Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2010-037

Great West Van Conversions Inc.

v.

President of the Canada Border Services Agency

Decision and reasons issued Wednesday, November 30, 2011

Canada

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- DECISION 15

IN THE MATTER OF an appeal heard on June 7, 2011, pursuant to subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF 13 decisions of the President of the Canada Border Services Agency, dated July 26, 2010, with respect to requests for further re-determination, pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

GREAT WEST VAN CONVERSIONS INC. **Appellant**

AND

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

AND

SAF-HOLLAND CANADA LIMITED **Intervener**

DECISION

The appeal is allowed.

Jason W. Downey
Jason W. Downey
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	June 7, 2011
Tribunal Member:	Jason W. Downey, Presiding Member
Counsel for the Tribunal:	Alain Xatruch
Research Director:	Audrey Chapman
Research Officer:	Jan Wojcik
Manager, Registrar Office:	Michel Parent
Registrar Officer:	Julie Lescom

PARTICIPANTS:

Appellant	**Counsel/Representative**
Great West Van Conversions Inc.	Michael Kaylor
Respondent	**Counsel/Representative**
President of the Canada Border Services Agency	Jennifer Francis
Intervener	**Counsel/Representative**
SAF-Holland Canada Limited	Michael R. Smith

WITNESSES:

Martin Geurts President Great West Van Conversions Inc.	Jon R. Johnson Barrister and solicitor and international trade consultant

Please address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: secretary@citt-tcce.gc.ca

STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Great West Van Conversions Inc. (Great West Van) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*[1] from 13 decisions made by the President of the Canada Border Services Agency (CBSA) pursuant to subsection 60(4).

2. The issue in this appeal is whether certain vans and other miscellaneous goods (the goods in issue), in addition to being classified under various tariff items in Chapters 1 to 97 of the schedule to the *Customs Tariff*,[2] may also be classified under tariff item No. 9958.00.00 as parts, accessories and articles for use as original equipment in the manufacture of passenger automobiles or under tariff item No. 9959.00.00 as materials of Section III, VI, VII, XI, XIII, XIV or XV or of Chapter 45 or 48 for use in the manufacture of passenger automobiles and thereby benefit from duty-free treatment.

PROCEDURAL HISTORY

3. Between September 2 and December 29, 2005, Great West Van imported the goods in issue under 13 separate transactions. The goods in issue were classified under various tariff items in Chapters 73, 74, 83, 85 and 87.

4. On August 20 and 21, 2009, Great West Van applied for a refund of duties pursuant to paragraph 74(1)(*e*) of the *Act* on the basis that duties were paid as a result of an error in the tariff classification of the goods in issue. In this regard, Great West Van requested that the goods in issue be classified under tariff item No. 9958.00.00 or 9959.00.00 and thereby benefit from duty-free treatment.

5. On November 19, 2009, and December 16 and 21, 2009, the CBSA denied Great West Van's applications for a refund of the duties paid on the goods in issue. Pursuant to subsection 74(4) of the *Act*, these denials were deemed to be re-determinations under paragraph 59(1)(a).

6. On December 10, 2009, and January 11 and 12, 2010, Great West Van requested further re-determinations of the tariff classification of the goods in issue pursuant to subsection 60(1) of the *Act*.

7. On July 26, 2010, the CBSA issued its decisions pursuant to subsection 60(4) of the *Act*, which denied the requests and confirmed its prior re-determinations that the goods in issue could not be classified under tariff item No. 9958.00.00 or 9959.00.00.

8. On September 13, 2010, Great West Van filed the present appeal with the Tribunal pursuant to subsection 67(1) of the *Act*.

9. On April 29, 2011, SAF-Holland Canada Limited (SAF-Holland) filed a notice of intervention with the Tribunal. On May 6, 2011, the Tribunal granted intervener status to SAF-Holland pursuant to subrule 41(2) of the *Canadian International Trade Tribunal Rules*.[3]

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1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].
2. S.C. 1997, c. 36.
3. S.O.R./91-499.

10. On June 7, 2011, the Tribunal held a public hearing in Ottawa, Ontario. Mr. Martin Geurts, President and founder of Great West Van, testified on behalf of Great West Van, and Mr. Jon R. Johnson, barrister and solicitor and international trade consultant, testified on behalf of the CBSA. SAF-Holland did not call any witnesses.

GOODS IN ISSUE

11. The goods in issue consist of eight 2005 model year Dodge Sprinter or Freightliner Sprinter commercial vans (Sprinter vans), as well as wheel rims with centre caps and lug bolts, hooks, toothbrush holders, actuators, lights, rope lighting, struts, chrome trim rings and Borbet® wheels.[4] According to Great West Van, it used these goods in the manufacture of its Class B motor homes (i.e. campers).[5] At the hearing, Mr. Geurts explained that a Class B motor home is "... a van that is manufactured into a motor home without extensive modification to the general shape of the vehicle."[6]

12. Great West Van filed, as a physical exhibit, a DVD demonstrating how Class B motor homes are manufactured.[7] The video was played during the hearing and, although the Tribunal learned that it had been produced by Pleasure-Way Industries Ltd. (Pleasure-Way), another Canadian manufacturer of Class B motor homes and competitor of Great West Van, Mr. Geurts testified that it fairly and accurately represented the production process followed by Great West Van.[8] The video showed how models of cargo vans are purchased and then heavily modified by cutting and stripping them of many original components and then by rewelding and extensively appending them with specialized parts and equipment exclusive to the motor home industry.

ANALYSIS

Statutory Framework

13. 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.

14. 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.[9] 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. 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.

