



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## DECISION AND REASONS

Appeal No. AP-2017-031

C. Keay Investments Ltd. dba  
Ocean Trailer Rentals

v.

President of the Canada Border  
Services Agency

*Decision and reasons issued  
Tuesday, May 15, 2018*

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IN THE MATTER OF an appeal heard on March 27, 2018, 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 June 27, 2017, with respect to a dispute pursuant to subsection 60(4) of the *Customs Act*.

**BETWEEN**

**C. KEAY INVESTMENTS LTD. DBA OCEAN TRAILER RENTALS**

**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: March 27, 2018  
Tribunal Panel: Serge Fréchette, Presiding Member  
Support Staff: Dustin Kenall, Counsel

**PARTICIPANTS:****Appellant**

C. Keay Investments Ltd. dba Ocean Trailer  
Rentals

**Counsel/Representative**

Barb Miller

**Respondent**

President of the Canada Border Services Agency

**Counsel/Representative**

Gabrielle White

**WITNESSES:**

Darryl Chafe  
Liaison to CIMC Vehicles Group Co., Ltd. and  
OEMs  
Ocean Trailer Rentals

Jamie Derby  
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Kirsten Selby  
Compliance Manager  
Expert Customs Brokers

Derek Quinn  
Director of Maintenance and Equipment  
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## STATEMENT OF REASONS

### INTRODUCTION

1. This is an appeal filed by C. Keay Investments Ltd. dba Ocean Trailer Rentals (Ocean Trailer) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*<sup>1</sup> from a decision made on June 27, 2017, by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4), with respect to requests for re-determination of tariff classification.

2. The issue in this appeal is whether certain models of highway trailer container chassis (the goods in issue) should be classified under tariff item No. 8716.39.30 as “other trailers and semi-trailers for road tractors or for motor vehicles for the transport of goods”, as determined by the CBSA, or under tariff item No. 8716.90.30 as “parts for use in the manufacture of trailers and semi-trailers”, as argued by Ocean Trailer.

### PROCEDURAL HISTORY

3. Between 2012 and 2014, Ocean Trailer imported the goods in issue under tariff item No. 8716.39.30 as “other trailers and semi-trailers for road tractors or for motor vehicles for the transport of goods” in 11 separate transactions.

4. On May 24, 2016, the CBSA, under subsection 74(4) of the *Act*, denied various applications for a refund of duties that Ocean Trailer made after importing the goods in issue, finding that they had been properly classified under tariff item No. 8716.39.30.

5. On August 18, 2016, Ocean Trailer, under subsection 60(1) of the *Act*, requested a further re-determination of the tariff classification of the goods in issue, claiming that they should be classified under tariff item No. 8716.90.30 as “parts for use in the manufacture of trailers and semi-trailers”.

6. On June 27, 2017, the CBSA, under subsection 60(4) of the *Act*, further re-determined the tariff classification of the goods, affirming its previous determination.

7. On September 14, 2017, Ocean Trailer filed this appeal with the Tribunal.

8. On November 24, 2017, Ocean Trailer filed its brief.

9. On February 2, 2018, the CBSA filed its brief.

10. On March 27, 2018, the Tribunal held an electronic hearing, at which Ocean Trailer called five lay witnesses, the CBSA called no witnesses, and the parties made submissions on the law and the evidence.

### PRELIMINARY ISSUES

#### Qualification of Expert Witnesses

11. On March 8, 2018, Ocean Trailer proposed to qualify three of its witnesses as experts: Mr. Jamie Darby, Mr. