



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2001-075

MilArm Co. Ltd.

v.

Commissioner of the Canada  
Customs and Revenue Agency

*Decision and reasons issued  
Wednesday, July 12, 2006*

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IN THE MATTER OF an appeal heard on June 6, 2006, under subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Commissioner of the Canada Customs and Revenue Agency dated September 27, 2001, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

**BETWEEN**

**MILARM CO. LTD.**

**Appellant**

**AND**

**THE COMMISSIONER OF THE CANADA CUSTOMS AND  
REVENUE AGENCY**

**Respondent**

**DECISION**

The appeal is dismissed.

Zdenek Kvarda  
Zdenek Kvarda  
Presiding Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

Place of Hearing: Ottawa, Ontario  
Date of Hearing: June 6, 2006  
Tribunal Member: Zdenek Kvarda, Presiding Member  
Research Manager: Paul R. Berlinguette  
Counsel for the Tribunal: Eric Wildhaber  
Registrar Officer: Stéphanie Doré  
Parties: Hugh Allan Kerr, for the appellant  
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## REASONS FOR DECISION

1. This is an appeal pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision of the Commissioner of the Canada Customs and Revenue Agency (CCRA) (now the President of the Canada Border Services Agency [CBSA]), dated September 27, 2001, under subsection 60(4) of the *Act*.

2. The issue in this appeal is whether the CCRA properly classified the rifles in issue as prohibited weapons of tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*.<sup>2</sup> The rifles in issue are two blank-firing lever-action rifles made by Bruni S.R.L.

3. The Tribunal decided to hold a hearing by way of written submissions in accordance with rules 25 and 25.1 of the *Canadian International Trade Tribunal Rules*.<sup>3</sup> A notice to this effect was published in the May 20, 2006, edition of the Canada Gazette.<sup>4</sup>

4. Subsection 136(1) of the *Customs Tariff* reads as follows:

The importation of goods of tariff item No. 9897.00.00, 9898.00.00 or 9899.00.00 is prohibited.	L'importation des marchandises des n <sup>os</sup> tarifaires 9897.00.00, 9898.00.00 ou 9899.00.00 est interdite.
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5. Tariff item No. 9898.00.00 reads as follows:

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* . . . .

6. Subsection 84(1) of the *Criminal Code*<sup>5</sup> provides that a "prohibited device" includes, among other things, a replica firearm, which is defined as follows:

"replica firearm" means any device that is designed or intended to exactly resemble, or to resemble with near precision, a firearm, and that itself is not a firearm, but does not include any such device that is designed or intended to exactly resemble, or to resemble with near precision, an antique firearm.	« réplique » Tout objet, qui n'est pas une arme à feu, conçu de façon à en avoir l'apparence exacte — ou à la reproduire le plus fidèlement possible — ou auquel on a voulu donner cette apparence. La présente définition exclut tout objet conçu de façon à avoir l'apparence exacte d'une arme à feu historique — ou à la reproduire le plus fidèlement possible — ou auquel on a voulu donner cette apparence.
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1. R.S.C. 1985 (2d Supp.), c. 1 [Act].

2. S.C. 1997, c. 36.

3. S.O.R./91-499.

4. C. Gaz. 2006.I.1231.

5. R.S.C. 1985, c. C-46.

7. Section 2 of the *Criminal Code* defines “firearm” as follows:

“firearm” means a barrelled weapon from which any shot, bullet or other projectile can be discharged and that is capable of causing serious bodily injury or death to a person, and includes any frame or receiver of such a barrelled weapon and anything that can be adapted for use as a firearm.	« arme à feu » Toute arme susceptible, grâce à un canon qui permet de tirer du plomb, des balles ou tout autre projectile, d’infliger des lésions corporelles graves ou la mort à une personne, y compris une carcasse ou une boîte de culasse d’une telle arme ainsi que toute chose pouvant être modifiée pour être utilisée comme telle.
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8. Subsection 84(1) of the *Criminal Code* defines “antique firearm” as follows:

“antique firearm” means (a) any firearm manufactured before 1898 that was not designed to discharge rim-fire or centre-fire ammunition and that has not been redesigned to discharge such ammunition, or (b) any firearm that is prescribed to be an antique firearm.	« arme à feu historique » Toute arme à feu fabriquée avant 1898 qui n’a pas été conçue ni modifiée pour l’utilisation de munitions à percussion annulaire ou centrale ou toute arme à feu désignée comme telle par règlement.
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## EVIDENCE

9. MilArm Co. Ltd. (MilArm) attempted to import the rifles in issue via mail. They measure approximately 36 inches in length and have a 17-inch blued barrel and hardwood stock that weighs 2.75 lbs. The rifles in issue fire 8-mm blank cartridges held in a magazine, and the empty cartridge is ejected when the lever is cocked.