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4. Tribunal Exhibit AP-2010-037-08A, tab A at para. 7, table 1.
5. *Transcript of Public Hearing*, 7 June 2011, at 31, 35.
6. *Ibid.* at 36.
7. Exhibit A-01.
8. *Transcript of Public Hearing*, 7 June 2011, at 27-28. Mr. Geurts explained that, since Pleasure-Way already had a video that was suitable for Great West Van's needs, it simply chose to present that video rather than producing one itself.
9. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.

15. 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[10] and the Canadian Rules[11] set out in the schedule."

16. 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.[12] 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."

17. 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[13] and the Explanatory Notes to the Harmonized Commodity Description and Coding System,[14] published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time." Accordingly, unlike chapter and section 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 interpretative guide to tariff classification in Canada.[15]

18. 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 determine the proper subheading and tariff item, applying Rule 6 of the *General Rules* in the case of the former and the *Canadian Rules* in the case of the latter.

Tariff Classification at Issue

19. In the present appeal, the parties generally agree that the goods in issue are properly classified under their respective tariff items in Chapters 73, 74, 83, 85 and 87. The only source of disagreement between the parties—and hence the issue in this appeal—is whether the goods in issue may also be classified under tariff item No. 9958.00.00 or 9959.00.00 and thereby benefit from duty-free treatment.

20. Chapter 99, which includes tariff item Nos. 9958.00.00 and 9959.00.00, provides special classification provisions that allow certain goods to be imported into Canada duty-free. As none of the headings of Chapter 99 are 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.[16] 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 *Explanat*ory *Notes* to consider.

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10. S.C. 1997, c. 36, schedule [*General Rules*].
11. S.C. 1997, c. 36, schedule.
12. 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).
13. World Customs Organization, 2d ed., Brussels, 2003 [*Classification Opinions*].
14. World Customs Organization, 4th ed., Brussels, 2007 [*Explanatory Notes*].
15. *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17.
16. Note 1 to Chapter 99 provides that the rule of specificity in Rule 3 (a) of the *General Rules* does not apply to the provisions of Chapter 99. This reflects the fact that classification in Chapters 1 to 97 and Chapter 99 is not mutually exclusive.

21. 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 issue of whether the goods in issue may also be classified under tariff item No. 9958.00.00 or 9959.00.00. 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.

22. In accordance with note 3 to Chapter 99, the goods in issue may only be classified in Chapter 99 after classification under a tariff item in Chapters 1 to 97 has been determined. As indicated above, the parties generally agree that the goods in issue are properly classified under specific tariff items in Chapters 1 to 97. In particular, the parties agree that the goods in issue, except for seven of the eight Sprinter vans, are properly classified under tariff item Nos. 8704.31.00 (one of the eight Sprinter vans), 8708.70.29 (wheel rims with centre caps and lug bolts), 7318.13.90 (hooks), 7418.20.00 (toothbrush holders), 8501.13.20 (actuators), 8512.20.90 (lights, including rope lighting), 8302.42.00 (struts), 8512.90.90 (chrome trim rings) and 8708.70.19 (Borbet® wheels). The Tribunal accepts these classifications. Therefore, insofar as these goods are concerned, the condition set out in note 3 to Chapter 99 has been met.

23. As for the above-referenced seven Sprinter vans, Great West Van submitted that, although they had been classified under tariff item No. 8703.23.00 (heading No. 87.03 covers motor vehicles principally designed for the transport of persons), the evidence demonstrates that they are actually for the transportation of goods and should therefore be classified under the same tariff item as the eighth Sprinter van, i.e. under tariff item No. 8704.31.00 (heading No. 87.04 covers motor vehicles for the transport of goods). It submitted that, notwithstanding the fact that it had not previously challenged the classification of the seven Sprinter vans, note 3 to Chapter 99 grants the Tribunal jurisdiction to revisit their classification in Chapters 1 to 97 if necessary.

24. The CBSA submitted that Great West Van had never before raised the issue of the proper classification of the seven Sprinter vans and that it was now too late to do so. It submitted that the materials filed by Great West Van indicate that the only issue in this appeal is whether the goods in issue qualify for the benefit of tariff item No. 9958.00.00 or 9959.00.00. It further submitted that, in these circumstances, note 3 to Chapter 99 does not grant the Tribunal jurisdiction to revisit the classification of the seven Sprinter vans in Chapters 1 to 97.

25. On the basis of the information on the record, it is clear that Great West Van did not directly contest, at any stage prior to the hearing, the classification of the seven Sprinter vans in Chapters 1 to 97 and that it had itself framed the issue in this appeal as pertaining solely to classification in Chapter 99. In any event, the Tribunal is of the view that, in the particular circumstances of this case, a determination as to whether the seven Sprinter vans are properly classified under tariff item No. 8703.23.00 or 8704.31.00 is not necessary for the proper disposition of this appeal, as it does not have any bearing on the analysis required to determine whether these goods meet the conditions of tariff item No. 9958.00.00 or 9959.00.00. Therefore, for the purposes of this appeal, the Tribunal will, without further analysis, simply consider that the current classification of the seven Sprinter vans under tariff item No. 8703.23.00 meets the condition set out in note 3 to Chapter 99.

26. Consequently, the only remaining issue before the Tribunal is to determine whether the goods in issue meet the conditions of tariff item No. 9958.00.00 or 9959.00.00. The Tribunal will address each of these tariff items in turn.

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

27. Tariff item No. 9958.00.00 provides as follows:

> **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.**

28. Since the goods in issue are not tires or tubes and Great West Van has not argued that they are for use in the manufacture of original equipment parts or for use as original equipment in the manufacture of trucks or buses, the Tribunal need only determine whether they are *parts, accessories or articles for use as original equipment in the manufacture of passenger automobiles*. Therefore, in order for the goods in issue to qualify for the benefit of tariff item No. 9958.00.00, they must be (1) parts, accessories or articles (2) for use as original equipment in (3) the manufacture of passenger automobiles.

