



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal AP-2020-010

J. Ward

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Friday, October 14, 2022*

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DECISION	15

IN THE MATTER OF an appeal heard on June 21, 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 May 27, 2020, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

J. WARD

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Frédéric Seppey

Frédéric Seppey
Presiding Member

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	June 21, 2022
Tribunal Panel:	Frédéric Seppey, Presiding Member
Tribunal Secretariat Staff:	Isaac Turner, Counsel Charlotte Saintonge, Student-at-law Kim Gagnon-Lalonde, Registrar Officer

PARTICIPANTS:**Appellant**

J. Ward

Respondent

President of the Canada Border Services Agency

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STATEMENT OF REASONS

INTRODUCTION

[1] Prior to December 30, 2019, Mr. J. Ward ordered two knives.¹ Upon importation to Canada, the knives were intercepted by the Canada Border Services Agency (CBSA) on December 30, 2019,² and detained on the ground that they were classified under tariff item No. 9898.00.00 of the Schedule to the *Customs Tariff* as “prohibited weapons” 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*.⁴

[2] Mr. Ward contested the CBSA’s seizure of the two knives, being of the view that they should not be considered as “prohibited weapons”. On March 17, 2020, the President of the CBSA received Mr. Ward’s request for a re-determination, pursuant to subsection 60(1) of the *Customs Act*.⁵ On May 27, 2020, the President of the CBSA maintained the original determination and rejected the request, pursuant to subsection 60(4) of the Act.⁶

[3] On August 17, 2020, Mr. Ward filed the present appeal under subsection 67(1) of the Act. In Mr. Ward’s view, the two knives should not be classified as “prohibited weapons” according to subsection 84(1) of the *Criminal Code*. He requested that the knives be released and sent to him.⁷

[4] For the reasons that follow, the appeal is dismissed. The two knives are properly classified under tariff item No. 9898.00.00 as “prohibited weapons”.

THE GOODS IN ISSUE

[5] The goods in issue consist of two knives: the first is the Kershaw knife and the second is the Cold Steel knife.

The Kershaw Knife

[6] The Kershaw Knife is a Kershaw Zing - Stainless folding knife⁸ that features a protrusion or “flipper” located on the spine of the blade, which passes through the handle of the knife when actuated. When the blade is in the closed position, the application of hand pressure to the flipper causes the blade to open to a fully extended and locked position. The knife also has a thumb stud on

¹ Exhibit AP-2020-010-29A at 8.

² Exhibit AP-2020-010-31 at 31.

³ R.S.C., 1985, c. C-46.

⁴ S.C. 1997, c. 36.

⁵ R.S.C., 1985, c. 1 (2nd Supp.) [Act].

⁶ Exhibit AP-2020-010-31 at 33–38.

⁷ Exhibit AP-2020-010-01.

⁸ There appeared to be disagreement with respect to the model of Kershaw knife, as different models were referenced by the appellant and respondent in the parties’ submissions. Mr. Ward referred to the Kershaw Cryo II folding knife and the CBSA referred to the Kershaw Zing - Stainless folding knife. As discussed below, the Tribunal had the opportunity to examine the actual knife in issue. Having done so, the Tribunal is of the view that the knife is a Kershaw Zing - Stainless folding knife. In any event, the name of the model of knife is not relevant to the Tribunal’s consideration of whether the knife should be classified as a prohibited weapon according to subsection 84(1) of the *Criminal Code*.

the blade and a clip on the handle. The knife uses a patented assisted opening action called “Assisted Speedsafe”, which uses a torsion bar to retain the blade closed and deploys the blade when triggered.

The Cold Steel Knife

[7] The Cold Steel Knife is a Cold Steel Spartan folding knife that has a blade that can deploy by applying pressure to a thumb plate located on the spine of the blade, while performing a centrifugal force movement, or a “quick flick of the wrist”. The thumb plate is also designed to catch on the edge of a pocket when the knife is drawn, which causes the blade to open into a locked position.

POSITIONS OF THE PARTIES

J. Ward

[8] Mr. Ward submits that the CBSA has erroneously classified the goods in issue as prohibited weapons under subsection 84(1) of the *Criminal Code*.⁹ He argues that such a classification, and previous Tribunal findings, go further than the standard test upheld by the Supreme Court of Canada for determining if a knife is prohibited.¹⁰ Mr. Ward argues that the Tribunal relies on a test based on its “own subjective interpretation” of selective elements of the *Criminal Code*, namely subsection 84(1), without considering the context provided by other provisions of the *Criminal Code* and the case law of the Supreme Court of Canada and courts of other jurisdictions.¹¹

[9] Mr. Ward expresses the view that there is a two-step test that must be applied to determine if an item is a prohibited weapon. According to Mr. Ward, the first step is to prove that the item is a weapon, and the second step is to determine whether that weapon is prohibited.¹² Mr. Ward submits, as evidence, photos of knives that are not the subject of this appeal and argues that these knives open automatically by the press of a button on the handle when centrifugal force is applied, but are not classified as weapons and are, therefore, not prohibited.¹³

[10] Mr. Ward submits that, although the Tribunal has clearly stated that “illicit” items being commercially available in Canada is not an excuse to justify their import, in this specific case it is a valid point. To this effect, Mr. Ward notes that the Kershaw and Cold Steel knives are sold commercially at sporting goods stores in Canada.¹⁴

⁹ Exhibit AP-2020-010-29A at 1.

