



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2006-012

Serge Poirier

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Thursday, March 8, 2007*

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IN THE MATTER OF an appeal heard on December 14, 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 President of the Canada Border Services Agency, dated April 12, 2006, with respect to a request for re-determination under subsection 60(4) of the *Customs Act*.

**BETWEEN**

**SERGE POIRIER**

**Appellant**

**AND**

**THE PRESIDENT OF THE CANADA BORDER SERVICES  
AGENCY**

**Respondent**

**DECISION**

The appeal is dismissed.

Serge Fréchette  
Serge Fréchette  
Presiding Member

Susanne Grimes  
Susanne Grimes  
Acting Secretary

Place of Hearing: Ottawa, Ontario  
Date of Hearing: December 14, 2006  
Tribunal Member: Serge Fr chet, Presiding Member  
Counsel for the Tribunal: Eric Wildhaber  
Mante Molepo  
Registrar Officer: Val rie Cannavino  
Parties: Serge Poirier, for the appellant  
Andrew Gibbs, for the respondent

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## STATEMENT OF REASONS

1. This is an appeal pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision of the President of the Canada Border Services Agency (CBSA), dated April 12, 2006, under subsection 60(4) of the *Act*.

2. The issue in this appeal is whether the CBSA properly classified two rifles as prohibited devices under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff*.<sup>2</sup> The first rifle is a Neonfire Delta Force M4A1 RIS spring airsoft rifle; the second rifle is a Neonfire M733 Commando RIS spring airsoft rifle (the rifles in issue).

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 November 18, 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.3701.

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. Serge Poirier attempted to import the rifles in issue by mail. The Neonfire Delta Force M4A1 RIS spring airsoft rifle comes with an integral RIS handguard and a front grip, and includes a full-size magazine that holds up to 18 rounds and 400 rounds in its reservoir, an extendable stock, a flashlight module, a laser sight, a nylon sling, a selector switch and a plastic red cap at the tip of the barrel. The Neonfire M733 Commando RIS spring airsoft rifle comes with an integral RIS handguard with five mounting rails and a front grip, and includes a LED flashlight, a scope, a selector switch, a collapsible stock, a nylon sling, a magazine with a capacity of 400 rounds and a red-orange muzzle tip. The CBSA alleged that the rifles in issue were designed or intended to exactly resemble, or to resemble with near precision, an M4A1 carbine assault rifle.

10. The CBSA filed the rifles in issue as physical exhibits, and the Tribunal examined them. The Tribunal also examined the authentic 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 Ms. Kara Hind of the Forensic Laboratory Services of the Royal Canadian Mounted Police. Ms. Hind’s qualifications as a weapons expert were not questioned by Mr. Poirier. The Tribunal accepted Ms. Hind as an expert in prohibited weapons.

## ARGUMENT

12. Mr. Poirier is president of Safari Aventure Loowak inc. He submitted that the rifles in issue were imported in order to be used by his company to conduct simulated training, purely for entertainment purposes. Mr. Poirier submitted that the rifles in issue should be released because they resemble the Crosman Stinger R34, a soft air gun which is sold at Canadian Tire stores. Mr. Poirier alleged that the prohibition on importing the rifles in issue amounts to discrimination, since the only objective of using these rifles is for simulated training.

13. The CBSA argued that prohibited devices include, *inter alia*, replica firearms and that the rifles in issue fulfil all the conditions found in the *Criminal Code* definition of “replica firearm” and, therefore, are prohibited devices.

**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*. For the rifles in issue to meet this definition, each one 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. The CBSA submitted that the rifles in issue resemble the M4A1 carbine assault rifle with near precision. The M4A1 is used by U.S. military forces, such as the Delta Force, the Navy SEALs and the Marine Corps. The M4 family follows the M16. The sale of M4 rifles made by Colt’s Manufacturing Company LLC is restricted to military forces and to the police. The rifles in issue are equipped with the same accessories as the authentic M4A1.

16. The CBSA submitted that the rifles in issue are not firearms, since the projectiles that they discharge are unlikely to cause serious bodily injury or death to a person, as required by the definition of “firearm” pursuant to section 2 of the *Criminal Code*. The Tribunal agrees with the CBSA that, to be considered a firearm, an airsoft rifle must have a muzzle velocity that exceeds 124 metres (407 feet) per second. Because the rifles in issue have muzzle velocities that are below this threshold,<sup>6</sup> the Tribunal agrees with the CBSA that they are not firearms. Based on the definition of “firearm” found in section 2, the Tribunal is satisfied that the second condition of the definition of “replica firearm” is fulfilled, i.e. each rifle in issue itself is not a firearm.

17. The CBSA submitted that the rifles in issue replicate the M4A1 carbine assault rifle, which is derived from the M16 rifle, manufactured between 1958 and 1964. Therefore, the M4A1 was not manufactured prior to 1898, the year before which a firearm must have been manufactured to be considered an antique firearm, pursuant to the *Criminal Code*. Thus, the Tribunal is satisfied that the third condition of the definition of “replica firearm” is fulfilled, i.e. each rifle in issue was 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, it 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.

Serge Fréchette  
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Serge Fréchette  
Presiding Member

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6. Ms. Hind’s report indicated that the Neonfire Delta Force M4A1 RIS spring airsoft rifle and the Neonfire M733 Commando RIS spring airsoft rifle have maximum velocities of 72 and 77 metres per second respectively.