Are the Goods in Issue Parts, Accessories or Articles?

29. Great West Van submitted that all the goods in issue can be considered parts, accessories and articles. With respect to the Sprinter vans, it submitted that, even though they may be complicated machines or vehicles, they nonetheless fall within the ordinary meaning of the word "article", which, it submitted, is very broad. In support of its position, it made reference to the Tariff Board's decision in *Star Shipping (Canada) Ltd. v. Deputy M.N.R.C.E.*,[17] where the word "articles" was found to refer to a finished product.

30. On the other hand, the CBSA submitted that the Sprinter vans are not parts, accessories or articles. It submitted that certain provisions of the *Customs Tariff* that have now been repealed serve to demonstrate that the words "parts, accessories and articles", as used in tariff item No. 9958.00.00, were not intended to cover complete motor vehicles such as the Sprinter vans.

31. More specifically, the CBSA submitted that, if Parliament had intended for complete motor vehicles to be covered by tariff item No. 9958.00.00, it would have simply said so, as it had done with tariff item Nos. 9954.00.00, 9955.00.00 and 9956.00.00, which were in force at the same time as tariff item No. 9958.00.00 but subsequently repealed in 2001 following a World Trade Organization ruling. It added that tariff item No. 9957.00.00, which was also in force at the same time as tariff item No. 9958.00.00 and covered articles for use as original equipment in the manufacture of the same motor vehicles mentioned in tariff item Nos. 9954.00.00, 9955.00.00 and 9956.00.00, constituted further proof that the term "articles" was not intended to cover complete motor vehicles.

32. In response, Great West Van submitted that, even when tariff item Nos. 9954.00.00, 9955.00.00, 9956.00.00 and 9957.00.00 were in place, it is not certain that vehicles similar to the Sprinter vans would not have qualified as "articles" under tariff item No. 9958.00.00. It added that, if they could have qualified at that time, there is no reason why they would not qualify today.

17. (1972), 5 T.B.R. 373.

33. The Tribunal notes that the CBSA did not argue that the goods in issue, aside from the Sprinter vans, could not be considered parts, accessories or articles. In the Tribunal's view, there is no doubt that the wheel rims with centre caps and lug bolts, hooks, toothbrush holders, actuators, lights, rope lighting, struts, chrome trim rings and Borbet® wheels each qualify as either parts, accessories or articles and, thus, meet the first condition for classification under tariff item No. 9958.00.00.

34. As for the Sprinter vans, the Tribunal must consider whether they fall within the ordinary meaning of the term "article", which is not defined for the purposes of tariff item No. 9958.00.00. However, the Tribunal has previously accepted that this term generally means "any finished or semi-finished product, which is not considered to be a material."[18] In this case, the Sprinter vans, even though they are delivered in their most basic rendering, are clearly finished products, as opposed to materials. Therefore, the Tribunal agrees with Great West Van that the ordinary meaning of the term "article" is sufficiently broad to encompass the Sprinter vans.

35. While the CBSA submitted that certain tariff items that have now been repealed indicate that the term "article" was never intended to cover complete vehicles, the Tribunal has not been persuaded by this argument. The fact that tariff item Nos. 9954.00.00, 9955.00.00 and 9956.00.00 made specific reference to complete vehicles does not, in the Tribunal's view, preclude such complete vehicles from also being considered "articles" when they are to be used as original equipment in the manufacture of other vehicles—a condition of former tariff item No. 9957.00.00 and current tariff item No. 9958.00.00, which did not appear in tariff item Nos. 9954.00.00, 9955.00.00 and 9956.00.00. If Parliament had intended for tariff item No. 9958.00.00 to only cover specifically named goods, it would not have used the words "parts, accessories and articles", which incontestably cover a very broad range of goods.

36. In light of the foregoing, the Tribunal is satisfied that, in the present case, the Sprinter vans are also articles and, therefore, meet the first condition for classification under tariff item No. 9958.00.00.

Does Great West Van Manufacture Passenger Automobiles?

37. In order to determine whether Great West Van manufactures passenger automobiles, the Tribunal must address two separate issues. First, it must determine whether the Class B motor homes produced by Great West Van can be considered "passenger automobiles" for the purposes of tariff item No. 9958.00.00. If they can be considered "passenger automobiles", it must then determine whether they can be considered as having been "manufactured" by Great West Van.

– "Passenger automobiles"

38. Great West Van submitted that the ordinary meaning of the English term "passenger automobiles" and its French equivalent, "*véhicules de tourisme*", encompasses the Class B motor homes that it produces. It also submitted that, while it is accepted that both the English and French versions of a statute are equally authoritative, the Supreme Court of Canada has held in *R. v. Daoust*[19] that, if there is ambiguity in one version but not the other, the meaning that is common to both versions should be obtained from the version that is clear.

18. See, for example, *Wolseley Canada Inc. v. President of the Canada Border Services Agency* (18 January 2011), AP-2009-004 (CITT) at para. 25.
19. [2004] 1 S.C.R. 217 [*Daoust*].

39. Great West Van submitted that, in this case, there could be no doubt about the meaning of the French term "*véhicules de tourisme*". It submitted that the word "vehicle", which is the English equivalent of the French word "*véhicule*", has been defined by the Federal Court of Canada as ". . . [a] means of conveyance provided with wheels or runners and used for the carriage of persons or goods."[20]

40. As for the French word "*tourisme*", Great West Van noted that it appears in the *Collins·Robert French-English English-French Dictionary*[21] preceded by the words ". . . *avion/voiture de*" and translated as "private plane/car". Therefore, it submitted that the French term "*véhicules de tourisme*" simply means "private vehicles". In its view, the Class B motor homes that it produces are clearly vehicles that are for the private use of its owners—a characterization with which it claimed Mr. Johnson agreed.

