Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2017-008

Honda Canada Inc.

v.

President of the Canada Border Services Agency

Decision and reasons issued Tuesday, February 27, 2018

Canada

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IN THE MATTER OF an appeal heard on October 26, 2017, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated February 14, 2017, with respect to a request for review of an advance ruling on tariff classification pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

HONDA CANADA INC. **Appellant**

AND

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

DECISION

The appeal is dismissed.

Serge Fréchette
Serge Fréchette
Presiding Member

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	October 26, 2017
Tribunal Panel:	Serge Fréchette, Presiding Member
Support Staff:	Rebecca Marshall-Pritchard, Counsel Anja Grabundzija, Counsel

PARTICIPANTS:

Appellant	**Counsel/Representatives**
Honda Canada Inc.	Michael Sherbo Andrew Simkins Michael Kaylor

Respondent	**Counsel/Representative**
President of the Canada Border Services Agency	Joanie Roy

WITNESS:

Martin Rose
Manager – Warranty and CH G-HQS Lead
Honda Canada Inc.

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STATEMENT OF REASONS

BACKGROUND

1. This appeal was filed by Honda Canada Inc. (Honda) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*[1] from decisions made by the President of the Canada Border Services Agency (CBSA) on February 14, 2017, pursuant to subsection 60(4) of the *Act*.

2. The sole issue in this appeal is whether the goods in issue qualify for duty relief under tariff item No. 9958.00.00 of the schedule to the *Customs Tariff*[2] as "parts, accessories and articles . . . for use as original equipment in the manufacture of [passenger automobiles, trucks or buses] or chassis therefor."[3]

DESCRIPTION OF THE GOODS IN ISSUE

3. The goods in issue are complete automatic transmissions. They are used to replace defective original transmissions in Honda motor vehicles covered by warranty. They are identical to the original transmissions, notably as they are designed for a specific Honda vehicle make and model. The replacements are completed by mechanics at Honda Canada dealerships, at no charge to the customer.

PROCEDURAL HISTORY

4. On October 7, 2014, Honda requested an advance ruling pursuant to paragraph 43.1(1)(c) of the *Act*, and requested that the goods in issue be classified under tariff item No. 8708.40.29 as "gear boxes and parts thereof". Honda also requested that the goods in issue be classified under tariff item No. 9958.00.00 and thereby benefit from duty relief.

5. On February 29, 2016, the CBSA determined that the goods in issue were properly classified under tariff item No. 8708.40.29. However, it denied Honda's request for classification in tariff item No. 9958.00.00 on the basis that the goods in issue were not for use as original equipment in the manufacture of vehicles.

6. On February 14, 2017, following Honda's request for further re-determination, the CBSA issued a decision pursuant to paragraph 60(4)(b) of the *Act* confirming that the goods in issue were not classifiable in tariff item No. 9958.00.00.

7. On May 8, 2017, Honda appealed the CBSA's decision to the Tribunal.

8. On October 24, 2017, the Tribunal sent a letter to the parties requesting post-hearing submissions regarding the legislative history of tariff item No. 9958.00.00.

9. On October 26, 2017, the Tribunal held an oral hearing. Mr. Martin Rose, Manager, Warranty and CH G-HQS Lead, Honda Canada Inc., testified on behalf of Honda.

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1. R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].
2. S.C. 1997, c. 36.
3. The parties agree that the goods in issue are properly classified in tariff item No. 8708.40.29 as "gear boxes and parts thereof".

10. On November 14, 2017, Honda filed its post-hearing submissions, with the CBSA filing its submissions on November 29, 2017. Honda filed its reply on December 5, 2017.

PARTIES' POSITIONS

Honda

11. Honda argued that the goods in issue are parts, accessories and articles for use as original equipment in the manufacture of the vehicles referred to in tariff item No. 9958.00.00.

12. Honda submitted that, consistent with the Tribunal's interpretation of "original equipment" in *Holland Hitch of Canada Limited v. President of the Canada Border Services Agency*,[4] tariff item No. 9958.00.00 refers to articles destined for use in original vehicle manufacture, those for use in "first fit" assembly and articles, such as the goods in issue, for use in aftermarket replacement for vehicles originally equipped with the same component (specifically designed for that make and model) and covered by the vehicle warranty.[5] Honda further submitted that any other interpretation would make the words "as original equipment" in tariff item No. 9958.00.00 redundant; it submitted that Parliament specifically used the phrase "for use as original equipment" in order to include warranty replacement in this tariff item.