¹⁰ Exhibit AP-2020-010-29A. In his submissions, Mr. Ward refers to *R. v. Archer*, (1983) 1983 CanLII 3510 (ON CA), 6 C.C.C. (3d) [*R. v. Archer*]. In that case, the Ontario Court of Appeal allowed the appeal of a conviction on a charge of possession of a prohibited weapon because it was not shown that the appellant had the necessary *mens rea*, which consisted in either knowledge or recklessness with respect to the characteristics of the knife in question, to constitute the offence, even though the knife was capable of being a prohibited weapon.

¹¹ Exhibit AP-2020-010-29A at 1–2.

¹² Exhibit AP-2020-010-29A at 3. The Tribunal notes that in the case cited by Mr. Ward to support this view, *R. v. Chan*, 2005 ONCJ 360 (CanLii), the Ontario Court of Justice found that the knife in issue opened by centrifugal force and therefore fit within the section 84(1) definition of a prohibited weapon, but that an item must fit the section 2 definition of “weapon” in addition to the section 84(1) definition before a conviction is warranted for possession of a prohibited weapon.

¹³ Exhibit AP-2020-010-29A at 3–5.

¹⁴ Exhibit AP-2020-010-29A at 2.

[11] Mr. Ward states that, in his view, these knives are uncategorized (as opposed to being non-restricted, restricted, or prohibited) under the *Criminal Code* and are simply not prohibited weapons.¹⁵ In support of this submission, Mr. Ward requested information from the Royal Canadian Mounted Police (RCMP) Firearms Lab (in his stated view, the reference body for establishing weapons classifications in Canada) which he claims indicates that the Kershaw Speedsafe knives have never been classified as prohibited weapons.¹⁶

[12] Mr. Ward argues that, based on the manufacturer's description, the Kershaw knife is designed as a tool and not a weapon.¹⁷ Mr. Ward similarly submits that he has clearly stated his intent to use these items as tools in his day-to-day functions as a police officer. Mr. Ward adds that members of the RCMP are authorized to carry pocketknives on their persons during their duties and that these knives are tools used for daily tasks such as cutting open exhibit bags or cutting seatbelts.¹⁸

[13] Mr. Ward submits that it would also be incorrect to classify a simple folding knife with a thumb stud on the blade as a prohibited weapon or centrifugal knife. There are many knives that may be "flicked" open from the closed position, and this does not make that knife prohibited. Mr. Ward argues that there are many instances where there could be inconsistencies in the manufacturing process, the assembly, or the maintenance of the knife that could affect how it opens under a "flick". Mr. Ward submits that the fact that a folding knife blade pivots out from the handle does not mean it should be classified as a centrifugal knife. Mr. Ward argues that any folding knife if hit, slapped, or flicked hard enough will overcome friction and the blade will open.¹⁹ Mr. Ward also argues that there is no clause or criteria in the *Criminal Code* definition of a prohibited weapon that asserts a knife capable of being opened by one hand makes it prohibited, nor is there any stipulation that a knife being quick to open makes it prohibited.²⁰

[14] Regarding the Kershaw knife in particular, Mr. Ward submits that the speed assist function does not make it a spring or centrifugal knife. Mr. Ward notes that Kershaw speed assist knives have a bias, commonly referred to as a torsion bar, inside the knife that works to both keep the blade closed and to assist the blade in opening. Mr. Ward argues that this mechanism is not referenced under the *Criminal Code* as prohibited, as opposed to springs.²¹ The blade on the Kershaw knife does not open automatically by the press of a button, gravity, or centrifugal force, but must instead be physically leveraged out of the handle. According to Mr. Ward, when leveraging the blade, one can flick their wrist and introduce centrifugal force to the opening process, but this is not required.²²

[15] In Mr. Ward's opinion, the thumb stud or protrusion on the rear of the blade of a knife is not attached to the handle, but rather the blade. Mr. Ward submits that the Tribunal has erred on this definition in previous rulings.²³ Mr. Ward similarly argues in his reply submission that a "flipper

¹⁵ Exhibit AP-2020-010-29A at 1–2.

¹⁶ Exhibit AP-2020-010-29A at 2. See also Exhibit AP-2020-010-29 at 14 (protected).

¹⁷ Exhibit AP-2020-010-29A at 5.

¹⁸ Exhibit AP-2020-010-29A at 6. The Tribunal notes that Mr. Ward also submitted a copy of a diploma certifying that he has completed the RCMP cadet training program, a letter from his supervisor indicating that he is a police officer and is authorized to carry folding pocketknives during the course of his duties as a police officer, and a curriculum vitae. Exhibit AP-2020-010-34A (protected).

¹⁹ Exhibit AP-2020-010-29A at 9–11.

²⁰ Exhibit AP-2022-010-34 at 9.

²¹ Exhibit AP-2020-010-29A at 2, 9. Mr. Ward submits, as evidence, a copy of a patent for a folding knife which he claims shows that there is no spring. Exhibit AP-2020-010-29A at 15.

²² Exhibit AP-2020-010-29A at 12.