41. Great West Van further submitted that the definitions of the words "automobile" and "car" provided by the CBSA[22] support its position that its Class B motor homes can be considered passenger automobiles. It submitted that the word "automobile" is defined as "a car . . ." and that the word "car" is defined as "a road vehicle with an enclosed passenger compartment, powered by an internal combustion engine; an automobile."

42. In Great West Van's view, the Class B motor homes meet the definition of a "car" and can therefore be considered automobiles. It also added that, while its Class B motor homes may have a subsidiary purpose, namely, to provide individuals or families with eating and sleeping accommodations while travelling, this does not detract from their status as passenger automobiles.

43. Finally, Great West Van submitted that, contrary to the CBSA's assertions, the Tribunal should not have regard to the *Explanatory Notes* to heading No. 87.03 and the definitions of the terms "passenger car" and "motor home" provided under the *Motor Vehicle Safety Regulations*[23] in determining whether its Class B motor homes can be considered passenger automobiles for the purposes of tariff item No. 9958.00.00.

44. It submitted that, in accordance with the Tribunal's decision in *Fenwick Automotive Products Limited v. President of the Canada Border Services Agency*,[24] the *Explanatory Notes* are not to be relied upon for purposes of interpreting tariff items in Chapter 99. It added that, although note 4 to Chapter 99 provides that words and expressions used in Chapter 99 have the same meaning as in Chapters 1 to 97, it does not give the Tribunal authority to look at the *Explanatory Notes* to Chapters 1 to 97. As for the *MVS Regulations*, it submitted that they are not *in pari materia* with the *Customs Tariff* (i.e. they have a different purpose) and therefore should not be relied upon.

45. For its part, the CBSA submitted that Great West Van's position that the term "passenger automobiles" and its French equivalent, "*véhicules de tourisme*", encompasses its Class B motor homes lacks common sense and strains the ordinary meaning of these terms. In this regard, it submitted that Mr. Geurts' own testimony was particularly revealing, as he did not refer to the Class B motor homes that Great West Van produces as automobiles or passenger automobiles and stated that the use of such terms would confuse consumers.[25]

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20. See *Pièces d'autos usagées RTA (1986) Inc. v. Canada*, 2005 FC 771 (CanLII); *Canada (Minister of National Revenue) v. Cast Terminals Inc.*, 2003 FCT 535 (CanLII).
21. Sixth ed., *s.v.* "*tourisme*".
22. Tribunal Exhibit AP-2010-037-08A, tab 5 at 117-18.
23. C.R.C., c. 1038 [*MVS Regulations*], subsection 2(1).
24. (11 March 2009), AP-2006-063 (CITT) [*Fenwick*].
25. *Transcript of Public Hearing*, 7 June 2011, at 60-62.

46. The CBSA submitted that the words "automobile" and "car", which are synonymous, are respectively defined as ". . . 'a self-propelled passenger vehicle that usu. has four wheels and an internal-combustion engine, used for land transport'"[26] and as ". . . a 'road vehicle with an enclosed passenger compartment, powered by an internal combustion engine' . . . ."[27] It noted that, while there is no dictionary definition of the term "passenger automobile", it has more or less the same definition as the term "automobile" because an automobile is designed to transport passengers.

47. The CBSA further submitted that the *Explanatory Notes* to heading No. 87.03, which define motor homes as ". . . vehicles for the transport of persons, specially equipped for habitation (with sleeping, cooking, toilet facilities, etc.)", show that, while a motor home is a vehicle for the transport of persons, it also has another function, which is to provide a place for habitation. In its view, the fact that Great West Van's Class B motor homes are equipped for habitation distinguishes them from passenger automobiles and prevents them from being considered as such.

48. The CBSA also submitted that the above distinction between a motor home and a passenger automobile is borne out in the definitions set out in the *MVS Regulations*. It submitted that the definitions for the terms "passenger car", which it suggests is the same thing as a passenger automobile, and "motor home" are such that there is no overlap between the terms.[28] Therefore, it submitted that, since the Class B motor homes produced by Great West Van fall within the definition of "motor home" in the *MVS Regulations*, they cannot be considered "passenger cars" and, as such, should not be considered passenger automobiles for the purposes of tariff item No. 9958.00.00.

49. Finally, the CBSA submitted that the common sense meaning of the term "passenger automobile" is fairly unambiguous and that, in any event, it is less ambiguous than its French equivalent, "*véhicules de tourisme*". It submitted that, while it agrees with Great West Van that the French term "*de tourisme*" indicate a private, as opposed to public, vehicle, the word "vehicle" itself has a much broader meaning than the word "automobile". It therefore submitted that the French term "*véhicules de tourisme*" should be reconciled to "*voiture de tourisme*", which means a private car, which is consistent with the definition and function of a passenger automobile.

50. The Tribunal notes that section 13 of the *Official Languages Act*[29] provides that the English and French versions of any act of Parliament are equally authoritative. Thus, neither the English nor the French version of the schedule to the *Customs Tariff* enjoys priority over the other. If the two versions appear to say different things, as seems to be the case here, the inconsistency cannot be resolved in a way that automatically gives priority to one of the versions. The basic rule governing the interpretation of bilingual enactments that are inconsistently drafted is known as the "shared meaning rule", by which the meaning that is shared by both versions is presumed to be the meaning intended by Parliament and is therefore the one that ought to be adopted.[30]

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26. Tribunal Exhibit AP-2010-037-08A at para. 15.
27. *Ibid.*
28. Subsection 2(1) of the *MVS Regulations* defines the term "passenger car" as ". . . a vehicle having a designated seating capacity of 10 or less, but does not include an all-terrain vehicle, a competition vehicle, a low-speed vehicle, a multi-purpose passenger vehicle . . ." and the term "motor home" as ". . . a multi-purpose passenger vehicle that is designed to provide temporary residential accommodations, as evidenced by the presence of at least four of the following [six features]: (*a*) cooking facilities . . . ."
29. R.S.C. 1985 (4th Supp.), c. 31.
30. R. Sullivan, *Statutory Interpretation*, 2d ed. (Toronto: Irwin Law, 2007) at 85.

51. In the Tribunal's view, this is not a case where either the English term "passenger automobiles" or the French term "*véhicules de tourisme*" is ambiguous and the other is clear, such that the clear—or less ambiguous—term can be used to construe the other. Rather, it is a case where one language version of the term is capable of a broader meaning than the other. In such circumstances, the shared meaning is normally derived from the version with the narrower or more restrictive meaning.[31]

52. The *Canadian Oxford Dictionary* defines "automobile" as "a car . . ."[32] and "car" as "**1** a road *vehicle* with an enclosed *passenger compartment*, powered by an internal combustion engine; an automobile . . ."[33] [emphasis added]. It also defines "vehicle", which is the English equivalent of the French word "*véhicule*", as "**1** any conveyance for transporting people, goods, etc., esp. on land."[34] These definitions clearly show that the word "vehicle" has a much broader meaning than the word "automobile". While an "automobile" is undeniably a "vehicle", a "vehicle" is not necessarily an "automobile". An "automobile" must be a road-going motor vehicle designed to carry passengers, whereas a "vehicle" can consist of any type of conveyance designed to carry anything.

53. The Tribunal notes that the parties essentially agree that the French term "*de tourisme*" describes a type of vehicle that is for private, as opposed to public, use. This interpretation is confirmed by *Le Petit Robert*, which defines such a term as follows: "*destiné aux déplacements privés et non utilitaires*" (intended for private and non-utilitarian movements).[35] This interpretation also does not appear to be inconsistent with the use of the word, or further, the concept of "passenger" in the English version of tariff item No. 9958.00.00. Therefore, in the Tribunal's view, the meaning that is shared by the English term "passenger automobiles" and the French term "*véhicules de tourisme*" is that of a private car or automobile.

54. The Tribunal also considered the Supreme Court of Canada's teachings to the effect that the shared meaning rule is not absolute and that, in some cases, a meaning that is shared by both versions of an enactment can be rejected if it seems contrary to Parliament's intention in light of the other principles of interpretation.[36] In *Cie Imm. BCN*, the Supreme Court of Canada rejected a shared narrow meaning and opted for a broader meaning because it believed that it reflected Parliament's true intent. Nonetheless, in the present case, the Tribunal is of the opinion that adopting the more restrictive meaning of "private car" or "automobile", as opposed to that of a "private vehicle", is in keeping with Parliament's intent.

55. Tariff item No. 9958.00.00 refers to "passenger automobiles, trucks or buses" and tariff item No. 9959.00.00, which is also in issue, refers to "passenger automobiles, buses, trucks, ambulances or hearses". It is apparent from these references that Parliament only intended for *road-going motor* vehicles to be covered under these tariff items. Since the word "vehicle" has a very broad meaning and incontestably covers more than road-going motor vehicles, the Tribunal is of the view that adopting the broader meaning of a vehicle or private vehicle would not be appropriate in the context of tariff item No. 9958.00.00.

56. The Tribunal also notes that the use of the term "*véhicules de tourisme*" in the French version of tariff item Nos. 9958.00.00 and 9959.00.00 raises questions with regard to the consistency of translations within the tariff. The English term "passenger automobiles" only appears on two other occasions in the tariff

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31. *Daoust* at para. 29; *Schreiber v. Canada (Attorney General)*, 2002 SCC 62 (CanLII) at para. 56.
32. Second ed., *s.v.* "automobile".
33. *Ibid.*, *s.v.* "car".
34. *Ibid.*, *s.v.* "vehicle".
35. 2011, *s.v.* "*tourisme*".
36. *Doré v. Verdun (City)*, [1997] 2 S.C.R. 862 at para. 25; *The Queen v. Cie Imm. BCN Ltée*, [1979] 1 S.C.R. 865 [*Cie Imm. BCN*] at 871-72.

and, on both occasions, the corresponding French term is "*automobiles*".[37] The *Larousse French-English English-French Dictionary* provides the following translation of "automobile": "*automobile . . . voiture . . . .*"[38] Moreover, it is interesting to note that the English terms "passenger vehicle" and "passenger car" in the *MVS Regulations* have, as corresponding French terms, "*véhicule de tourisme*" and "*voiture de tourisme*" respectively.[39] Although the definitions provided under the *MVS Regulations* are neither authoritative nor binding upon the Tribunal, they do tend to indicate that there may have been an issue with the consistency of translations in the tariff and that the French version of tariff item Nos. 9958.00.00 and 9959.00.00 should have used the term "*voitures de tourisme*", which would be entirely consistent with the shared meaning found above.

57. Having determined that the more restrictive meaning of a private car or automobile is compatible with Parliament's intent, the Tribunal must now determine whether the Class B motor homes that Great West Van produces can be considered private cars or automobiles. In the Tribunal's opinion, the Class B motor homes produced by Great West Van are clearly vehicles that are for the private use of their owners as opposed to a public or commercial use. That point was not contested by the parties. In fact, the testimonies of both Messrs. Geurts and Johnson support the Tribunal's conclusion in this regard.[40] Therefore, the only remaining question is whether the Class B motor homes can be considered cars or automobiles.

