



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

---

## DECISION AND REASONS

Appeal AP-2021-026

O. Goodfellow

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Thursday, November 24, 2022*

**TABLE OF CONTENTS**

DECISION..... i

STATEMENT OF REASONS ..... 1

    BACKGROUND ..... 1

    PROCEDURAL HISTORY ..... 1

    DESCRIPTION OF THE GOODS IN ISSUE ..... 2

    LEGAL FRAMEWORK ..... 2

    POSITIONS OF THE PARTIES ..... 3

        O. Goodfellow ..... 3

        CBSA ..... 3

ANALYSIS..... 4

    Whether the goods in issue are prohibited weapons ..... 4

    Other considerations ..... 6

DECISION ..... 6

IN THE MATTER OF an appeal heard on August 18, 2022, pursuant to section 67 of the *Customs Act*;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated September 20, 2021, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**O. GOODFELLOW**

**Appellant**

**AND**

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

**Respondent**

**DECISION**

The appeal is dismissed.

Randolph W. Heggart

---

Randolph W. Heggart

Presiding Member

Place of Hearing: Ottawa, Ontario (File Hearing)  
Date of Hearing: August 18, 2022

Tribunal Panel: Randolph W. Heggart, Presiding Member

Tribunal Secretariat Staff: Nadja Momcilovic, Counsel  
Geneviève Bruneau, Registrar Officer  
Rekha Sobhee, Registrar Officer

**PARTICIPANTS:****Appellant**

O. Goodfellow

**Respondent**

President of the Canada Border Services Agency

**Counsel/Representative**

Sarah Rajguru

Please address all communications to:

The Deputy Registrar  
Telephone: 613-993-3595  
Email: [citt-tcce@tribunal.gc.ca](mailto:citt-tcce@tribunal.gc.ca)

## STATEMENT OF REASONS

### BACKGROUND

[1] This is an appeal filed by Mr. O. Goodfellow with the Canadian International Trade Tribunal pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> (the Act) from a decision made by the President of the Canada Border Services Agency (CBSA) dated September 20, 2021, pursuant to subsection 60(4) of the Act.

[2] At issue is whether three models of “Zero Tolerance” brand knives (the goods in issue) imported by Mr. Goodfellow are properly classified under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*<sup>2</sup> as prohibited weapons and therefore prohibited from importation into Canada pursuant to subsection 136(1) of the *Customs Tariff*.

### PROCEDURAL HISTORY

[3] On or around June 30, 2020, the goods in issue were imported by Mr. Goodfellow and detained by the CBSA for examination.<sup>3</sup>

[4] On March 23, 2021, the CBSA determined that the goods were prohibited weapons within the meaning of tariff item No. 9898.00.00 and denied their importation into Canada.<sup>4</sup>

[5] On June 23, 2021, Mr. Goodfellow requested a review of the tariff classification of the goods, pursuant to subsection 60(1) of the Act.<sup>5</sup>

[6] On September 20, 2021, the CBSA maintained its original determination and rejected the request, pursuant to subsection 60(4) of the Act.<sup>6</sup>

[7] On December 19, 2021, Mr. Goodfellow filed the present appeal under subsection 67(1) of the Act.<sup>7</sup>

[8] Having failed to file his appellant’s brief by March 7, 2022, the Tribunal followed up with Mr. Goodfellow on March 8 and on March 16, 2022, asking that he file his brief.

[9] On March 30, 2022, Mr. Goodfellow filed the appellant’s brief, which consisted of an email outlining his arguments.<sup>8</sup>

[10] On May 30, 2022, the CBSA filed the respondent’s brief.<sup>9</sup>

---

<sup>1</sup> R.S.C., 1985, c. 1 (2nd Supp.).

<sup>2</sup> S.C. 1997, c. 36.

<sup>3</sup> Exhibit AP-2021-026-08 at para. 3.

<sup>4</sup> *Ibid.* at para. 4, at 85–87.

<sup>5</sup> *Ibid.* at para. 5, at 92.

<sup>6</sup> *Ibid.* at para. 6, at 97–99.

<sup>7</sup> Exhibit AP-2021-026-01.

<sup>8</sup> Exhibit AP-2021-026-06 at 1.

<sup>9</sup> Exhibit AP-2021-026-08.

[11] On August 18, 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*.<sup>10</sup>

## DESCRIPTION OF THE GOODS IN ISSUE

[12] The goods in issue are three models of “Zero Tolerance” brand knives:

- (i) Knife #1: A Zero Tolerance folding knife, model ZT-0456, measuring 11.4 cm when closed and 19.6 cm when open;<sup>11</sup>
- (ii) Knife #2: A Zero Tolerance folding knife, model ZT-0462, measuring 13.3 cm when closed and 22.5 cm when open;<sup>12</sup> and
- (iii) Knife #3: A Zero Tolerance folding knife, model ZT-0055, measuring 12.7 cm when closed and 22.23 cm when open.<sup>13</sup>

[13] Each of the goods features a protrusion, or “flipper”/“flipper tab”. When the blade is in the closed position, the application of pressure by the thumb on the flipper causes the blade of the knife to open to a fully extended and locked position.<sup>14</sup>

## LEGAL FRAMEWORK

[14] 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.

