



Ottawa, Wednesday, February 6, 1991

**Appeal No. AP-89-279**

IN THE MATTER OF an appeal heard on October 31, 1990,  
under section 67 of the *Customs Act*, R.S.C., 1985, c. 1  
(2nd Supp.) as amended;

AND IN THE MATTER OF a decision of the Deputy Minister  
of National Revenue for Customs and Excise dated  
December 18, 1989, with respect to a request for a  
re-determination pursuant to section 63 of the *Customs Act*.

**BETWEEN**

**POLLARD BANKNOTE LTD.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE  
FOR CUSTOMS AND EXCISE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed. The printing machinery is properly classified as offset printing machinery, reel fed, with an image or printing area less than 2413 cm<sup>2</sup>.

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Michèle Blouin  
Michèle Blouin  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-89-279**

**POLLARD BANKNOTE LTD.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE  
FOR CUSTOMS AND EXCISE**

**Respondent**

*Customs Act - Classification - Offset printing machinery - Image - Printing Area.*

*This is an appeal under subsection 67(1) of the Customs Act from a re-determination made by the Deputy Minister of National Revenue for Customs and Excise, classifying the goods in issue under tariff item No. 8443.11.20 as offset printing machinery, reel fed, with an image or printing area less than 2413 cm<sup>2</sup>. The appellant seeks a declaration that the apparatus has a printing area of 2413 cm<sup>2</sup> or larger and be classified under tariff item No. 8443.11.10. The appellant claims that the image or printing area must be calculated from the total of the six print towers of the apparatus, which produce a total image or printing area of 2413 cm<sup>2</sup> or larger.*

**HELD:** *The appeal is dismissed. The Tribunal concludes that, for tariff classification purposes, the image or printing area of printing machinery is determined by the "image or printing area" of a printing tower, itself determined by the size of its printing plate, and not by the aggregate of the six printing plate areas of the six towers.*

*Place of Hearing: Winnipeg, Manitoba*

*Date of Hearing: October 31, 1990*

*Date of Decision: February 6, 1991*

*Tribunal Members: Sidney A. Fraleigh, Presiding Member  
Arthur B. Trudeau, Member  
Michèle Blouin, Member*

*Clerk of the Tribunal: Nicole Pelletier*

*Appearances: Douglas J. Bowering, for the appellant  
Geoffrey Lester, for the respondent*

**Statutes Cited:** *Customs Act, R.S.C., 1985, c. 1 (2nd Supp.), as amended;  
Customs Tariff, R.S.C., 1985, c. 41 (3rd Supp.), as amended.*

**Other Reference Cited:** *The Oxford English Dictionary, 2nd edition, 1989.*

**Appeal No. AP-89-279**

**POLLARD BANKNOTE LTD.**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE  
FOR CUSTOMS AND EXCISE**

**Respondent**

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member  
ARTHUR B. TRUDEAU, Member  
MICHÈLE BLOUIN, Member

**REASONS FOR DECISION**

This is an appeal under subsection 67(1) of the *Customs Act*<sup>1</sup> from a re-determination made by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister), classifying the goods in issue under tariff item No. 8443.11.20 as offset printing machinery, reel fed, with an image or printing area less than 2413 cm<sup>2</sup>. The appellant seeks a declaration that the printing machinery has a printing area of 2413 cm<sup>2</sup> or larger and be classified under tariff item No. 8443.11.10.

**THE FACTS**

On June 25, 1988, the appellant, Pollard Banknote Ltd., imported a model R126 compu-press offset printing machine from Didds Graphic Systems Corporation of Emporia, United States, at the Port of Emerson, Manitoba.

The Model R126 compu-press is a reel fed offset printing machine used to print catalogue sheets, brochures and letterhead, with or without color, from a roll of paper.

The machine has six printing towers that may be used to run different or similar colored inks. Each printing tower is designed in the same manner; each produces a print area of 29.68 cm x 43.20 cm, for a net area of 1282.176 cm<sup>2</sup>.

On entry, the product was first classified under tariff item No. 8443.11.20. On October 27, 1988, the appellant asked for a re-determination of the machine. On February 16, 1989, a designated officer classified the machine under the same tariff item. The appellant asked for a further re-determination by the Deputy Minister who, on December 18, 1989, also classified the Model R126 compu-press under tariff item No. 8443.11.20. The appellant now appeals to this Tribunal.

**THE ISSUE AND RELEVANT LEGISLATION**

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1. R.S.C., 1985, c. 1 (2nd Supp.).

