



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal AP-2022-014

J. D. Schneider

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Monday, August 14, 2023*

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DECISION 7

IN THE MATTER OF an appeal heard on April 4, 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 made pursuant to subsection 60(4) of the *Customs Act*, dated February 28, 2022, with respect to a request for re-determination.

BETWEEN

J. D. SCHNEIDER

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: Via videoconference
Date of Hearing: April 4, 2023
Tribunal Panel: Randolph W. Heggart, Presiding Member
Tribunal Secretariat Staff: Charlotte Saintonge, Counsel
Isaac Turner, Counsel
Matthew Riopelle, Registrar Officer

PARTICIPANTS:

Appellant	Counsel/Representative
J. D. Schneider	Self-represented
Respondent	Counsel/Representative
President of the Canada Border Services Agency	Christian Halt

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STATEMENT OF REASONS

BACKGROUND

[1] This is an appeal by J. D. Schneider filed with the Canadian International Trade Tribunal on May 16, 2022, pursuant to subsection 67(1) of the *Customs Act*¹ (the Act) from a decision made on February 28, 2022, by the President of the Canada Border Services Agency (CBSA) pursuant to subsection 60(4) of the Act.

[2] At issue is whether the pocket Black Sable folding knife (the good in issue), imported by J. D. Schneider, is properly classified under tariff item 9898.00.00 of the schedule to the *Customs Tariff*² as a “prohibited weapon” in accordance with subsection 84(1) of the *Criminal Code*³ and is therefore prohibited from importation into Canada pursuant to subsection 136(1) of the *Customs Tariff*.

[3] For the reasons that follow, the appeal is dismissed. The good in issue is properly classified under tariff item 9898.00.00 as a “prohibited weapon”.

PROCEDURAL HISTORY

[4] On or around September 7, 2021, the good in issue was imported, seized and detained by the CBSA for further examination.⁴ On that same day, the CBSA determined that the good in issue was a prohibited weapon within the meaning of tariff item 9898.00.00 and denied its importation into Canada.⁵

[5] On December 7, 2021, J. D. Schneider requested a re-determination, pursuant to subsection 60(1) of the Act.⁶

[6] On February 28, 2022, the CBSA issued a re-determination pursuant to subsection 60(4) of the Act, maintaining its original determination that the good in issue was properly classified under tariff item 9898.00.00 as a prohibited weapon.⁷

[7] On May 16, 2022,⁸ J. D. Schneider filed the present appeal under subsection 67(1) of the Act.⁹

[8] On April 4, 2023, the Tribunal held a videoconference hearing, in accordance with rule 25 of the *Canadian International Trade Tribunal Rules*.¹⁰

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-2022-014-12 at 14.

⁵ *Ibid.*

⁶ *Ibid.* at 16.

⁷ Exhibit AP-2022-014-01.A at 1–3; Exhibit AP-2022-014-12 at 18–20.

⁸ The notice of appeal was submitted on May 16, 2022, but J. D. Schneider did not submit a copy of the decision subject to the appeal until July 15, 2022.

⁹ Exhibit AP-2022-014-01 at 1.

¹⁰ SOR/91-499.

[9] On April 17, 2023, following the receipt of post-hearing submissions from the parties, the record in this matter closed.

DESCRIPTION OF THE GOOD IN ISSUE

[10] The good in issue is a pocket Black Sable folding knife. The knife blade is made of high carbon stainless steel attached to a grooved aluminum handle.¹¹

[11] The good features a protrusion, known as a “flipper”, on the spine of the knife, as well as thumb studs on either side of the blade. When the blade is in a closed position, the application of pressure to this protrusion causes the blade to fully open and lock.

LEGAL FRAMEWORK

[12] 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.”

[13] Tariff item 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* ...

[14] When dealing with the classification of goods under tariff item 9898.00.00, subsection 136(2) of the *Customs Tariff* provides that the *General Rules for the Interpretation of the Harmonized System*¹² do not apply. Furthermore, note 1 to Chapter 98 of the schedule to the *Customs Tariff* provides that “[g]oods which are described in any provision of this Chapter are classifiable in the said provision if the conditions and requirements thereof and of any applicable regulations are met.”

[15] Tariff item 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 ...”.

[16] To determine whether the good in issue is properly classified as a prohibited weapon under tariff item 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*.

¹¹ Exhibit AP-2022-014-12 at 4; Exhibit AP-2022-014-B-01.

