



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2018-058

D. Liu

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Friday, November 22, 2019*

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IN THE MATTER OF an appeal heard on July 9, 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 October 12, 2018, pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

D. LIU

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 9, 2019

Tribunal Panel: Susan D. Beaubien, Presiding Member

Support Staff: Heidi Lee, Counsel

PARTICIPANTS:**Appellant**

D. Liu

Respondent

President of the Canada Border Services Agency

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STATEMENT OF REASONS

OVERVIEW

1. Mr. D. Liu acquired a knife identified as “Massdrop x Ferrum Forge Falcon Wing Edition” bearing serial number WZ0323 MDX-19597-3 (Massdrop Knife). When the Massdrop Knife was shipped for delivery to Mr. Liu in Canada, the item was detained by the President of the Canada Border Services Agency (CBSA).¹
2. Upon inspection, the CBSA determined that the Massdrop Knife was a prohibited weapon, as defined by the *Criminal Code*.² As such, the CBSA classified the Massdrop Knife under tariff item 9898.00.00 of the *Customs Tariff*.³ Goods that are classified under tariff item 9898.00.00 are prohibited from being imported into Canada.
3. Mr. Liu disagreed with the CBSA’s decision and sought reconsideration.⁴ The CBSA maintained the contested classification.⁵
4. Mr. Liu now appeals to the Tribunal pursuant to subsection 67(1) of the *Customs Act*.⁶

BACKGROUND

5. The Massdrop Knife is designed by Ferrum Forge and manufactured in China by WE Knife.⁷ It is a folding knife comprising a stainless steel blade and titanium handle, measuring 3.9 inches in a closed position and 6.8 inches in an open position.⁸
6. A key point of contention in this appeal is the mechanism (“flipper” or “flipper tab”) that enables the Massdrop Knife to be opened from the closed position. The CBSA contends that this mechanism causes the Massdrop Knife to be opened in a manner that renders it to be a prohibited weapon. Mr. Liu contests this characterization and the conclusion reached by the CBSA.
7. On July 30, 2018, the CBSA detained the Massdrop Knife upon inspection at the International Mail Processing Centre Léo-Blanchette, pursuant to section 101 of the *Customs Act*.⁹
8. The CBSA’s determination that the Massdrop Knife is a prohibited weapon was communicated to Mr. Liu on July 30, 2018.¹⁰
9. By letter dated August 1, 2018, Mr. Liu disputed the seizure of the Massdrop Knife and requested reconsideration of the CBSA’s finding.¹¹

¹ Exhibit AP-2018-058-08, p. 17, Vol. 1.

² R.S.C., 1985, c. C-46.

³ S.C. 1997, c. 36; Respondent’s Brief, Exhibit 8, p. 17-18.

⁴ Exhibit AP-2018-058-08, p. 19, Vol. 1.

⁵ Exhibit AP-2018-058-05, p. 5, Vol. 1.

⁶ Exhibit AP-2018-058-01, Vol. 1.

⁷ Exhibit AP-2018-058-05, p. 5, Vol. 1.

⁸ Exhibit AP-2018-058-08, p. 21, Vol. 1.

⁹ Exhibit AP-2018-058-08, p. 3, Vol. 1.

¹⁰ Exhibit AP-2018-058-08, p. 4, 17, Vol. 1.

¹¹ Exhibit AP-2018-058-08, p. 19, Vol. 1.

10. Mr. Liu contended that this knife cannot be opened by gravity or centrifugal force and that it has “no buttons, springs or other devices attached to the handle of the knife.”¹² More particularly, the knife handle is made of solid titanium alloy with “no moving parts, buttons, mechanisms, springs or any other devices which would make the knife a prohibited weapon.” Unlike a switchblade, the flipper tab is part of the blade, as opposed to being a component of the handle, and the detent on the knife is “much too tight” to permit the knife to be opened by gravity or centrifugal force. Accordingly, Mr. Liu submitted that the Massdrop Knife was not a prohibited weapon and provided a photograph from the seller depicting the knife in disassembled form.