²³ Exhibit AP-2020-010-29A at 11.

device” is part of the blade assembly and is not a button or device attached to the handle. In this respect, Mr. Ward notes that the Tribunal has dismissed appeals concerning Kershaw assisted opening knives that utilize a torsion bar and have a flipper but has allowed an appeal concerning a Kershaw assisted opening knife with a torsion bar and a thumb stud located on the blade. Mr. Ward asserts that the only difference between the two is that a “flipper” has been categorized as a prohibited device. He argues that there is no *Criminal Code* precedent to support this classification.²⁴

[16] Mr. Ward did not comment in detail on the characteristics of the Cold Steel knife in connection to the criteria for a prohibited weapon set out in subsection 84(1) of the *Criminal Code*.

[17] Finally, in his reply submission, Mr. Ward argues that the Tribunal has a vested interest in the CBSA. Mr. Ward alleges that this constitutes a conflict of interest and an inherent bias and is an affront to the principles of natural justice and a breach of procedural fairness. Mr. Ward submits, as an example, a sequence of events wherein the Tribunal rendered a decision that was consistent with a policy set out in a CBSA memorandum, which is now relied upon by the CBSA.²⁵

CBSA

[18] The CBSA submits that the goods in issue are both visibly knives with a blade and are advertised as such by the manufacturers. Accordingly, the CBSA’s submission focuses on whether the remaining criteria in subsection 84(1) of the *Criminal Code* are met for each of the goods in issue (i.e. whether the Kershaw knife opens automatically by hand pressure applied to a device and whether the Cold Steel knife opens automatically by centrifugal force).

[19] With respect to the Kershaw knife, the CBSA submits that the knife has a blade that opens automatically by hand pressure applied to an “other device”, a flipper. The CBSA argues that the video recording of the Kershaw knife opening shows that no further human manipulation is required for the blade to deploy once sufficient pressure has been applied to the flipper.²⁶ The CBSA also contends that the manufacturer’s website confirms the presence and functionality of the flipper and that it is designed to assist with quick opening of the knife.²⁷

[20] The CBSA submits that akin to the knife at issue in *La Sagesse de l’Eau*, once the flipper of the Kershaw knife passes through the handle, the opening mechanism is sufficiently strong to fully deploy the blade by itself, without the need of further human intervention.²⁸ The CBSA further argues that, as accepted by the Tribunal in *M. Abbas*, this type of “flipper” meets the definition of “other device” in or attached to the handle given its “raison d’être” is to cause the blade to open automatically when applying hand pressure to it.²⁹ In addition, the CBSA notes that the Tribunal has

²⁴ Exhibit AP-2020-010-34 at 9. Mr. Ward refers to *A. Cowan* (22 August 2017), AP-2016-046 (CITT) [*A. Cowan*]. In that case, the Tribunal found that the good in issue did not meet the definition of a prohibited weapon as found in the *Criminal Code* because the thumb stud was located in the blade and not in the handle or on it. The Tribunal further added that the stud was not intended to activate an opening mechanism, but rather to assist in a controlled deployment of the blade by the user.

²⁵ Exhibit AP-2020-010-34 at 2.

²⁶ Exhibit AP-2020-010-31 at paras. 25–26. See Exhibit AP-2020-010-31A for the CBSA’s video recording of the good in issue opening.

²⁷ Exhibit AP-2020-010-31 at para. 27.

²⁸ Exhibit AP-2020-010-31 at para. 26, referring to *La Sagesse de l’Eau* (13 November 2012), AP-2011-040 and AP-2011-041 (CITT) [*La Sagesse de l’Eau*] at para. 51.

²⁹ Exhibit AP-2020-010-31 at para. 28, referring to *M. Abbas* (29 November 2019), AP-2018-060 (CITT) [*M. Abbas*] at paras. 28, 82. See also *D. Liu* (22 November 2019), AP-2018-058 (CITT) at paras. 79–83.

found other similar knives which employ the same Kershaw Patented “Assisted Speedsafe” opening mechanism as the good in issue to be prohibited.³⁰

[21] The CBSA also submits, in reply to Mr. Ward’s argument that the Kershaw knife is designed as a tool and not a weapon, that the Tribunal in *J. Humber* found that a manufacturer’s intent when advertising the purpose of the goods has no bearing on whether its physical characteristics meet the definition of “prohibited weapon”, for the purposes of tariff classification.³¹

[22] Regarding the Cold Steel knife, the CBSA submits that the knife has a blade that opens automatically by centrifugal force. The CBSA argues that the video recording of the knife opening shows that when pressure is applied to the thumb plate, while performing a centrifugal movement or wrist flick, the blade deploys rapidly and automatically into a fully extended and locked position, with one simultaneous and single-handed movement.³² The CBSA contends that this functionality is confirmed by the manufacturer’s website, which describes the knife as a “one handed opener” knife, capable of opening its blade rapidly when applying pressure to a thumb plate.³³

[23] The CBSA argues that in *T. Laplante*, the Tribunal found a knife with a similar opening mechanism to the Cold Steel knife was prohibited within the meaning of subsection 84(1) of the *Criminal Code*. In that case, the Tribunal found that the knife opened “automatically by centrifugal force” since a “gentle push of thumb stud”, along with a “slight flip of the wrist”, caused the blade to fully open in the locked position and notes that, as is the case with the Cold Steel knife, this could be accomplished in “one simultaneous, single-handed movement with the wrist, thumb and forefinger”.³⁴

[24] The CBSA argues that the Cold Steel knife was designed to be opened quickly. In *J. Humber*, the Tribunal noted that the design intent of the opening methods, and whether they are designed to facilitate rapid deployment, is relevant in determining whether a knife opens “automatically”.³⁵ The CBSA notes that the marketing materials for the Cold Steel knife specifically state that the opening mechanisms are designed to allow opening at “lightning speed”.³⁶

[25] In addition to the above, the CBSA submits that Mr. Ward has not submitted evidence to establish that he is importing the goods in issue in the course of employment or under the authority of a police force. The CBSA argues that the fact that an individual is employed as a police officer does not, on its own, allow importation of prohibited weapons. Rather, the officer must be acting in the course of their “duties or employment” or under “the authority of the police force”.