[15] 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 . . .

[16] 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*<sup>15</sup> 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

---

<sup>10</sup> SOR/91-499.

<sup>11</sup> Exhibit AP-2021-026-08 at 4.

<sup>12</sup> *Ibid.* at 5.

<sup>13</sup> *Ibid.* at 6.

<sup>14</sup> *Ibid.* at para. 35; see also Exhibit AP-2021-026-08.A for CBSA video recordings of the goods in issue opening.

<sup>15</sup> S.C. 1997, c. 36, schedule.

classifiable in the said provision if the conditions and requirements thereof and of any applicable regulations are met.”

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

[18] Subsection 84(1) of the *Criminal Code* includes the following, in relevant part:

***prohibited weapon . . .***

(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 . . .

[19] In order to determine whether the goods in issue are properly classified as prohibited weapons 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 subsection 84(1) of the *Criminal Code*.

## POSITIONS OF THE PARTIES

### O. Goodfellow

[20] Mr. Goodfellow submitted that the knives do not open automatically because they require direct manipulation of the blade, whereas the “lockbar” ensures that the blade is locked into an open or closed position for safety purposes.<sup>16</sup>

[21] Mr. Goodfellow also argued that goods with similar locking mechanisms are available for purchase in Canada and that, accordingly, they cannot be illegal to import.<sup>17</sup>

### CBSA

[22] The CBSA submitted that Mr. Goodfellow has failed to satisfy the legal burden of showing that the CBSA was incorrect in classifying the goods in issue as prohibited weapons<sup>18</sup> and that the appeal could be dismissed on this basis alone.<sup>19</sup> The CBSA also submitted that Mr. Goodfellow did not file evidence or provide a basis upon which the Tribunal could determine that the CBSA’s classification was incorrect.

[23] The CBSA noted that the goods in issue each feature a flipper or flipper tab,<sup>20</sup> which, according to the Tribunal’s previous findings, constitute “devices” within the meaning of paragraph (a) of the definition of “prohibited weapon” under subsection 84(1) of the *Criminal*

---

<sup>16</sup> Exhibit AP-2021-026-06 at 1.

<sup>17</sup> *Ibid.*

<sup>18</sup> Exhibit AP-2021-026-08 at para. 11.

<sup>19</sup> *Ibid.* at para. 12.

<sup>20</sup> *Ibid.* at para. 20.

*Code*.<sup>21</sup> The CBSA further submitted that applying hand pressure to these devices causes the blades of the knives to quickly (i.e. automatically) extend and lock in an open position.<sup>22</sup>

[24] The CBSA finally argued that although Mr. Goodfellow stated that similar goods are available for purchase across Canada, this consideration is irrelevant to whether the goods were properly classified as a prohibited weapon.<sup>23</sup>

## ANALYSIS

### Whether the goods in issue are prohibited weapons

[25] In the present file, Mr. Goodfellow bears the burden of demonstrating that the CBSA incorrectly classified the goods in issue as prohibited weapons.<sup>24</sup>

[26] The key issue before the Tribunal is whether the goods in issue are prohibited weapons within the meaning of the definition of that expression found in subsection 84(1) of the *Criminal Code*. In the present appeal, this requires determining whether the goods in issue open 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] Neither party has argued that the goods in issue open automatically by gravity or by centrifugal force. Accordingly, the Tribunal need not consider the first part of the definition of prohibited weapon and will rather focus on whether the goods in issue open automatically by hand pressure applied to a button, spring or other device, as argued by the CBSA.<sup>25</sup>

[28] 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”.<sup>26</sup> In past cases, the Tribunal accepted that a flipper/flipper tab constitutes a device<sup>27</sup> and that a knife’s component (such as a flipper) may be considered as a device even if it “functions, *directly or indirectly*, in combination with other components of the knife to achieve the result of automatically opening the knife” [emphasis in original].<sup>28</sup>

[29] The CBSA submitted that the flipper/flipper tab on each of the goods in issue falls within the meaning of a device because applying minimal hand pressure to the flipper/flipper tab initiates the

---

<sup>21</sup> *Ibid.* at para. 20, referring to *B. Shaw v. President of the Canada Border Services Agency* (7 September 2021), AP-2020-022 (CITT) [*B. Shaw*] at para. 26; *D. Liu v. President of the Canada Border Services Agency* (22 November 2019), AP-2018-058 (CITT) [*D. Liu*] at para. 80; *Knife & Key Corner Ltd. v. President of the Canada Border Services Agency* (14 September 2015), AP-2014-030 (CITT) [*Knife & Key*] at para. 32.

<sup>22</sup> Exhibit AP-2021-026-08 at para. 35.

<sup>23</sup> *Ibid.* at para. 11.

