



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2009-005

Les Pièces d'Auto Transit Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, July 28, 2010*

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IN THE MATTER OF an appeal heard on May 18, 2010, pursuant to subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated February 2, 2009, with respect to a request for further re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

LES PIÈCES D'AUTO TRANSIT INC.

Appellant

AND

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

Respondent

DECISION

The appeal is dismissed.

André F. Scott
André F. Scott
Presiding Member

Gillian Burnett
Gillian Burnett
Acting Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	May 18, 2010
Tribunal Member:	André F. Scott, Presiding Member
Research Director:	Dominique Laporte
Research Officer:	Jan Wojcik
Counsel for the Tribunal:	Eric Wildhaber
Manager, Registrar Office:	Michel Parent
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PARTICIPANTS:**Appellant**

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Michael Kaylor

Respondent

President of the Canada Border Services Agency

Counsel/Representative

Luc Vaillancourt

WITNESSES:

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Service Maintenance Supervisor and
Project Manager
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James Savoie
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Les Pièces d'Auto Transit Inc.

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Les Pièces d'Auto Transit Inc. (Transit) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*¹ from a decision of the President of the Canada Border Services Agency (CBSA) dated February 2, 2009, with respect to a request for further re-determination pursuant to subsection 60(4).

2. The issue in this appeal concerns the tariff classification of four types of goods known commercially and in the trade by a variety of names, including wheel hub bearing assembly, front or rear hub assembly, wheel hub assembly, wheel bearing hub assembly and wheel hub bearing unit² (the goods in issue). The CBSA classified the goods in issue containing either ball or tapered roller bearings under tariff item No. 8708.99.99 of the schedule to the *Customs Tariff*³ as other parts and accessories of the motor vehicles of heading Nos. 87.01 to 87.05. It now claims that the goods in issue with ball bearings should be classified under tariff item No. 8708.99.59 as other double flanged wheel hub units incorporating ball bearings and that the goods in issue with tapered roller bearings 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. Transit claimed that the goods in issue containing ball bearings should be classified under tariff item No. 8482.10.90 as other ball bearings and that the goods in issue containing roller bearings should be classified under tariff item No. 8482.20.90 as other tapered roller bearings, including cone and tapered roller assemblies.

PROCEDURAL HISTORY

3. On October 9, 2007, Transit imported the goods in issue under tariff item No. 8708.70.29.⁴

4. On April 24, 2008, pursuant to paragraph 74(1)(e) of the *Act*, Transit requested a refund of duty paid in error, claiming that the goods in issue should have been classified under tariff item No. 8482.20.90.

5. On July 22, 2008, pursuant to subsection 74(4) of the *Act*, the CBSA denied the request for a refund of duty on the basis that the goods in issue were properly classified under tariff item No. 8708.70.29.

6. On July 23, 2008, pursuant to subsection 60(1) of the *Act*, Transit requested a further re-determination of the tariff classification of the goods in issue submitting that they should be classified under tariff item No. 8482.20.90.

7. On February 2, 2009, pursuant to subsection 60(4) of the *Act*, the CBSA made a further re-determination and classified the goods in issue under tariff item No. 8708.99.99.

8. On April 21, 2009, pursuant to subsection 67(1) of the *Act*, Transit filed the present appeal with the Tribunal.

1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].

2. Tribunal Exhibits AP-2009-005-8A and AP-2009-005-10A.

3. S.C. 1997, c. 36.

4. Tribunal Exhibit AP-2009-005-10A, tab A.

9. On June 23, 2009, pursuant to rule 8 of the *Canadian International Trade Tribunal Rules*, the Tribunal extended the deadline for Transit to file its brief to July 23, 2009.⁵ On July 14, 2009, that deadline was extended again, with a new filing date set for August 4, 2009.⁶ Transit filed its brief on July 30, 2009.⁷

10. On October 30, 2009, the CBSA submitted its brief.⁸

11. On May 18, 2010, the Tribunal held a public hearing in Ottawa, Ontario.

12. Mr. Mario J. Vasiliu, Service Maintenance Supervisor and Project Manager, Schindler Elevator Company, and Mr. James Savoie, Quality Assurance Supervisor, Transit, appeared as witnesses for Transit. The Tribunal qualified Mr. Vasiliu as an expert witness in the design of robotic automated equipment in the manufacture of motor vehicles, and in the operation and function of bearings.

