



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal AP-2021-028

N. Reshetnyak

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Friday, September 16, 2022*

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IN THE MATTER OF an appeal heard on July 5, 2022, pursuant to subsection 67(1) of the *Customs Act*;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated October 4, 2021, with respect to a request for further re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

N. RESHETNYAK

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Cheryl Beckett

Cheryl Beckett
Presiding Member

Place of Hearing: Ottawa, Ontario (file hearing)
Date of Hearing: July 5, 2022

Tribunal Panel: Cheryl Beckett, Presiding Member

Tribunal Secretariat Staff: Nadja Momcilovic, Counsel
Charlotte Saintonge, Student-at-law
Morgan Oda, Registrar Officer

PARTICIPANTS:**Appellant**

N. Reshetnyak

Respondent

President of the Canada Border Services Agency

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STATEMENT OF REASONS

BACKGROUND

[1] This is an appeal filed by Mr. N. Reshetnyak with the Canadian International Trade Tribunal pursuant to subsection 67(1) of the *Customs Act*¹ (the Act) from a decision made by the President of the Canada Border Services Agency (CBSA) dated October 4, 2021, pursuant to subsection 60(4) of the Act.

[2] At issue is whether the “Almazka” folding knife (the good in issue) imported by Mr. Reshetnyak is properly classified under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*² as a prohibited weapon according to subsection 84(1) of the *Criminal Code*³ and therefore prohibited from importation into Canada pursuant to subsection 136(1) of the *Customs Tariff*.

PROCEDURAL HISTORY

[3] On or around July 8, 2021, the good in issue arrived in Canada by mail and was detained by the CBSA.⁴

[4] On July 8, 2021, the CBSA determined that the good was a prohibited weapon within the meaning of tariff item No. 9898.00.00 and denied its importation into Canada.⁵

[5] On July 28, 2021, Mr. Reshetnyak requested a further re-determination, pursuant to subsection 60(1) of the Act.⁶

[6] On October 4, 2021, the CBSA maintained its original determination and rejected the request, pursuant to subsection 60(4) of the Act.⁷

[7] On January 4, 2022, Mr. Reshetnyak filed the present appeal under subsection 67(1) of the Act.⁸

[8] On July 5, 2022, 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*.⁹

¹ R.S.C., 1985, c. 1 (2nd Supp.).

² S.C. 1997, c. 36.

³ R.S.C., 1985, c. C-46.

⁴ Exhibit AP-2021-028-08.B at 6, 46–47.

⁵ *Ibid.* at 46–47.

⁶ *Ibid.* at 49–53.

⁷ Exhibit AP-2021-028-01 at 8–10.

⁸ *Ibid.*

⁹ SOR/91-499.

DESCRIPTION OF THE GOOD IN ISSUE

[9] The good in issue is an “Almazka” folding knife. The knife is 12 1/2 inches (approximately 32 centimetres) in length when open and 7 1/2 inches (approximately 19 centimetres) in length when closed.¹⁰

[10] The good features a protrusion or “thumb stud” that is connected to the spine of the blade. When the blade is in the closed position, the application of pressure on the thumb stud along with a quick flick of the wrist causes the blade of the knife to open to a fully extended and lock position.¹¹

LEGAL FRAMEWORK

[11] 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.

[12] 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* . . .

[13] 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*¹² 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 this Chapter are classifiable in said provision if the conditions and requirements thereof and of any applicable regulations are met.”

[14] According to the *Customs Tariff*, a “prohibited weapon” includes any items defined as a “prohibited weapon” in subsection 84(1) of the *Criminal Code*.

¹⁰ Exhibit AP-2021-028-08.B at 4.

¹¹ Exhibit AP-2021-028-08 at para. 3. See Exhibit AP-2021-028-08.A for a CBSA video recording of the good in issue opening.

¹² S.C. 1997, c. 36, schedule.

[15] Subsection 84(1) of the *Criminal Code* includes the following:

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 . . .

[16] In order to determine whether the good in issue is properly classified as a weapon under tariff item No. 9898.00.00 and therefore prohibited from importation into Canada, the Tribunal must determine whether it meets the above definition in paragraph 84(1)(a) of the *Criminal Code*.

POSITIONS OF THE PARTIES

N. Reshetnyak

[17] Mr. Reshetnyak submits that the knife neither opens by centrifugal force nor by hand pressure applied to a device attached to the knife. Rather, he argues that the good in issue uses a Linerlock mechanism to secure the blade in an open position and does not assist in the automatic opening of the blade.¹³

[18] Mr. Reshetnyak also argues that goods with similar locking mechanisms are available for purchase in Canada.¹⁴

CBSA

[19] The CBSA submits that Mr. Reshetnyak has failed to satisfy the legal burden of showing that the CBSA was incorrect in classifying the good in issue as a prohibited weapon and that the appeal could be dismissed on this basis alone.¹⁵ The CBSA also submits that Mr. Reshetnyak did not file evidence or provide a basis upon which the Tribunal could determine that the CBSA's classification was incorrect.

[20] According to the CBSA, the good in issue is a knife with a blade that opens automatically by centrifugal force.¹⁶ Indeed, the CBSA concluded, on the basis of the Tribunal's finding in *T. Laplante v. President of the Canada Border Services Agency*, that a knife that opens quickly when a "flick of the wrist is accompanied by minimal manipulation of a flipper" [emphasis in original] opens automatically by centrifugal force.¹⁷

[21] The CBSA also indicated that the Linerlock mechanism only locks the blade once the knife has been deployed and that it has no bearing on the opening of the knife.¹⁸

¹³ Exhibit AP-2021-028-01 at 1.

¹⁴ *Ibid.* at 2-7.

¹⁵ Exhibit AP-2021-028-08.B at 8.

¹⁶ *Ibid.* at 11.

¹⁷ *Ibid.*, referring to *T. Laplante v. President of the Canada Border Services Agency* (16 November 2017), AP-2017-012 (CITT) [*T. Laplante*] at para. 29.

¹⁸ Exhibit AP-2021-028-08.B at 11.

[22] The CBSA finally argues that, although Mr. Reshetnyak stated that similar goods are sold across various Canadian stores, this consideration is irrelevant to whether the good was properly classified as a weapon.¹⁹

ANALYSIS

Burden of proof

[23] Subsection 152(3) of the Act imposes a legal burden on Mr. Reshetnyak to show that the good in issue is incorrectly classified under tariff item No. 9898.00.00 as a prohibited weapon.²⁰

[24] In appeals filed pursuant to subsection 67(1) of the Act, the Tribunal has applied the test in *Hickman Motors Ltd. v. Canada*,²¹ where the Supreme Court of Canada provided that an appellant may meet this burden, at least initially, by putting forward a *prima facie* case.²² The Tribunal has held that, where the appellant has no access to the item because it has been seized and detained by the CBSA, a written description of how the knife opens is sufficient to show a *prima facie* case.²³

[25] Mr. Reshetnyak's submissions addressed the characteristics of the knife and provided a brief description of how the knife opens and operates. As such, the Tribunal finds that Mr. Reshetnyak showed a *prima facie* case and, by extension, has discharged the required burden of proof.

Whether the good in issue is a prohibited weapon

[26] To determine whether the good in issue is properly classified as a prohibited weapon under tariff item No. 9898.00.00, the relevant definition is that of paragraph 84(1)(a) of the *Criminal Code*. Accordingly, the good in issue is a prohibited weapon if the 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.

[27] The Tribunal has held that a knife is considered to open automatically if the blade opens with either minimal manipulation of a thumb stud or by a quick outward flick of the wrist.²⁴ The Tribunal has similarly held that "automatically", within the context of paragraph 84(1)(a) of the *Criminal Code*, means "largely or wholly involuntarily" and that minimal manipulation does not negate the

¹⁹ *Ibid.* at 10.