¹² S.C. 1997, c. 36, schedule.

POSITIONS OF THE PARTIES

J. D. Schneider

[17] J. D. Schneider submitted that although the knife that he ordered (i.e., the good in issue) was supposed to include a torsion bar, his reading of the CBSA's redetermination of February 28, 2022, was that the knife does not have a torsion bar, spring mechanism or caged bearings. In support, J. D. Schneider provided a link to a video¹³ which he argued proved that the assisted opening mechanism was removed from the good in issue. J. D. Schneider argued that the torsion bar holds the blade in and that, if it had been present, the knife could not be opened with the flick of a wrist.¹⁴

[18] J. D. Schneider further submitted that paragraph (a) of the definition of "prohibited weapon" in subsection 84(1) of the *Criminal Code* does not mention that having a protrusion or flipper on the blade makes the knife a prohibited weapon. J. D. Schneider argued that this definition refers to switch blades that have springs and buttons in the handle to load and launch a blade at the touch of a button. J. D. Schneider explained that the good in issue does not have a button and "requires a force on the protrusion of the blade to overcome the force of the torsion bar holding the blade in closed position."¹⁵

[19] J. D. Schneider also submitted that "every folding knife that [he has] ever seen can be opened with a flick of the wrist if it is partially opened".¹⁶ In support of this assertion, J. D. Schneider referred to, as examples, other folding knife models that he had purchased from Canadian Tire.¹⁷ J. D. Schneider also attached references to retailers in Canada selling "fully working assisted opening knives" to demonstrate that such goods are available for purchase in Canada.¹⁸ In a post-hearing submission, J. D. Schneider also referred to North Arm Knives, a Canadian manufacturer of folding knives that sells its folding knives in Canada. In this respect, J. D. Schneider noted that a "legal note" on North Arm Knives's website indicates that a knife similar to the good in issue is legal in Canada and that, upon contacting the company, he was told that this knife is sold to police officers and thousands have been sold in Canada since 2016.¹⁹

[20] Lastly, J. D. Schneider asserted that the good in issue is "... being held because of its price being so low and that [the] CBSA is pulling straws to protect Canadian retailers from competition by cheaper foreign sellers."²⁰ J. D. Schneider also claimed in his submissions that "[a] knife is no more dangerous than a pointed stick unless someone uses it to cause harm"²¹ and that he believed that, as

¹³ Exhibit AP-2022-014-07 at 1. Online: <<https://www.youtube.com/watch?v=c5EBPCdd8jQ>>.

¹⁴ In post-hearing submissions, J. D. Schneider indicated that until the hearing he was unaware that the good in issue contained a torsion bar and is a "flipper knife". Exhibit AP-2022-014-23; Exhibit AP-2022-014-27. See also *Transcript of Public Hearing* at 36. As it is not in dispute that the good in issue contains a torsion bar, it is not necessary for the Tribunal to consider this submission.

¹⁵ Exhibit AP-2022-014-27 at 2.

¹⁶ Exhibit AP-2022-014-07 at 1.

¹⁷ See Exhibit AP-2022-014-07 at 1. J. D. Schneider refers to the Huntshield Northern Survival knife and to the Gerber Air Ranger knife and submits videos showing the opening of these knives. See Exhibit AP-2022-014-07.A.

¹⁸ Exhibit AP-2022-014-07 at 4–13.

¹⁹ Exhibit AP-2022-014-23; Exhibit AP-2022-014-27.

²⁰ Exhibit AP-2022-014-07 at 1.

²¹ *Ibid.* At the hearing, J. D. Schneider also suggested that it would be difficult to harm someone with a knife the size of the good in issue. *Transcript of Public Hearing* at 11–12, 20.

someone who does network cable installations from the top of a ladder, he should be able to have a knife that can be opened with one hand.

CBSA

[21] The CBSA submitted that J. D. Schneider has failed to satisfy his legal burden of proof in this appeal because he did not file evidence or a brief. The CBSA asserts that the onus is on the appellant to show that the CBSA incorrectly classified the good in issue under tariff item 9898.00.00. The CBSA contended that J. D. Schneider did not provide sufficient evidence to meet this burden.²²

[22] The CBSA further submitted that, in any case, the classification of the good in issue is consistent with the applicable statutory framework as well as previous decisions of the Tribunal. Specifically, the CBSA contended that the good in issue meets the definition of “prohibited weapon”, because the knife’s blade opens “automatically” by hand pressure being applied to a “device” that is “in or attached to the handle of the knife”.

