Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2012-004

Holland Hitch of Canada Limited

v.

President of the Canada Border Services Agency

Decision and reasons issued
Friday, January 18, 2013

Canada

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IN THE MATTER OF an appeal heard on October 30, 2012, pursuant to subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF 24 decisions of the President of the Canada Border Services Agency dated March 21, 2012, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

HOLLAND HITCH OF CANADA LIMITED **Appellant**

AND

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

DECISION

The appeal is allowed.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Eric Wildhaber
Eric Wildhaber
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	October 30, 2012
Tribunal Member:	Stephen A. Leach, Presiding Member
Counsel for the Tribunal:	Reagan Walker Laura Little
Manager, Registrar Programs and Services:	Michel Parent
Registrar Officer:	Ekaterina Pavlova

PARTICIPANTS:

Appellant	**Counsel/Representatives**
Holland Hitch of Canada Limited	Michael R. Smith Kelly Zeng
Respondent	**Counsel/Representatives**
President of the Canada Border Services Agency	Brian Harvey Jan Wojcik

WITNESSES:

Odiel Verbrugge Plant Manager SAF - HOLLAND Canada Limited	Gary F. Greer Director, -Applications Engineering (Americas) Trailer Systems Business Unit SAF – HOLLAND Canada Limited
Rod McKenzie Senior Program Advisor Canada Border Services Agency	Martin Restoule Coordinator/Professor Algonquin College

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Holland Hitch of Canada Limited[1] (Holland Hitch) with the Canadian International Trade Tribunal (the Tribunal) on April 25, 2012, pursuant to subsection 67(1) of the *Customs Act*[2] from re-determinations of tariff classifications made by the President of the Canada Border Services Agency (CBSA) on March 21, 2012, pursuant to subsection 60(4).

2. The issue in this appeal is whether fifth-wheel castings (the goods in issue), which the parties agree are properly classified under tariff item No. 8708.99.99 of the schedule to the *Customs Tariff*,[3] are entitled to the benefits of tariff item No. 9958.00.00 as parts, accessories and articles for use in the manufacture of original equipment parts for trucks or for use as original equipment in the manufacture of trucks or chassis, or, in the alternative, tariff item No. 9959.00.00 as materials of Section XV for use in the manufacture of trucks or parts, accessories or parts thereof, or, in the further alternative, tariff item No. 9962.00.00 as parts of chassis frames for use in the repair of road tractors for semi-trailers.

PROCEDURAL HISTORY

3. For several years, Holland Hitch claimed duty-free treatment for the goods in issue under tariff item No. 9958.00.00. Prior to 2001, Holland Hitch requested and received authorization from the Canada Customs and Revenue Agency (the CBSA's predecessor agency) to use tariff item No. 9957.00.00 (pre-1998 tariff code 9450) for the classification of the goods in issue for use in the manufacture of fifth-wheel assemblies. This authorization was provided with instructions that Holland Hitch must account for any diversions to aftermarket service use pursuant to subsection 32.2(6) of the *Act*.[4]

4. Following a World Trade Organization (WTO) decision that found a Canada-United States agreement[5] to be in violation of its WTO obligations, tariff item No. 9957.00.00 was revoked, and importers were instructed to instead account for their goods under tariff item No. 9958.00.00, effective February 18, 2001. From that point onwards, Holland Hitch applied tariff item No. 9958.00.00 to the goods in issue and continued to file amendments for diversions to aftermarket service use, in accordance with instructions in the CBSA's previous authorization letters regarding tariff item No. 9957.00.00. Holland Hitch submitted that it assumed that those instructions were well-founded and, thus, believed that it had a statutory obligation to report such diversions.[6]

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1. Although Holland Hitch of Canada Limited now operates as SAF - HOLLAND Canada Limited, the present appeal was filed under its former business name.
2. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].
3. S.C. 1997, c. 36.
4. Subsection 32.2(6) of the *Act* provides as follows: "The obligation under this section to make a correction to a declaration of tariff classification includes an obligation to correct a declaration of tariff classification that is rendered incorrect by a failure, after the goods are accounted for under subsection 32(1), (3) or (5) or, in the case of prescribed goods, after the goods are released without accounting, to comply with a condition imposed under a tariff item in the List of Tariff Provisions set out in the schedule to the *Customs Tariff* or under any regulations made under that Act in respect of a tariff item in that List."
5. *Agreement concerning automotive products between the Government of Canada and the Government of the United States of America*, 16 January 1965, Can. T.S. 1966 No. 14, 17 U.S.T. 1373 (entered into force 16 January 1966) [*Auto Pact*].
6. Tribunal Exhibit AP-2012-004-04 at para. 13, Administrative Record, Vol. 1.

5. On May 6, 2005, the CBSA instructed Holland Hitch to continue filing blanket amendments pursuant to subsection 32.2(6) of the *Act* where the goods in issue were diverted to aftermarket service use. The CBSA renewed the blanket authorization on September 30, 2009, and again on May 11, 2011.

6. Between November 23, 2010, and January 10, 2012, the CBSA issued 24 re-determinations pursuant to subsection 59(1) of the *Act*, in which it was confirmed that the goods in issue were properly classified under tariff item No. 8708.99.99 but denied duty-free treatment under tariff item No. 9958.00.00 on the basis of Holland Hitch's blanket amendments for the reported diversions to aftermarket service use.

7. Although the CBSA had routinely issued re-determinations for the goods in issue imported by Holland Hitch where they were subsequently diverted to aftermarket service use, Holland Hitch decided to contest the above 24 re-determinations on the grounds that the CBSA's instructions with respect to reporting such diversions were based on an incorrect interpretation of tariff item No. 9958.00.00.

8. As a result, between February 23, 2011, and February 2, 2012, Holland Hitch filed a series of requests for further re-determinations under subsection 60(1) of the *Act*, on the grounds that the goods were eligible for the benefits of tariff item No. 9958.00.00 or, in the alternative, tariff item No. 9959.00.00 or, in the further alternative, tariff item No. 9962.00.00.

9. On March 21, 2012, the CBSA issued further re-determinations pursuant to subsection 60(4) of the *Act*, which confirmed the classification of the goods in issue under tariff item No. 8708.99.99 and denied duty-free treatment under tariff item No. 9958.00.00, 9959.00.00 or 9962.00.00.

10. On April 25, 2012, Holland Hitch filed the present appeal.

11. On October 19, 2012, Holland Hitch filed additional documents, authorities and submissions on which it intended to rely at the hearing, pursuant to paragraph 34(3)(*a*) of the *Canadian International Trade Tribunal Rules*.[7] That same day, the CBSA objected to the filing of Holland Hitch's further submissions and requested that these be rejected or otherwise struck from the record as an abuse of the Tribunal's process.[8]

12. On October 23, 2012, Holland Hitch responded that the submissions were necessary to discharge its burden of proof, as the appellant, by addressing the issue of statutory interpretation raised in the CBSA's brief and supported by documents and authorities that had not been previously filed.[9] For its part, the CBSA argued that Holland Hitch was unfairly attempting to split its case by filing a reply, which was not contemplated by the *Rules*.[10]

13. On October 24, 2012, the Tribunal decided to allow Holland Hitch's additional submissions. It is important to note that the *Rules* do not expressly prohibit reply submissions as part of the additional documents filed under paragraph 34(3)(*a*). In this case, the Tribunal decided that, pursuant to rule 6, it was fair and equitable for Holland Hitch to have the opportunity to address the issues of statutory interpretation that were raised in the CBSA's brief and that were of central importance to the CBSA's case, namely, the application of the *NAFTA Rules of Origin Regulations*[11] in the tariff classification context, and the legislative history of tariff item No. 9958.00.00. Moreover, the Tribunal was not convinced that allowing

7. S.O.R./91-499 [*Rules*].
8. Tribunal Exhibit AP-2012-004-22, Administrative Record, Vol. 1F.
9. Tribunal Exhibit AP-2012-004-24, Administrative Record, Vol. 1F.
10. Tribunal Exhibit AP-2012-004-25, Administrative Record, Vol. 1F.
11. S.O.R./94-14 [*NAFTA Regulations*].