10. The CBSA filed the two rifles in issue as physical exhibits, and the Tribunal examined them. The Tribunal also examined the real firearms that the rifles in issue are alleged to resemble, which the CBSA provided as physical exhibits.

11. The CBSA filed an expert report prepared by Mr. J. A. Yves Quevillon of the Forensic Laboratory Services of the Royal Canadian Mounted Police. Mr. Quevillon’s qualifications as a weapons expert were not questioned by MilArm. The Tribunal accepted Mr. Quevillon as an expert in prohibited weapons. Mr. Quevillon reported that, in his expert opinion, the rifles in issue are replica firearms.

## ARGUMENT

12. MilArm submitted that: (1) the rifles in issue fall within the *Criminal Code* definition of “firearm” because they can be adapted in such a manner that they become a firearm, i.e. re-barrelled to fire low-power cartridges; (2) the rifles do not fall within the definition of “replica firearm” because the blank cartridges fired from them can cause injury to eyes and hearing; and (3) the definition of “replica firearm” should be interpreted narrowly to include only items that are solely designed to resemble firearms and nothing more. Given that the rifles can fire blank cartridges, MilArm argued that the rifles in issue do not fall within the narrow definition of “replica firearm”.

13. The CBSA disagreed, submitting that the rifles in issue are replica firearms and, therefore, prohibited from importation into Canada. In its view, the rifles in issue do not fall within the *Criminal Code* definition of “firearm” because the rifles are not barrelled weapons from which any shot, bullet or other projectile can be discharged. The CBSA submitted that the rifles in issue cannot be considered replicas of an “antique firearm” as defined in the *Criminal Code* because the Winchester rifle model 1894, which they resemble, was designed to discharge centre-fire ammunition and had a repeating mechanism fed by a cartridge magazine.

**DECISION**

14. In order to determine whether the rifles in issue are properly classified under tariff item No. 9898.00.00, the Tribunal must determine if they meet the definition of “replica firearm” under subsection 84(1) of the *Criminal Code*. To be considered a “replica firearm”, a device must fulfil three conditions: (1) it must be designed or intended to exactly resemble, or to resemble with near precision, a firearm; (2) it must not itself be a firearm; and (3) it must not be designed or intended to exactly resemble, or to resemble with near precision, an antique firearm.

15. Mr. Quevillon’s report stated that the rifles in issue are “. . . devices that resemble with near precision the WINCHESTER model 1894 lever action rifle which is a barreled weapon from which a bullet can be discharged and that is capable of causing serious bodily injury or death . . .” The Tribunal’s own examination of the rifles in issue and the real firearm after which they were modelled revealed a close if not identical resemblance in size, shape and general appearance. Consequently, the Tribunal is satisfied that the rifles in issue fulfil the first condition of the definition of “replica firearm”, i.e. they are designed or intended to exactly resemble, or to resemble with near precision, a firearm.

16. Mr. Quevillon’s report also stated that the rifles in issue are “. . . designed exclusively for firing blank cartridges . . .” and that “. . . [t]hey are not barreled weapons from which any shot, bullet or other projectile can be discharged . . .” Based on the definition of “firearm” found in section 2 of the *Criminal Code*, the Tribunal is satisfied that the second condition of the definition of a “replica firearm” is fulfilled, i.e. the rifles in issue are not firearms that are capable of causing serious bodily injury or death to a person. In the Tribunal’s view, injury to eyes and hearing caused by the firing of blanks is not the “serious bodily injury or death” provided for in the *Criminal Code*’s definition of “firearm”. Moreover, the Tribunal agrees with the CBSA that any possible modification to the rifles in issue for the purpose of enabling them to cause serious injury or death is not a relevant fact, as the Tribunal must examine the goods in issue in the condition and state in which they were seized at the time of importation, not based on what they allegedly could one day become.

17. Although the manufacture of the Winchester rifle model 1894 started before the year 1898, the evidence indicates that it was designed to discharge centre-fire ammunition. Because of this feature, the Winchester rifle model 1894 does not fall within the *Criminal Code* definition of “antique firearm”. The Tribunal notes that MilArm did not contest this fact. Thus, it is satisfied that the third condition of the definition of “replica firearm” is fulfilled, i.e. the rifles in issue were not designed or intended to exactly resemble, or to resemble with near precision, an antique firearm.

18. Accordingly, because the rifles in issue fulfil the three conditions that make them replica firearms under the *Criminal Code*, the Tribunal finds that they are prohibited devices. Consequently, the Tribunal finds that the rifles in issue are properly classified under tariff item No. 9898.00.00 and, as such, prohibited from importation into Canada under subsection 84(1) of the *Criminal Code* and subsection 136(1) of the *Customs Tariff*.

19. For the foregoing reasons, the appeal is dismissed.

Zdenek Kvarda  
Zdenek Kvarda  
Presiding Member