

Ottawa, Tuesday, February 13, 1996

Appeal No. AP-89-284

IN THE MATTER OF an appeal heard on December 6, 1995,
under section 67 of the *Customs Act*, R.S.C. 1985, c. 1
(2nd Supp.);

AND IN THE MATTER OF a decision of the Deputy Minister of
National Revenue dated February 19, 1990, with respect to a
request for re-determination under section 63 of the *Customs Act*.

BETWEEN

SPECIAL MISSIONS GROUP LIMITED

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Anita Szlajak

Anita Szlajak
Member

Michel P. Granger

Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-89-284

SPECIAL MISSIONS GROUP LIMITED

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

The issue in this appeal is whether certain firearms are properly classified as prohibited goods under Code 9965 of Schedule VII to the Customs Tariff. The goods in issue consist of three classes of firearms: 1,425 AK-47 Kalachnikov rifles, 150 Carl Gustav M-45 submachine guns and 5 R.P.D. machine guns.

***HELD:** The appeal is dismissed. The Tribunal finds that the firearms in issue are capable of reconversion to automatic weapons in a relatively short period of time with relative ease. According to testimony, the parts necessary to effect the reconversion are readily available, and the task could be accomplished in little time. The Tribunal is of the view that these firearms are prohibited weapons and that their importation by the appellant is therefore prohibited.*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: December 6, 1995
Date of Decision: February 13, 1996*

*Tribunal Members: Arthur B. Trudeau, Presiding Member
Robert C. Coates, Q.C., Member
Anita Szlazak, Member*

Counsel for the Tribunal: David M. Attwater

Clerk of the Tribunal: Anne Jamieson

Appearance: Geoffrey S. Lester, for the respondent

Appeal No. AP-89-284

SPECIAL MISSIONS GROUP LIMITED

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
ROBERT C. COATES, Q.C., Member
ANITA SZLAZAK, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act) from a decision of the Deputy Minister of National Revenue made under paragraph 64(a) of the Act. The issue in this appeal is whether certain firearms are properly classified as prohibited goods under Code 9965 of Schedule VII to the *Customs Tariff*² (Code 9965). The goods in issue consist of three classes of firearms: 1,425 AK-47 Kalachnikov rifles, 150 Carl Gustav M-45 submachine guns and 5 R.P.D. machine guns.

Pursuant to section 114 of the *Customs Tariff*, “[t]he importation into Canada of any goods enumerated or referred to in Schedule VII [to the *Customs Tariff*] is prohibited.” Enumerated at Code 9965 are:

Offensive weapons as defined in the Criminal Code, or parts, components, accessories, ammunition or large-capacity cartridge magazines defined as “prohibited weapons” for the purposes of Part III of that Act, but this code does not affect in any manner [certain firearms, ammunition, implements, etc., not relevant to this appeal].

At section 2 of the *Criminal Code*,³ an offensive weapon is defined to include any firearm within the meaning ascribed in section 84 of that act. At the time of importation, the *Criminal Code*, Part III, subsection 84(1), defined “prohibited weapon,” in part, as:

(c) any firearm ... [except certain “restricted weapons”] that is capable of firing bullets in rapid succession during one pressure of the trigger.

The appellant imported into Canada, in the spring of 1989, three classes of firearms. Before importation, the firearms were altered by welding, cutting and grinding some parts, rendering them incapable of firing bullets in rapid succession during one pressure of the trigger (i.e. in automatic mode).

-
1. R.S.C. 1985, c. 1 (2nd Supp.).
 2. R.S.C. 1985, c. 41 (3rd Supp.).
 3. R.S.C. 1985, c. C-46.

On importation, the firearms were classified as prohibited goods on the basis that, although as presented they had been converted from having an automatic firing capability, they could be reconverted to automatic weapons in a relatively short period of time with relative ease.

The respondent's witness was Mr. Earl Soley, a specialist in firearms and ammunition, who recently retired as a constable attached to the Chief Provincial Firearms Office of the Ontario Provincial Police. Soon after importation of the firearms, Mr. Soley was asked to investigate and report on the extent to which the firearms had been converted from having an automatic firing capability. To this end, he randomly chose a sample of each type of firearm to assess its capacity for reversion to an automatic weapon.

The Carl Gustav M-45 submachine gun was designed as a close combat weapon. As manufactured, it operates only in a fully automatic mode. Mr. Soley told the Tribunal that, with regard to the sample that he inspected, the bolt face and firing pin were welded, the barrel chamber was partially obstructed by weld, the barrel and barrel jacket were welded to the frame, and the end cap was welded to the frame. This was consistent with the firearm conversions specified by the appellant to the respondent in a document dated May 9, 1989, labelled Exhibit B-2. He explained that the first two modifications disabled the firearm from firing and that the latter two modifications serve only to retard repair.