²⁰ *J. Humber v. President of the Canada Border Services Agency* (13 December 2019), AP-2018-062 (CITT) [*J. Humber*] at para. 83, citing *Digital Canoe Inc. v. President of the Canada Border Services Agency* (22 August 2016), AP-2015-026 (CITT) at para. 15 and *Canada (Border Services Agency) v. Miner*, 2012 FCA 81 at paras. 7, 21.

²¹ *Hickman Motors Ltd. v. Canada*, [1997] 2 S.C.R. 336.

²² See, for example, *Schlumberger Canada Limited v. President of the Canada Border Services Agency* (21 June 2017), AP-2015-022 (CITT) at para. 34; *BSH Home Appliance Ltd. v. President of the Canada Border Services Agency* (27 October 2014), AP-2013-057 (CITT) at para. 29.

²³ *J. Humber* at para. 89.

²⁴ *T. Brown v. President of the Canada Border Services Agency* (17 June 2019), AP-2018-020 (CITT) [*T. Brown*] at para. 25.

automaticity of the opening of the blade.²⁵ In other words, “automatically” does not mean completely without human intervention.

[28] The Tribunal has also held that a knife will be considered to open automatically by centrifugal force when it opens by “a flick of the wrist . . . accompanied with minimal manipulation by the thumb of either the flipper or other non-edged parts of the blade”²⁶ and that a knife “may still open automatically by centrifugal force even if it requires some preliminary or simultaneous manipulation of a flipper or part of the blade.”²⁷

[29] In the present case, the evidence submitted by the CBSA clearly demonstrates that the knife opens quickly and locks into position after hand pressure is exerted upon the thumb stud and the wrist holding the knife swiftly flicks outwards.²⁸ Moreover, the Tribunal finds that the Linerlock mechanism has no bearing on the opening of the knife, as it only locks the blade once the knife has been deployed.

[30] As noted by the CBSA, the good in issue is similar to the knife in *T. Brown*, where the Tribunal found that a knife opened automatically when the manipulation of a thumb stud on the blade was accompanied by a flick of the wrist.²⁹ In that case, the Tribunal found this to indicate that the knife opened automatically by centrifugal force.³⁰

[31] In light of the above, the Tribunal is of the view that the good in issue is properly classified as a prohibited weapon under tariff item No. 9898.00.00.

Other considerations

[32] The Tribunal has consistently held that the sale, the availability, or the presence of similar goods within Canada has no bearing on whether goods are prohibited weapons and barred from importation into Canada.³¹ Accordingly, Mr. Reshetnyak’s argument that goods with similar mechanisms are available for purchase in Canada is not a relevant consideration for the classification of the good in issue under tariff item No. 9898.00.00.³²

²⁵ *M. Abbas v. President of the Canada Border Services Agency* (29 November 2019), AP-2018-060 (CITT) at para. 53, citing *La Sagesse de l’Eau v. President of the Canada Border Services Agency* (13 November 2012), AP-2011-040 and AP-2011-041 (CITT) at paras. 46–48.

²⁶ *T. LaPlante* at para. 29.

²⁷ *T. LaPlante* at para. 31, referring to *Digital Canoe Inc. v. President of the Canada Border Services Agency* (22 August 2016), AP-2015-026 (CITT) at paras. 13–15.

²⁸ See Exhibit AP-2021-028-08.A.

²⁹ Exhibit AP-2021-028-08.B at 13, referring to *T. Brown* at para. 25.

³⁰ *T. Brown* at para. 26.

³¹ *J. Humber* at para. 88, citing *Ivan Hoza v. President of the Canada Border Services Agency* (6 January 2010), AP-2009-002 (CITT) at para. 30; *Romain L. Klaasen v. President of the Canada Border Services Agency* (18 October 2005), AP-2004-007 (CITT) at paras. 6–7.

³² Exhibit AP-2021-028-01 at 2–7.

DECISION

[33] For the above reasons, the appeal is dismissed.

Cheryl Beckett

Cheryl Beckett
Presiding Member