³⁰ Exhibit AP-2020-010-31 at para. 30, citing the following cases: *R.S. Abrams* (21 December 2016), AP-2016-004 (CITT) [*R.S. Abrams*] at para. 24; *Digital Canoe Inc* (22 August 2016), AP-2015-026 (CITT) [*Digital Canoe*] at paras. 21–25.

³¹ Exhibit AP-2020-010-31 at para. 31, referring to *J. Humber* (13 December 2019), AP-2018-062 (CITT) [*J. Humber*] at para. 63.

³² Exhibit AP-2020-010-31 at para. 36. See Exhibit AP-2020-010-31A for the CBSA’s video recording of the good in issue opening.

³³ Exhibit AP-2020-010-31 at para. 37.

³⁴ Exhibit AP-2020-010-31 at para. 38, citing *T. LaPlante* (16 November 2017), AP-2017-012 (CITT) [*T. LaPlante*] at paras. 29–30.

³⁵ Exhibit AP-2020-010-31 at para. 39, referring to *J. Humber* at para. 78.

³⁶ Exhibit AP-2020-010-31 at para. 39.

[26] The CBSA notes that its policy regarding the exclusion in tariff item No. 9898.00.00 states as follows:

146. Public officers acting in the course of their duties, and individuals acting on behalf of and under the authority of a domestic police force, the Canadian Armed Forces, a visiting force, or of a federal or provincial department may import prohibited weapons or devices, or move them in transit through Canada. *Their importation must be for official business. Firearms licences, authorizations, permits or registration certificates are not required, but proof of official status and approval from the public officer's superior(s) must be confirmed. Public officers or other such individuals cannot import prohibited weapons or devices by mail.*³⁷

[Emphasis added]

[27] The CBSA argues that while the Tribunal is not bound by this policy, it is instructive in setting out the kind of documentation that could establish that Mr. Ward falls within this exclusion. The CBSA submits that in addition to not providing proof of his official status, approval from his superior(s) for importation of the goods, or any other evidence that the goods are required for official police purposes, Mr. Ward has sought to import these items to himself by mail, in his personal capacity, to his personal residential address.³⁸

[28] Lastly, the CBSA submits that the mere fact that Mr. Ward does not intend to use the goods as weapons is irrelevant for the purposes of tariff classification and that tariff classification of the goods is not contingent on intent or the good faith of the person seeking to import the knives. The CBSA further submits, in reply to submissions made by Mr. Ward, that the availability of similar goods within Canada and the practices of police forces regarding prohibited weapons are irrelevant to tariff classification. The CBSA also asserts that Mr. Ward's statement that "the RCMP Firearms Lab have never classified the Kershaw Speedsafe knives as prohibited" is misleading, as the letter simply states that no records were found that were responsive to Mr. Ward's request.³⁹

PRELIMINARY MATTER: ALLEGATIONS THAT THE TRIBUNAL DOES NOT RESPECT NATURAL JUSTICE PRINCIPLES AND IS BIASED TOWARDS THE CBSA

[29] Before proceeding with the analysis of the substantive arguments presented by the parties, the Tribunal deems it necessary to address Mr. Ward's allegations that "the Tribunal has a vested interest in the CBSA and its actions" and that the Tribunal's previous rulings and decisions constitute "an affront to the principles of Natural Justice and a breach of procedural fairness". At times through his submissions, Mr. Ward seemed to believe that the decision of the Tribunal in the present case had already been made.⁴⁰

[30] The Tribunal is an impartial and independent quasi-judicial body, mandated by Parliament to, among other things, hear and determine appeals made to the Tribunal under the *Customs Act* by

³⁷ Exhibit AP-2020-010-31 at para. 44, citing Memorandum D19-13-2 "Importing and Exporting Firearms, Weapons and Devices" of the CBSA.

³⁸ Exhibit AP-2020-010-31 at para. 45.

³⁹ Exhibit AP-2020-010-31 at para. 51.

⁴⁰ For example, the appellant calls on the Tribunal to "reverse their classification of the two seized knives as prohibited weapons" (Exhibit AP-2020-010-29A at 7). Similarly, the appellant states that the Tribunal's decision was reached in a matter that "contravenes the applicable principles of procedural fairness" (Exhibit AP-2020-010-34 at 1).

persons aggrieved by a decision of the CBSA. The principles of natural justice are an integral part of the procedural and legal framework in which the Tribunal operates. In all its mandates, including appeals of decisions of the CBSA made under the Act, the Tribunal gives each party an opportunity to submit evidence, present its views and respond to other parties before it makes a final decision. Finally, the Tribunal member (or members) seized of the particular case makes their decision based on the evidentiary record and the arguments of the parties, and provides reasons for that decision.

[31] Further, the Tribunal is a court of record⁴¹ and its members take an oath upon assuming office. The jurisprudence recognizes the solemnity of taking an oath as reinforcing the presumption of impartiality.⁴²

[32] The test for reasonable apprehension of bias is whether a reasonably informed person, having knowledge of all relevant circumstances, would think that it is more likely than not that the decision-maker, whether consciously or not, would not decide the matter fairly.⁴³ In doing so, the person must view the situation from a realistic and practical standpoint.

