself.

22. Accordingly, Mr. Abbas argues that the CBSA was incorrect in finding that the knife opens automatically to a fully extended position due to pressure being applied to a button, spring, or other device in or attached to the handle of the knife. The pressure is applied to a protrusion which is part of the blade and not in or attached to the handle. As a blade is an inherent and essential aspect of a "knife", Mr. Abbas further contends that the blade cannot be reasonably construed to be a "device" that is attached to the handle. As the CRKT Knife comprises only a blade attached to a handle, there is no additional "device" that would place the item within the definition of "prohibited weapon".

23. In addition, Mr. Abbas asserts that the CRKT Knife does not open by either gravity or centrifugal force. Loosening or tightening of the screw that connects the blade and handle would affect the ease at which the blade could open by way of gravity. A loose screw could allow the blade to fall open by gravity or be propelled to open by way of centrifugal force. Mr. Abbas submits that the tightness of the set screw is a random variable that does not define the intended method for opening the knife.

24. Mr. Abbas claims that the CRKT Knife is indistinguishable from the knife in *A. Cowan* that was found by the Tribunal not to be a prohibited weapon. The CRKT Knife opens by applying finger pressure to the blade which is equivalent to applying pressure to the blade stud that was present on the knife in *A. Cowan*.

¹⁹ *A. Cowan v. President of the Canada Border Services Agency* (22 August 2017), AP-2016-046 (CITT) [A. Cowan] at para 30.

²⁰ Exhibit AP-2018-060-01A, p. 9, Vol. 1.

CBSA

25. The CBSA characterizes the CRKT Knife as having a protrusion or “flipper” connected to the blade which extends through the back of the knife’s handle. The application of slight hand pressure to this “flipper” causes the blade of the knife to open to a fully extended and locked position.

26. After summarizing the relevant statutory framework, the CBSA argues that the CRKT Knife meets the definition of a “prohibited weapon” because the blade of the knife opens automatically as a result of hand pressure being applied to a device that is within or attached to the handle of the knife.

27. Having regard to previous decisions of the Tribunal, the CBSA submits that a knife may open “automatically”, even if some degree of human intervention is involved. If the blade of the knife opens as a result of hand pressure applied to a device with minimal manipulation, this will support a finding that the knife opens “automatically” and is thus a prohibited weapon.

28. The CBSA contends that the CRKT Knife meets this test. The flipper on the spine of the blade protrudes from the handle when the knife is closed. Only minimal pressure needs to be applied to the flipper in order for the blade to open. In view of the broad definition of “device” that has been previously approved and adopted by the Tribunal, the flipper of the CRKT Knife is thus a “device” because its clear purpose is to enable the easy opening of the knife.

29. As the flipper moves through the handle, it engages an internal mechanism within the handle which causes the knife to open into a position where the blade is fully extended and locked. Accordingly, the CBSA asserts that the flipper is attached to the handle. It points to previous Tribunal decisions where knives having actuators or protrusions on the blade were found to be prohibited weapons because the protrusion or actuator worked co-operatively with other components of the handle, causing the knife to open automatically, as a result of pressure being applied to the protrusion or actuator.

30. The CBSA distinguishes *A. Cowan* (case relied upon by Mr. Abbas) from the knife at issue in the present appeal. In *A. Cowan*, the knife had a thumb stud located on the face of the blade which did not pass through the handle as the blade of the knife moves from a closed to an open position. This distinction is alleged to be important because a thumb stud on the face of the blade allows the user to control the speed at which the blade pivots from the closed to open position, or even to open the knife part way. The CBSA also notes that it did not contest *A. Cowan* and made joint submissions with the appellant in that case.

31. The CBSA asserts that the CRKT Knife is unlike the knife in *A. Cowan*. It further asserts that Mr. Abbas bears the legal burden of showing that the CBSA is incorrect in classifying the CRKT Knife as a prohibited weapon. The CBSA contends that Mr. Abbas has not succeeded in meeting this onus.

ANALYSIS

Legislative Framework

32. The *Act* and *Customs Tariff* govern the importation of goods into Canada. Goods are classified in accordance with criteria and directions prescribed by the *Customs Tariff* and its Schedule.

