



Ottawa, Friday, March 19, 1993

**Appeal No. AP-92-018**

IN THE MATTER OF an appeal heard on October 7, 1992,  
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 for Customs and Excise dated  
February 10, 1992, with respect to a request for  
re-determination pursuant to section 63 of the *Customs Act*.

**BETWEEN**

**ÉDITIONS PANINI DU CANADA LTÉE**

**Appellant**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed. The Tribunal declares that the goods in issue are more properly classified under tariff item No. 4911.91.90 as other pictures, designs and photographs.

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Presiding Member

Michèle Blouin  
Michèle Blouin  
Member

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-92-018**

**ÉDITIONS PANINI DU CANADA LTÉE**

**Appellant**

**and**

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

**Respondent**

*The issue in this appeal involves the proper tariff classification of hockey cards bearing the brand name "Upper Deck." Customs officials, and ultimately the Deputy Minister of National Revenue for Customs and Excise, classified the goods in issue under tariff item No. 4911.99.90 as other printed matter. The appellant took issue with this classification, arguing that the hockey cards are more properly classified under tariff item No. 4911.91.90 as other pictures, designs and photographs.*

**HELD:** *The appeal is allowed. The Tribunal declares that the goods in issue are more properly classified under tariff item No. 4911.91.90 as other pictures, designs and photographs.*

*Place of Hearing: Ottawa, Ontario*

*Date of Hearing: October 7, 1992*

*Date of Decision: March 19, 1993*

*Tribunal Members: Sidney A. Fraleigh, Presiding Member*

*Michèle Blouin, Member*

*Robert C. Coates, Q.C., Member*

*Counsel for the Tribunal: Clifford Sosnow*

*Clerk of the Tribunal: Dyna Côté*

*Appearances: Michael Sherbo, for the appellant*

*Linda J. Wall, for the respondent*

**Appeal No. AP-92-018**

**ÉDITIONS PANINI DU CANADA LTÉE**

**Appellant**

**and**

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

**Respondent**

TRIBUNAL: SIDNEY A. FRALEIGH, Presiding Member  
MICHÈLE BLOUIN, Member  
ROBERT C. COATES, Q.C., Member

**REASONS FOR DECISION**

The issue in this appeal involves the proper tariff classification of hockey cards bearing the brand name "Upper Deck." Customs officials, and ultimately the Deputy Minister of National Revenue for Customs and Excise, classified the goods in issue under tariff item No. 4911.99.90 of the *Customs Tariff*<sup>1</sup> as other printed matter. The appellant took issue with this classification, arguing that the hockey cards are more properly classified under tariff item No. 4911.91.90 as other pictures, designs and photographs.

Evidence at the hearing was provided by Ms. Brigitte Beaudry, Production Manager for the appellant company, and Mr. Donald Billows who testified on behalf of the respondent. Mr. Billows is President of Capital City Cards which is a sports card retailing business.

The cards in issue feature players on various professional hockey and baseball teams. The cards are purchased and traded by collectors and sports fans. Each card measures approximately six by nine centimetres and highlights a single player and his team. On the front of the card is a picture of a hockey or baseball player - the picture is placed in the centre of the card - which takes up approximately 80 percent of the surface area. The remaining 20 percent of the surface is covered with the player's name, the player's position, the "Upper Deck" logo, the team logo and the team name. The picture is framed with a white border.

The back of the card contains a picture of the same hockey or baseball player (right side) which covers approximately 50 percent of the surface area. The back of the card also contains information such as the player's name, team and position, career statistics, the "Upper Deck" logo, the team logo and the card number. The picture and printed information are surrounded by a white border.

While the statistical portion of sports cards, such as the ones in issue, is important, the evidence indicates that, in general, such cards could not be sold if they did not contain the player's picture. Indeed, the player's picture is the most important part of the sports card.

---

1. R.S.C. 1985, c. 41 (3rd Supp.).

The cards in issue are made out of card stock, a material used in the printing industry. The material is stronger and thicker than paper. The printing process used to produce the cards is called lithography.