[33] Bias has been defined as follows:

. . . a leaning, inclination, bent or predisposition towards one side or another or a particular result. In its application to legal proceedings, it represents a predisposition to decide an issue or cause in a certain way which does not leave the judicial mind perfectly open to conviction. Bias is a condition or state of mind which sways judgment and renders a judicial officer unable to exercise his or her functions impartially in a particular case.⁴⁴

[34] A party alleging apprehension of bias bears the burden of rebutting the presumption that the adjudicator will act impartially. The presumption is not rebutted by suspicions, insinuations, conjecture, impressions or opinions.⁴⁵ The challenge must rest on serious and substantial grounds and be supported by cogent evidence.⁴⁶

[35] Mr. Ward has advanced no grounds, much less evidence, indicating that the undersigned is unable to bring an impartial mind to the proceedings. The argument is entirely speculative. Hence, the Tribunal will not consider any further this aspect of Mr. Ward's argument and will focus its analysis on the substantive arguments presented by the parties.

⁴¹ Subsection 17(1) of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.).

⁴² *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484 at paras. 116–117; *Lee v. Canada (Citizenship and Immigration)*, 2011 FC 617 at para. 14; *Sanofi-Aventis Canada Inc. v. Novopharm Limited*, 2006 FC 1473 at para. 24.

⁴³ *Wewaykum Indian Band v. Canada*, 2003 SCC 45 [Wewaykum] at para. 60.

⁴⁴ *Wewaykum* at para. 58. Also see *R. v. S. (R.D.)* at para. 106.

⁴⁵ *Agnaou v. Canada (Attorney General)*, 2014 FC 850 at para. 47.

⁴⁶ *Gulia v. Canada (Attorney General)*, 2021 FCA 106 at para. 23.

LEGAL FRAMEWORK

[36] Subsection 136(1) of the *Customs Tariff* provides as follows:

<p>The importation of goods of tariff item No. 9897.00.00, 9898.00.00 or 9899.00.00 is prohibited.</p>	<p>L'importation des marchandises des n^{os} tarifaires 9897.00.00, 9898.00.00 ou 9899.00.00 est interdite.</p>
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[37] Tariff item No. 9898.00.00 provides as follows:

<p>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, but does not include the following:</p>	<p>Armes à feu, armes prohibées, armes à autorisation restreinte, dispositifs prohibés, munitions prohibées et éléments ou pièces conçus exclusivement pour être utilisés dans la fabrication ou l'assemblage d'armes automatiques, désignés comme « marchandises prohibées » au présent numéro tarifaire, sauf :</p>
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<p>(a) prohibited goods imported by</p> <p>(i) a public officer in the course of the public officer's duties or employment,</p> <p>(ii) an individual on behalf of and under the authority of a police force, . . .</p>	<p>a) les marchandises prohibées importées par l'une ou l'autre des personnes suivantes :</p> <p>(i) un fonctionnaire public dans le cadre de ses fonctions,</p> <p>(ii) un particulier pour le compte et sous les ordres d'une force policière, [...]</p>
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<p>For the purposes of this tariff item,</p>	<p>Pour l'application du présent numéro tarifaire :</p>
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<p>. . .</p>	<p>[...]</p>
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<p>(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;</p> <p>(c) "public officer" has the same meaning as in subsection 117.07(2) of the Criminal Code; . . .</p>	<p>b) « arme à autorisation restreinte », « arme à feu à autorisation restreinte », « arme à feu prohibée », « arme automatique », « arme prohibée », « dispositif prohibé », « munitions prohibées » et « permis » s'entendent au sens du paragraphe 84(1) du Code criminel;</p> <p>c) « fonctionnaire public » s'entend au sens du paragraphe 117.07(2) du Code criminel; [...]</p>
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[38] When dealing with the classification of goods under tariff item No. 9898.00.00, the *General Rules for the Interpretation of the Harmonized System*⁴⁷ do not apply.⁴⁸ As such, 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.

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

“Prohibited weapon” means	« arme prohibée »
(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 . . .	a) Couteau dont la lame s’ouvre automatiquement par gravité ou force centrifuge ou par pression manuelle sur un bouton, un ressort ou autre dispositif incorporé ou attaché au manche; [...]

[40] 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 the goods meet the above definition in subsection 84(1) of the *Criminal Code*.

[41] If the Tribunal determines that the goods in issue are prohibited weapons, the Tribunal must also determine whether the goods in issue are excluded from tariff item No. 9898.00.00 as prohibited goods that are imported (i) by a public officer in the course of the public officer’s duties or employment or (ii) an individual on behalf of and under the authority of a police force.

[42] In this regard, tariff item No. 9898.00.00 prescribes that “public officer” has the same meaning as in subsection 117.07(2) of the *Criminal Code*, which includes the following:

- (a) a peace officer;
- . . .
- (e) a person training to become a police officer or a peace officer under the control and supervision of
- (i) a police force . . .

ANALYSIS

[43] Appeals brought before the Tribunal under subsection 67(1) of the *Customs Act* are determined *de novo*.⁴⁹ This means that the Tribunal is not limited to reviewing the CBSA’s decision

⁴⁷ S.C. 1997, c. 36, schedule.