13. Dr. Atef Fahim, Professor of Mechanical Engineering, University of Ottawa, was called to appear as a witness for the CBSA. The Tribunal qualified Dr. Fahim as an expert witness in mechanical engineering with a specialization in machine design and control systems.

GOODS IN ISSUE

14. The table below lists the exhibits that were filed with the Tribunal, by exhibit number, product name and number, and certain physical characteristics germane to this appeal. Exhibits B-01 to B-03 are not the goods in issue, but examples of bearings. Exhibits B-04 to B-07 are the goods in issue.

Exhibit No.	Product Name or Number	Physical Characteristics
B-01	Double Row Angular Contact Ball Bearing manufactured by SKF (3205 ATN9/C3)	Ball bearing ⁹
B-02	Deep Groove Ball Bearing manufactured by SKF Explorer (6205)	Ball bearing ¹⁰
B-03	Tapered Roller Bearing manufactured by Timken (Set 2 LM11949 – LM11910)	Tapered roller bearing ¹¹
B-04	Hub Unit Rear Wheel (RW) Dodge Caravan 98-Up BR93006770-512156 (or RW8156)	Contains double-flanged ball bearings ¹²

5. Tribunal Exhibit AP-2009-005-04.

6. Tribunal Exhibit AP-2009-005-05.

7. Tribunal Exhibit AP-2009-005-08A.

8. Tribunal Exhibit AP-2009-005-10A.

9. *Transcript of Public Hearing*, 18 May 2010, at 8.

10. *Ibid.* at 9.

11. *Ibid.* 9, 11-13, 23, 105.

12. *Ibid.* at 12, 14, 19.

B-05	Hub Unit Front Wheel (FW) Jeep Cherokee 90-00 BR930014 70-513084	Contains double-flanged ball bearings ¹³
B-06	Hub Unit FW Chev Silverado 1500/GMC Sierra 99-05 2WD 6lug SP550306 70-515054 - G3 (or FW754)	Contains double-flanged ball bearings ¹⁴
B-07	Hub Unit RW Nissan Sentra 2001 w/ABS 512303 432004Z005 (512303)	Contains single-flanged ball bearings ¹⁵

15. Of all the common names by which the goods in issue are known in the trade, the Tribunal considered the term “wheel hub bearing assembly” to be the most descriptive. Indeed, the goods in issue are sealed assemblies that contain ball bearings¹⁶ that are placed onto a motor vehicle wheel hub. The bearing component fits into the centre of a metal disc (the wheel hub); in turn, the assembled wheel hub and bearings fit tightly onto the drive shaft or axle of a motor vehicle. Essentially, the goods in issue enable car or truck wheels to spin.

16. The bearings contained in the goods in issue are sealed into the assembly. Therefore, the assembly cannot be disassembled for repair, for example, to change the bearings that are inside in the event that they wear out. Rather, when any component of the goods in issue fails, the entire assembly must be replaced.

17. The part numbers assigned to the goods in issue identify them for use in specific car or truck makes and models.

18. Some of the goods in issue contain other components, such as flanges for connection to other components of the motor vehicle, and a gear ring for interaction with an anti-lock braking system (ABS). They typically also have threaded rods sticking out of them onto which the motor vehicle’s wheel is placed and secured with lug nuts.

STATUTORY FRAMEWORK

General

19. In appeals pursuant to section 67 of the *Act* concerning tariff classification matters, the Tribunal determines the proper tariff classification of the goods in issue in accordance with prescribed interpretative rules.