<sup>24</sup> Subsection 152(3) of the Act. See, for example, *Canada (Border Services Agency) v. Milner*, 2012 FCA 81.

<sup>25</sup> Exhibit AP-2021-026-08 at para. 19.

<sup>26</sup> *M. Abbas v. President of the Canada Border Services Agency* (13 November 2019), AP-2018-060 (CITT) at para. 55, 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) [*La Sagesse de l’Eau*] at paras. 41–42; *Knife & Key* at para. 30.

<sup>27</sup> *D. Liu* at para. 80; *B. Shaw* at paras. 26–27.

<sup>28</sup> *D. Liu* at para. 78. See also *M. Abbas* at para. 79.



mechanism which allows the blade of the knives to rapidly deploy into a fully extended and locked position.<sup>29</sup>

[30] Having regard to the interpretation afforded to the word “device” in previous decisions,<sup>30</sup> the Tribunal finds that the flipper/flipper tab in each of the goods in issue constitutes a device.

[31] Concerning the issue of whether the device is “in or attached to the handle of the knife”, the Tribunal has previously found that a flipper/flipper tab is located in or attached to the handle of a knife when “pressing on the protrusion engages the torsion bar or spring system, which is integrated to the handle.”<sup>31</sup>

[32] On this point, the CBSA submitted that the tests performed on the goods in issue demonstrate that, when minimal hand pressure is applied to the protrusion of each of the knives, the flipper moves through the handle and engages the internal mechanism, which rapidly deploys and locks the blade in an open position.<sup>32</sup>

[33] The Tribunal finds that the device in each of the goods in issue is “in or attached to the handle of the knife” within the meaning of the definition of prohibited weapon in subsection 84(1) of the *Criminal Code*. In this regard, the operation of folding knives found to be prohibited weapons in previous Tribunal cases is analogous to the operation of the knives at issue in this appeal.<sup>33</sup>

[34] Finally, concerning the question of opening automatically, the Tribunal has, in the past, found this criterion to be satisfied if the blade of a knife opened automatically into an open and locked position by applying hand or finger pressure to the flipper.<sup>34</sup> The Tribunal similarly held that “automatically”, within the context of the definition of a “prohibited weapon” in subsection 84(1) of the *Criminal Code*, means “largely or wholly involuntarily” and that minimal manipulation does not negate the automaticity of the opening of the blade.<sup>35</sup> In other words, “automatically” does not mean completely without human intervention.

[35] The CBSA argues that, given that the goods in issue rapidly deploy following minimal manipulation (i.e. applying slight hand pressure on the flipper/flipper tab), the knives should be considered to open automatically.<sup>36</sup> For his part, Mr. Goodfellow argues that the goods in issue do not open automatically because the blade must be directly manipulated in order to open the knife.<sup>37</sup>

[36] In the present appeal, the evidence submitted by the CBSA clearly demonstrates that, in the case of all three knives, application of slight hand pressure to the flipper/flipper tab causes the blade

---

<sup>29</sup> Indeed, the CBSA argues that, in the case of each of the goods in issue, the flipper/flipper tab works in conjunction with other components of the knife (torsion bar or KVT ball bearings). The CBSA argues that applying minimal hand pressure to the flipper/flipper tab causes the blade of the knife to open automatically. See Exhibit AP-2021-026-08 at paras. 20–30.

<sup>30</sup> *D. Liu* at para. 80; *Knife & Key* at para. 32; *M. Abbas* at para. 83.

<sup>31</sup> *Knife & Key* at para. 42.

<sup>32</sup> Exhibit AP-2021-026-08 at para. 29.

<sup>33</sup> *Key & Corner* at paras. 41–43; *D. Liu* at para. 82.

<sup>34</sup> *M. Abbas*.

<sup>35</sup> *M. Abbas* at para. 53 (citing *La Sagesse de l’Eau* at paras. 46–48).

<sup>36</sup> Exhibit AP-2021-026-08 at paras. 33–34.

<sup>37</sup> Exhibit AP-2021-026-06 at 1.

to rapidly open to a fully extended and locked position.<sup>38</sup> Accordingly, the Tribunal finds that each of the goods in issue opens automatically by hand pressure applied to a device in or attached to the handle of the knife; in other words, the goods in issue answer the definition of “prohibited weapon” found in subsection 84(1) of the *Criminal Code*.

[37] In light of the above, the Tribunal finds that the goods in issue are properly classified as prohibited weapons under tariff item No. 9898.00.00.

### Other considerations

[38] 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.<sup>39</sup> Accordingly, Mr. Goodfellow’s argument that goods with similar mechanisms are available for purchase in Canada is not a relevant consideration for the classification of the goods in issue under tariff item No. 9898.00.00.<sup>40</sup>

### DECISION

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

Randolph W. Heggart

---

Randolph W. Heggart  
Presiding Member

---

<sup>38</sup> Exhibit AP-2021-026-08.A.

<sup>39</sup> *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.

<sup>40</sup> Exhibit AP-2021-026-06 at 1.