⁴⁸ Subsection 136(2) of the *Customs Tariff*.

⁴⁹ *Digital Canoe* at para. 15; *Danson Décor Inc. v. President of the Canada Border Services Agency* (6 September 2019) AP-2018-043 (CITT) [*Danson Décor*] at paras. 82–93.

for clear error or unreasonableness. The appeal is a new proceeding where the Tribunal must reach its own decision concerning the correct tariff classification of the goods in issue.

[44] 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.⁵⁰ That said, the appellant bears the legal burden of showing that the classification of the goods is incorrect.⁵¹

[45] It is also important to note that the Tribunal's jurisdiction in reviewing the question in dispute is very well defined. It is strictly limited to tariff classification.⁵² This means that, in the present case, the Tribunal must determine whether the goods in issue are correctly (or *a contrario*, incorrectly) classified under tariff item No. 9898.00.00 as prohibited weapons.

[46] In conducting this analysis, the Tribunal typically examines successively two questions. First, the Tribunal addresses a question of law, namely what test or criteria must be met in order for the goods in issue to be classified as prohibited weapons under tariff item No. 9898.00.00. Once this question of law is settled, the Tribunal must then determine, as a question of fact, whether the evidence demonstrates that the legal test has been met and, consequently, whether the goods in issue are correctly classified as prohibited weapons under tariff item No. 9898.00.00.

Question of law: Tariff item No. 9898.00.00 provides that “prohibited weapon” is defined the same as in subsection 84(1) of the *Criminal Code*

[47] With respect to the question of law mentioned above, a plain sequential reading of the relevant provisions of the *Custom Tariff* leaves little room for the Tribunal to deviate from its long-standing approach in determining the proper classification of goods as prohibited weapons:

- (a) Subsection 136(1) of the *Customs Tariff* prohibits the importation of goods classified under tariff item No. 9898.00.00;
- (b) Tariff item No. 9898.00.00 explicitly includes “prohibited weapons”;
- (c) The same tariff item specifies that the term “prohibited weapon” has the same meaning as in subsection 84(1) of the *Criminal Code*;
- (d) Subsection 84(1) of the *Criminal Code* defines “prohibited weapon”, in relevant part,⁵³ as follows:
 - (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.

⁵⁰ *Danson Décor* at paras. 82–93.

⁵¹ *J. Humber* at para. 45.

⁵² The Tribunal's jurisdiction is limited by subsection 67(1) of the Act, which provides that a person aggrieved by a decision of the President of the CBSA made under section 60 or 61 may appeal from the decision to the Tribunal. In this case, the decision under appeal relates to the tariff classification of the goods in issue.

⁵³ Paragraph (b), which defines a “prohibited weapon” as “any weapon, other than a firearm, that is prescribed to be a prohibited weapon”, is not relevant to this appeal.

[48] A careful review of Mr. Ward's submissions seems to indicate that the question in dispute arises between step (c) and step (d) described above. The CBSA states that the definition of "prohibited weapon" for the purpose of tariff item No. 9898.00.00 should be, *word for word*, the language found in subsection 84(1) of the *Criminal Code*. On the contrary, Mr. Ward suggests that the words found in subsection 84(1) must be understood in the context of how the *Criminal Code*, *as a whole*, has been interpreted – taking into account, *inter alia*, the definition of "weapon" in section 2 of the *Criminal Code*, subsection 88(1) on possession of a weapon for dangerous purpose, section 91 on unauthorized possession of weapons and the criminal law jurisprudence referring to *mens rea*. In other words, Mr. Ward argues that it is not sufficient for a knife to meet the definition set out in subsection 84(1) to be classified under tariff item No. 9898.00.00, but rather that it must first be considered a weapon in light of section 2 of the *Criminal Code*, other provisions of the *Criminal Code* and the criminal law jurisprudence. Mr. Ward's position is set out in one sentence found in his submission in reply to the respondent's brief: "The Criminal Code is the basis and authority from which Tariff item 9898.00.00 is derived."⁵⁴

[49] The Tribunal does not agree with Mr. Ward's position. Referring back to the analytical step-by-step process described above, put simply, if a knife meets the definition of a prohibited weapon found in subsection 84(1) of the *Criminal Code*, it must be classified under tariff item No. 9898.00.00 and its importation is prohibited (provided that it is not determined to be excluded by other portions of tariff item No. 9898.00.00).

[50] Tariff item No. 9898.00.00 uses the expression "prohibited weapon" and specifically refers to subsection 84(1) of the *Criminal Code* to provide a definition of what constitutes a "prohibited weapon" for the purpose of that tariff item. Subsection 84(1) of the *Criminal Code*, in turn, provides a precise definition of "prohibited weapon", as quoted above, with respect to certain types of knives. While other provisions of the *Criminal Code* may be relevant for interpreting other aspects of tariff item No. 9898.00.00,⁵⁵ the Tribunal finds no legal basis to take into account other provisions of the *Criminal Code* in determining whether the goods meet the relevant definition of a "prohibited weapon", as set out in subsection 84(1). The Tribunal cannot accept Mr. Ward's arguments in this regard.

[51] The Tribunal will now analyze each good in issue to assess whether the evidence indicates that either of the goods has been incorrectly classified under tariff item No. 9898.00.00. The Tribunal will then also consider, if necessary, the applicability of the exclusion found in tariff item No. 9898.00.00 for the importation of prohibited weapons by individuals in the course of their employment or under the authority of a police force.