20. 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.¹⁷ The schedule is divided into sections and chapters, with

13. *Ibid.* at 16, 18-19.

14. *Ibid.* at 17-19.

15. *Ibid.* at 19-20.

16. *Ibid.* 18 May 2010, at 44, 131-32.

17. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.

each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items. Sections and chapters may include notes concerning their interpretation. Sections 10 and 11 of the *Customs Tariff* prescribe the approach that the Tribunal must follow when interpreting the schedule in order to arrive at the proper tariff classification of goods.

21. Subsection 10(1) of the *Customs Tariff* provides as follows: "... the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System^[18] and the Canadian Rules^[19] set out in the schedule."

22. The *General Rules* comprise six rules structured in sequence so that, if the classification of the goods cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, and so on, until classification is completed.²⁰ Classification therefore begins with Rule 1, which provides as follows: "... for legal purposes, 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 following provisions."

23. Section 11 of the *Customs Tariff* provides as follows: "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 Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time."

24. Accordingly, unlike section and chapter notes, the *Explanatory Notes* are not binding on the Tribunal in its classification of imported goods. However, the Federal Court of Appeal has stated that these notes should be respected, unless there is a sound reason to do otherwise, as they serve as an interpretive guide to tariff classification in Canada.²³

25. Once the Tribunal has used this approach to determine the heading in which the goods should be classified, the next step is to determine the proper subheading or tariff item, applying Rule 6 of the *General Rules* in the case of the former and Rule 1 of the *Canadian Rules* in the case of the latter.

Relevant Provisions of the Customs Tariff, Section and Chapter Notes, and Explanatory Notes

Customs Tariff

26. The relevant portions of Chapter 84 of the *Customs Tariff* read as follows:

84.82 Ball or roller bearings.

8482.10 -Ball bearings

18. S.C. 1997, c. 36, schedule [*General Rules*].

19. S.C. 1997, c. 36, schedule.

20. Rules 1 through 5 of the *General Rules* apply to classification at the heading level (i.e. to four digits). Pursuant to Rule 6 of the *General Rules*, Rules 1 through 5 apply to classification at the subheading level (i.e. to six digits). Similarly, the *Canadian Rules* make Rules 1 through 5 of the *General Rules* applicable to classification at the tariff item level (i.e. to eight digits).

21. World Customs Organization, 2d ed., Brussels, 2003.

22. World Customs Organization, 4th ed., Brussels, 2007 [*Explanatory Notes*].

23. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17.

...

8482.10.90 - - -Other

...

8482.20 -Tapered roller bearings, including cone and tapered roller assemblies

...

8482.20.90 - - -Other

...

8482.30.00 -Spherical roller bearings

...

8482.40.00 -Needle roller bearings

...

8482.50.00 -Other cylindrical roller bearings

...

8482.80 -Other, including combined ball/roller bearings

27. The relevant portions of Chapter 87 of the *Customs Tariff* read as follows:

87.08 Parts and accessories of the motor vehicles of headings 87.01 to 87.05.

...

8708.70 -Road wheels and parts and accessories thereof

...

- - -Parts and accessories:

...

8708.70.29 - - - -Other

...

-Other parts and accessories:

...

8708.99 - -Other

...

- - -Double flanged wheel hub units incorporating ball bearings:

...

8708.99.59 - - - -Other

- - -Other:

...