13. In its additional submissions, Honda submitted that in the context of the second part of tariff item No. 9958.00.00, the word "manufacture" appears in close proximity to the words "original equipment", and that the latter broaden the ordinary meaning of the former. As such, because "original equipment" includes warranty replacement, so too does the word "manufacture" in this context.

14. Conversely, Honda submitted that if "in the manufacture" in the second part of the tariff item were interpreted as excluding warranty replacement, there would be a conflict with the meaning of "original equipment", as one definition would include warranty replacement and the other would exclude it. According to Honda, a similar conflict would exist between the first and the second part of tariff item No. 9958.00.00. In addition, such an interpretation would unfairly disadvantage importers of original equipment used in warranty replacement vis-à-vis competitors who import parts for use in the manufacture of an equivalent original equipment part in Canada that is similarly destined for use in warranty replacement.

15. Honda submitted that the predecessor of tariff item No. 9958.00.00, Code 6227, was worded the same way.

CBSA

16. In its initial brief, the CBSA conceded that the goods in issue are "articles" and that they are for use as "original equipment", as interpreted in *Holland Hitch*. However, the CBSA submitted that the goods in issue were not for use in the manufacture of passenger automobiles, trucks or buses. The CBSA submitted that "manufacture" does not include repair or replacement.

17. In its additional submissions, the CBSA submitted that the legislative history of tariff item No. 9958.00.00 shows that the intent of Parliament has been to offer relief to Canadian manufacturers of vehicles and parts thereof.

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4. (18 January 2013), AP-2012-004 (CITT) [*Holland Hitch*]. The Tribunal's decision was affirmed on appeal by the Federal Court of Appeal in *Canada (Border Services Agency) v. Saf-Holland Canada Ltd.*, 2014 FCA 3 (CanLII).
5. Exhibit AP-2017-008.04A at para. 27, Vol. 1.

18. Nuancing its initial submissions, the CBSA further argued that the goods in issue do not constitute "original equipment". It argued that while "original equipment parts" in the first part of tariff item No. 9958.00.00 may include replacement parts covered by warranty, the expression "original equipment" in the second part of the tariff item, which is relevant to this appeal, is contextualized and narrowed by the additional requirement that the articles be used "in the manufacture of . . . vehicles". According to the CBSA, warranty parts cannot logically be used in the manufacture of vehicles.

19. The CBSA submitted that the common thread in tariff item No. 9958.00.00 is the requirement that, in order to be afforded duty-free treatment, there must be manufacturing in Canada, whether of parts (as in the first part of the tariff item) or of vehicles (as in the second part of the tariff item). The CBSA submitted that Honda's interpretation renders the word "manufacture" meaningless.

ANALYSIS[6]

20. Tariff item No. 9958.00.00 reads as follows:

> 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.

21. It is clear that the goods in issue are "parts, accessories and articles" within the meaning of the *Customs Tariff*. Furthermore, as it is not argued that the goods in issue are "for use in the manufacture of original equipment parts for passenger automobiles, trucks or buses", the only question in appeal is whether the goods in issue are classified in tariff item No. 9958.00.00 by reason of being "for use as original equipment in the manufacture of such vehicles or chassis therefor".

Meaning of ". . . for use as original equipment in the manufacture of . . . vehicles or chassis therefor"

22. In essence, Honda relies on the Tribunal's decision in *Holland Hitch* to argue that the trade meaning of "original equipment" includes parts used for aftermarket replacement in vehicles originally equipped with the same part (i.e. specifically designed for the particular vehicle make and model) and covered by vehicle warranty. Therefore, Honda argues that, by necessary implication, the words "manufacture of . . . vehicles" used in conjunction with "original equipment" have a meaning broader than their ordinary meaning and include replacement of parts under warranty.

23. Conversely, the CBSA's amended position is that the words "original equipment" in the second part of tariff item No. 9958.00.00 are narrowed by the associated requirement "for use . . . *in the manufacture of . . . vehicles . . .*" [emphasis added]. The CBSA relies on *Great West Van Conversions Inc. v. President of the Canada Border Services Agency*,[7] where the Tribunal interpreted "manufacture" as it appears in the second part of tariff item No. 9958.00.00 as meaning to produce new goods that have new forms, qualities and properties that allow them to perform a function that could not previously be performed. Consequently, because warranty replacement parts cannot logically be used in the manufacture of vehicles, the CBSA argues that the term "original equipment" does not include warranty replacement parts in this context.