33. The *Customs Tariff* is premised on an international system, the Harmonized Commodity Description and Coding System (the Harmonized System). The objective of the classification system is to rationalize and harmonize the classification of goods and commodities which are the subject of international trade.²¹

34. The Harmonized System comprises a progressive eight-digit system for tariff classifications. The system proceeds from the general to the more specific, by way of chapters, headings, subheadings and tariff items, which is incorporated within the Schedule to the *Customs Tariff*.

35. At issue in this appeal is whether the CBSA has properly classified the CRKT Knife under tariff item 9898.00.00.

36. Mr. Abbas's appeal from the CBSA's decision is brought pursuant to subsection 67(1) of the *Act*. It is undisputed that Mr. Abbas is a "person aggrieved" by the CBSA's decision. He asserts ownership of the CRKT Knives and the right to import the items into Canada.

37. The *Rules* prescribe the procedure to be followed on appeals brought under section 67 of the *Act*. On appeal, both the appellant and respondent may file additional materials, including physical exhibits that were not before the CBSA at first instance. The parties may also present evidence of fact and/or expert witnesses.²²

38. Appeals to the Tribunals are determined *de novo*. This means that the Tribunal is not limited to reviewing the CBSA's decision for clear error or unreasonableness. The appeal is a new proceeding where the Tribunal must reach its own decision concerning the correct tariff classification for the goods.

39. In doing so, the Tribunal owes no deference to the CBSA's decision. It is free to assess the record, up to and including the reweighing of evidence placed before the CBSA, and giving consideration to any new evidence or submissions that may be presented on appeal.²³

40. When conducting this analysis, the Tribunal must identify, as a question of law, the test or criteria that must be met in order for an item to be classified under tariff item 9898.00.00. The Tribunal must then determine, as a question of fact, whether the evidence demonstrates that the legal test has been met.

41. Section 10 of the *Customs Tariff* mandates that classification of goods shall be determined, unless otherwise provided, in accordance with the *General Rules for the Interpretation of the Harmonized System* and the *Canadian Rules*, as set out in the Schedule to the *Customs Tariff*. General Rule 1 requires that classification be determined initially only with reference to the headings within a chapter, as well as any relevant section or chapter notes.

42. However, subsection 136(2) of the *Customs Tariff* provides that the *General Rules* do not apply with respect to the classification of goods under tariff item 9898.00.00. As such, there are no section or chapter notes that are relevant to the classification at issue. Likewise, there are no relevant classification opinions or explanatory notes that the Tribunal is required to consider.

²¹ *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131, at paras. 4-5.

²² Part II of the *Rules*.

²³ *Danson Décor Inc. v. President of the Canada Border Services Agency* (6 September 2019), AP-2018-043 (CIIT) at paras. 82-93.

43. Subsection 136(1) of the *Customs Tariff* prohibits the importation into Canada of goods that are classified under tariff item 9898.00.00, which covers the following goods:

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

44. The provisions of tariff item 9898.00.00 prescribe the following:

For the purposes of this tariff item,

- (a) “firearms” and “weapon” have the same meaning as in section 2 of the *Criminal Code*;
- (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*.

45. The wording used in the *Customs Tariff* thus directs the Tribunal to consider the provisions of section 2 and subsection 84(1) of the *Criminal Code*. As this appeal requires a *de novo* analysis, the Tribunal must consider which definitions provided in either section 2 or subsection 84(1) of the *Criminal Code* are potentially relevant.

46. As the CRKT Knife is plainly not “firearms”, the only potentially relevant portion of section 2 of the *Criminal Code* is the entry for “weapon”:

weapon means any thing used, designed to be used or intended for use

- (a) in causing death or injury to any person, or
- (b) for the purpose of threatening or intimidating any person

and, without restricting the generality of the foregoing, includes a firearm and, for the purposes of sections 88, 267 and 272, any thing used, designed to be used or intended for use in binding or tying up a person against their will; (*arme*)

47. With respect to subsection 84(1) of the *Criminal Code*, the Tribunal finds that its definitions for “automatic firearm”, “licence”, “prohibited ammunition”, “prohibited firearm” and “restricted firearm” to be irrelevant as they refer to firearms. This leaves the following terms as being potentially relevant:

prohibited device means

- (a) any component or part of a weapon, or any accessory for use with a weapon, that is prescribed to be a prohibited device,
- (b) a handgun barrel that is equal to or less than 105 mm in length, but does not include any such handgun barrel that is prescribed, where the handgun barrel is for use in international sporting competitions governed by the rules of the International Shooting Union,
- (c) a device or contrivance designed or intended to muffle or stop the sound or report of a firearm,
- (d) a cartridge magazine that is prescribed to be a prohibited device, or
- (e) a replica firearm; (*dispositif prohibé*)