Holland Hitch to file additional submissions would cause any prejudice to the CBSA. Although the CBSA was given the opportunity to make a final reply, no further submissions were filed.

14. On October 25, 2012, Holland Hitch requested the use of an easel and paper for pictorial aids during the testimony of one of its witnesses. The CBSA objected on the grounds that such material should have been included in Holland Hitch's additional documents filed pursuant to paragraph 34(3)(*a*) of the *Rules*. On October 29, 2012, the Tribunal approved the use of pictorial aids, as long as they were put on the record, along with a verbal description by the witness, subject to any specific objections raised by the CBSA at the hearing.

15. On October 30, 2012, the Tribunal heard the appeal.

16. Two lay witnesses testified on behalf of Holland Hitch: Mr. Odiel Verbrugge, Plant Manager, SAF - HOLLAND Canada Limited; and Mr. Garry F. Greer, Director, Applications Engineering (Americas), Trailer Systems Business Unit, SAF - HOLLAND Canada Limited. Holland Hitch sought to have Mr. Verbrugge and Mr. Greer qualified as expert witnesses. At the hearing, the CBSA opposed both requests.

17. During the qualification process, Holland Hitch presented Mr. Verbrugge as an expert in automotive business processes, fifth wheel manufacturing and Holland Hitch's business practices, on the basis of his experience in plant management and product engineering.[12] The CBSA challenged Mr. Verbrugge's capacity to give opinion evidence on the grounds that his expertise was unsubstantiated, since he lacked broader experience in the automotive industry and had no background in marketing or as an executive in the automotive sector. The CBSA further alleged that Mr. Verbrugge lacked impartiality, since he was employed by SAF - HOLLAND Canada Limited and had a pecuniary interest in the outcome of the proceedings.

18. The Tribunal was not convinced of Mr. Verbrugge's expertise in the automotive industry in general, due to his lack of experience in the business processes of manufacturers other than Holland Hitch. Therefore, the Tribunal refused to qualify Mr. Verbrugge as an expert and instead invited Holland Hitch to call upon him to testify solely on the facts regarding the company's manufacturing and business practices. Further, the Tribunal noted that Mr. Verbrugge's alleged lack of independence was not a factor in the qualification decision; rather, this would have gone to the weight of his expert evidence.[13] In other words, if Mr. Verbrugge had been recognized as an expert, then the Tribunal would have considered whether his opinion evidence ought to be given reduced weight or was unreliable as a result of bias.

19. Holland Hitch sought to qualify Mr. Greer as an expert in professional engineering and the structural integrity relationship between the fifth wheel and frame design, as well as Holland Hitch's engineering practices as a whole.[14] The CBSA took issue with Mr. Greer's qualifications in these areas (aside from his credentials as a professional engineer) given his lack of specific experience in structural engineering, truck design and truck manufacture. The CBSA also raised Mr. Greer's lack of impartiality on the same basis as Mr. Verbrugge.

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12. *Transcript of Public Hearing*, 30 October 2012, at 14, 26.
13. *Ibid.* at 22-23, 188-89. See, also, *Re Complaint Filed by Siemens Enterprise Communications Inc., formerly Enterasys Networks of Canada Ltd.* (23 December 2010), PR-2010-049, PR-2010-050 and PR-2010-056 to PR-2010-058 (CITT) at para. 67.
14. *Transcript of Public Hearing*, 30 October 2012, at 74.

20. After careful consideration, the Tribunal refused to qualify Mr. Greer as an expert witness because he lacked specific experience in structural engineering, truck design and truck manufacture. As in Mr. Verbrugge's case, the Tribunal noted that, had Mr. Greer been qualified as an expert, any allegation with regard to bias would have gone to the weight to be given to his opinion evidence.

21. The CBSA sought to have Mr. Martin Restoule, coordinator of the automotive and truck and coach programs at Algonquin College in Ottawa, Ontario, qualified as an expert witness in the design, assembly and maintenance of road trucks and their major components. The request was opposed by Holland Hitch on the grounds that Mr. Restoule did not have expertise in design and assembly. On the basis of Mr. Restoule's relevant experience in automotive technology and road truck maintenance, the Tribunal qualified him as an expert in automotive mechanics.

22. The CBSA also called Mr. Rod McKenzie, Senior Program Advisor at the CBSA, as a lay witness.

23. At the outset of the hearing, Holland Hitch consented to the CBSA's request for limited disclosure of confidential material that had been filed for use during Mr. Greer's testimony. Limited disclosure forms (Form III) were filed by the CBSA's representative, Mr. Jan Wojcik, and witnesses, Mr. McKenzie and Mr. Restoule. During Mr. Greer's testimony, his presentation of the confidential material was heard *in camera* pursuant to subrule 23(2) of the *Rules*.

GOODS IN ISSUE

24. The goods in issue are eight models of top plates, or fifth-wheel castings, composed of an American Society for Testing and Materials A27, Grade 65-35, cast steel.[15]

25. Holland Hitch imports the goods in issue from a casting supplier in France for further processing, including machining, facing, drilling and the installation of other components to produce fifth-wheel assemblies.[16] The end product is used as fifth wheels on highway tractors for pulling semi-trailers.[17]

STATUTORY FRAMEWORK

26. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).[18] The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

27. Subsection 10(1) of the *Customs Tariff* provides that the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules for the Interpretation of the Harmonized System*[19] and the *Canadian Rules*[20] set out in the schedule.

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15. Models XA-171, XA-201, XA351, XD71, XD-101, XD-351, XD-331 and XD2081. *Transcript of Public Hearing*, 30 October 2012, at 29-30.
16. Tribunal Exhibit AP-2012-004-04 at paras. 4-6, Administrative Record, Vol. 1; Tribunal Exhibit AP-2012-004-08A at paras. 1-2, Administrative Record, Vol. 1; *Transcript of Public Hearing*, 30 October 2012, at 29.
17. *Transcript of Public Hearing*, 30 October 2012, at 31.
18. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.
19. S.C. 1997, c. 36, schedule [*General Rules*].
20. S.C. 1997, c. 36, schedule.

28. The *General Rules* comprise six rules. Classification begins with Rule 1, which provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the other rules.

29. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*[21] and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,[22] published by the WCO. While the *Classification Opinions* and the *Explanatory Notes* are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.[23]

30. The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the *General Rules* as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant *Classification Opinions* and *Explanatory Notes*. If the goods in issue cannot be classified at the heading level through the application of Rule 1, then the Tribunal must consider the other rules.[24]

31. Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to use a similar approach to determine the proper subheading.[25] The final step is to determine the proper tariff item.[26]

Relevant Classification Provisions

32. Chapter 99, which includes tariff item Nos. 9958.00.00, 9959.00.00 and 9962.00.00, provides special classification provisions that allow certain goods to be imported into Canada duty-free. As none of the headings of Chapter 99 is divided at the subheading or tariff item level, the Tribunal need only consider, as the circumstances may require, Rules 1 through 5 of the *General Rules* in determining whether goods may be classified in that chapter. Moreover, since the Harmonized System reserves Chapter 99 for special classifications (i.e. for the exclusive use of individual countries), there are no *Classification Opinions* or *Explanatory Notes* to consider.

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21. World Customs Organization, 2d ed., Brussels, 2003 [*Classification Opinions*].
22. World Customs Organization, 5th ed., Brussels, 2012 [*Explanatory Notes*].
23. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that the *Explanatory Notes* be respected unless there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to the *Classification Opinions*.
24. Rules 1 through 5 of the *General Rules* apply to classification at the heading level.
25. Rule 6 of the *General Rules* provides that ". . . the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules [i.e. Rules 1 through 5] . . ." and that ". . . the relative Section and Chapter Notes also apply, unless the context otherwise requires."
26. Rule 1 of the *Canadian Rules* provides that ". . . the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the [*General Rules*] . . ." and that ". . . the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires." The *Classification Opinions* and the *Explanatory Notes* do not apply to classification at the tariff item level.

33. There are no notes to Section XXI (which includes Chapter 99). However, the Tribunal considers notes 3 and 4 to Chapter 99 to be relevant to the present appeal. These notes provide as follows:

> 3. Goods may be classified under a tariff item in this Chapter and be entitled to the Most-Favoured-Nation Tariff or a preferential tariff rate of customs duty under this Chapter that applies to those goods according to the tariff treatment applicable to their country of origin only after classification under a tariff item in Chapters 1 to 97 has been determined and the conditions of any Chapter 99 provision and any applicable regulations or orders in relation thereto have been met.
>
> 4. The words and expressions used in this Chapter have the same meaning as in Chapters 1 to 97.

34. In keeping with note 3 to Chapter 99, the goods in issue may only be classified in Chapter 99 after classification under tariff items in Chapters 1 to 97 has been determined. The parties agreed that the goods in issue are properly classified under tariff item No. 8708.99.99, as other parts and accessories of the motor vehicles of heading Nos. 87.01 to 87.05.[27] The Tribunal accepts this classification.

35. Therefore, the remaining issue before the Tribunal is whether the goods in issue meet the conditions of tariff item No. 9958.00.00, 9959.00.00 or 9962.00.00, which provide as follows:

Chapter 99

SPECIAL CLASSIFICATION PROVISIONS – COMMERCIAL

. . .

9958.00.00	**Parts, accessories and articles, excluding tires and tubes, for use in the manufacture of original equipment parts for passenger automobiles, trucks or buses, or for use as original equipment in the manufacture of such vehicles or chassis therefor.**
9959.00.00	**Materials of Section III, VI, VII, XI, XIII, XIV or XV or of Chapter 45 or 48, or electric conductors for a voltage exceeding 1,000 V (excluding winding wire and co-axial conductors), for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses, or chassis therefor, or parts, accessories or parts thereof, other than rubber tires and inner tubes.**

. . .

9962.00.00	**The following for use in the repair of road tractors for semi-trailers . . . and chassis therefore:**
	. . .
	Chassis frames and steel shapes for the manufacture therefore;
	. . .
	Parts of the foregoing, . . .

POSITIONS OF PARTIES

First Issue: Classification under Tariff Item No. 9958.00.00

36. Holland Hitch submitted that the goods in issue are entitled to the benefits of tariff item No. 9958.00.00 as parts or articles for use in the manufacture of original equipment parts for trucks.

27. Tribunal Exhibit AP-2012-004-04 at paras. 27-31, Administrative Record, Vol. 1; Tribunal Exhibit AP-2012-004-08A at para. 8, Administrative Record, Vol. 1.

Specifically, Holland Hitch claimed that the top plates are parts or semi-finished articles imported for further processing by Holland Hitch to produce fifth-wheel assemblies, which are original equipment parts that enable highway tractors to haul the load of a semi-trailer.

37. The CBSA accepted that the goods in issue are parts for use in the manufacture of parts for trucks,[28] namely, fifth-wheel assemblies, by Holland Hitch.[29] However, the CBSA did not agree that Holland Hitch's fifth-wheel assemblies qualify as "original equipment". In fact, the parties defined this term differently.

38. In the absence of any definition of the term "original equipment" in the *Customs Tariff*, Holland Hitch took the position that this term is widely used in a variety of industries and can apply to anything that comes out of the manufacturing process of a good, as previously recognized by the Tribunal.[30] More specifically, Holland Hitch submitted that the meaning of this term in the automotive industry refers to goods that are part of the original truck design. According to Holland Hitch, its fifth-wheel assemblies qualify as original equipment parts because they are built to the same design specifications for a particular truck model, regardless of whether they are ultimately used in original truck manufacture or aftermarket services.

39. Further, Holland Hitch submitted that the "for use in" portion of tariff item No. 9958.00.00 does not, on its face, exclude original equipment parts used for truck repair, whereas the phrase following "or for use as" does specify that the original equipment must be used in original truck manufacture. Holland Hitch argued that the goods in issue can be classified under the tariff item if they meet the conditions of either the phrase preceding "or for use as" or the phrase following it, but do not need to meet the conditions of both phrases. In other words, Holland Hitch took a *disjunctive* interpretative approach, according to which it need only be shown that the goods in issue are used in the manufacture of original equipment parts for trucks, regardless of whether they are then sold for aftermarket service use.

40. The CBSA's position, on the other hand, is based on a *conjunctive* approach that requires the goods in issue to meet the conditions of tariff item No. 9958.00.00 taken as a whole. The CBSA submitted that the phrase following "or for use as" is merely a variation of the preceding phrase and, thus, that the goods in issue are eligible for duty relief under this tariff item only in cases where their end use is original truck manufacture. According to the CBSA, if Parliament had intended a disjunctive approach, a semicolon would have been used to separate the two phrases.

41. In its brief, the CBSA referred to the legislative history of tariff item No. 9958.00.00, the CBSA's administrative practices relating to this tariff item and the ordinary meaning of "original equipment" to support its position that, where the goods in issue are used in parts destined for the aftermarket, those parts cannot be considered original equipment and, thus, must be reported as diversions to aftermarket service use. In oral argument, however, the CBSA relied on the following argument as dispositive of this issue: the Tribunal must apply the definition of "original equipment" set out in the *NAFTA Regulations*,[31] which clearly excludes parts for the aftermarket.[32]

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28. For ease of reference, "road tractors for semi-trailers", "highway truck tractors" or "heavy road trucks" are herein collectively referred to as "trucks".
29. Tribunal Exhibit AP-2012-004-08A at paras. 1-3, Administrative Record, Vol. 1; *Transcript of Public Hearing*, 30 October 2012, at 264.
30. *Great West Van Conversions Inc. v. President of the Canada Border Services Agency* (30 November 2011), AP-2010-037 (CITT) [*Great West Van*] at para. 81.
31. In subsection 2(1) of the *NAFTA Regulations*, "original equipment" is defined as follows: ". . . a material that is incorporated into a motor vehicle *before the first transfer of title or consignment of the motor vehicle* to a person who is not a motor vehicle assembler, and that is . . . (*b*) an automotive component assembly, automotive component, sub-component or listed material" [emphasis added].
32. *Transcript of Public Hearing*, 30 October 2012, at 265, 273.

