



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2020-022

B. Shaw

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, September 7, 2021*

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DECISION 5

IN THE MATTER OF an appeal heard on June 8, 2021, 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 28, 2020, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

B. SHAW

Appellant

AND

THE PRESIDENT OF THE CANADA BORDER SERVICE AGENCY Respondent

DECISION

The appeal is dismissed.

Randolph W. Heggart

Randolph W. Heggart

Presiding Member

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	June 8, 2021
Tribunal Panel:	Randolph W. Heggart, Presiding Member
Support Staff:	Isaac Turner, Counsel Nadja Momcilovic, Student-at-law

PARTICIPANTS:

Appellant	Counsel/Representative
B. Shaw	Bernie Shaw
Respondent	Counsel/Representative
President of the Canada Border Services Agency	Marshall Jeske

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STATEMENT OF REASONS

BACKGROUND

[1] This is an appeal filed by Mr. B. Shaw with the Canadian International Trade Tribunal pursuant to subsection 67(1) of the *Customs Act*¹ from a decision made by the President of the Canada Border Services Agency (CBSA) dated October 28, 2020, pursuant to subsection 60(4) of the *Act*.

[2] At issue is whether the Todd Begg Steelcraft Series flipper knife (the good in issue) imported by Mr. Shaw 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 September 1, 2020, the CBSA detained the good in issue.⁴

[4] On September 2, 2020, the CBSA determined that the good in issue was a prohibited weapon within the meaning of tariff item No. 9898.00.00 and denied its importation into Canada.⁵

[5] On October 7, 2020, the CBSA received Mr. Shaw's request for re-determination pursuant to subsection 60(1) of the *Act*.

[6] On October 28, 2020, the CBSA issued a decision that maintained the classification of the good in issue as a prohibited weapon pursuant to subsection 60(4) of the *Act*.⁶

[7] On November 30, 2020, Mr. Shaw appealed to the Tribunal pursuant to subsection 67(1) of the *Act*.⁷

[8] On June 8, 2021, 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*.⁸

DESCRIPTION OF THE GOOD IN ISSUE

[9] The good in issue is a Todd Begg Steelcraft Series flipper knife. The knife is nine inches long when open, and five inches long when closed.

[10] The good features a protrusion or flipper that is connected to the spine of the blade. When the blade is in the closed position, the application of hand pressure to the flipper causes it to open to a fully extended and locked position.

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

² S.C. 1997, c. 36.

³ R.S.C., 1985, c. C-46.

⁴ Exhibit AP-2020-022-11 at 12.

⁵ *Ibid.* at 14-15.

⁶ *Ibid.* at 17-19.

⁷ Exhibit AP-2020-022-01.

⁸ SOR/91-499.

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*⁹ do not apply. Furthermore, note 1 to Chapter 98 of the schedule to the *Customs Tariff* provides that “Goods which are described in any provision of Chapter 98 are classifiable in the said provision if the conditions and requirements thereof and of any applicable regulations are met”.

[14] The question of whether the good in issue is properly classified under tariff item No. 9898.00.00 must therefore be determined according to the terms of that tariff item and the applicable provisions of the *Criminal Code*.

[15] Tariff item No. 9898.00.00 prescribes that “prohibited weapon” has the same meaning as in subsection 84(1) of the *Criminal Code*, which defines “prohibited weapon” as follows:

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*)

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

⁹ S.C. 1997, c. 36, schedule.

PARTIES' POSITIONS

B. Shaw

[17] Mr. Shaw submitted that he did not know the good in issue could be opened with one hand, but rather that he purchased it based on the craftsman's reputation. Mr. Shaw noted that returning the knife is not an option seeing as it is partially custom-made and that, even if it were possible, returning the knife by way of bonded courier is cost prohibitive.

[18] Mr. Shaw further submitted that the decision to classify the good in issue as a prohibited weapon was not impartial. He argued that quoting the *Criminal Code* and denying his arguments as not valid is not impartial. Mr. Shaw submitted that he does not understand how a person with accessibility issues poses a threat to society using a knife that opens with one hand. As part of this argument, Mr. Shaw also expressed concerns about his civil liberties being reduced.

CBSA

[19] The CBSA submitted that Mr. Shaw 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. The CBSA contended that Mr. Shaw did not file evidence or a brief, and the characteristics of the good in issue were not addressed in the limited submissions that were contained in his letter of November 10, 2020. The CBSA argued that these submissions do not provide a basis upon which the Tribunal could determine that the CBSA's classification was incorrect. The CBSA further argued that although Mr. Shaw states that he did not know that the knife could be opened with one hand and that returning the knife would be cost prohibitive, these considerations are not related to the knife's classification as a prohibited weapon.