The heading under which both parties seek to classify the cards in issue reads "Other printed matter, including printed pictures and photographs." Subheading No. 4911.91, chosen by the appellant, reads "Pictures, designs and photographs." Included in this subheading is tariff item No. 4911.91.90 which reads "Other." Subheading No. 4911.99, chosen by the respondent, reads "Other." It contains several tariff items. The tariff item chosen by the respondent reads "Other."

The appellant's position is based on the Explanatory Notes<sup>2</sup> to heading No. 49.11 which state that "[f]ramed pictures and photographs remain classified in this heading when the essential character of the whole is given by the pictures or photographs; in other cases such articles are to be classified in the heading appropriate to the frames, as articles of wood, metal, etc." The appellant contended that the Explanatory Notes indicate that goods under heading No. 49.11 are to be classified under the tariff item which describes the essential character of the goods in issue. The appellant contended that the word "pictures" best describes the essential character of the cards in issue, even though there are other components to the cards.

Counsel for the respondent submitted that the goods in issue are not pictures, nor are they marketed as such. They are hockey and baseball cards (respondent's emphasis) on which the text is not incidental, but rather is integral to the presentation and use of the product. The details of each player's career and performance statistics provided by the text are an essential ingredient sought after by sports fans and make the card suitable for collecting and trading. Consequently, counsel concluded that the printed statistical and written information is integral to the description and function of the goods in issue. As there is no tariff item specifically naming sports cards, the goods in issue fall within the classification of other printed matter pursuant to tariff item No. 4911.99.90.

After considering the evidence, the applicable tariff items and the relevant Explanatory Notes, the Tribunal considers that the appeal should be allowed.

As required by section 11 of the *Customs Tariff*, the Tribunal examined the applicable Explanatory Notes in deciding which tariff item best describes the goods in issue. The Explanatory Notes to Chapter 49 of the *Customs Tariff*, the Chapter which both the appellant and the respondent agree applies to the goods in issue, stipulate as follows:

*[T]his Chapter covers all printed matter of which the essential nature and use is determined by the fact of its being printed with motifs, characters or pictorial representations.*

...

*For the purposes of this Chapter, the term "printed" includes ... reproduction by the several methods of ordinary hand printing (e.g., prints from engravings or woodcuts, other than originals) or mechanical printing (letterpress, offset printing, lithography, photogravure, etc.).*

---

2. Explanatory Notes to the Harmonized Commodity Description and Coding System, Customs Co-operation Council, First Edition, Brussels, 1986.

In the Tribunal's view, the word "pictures" in tariff subheading No. 4911.91 and, by extension, tariff item No. 4911.91.10, is to be interpreted within the context of the "essential nature and use" interpretive criterion set out in the Explanatory Notes to Chapter 49 of the *Customs Tariff*.

Applying this criterion to the evidence adduced at the hearing, the Tribunal considers that the essential nature of the goods in issue is defined by their pictorial content. Simply put, a player's picture is the most important feature of the goods in issue. Further, the evidence also clearly establishes that the pictorial content of the cards is essential to their use; a retailer could not sell the cards in issue if they did not contain a pictorial representation of a player.

Thus, notwithstanding the printed text, the essential nature and use of the goods in issue is governed by the pictorial content and indicates that the cards in issue are more properly classified under tariff item No. 4911.91.90 as other pictures, designs and photographs.

Furthermore, because of the principle of greater specificity enunciated in Rule 3 (a) of the General Rules for the Interpretation of the Harmonized System,<sup>3</sup> even if it could be argued that the goods in issue are also properly classified under the tariff item chosen by the respondent, the Tribunal considers that the appellant's chosen tariff item is more specific in its designation than that chosen by the respondent.

Accordingly, the appeal is allowed. The Tribunal considers that the goods in issue are more properly classified under tariff item No. 4911.91.90 as other pictures, designs and photographs.

Sidney A. Fraleigh

Sidney A. Fraleigh  
Presiding Member

Michèle Blouin

Michèle Blouin  
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Member

---

3. *Ibid.*, Schedule I.