11. On October 12, 2018, the CBSA issued a decision which maintained the classification of the Massdrop Knife as a prohibited weapon.¹³

The CBSA’s Decision

12. The CBSA examined the Massdrop Knife and noted its physical characteristics, including its mode of operation. When pressure was applied to the flipper, the knife blade was said to open automatically “to the fully extended position”. The CBSA concluded that this outcome constituted an automatic opening of the knife by means of hand pressure “applied to a button, spring or other device in or attached to the handle of the knife.”

13. The CBSA then considered the relevant statutory provisions, namely, subsection 84(1) of the *Criminal Code*, section 136 of the *Customs Tariff* and tariff item 9898.00.00.

14. Noting that goods must be assessed in their form at the time of importation (and not disassembled), the CBSA found the flipper to be located in the handle of the Massdrop Knife. When pressure is applied to the flipper, the CBSA further found that ball bearings in the pivot joint of the Massdrop Knife cause the blade to open smoothly and easily for “fast and easy” deployment.

15. Having regard to previous decisions of the Tribunal, the CBSA concluded that the Massdrop Knife is equipped with a device that performs the particular purpose or function of enabling fast and easy deployment of the knife. Accordingly, the CBSA held that the Massdrop Knife meets the definition of “prohibited weapon” as prescribed by the *Criminal Code* and should be classified under tariff item 9898.00.00 as an item that is prohibited from being imported into Canada.

16. Mr. Liu appealed the CBSA’s decision on December 19, 2018.¹⁴

Mr. Liu’s Appeal

17. In support of his appeal, Mr. Liu submitted a brief comprising written submissions,¹⁵ together with copies of supporting jurisprudence.

18. The CBSA filed a brief in response to Mr. Liu. It comprised written submissions¹⁶ with supporting jurisprudence, copies of the Notice of Detention¹⁷ and correspondence between the CBSA and Mr. Liu,

¹² Exhibit AP-2018-058-08, p. 19, Vol. 1.

¹³ Exhibit AP-2018-058-01, p. 3, Vol. 1.

¹⁴ Exhibit AP-2018-058-01, p. 1, Vol. 1.

¹⁵ Exhibit AP-2018-058-05, p. 1, Vol. 1.

¹⁶ Exhibit AP-2018-058-08, p. 1, Vol. 1.

¹⁷ Exhibit AP-2018-058-08, p. 17, Vol. 1.

which culminated in the decision under appeal,¹⁸ as well as product literature concerning the Massdrop Knife, which was apparently sourced from the Internet.¹⁹

19. Neither party tendered expert evidence.

20. 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*. The hearing was held on July 9, 2019.

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

POSITIONS OF THE PARTIES ON APPEAL

Mr. Liu

22. According to Mr. Liu, the Massdrop Knife is a type of "flipper tab" knife.

23. Flipper tab knives feature a tab or protrusion forged into the blade of the knife. When pressed, the flipper tab serves to overcome detent and bias of the folded knife, thus moving the blade from a closed position within the knife handle towards an open, extended position. In the case of the Massdrop Knife, this motion is facilitated by an internal ball bearing system which is set within the pivot of the knife. The ball bearing system allows for smoother operation of the knife, with reduced wear on the knife components.

24. Mr. Liu points out that nearly all folding knives have a certain level of resistance to opening, which is referred to as the "detent" of the knife. Beyond the detent, the resistance to the opening of the knife decreases as the knife blade moves toward to a fully open, locked position. Some degree of hand pressure is required to open any folding knife, even if that pressure is applied to a flipper tab, or other means such as a "thumb stud" or "nail knick", together with some manual manipulation of the knife. Once the detent is overcome, a simple flick of the wrist would supply enough centrifugal force to propel the knife blade into an extended, open and locked position. On this test, Mr. Liu argues that all folding knives would consequently be deemed to be prohibited weapons.