8708.99.99 - - - -Other

Section and Chapter Notes

28. The relevant notes to Section XVI read as follows:
1. This Section does not cover:
...
(l) Articles of Section XVII.
29. The relevant notes to Chapter 84 read as follows:
6. Heading 84.82 applies, *inter alia*, to polished steel balls, the maximum and minimum diameters of which do not differ from the nominal diameter by more than 1% or by more than 0.05 mm, whichever is less. Other steel balls are to be classified in heading 73.26.
30. The relevant notes to Section XVII read as follows:
2. The expressions “parts” and “parts and accessories” do not apply to the following articles, whether or not they are identifiable as for the goods of this Section:
...
(e) ... articles of heading 84.81 or 84.82 ...
...
3. References in Chapters 86 to 88 to “parts” or “accessories” do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

Explanatory Notes

31. The relevant *Explanatory Notes* to Section XVI read as follows:

GENERAL**(I) GENERAL CONTENT OF THE SECTION**

- (A) Subject to certain **exclusions** provided for in the Notes to this Section and to Chapters 84 and 85 and apart from goods covered more specifically in other Sections, this Section covers all mechanical or electrical machinery, plant, equipment, apparatus and appliances and parts thereof, together with certain apparatus and plant which is neither mechanical nor electrical (such as boilers and boiler house plant, filtering apparatus, etc.) and parts of such apparatus and plant.

The main **exclusions** from the Section are:

- ...
(e) Articles of **Section XVII**.

32. The relevant *Explanatory Notes* to Chapter 84 read as follows:

GENERAL

...

(B) GENERAL ARRANGEMENT OF THE CHAPTER

...

- (6) Headings 84.81 to 84.84 cover certain general-purpose goods suitable for use as machinery parts or as parts of goods of other Chapters.

33. The relevant *Explanatory Notes* to heading No. 84.82 read as follows:

This heading covers all ball, roller or needle roller type bearings. They are used in place of smooth metal bearings and enable friction to be considerably reduced. They are generally fitted between the bearing housing and the shaft or axle, and may be designed to give radial support (radial bearings) or to resist thrust (thrust bearings). Certain bearings may be designed for both radial and thrust support.

Normally, bearings consist of two concentric rings (races) enclosing the balls or rollers, and a cage which keeps them in place and ensures that their spacing remains constant.

...

The heading **does not cover** machinery parts incorporating ball, roller or needle roller bearings; these are classified in their own appropriate headings, e.g.:

- (a) Bearing housings and bearing brackets (**heading 84.83**).
- (b) Bicycle hubs (**heading 87.14**).

34. The relevant *Explanatory Notes* to Section XVII read as follows:

GENERAL

...

(III) PARTS AND ACCESSORIES

...

It should, however, be noted that these headings apply **only** to those parts or accessories which comply with **all three** of the following conditions:

- (a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below).
- and
- (b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88 (see paragraph (B) below).
- and
- (c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below).

(A) **Parts and accessories excluded by Note 2 to Section XVII.**

This Note **excludes** the following parts and accessories, whether or not they are identifiable as for the articles of this Section:

...

- (6) **Certain other goods of Chapter 84, e.g.:**

...

- (b) Ball or roller bearings (**heading 84.82**).

...

(B) **Criterion of sole or principal use.**

- (1) **Parts and accessories classifiable both in Section XVII and in another Section.**

Under Section Note 3, parts and accessories which are not suitable for use **solely or principally** with the articles of Chapters 86 to 88 are **excluded** from those Chapters.

The effect of Note 3 is therefore that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its **principal use**. Thus the steering gear, braking systems, road wheels, mudguards, etc., used on many of the mobile machines falling in Chapter 84, are virtually identical with those used on the lorries of Chapter 87, and since their principal use is with lorries, such parts and accessories are classified in this Section.

...

(C) **Parts and accessories covered more specifically elsewhere in the Nomenclature.**

Parts and accessories, even if identifiable as for the articles of this Section, are **excluded** if they are covered more specifically by another heading elsewhere in the Nomenclature, e.g.

35. The relevant *Explanatory Notes* to Chapter 87 read as follows:

This Chapter also covers parts and accessories which are identifiable as being suitable for use **solely or principally** with the vehicles included therein, **subject** to the provisions of the Notes to Section XVII (see the General Explanatory Note to the Section).