42. This issue was recently addressed by the Tribunal in *Great West Van*, which similarly dealt with the classification of goods under tariff item No. 9958.00.00 and in which Holland Hitch was an intervener. In that decision, the Tribunal gave little weight to the definition of "original equipment" provided in the *NAFTA Regulations* on the basis that these regulations pertain to the origin status of goods and not tariff classification. Further, the *NAFTA Regulations* were developed for the purpose of the *North American Free Trade Agreement*[33] and thus should not be imposed on goods imported from non-*NAFTA* countries.[34] This was essentially the position taken by Holland Hitch in the present appeal, although the Tribunal notes that its submissions on this point were not extensive.

43. Conversely, the CBSA argued that, in *Great West Van*, the Tribunal's remarks with respect to the application of the *NAFTA Regulations* were *dicta* and, to the extent that they carried any weight, incorrect.[35] In this regard, the CBSA submitted that the *NAFTA Regulations* and the *Customs Tariff* relate to the same subject matter, namely, managing cross-border trade and providing tariff relief, and also relied on the fact that the *Customs Tariff* is the enacting authority for the *NAFTA Regulations*.[36] For these reasons, the CBSA claimed that a definition provided in one is applicable to the other pursuant to section 15 of *Interpretation Act*.[37] In other words, these laws are alleged to be *in pari materia*.

Second Issue: Classification Under Tariff Item No. 9959.00.00

44. In the alternative, Holland Hitch submitted that the goods in issue are entitled to the benefits of tariff item No. 9959.00.00, as materials of Section XV, namely, steel, for use in the manufacture of parts for trucks.

45. Holland Hitch argued that, even though the goods in issue are properly classified under tariff item No. 8708.99.99 as other parts and accessories of the motor vehicles of heading Nos. 87.01 to 87.05, they also meet the definition of "materials" because they are ". . . a constituent part of a finished fifth wheel."[38] Holland Hitch urged the Tribunal to interpret the word "materials" according to its ordinary meaning, which is defined as follows: "The matter from which anything is made. The elements, constituent parts, or substrate of something".[39]

46. Moreover, Holland Hitch argued that the goods in issue need not be classified in Section XV in order to qualify as "materials of" that section for the purposes of tariff item No. 9959.00.00. In Holland Hitch's view, had Parliament intended for the goods in issue to be classified in one of the enumerated sections or chapters as a condition of eligibility for tariff item No. 9959.00.00, then this would have been expressly stated in that tariff item, i.e. by using the term "classified in".

47. For its part, the CBSA countered that the goods in issue do not qualify for relief under tariff item No. 9959.00.00 because they are not "materials". Specifically, the CBSA argued that top plates are not

33. *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994) [*NAFTA*].
34. *Great West Van* at para. 79.
35. *Transcript of Public Hearing*, 30 October 2012, at 288.
36. Subsection 16(2) of the *Customs Tariff* states that the Governor in Council may, on the recommendation of the Minister of Finance, make regulations respecting the origin of goods in relation to Canada's free trade agreements.
37. R.S.C. 1985, c. I-21.
38. Tribunal Exhibit AP-2012-004-04 at para. 71, Administrative Record, Vol. 1.
39. *Ibid.* at paras. 69-70.

physical substances or solid matters from which things are made or composed and that, therefore, they do not satisfy the ordinary meaning of the term "material".

48. The CBSA further submitted that the goods in issue cannot be considered "materials" because they are "parts" or "articles", as agreed by the parties, and that materials are constituent elements of parts. In this regard, the CBSA relied on the use of the terms "materials" and "parts" in tariff item No. 9959.00.00 to show that they ought to have distinct meanings, given the presumption against tautology.

49. According to the CBSA, even if the goods in issue are found to be "materials", they are not classified in any of the enumerated sections or chapters and, therefore, do not meet the conditions of tariff item No. 9959.00.00.

Third Issue: Classification Under Tariff Item No. 9962.00.00

50. In the further alternative, Holland Hitch argued that the goods in issue are entitled to the benefits of tariff item No. 9962.00.00, as parts of chassis frames for use in the repair of road tractors for semi-trailers. Holland Hitch based this position on the following rationale. If the Tribunal determines that fifth-wheel assemblies incorporating the goods in issue are not considered "original equipment" for the purpose of tariff item No. 9958.00.00 where they are used in aftermarket service, then they will fall under tariff item No. 9962.00.00. In other words, even if the goods in issue are not for use in the manufacture of original equipment for trucks, they would nevertheless qualify under tariff item No. 9962.00.00 as aftermarket parts of chassis frames for use in truck repair. Specifically, the goods in issue are used in the repair of the fifth wheel.

51. Holland Hitch submitted that fifth-wheel assemblies are "parts" of chassis frames because they are integral to the design and essential to the function of the frame, namely, to withstand the load being hauled, as well as the twisting and torsion from carrying the semi-trailer, without which the tractor cannot form a complete unit with the semi-trailer. Further, the fifth wheel has no alternative function and cannot be used unless it is attached to the truck frame.

52. While the CBSA allowed that the goods in issue are considered "parts", it argued that they are parts of fifth-wheel assemblies and not chassis frames. The CBSA submitted that the ordinary meaning of the term "chassis frame" refers to the structural unit of a vehicle without attachments, such as fifth-wheel assemblies which are bolted to the frame. Similarly, the engine, wheels, gas tank, cabin and mud guards would not be considered parts of the chassis frame. The CBSA argued that the Tribunal ought to take a restrictive approach to the interpretation of the terms "parts of" and "[c]hassis frames and steel shapes for the manufacture therefore", so as not to render other items listed under tariff item No. 9962.00.00 meaningless.

ANALYSIS

Do the Goods in Issue Qualify for the Benefits of Tariff Item No. 9958.00.00?

53. In order for the goods in issue to qualify for the benefits of tariff item No. 9958.00.00, they must be "[p]arts, accessories and articles . . . for use in the manufacture of original equipment parts for passenger automobiles, trucks or buses, *or* for use as original equipment in the manufacture of such vehicles or chassis therefor" [emphasis added].

54. The Tribunal agrees with taking a disjunctive approach to the interpretation of tariff item No. 9958.00.00. Tribunal jurisprudence supports the use of the word "or" to suggest separate activities or conditions for tariff classification purposes.[40] The phrase preceding "or for use as" in tariff item No. 9958.00.00 contains no express condition that the original equipment parts must be used in original vehicle manufacture. Therefore, according to ordinary grammatical usage, the Tribunal need only determine whether the goods in issue are (1) parts, accessories or articles (2) for use in the manufacture of (3) original equipment parts for trucks. Since the parties agree that the conditions in (1) and (2) are met, as discussed above, the sole issue left for the Tribunal to determine is whether fifth-wheel assemblies that are manufactured using the goods in issue (i.e. fifth wheels destined for aftermarket service use) are "original equipment" parts for trucks.