25. In the case of the Massdrop Knife, a flicking of the wrist alone creates insufficient centrifugal force to overcome the detent when the knife is closed. Mr. Liu asserts that this knife model has a very strong detent that precludes it from being opened from centrifugal force generated by simple wrist movement. He points out that prohibited "assisted-opening" knives have a mechanism in the handle that propels the blade into an extended or locked position, after the initial detent is overcome and that the case law illustrates that such mechanisms comprise a spring(s) or a torsion bar.

26. The Massdrop Knife does not have either a spring or a torsion bar. Mr. Liu disputes the CBSA's finding that the Massdrop Knife has a ball bearing opening system that facilitates "fast and easy" deployment of the knife blade. He submits that the ball bearings serve another purpose, namely, to reduce wear around the pivot. Mr. Liu says that phosphor-bronze washers are well known and used to reduce the friction that is caused at the pivot when a knife is opened, thus reducing wear and tear and prolonging the useful life of the product. Essentially, he asserts that the ball bearing system of the Massdrop Knife is a mechanical equivalent to a washer assembly which functions to facilitate the smooth operation of the knife, as opposed to actuating the rapid opening of the knife blade to an extended and locked position.

¹⁸ Exhibit AP-2018-058-08, p. 19-23, Vol. 1.

¹⁹ A URL appears at the bottom of each page. See Exhibit AP-2018-058-08, p. 24-34, Vol. 1.

27. In summary, Mr. Liu argues that the Massdrop Knife is distinguishable, both in terms of its structure, components and mechanics of operation, from prohibited weapons as described in previous decisions cited by the CBSA. The opening of the Massdrop Knife is initiated by engaging the flipper tab, which is part of the knife blade, not the handle. The flipper tab on its own does not serve to fully open the knife. Once detent is overcome by engaging the flipper tab, there is no internal mechanism, such as a torsion bar or spring, operating to propel the knife to open.

CBSA

28. The CBSA says that Mr. Liu bears the legal burden of showing that the CBSA was incorrect in classifying the Massdrop Knife as a prohibited weapon. It asserts that Mr. Liu has not succeeded in meeting this onus.

29. After summarizing the relevant statutory framework, the CBSA argues that the Massdrop Knife meets the definition of a “prohibited weapon” because:

- (a) it is a knife having a blade;
- (b) the blade of the knife “opens automatically by centrifugal force”; and
- (c) the blade opens automatically when hand pressure is applied to a device that is within or attached to the handle of the knife.

30. The CBSA stresses that the legislation does not prescribe or define a knife as a “prohibited weapon” with reference to either its components or structure. A prohibited knife is one that opens automatically. The internal mechanics of the knife are irrelevant.

31. According to the CBSA, a knife is considered to open automatically if centrifugal force generated by a flick of the wrist causes the blade to become fully open in the locked position. This remains the case even if some minimal preliminary or simultaneous manipulation of a flipper tab or other part of the blade is also required.

32. In addition, the CBSA asserts that a knife opens automatically if it opens as a result of hand pressure being applied to a device with minimal manipulation. The CBSA argues that the word “device” should be given a broad interpretation, i.e. a “device” is a “thing made or adapted for a particular purpose, esp. a mechanical contrivance.” The flipper tab is a “device” because it functions to cause rapid opening of the Massdrop Knife by activating the caged bearing system.

33. The CBSA submits that the Massdrop Knife satisfies both of these criteria. When light pressure is applied to the flipper tab, the knife blade opens “effortlessly” to the extended, locked position. In the alternative, the CBSA also submits that the blade achieves a fully open and locked position when pressure is applied to a device, i.e. the flipper tab, and is accompanied by a flick of the wrist.

34. In summary, the CBSA contends that the Massdrop Knife is a prohibited weapon because it may be deployed with one hand, as the Massdrop Knife opens to a fully extended, locked position from either a flick of the wrist or hand pressure applied to a device with minimal manipulation. It is therefore properly classified as a prohibited weapon, regardless of its underlying mechanics or structure.