[20] The CBSA further submitted that, in any event, the classification of the good in issue as a prohibited weapon is in accordance with the applicable statutory framework and previous decisions of the Tribunal. The CBSA argued, in particular, that in *M. Abbas*, the Tribunal found that a knife with a very similar flipper had been properly classified as a prohibited weapon.¹⁰ According to the CBSA, the good in issue is a knife with a blade that opens automatically by hand pressure applied to a device in or attached to the handle. The CBSA made three arguments in respect of this submission. First, for the blade to open, the user of the knife need only apply minimal pressure to the flipper located on the spine of the blade, which, when closed, protrudes from the handle. Second, the clear purpose of the flipper is to open the blade and that, consequently, the flipper falls within the Tribunal's definition of device. Third, the flipper passes through, and rests within, the slot-like aperture in the handle.

¹⁰ *M. Abbas* (29 November 2019), AP-2018-060 (CITT) [*M. Abbas*].

ANALYSIS

Burden of proof

[21] Subsection 152(3) of the *Act* imposes a legal burden on Mr. Shaw to show that the good in issue is incorrectly classified under tariff item No. 9898.00.00 as a prohibited weapon.¹¹

[22] In appeals filed pursuant to subsection 67(1) of the *Act*, the Tribunal has applied¹² the test in *Hickman*, wherein the Supreme Court of Canada provides that an appellant may meet this burden, at least initially, by putting forward a *prima facie* case.¹³ 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.¹⁴

[23] Mr. Shaw's submissions did not address the characteristics of the knife nor provide a description of how the knife opens and operates. As such, the Tribunal finds that Mr. Shaw did not show a *prima facie* case and, by extension, has not discharged the aforementioned burden of proof.

Whether the good in issue is a prohibited weapon

[24] In order 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.

[25] The Tribunal has held that a knife is considered to open automatically if the blade opens as a result of hand pressure on a device with minimal manipulation.¹⁵ 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 automaticity of the opening of the blade.¹⁶ In other words, "automatically" does not mean completely without human intervention.

[26] With respect to the question of whether a knife has a "button, spring or other device in or attached to the handle," a device is broadly defined in the Tribunal's jurisprudence as "a thing made or adapted for a particular purpose" or "a piece of equipment or a mechanism designed to serve a special purpose or perform a special function."¹⁷

¹¹ *J. Humber* (13 December 2019), AP-2018-062 (CITT) [*J. Humber*] at para. 83 (citing *Digital Canoe Inc.* [22 August 2016], AP-2015-026 [CITT] at para. 15 and *Canada [Border Services Agency] v. Miner*, 2012 FCA 81 at paras. 7, 21).

¹² See, for example, *Schlumberger Canada Limited* (21 June 2017), AP-2015-022 (CITT) at para. 34; *BSH Home Appliance Ltd.* (27 October 2014), AP-2013-057 (CITT) at para. 29.

¹³ *Hickman Motors Ltd. v. Canada*, [1997] 2 S.C.R. 336 [*Hickman*].

¹⁴ *J. Humber* at para. 89.

¹⁵ *M. Abbas* at para. 54, citing *T. Laplante v. President of the Canada Border Services Agency* (16 November 2017), AP-2017-012 (CITT) at paras. 25-28.

¹⁶ *Ibid.* at para. 53, citing *La Sagesse de l'Eau* (13 November 2012), AP-2011-040 and AP-2011-041 (CITT) [*La Sagesse de l'Eau*] at paras. 46-48.

¹⁷ *Ibid.* at para. 55 (citing *La Sagesse de l'Eau* at paras. 41-42; *Knife & Key Corner Ltd.* [14 September 2015], AP-2014-030 [CITT] at para. 30).

[27] In the present case, the evidence submitted by the CBSA clearly demonstrates that the application of hand pressure to the flipper on the good in issue causes the blade to open to a fully extended and locked position. It is also clear on the evidence that the purpose of the flipper is to open the knife and that the flipper is in the handle or attached to the handle of the knife.¹⁸

[28] As noted by the CBSA, the good in issue is similar to the knife in *M. Abbas*, wherein the Tribunal found that a knife opened automatically because once the opening of the blade was initiated by applying hand or finger pressure, the flipper was displaced over a short distance, but the blade as a whole was propelled to travel rapidly over an arc spanning 180 degrees and then locked into an open position.¹⁹ In that case, the Tribunal also found that the flipper constituted a device that was in or attached to the handle of the knife.²⁰

[29] In light of the above, the Tribunal is of the view that, irrespective of the finding that the burden of proof has not been discharged, the good in issue is properly classified as a prohibited weapon under tariff item No. 9898.00.00.

Other considerations

[30] The Tribunal has held 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.²¹ Accordingly, Mr. Shaw's argument that he did not know the knife was one-hand opening and that returning the knife would be expensive are not relevant considerations.

DECISION

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

Randolph W. Heggart

Randolph W. Heggart

Presiding Member

¹⁸ Exhibit AP-2020-022-11 at 3-4; Exhibit AP-2020-022-11A.

¹⁹ *M. Abbas* at paras. 70-73.

²⁰ *Ibid.* at paras. 82-83.

²¹ *Ibid.* at para. 56.