"Original equipment"

55. The term "original equipment" is not defined in the *Customs Tariff*. Therefore, the Tribunal will attempt to give meaning to this term, as it does in any case where a definition is not provided or is unclear, by having regard to other sources to aid in its interpretation. However, the Tribunal will first consider whether it is bound to apply the definition of this term found in the *NAFTA Regulations*, as argued by the CBSA.

56. The modern rule of statutory interpretation requires ". . . the words of an Act . . . to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."[41]

57. In a similar vein, the Supreme Court of Canada has recognized that statutes enacted by the same government should be interpreted harmoniously, especially when they are closely related.[42] This presumption is codified in subsection 15(2) of the *Interpretation Act*, which states that the interpretation provisions of an enactment are applicable to all other enactments of the same subject matter unless a contrary intention appears. The key is that the statutes must relate to the same subject matter, since it can be hazardous to shift from one statute to another without accounting for contextual differences that may change the meaning of a particular word that appears in both laws.[43]

58. The courts have taken a cautious approach to the transfer of definitions from one statute to another, even when they relate to the same subject matter. Duff J. stated the following in *Miln-Bingham Printing Co. v. The King*:[44]

> No doubt, for the purpose of ascertaining the meaning of any given words in a statute, the usage of that word in other statutes may be looked at, especially if the other statutes happen to be *in pari materia*, but it is altogether a fallacy to suppose that because two statutes are *in pari materia*, a definition clause in one can be boldly transferred to the other.

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40. *Ibid.*, tab 14; *Dynamo Industries, Inc. v. President of the Canada Border Services Agency* (1 April 2009), AP-2008-007 (CITT) at para. 33. See, also, *Brial Holdings Ltd.* (27 July 1993), AP-92-039 (CITT); *S.C. Johnson and Son, Limited v. Deputy M.N.R.* (21 February 1997), AP-95-233 (CITT).
41. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, citing Elmer Driedger, *Construction of Statutes*, 2d ed. (Toronto: Butterworths, 1983) at 87. See, also, *Canada Trustco Mortgage Co. v. Canada*, [2005] 2 S.C.R. 601 at para. 10.
42. *Therrien (Re)*, [2001] 2 S.C.R. 3 at para. 121.
43. Pierre-André Côté, *The Interpretation of Legislation in Canada*, 2nd ed. (Cowansville: Yvon Blais, 1991) at 291, as cited in *Canada v. Paccar of Canada Ltd.*, 1998 CanLII 7928 [*Paccar*] at para. 21.
44. *Miln-Bingham Printing Co. Ltd. v. The King*, [1930] S.C.R. 282. See, also, *Paccar* at para. 21.

59. The Tribunal is not persuaded that the definition of "original equipment" provided in the *NAFTA Regulations* must be applied in the context of tariff classification under the *Customs Tariff*. Although both statutes fall under Canada's customs law, the tariff classification exercise is separate and distinct from the determination of origin.[45]

60. Subsection 2(1) of the *Act* defines "tariff classification" as follows:

> "tariff classification" means the classification of imported goods under a tariff item in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*.

61. Canada's tariff classification regime requires that the goods be properly classified based on their physical characteristics, pursuant to prescribed interpretative rules.[46] As described above, the same rules also apply to the interpretation of special tariff treatment provisions under Chapter 99. In this regard, Mr. McKenzie testified that Chapter 99 provides for specific relief for goods that would otherwise be dutiable, as classified in Chapters 1 to 97.[47] However, it is important to note that imported goods from any country can potentially qualify for the benefits of Chapter 99.

62. The determination of origin, on the other hand, provides the basis for determining whether or not imported goods, as classified, qualify for preferential treatment (e.g. under *NAFTA*). In particular, the *NAFTA Regulations* provide the basis for ensuring that goods that originate in the territory of a *NAFTA* country receive preferential treatment, whereas imported goods from other countries merely being transshipped through or undergoing only minimal processing in North America are not eligible for these benefits. Given that the *NAFTA Regulations* apply to the three *NAFTA* countries only, the Tribunal finds that it would be improper to impose more restrictive conditions developed for *NAFTA* purposes, including statutory definitions, on goods imported from non-*NAFTA* countries.[48] This is especially important in light of Mr. Verbrugge's testimony that Holland Hitch imports the goods in issue from France.[49]

63. The above finding is consistent with the Tribunal's determination in *Great West Van*,[50] which did indeed have a bearing on its disposition of that case (contrary to the CBSA's assertion). In that decision, having determined that the definition of "original equipment" provided under the *NAFTA Regulations* was

45. *C.B. Powell Limited v. President of the Canada Border Services Agency* (11 August 2010), AP-2010-007 and AP-2010-008 (CITT) at paras. 34-36.
46. Subsection 10(1) of the *Customs Tariff*.
47. *Transcript of Public Hearing*, 30 October 2012, at 117-18.
48. Furthermore, had Parliament intended for the term "original equipment" to have the same meaning as provided in the *NAFTA Regulations*, then, it could have expressly incorporated, either directly or by reference, that definition into the *Customs Tariff*. This has been done in other provisions of the *Customs Tariff*, such as tariff item No. 9898.00.00, which specifically refers to the definitions relating to prohibited weapons set out in the *Criminal Code*, R.S.C. 1985, c. C-46. See, also, *Great West Van* at para. 61.
49. *Transcript of Public Hearing*, 30 October 2012, at 29.
50. *Great West Van* at para. 79.

not determinative,[51] the Tribunal looked to other interpretative aids and ultimately relied on the industry-specific usage of the term "original equipment".[52]

64. Similarly, in the present matter, the Tribunal is not convinced by the CBSA's argument that tariff item No. 9958.00.00 ought to be read as excluding automotive parts used for aftermarket repair based on the legislative history of Canada's automotive tariff provisions dating back to the *Auto Pact*, under which duty-free treatment was restricted to imported goods for use in original vehicle manufacture, or the former *Motor Vehicles Tariff Order, 1998*,[53] which defined the word "parts" as excluding parts for repair or replacement purposes. However, in the Tribunal's view, to read in a similar exclusion under tariff item No. 9958.00.00 would ignore the fact that the *Auto Pact* was repealed in 2001 (along with tariff item No. 9957.00.00 and the *MVTO, 1998*), following the WTO ruling that found this sectoral free trade arrangement between Canada and the United States to be in violation of Canada's WTO obligations. At that time, tariff item No. 9958.00.00 was not amended. Moreover, this tariff item was never even covered by the *MVTO, 1998* in the first place,[54] and it is clearly a more generally worded provision than former tariff item No. 9957.00.00 (and, for that matter, pre-*Customs Tariff* code 9450).

65. It is also well established in the Tribunal's jurisprudence that the CBSA's administrative practices are non-binding upon the Tribunal.[55] Accordingly, the Tribunal does not ascribe customs Memorandum D10-15-21,[56] which specifically excludes parts for aftermarket use from classification under tariff item No. 9958.00.000, any greater probative value than other interpretative aids in determining the classification of the goods in issue.

66. The Tribunal has previously recognized that, if a term used in the *Customs Tariff* is not defined or is unclear, but has a particular meaning in a trade, then it should be interpreted in that sense; otherwise, it should be interpreted according to its ordinary meaning.[57] As a result, the Tribunal will look to the industry usage of the term "original equipment" to assist in its determination of the proper meaning of this term.