58. As mentioned above, a car or an automobile is defined as a road vehicle with an enclosed passenger compartment, powered by an internal combustion engine. The Class B motor homes produced by Great West Van appear to meet these criteria; they are road-going vehicles powered by an internal combustion engine and designed for the transport of persons. However, the CBSA argued that the *Explanatory Notes* to heading No. 87.03 show that, while motor homes are vehicles for the transport of persons, they are also equipped for habitation and that this additional function serves to distinguish them from automobiles.

59. In the Tribunal's view, the fact that the *Explanatory Notes* to heading No. 87.03[41] describe motor homes as having a function that is additional to that of transporting persons (i.e. a habitation function) does not prevent them from being considered as cars or automobiles for the purposes of tariff item No. 9958.00.00. As noted above, the Class B motor homes produced by Great West Van meet the dictionary definition of a car or an automobile. Moreover, although Mr. Geurts did concede that Great West Van does not use the term "automobile" to describe their Class B motor homes,[42] this does not mean that they cannot, from a technical standpoint, be considered as such for the purposes of tariff item No. 9958.00.00.

60. In fact, the Tribunal notes that Mr. Geurts' testimony shows that, contrary to other types of recreational vehicles, including the much larger and bus-like Class A motor homes, Class B motor homes offer an inherent increased mobility and flexibility because of their relatively small size, such that, in

37. See tariff item Nos. 8301.70.10 and 8458.19.10.
38. 2007, *s.v.* "automobile".
39. See the definition of the term "passenger car" under subsection 2(1) of the *MVS Regulations*.
40. *Transcript of Public Hearing*, 7 June 2011, at 36, 79.
41. The Tribunal notes that, contrary to what was argued by Great West Van, the Tribunal's decision in *Fenwick* does not stand for the proposition that *Explanatory Notes* are not to be relied upon for the purposes of interpreting tariff items in Chapter 99. The Tribunal's decision in *Fenwick*, in essence, only clarifies that there are no *Explanatory Notes* to Chapter 99. In the Tribunal's view, note 4 to Chapter 99, which provides that words and expressions used in Chapter 99 have the same meaning as in Chapter 1 to 97, allows it to have regard to the *Explanatory Notes* to Chapters 1 to 97 when attempting to decipher the meaning of words and expressions that are used in those chapters, as well as in Chapter 99, or words and expressions that may be useful in interpreting other words and expressions in Chapter 99.
42. *Transcript of Public Hearing*, 7 June 2011, at 60-62.

addition to being used for travel, their owners also use them for activities performed on a daily basis, such as going golfing, driving downtown or going to a shopping centre.[43] In the Tribunal's view, such uses are of the type that one would normally associate with a car or an automobile.

61. As for the CBSA's reliance on the *MVS Regulations*, the Tribunal is of the view that, while these regulations may create a distinction between a motor home and a car or an automobile, they are not *in pari materia* with the *Customs Tariff* and, as such, should not be relied upon in the context of the present appeal. Had Parliament wanted to incorporate, either directly or by reference, definitions from the *MVS Regulations* into the *Customs Tariff*, it would have expressly done so.

62. In light of the above, the Tribunal concludes that the Class B motor homes produced by Great West Van can be considered private cars or automobiles, which means that they can also be considered "passenger automobiles" for the purposes of tariff item No. 9958.00.00.

– "Manufacture"

63. The Tribunal must now determine whether Great West Van "manufactures" Class B motor homes.

64. Great West Van submitted that the leading case on the meaning of the word "manufacture" is the decision of the Supreme Court of Canada in *The Queen v. York Marble, Tile and Terrazzo Ltd.*[44] wherein it was held that ". . . 'manufacture is the production of articles for use from raw or prepared material by giving to these materials *new forms, qualities and properties or combinations* whether by hand or machinery'". It also made reference to a number of other decisions, including a decision of the Federal Court of Appeal, wherein it was held that "[a] thing is produced if what a person does has the result of producing something new; and a thing is new when it can perform a function that could not be performed by the things which existed previously."[45]

65. Great West Van submitted that, on the basis of the above jurisprudence, the act of manufacturing essentially consists of taking articles and raw materials and converting them into something that is new, giving it a new quality or character. It submitted that the evidence in this case clearly demonstrates that Great West Van takes the different goods in issue, including the Sprinter vans, and converts them into new vehicles that provide home accommodations.

66. Although the CBSA did not directly address the issue of whether Great West Van "manufactures" Class B motor homes, its submissions regarding the meaning of the term "original equipment" suggest that it does not consider Great West Van to be a manufacturer because it is not engaged in the original production of motor vehicles through large-scale assembly line production. In its view, Great West Van simply takes Sprinter vans, which are already complete vehicles upon importation, and retrofits or converts them into Class B motor homes.

67. In the Tribunal's view, the evidence on the record demonstrates that Great West Van does indeed "manufacture" Class B motor homes. In his testimony, Mr. Geurts explained that Great West Van's production process begins with the importation of cargo vehicles (the Sprinter vans in this case), which are then essentially striped down and taken apart before they are gradually rebuilt, piece by piece, into Class B motor homes, which are completely new and different vehicles.[46] He added that this process involves the in-house manufacture of such items as cabinets, steel components and seat assemblies.[47]

43. *Ibid.* at 36-39.
44. [1968] S.C.R. 140 [*York Marble*].
45. *Enseignes Imperial Signs Ltée v. M.N.R.*, [1991] 1 C.T.C. 229 [*Imperial Signs*].
46. *Transcript of Public Hearing*, 7 June 2011, at 29.
47. *Ibid.*

68. In this regard, the Tribunal found the DVD video presented as evidence to be compelling, as it illustrates how existing models of cargo vans are cut, stripped, disassembled and then intricately rebuilt for an entirely new purpose, with new and different parts, assemblies and specifications, which are conceptually distinct from the original product. Although the chassis, engine and front assembly of the original cargo vans remain, what emerges at the end of the production line is a very distinct vehicle.