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6. The legal framework for tariff classification is set out in Annex A.
7. (30 November 2011), AP-2010-037 (CITT) [*Great West Van*] at para. 70, relying on the principles set out in *The Queen v. York Marble, Tile and Terrazo Ltd*, [1968] SCR 140 and *Enseignes Imperial Signs Ltée v. M.N.R.*, [1990] F.C.J. No. 171, [1991] 1 C.T.C. 229.

24. Having considered the parties' submissions and evidence, the Tribunal finds that "for use as original equipment in the manufacture of . . . vehicles or chassis therefor", within the meaning of tariff item No. 9958.00.00, does not extend to articles for use in the replacement of parts under vehicle warranty.

25. None of the relevant terms are defined in the *Customs Tariff*. 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."[8] The "ordinary meaning" of a provision refers "to the reader's first impression meaning, the understanding that spontaneously comes to mind when words are read in their immediate context."[9] It has also been described as the "natural meaning which appears when the provision is simply read through".[10]

26. When tariff item No. 9958.00.00 is read in its ordinary and grammatical sense, it conveys that imported goods qualify for duty relief under this tariff item if they are for use in the manufacture of other goods. Specifically, the first part of the tariff item applies where the imported good is for use in the manufacture of original equipment parts; the second part applies where the imported good is for use as original equipment in the manufacture of vehicles.

27. The French version of the tariff item conveys the same meaning focused on the use of the imported good in the manufacture of another good.[11] In fact, this ordinary and grammatical sense of tariff item No. 9958.00.00 has been recognized by the Tribunal.[12]

28. Honda did not disagree that the ordinary meaning of "manufacture" (and as interpreted by the Tribunal in *Great West Van* in the context of the second part of tariff item No. 9958.00.00) does not include replacing a defective part, albeit under vehicle warranty.[13]

29. Furthermore, the Tribunal does not accept Honda's argument that the expression "original equipment" as interpreted in *Holland Hitch* contextualizes the meaning of "manufacture" in the second part of tariff item No. 9958.00.00 to the extent of also including replacement of defective parts under warranty. Honda's position would require adopting a strained interpretation of the text of the tariff item as a whole, as well as of the word "manufacture". The Tribunal finds no basis for adopting such an interpretation.

30. In this regard, *Holland Hitch* does not support Honda's position. Prior to interpreting the expression "original equipment parts" as it appears in the first part of tariff item No. 9958.00.00, the Tribunal

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8. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 at para. 21.
9. R. Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. at 30.
10. *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Association*, [1993] 3 SCR 724, 1993 CanLII 31 (SCC) at p. 735 (Gonthier J.); see also *Pharmascience Inc. v. Binet*, [2006] 2 SCR 513, 2006 SCC 48 (CanLII) at para. 30.
11. The French version reads as follows: "Parties, accessoires et articles, à l'exclusion des pneumatiques et chambres à air, *devant servir à la fabrication de parties d'équipement d'origine* de véhicules de tourisme, de camions ou d'autobus, *ou devant servir d'équipement d'origine dans la fabrication de ces véhicules* ou de leurs châssis" [emphasis added].
12. In *Great West Van*, which dealt with the second part of the tariff item, the Tribunal stated that tariff item No. 9958.00.00 requires the imported goods to be (1) parts, accessories or articles (2) for use as original equipment in (3) the manufacture of passenger automobiles. Similarly, in *Holland Hitch*, which dealt with the first part of tariff item No. 9958.00.00, it was understood that use in "manufacture" was a necessary condition for classification in the tariff item. All parties accepted that the goods in issue were semi-finished articles imported for further processing into finished automotive parts.
13. Exhibit AP-2017-008-14A at paras. 17, 25-26, Vol. 1A. *Transcript of Public Hearing*, 26 October 2017, at 40-41.

specifically recognized the different requirements of the first and second part of the tariff item, including the fact that 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"[14] [emphasis added].