[23] In support of its position and having regard to the Tribunal’s jurisprudence, the CBSA made two arguments. First, it argued that the good in issue has a blade that opens “automatically”, because that blade opens as a result of hand pressure applied to a device with minimal manipulation.²³ The CBSA submitted that, similar to the knife in *M. Abbas v. President of the Canada Border Services Agency*, the user of the knife in issue need only apply minimal pressure to the protrusion or flipper device on the handle to cause the blade to swing into an open and locked position.²⁴ Second, the CBSA argued that the flipper in this case constitutes a “device” that is “in or attached” to the knife’s handle. The CBSA claimed that the flipper is clearly intended to allow for the easy opening of the blade and that it is “in or attached” to the good in issue’s handle. The CBSA submitted that this is consistent with previous Tribunal decisions.²⁵

[24] Additionally, the CBSA asserted that J. D. Schneider’s submissions include several arguments which have previously been refuted by the Tribunal, such as that there are knives similar to the knife in issue available at Canadian retailers and that the knife in issue is “no more dangerous than a pointed stick unless someone uses it to cause harm”. The CBSA submitted that, as stated in *J. Ward v. President of the Canada Border Services Agency*, “the criteria for prohibition of certain types of knives are referable only to the characteristics of the knife at issue” and “the fact that [a] 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*”.²⁶ The CBSA further submitted that the Tribunal has consistently held that the intended use of goods has no bearing on the determination of whether knives are properly classified as prohibited weapons under tariff item 9898.00.00. In this

²² *Canada (Border Services Agency) v. Miner*, 2012 FCA 81 [*Miner*] at para. 21.

²³ *M. Abbas v. President of the Canada Border Services Agency* (13 November 2019), AP-2018-060 (CITT) [*M. Abbas*] at paras. 54, 60; *La Sagesse de l’Eau* (13 November 2012), AP-2011-040 and AP-2011-041 (CITT) [*La Sagesse de l’Eau*] at paras. 47, 49.

²⁴ In this respect, the CBSA noted that the CBSA Examination Report identifies that “... the blade is opened by way of an index flicker which protrudes from the back of the handle when in the closed position. Applying pressure to this protrusion causes the blade to open fully and lock.” See Exhibit AP-2022-014-12 at 31.

²⁵ *M. Abbas* at para. 83; *Knife & Key Corner Ltd. v. President of the Canada Border Services Agency* (14 September 2015), AP-2014-030 (CITT) at paras. 32, 33, 40, 42; *La Sagesse de l’Eau* at para. 45.

²⁶ *J. Ward v. President of the Canada Border Services Agency* (14 October 2022), AP-2020-010 (CITT) [*J. Ward*] at paras. 61, 71. See also *A. Savoie v. President of the Canada Border Services Agency* (6 August 2019), AP-2018-050 (CITT) at para. 28.

regard, the importer's intentions or good faith are not relevant to the tariff classification exercise, which is strictly limited to an evaluation of the physical characteristics of the knife at the time of importation into Canada.²⁷

[25] In response to J. D. Schneider's post-hearing submission, the CBSA submitted that the opinion of a retailer or manufacturer is not an authoritative statement of the law. The CBSA also reiterated its position that the availability of similar goods in Canada and the importer's intended use of the good in Canada are not relevant considerations for the purpose of tariff classification.

ANALYSIS

[26] Subsection 152(3) of the Act imposes a legal burden on J. D. Schneider to show that the good is incorrectly classified under tariff item 9898.00.00 as a prohibited weapon.²⁸ For the reasons that follow, the Tribunal finds that J. D. Schneider has not met this burden.

[27] To determine whether the good in issue is properly classified as a prohibited weapon under tariff item 9898.00.00, the Tribunal must consider the characteristics, properties and operation of the good to determine, on the facts, whether the good in issue meets the definition of "prohibited weapon" in paragraph 84(1)(a) of the *Criminal Code*. Specifically, the Tribunal must determine whether the good in issue has a blade that 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 the knife.

[28] In these proceedings, it is not alleged that the good in issue opens "by way of gravity or centrifugal force". The Tribunal must therefore determine whether the good in issue meets the second part of the "prohibited weapon" definition, namely whether the knife blade opens "automatically" by hand pressure applied to a device in or attached to the handle of the knife.