69. Mr. Geurts further explained that the Class B motor homes are subject to rigorous testing and that Great West Van is required to meet the same stringent standards as any vehicle manufacturer.[48] In this regard, he stated that, once the motor homes are completed, Great West Van issues its own manufacturer's statement of origin, as the original vehicles no longer exist.[49] He also stated that Great West Van offers a warranty on all its products.[50]

70. On the basis of the above evidence, the Tribunal has no difficulty in concluding that the goods in issue, including the Sprinter vans, are used by Great West Van to produce new goods, i.e. the Class B motor homes, which have new forms, qualities and properties that allow them to perform a function that could not previously be performed, i.e. a habitation function. In the Tribunal's view, whether something can be considered to have been manufactured is not dependent on whether it was produced through large-scale assembly line production. Therefore, in accordance with the principles stated in *York Marble* and *Imperial Signs*, the Tribunal concludes that Great West Van "manufactures" Class B motor homes, which, for the purposes of this appeal, have been considered "passenger automobiles".

Are the Goods in Issue for Use as Original Equipment?

71. Having determined that the goods in issue are parts, accessories and articles and that Great West Van manufactures Class B motor homes that can be considered passenger automobiles, the Tribunal must now determine whether the goods in issue are for use as "original equipment" in the manufacture of those motor homes.

72. The CBSA submitted that the goods in issue are not for use as "original equipment" because, in the automotive industry, that term has a very precise meaning and refers to the automotive parts that are specifically designed and manufactured and then sold to a vehicle assembler, which uses the parts to manufacture vehicles. In the absence of any definition of the term "original equipment" in the tariff, it referred to the *NAFTA Rules of Origin Regulations*,[51] which define this term as ". . . 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 . . . ." It submitted that, according to Mr. Johnson, this definition accurately reflects what is considered to be "original equipment" in the automotive industry.

73. The CBSA submitted that Great West Van is not a "motor vehicle assembler" in industry parlance, as that term is restricted to manufacturers, i.e. entities that engage in original production of complete motor vehicles, typically through large-scale assembly line production. It submitted that Mr. Johnson's testimony made it clear that, in Canada, the motor vehicle assemblers were Ford, Chrysler, General Motors, Toyota and Honda—the so-called "Big Five". It also submitted that, in the present case, the transfer of title to the

48. *Ibid.* at 29-30. The Tribunal notes that the DVD video presented at the hearing showed that Pleasure-Way certifies that its vehicles, once completed, meet applicable standards established by various organizations, such as the Recreation Vehicle Industry Association, the Canadian Standards Association, the United States Department of Transportation and the United States National Highway Traffic Safety Administration. Although this was not directly addressed by Mr. Geurts at the hearing, the Tribunal sees no reason why Great West Van would not also provide these certifications upon completion of its Class B motor homes.
49. *Transcript of Public Hearing*, 7 June 2011, at 30.
50. *Ibid.* at 40.
51. S.O.R./94-14 [*NAFTA Regulations*].

Sprinter vans, which are already complete motor vehicles, occurred at the time of importation and before they were gutted and made into motor homes. In other words, the Sprinter vans, and the other goods in issue for that matter, were not incorporated into the motor homes before the first transfer of title to Great West Van. For these reasons, it submitted that the goods in issue cannot be considered as "original equipment".

74. In response, Great West Van submitted that the definition of "original equipment" and, by implication, the definition of "motor vehicle assembler" provided in the *NAFTA Regulations* should not be relied upon, as they pertain to issues of origin as opposed to tariff classification. It further submitted that, since goods imported from all countries can qualify for the benefit of tariff item No. 9958.00.00, it would make no sense to rely on definitions of the terms "original equipment" and "motor vehicle assembler" that are applicable only for purposes of the *North American Free Trade Agreement*.[52]

75. Great West Van submitted that the term "original equipment" has a very broad meaning and that, had Parliament intended for it to have a narrow meaning for the purposes of tariff item No. 9958.00.00, it would have expressly referred to the *NAFTA Regulations* in that tariff item. It therefore submitted that, in the absence of any restrictive language, the term "original equipment" applies to all the goods, materials and articles imported by any original manufacturer of vehicles for the purpose of producing those vehicles. It further submitted that, according to Mr. Geurts, since Great West Van is an original manufacturer of Class B motor homes, all goods used for the manufacture of those motor homes are considered original equipment.

76. Great West Van also argued that, although it does not consider the definitions in the *NAFTA Regulations* to be relevant in the context of this appeal, those definitions would not have the effect of precluding the goods in issue from being considered original equipment. More specifically, it submitted that there is no support for the CBSA's position that the term "motor vehicle assembler" only encompasses large-scale manufacturers, such as Ford, General Motors, Chrysler, Toyota and Honda. It also submitted that, since the motor vehicles being manufactured by Great West Van are the Class B motor homes, the first transfer of title for those motor vehicles is from Great West Van to its dealer network.

77. For its part, SAF-Holland made submissions which largely supported the position advanced by Great West Van. Notably, it submitted that the definition of "original equipment", as it appears in the *NAFTA Regulations*, should not apply for the purposes of tariff item No. 9958.00.00 and that the benefit of this tariff item should not be available only for large-scale manufacturers such as the "Big Five". It also submitted that, in its view, original equipment encompasses all the goods that are part of the original design envelope of a vehicle.