67. As stated above, Holland Hitch submitted that the term "original equipment" refers to manufactured goods that are part of the original truck design. In particular, Holland Hitch relied upon the affidavit of Mr. Greer dated May 13, 2011 (originally filed in *Great West Van*), in which he stated that original equipment manufacture is commonly understood in the automotive industry to apply where goods are manufactured for use in original vehicle assembly or for repair service covered by warranty, typically through a dealer for the vehicle assembler.[58]

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51. In *Great West Van*, at paras. 56, 61, the Tribunal made a similar determination that the definitions of the terms "passenger car" and "motor home" provided under the *Motor Vehicle Safety Regulations*, C.R.C., c. 1038, were neither authoritative nor binding upon the Tribunal, and should not be relied on in the context of tariff classification because they are not *in pari materia* with the *Customs Tariff*.
52. In *Great West Van*, at para. 78, the Tribunal stated as follows: ". . . when combined, definitions of the words 'original' and 'equipment' clearly do not give a proper indication of the meaning that should be attributed to this term, which the Tribunal recognizes as being industry-specific."
53. S.O.R./98-43 [*MVTO, 1998*].
54. The *MVTO, 1998* was applicable to tariff item Nos. 9954.00, 9955.00.00, 9956.00.00 and 9957.00.00 only.
55. *DSM Nutritional Products Canada Inc. v President of the Canada Border Services Agency* (2 December 2008), AP-2007-012 (CITT).
56. (26 June 2011).
57. *Outdoor Gear Canada v. President of the Canada Border Services Agency* (21 November 2011), AP-2010-060 (CITT) at para. 25.
58. Tribunal Exhibit AP-2012-004-04, tab 9, Administrative Record, Vol. 1.

68. In contrast, Mr. Restoule testified that, on the basis of his experience as an auto mechanic, the term "original equipment" means "... anything that would come assembled on the truck from the manufacturer."[59] Mr. Restoule went on to distinguish between original equipment parts and repair parts as follows: "... when you repair something, the component you are putting on is not necessarily an original equipment part. It could be a part from another manufacturer that you are putting in."[60]

69. In the Tribunal's view, it is entirely reasonable that, from the perspective of an automotive mechanic, the term "original equipment" means any parts incorporated into the original vehicle. However, for automotive parts manufacturers, such as Holland Hitch, the meaning of this term is not as limited.

70. The Tribunal heard evidence that Holland Hitch designs and manufactures fifth-wheel assemblies for a variety of customers. Mr. Verbrugge testified that Holland Hitch sells fifth wheels to original vehicle manufacturers (e.g. Paccar and Freightliner), original equipment suppliers, including dealerships and service centres (e.g. Paccar and Volvo dealerships), for repair service, and aftermarket distributors (e.g. UAP) for "first fit", which refers to dealerships that import nearly fully assembled tractors and fit them with fifth wheels so that they can haul a load.[61]

71. Mr. Verbrugge testified that all fifth wheels are designed and built by Holland Hitch according to customer specifications and are covered by warranty.[62] He explained that customer specifications, whether an original vehicle manufacturer or aftermarket service centre, are designated by Holland Hitch part numbers.[63] Mr. Verbrugge also gave evidence that Holland Hitch's sales group works directly with the customers to determine the specifications required for a particular order; as well, Holland Hitch's research and development department often works closely with the engineering teams of larger customers to develop and test design solutions to meet their specific needs.[64]

72. During his testimony, Mr. Greer described in greater detail the collaboration between Holland Hitch and its customers, i.e. vehicle manufacturers, such as Paccar, to develop and test fifth-wheel configurations for a specific truck model.[65]

73. The parties do not dispute that fifth-wheel assemblies manufactured by Holland Hitch, in which the goods in issue are a primary component, are properly considered original equipment where they are used in original truck manufacture. The Tribunal agrees. The Tribunal also places in this same category fifth-wheel assemblies made by Holland Hitch for sale to "first fit" distributors that import tractors which cannot perform the basic function of highway trucks, i.e. hauling a load, until the fifth wheel is added.[66] It is clear from the testimonies of Mr. Greer and Mr. Restoule that the purpose of a fifth wheel is to connect a tractor to a semi-trailer in order to haul a load.[67] The addition of a "first fit" fifth wheel to a tractor in order to serve as a coupling device can therefore be considered akin to original vehicle assembly.

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59. *Transcript of Public Hearing*, 30 October 2012, at 213.
60. *Ibid.*
61. *Ibid.* at 31, 35, 40, 42.
62. *Ibid.* at 49-50, 53-54. See, also, Tribunal Exhibit AP-2012-004-04, tab 10, Administrative Record, Vol. 1.
63. *Transcript of Public Hearing*, 30 October 2012, at 47-48, 62-63.
64. *Ibid.* at 47-48, 62-63, 79, 85, 94-95, 105; *Transcript of In Camera Hearing*, 30 October 2012, at 2-4.
65. *Transcript of Public Hearing*, 30 October 2012, at 79, 85, 94-95, 105; *Transcript of In Camera Hearing*, 30 October 2012, at 2-4.
66. *Transcript of Public Hearing*, 30 October 2012, at 42.
67. *Ibid.* at 89-90, 230.

74. Furthermore, the Tribunal finds that Holland Hitch's fifth wheels qualify as original equipment parts where they are replacement parts for trucks originally equipped with the same fifth-wheel product, which is specifically designed for that particular truck make and model, and covered by the vehicle warranty. This includes parts used for aftermarket service as long as the replacement part is the same Holland Hitch part number as the original for the same truck model. Conversely, the Tribunal would not categorize fifth wheels as original equipment where they are ultimately used as aftermarket parts in a more generic sense, for example, to repair a vehicle that was originally equipped with another fifth-wheel product.

75. Therefore, the Tribunal finds that the goods in issue are parts or articles for use in the manufacture of original equipment for trucks, to the extent that "original equipment" refers to fifth wheels destined for use in original vehicle manufacture, "first fit" assembly or for aftermarket replacement for trucks originally equipped with the same fifth-wheel product and covered by vehicle warranty, and therefore qualify for the benefits of tariff item No. 9958.00.00.

76. In light of the possibility that there may be a subset of the goods in issue that does not meet the above conditions and, accordingly, would not be eligible for relief under tariff item No. 9958.00.00, the Tribunal will next consider whether the goods in issue meet the conditions of tariff item No. 9959.00.00 or 9962.00.00.

Do the Goods in Issue Qualify for the Benefits of Tariff Item No. 9959.00.00?

77. In order for the goods in issue to qualify for the benefits of tariff item No. 9959.00.00, as claimed in the alternative by Holland Hitch, they must be materials of one of the enumerated sections or chapters that are for use in the manufacture of parts of trucks or truck chassis, or parts, accessories or parts thereof, other than rubber tires and inner tubes.

78. The Tribunal is not convinced by Holland Hitch's argument that goods need not be classified in Section XV to qualify as materials of Section XV for the purposes of tariff item No. 9959.00.00. The CBSA referred to other examples where the terms "of tariff item" or "of Chapter" are used in Chapter 99, which is taken to mean that the goods must be classified under that particular tariff item or in that particular Chapter. The Tribunal agrees. Otherwise, the interpretation proposed by Holland Hitch would, in effect, allow for two or more classifications in Chapters 1 to 97 for the same goods. In accordance with the Note 3 to Chapter 99, goods may be classified under a tariff item in Chapter 99 only after classification under a tariff item in Chapters 1 to 97 has been determined, pursuant to the *General Rules*.