[29] 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. 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.²⁹ In other words, "automatically" does not mean completely without human intervention.

[30] In the matter at hand, having considered the entirety of the evidence placed in the record and the submissions of the parties, the Tribunal is of the view that J. D. Schneider failed to prove that the CBSA's classification is incorrect. Rather, the evidence before the Tribunal demonstrates that the good in issue is properly classified as a prohibited weapon under tariff item 9898.00.00, as determined by the CBSA.

[31] The Tribunal carefully examined the good in issue and found that it fully opens into a locked position from a closed position with one hand when applying minimal pressure to the protrusion on

²⁷ *M. Abbas* at para. 56.

²⁸ Subsection 152(3) of the Act; *Miner* at paras. 7, 21–22; See also, e.g., *J. Humber v. President of the Canada Border Services Agency* (27 November 2019), AP-2018-062 (CIIT) [*J. Humber*] at paras. 83–85.

²⁹ *M. Abbas* at para. 53, citing *La Sagesse de l'Eau* at paras. 46–48. See also *J. Ward* at para. 54.

the back of the blade. The Tribunal is therefore satisfied that the good in issue opens “automatically” and is satisfied that it meets the definition of “prohibited weapon” as provided in the *Criminal Code*.

[32] The Tribunal is also satisfied, consistent with Tribunal precedent,³⁰ that the good in issue has a blade that opens “by hand pressure applied to a device in or attached to the handle of the knife”. As noted by the CBSA, the good in issue is similar to the knife that was at issue in *M. Abbas*, wherein the Tribunal found that the knife opened automatically as a result of hand pressure being applied to a button, spring or other device. In that case, the Tribunal found that a tab-like protrusion or flipper, such as the one on the good in issue, constituted a device that was in or attached to the handle of the knife.³¹ Moreover, the Tribunal’s examination and manipulation of the good in issue clearly demonstrated that the purpose of the flipper is to enable the quick and automatic opening of the blade. As discussed above, when pressure was applied to the flipper, the blade was released and opened automatically into a fully extended and locked position.

[33] In light of the above, the Tribunal finds that the good in issue is a prohibited weapon within the meaning of subsection 84(1) of the *Criminal Code*. Accordingly, the good in issue is properly classified as a prohibited weapon under tariff item 9898.00.00.

Certain submissions made by J. D. Schneider are not relevant for tariff classification purposes

[34] The Tribunal has consistently held that the sale, availability or presence of similar goods within Canada has no bearing on whether a knife is a prohibited weapon and barred from importation into Canada.³² Accordingly, J. D. Schneider’s submissions with respect to similar knife models being available for sale and manufactured in Canada, while disconcerting, are not relevant considerations for the classification of the good in issue under tariff item 9898.00.00.

[35] It is similarly well established that the criteria for prohibition of certain types of knives are referable only to the characteristic of the knife at issue and are not contingent or dependent on the intent or good faith of the individual seeking to import the knife.³³ Therefore, J. D. Schneider’s submissions regarding whether the good could be used to cause harm and how the good would be used are likewise not relevant considerations for tariff classification.

[36] In addition, with respect to the above-mentioned “legal note” of North Arm Knives, the Tribunal notes that, in addition to the opinion of a retailer or manufacturer not being an authoritative statement of the law, as submitted by the CBSA, this opinion is in respect of a knife that is not the good in issue. For these reasons, it is also not relevant for the purpose of tariff classification.

³⁰ *M. Abbas; B. Shaw v. President of the Canada Border Services Agency* (7 September 2021), AP-2020-022 (CITT) [*B. Shaw*].

³¹ *M. Abbas* at paras. 70–83.

³² *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.

³³ See, e.g., *J. Humber* at para. 63; *T. Brown v. President of the Canada Border Services Agency* (17 June 2019), AP-2018-020 (CITT) at paras. 27–28; *T. Woodworth v. President of the Canada Border Services Agency* (11 September 2007), AP-2006-035 (CITT) at para. 20; *R. Joschko v. President of the Canada Border Services Agency* (14 December 2011), AP-2011-012 (CITT) at para. 28; *M. Abbas* at para. 56; *B. Shaw* at para. 30.

DECISION

[37] The appeal is dismissed.

Randolph W. Heggart

Randolph W. Heggart

Presiding Member