



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2003-014

Carl DeFrance

v.

Commissioner of the Canada
Customs and Revenue Agency

*Decision and reasons issued
Thursday, September 9, 2004*

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IN THE MATTER OF an appeal heard on March 30, 2004, under section 67 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 May 6, 2003, with respect to a request for re-determination under section 60 of the *Customs Act*.

BETWEEN

CARL DEFRANCE

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: March 30, 2004

Tribunal Member: Pierre Gosselin, Presiding Member

Counsel for the Tribunal: Dominique Laporte
Nick Covelli

Clerk of the Tribunal: Anne Turcotte

Parties: Carl DeFrance, for the appellant
Tatiana Sandler, for the respondent

Please address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

Telephone: (613) 993-3595
Fax: (613) 990-2439
E-mail: secretary@citt-tcce.gc.ca

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), dated May 6, 2003, under subsection 60(4) of the *Act*.

2. The issue in this appeal is whether the good in issue is properly classified under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*² as a prohibited device, as determined by the CCRA.

3. Tariff item No. 9898.00.00 reads in part as follows:

9898.00.00 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*.

4. Subsection 84(1) of the *Criminal Code*³ 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.

5. 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.

6. 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.

EVIDENCE

7. Mr. Carl DeFrance attempted to import the good in issue via mail. The CCRA deemed the good to be a “replica firearm” and detained it as a prohibited device at the time of entry into Canada on April 7, 2003. A notice of detention was subsequently issued to Mr. DeFrance. He requested a

1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].

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

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

re-determination of the classification of the gun under tariff item No. 9898.00.00 pursuant to subsection 60(1) of the *Act*. The CCRA denied this request on May 6, 2003.

8. Mr. DeFrance filed a notice of appeal with the Tribunal on June 23, 2003, within the 90-day period prescribed by section 67 of the *Act*.

9. The Tribunal decided to hold a hearing by way of written submissions in accordance with rule 25 of the *Canadian International Trade Tribunal Rules*.⁴

10. The Canada Border Services Agency (CBSA) (formerly the CCRA) filed the gun in issue as an exhibit, and the Tribunal had an opportunity to physically examine it.

11. The CBSA filed an expert report that was prepared by Mr. Gilbert Desjardins of the judiciary sciences and legal medicine laboratory of the province of Quebec. Mr. Desjardins's qualification as a firearms expert was not questioned by Mr. DeFrance. Mr. Desjardins reported that, in his expert opinion, the gun in issue is a replica firearm.

ARGUMENT

12. Mr. DeFrance submitted that the gun in issue is a toy.

13. The CBSA submitted that the gun in issue is a replica firearm. According to the CBSA, the gun in issue was designed or intended to resemble with near precision a Colt M4A1 carbine, which is a prohibited firearm.

DECISION

14. In order to determine whether the gun in issue is properly classified under tariff item No. 9898.00.00, the Tribunal must determine if it meets the definition of "replica firearm" under subsection 84(1) of the *Criminal Code*. For the gun in issue to meet this definition, it 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. Desjardins's report states that the gun in issue "is a reproduction, with near precision, of a **Colt** trade-mark.223 Rem-calibre (5.56mm x 45mm) model **M4AI carbine**" [translation]. Indeed, the bill of sale describes the gun in issue as a "M4A1 carbine". The CBSA submitted uncontested evidence that a Colt M4A1 carbine can discharge a bullet and is capable of causing serious bodily injury or death to a person. Based on the definition of "firearm" found in section 2 of the *Criminal Code*, the Tribunal is satisfied that the gun in issue meets the first condition of the definition of "replica firearm", i.e. it is designed or intended to exactly resemble, or to resemble with near precision, a firearm.

16. The report also states that the energy produced when a projectile is shot from the gun in issue "is not enough to risk causing serious injuries or death" [translation]. 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 met, i.e. the gun in issue is not itself a firearm.

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

17. The CBSA submitted that the gun in issue resembles a Colt M4A1 carbine manufactured after 1898 and therefore does not meet the definition of “antique firearm” found in subsection 84(1) of the *Criminal Code*. Mr. DeFrance did not contest this. Indeed, the physical appearance of the gun in issue suggests that its design was clearly intended to closely resemble a modern firearm. Thus, the Tribunal is satisfied that the third condition of the definition of a “replica firearm” is met, i.e. the gun in issue was not designed or intended to exactly resemble, or to resemble with near precision, an antique firearm.

18. In light of the above, the Tribunal finds that the gun in issue is included in the definition of “replica firearm” found in subsection 84(1) of the *Criminal Code*. As a replica firearm is included in the definition of “prohibited device” of subsection 84(1), the Tribunal is of the opinion that the gun in issue is properly classified under tariff item No. 9898.00.00.

19. Therefore, the appeal is dismissed.

Pierre Gosselin

Pierre Gosselin
Presiding Member