ANALYSIS

Legislative Framework

35. The *Customs 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.

36. 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.²⁰

37. 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*.

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

39. Mr. Liu's appeal from the CBSA's decision is brought pursuant to subsection 67(1) of the *Customs Act*. It is undisputed that Mr. Liu is a "person aggrieved" by the CBSA's decision. He asserts ownership of the Massdrop Knife and the right to import the item into Canada.

40. The *Canadian International Trade Tribunal Rules*²¹ 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

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

42. In 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.

43. 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 must be determined initially only with reference to the headings within a chapter, as well as any relevant section or chapter notes

²⁰ *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131, at paras. 4-5.

²¹ S.O.R./91-499 [Rules].

²² Part II of the Rules.

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

44. Section 11 of the *Customs Tariff* contains the following directions with respect to determining the classification of goods:

11 In interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System and the Explanatory Notes to the Harmonized Commodity Description and Coding System, published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time.

45. The Tribunal finds that there are no section or chapter notes that are relevant to the classification at issue. Likewise, there are no relevant World Customs Organization classification opinions or explanatory notes to consider.

46. 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

47. The provisions of tariff item 9898.00.00 also 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*.

48. 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.

49. As the Massdrop 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*)

50. 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 are all referable 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*)

51. 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 or Restricted*, SOR/98-462.

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

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

54. 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.²⁴

55. Although the word “automatically” is not defined therein, the purpose of subsection 84(1) of the *Criminal Code* has been construed to prohibit 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.²⁵

²⁴ E.g. *Knife & Key Corner Ltd. v. President of the Canada Border Services Agency* (14 September 2015), AP-2014-030 (CITT) [*Knife & Key Corner*] at para. 20.

²⁵ *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.).

56. 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 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*.²⁶

[Footnotes omitted]

57. 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 minimal manipulation that achieves the same result will suffice.²⁷

58. 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.”²⁸

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 . . .”

The *Canadian Oxford Dictionary* defines “device” as “. . . a thing made or adapted for a particular purpose, esp. a mechanical contrivance . . .”²⁹

[Footnotes omitted]

59. 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

²⁶ *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 de l’Eau*].

²⁷ *T. Laplante v. President of the Canada Border Services Agency* (16 November 2017), AP-2017-012 (CITT) [*Laplante*] at paras. 25-28.

²⁸ *La Sagesse de l’Eau* at para. 41.

²⁹ *Knife & Key Corner* at paras. 30-31.

party 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 Canada,³⁰ even if the importer acts in good faith and has no criminal intent.

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

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

62. The Massdrop 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. 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.

63. 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. The blade is securely retained within the casing by a stop bracket. The upper (dull) surface of the blade includes an indentation that abridges a raised and ridged protrusion which serves to define the flipper tab. When an index finger is placed on the flipper tab and slight downward pressure is applied, the blade is released from its nested position within the casing. This causes the blade to rotate about the axis of the pivot pin into an open position 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.

64. 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. As the knife folds into a closed position within the casing, a slight lateral pressure must be exerted on the upper side of the blade in order to engage the stop bracket, thus enabling the blade to be fully and securely nested within the casing.

65. The Tribunal performed several tests in order to assess whether the Massdrop Knife “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.” In doing so, the Tribunal did not disassemble the knife. It is settled law that goods must be assessed for tariff classification purposes in their form at the time of importation.³¹

66. The Tribunal concludes that the Massdrop Knife does not open by operation of gravity alone. Some degree of human intervention is required to actuate the opening of the knife by overcoming the detent of the blade which is locked within the handle when the knife is closed. However, the Tribunal does find that the Massdrop Knife opens automatically by centrifugal force or, in the alternative by way of hand pressure applied to a button, spring or other device in or attached to the handle.

67. 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 tab, the blade quickly disengaged from its locked

³⁰ As a consequence of being classified under tariff item 9898.00.00 and by operation of section 136 of the *Customs Act*.

