



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2002-003

Bill Rampton

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 7, 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 February 21, 2002, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

BILL RAMPTON

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 7, 2006
Tribunal Member: Zdenek Kvarda, Presiding Member
Research Manager: Paul R. Berlinguette
Counsel for the Tribunal: Eric Wildhaber
Registrar Officer: Stéphanie Doré
Parties: Bill Rampton, for the appellant
Lynn Marchildon, for the respondent

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REASONS FOR DECISION

1. This is an appeal pursuant to subsection 67(1) of the *Customs Act*¹ 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 February 21, 2002, under subsection 60(4) of the *Act*.

2. The issue in this appeal is whether the CCRA properly classified the revolvers in issue as prohibited devices of tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*.² The revolvers in issue are two identical six-shot Western revolvers.

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*.³ A notice to this effect was published in the May 20, 2006, edition of the *Canada Gazette*.⁴

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 ^{os} 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*⁵ 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. Mr. Bill Rampton attempted to import the revolvers in issue via mail. They are both nickel-plated with hardwood grips and have barrels that measure approximately 7 inches in length.

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

11. The CBSA filed an expert report prepared by Mr. Dean B. Dahlstrom of the Forensic Laboratory Services of the Royal Canadian Mounted Police. Mr. Dahlstrom’s qualifications as a weapons expert were not questioned by Mr. Rampton. The Tribunal accepted Mr. Dahlstrom as an expert in prohibited weapons.

ARGUMENT

12. Mr. Rampton submitted that the laws of Canada changed between the time of purchase and the time of importation, at which time the revolvers in issue became prohibited weapons. He submitted that the revolvers in issue “. . . are not restricted for collectors or costumes depicting Western post Civil War attire”⁶

13. The CBSA submitted that: (1) the revolvers in issue are replica firearms and, therefore, prohibited from importation into Canada; (2) no changes were made to the customs legislation or the *Criminal Code* during the period at issue; and (3) in order for collectors or businesses to obtain such goods for purposes such as historical re-enactments, they are required to have a licence issued by a provincial firearms registry prior to importation.

6. Exhibit AP-2002-003-1.

DECISION

14. In order to determine whether the revolvers 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. Dahlstrom’s report indicated that the revolvers in issue are devices designed to resemble the Colt Single Action Army revolver. The Tribunal’s own examination of the revolvers in issue and the firearms after which they were modelled revealed a close resemblance in size, shape and general appearance. The only minor difference was the length of the barrel. The Tribunal also notes that the boxes containing the revolvers in issue had the mention “replica” written on them, which indicates that these goods were sold as replica firearms. Consequently, the Tribunal is satisfied that the revolvers 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. The Tribunal is also of the view that the revolvers in issue are not firearms because, in their present condition, they are not designed to discharge a projectile. In this regard, it notes that the firing pin has been removed and that the barrel is partially blocked at one end. 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 revolvers in issue are not firearms.

17. With respect to the third condition of the definition, Mr. Dahlstrom’s report stated that the revolvers in issue “. . . resemble both the antique version and non antique version of the Colt Single Action Army revolver with equal facility”⁷ The CBSA submitted that the manufacture of the Colt Single Action Army revolver started prior to 1898, and continued until the 1940s and beyond. As mentioned by the CBSA, the Tribunal recalls that it has previously held that a device which is modelled after both an antique and non-antique firearm cannot be considered a replica of an “antique firearm”.⁸ The same conclusion applies here.

18. As noted earlier, Mr. Rampton also argued that the revolvers in issue fell within the *Criminal Code* definition of “antique firearm” when they were purchased, i.e. firearms manufactured before 1898 that were not designed to fire, but that the customs legislation changed between the time of purchase and the time of importation. In this regard, the Tribunal notes that there does not appear to have been any relevant changes made to the customs legislation or to the *Criminal Code* during the period at issue.

19. In light of the above, the Tribunal is satisfied that the third condition of the definition of “replica firearm” is fulfilled, i.e. the revolvers in issue were not designed or intended to exactly resemble, or to resemble with near precision, an antique firearm.

20. In his brief, Mr. Rampton stated that “. . . replicas of this type of weapon are not restricted for collectors or costumes depicting Western post Civil War attire”⁹ In this connection, the Tribunal notes

7. Respondent’s Expert Report, Tab 1 at 1.

8. See *Terry Thompson v. CCRA* (14 January 2003), AP-2001-064 (CITT).

9. Exhibit AP-2002-003-1.

that replica firearms may lawfully be imported into Canada under certain conditions. The onus rests with the importer to obtain the appropriate licence to do so.

21. Accordingly, because the revolvers in issue fulfil the three conditions that make them “replica firearm[s]” under the *Criminal Code*, the Tribunal finds that they are prohibited devices. Consequently, it finds that the revolvers 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*.

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

Zdenek Kvarda
Zdenek Kvarda
Presiding Member