78. The Tribunal notes that the term "original equipment" is not defined in the tariff and that it must therefore attempt to give meaning to this term by having regard to other interpretive aids. While dictionary definitions are usually very helpful in ascertaining the common meaning of words, the Tribunal is of the view that it is not appropriate in this instance because, 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.

79. The Tribunal is also not persuaded that the definition of "original equipment", as provided in the *NAFTA Regulations*, should be given much weight. The *NAFTA Regulations* pertain to issues of origin (i.e. the determination of when goods can be found to originate in the territory of a *NAFTA* country) as opposed to tariff classification. In addition, as argued by Great West Van, goods imported from any country

52. *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*].

can potentially qualify for the benefit of tariff item No. 9958.00.00. If the Tribunal were to rely on the *NAFTA Regulations* to define the term "original equipment", it would in effect be imposing criteria developed for *NAFTA* purposes upon goods imported from non-*NAFTA* countries.

80. At the hearing, Mr. Geurts testified that Great West Van is regarded in the industry as an original manufacturer of Class B motor homes and that all the parts that it installs at the time of manufacture are considered original equipment.[53] The Tribunal agrees with this characterization. As the Tribunal has previously determined, Great West Van is a manufacturer of Class B motor homes. Once completed, these motor homes possess new forms, qualities and properties that allow them to perform functions that could not previously be performed by the Sprinter vans or the other goods in issue. Therefore, Great West Van is manifestly an *original* manufacturer of Class B motor homes.

81. Considering that Great West Van is an original manufacturer of Class B motor homes, the Tribunal is of the view that all goods, whether parts, accessories or articles, that are specifically designated by Great West Van to be installed or incorporated into the motor homes (i.e. goods that are part of the original design of the motor homes) can be considered original equipment. The Tribunal believes that such an interpretation is reasonable within the context of tariff item No. 9958.00.00. Indeed, the Tribunal notes that, when asked by the Tribunal whether the term "original equipment" could apply to anything used in the manufacturing process of a product, Mr. Johnson answered in the affirmative and stated that the term is widely used in various industries.[54] As all the goods in issue, including the Sprinter vans, are installed or incorporated into a new product with a new identity, i.e. the Class B motor homes, they are necessarily original equipment.

82. The Tribunal notes that, even if the definition of "original equipment" in the *NAFTA Regulations* had been applied in this case, it would still have concluded that the goods in issue are original equipment. Subsection 2(1) of the *NAFTA Regulations* defines the term "original equipment", as well as the terms "material" and "motor vehicle assembler", as follows:

> "original equipment" means 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 . . . .
>
> "material" means a good that is used in the production of another good, and includes a part or ingredient.
>
> "motor vehicle assembler" means a producer of motor vehicles and any related person with whom, or joint venture in which, the producer participates with respect to the production of motor vehicles.

83. Great West Van is clearly a producer of motor vehicles and therefore meets the definition of a "motor vehicle assembler". In this regard, the Tribunal notes that, in his testimony, Mr. Johnson acknowledged that the term "motor vehicle assembler" could apply to organizations that are smaller than the "Big Five".[55] The goods in issue are also clearly goods that are used in the production of other goods (i.e. in the production of Class B motor homes) and therefore meet the definition of "material".

84. Finally, the first transfer of title of the Class B motor home—the relevant motor vehicle for the purposes of the definition of "original equipment"—is from Great West Van to its customers or dealers, as the case may be. Therefore, as the goods in issue are "materials" that are incorporated into a motor vehicle (i.e. motor home) before the first transfer of title of that specific motor vehicle from a "motor vehicle

53. *Transcript of Public Hearing*, 7 June 2011, at 42.
54. *Ibid.* at 81.
55. *Ibid.* at 80.

assembler" (i.e. Great West Van) to a person who is not a motor vehicle assembler (i.e. Great West Van's customers or dealers), they meet the definition of "original equipment" as provided in the *NAFTA Regulations*.

85. In light of the foregoing, the Tribunal finds that the goods in issue are parts, accessories and articles for use as original equipment in the manufacture of passenger automobiles and, therefore, qualify for the benefit of tariff item No. 9958.00.00.

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

86. Tariff item No. 9959.00.00 provides as follows:

> **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 thereof, or parts, accessories or parts thereof, other than rubber tires and inner tubes.**

87. There was a common understanding between the parties that the issue with respect to tariff item No. 9959.00.00 is whether the goods in issue are materials of the enumerated sections or chapters that are for use in the manufacture of passenger automobiles. However, given the Tribunal's findings above, the only question remaining with respect to this tariff item is whether the goods in issue are materials of the enumerated sections or chapters.

88. The CBSA argued that the goods in issue either do not fall within the sections or chapters enumerated in tariff item No. 9959.00.00 or are not "materials" and, therefore, do not qualify for the benefit of tariff item No. 9959.00.00. For its part, Great West Van conceded that none of the goods in issue are materials and that, therefore, none of them can qualify for the benefit of that tariff item.[56]

89. The Tribunal agrees that none of the goods in issue are materials and that, accordingly, they cannot qualify for the benefit of tariff item No. 9959.00.00. The Tribunal notes that the meaning given to the word "materials" in the context of the *Customs Tariff* is different from that given to the same word in the *NAFTA Regulations* as seen above. Therefore, while the goods in issue were considered materials under the *NAFTA Regulations*, they are not considered as such under the *Customs Tariff*.

DECISION

90. For the foregoing reasons, the Tribunal concludes that the goods in issue are entitled to the duty-free treatment conferred by tariff item No. 9958.00.00.

91. The appeal is therefore allowed.

Jason W. Downey
Jason W. Downey
Presiding Member

56. *Ibid.* at 102-103, 109.