



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2003-009

Jencon Bits of Pieces

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 5, 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 14, 2003, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

BETWEEN

JENCON BITS OF PIECES

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 5, 2006
Tribunal Member: Zdenek Kvarda, Presiding Member
Research Manager: Paul R. Berlinguette
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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 14, 2003, under subsection 60(4) of the *Act*.

2. The issue in this appeal is whether the CCRA properly classified the goods in issue as prohibited devices of tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*.² The goods in issue are six unassembled firearm magazine kits.

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 defines "prohibited device" as follows:

"prohibited device" means	« dispositif prohibé »
(a) any component or part of a weapon, or any accessory for use with a weapon, that is prescribed to be a prohibited device,	a) Élément ou pièce d'une arme, ou accessoire destiné à être utilisé avec une arme, désignés comme tel par règlement;
. . .	[...]
(d) a cartridge magazine that is prescribed to be a prohibited device	d) chargeur désigné comme tel par règlement
	[...]

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 5 of the *Regulations Prescribing Certain Firearms and other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*⁶ reads as follows:

<p>The components and parts of weapons, accessories, and cartridge magazines listed in Part 4 of the schedule are prohibited devices for the purposes of paragraphs (a) and (d) of the definition “prohibited device” in subsection 84(1) of the <i>Criminal Code</i>.</p>	<p>Les éléments ou pièces d’armes, les accessoires et les chargeurs énumérés à la partie 4 de l’annexe sont désignés des dispositifs prohibés pour l’application des alinéas a) et d) de la définition de « dispositif prohibé » au paragraphe 84(1) du <i>Code criminel</i>.</p>
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8. Subsection 3(1) of Part 4 of the schedule to the *Regulations* reads as follows:

<p>Any cartridge magazine</p> <p>(a) that is capable of containing more than five cartridges of the type for which the magazine was originally designed and that is designed or manufactured for use in</p> <p style="padding-left: 20px;">(i) a semi-automatic handgun that is not commonly available in Canada,</p> <p style="padding-left: 20px;">(ii) a semi-automatic firearm other than a semi-automatic handgun,</p> <p style="padding-left: 20px;">...</p> <p>(b) that is capable of containing more than 10 cartridges of the type for which the magazine was originally designed and that is designed or manufactured for use in a semi-automatic handgun that is commonly available in Canada.</p>	<p>Tout chargeur qui peut contenir :</p> <p>a) plus de cinq cartouches du type pour lequel il a été initialement conçu et qui est conçu ou fabriqué pour servir dans l’une des armes à feu suivantes :</p> <p style="padding-left: 20px;">(i) une arme de poing semi-automatique qui n’est pas habituellement disponible au Canada,</p> <p style="padding-left: 20px;">(ii) une arme à feu semi-automatique, autre qu’une arme de poing semi-automatique, [...]</p> <p>b) plus de dix cartouches du type pour lequel il a été initialement conçu et qui est conçu ou fabriqué pour servir dans une arme de poing semi-automatique qui est habituellement disponible au Canada.</p>
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EVIDENCE

9. Jencon Bits of Pieces (Jencon) attempted to import the goods in issue via mail. The six unassembled firearm magazine kits each consist of a casing (also referred to as a shell or a box), a spring, a follower and a floor plate.

10. The CBSA filed the goods in issue as physical exhibits, and the Tribunal examined them.

11. The CBSA filed an expert report prepared by Mr. A. J. Voth of the Forensic Laboratory Services of the Royal Canadian Mounted Police. Mr. Voth’s qualifications as a weapons expert were not questioned by Jencon. The Tribunal accepted Mr. Voth as an expert in prohibited weapons. Mr. Voth reported that, in his expert opinion, the goods in issue, when assembled, fall within the meaning of subsection 84(1) of the *Criminal Code*.

ARGUMENT

12. Jencon submitted that the goods in issue are not prohibited devices and should be classified as individual articles. According to Jencon, the goods in issue were to be used as raw materials to make up magazines that comply with the requirements of the *Criminal Code*. Jencon argued that the definition of

6. S.O.R./98-462 [*Regulations*].

“cartridge magazine” under the *Criminal Code* does not include the unassembled parts of a cartridge magazine. Moreover, the various parts are not capable of feeding any ammunition into the firing chamber of a firearm. In support of its position, Jencon referred to *R. v. Ross*,⁷ arguing that this decision stands for the proposition that the component parts of a prohibited device do not constitute the prohibited device. Furthermore, it submitted that goods similar or identical to those in issue have been cleared through Customs in the past.

13. The CBSA disagreed, submitting that the goods in issue are indeed prohibited devices within the meaning of subsection 84(1) of the *Criminal Code*, as they are components of cartridge magazines that are prescribed as “prohibited device[s]” by the *Regulations*. It argued that the goods in issue can be assembled within minutes to create high-capacity cartridge magazines that are each capable of containing, as the case may be, more than 5 or more than 10 cartridges and, therefore, are properly classified as prohibited devices within the meaning of the *Criminal Code*. With regard to *Ross*, the CBSA submitted that the trial judge in that matter considered the intention of Parliament through the lens of the criminal justice system where the liberty rights of the accused were at stake. In addition, it argued that *Ross* dealt with kits that could possibly become silencers. In this connection, the CBSA submitted that the Tribunal has generated its own jurisprudence on the significance of an item’s ability to be reconverted to a “prohibited weapon” within a relatively short period of time with relative ease.⁸ Furthermore, it submitted that each specific importation is assessed and classified independently.

DECISION

14. The Tribunal must determine whether the goods in issue are properly classified under tariff item No. 9898.00.00 as prohibited devices. As noted above, section 5 of the *Regulations* prescribes that “. . . components and parts of . . . cartridge magazines listed in Part 4 of the schedule are prohibited devices for the purposes of paragraphs (a) and (d) of the definition ‘prohibited device’ in subsection 84(1) of the *Criminal Code*.” According to Mr. Voth, the goods in issue, when assembled, are devices or containers from which ammunition may be fed into the firing chamber of various firearms. Upon examination, the Tribunal determined that the goods in issue could be converted to cartridge magazines in a relatively short period of time with relative ease. In addition, the fact that the goods in issue are imported as kits or in packages is evidence, in and of itself, that they serve no other purpose than to become assembled cartridge magazines. Consequently, it is clear that the goods in issue are designed or intended to be assembled into cartridge magazines of various firearms. Furthermore, the Tribunal accepts the CBSA’s evidence that each magazine kit has a casing that is capable of containing, as the case may be, more than 5 or more than 10 cartridges each. Thus, the goods in issue satisfy the criteria of Part 4 of the schedule to the *Regulations*. Consequently, they meet the *Criminal Code* definition of “prohibited device”.

15. With respect to Jencon’s claim that similar or identical shipments have been cleared through Customs, the Tribunal recalls its decision in *Wayne Ericksen v. CCRA*⁹ that this is irrelevant.

7. 16 C.C.C. (3d) 175 [*Ross*].

8. In support of this claim, the CBSA relied on *Special Missions Group Ltd. v. Deputy M.N.R.C.E.* (13 February 1996), AP-89-284 (CITT) and *Anderson v. Deputy M.N.R.C.E.* (13 January 1999), AP-97-043 (CITT).

9. (3 January 2002), AP-2000-059 (CITT). In that case, the Tribunal held that, for classification purposes, it was irrelevant that similar or identical goods had previously entered Canada unhindered.

16. Accordingly, the Tribunal finds that the goods in issue are properly classified as prohibited devices 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*.

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

Zdenek Kvarda
Zdenek Kvarda
Presiding Member