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, or
- (b) any weapon, other than a firearm, that is prescribed to be a prohibited weapon; (*arme prohibée*)

restricted weapon means any weapon, other than a firearm, that is prescribed to be a restricted weapon; (*arme à autorisation restreinte*)

48. Each of these terms refer, in part, to prescriptions that designate a weapon or item as being “prohibited” or “restricted”. These designations are, in turn, found in other statutory or legislative enactments, notably 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*.²⁴

49. The first portion of the definition of “prohibited weapon” is clearly relevant to the CRKT Knife and indeed, forms the rationale for the CBSA’s decision to classify the item under tariff item 9898.00.00.

50. As such, the Tribunal will first assess whether the CRKT Knife is a “prohibited weapon” as prescribed by clause (a) of the definition provided in subsection 84(1) of the *Criminal Code*. If the CRKT Knife fulfills those criteria, it is correctly classified under tariff item 9898.00.00. If the criteria are not met, the Tribunal would then consider whether the CRKT Knife is otherwise prescribed to be a “prohibited device”, “prohibited weapon” or “restricted weapon”, which would cause it to be classified under tariff item 9898.00.00.

51. It is settled law that a knife is a “prohibited weapon” within the meaning of subsection 84(1) of the *Criminal Code* where the knife blade opens automatically in one of two ways: (1) by gravity or centrifugal force, or (2) by hand pressure applied to a button, spring or other device in or attached to the handle of the knife.²⁵

52. Although the word “automatically” is not defined therein, the purpose of subsection 84(1) of the *Criminal Code* has been interpreted by the jurisprudence as prohibiting the possession and use of a knife that can be rapidly opened for deployment as a weapon:

In our view, the purpose of proscribing the possession of knives that have a blade that can be opened by centrifugal force was to suppress the possession of knives having a blade which, by pressure on a button or by a flicking of the knife, is immediately opened thereby making the knife available for use as a weapon.²⁶

53. In the context of subsection 84(1), the Tribunal has previously interpreted “automatically” to mean “largely or wholly involuntarily”, but also that the term contemplates some degree of human intervention:

46. The Tribunal accepts that, in the context of subsection 84(1) of the *Criminal Code*, “automatically” means “largely or wholly involuntarily”, as suggested by the CBSA. Thus, the Tribunal finds that the need for a minimum of manipulations does not necessarily negate the automaticity of the opening of the blade.

47. According to the Tribunal, that “automatically” cannot mean completely without human intervention is plain from a reading of the provision itself. The provision contemplates a knife with a blade that opens “automatically” as a result of hand pressure. This necessarily implies a degree of human intervention.

48. This conclusion is consistent with the decision of the Supreme Court of Canada in *R. v. Vaughan*, which stands for the proposition that some extra manipulations will not preclude a knife from being a “prohibited weapon”. In that case, the Supreme Court accepted that a knife that opened

²⁴ SOR/98-462.

²⁵ E.g. *Knife & Key Corner Ltd. v. President of the Canada Border Services Agency* (14 September 2015), AP-2014-030 (CITT) [*Knife & Key*] at para. 20.

²⁶ *R. v. Archer*, (1983) 1983 CanLII 3510 (ON CA), 6 C.C.C. (3d) 129 at p. 132, as quoted in *R. v. Vaughan* 60 C.C.C. (3d) 87, 1990 CanLII 3059 (QC CA); affd [1991] 3 SCR 691(S.C.C.).

by centrifugal force, but also required the user to remove the safety switch and to change his hold of the knife with a certain dexterity, constituted a “prohibited weapon” within the meaning of subsection 84(1) of the *Criminal Code*. [footnotes omitted]²⁷

