



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal AP-2021-037

K. Tang

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Friday, February 17, 2023*

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DECISION 5

IN THE MATTER OF an appeal heard on January 12, 2023, 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 December 21, 2021, made pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

K. TANG

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

Eric Wildhaber

Eric Wildhaber
Presiding Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: January 12, 2023
Tribunal Panel: Eric Wildhaber, Presiding Member
Tribunal Secretariat Staff: Isaac Turner, Counsel
Jennifer Mulligan, Expert Paralegal
Kim Gagnon-Lalonde, Registry Officer

PARTICIPANTS:

Appellant	Counsel/Representative
K. Tang	Self-represented
Respondent	Counsel/Representative
President of the Canada Border Services Agency	Maryse Piché Bénard

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STATEMENT OF REASONS

BACKGROUND

[1] This is an appeal filed by K. Tang 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 December 21, 2021, pursuant to subsection 60(4) of the Act.

[2] At issue is whether the Browning DA77 Hunter Series folding knife (the good in issue), imported by K. Tang, 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 May 1, 2021, the CBSA detained the good in issue upon importation. On the same day, 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.⁴

[4] On July 7, 2021, the CBSA received K. Tang's request for redetermination pursuant to subsection 60(1) of the Act.⁵

[5] On December 21, 2021, the CBSA issued a decision pursuant to subsection 60(4) of the Act that maintained the classification of the good in issue as a prohibited weapon.⁶

[6] On February 15, 2022, K. Tang appealed to the Tribunal pursuant to subsection 67(1) of the Act.⁷

[7] On January 12, 2023, 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

LEGAL FRAMEWORK

[8] 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.

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-2021-037-14 at 14–17.

⁵ *Ibid.* at 19.

⁶ *Ibid.* at 21–23.

⁷ Exhibit AP-2021-037-01.

⁸ SOR/91-499.

[9] 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”, “license”, “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* ...

[10] 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 “[g]oods 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.”

[11] 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*.

[12] 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 the term, in relevant part, as follows:

[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 ...

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

PARTIES’ POSITIONS

K. Tang

[14] K. Tang submitted that he has been collecting blades for approximately 20 years as a hobby. K. Tang submitted that he purchased the good in issue to add to his collection.

[15] K. Tang further noted in his submissions that he is 76 years old and suffers from serious health conditions. As a result, the Tribunal offered various accommodations to K. Tang with a view of attempting to facilitate his communications with the Tribunal and his understanding of the procedures in this matter.

⁹ S.C. 1997, c. 36, schedule.

CBSA

[16] The CBSA submitted that K. Tang had failed to satisfy the legal burden of showing that the CBSA incorrectly classified the good in issue as a prohibited weapon. The CBSA argued that the entirety of K. Tang's submissions is contained in his letter to the Tribunal dated February 15, 2022, and that these submissions do not discuss the relevant characteristics of the good. The CBSA argued that K. Tang's submissions regarding his knife collector hobby, his age and his health conditions are irrelevant to whether the good was properly classified as a prohibited weapon.

[17] The CBSA further submitted that, although the appeal could be dismissed on the basis of the above alone, the good in issue meets the definition of a prohibited weapon based on the plain wording of the *Criminal Code*, as well as various Tribunal decisions. The CBSA argued that, in *M. Abbas v. President of the Canada Border Services Agency*, the Tribunal considered a knife with a very similar flipper/protrusion mechanism and concluded that it had been properly classified as a prohibited weapon.¹⁰ According to the CBSA, the good is a knife with a blade that opens automatically by hand pressure applied to a device in or attached to the handle. In this respect, the CBSA submitted as follows: the knife opens automatically because the user needs only to apply minimal pressure to the protrusion/flipper for it to open; the clear purpose of the protrusion/flipper is to allow for easy opening of the blade, which, consequently, means that the protrusion/flipper falls within the Tribunal's definition of device; and the protrusion/flipper passes through, and rests within, the slot-like aperture in the handle.

ANALYSIS

The appellant did not meet his burden of proof

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

[19] K. Tang did not meet this burden. The objections that he raised to the CBSA's decision pertain to his personal situation only; they do not provide evidence or argument as to why the Tribunal should consider classifying the good elsewhere in the tariff nomenclature, or otherwise than the CBSA has. This is sufficient to dispose of this matter, and the Tribunal does so on that basis. The Tribunal nevertheless offers the analysis that follows for comprehensiveness.

The good in issue is a prohibited weapon

[20] The Tribunal examined and manipulated the good in issue and came to the following findings of fact and law.

¹⁰ *M. Abbas v. President of the Canada Border Services Agency* (13 November 2019), AP-2018-060 (CITT) [*M. Abbas*].

¹¹ *J. Humber v. President of the Canada Border Services Agency* (27 November 2019), AP-2018-062 (CITT) 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] The Tribunal confirmed that the good in issue is a Browning DA77 Hunter Series folding knife.¹² The knife measures approximately 12.5 centimetres (cm) when closed and approximately 22.5 cm when open.¹³

[22] The good in issue has a thumb stud on each side of the blade, as well as a flipper, or protrusion, connected to the spine of the blade. When the blade is in the closed position, the flipper rests within an aperture of the handle of the knife, and application of hand/finger action or pressure to it causes the blade to immediately open to a fully extended and locked position. As such, the good in issue can be opened automatically by hand pressure applied in the manner described in this paragraph.

[23] The Tribunal notes that its examination and manipulation of the good in issue were entirely concordant with what it was able to observe from the video demonstration on file submitted by the CBSA.¹⁴

[24] Tariff item No. 9898.00.00 refers to the definition of “prohibited weapon” that is found at subsection 84(1) of the *Criminal Code*. The relevant portion of that definition for the purposes of this appeal concerns knives that “open automatically ... by hand pressure applied to a ... device in or attached to the handle of the knife”.

[25] The good in issue does just that. It is a steel-bladed pocketknife that is automatically deployed as described above. Again, minimal hand/finger fast-action manipulation applied to a device that is contained in the handle of the knife immediately deploys the blade to its locked, ready-to-use and open position.¹⁵

[26] As the good in issue meets the relevant description of a “prohibited weapon” that is found in the *Criminal Code*, it is properly classified as such under tariff item No. 9898.00.00.

[27] Submissions made by K. Tang regarding his intentions as a collector or other personal situations are not factors that are considered when performing tariff classification. The Tribunal examines goods for what they are, irrespective of extraneous considerations such as those that he raised.¹⁶

¹² Exhibit AP-2021-037-B-01.

¹³ Exhibit AP-2021-037-14 at 4.

¹⁴ Exhibit AP-2021-037-14.A.

¹⁵ On the meanings of the terms “automatically” and “device” in the context of subsection 84(1) of the *Criminal Code*, see *M. Abbas* at paras. 53–55. In *M. Abbas*, see citations to *La Sagesse de l’Eau* (13 November 2012), AP-2011-040 and AP-2011-041 (CITT) at paras. 41, 46–48; *T. Laplante v. President of the Canada Border Services Agency* (16 November 2017), AP-2017-012 (CITT) at paras. 25–28; and *Knife & Key Corner Ltd.* (14 September 2015), AP-2014-030 (CITT) at paras. 30–31.

¹⁶ *M. Abbas* at para. 56.

DECISION

[28] The appeal is dismissed.

Eric Wildhaber

Eric Wildhaber
Presiding Member