Mr. Soley told the Tribunal that he was able to acquire for \$80.00 at a gun show in Ancaster, Ontario, the parts necessary to reconvert the firearm. When these parts were installed, the firearm was capable of firing in automatic mode. Regardless of the availability of parts, he explained that the firearm could be reconverted to an automatic weapon by machining the weld out of the chamber and by machining the front face of the breech block to construct a firing pin. He told the Tribunal that reversion with the replacement parts took 15 minutes. He opined that reversion by machining would take approximately 30 to 45 minutes.

The AK-47 Kalachnikov rifle has been the standard military issue of the Soviet Union and its allies. It is manufactured as an assault rifle to fire in either semi-automatic or automatic mode. Mr. Soley told the Tribunal that, with regard to the sample that he inspected, the top of the hammer had been ground off, a portion of the auto sear had been removed, the tail of the disconnecter had been removed, and the trigger pin had been welded to the trigger. As imported, the firearm could fire in semi-automatic mode.

Mr. Soley told the Tribunal that he simply phoned a supplier in the United States to acquire replacement parts. The conversion kit, as it was called, was received by courier the next day. He explained that such parts are readily available and easily imported into Canada. With the replacement parts, reversion took approximately one hour. Mr. Soley admitted, however, that reversion would have been difficult, but not impossible, without the parts.

The R.P.D. machine gun is a heavy weapon, weighing approximately 12 to 14 pounds, normally fitted with a large-capacity drum magazine. It was manufactured to fire a single shot or in automatic mode. Mr. Soley told the Tribunal that, as imported, the gas piston had been removed from the firearm, and the gas regulator had been welded to the frame. Though the alleged conversions to the machine guns, as illustrated in Exhibit B-2, included welding shut the gas regulator port, this had not been done on the sample inspected by the witness. To reconvert the firearm, it was necessary for Mr. Soley to cut off the weld on the gas regulator and install the piston that was shipped with the firearm. When this was done, the weapon was fully

automatic. He told the Tribunal that reconversion took five minutes. Mr. Soley testified that, with the proper tools, a replacement piston could be machined in about one hour.

Although it was advised of the hearing date and indicated an intention to appear, the appellant was not represented at the hearing. In its brief, however, the appellant argued that, in determining whether a firearm is capable of automatic fire, it is necessary to consider: (a) whether the firearm, in its current state, is capable of automatic fire if handled in a certain manner; (b) whether the firearm can be reconverted to automatic fire by simply breaking through a weld and/or manipulating the firearm's internal mechanisms; (c) whether parts necessary to reconvert the firearm to automatic fire are readily available; and (d) the technical skill and time required to perform the reconversion.

The appellant argued that the firearms in issue are not capable of automatic fire, nor can they be reconverted to automatic fire by simply breaking welds. Rather, such a reconversion would require replacing parts that are unavailable. If the necessary parts were available, the reconversion would require considerable technical skill and knowledge and involve a time-consuming and extensive process.

The appellant submitted that a firearm need not be rendered permanently and irreversibly incapable of automatic fire in order to escape classification as a prohibited weapon. Such a requirement would mean that all semi-automatic firearms, including those designed to fire only in semi-automatic mode in their original form, must be considered prohibited weapons under the *Criminal Code*.

Counsel for the respondent submitted that the firearms in issue are offensive weapons under Code 9965 because they are prohibited weapons within the meaning of the *Criminal Code*. A firearm will be classified as a prohibited weapon if it is "capable of firing bullets in rapid succession during one pressure of the trigger." Although the firearms in issue, as imported, could not fire in an automatic mode, a majority of the Supreme Court of Canada in *Her Majesty the Queen v. Bernhard Hasselwander*⁴ held that a firearm had such a capacity if it was "capable of conversion to an automatic weapon in a relatively short period of time with relative ease."⁵ Counsel submitted that, on the strength of Mr. Soley's evidence, the Tribunal should find that the goods in issue are capable of conversion to automatic weapons in a relatively short period of time with relative ease.

The Tribunal had little difficulty in finding on the evidence that the firearms in issue were capable of reconversion to automatic weapons in a relatively short period of time with relative ease. According to the testimony of Mr. Soley, the parts necessary to effect the reconversion were readily available, and the task could be accomplished in little time. Based on the reasoning of the Supreme Court of Canada in *Hasselwander*, the Tribunal is of the view that these firearms are prohibited weapons and that their importation by the appellant is therefore prohibited.

In considering whether reconversion of a firearm to an automatic weapon can be accomplished in a relatively short period of time and with relative ease, the Tribunal believes that it is not determinative whether replacement parts are actually available, nor is it determinative whether such weapons are brought into the country by a person knowledgeable about weapons or otherwise. Regardless of the availability of

4. [1993] 2 S.C.R. 398.

5. *Ibid.* at 416.

replacement parts by Mr. Soley, the Tribunal would have found on the facts that the firearms in issue were prohibited weapons because of the ease of their reconversion.

Accordingly, the appeal is dismissed.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Anita Szlajak

Anita Szlajak
Member