54. Previous cases have conclusively decided that “centrifugal force” includes quick wrist movement (such as flicking of the wrist) that causes the knife to open automatically. As noted above, a knife will open “automatically” where the blade becomes exposed and available for use as the inevitable consequence of simple physics initiated by minimal human action or manipulation. Automatic opening of a knife by way of centrifugal force is not specifically limited to initiation by way of wrist action – any degree of minimal manipulation that achieves the same result will suffice, whether that manipulation is by way of wrist movement and/or pressure applied to a button, spring or other device in or attached to the handle.²⁸

55. In previous decisions, the Tribunal has accepted and adopted dictionary definitions with respect to the meaning of terms used in subsection 84(1):

The *Canadian Oxford Dictionary* defines “button” as “a knob on a piece of mechanical or electronic equipment which performs a particular function when pressed.” It also defines “spring” as “a resilient device usu. of bent or coiled metal having the ability to return to its original shape with the removal of force or pressure . . .” and “device” as “a thing made or adapted for a particular purpose, esp. a mechanical contrivance.”²⁹

Merriam-Webster’s Collegiate Dictionary defines “device” as “. . . **f**: a piece of equipment or a mechanism designed to serve a special purpose or perform a special function . . .”³⁰

The *Canadian Oxford Dictionary* defines “device” as “. . . a thing made or adapted for a particular purpose, esp. a mechanical contrivance. . . .” [footnotes omitted]³¹

56. It should be noted that the criteria for prohibition of certain types of knives are referable only to the characteristics of the knife at issue, and are not contingent or dependent on the intent or good faith of the person seeking to import the knife. If the knife has the characteristics or mechanics of operation falling within the scope of subsection 84(1) of the *Criminal Code*, the item is prohibited from importation into Canada³², even if the importer acts in good faith and has no criminal intent.

57. In view of the foregoing, the question before the Tribunal is whether, on the facts, the properties and operation of the CRKT Knife satisfy the above criteria, thus falling within the statutory definition of “prohibited weapon”.

58. As neither party filed an expert report or other evidence demonstrating operation of the CRKT Knife, the Tribunal conducted its own examination of the item.

59. The CRKT Knife is a folding knife comprising a blade portion and a handle portion. A pivot pin hingedly connects the handle portion to one end of the blade portion. The underside of the handle portion has a slot-like cavity which is adapted to receive the blade and provide a casing to retain the blade when the knife is closed.

²⁷ *La Sagesse de l’Eau v. President of the Canada Border Services Agency* (13 November 2012), AP-2011-040 and AP-2011-041 (CITT) [*La Sagesse*].

²⁸ *T. Laplante v. President of the Canada Border Services Agency* (16 November 2017), AP 2017-012 (CITT) [*T. Laplante*] at paras. 25-28.

²⁹ *La Sagesse* at para. 41.

³⁰ *Knife & Key* at para. 30.

³¹ *Knife & Key* at paras. 30-31.

³² As a consequence of being classified under tariff item 9898.00.00 and by operation of section 136 of the *Act*.

60. The blade rotates through the axis of the pivot pin from a closed to an open position. In the closed position, the blade is nested, edge side down, within the handle casing. When the knife is closed, the blade is retained under mechanical tension within the casing.

61. A generally triangular-shaped, tab-like protrusion extends downwardly through the handle casing adjacent to the pivot pin, when the knife is closed. The Tribunal concludes that this tab-like protrusion is the “flipper” referred to by the parties.

62. When pressure is applied to the flipper, the blade is released from its nested position under tension within the handle casing. This causes the blade to quickly rotate about the axis of the pivot pin such that the tip of the blade moves within an arc of approximately 180 degrees from the closed, nested position to a fully extended, open position.

63. As the knife is opened, the sharp edge of the blade becomes exposed for use. When the blade is fully extended, locking means are engaged to securely retain the blade in the open position. To close the knife, pressure is applied to move the blade (through the axis of the pivot pin) towards the open casing of the handle portion.

64. The Tribunal performed several tests in order to assess whether the CRKT Knife opens “automatically” when hand pressure is applied to a “device” in or attached to the handle of the knife.

65. In a first test, the closed knife was held in one hand, with the closed (nested) blade perpendicular to a table. When finger pressure was applied to the flipper, the blade quickly disengaged from its closed position and swung upwardly (against gravity) to a fully open and locked position on four out of five attempts. On the occasion where the blade did not fully open, it had travelled substantially the full distance to the open position such that minimal effort (quick flick of the wrist) was sufficient to propel the blade into the fully extended and locked position.