The issue is whether the imported offset printing machine has an image or printing area of 29.68 cm x 43.20 cm or 1282.176 cm<sup>2</sup> (i.e., the dimension of one printing tower printing area), which would permit it to be classified under tariff item No. 8443.11.20 as being less than 2413 cm<sup>2</sup>, or whether it has an image or printing area six times 29.68 cm x 43.20 cm or 7692 cm<sup>2</sup> (i.e., the dimension of the aggregate of the six printing towers), which would permit it to be classified under tariff item No. 8443.11.10 as having an image or printing area of 2413 cm<sup>2</sup> or larger.

For the purpose of this appeal, the relevant statutory provisions are:

*Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.), as amended:

*67.(1) A person who deems himself aggrieved by a decision of the Deputy Minister made pursuant to section 63 or 64 may appeal from the decision to the Canadian International Trade Tribunal by filing a notice of appeal in writing with the Deputy Minister and the Secretary of the Canadian International Trade Tribunal within ninety days after the time notice of the decision was given.*

*Customs Tariff*, R.S.C., 1985, c. 41 (3rd Supp.), as amended:

**84.43**            ***Printing machinery; machines for uses ancillary to printing.***

***-Offset printing machinery:***

**8443.11**        ***--Reel fed***

8443.11.10     *---With an image or printing area of 2413 cm<sup>2</sup> or larger*

8443.11.20     *---With an image or printing area less than 2413 cm<sup>2</sup>*

## ARGUMENTS

In its brief, the appellant argued that the image or printing area mentioned in tariff item Nos. 8443.11.10 and 8443.11.20 must be established on the basis of the image or printing area on which the press operates, not the size of the paper involved. It added that the machine in issue has six printing towers that could be used to run different or similar colored inks. Since each printing tower produces a print area of 29.68 cm x 43.20 cm or 1282.176 cm<sup>2</sup>, the total image or printing area is therefore 7693.056 cm<sup>2</sup>. Consequently, the machine should be classified under tariff item No. 8443.11.10 as having an image or printing area of 2413 cm<sup>2</sup> or larger. The appellant alleged that the industry would support such a calculation.

The appellant also maintained that under the designation and codification set forth by the Harmonized System, the imported article must be assessed in its essential character as imported, not in its potential use.

The appellant argued that the criteria used in the determination are based upon the wording of tariff item No. 8443.12.00, which refers to printing machinery, sheet fed, office type, for a sheet size not exceeding 22 cm x 36 cm. It observed that the machinery in issue allows the paper to be fed between any of the stations, to allow printing on the reverse side of the paper.

The respondent submitted in his brief that the product in issue is made up of six components, or

printing towers, forming an offset printing press. These components, he stated, do not produce a finished product that has an area covered in print six times the size of one offset printing image.

The respondent also submitted that the term "image or printing area" is singular and refers to the image that is produced after the paper has passed through all printing towers. He relied on the definition of the words "image" and "area" as provided by *The Oxford English Dictionary*, 2nd edition, 1989. The word "image," he said, is defined as: "To make an image or; to represent or set forth by an image." As for the word "area," it means "A particular extent of surface."

The respondent argued that, whether one offset print tower or all six are used, the end product is, nevertheless, a printed product that has an area of print no larger than 29.68 cm x 43.20 cm, for a net area of 1282.176 cm<sup>2</sup>. Consequently, the product in issue, the model R126 compu-press, does not print an image of 2413 cm<sup>2</sup> or larger and, thus, is not entitled to be classified under tariff item No. 8443.11.10. Finally, he added that not all six printing towers are necessarily used at all times.

At the hearing, each party called expert witnesses. The appellant also produced a sample of printing and documentary evidence from a technical encyclopedia. The respondent produced technical advertisement of a Model R126 compu-press offset printing machine, the same type as the one in issue.

The appellant's expert, Mr. Lyle Scrymgeour, Vice-President of Pollard Banknote Ltd., described the main components of the machinery and explained its operation as well as the printing process it involves. The witness also showed a printing plate used with the printing machinery in issue. That plate is required in order to produce an image. He explained that an image coming from a negative would be transferred to the plate that has a photo-sensitive coating on it. He added that in order to use what is called a four-color process, four plates would be needed, each having a different image and being different in character.

Mr. Kenneth Campbell, the plant superintendent at Kromar Printing Ltd., testified for the respondent. He described the essential parts of an offset printing machine, particularly the three cylinders it requires. He explained that an aluminum plate is fixed to what he called the "plate cylinder." The ink adheres to this plate and the pictorial depiction constitutes what is called an image in the printing trade. This image is then transferred to the "rubber blanket cylinder." The printing paper is fed between this cylinder and an "impression cylinder," which simply presses the paper against the "rubber blanket cylinder," allowing the transfer of the image to the paper.