79. As stated above, the parties recognized and the Tribunal accepts that the goods in issue are properly classified under tariff item No. 8708.99.99. Since this tariff item does not fall within any of the sections or chapters listed in tariff item No. 9959.00.00, the goods in issue are not eligible for the benefits of tariff item No. 9959.00.00.

80. The Tribunal notes that, even if the goods in issue were classified in one of the enumerated sections or chapters listed in tariff item No. 9959.00.00, it agrees with the CBSA that the goods in issue are not "materials" and, therefore, do not qualify for relief under that tariff item.

81. The term "materials" is not defined in the *Customs Tariff*. Both Holland Hitch and the CBSA relied on similar dictionary definitions of this term.[68] The Tribunal accepts the ordinary meaning of "material" as ". . . [t]he matter of which a thing is or may be made. . . . The constituent parts of something".[69]

82. In turn, the dictionary definition of "matter" is "**1** The substance or the substances collectively of which a physical object consists; constituent material, esp. of a particular kind . . .".[70]

83. The term "substance" is defined as "**1** The essential nature or part of a thing etc., essence; . . . **2** that of which a physical thing consists; the essential (esp. solid) material forming a thing."[71]

84. At the hearing, Mr. Verbrugge stated that the goods in issue are parts, namely, the cast top plates, produced by Holland Hitch's casting supplier prior to importation and are made of high-grade cast steel.[72] Holland Hitch also noted, in its written submissions, that the goods in issue ". . . are made from the metals of section XV, namely steel."[73]

85. The Tribunal is of the view that cast steel is a "material" within the ordinary meaning of that term because it is the essential matter or substance of which the goods in issue (i.e. top plates) are made. On the other hand, the goods in issue themselves are parts, as agreed by the parties and recognized by the Tribunal.

86. On the basis of the foregoing, the Tribunal finds that the goods in issue are not materials of Section XV and, therefore, do not qualify for the benefits of tariff item No. 9959.00.00.

Do the Goods in Issue Qualify for the Benefits of Tariff Item No. 9962.00.00?

87. In order for the goods in issue to be eligible for the relief provisions of tariff item No. 9962.00.00, they must be (1) parts of chassis frames and steel shapes for the manufacture therefore (2) for use in the repair (3) of road tractors for semi-trailers.

88. With respect to the first condition, the CBSA conceded that the goods in issue are parts of fifth-wheel assemblies, which are, in turn, parts of trucks.[74] What is at issue is whether fifth-wheel assemblies are parts of chassis frames and steel shapes for the manufacture of such frames.

89. The Tribunal's jurisprudence has found the following criteria to be relevant when determining whether goods qualify as "parts": (1) whether the product in issue is essential to the operation of the other product; (2) whether the product in issue is a necessary and integral part of the other product; (3) whether the product in issue is installed in the other product; and (4) common trade usage and practice.[75] The

68. Tribunal Exhibit AP-2012-004-04 at para. 70, Administrative Record, Vol. 1; Tribunal Exhibit AP-2012-004-08A, tab Q, Administrative Record, Vol. 1.
69. *Shorter Oxford English Dictionary*, 5th ed., *s.v.* "matter".
70. Tribunal Exhibit AP-2012-004-08A, tab Q, Administrative Record, Vol. 1; *Canadian Oxford Dictionary*, 2d ed., *s.v.* "matter".
71. *Shorter Oxford English Dictionary*, 5th ed., *s.v.* "substance".
72. *Transcript of Public Hearing*, 30 October 2012, at 29.
73. Tribunal Exhibit AP-2012-004-04 at para. 72, Administrative Record, Vol. 1.
74. *Transcript of Public Hearing*, 30 October 2012, at 285.
75. *GL&V/Black Clawson-Kennedy v. Deputy M.N.R.* (27 September 2000), AP-99-063 (CITT) at 9 [*GL&V/Black Clawson-Kennedy*]; *York Barbell Company Limited v. Deputy M.N.R C.E.* (19 August 1991), AP-90-161 (CITT) at 6.

Tribunal has recognized, however, that each case must be determined on its own merits and that there is no universal test for "parts".[76]

90. In accordance with past practice,[77] the Tribunal will consider these criteria, as it finds appropriate in the context of this case, for the purpose of determining whether the goods in issue are parts of chassis frames.

91. Turning to the term "chassis frame", which is not defined in the *Customs Tariff*, the Tribunal notes that the *Explanatory Notes* to heading No. 87.08 provide some specific examples of parts of chassis frames as follows:

> This heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05, **provided** the parts and accessories fulfil **both** the following conditions:
>
> (i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles;
>
> and (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).
>
> Parts and accessories of this heading include:
>
> (A) Assembled motor vehicle chassis-frames (whether or not fitted with wheels **but without engines**) and parts thereof (side-members, braces, cross-members; suspension mountings; supports and brackets for the coachwork, engine, running-boards, battery or fuel tanks, etc.).

92. As mentioned above, the *Explanatory Notes*, including those to heading No. 87.08, should be respected unless there is a sound reason to do otherwise, and Note 4 to Chapter 99 states that the words and expressions used in this chapter have the same meaning as in Chapters 1 to 97. In other words, to the extent that the words and expressions used in tariff item No. 9962.00.00 (particularly parts of chassis frames) have the same meaning as they do in heading No. 87.08 and that the *Explanatory Notes* to heading No. 87.08 inform the meaning of those same words, the Tribunal ought to have regard to these explanatory notes unless there is a sound reason to do otherwise.

93. The Tribunal has previously found that the *Explanatory Notes* may direct a particular tariff classification for purposes of Chapters 1 to 97, i.e. by indicating that a particular product is included or excluded from a particular heading, without necessarily informing the definition of the words and expressions used therein for purposes of Chapter 99.[78] This does not, however, prevent the Tribunal in this case from having regard to the non-exhaustive list of parts of chassis frames set out in the *Explanatory Notes* to heading No. 87.08, with a view to shedding light on the types of goods considered to be "parts" of chassis frames for purposes of tariff item No. 9962.00.00, while recognizing that the list may not necessarily be limited to these examples.

94. Accordingly, the Tribunal will look to the trade usage and ordinary meaning of "chassis frame" to give meaning to this term.

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76. *Ibid.*
77. *GL&V/Black Clawson-Kennedy*. See, also, *Asea Brown Boveri Inc. v. Deputy M.N.R.* (21 February 2000), AP-98-001 (CITT).
78. *Beckman Coulter Canada Inc. v. President of the Canada Border Services Agency* (17 January 2012), AP-2010-065 (CITT) at paras. 33-37.

95. The CBSA referred to the definitions of "frame" provided in the *Canadian Oxford Dictionary*, i.e. ". . . the basic rigid supporting structure of anything, e.g. of a building, motor vehicle, or aircraft . . ." and in the *Merriam-Webster's Collegiate Dictionary*, i.e. ". . . a structural unit in an automobile chassis supported on the axles and supporting the rest of the chassis and the body . . .".[79] The CBSA further relied on various automotive industry-specific descriptions of the chassis frame, which state that the frame is the truck's "backbone", or the basic structure of the vehicle, designed to support the weight of the body and absorb all the loads imposed by the terrain, suspension system, engine, drive train, steering system and other components mounted on the frame.[80] The Tribunal accepts these definitions and trade usage of the term "chassis frames", noting that they were not contested by Holland Hitch; further, they were agreed upon by all three witnesses at the hearing.[81]

96. In light of the above, the Tribunal is not persuaded that the goods in issue are parts of chassis frames and steel shapes for the manufacture therefore, for the following reasons.