³¹ *Tiffany Woodworth v. President of Canada Border Services Agency* (11 September 2007), AP-2006-035 (CITT) at para. 21.

position and swung upwards (against gravity) to a position that was approximately 75% of the distance to a fully extended and locked position, i.e. the tip of the blade moved through an arc of about 130-150 degrees. Quick and minimal effort (wrist flick) was sufficient to propel the blade into the fully extended and locked position.

68. 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 tab, the blade quickly disengaged from its locked position and swung upwards to a position that was approximately 75% of the distance to a fully extended and locked position, i.e. the tip of the blade moved through an arc of about 140-150 degrees. Quick and minimal effort (wrist flick) was sufficient to propel the blade into the fully extended and locked position.

69. In a third test, the Massdrop Knife was held in one hand, with the nested blade essentially parallel to the table. When pressure was applied to the flipper tab, the knife blade swung quickly and completely to a fully extended and locked position. This test was repeated and the same result was obtained on four out of five attempts. On the one occasion where the blade did not travel through a full 180-degree arc, a simple wrist flick was sufficient to complete the rotation of the blade (from about 140-150 degrees) and propel the blade into a fully open, locked position (180 degrees).

70. A fourth test was conducted from a standing position. The Massdrop 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 tab 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 four out of five attempts. As in the previous tests described above, on the one occasion where the blade did not fully swing into a fully open and locked position, it had substantially travelled through the requisite arc and required only minimal manipulation in order for the blade to complete the full rotation. This test was repeated where the starting position was varied so that the nested blade was facing away from the user's body. The same results were observed – the blade opened easily to the fully extended locked position on four out of five attempts. Minimal manipulation was required to complete the opening on the fifth attempt.

71. In each test, the Massdrop Knife could thus be opened from a closed position using only a slight downward pressure applied to the flipper tab and/or minimal manipulation to complete the blade's rotation into a fully open and locked position. It would appear that the biasing of the blade to abut the stop bracket in the casing (when the knife is closed and locked) creates tension or potential mechanical energy.³² Once released by means of pressure applied to the flipper tab, that mechanical tension is actuated to kinetic energy which is sufficient to propel the blade to rotate through the axis of the pivot pin to either the fully extended open position³³ or to a substantially open position.³⁴

72. Having regard to the foregoing, the Tribunal concludes that the Massdrop Knife opens "automatically" as a result of centrifugal force. The Merriam-Webster dictionary defines "centrifugal force"

³² In addition, product literature for the Massdrop Knife touts the "spring properties" of titanium as providing "a safe and reliable frame lock that is almost impossible to accidentally disengage." See Exhibit 8, p. 27.

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

³⁴ I.e. the tip of the blade travels an arc that is substantially, but not fully complete, of the full 180-degree arc from the closed position of the knife to its open and locked position. The rotational movement of the blade stops at around 130-150 degrees of rotation from the initial resting position of the tip when the blade is locked.

as “the apparent force that is felt by an object moving in a curved path that acts outwardly away from the center of rotation.”³⁵ This definition describes the path and movement of the Massdrop Knife blade as it travels in an arc from its closed to open position. Although the same could be said for a conventional folding knife whose blade is opened by way of hand manipulation alone, what distinguishes a prohibited knife is the element of *automatic* opening. Once the opening is triggered by simple mechanics or hand manipulation, the blade of a prohibited knife moves quickly and inevitably to an open position. As such, it is the mechanism of *operation* of the knife, and not its parts, construction or internal mechanics that is determinative.³⁶

73. In the case of the Massdrop Knife, initial downward hand pressure applied to the flipper tab actuates movement of the blade into a fully extended and locked position, or moves the blade to a substantially open position where only minimal and simple effort (wrist flick) is required to obtain the result of a fully open and operational knife blade. This is sufficient to meet the test for automatic opening of a knife by operation of centrifugal force.³⁷

74. In the alternative, the Tribunal also finds that the Massdrop Knife opens automatically as a result of hand pressure applied to a button, spring or other device in or attached to the handle of the knife.