Mr. Campbell pursued his testimony by giving his opinion on the image transferred and the relation between the number of images printed and the number of colors required. Explaining how the image is transferred during a color process, he then answered the following questions:

*Q. What about the size of the printing area involved?*

*A. On each printing unit it does not change. It has a maximum printing area and it cannot be exceeded.*

*Q. So if the web passed through, let's say, four stations, would the printing area be multiplied by 1 by 4 so that you have four times the size of the printing area?*

A. No. *If you have this plate, for example - if you had that plate, albeit one color, take this plate and mount it on four distinct printing units of that image, you are just applying that maximum image area over top of each press. Each printing unit has a maximum area. Therefore, you are just taking this one and adding it on top of that one, on top of that one and on top of that one but the maximum image area you have not changed.*<sup>2</sup>

In cross-examination, he acknowledged that each image transferred during a colored printing operation is distinct.

In final argument, the appellant contended that the word "or" in the phrase "an image or printing area" of tariff item Nos. 8443.11.10 and 8443.11.20, should be read as meaning an image area or a printing area, whichever condition is met first. In this regard, it stated that each printing plate has its own image and that each of the six printing towers that use these plates prints a different image on the paper.

Besides, it contended, the equipment in issue forms one functional unit and has to be classified as a single machine. Therefore, it concluded, the image area must be identified as a multiple of the image area of each plate and the proper classification then is under tariff item No. 8443.11.10 as the image area is 2413 cm<sup>2</sup> or larger.

The respondent submitted that, in the printing trade, the image is the plate. Thus, he contended, the printing area or the image corresponds to the plate. In this regard, counsel for the respondent added that machinery in the trade is defined by its capacity and that the capacity is reflected by the size of the end-product, but, more importantly, of the printing plate. Therefore, he argued, the number of printing towers involved is irrelevant. The machinery will still be defined by its capacity to produce a 12 in. x 17 in. product, and that will stay the same, notwithstanding the number of towers added.

The respondent submitted that the fact that six images might be transferred during one process does not mean that a total area is covered by the sum of these images. He argued that the result is not six times the original size of the images, but six separate images controlled by the size of the printing plates. Since each printing plate corresponds to one image, the result is merely a superimposition of images governed by the size of the plates.

The respondent also contested the relevancy of the functional unit theory as used by the appellant. This theory, he submitted, is to be used to classify components where it is not otherwise possible or where there is a doubt that it forms a functional unit. Since the matter in the case at hand is to determine the image, that theory is useless.

Finally, he submitted that the French version, by its use of the words "*une surface d'impression*" is collapsing into one general concept the two expressions used in the English version, i.e., "image" and "printing area." Therefore, these words are synonymous and do not serve the appellant's argument.

## FINDING OF THE TRIBUNAL

The Tribunal agrees with the view that for *Customs Tariff* classification purposes the printing machinery in issue must be classified according to its nature rather than to what it produces. Thus, the issue is not the size of the product, but, rather, what constitutes the "image or printing area" of the printing machinery.

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2. Transcript of Appeal No. AP-89-279 at p. 81.

The Tribunal notes that the phrase "*surface d'impression*" used in the French version of the *Customs Tariff* must encompass the words "image" and "printing area" used in the English version and, therefore, considers that "image" and "printing area" have the same meaning.

The evidence indicates that a printing tower by itself could be an offset printing machine, as contemplated in tariff heading 84.43. In this appeal, six identical printing towers are interconnected on a rail to form an offset printing machine capable of printing different colors on both sides of the page in one pass as it is equipped with a turnbar.

The Tribunal is also satisfied by the clear evidence of both witnesses with respect to the function of the printing plate in each tower. It is the Tribunal's view that the printing plate plays a fundamental role in the printing process and it is the plate's maximum image transfer capacity that ultimately determines the image or printing area of the printing press. In this instance, that capacity is limited by the size of the cylinder that holds the plate. The cylinder can hold a plate that would produce an image or printing area of 29.68 cm x 43.20 cm, for a total of 1282.176 cm<sup>2</sup>.

This evidence was supported by Mr. Campbell's testimony to the effect that multiple printing towers allow the use of different colors and that nothing in the color process changes the image or printing area capacity of the printing machine.

The Tribunal is also of the view that the fact this machinery has a turnbar, which allows the paper to be printed on both sides, is not significant. Indeed, it does not change the image or printing area capacity of the machinery having regard to the Tribunal's conclusion as to the role of the printing plate.

In sum, the Tribunal is convinced that nothing suggests that the mere multiplication of the six printing towers' images or printing areas is sufficient to change the character of offset printing machinery with respect to the two tariff items involved in the case at point.

## CONCLUSION

The appeal should be dismissed. The printing machinery is properly classified as offset printing machinery, reel fed, with an image or printing area less than 2413 cm<sup>2</sup>.

Sidney A. Fraleigh

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Presiding Member

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