36. The relevant *Explanatory Notes* to heading No. 87.08 read 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).

ANALYSIS

37. In accordance with Rule 1 of the *General Rules*, the Tribunal must first examine the parties' competing views with respect to classification at the four-digit heading level. Transit argued for classification of the goods in issue in heading No. 84.82. The CBSA argued that they should be classified in heading No. 87.08.

Transit's Position

38. Transit argued that Tribunal case law²⁴ supports its contention that the goods in issue should be classified in heading No. 84.82 as ball or roller bearings.

24. *Western Construction Company Limited v. M.N.R. and Canadian Construction Association* (20 November 2000), AP-99-093 to AP-99-102 and AP-2000-010 to AP-2000-012 (CITT); *Single Row Tapered Roller Bearings, Including Cups and Cone Assemblies, in the Sizes from 1.000 Inch (25.4 mm) up to and including 6.625 Inches (168.275 mm) outside diameter, originating in or exported from Japan* (9 July 1992), NQ-91-007 (CITT); *Bathurst Paper Limited v. Minister of Municipal Affairs of New Brunswick*, [1972] S.C.R. 471; *Nova, an Alberta Corporation v. The Queen*, 88 DTC 6386 (FCA); *Olympia Floor and Wall Tile Company v. Deputy M.N.R.*, 5 C.E.R. 562.

39. Transit contended that Note 2(e) to Section XVII specifies that the expressions “parts” and “parts and accessories” in Section XVII do not apply to articles of heading No. 84.81 or 84.82 whether or not they are identifiable as parts for the goods of Section XVII. According to Transit, this means that the goods in issue must fall under heading No. 84.82. It maintained the position that, in accordance with section 11 of the *Customs Tariff*, the goods in issue are described in subheading No. 8482.10 or 8482.20. Transit also relied on the wording of the statistical codes at the 10-digit level to support its position.²⁵

40. According to Transit, the fact that the goods in issue can be used in applications other than automotive ones supports its position. In this regard, it relied on the testimonies of Mr. Savoie, who stated that he has sold the goods in issue for use in a car wash, and of Mr. Vasiliu, who stated that they can be used in ski lifts or conveyor systems.

CBSA’s Position

41. The CBSA argued that the goods in issue are parts of motor vehicles that serve multiple purposes. As such, it argued that the goods in issue are excluded from heading No. 84.82. Notwithstanding the fact that Note 2(e) to Section XVII (which covers parts of motor vehicles) excludes bearings from being considered parts of motor vehicles, the CBSA argued that Note 1(l) to Section XVI (which covers bearings) excludes articles of Section XVII.

42. The CBSA referenced various dictionary definitions²⁶ to substantiate its position that the goods in issue are more than bearings. It pointed to the fact that they are composed of several components (wheel hub, bolts, sensors and bearings) that individually and collectively serve purposes beyond those of just bearings.²⁷ The CBSA pointed to the fact that the bearings form but one part of a sealed unit that must be replaced in its entirety if it fails; as such, the bearing component cannot be extracted from the sealed unit and separated for repair.²⁸

43. The CBSA noted that each of the goods in issue bears a part number²⁹ and is designed for a specific motor vehicle to specifications that take into consideration several factors, such as torque, motor vehicle weight and anticipated loads.³⁰ In the CBSA’s view, these considerations demonstrate that the goods in issue are parts of motor vehicles rather than bearings.