75. Mr. Liu has argued that the flipper tab cannot be a “button, spring or other device in or attached to the handle of the knife” because it is located on the blade, and is not “in or attached to the handle of the knife.”

76. 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:

54. . . . 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. . . .³⁸

[Footnotes omitted]

77. 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 de l’Eau* is relevant:

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.

³⁵ <https://www.merriam-webster.com/dictionary/centrifugal%20force>; Courts and tribunals may take judicial notice of relevant definitions from dictionaries which may be published in electronic format and be accessible online. See *R. v. Krymowski*, 2005 SCC 7 at paras. 22-24; *Envirodrive Inc. v. 836442 Alberta Ltd.*, 2005 ABQB 446 at para. 53.

³⁶ *La Sagesse de l’Eau* at para. 52; *Laplante* at paras. 29-31.

³⁷ E.g. see *Digital Canoe Inc. v President of Canada Border Services Agency* (12 July 2006), AP-2004-047 (CITT).

³⁸ *La Sagesse de l’Eau* at para. 54.

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."

78. 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 be 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

79. The purpose of the flipper tab on the Massdrop Knife is to facilitate opening of the knife. As discussed above, once downward pressure is applied to the flipper tab by hand, the blade is released from the stop bracket and propelled by a spring-like force to swing open. Functionally, this is equivalent to the action of a "button" and falls within the definition of "button" previously adopted by the Tribunal.⁴⁰

80. In the alternative, the Tribunal finds that the flipper tab is a "device" within the meaning of paragraph 84(1)(a) of the *Criminal Code*. This conclusion is underpinned by the broad and purposive interpretation afforded to the word "device" in previous decisions.⁴¹

81. Mr. Liu contends that the flipper tab cannot be a "device" because it is not "in or attached to the handle of the knife." However, the flipper tab mechanically co-operates with the stop bracket which is located in the handle. The stop bracket serves to lock and retain the blade in a nested, closed position within the handle.

82. In *Knife & Key Corner*, the Tribunal concluded that a protrusion on a knife blade was necessarily "attached" to the knife's handle because the protrusion served to activate a spring or torsion bar located within the handle, thus causing the automatic opening of the knife. This is analogous to the operation of the Massdrop Knife at issue in this appeal.

83. The common thread running through previous relevant decisions⁴² is that the knives at issue open automatically for quick and easy deployment with only a minimal amount of manipulation. Notwithstanding Mr. Liu's well-presented argument, the Massdrop Knife cannot be distinguished on the basis that it does not have an explicit spring or torsion bar. The Massdrop Knife uses a mechanical equivalent to achieve the same operational result as the knives considered in *Knife & Key Corner*, *La Sagesse de l'Eau*, and *Laplante*. It is not the structure of the knife but rather the operational result (automatic opening) that is dispositive, having regard to the terms of the explicit statutory wording used in subsection 84(1) and its underlying purpose.

Relevant Classifications

84. Having regard to the reasons above, the Tribunal concludes that the Massdrop Knife is a "prohibited weapon" within the meaning of subsection 84(1) of the *Criminal Code*. Accordingly, the

³⁹ E.g. *Knife & Key Corner* at paras. 38-31; *La Sagesse de l'Eau* at paras. 40-45.

⁴⁰ See para. 58 above.

⁴¹ E.g. *Knife & Key Corner* at paras. 30-39; *La Sagesse de l'Eau* at para. 42.

⁴² I.e. *Knife & Key Corner*, *La Sagesse de l'Eau*, *Laplante* and cases cited therein.

Tribunal need not consider whether the Massdrop Knife is also or otherwise a prohibited device, prohibited weapon or restricted weapon, by way of legislative prescription.

85. Consequently, the Tribunal finds that the Massdrop 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 the tariff item 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