97. The Tribunal accepts the evidence that chassis frames are generally made up of two steel side members, or rails, and riveted (or welded) together by a number of shorter steel cross-members in a "ladder" frame design.[82] There was also uncontested evidence that the fifth wheel, when used on a tractor for hauling semi-trailers, is mounted on a slider and bolted to the side members of the chassis frame.[83]

98. Mr. Greer testified that a fifth wheel, once bolted to the frame, becomes an integral part of the frame by connecting the tractor to the semi-trailer and allowing for the transfer of the load of the semi-trailer to the side members of the frame.[84] Specifically, he explained that ". . . the load of the front of the trailer sits on the fifth wheel, which . . . sits on its bracket on its base, which is on the side rails of the truck frame, and then the load is carried through the suspension and axles to the ground."[85]

99. Mr. Greer further described how Holland Hitch works closely with its vehicle manufacturer customers to design and test fifth wheels with their tractor frames, which has resulted, in the case of Paccar, in a modified tractor frame design that is able to use fewer cross members (leading to weight reduction gains) because the incorporation of the fifth wheel allows the same level of frame strength and rigidity to be maintained.[86] Mr. Greer also noted, however, that chassis frames from different frame manufacturers do not tend to differ much since, ". . . in general terms, they have all sort of evolved [into] something similar."[87]

100. For his part, Mr. Restoule testified that the frame is the structural unit of a vehicle without attachments, such as the fifth wheel. Specifically, he stated that the main function of the chassis frame is to provide the structural support, or "foundation", of the vehicle to which everything else is attached, including

79. *Canadian Oxford Dictionary*, 2d ed., *s.v.* "frame"; *Merriam Webster's Collegiate Dictionary*, 10th ed., *s.v.* "frame".
80. Tribunal Exhibit AP-2012-004-08A at para. 73, tabs H, I, Administrative Record, Vol. 1.
81. *Transcript of Public Hearing*, 30 October 2012, at 59, 88, 223-24.
82. *Ibid.* at 92. See, also, Tribunal Exhibit AP-2012-004-04, tab 10, Administrative Record, Vol. 1; Tribunal Exhibit AP-2012-004-08A, tabs H, I, Administrative Record, Vol. 1.
83. *Transcript of Public Hearing*, 30 October 2012, at 65, 100, 108, 110, 205, 210; Tribunal Exhibit AP-2012-004-06A, tab 5, Administrative Record, Vol. 1A; Tribunal Exhibit AP-2012-004-08A, tab J, Administrative Record, Vol. 1.
84. *Transcript of Public Hearing*, 30 October 2012, at 100.
85. *Ibid.* at 89.
86. *Ibid.* at 77-79, 85, 94.
87. *Ibid.* at 108.

the fifth wheel and other pieces of equipment that are separate components fitted to the frame, such as the engine and the battery.[88] In turn, the frame is supported by the suspension system and axles.

101. Mr. Restoule stated that the functional role of the frame is the same for all heavy trucks, including fifth-wheel tractor-trailers, cement mixers, tow trucks, waste disposal trucks and dump trucks.[89] In his view, therefore, fifth wheels, like other separate components that may be fitted to the frame for various applications, are not "parts" of chassis frames, but rather parts or accessories of the tractor (or truck) as a whole.[90]

102. The Tribunal agrees with Mr. Restoule that the chassis frame performs the same basic function in all heavy trucks, i.e. to provide structural support for the weight of the body and other components of the vehicle and transfer loads imposed on the frame by the body and other components of the vehicle. The evidence presented in this case leads the Tribunal to the conclusion that fifth wheels are not essential to the operation of the chassis frame because the frame can, on its own, support the weight of the cab, engine, etc. Although the frame cannot serve one particular function, i.e. haul a semi-trailer, without being fitted with a fifth wheel, it is nevertheless functional as a foundational structure that provides rigidity and strength to support the body and other components of the vehicle.

103. The Tribunal recognizes that the fifth wheel, once bolted to the frame, may reinforce the frame and help transfer loads through to the ground. While interaction between the fifth wheel and the frame is inevitable, given that the fifth wheel is mounted on the frame and they are both integral to the operation of the vehicle, the Tribunal finds that they are separate components. Similarly, while suspension mountings are "parts" of chassis frames, in accordance with the *Explanatory Notes* to heading No. 87.08, the suspension system itself is a separate component from the frame, despite the fact that it is attached to the frame and helps transfer loads from the frame to the ground. Therefore, the Tribunal agrees with the CBSA's argument that the fifth wheel is not any more part of the frame than, for example, the suspension system, engine, drive train, steering system, battery and other components that are connected to and interact with the frame.

104. The fifth wheel has a distinct function from the frame, in that it acts primarily as a coupling device between road tractors and semi-trailers, which enables the tractor to haul the load of a semi-trailer.[91] In the Tribunal's view, the evidence clearly demonstrates that the fifth wheel forms a complete unit, which is manufactured and marketed separately from the chassis frame and is for use solely or principally with trucks, specifically road tractors for semi-trailers, whether in the original manufacture or aftermarket repair service of such vehicles.[92] Furthermore, the Tribunal is of the opinion that the evidence relating to common trade usage and practice does not support the categorization of fifth wheels as "parts" of chassis frames.[93] On the basis of the above, it is clear that three of the four criteria from the jurisprudence have not been met.

105. Accordingly, the Tribunal finds that the goods in issue are not "parts" of chassis frames or steel shapes for the manufacture therefore and, consequently, do not qualify for the benefits of tariff item No. 9962.00.00.

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88. *Ibid.* at 190-91, 205-207.
89. *Ibid.* at 190-91, 197.
90. *Ibid.* at 209, 212.
91. *Ibid.* at 89, 228. See, also, Tribunal Exhibit AP-2012-004-08A, tab J at 99, Administrative Record, Vol. 1.
92. Tribunal Exhibit AP-2012-004-04, tabs 10, 11, 12, Administrative Record, Vol. 1.
93. *Transcript of Public Hearing*, 30 October 2012, at 212, 221; Tribunal Exhibit AP-2012-004-04, tabs 10, 12, Administrative Record, Vol. 1; Tribunal Exhibit AP-2012-004-08A, tabs H, I, J, Administrative Record, Vol. 1; Tribunal Exhibit AP-2012-004-20A, tab 2 at 17-19, 20-21, Administrative Record, Vol. 1F.

DECISION

106. For the foregoing reasons, the Tribunal concludes that the goods in issue are parts or articles for use in the manufacture of original equipment for trucks, to the extent that "original equipment" refers to fifth wheels destined for use in original vehicle manufacture, "first fit" assembly or for aftermarket replacement for trucks originally equipped with the same fifth-wheel product and covered by vehicle warranty, and are, accordingly, entitled to the duty-free treatment conferred by tariff item No. 9958.00.00.

107. Therefore, the appeal is allowed.

Stephen A. Leach
Stephen A. Leach
Presiding Member