The Kershaw knife's blade opens automatically by hand pressure applied to a device attached to the handle of the knife

[52] In light of the previous section, it is clear 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

⁵⁴ Exhibit AP-2020-010-34 at 11.

⁵⁵ For example, tariff item No. 9898.00.00 provides, as noted in the legal framework section above, that "public officer" has the same meaning as in subsection 117.07(2) of the *Criminal Code*. It also provides that "weapon" has the same meaning as in section 2 of the *Criminal Code*.

other device in or attached to the handle of the knife.⁵⁶ The requirement that the knife open “automatically” modifies both categories of described mechanisms for opening of the knife.

[53] It is not alleged that the Kershaw knife opens automatically “by gravity or centrifugal force”. Accordingly, the question before the Tribunal is limited to the second branch of the definition of “prohibited weapon” set forth in subsection 84(1) of the *Criminal Code*, namely, whether the Kershaw knife opens “automatically” by hand pressure applied to a button, spring or other device in or attached to the handle of the knife.

[54] The Tribunal has previously 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.⁵⁷ The Tribunal has similarly held that “automatically”, within the context of 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.⁵⁸ In other words, “automatically” does not mean completely without human intervention.

[55] 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.”⁵⁹ As noted by the CBSA, in *M. Abbas*, the Tribunal determined that the protrusion/flipper device at issue was in or attached to the handle because it rested within an aperture of the handle and worked to release the mechanical tension generated within the handle, which served to retain the blade in a closed and locked position.⁶⁰

[56] In the present case, as described above, Mr. Ward asserts that the blade on the knife does not open automatically by the press of a button, gravity or centrifugal force, but must instead be physically leveraged out of the handle. Mr. Ward also argues that a “flipper device” is part of the blade assembly and is not a button or device attached to the handle.

[57] The evidence submitted by the CBSA clearly demonstrates that the application of hand pressure to the flipper of the Kershaw knife causes the blade to automatically open to a fully extended and locked position. It is likewise clear that the flipper is a device in the handle or attached to the handle of the knife, as it rests within an aperture of the handle of the knife when the blade is closed and that, when pressure is applied, it activates the torsion bar assisted-opening mechanism and opens the blade of the knife.⁶¹ The description of the knife on the manufacturer’s website further confirms the purpose of the flipper.⁶²

[58] The Tribunal also conducted its own examination of the Kershaw knife, which included opening and closing the knife several times. In doing so, the undersigned took particular note of how easily the blade opened when hand pressure was applied to the flipper.

⁵⁶ See, for example, *J. Humber* at para. 51, *Digital Canoe* at para. 16; *Knife & Key Corner Ltd. v. President of the Canada Border Services Agency* (14 September 2015), AP-2014-030 (CITT) [*Knife & Key*] at para. 20.

⁵⁷ *M. Abbas* at para. 54, citing *T. LaPlante* at paras. 25–28.

⁵⁸ *Ibid.* at para. 53, citing *La Sagesse de l’Eau* at paras. 46–48.

⁵⁹ *Ibid.* at para. 55, citing *La Sagesse de l’Eau* at paras. 41–42; *Knife & Key* at para. 30.

⁶⁰ *M. Abbas* at para. 82.

⁶¹ Exhibit AP-2020-010-31A.

⁶² Exhibit AP-2020-010-31 at 21.

[59] Regarding Mr. Ward's argument that the torsion bar assisted-opening mechanism is not referenced under subsection 84(1) of the *Criminal Code*, as opposed to springs, the Tribunal notes that the presence of a spring is not a necessary condition to meet the definition of a "prohibited weapon" which provides, in relevant part, for "a button, spring or other device in or attached to the handle of the knife" [emphasis added].⁶³ In this respect, the Tribunal recalls, as noted by the CBSA, that the Tribunal has in previous cases found knives with similar mechanisms to be prohibited weapons. The Tribunal also notes that it has previously found that, as it is located within the handle, a torsion bar assisted-opening mechanism could fall within the definition of a device where it operates to open the blade of a knife via hand pressure applied to a protrusion or flipper.⁶⁴

[60] With respect to Mr. Ward's submission that the Tribunal has dismissed appeals concerning Kershaw assisted opening knives that have a torsion bar and a flipper but allowed an appeal concerning a Kershaw assisted opening knife with a torsion bar and a thumb stud located on the blade, the Tribunal notes that the knife in the latter case presented distinguishable characteristics. In *A. Cowan*, the Tribunal found that the thumb stud was located on the blade and not in the handle or on it and that "[t]he stud [was] not specifically intended to activate an opening mechanism, but rather [assist] in a controlled deployment of the blade by the user."⁶⁵ In the present case, the flipper is in or attached to the handle and offers no such control in relation to the deployment of the blade.

[61] Finally, regarding Mr. Ward's submissions that the Kershaw knife is sold at sporting goods stores in Canada and is designed as a tool, not a weapon, the Tribunal notes that these are not relevant considerations for the purpose of determining the proper tariff classification of goods under the *Customs Tariff*. The Tribunal has consistently 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.⁶⁶

[62] In light of the above, the Tribunal finds that the Kershaw knife is properly classified as a prohibited weapon under tariff item No. 9898.00.00.