66. The test described above was repeated, except for a slight variation in the starting position. The knife was held in one hand, but positioned such that the nested blade was angled at approximately 45 degrees relative to the table. Upon applying hand pressure to the flipper, the blade quickly disengaged from its closed position and swung upwardly to a fully extended and locked position on five out of five attempts.

67. The above test was again repeated where the closed knife was held in one hand, parallel to a table. Hand pressure applied to the flipper caused the blade to disengage from its closed position and rotate to a fully open, extended and locked position in five out of five attempts.

68. In a further test, the closed CRKT Knife was held in one hand with the body of the knife parallel to the floor and the nested blade facing the user’s body. Pressure applied to the flipper caused the blade to quickly release from the stop bracket and rotate around the pivot in an arc travelling outwardly away from the body into an open, extended and locked position. This result was obtained in five out of five attempts, from a seated position. The test was repeated from a standing position. Again, pressure applied to the flipper caused the blade to quickly open into an extended and locked position, one five out of five attempts.

69. In each test, the CRKT Knife could thus be opened from a closed position using only a slight finger pressure applied to the flipper and/or minimal manipulation. It would appear that there is a bias or detent that creates a mechanical tension when the blade is nested within the handle casing. This tension is released when pressure is applied to the flipper, causing the blade to fully rotate through the axis of the pivot pin to an extended and locked position.³³

³³ The tip of the blade travels a full 180-degree arc from the resting closed position to the open and locked position.

70. When determining whether a knife is (or is not) a prohibited weapon, the first question to be answered is whether the knife opens automatically by way of gravity, centrifugal force or hand pressure applied to a button, spring or device in or attached to the handle. “Automatic” opening is a key feature which distinguishes a prohibited weapon from a permissible folding knife. If opening of the knife is triggered by basic physics or minimal hand manipulation causing the blade to move *quickly and inevitably* to an open and locked position, the knife opens automatically for the purposes of subsection 84(1) of the *Criminal Code*. In contrast, where a series of steps or co-ordinated movement is required to open a folding knife, the Tribunal has previously concluded that the knife is not a “prohibited weapon”.³⁴

71. In *A. Cowan*, the knife was designed to enable the user to control the extent and speed of the unfolding of the blade from its closed and nested position within the handle:

The stud is not specifically intended to activate an opening mechanism, but rather assists in a controlled deployment of the blade by the user.³⁵

72. In the present case, the user has no such control. Once the opening of the CRKT Knife is initiated by applying hand or finger pressure, the flipper is displaced over a short distance, but the blade as a whole is propelled to travel rapidly over an arc spanning 180 degrees and then lock into an open position.

73. In view of the outcome of the above tests, the Tribunal concludes that the CRKT Knife opens “automatically”.

74. If a knife opens automatically by way of gravity or centrifugal force, that finding is decisive since the knife meets the definition of “prohibited weapon”. It is the mechanism of operation of the knife, and not its specific parts, construction or internal mechanics that is the critical factor.

75. In the present case, neither party has alleged that the CRKT Knife opens by way of gravity or centrifugal force. Instead, the analysis requires an assessment of the knife structure and whether the knife opens automatically as a result of hand pressure applied to a button, spring or other device that is located in, or is attached to, the handle of the knife.

76. Mr. Abbas argues that the CRKT Knife is not a prohibited weapon because it does not have a spring, lever, or other device in or attached to the handle of the knife.

77. In interpreting and applying the statutory definition of “prohibited weapon”, the Tribunal has consistently been mindful of the principle that statutes must be given a purposive interpretation:

The modern rule of statutory interpretation requires “. . . the words of an Act . . . to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.” The jurisprudence has identified the purpose of subsection 84(1) as being to prohibit knives that can be easily concealed and rapidly deployed. [footnotes omitted]³⁶

78. As such, when considering whether the knife has a “button, spring or other device in or attached to the handle”, the critical consideration remains whether the knife opens automatically. The Tribunal’s reasoning in *La Sagesse* is relevant:

³⁴ E.g. *Abraham I. Goldrich v. The Commissioner of the Canada Customs and Revenue Agency* (17 October 2001), AP-2000-035 (CITT); *A. Cowan*.