25. *Transcript of Public Hearing*, 18 May 2010, at 160-61. The Tribunal notes that sections 10 and 11 of the *Customs Tariff* make no mention of the use of the 10-digit statistical codes for classification purposes; accordingly, they are not relevant for classification purposes. See *Bio Agri Mix Ltd. v. Commissioner of the Canada Customs and Revenue Agency* (28 November 2000) AP-99-085 (CITT) at 6-7: “The Tribunal notes that the appellant’s proposed classification makes reference to the wording of the *Customs Tariff* at the 9th and 10th digit levels. Specifically, the description ‘containing chlortetracycline’ is found at classification No. 2309.90.39.42. The 9th and 10th digits, however, are not part of the classification system, rather they are statistical codes used by Statistics Canada. As such, they do not form part of the schedule to the *Customs Tariff*, having been added by Statistics Canada solely for the purpose of gathering statistical information. The Tribunal has consistently maintained that it is inappropriate to have regard to the 9th and 10th digits in deciding matters of tariff classification. In fact, the General Rules and the *Canadian Rules* do not direct classification at the 9th and 10th digit levels” [emphasis added, footnote omitted].

26. Respondent’s brief, tab E.

27. Tribunal Exhibit AP-2009-005-12A, tab E.

28. *Transcript of Public Hearing*, 18 May 2010, at 20, 125-27.

29. *Ibid.* at 30, 55.

30. *Ibid.* 18 May 2010, at 120-24.

44. According to the CBSA, in order for the goods in issue to be classified as parts of motor vehicles, they must meet three criteria.³¹ First, they must not be excluded by the terms of Note 2 to Section XVII. Second, they must be suitable for use “solely or principally” with the articles of Chapters 86 to 88. Third, the goods in issue must not be more specifically included elsewhere in the nomenclature. The CBSA argued that, because all three criteria are met, the goods in issue are therefore parts of motor vehicles of heading No. 87.08. In support of its contention that the goods in issue are parts, the CBSA referenced the Tribunal’s decision in *GL&V/Black Clawson-Kennedy v. Deputy M.N.R.*³² and argued that the goods in issue are necessary and integral parts of motor vehicles.

45. Alternatively, in accordance with Rule 3 (b) of the *General Rules*, the CBSA contended that the goods in issue can still be classified as parts of motor vehicles of heading No. 87.08 because their essential character is that of parts of motors vehicles. In the further alternative, the CBSA contended that, if the Tribunal cannot be guided by the essential character rule, Rule 3 (c) would apply, whereby classification would occur in the heading that occurs last in numerical order, which would be heading No. 87.08 in the present instance.

Tribunal Findings

46. The fundamental question to be resolved pertains to the exact nature of the goods in issue: whether they are parts of motor vehicles, as contended by the CBSA, or “ball or roller bearings” used in machinery and mechanical appliances, as claimed by Transit.

47. In the Tribunal’s view, it clearly emerges from Mr. Savoie’s testimony that the goods in issue are almost exclusively used in motor vehicles.

48. Mr. Savoie’s testimony revealed that the goods in issue had evolved over the years because of changes in technology in the automotive sector relating to safety or productivity. From a flangeless sealed bearing unit, the goods in issue now contain a chassis flange, which is bolted directly to the chassis of the car.³³ Additional features relating to the ABS have been incorporated.³⁴ Mr. Savoie testified that each of the goods in issue contains a sealed ball bearing that consists of ball bearings, a cage, and inner and outer races.³⁵ The goods in issue represented by Exhibits B-04, B-05 and B-06 (respectively part Nos. 512156, 513084 and 515054G3) are double-flanged; the product in issue represented by Exhibit B-07 (part No. 512303) is single-flanged.³⁶ The goods in issue also possess an ABS gear³⁷ or an ABS sensor.³⁸ If one of the components in the goods in issue malfunctions, the entire assembly needs to be replaced.³⁹ The latter development was deliberately adopted by automobile manufacturers to improve productivity.

31. *Explanatory Notes*, Section XVII, Part III.

32. (27 September 2000) AP-99-063 (CITT) [*GL&V/Black*] at 9: “The following criteria have been found to be relevant when such a determination is to be made: (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.”

33. *Transcript of Public Hearing*, 18 May 2010, at 41-42.

34. *Ibid.* at 65.

35. *Ibid.* at 12-20.

36. *Ibid.* at 19, 18, 17-18, 20.