The Cold Steel knife's blade opens automatically by centrifugal force

[63] Mr. Ward's submissions are largely silent on why the Cold Steel knife is not properly classified as a "prohibited weapon" under tariff item No. 9898.00.00. Mr. Ward's appellant's brief notes that the Cold Steel knife is sold in sporting goods stores in Canada, but otherwise includes few references to this knife. Mentions of the Cold Steel knife in Mr. Ward's response to the CBSA's respondent's brief are limited to a description of the knife from the manufacturer's website and quotes from the CBSA's brief.

[64] The Tribunal reiterates that Mr. Ward bears the burden of demonstrating that the good in issue has not been properly classified by the CBSA. Subsection 152(3) of the Act imposes a legal

⁶³ The relevant definition of a prohibited weapon under subsection 84(1) of the *Criminal Code* reads: "(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 . . ." [emphasis added].

⁶⁴ *R.S. Abrams* at paras. 22, 24; *Digital Canoe* at paras. 19–20; *Knife & Key* at para. 33.

⁶⁵ *A. Cowan* at para. 32.

⁶⁶ *M. Abbas* at para. 56.

burden on Mr. Ward to show that the goods are incorrectly classified under tariff item No. 9898.00.00 as a prohibited weapon.⁶⁷

[65] Having regard to the arguments and evidence before it, the Tribunal finds that Mr. Ward has not discharged this burden.

[66] As noted above, 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. The requirement that the knife open “automatically” modifies both categories of described mechanisms for opening of the knife.

[67] It is not alleged that the Cold Steel knife opens “automatically” by hand pressure applied to a button, spring or other device in or attached to the handle of the knife. This being the case, the question before the Tribunal is limited to the first branch of the definition of “prohibited weapon”, set forth in subsection 84(1) of the *Criminal Code*, namely, whether the knife opens “automatically” by way of gravity or centrifugal force.

[68] The Tribunal has held that “centrifugal force” includes quick wrist movement, such as flicking of the wrist, which causes the knife to open automatically.⁶⁸ The Tribunal has also held 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.⁶⁹

[69] The evidence is clear that the Cold Steel knife opens automatically by centrifugal force with minimal manipulation. When hand pressure is applied to the thumb plate and the wrist holding the knife flicks outwards, the knife automatically opens into a fully extended and locked position. This can be accomplished using one hand and in a single motion.⁷⁰ The description of the knife on the manufacturer’s website also makes it clear that the knife was designed to operate as such.⁷¹

[70] The above evidence with respect to how the knife opens is corroborated by the Tribunal’s own detailed examination of the Cold Steel knife. In testing the knife, the undersigned was able to open the blade of the knife with little effort on the first attempt, simply by moving his hand away from his body.

[71] The Tribunal also notes, for the same reasons given in respect of the Kershaw knife above, that the fact that the Cold Steel knife may be sold at sporting good stores in Canada is not relevant for the purpose of determining the proper tariff classification of goods under the *Customs Tariff*.

[72] In light of the above, the Tribunal finds that the Cold Steel knife is properly classified as a prohibited weapon under tariff item No. 9898.00.00.

⁶⁷ *J. Humber* at para. 83, citing *Digital Canoe* at para. 15 and *Canada (Border Services Agency) v. Miner*, 2012 FCA 81 at paras. 7, 21.

⁶⁸ *J. Humber* at para. 56, citing as examples, *Wayne Ericksen* (3 January 2002), AP-2000-059 (CITT) and *R. Christie* (15 January 2014), AP-2012-072 (CITT) at para. 59.

⁶⁹ *T. Laplante* at para. 31, citing *Digital Canoe* at paras. 13–15.

⁷⁰ Exhibit AP-2020-010-31A.

⁷¹ Exhibit AP-2020-010-31 at 26.

The appellant did not import the goods in the course of his employment or under the authority of a police force

[73] In his submissions, Mr. Ward does not suggest that he imported the goods in the course of his employment as an RCMP officer. He rather justified his familiarity with knives of the type he attempted to import and his knowledge of what truly constitutes, in his view, a prohibited weapon, on his long-standing employment as an RCMP officer. These considerations are not relevant for the purpose of considering the applicability of the exclusion found in tariff item No. 9898.00.00.

[74] As submitted by the CBSA, the wording of the *Customs Tariff* is clear that the fact that an individual is employed as a police officer does not, on its own, allow them to import prohibited weapons. In order for the exclusion in tariff item No. 9898.00.00 to apply, in importing such goods, the individual must be acting in the course of their “duties or employment” or under “the authority of the police force”.

[75] While the evidence submitted by Mr. Ward makes it clear that he is a police officer and suggests that, once obtained, he would use the goods in issue as tools in his function as a police officer, it fails to establish that Mr. Ward imported the goods in the course of his employment or under the authority of a police force.⁷² The evidence submitted by the CBSA that Mr. Ward sought to import these items by mail, in his personal capacity, to his personal residential address supports this assessment.⁷³

[76] Accordingly, the Tribunal finds that the exclusion found in tariff item No. 9898.00.00 for the importation of prohibited weapons by individuals in the course of their employment or under the authority of a police force does not apply.

DECISION

[77] For the above reasons, the appeal is dismissed. The two knives in issue are properly classified as prohibited weapons under tariff item No. 9898.00.00.

Frédéric Seppey
Frédéric Seppey
Presiding Member

⁷² Exhibit AP-2020-010-034 at 19–23; Exhibit AP-2020-010-34A (protected).

⁷³ Exhibit AP-2020-010-31 at 31.