31. Contrary to the phrase in issue in *Holland Hitch*, the phrase *following* the words "or for use as" in tariff item No. 9958.00.00 expressly requires the goods to be for use as original equipment "in the manufacture of . . . vehicles . . . ." The trade meaning of "original equipment" found in *Holland Hitch* cannot eclipse that express requirement. Rather, that express requirement indicates that the second part of the tariff item applies only to original equipment used in the manufacture of vehicles.[15]

32. This interpretation is consistent with the apparent legislative intent behind tariff item No. 9958.00.00. As the CBSA submitted, this tariff item derives from an order reducing duties[16] on certain goods used in the manufacture of motor vehicles. The Regulatory Impact Analysis Statement accompanying the order states, *inter alia*, as follows:

> . . . This Order amends the *Customs Duties Reduction or Removal Order, 1988* to either reduce or remove MFN rates of duty on *a range of original equipment automotive parts for use in the manufacture of motor vehicles*. . . . It has been the longstanding practice to use this Order in Council authority to reduce or remove customs duties on *materials used in Canadian manufacturing operations*. . . . The reduction of the duty on automotive parts will reduce *input costs* for Asian automotive companies (Toyota, Honda and Hyundai) which *manufacture motor vehicles in Canada*. This action is consistent with the Prosperity Task Force's recommendation that Canadian tariffs on *manufacturing inputs* be reduced to levels of our major trading partners. . . . [17]
>
> [Emphasis added]

33. Consistent with the ordinary meaning of Code 6227, and later tariff item No. 9958.00.00, Parliament's focus on manufacturing activity and inputs is clear from the Regulatory Impact Analysis Statement. Nothing in the legislative history of this provision supports Honda's extended interpretation of "manufacture" in particular.

34. In light of the foregoing, the Tribunal is not prepared to accept Honda's remaining textual arguments. In fact, both parties have argued that Parliament could have drafted tariff item No. 9958.00.00 differently had it wished to achieve one or the other outcome. In this context, the Tribunal finds these textual arguments to be of little value in the interpretive exercise at hand. The Tribunal relies on the words actually chosen by Parliament, which, in their ordinary and grammatical sense, convey a meaning that is also consistent with the legislative history of the provision.

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14. *Holland Hitch* at para. 54.
15. Honda argued at the hearing that the words "in the manufacture of . . . vehicles . . ." were used by Parliament in conjunction with "original equipment" to indicate that only first fit and warranty replacement were covered, arguing that "other than that, there's virtually no way to get . . . warranty replacement covered by the provision and not replacement from a broader sense . . ."; *Transcript of Public Hearing*, 26 October 2017, at 37-38. Yet, the trade meaning of "original equipment" as found in *Holland Hitch* at paras. 74-75 and relied on by Honda is inherently limited to replacements under warranty. As such, Honda has provided no convincing rationale for the presence of the words "in the manufacture of . . . vehicles . . ." in the second part of the tariff item if its interpretation were to be adopted.
16. *Customs Duties Reduction or Removal Order, 1988, amendment*, SOR/94-18. See Exhibit AP-2017-008-15A, tab 4, Vol. 1B. This order introduced Code 6227, the predecessor of tariff item No. 9958.00.00, which was in all aspects relevant to this appeal worded in identical fashion.
17. Exhibit AP-2017-008-15A, tab 4, Vol. 1B.

The Goods in Issue Are Not Classifiable in Tariff Item No. 9958.00.00

35. The goods in issue are used to replace defective transmissions on Honda cars under warranty. As stated above, replacing a transmission does not constitute "manufacture". As such, the goods in issue are not for use as original equipment in the manufacture of passenger automobiles, trucks or buses or chassis therefor and are not classifiable in tariff item No. 9958.00.00.

DECISION

36. The appeal is dismissed.

Serge Fréchette
Serge Fréchette
Presiding Member

ANNEX A – LEGAL FRAMEWORK

1. 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.

2. Subsection 10(1) of the *Customs Tariff* provides that, subject to subsection 10(2), 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.

3. 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.

4. 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]

5. Chapter 99 sets out special classification provisions adopted by Canada that generally allow certain goods to be imported duty-free. The provisions of this chapter are not standardized at the international level. 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.

6. The notes to Chapter 99 provide as follows:

> 1. The provisions of this Chapter are not subject to the rule of specificity in General Interpretative Rule 3 (a).
>
> 2. Goods which may be classified under the provisions of Chapter 99, if also eligible for classification under the provisions of Chapter 98, shall be classified in Chapter 98.
>
> 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.
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> 4. The words and expressions used in this Chapter have the same meaning as in Chapters 1 to 97.

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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.
21. World Customs Organization, 4th ed., Brussels, 2017.
22. World Customs Organization, 6th ed., Brussels, 2017.
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.