³⁵ *A. Cowan* at para. 32.

³⁶ *La Sagesse* at para. 54.

51. . . . [T]he Tribunal is satisfied that pressure on the relevant device in the handle of the knives rapidly releases the blades. The manipulations required from the user to activate the assisted-opening mechanisms of the knives in issue appear to be altogether minimal. The Tribunal notes that, once the user pushes on the device, almost all of the travel of the blade is achieved by the internal mechanism and not through hand pressure. In addition, in the case of both knives, once the blade is put into motion as a result of the initial pressure, the blades do not stop before they are fully opened; no further manipulation by the user is required.

52. With respect to SDL's technical argument that the opening of the blades of the knives in issue cannot be considered "automatic" given that the blades must be *manually moved* an initial distance to overcome the *bias toward closure*, the Tribunal notes that the legislation does not prescribe the internal mechanics of the knife. As stated above, the requirement of automaticity seems to be that the blade of the knife effectively opens with minimal manipulation as a result of, in this case, hand pressure on a "device". "Device" is broadly defined and so long as the required manipulations remain minimal, the internal mechanics of the knife do not matter. For this reason, the fact that a small portion of the travel of the blade is effected manually and the fact that the knives in issue have an initial "bias toward closure" are irrelevant.³⁷

79. The common thread running through previous relevant decisions³⁸ is that knives which open *automatically* for quick and easy deployment with only a minimal amount of manipulation, are considered to be prohibited weapons. A component of a knife that is designed and present for the purpose of actuating the rapid opening of the knife may be construed as being a "button, spring or other device" within the meaning of subsection 84(1) even where it functions, *directly or indirectly*, in combination with other components of the knife to achieve the result of automatically opening the knife.³⁹

80. The purpose of the flipper on the CRKT Knife is to enable the quick and automatic opening of the knife. As discussed above, once pressure is applied to the flipper, the blade is released and opens automatically. Indeed, the blade rotates unimpeded, through the axis of the pivot pin and through the slot-like cavity in the knife. In essence, the flipper acts as one end of a lever with the pivot pin of the knife serving as the fulcrum of the lever.

81. Mr. Abbas also contends that the flipper cannot be a "device" because it is part of the knife blade and not "in or attached to the handle" of the knife.

82. The flipper and blade do appear to have been stamped from the same metal blank such that the flipper is integral with the rest of the blade. However, when the CRKT Knife is in a closed position, the flipper passes through, and rests within, the slot-like aperture in the handle. This defines the starting position, for operational purposes, from which the flipper can be engaged in order to open the knife. Since the flipper rests within an aperture of the handle, the Tribunal finds that the tab is consequently "in" the handle or that it is "attached" to the handle because it works to release the mechanical tension generated within the handle which serves to retain the blade in a closed and locked position.

83. Having regard to the broad and purposive interpretation afforded to the word "device" in previous decisions, the Tribunal concludes that the flipper is a "device" that is in or attached to the handle of the CRKT Knife.

³⁷ *La Sagesse*.

³⁸ I.e. *Knife & Key*, *La Sagesse*, *T. Laplante* and cases cited therein.

³⁹ E.g. *Knife & Key* at paras. 38-31; *La Sagesse* at paras. 40-45.

Relevant Classifications

84. Accordingly, the Tribunal finds that the CRKT Knife is a “prohibited weapon” within the meaning of subsection 84(1) of the *Criminal Code*. In view of this conclusion, the Tribunal need not consider whether the CRKT Knife is also or otherwise a prohibited device, prohibited weapon or restricted weapon, by way of legislative prescription.

85. Consequently, the CRKT Knife is correctly classified under tariff item 9898.00.00 of the *Customs Tariff*.

86. The wording of tariff item 9898.00.00 provides for certain exemptions and exceptions. Items that have been classified under tariff item 9898.00.00 may nonetheless be imported under certain conditions. These include situations where the importer is a public officer, police officer, or member of the Canadian Forces acting within the scope of their duties or authority, among others. Neither party has indicated that any exception or exemption provided by tariff is relevant, and nothing in the record before the Tribunal suggests that any exception or exemption would be applicable to the circumstances of this case.

DECISION

87. For all of the above reasons, the appeal is dismissed.

Susan D. Beaubien
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Presiding Member