37. *Ibid.* at 11.

38. *Ibid.* at 62.

39. *Ibid.* at 20, 28.

49. In the Tribunal's view, it is particularly telling that the goods in issue have individual part numbers and are designed for specific motor vehicles. The Tribunal notes that this was recognized by both parties.⁴⁰ The goods in issue are sold as parts of a motor vehicle and constitute assemblies, since they serve several purposes that go beyond the mere function of bearings. The goods in issue in fact support the brake rotor, support the wheel to reduce rolling friction and play a part in the ABS.

50. Furthermore, in the Tribunal's view, the goods in issue meet the four criteria for "parts" as set out in *GL&V/Black*. In fact, the goods in issue are automotive "parts" because they are (1) essential to the functioning of a motor vehicle, (2) specifically designed for use therein, (3) not designed for other applications and (4) considered parts in common trade usage and practice.

51. The Tribunal heard from Mr. Savoie that he knew that a device similar to the goods in issue had been used as part of a car wash machine, but it clearly emerged from the testimony that that particular use was anecdotal and an exception.⁴¹ Mr. Vasiliu testified to the use of the goods in issue in conveyor systems.⁴² Upon further questioning, he explained that a conveyor system that incorporated the goods in issue would need to be configured differently.⁴³ In addition, Dr. Fahim testified that he could not recommend using the goods in issue for applications other than those automotive uses for which they were designed. In his view, if an engineer were to recommend using the goods in issue for non-intended uses, such as in a car wash machine, the engineer's professional conduct and liability would be at risk.⁴⁴

52. Accordingly, the Tribunal is of the view that the evidence on file clearly demonstrates that the goods in issue are for use solely or principally with motor vehicles and are therefore parts of motor vehicles (which are classified in heading Nos. 87.01 to 87.05). Consequently, in accordance with Rule 1 of the *General Rules*, Note 1(l) to Section XVI, Notes 2(e) and 3 to Section XVII and the *Explanatory Notes* to Section XVII, the goods in issue are properly classified in heading No. 87.08.

53. Having been considered parts of motor vehicles by application of Rule 1 of the *General Rules*, they are therefore excluded from heading No. 84.82 by virtue of Note 1(l) to Section XVI.

54. All the goods in issue contain ball bearings, three of the four goods in issue are double-flanged, and the remaining one in issue is single-flanged.

55. On the basis of Rule 6 of the *General Rules*,⁴⁵ the goods in issue are considered to be other parts of the motor vehicles of heading Nos. 87.01 to 87.05. The goods in issue are properly classified in subheading No. 8708.99.

40. *Ibid.* at 30, 55, 123.

41. *Ibid.* at 45.

42. *Ibid.* at 69.

43. *Ibid.* at 95.

44. *Ibid.* at 142-43.

45. Rule 6 of the *General Rules* reads as follows: "For legal purposes, 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 [Rules 1 to 5], on the understanding that only subheadings at the same level are comparable. For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires."

56. On the basis of Rule 1 of the *Canadian Rules*,⁴⁶ the goods in issue represented by Exhibits B-04, B-05 and B-06 (respectively part Nos. 512156, 513084 and 515054G3) are double-flanged wheel hub units that incorporate ball bearings and, therefore, should be classified under tariff item No. 8708.99.59. The last one in issue represented by Exhibit B-07 (part No. 512303) is not a double-flanged wheel hub unit that incorporates ball bearings, but a single-flanged wheel hub unit, and is therefore properly classified under tariff item No. 8708.99.99 as other parts of the motor vehicles of heading Nos. 87.01 to 87.05.

DECISION

57. The appeal is dismissed.

André F. Scott

André F. Scott
Presiding Member

46. According to Rule 1 of the *Canadian Rules*, “[f]or legal purposes, 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 for the Interpretation of the Harmonized System, on the understanding that only tariff items at the same level are comparable. For the purpose of this Rule the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires.”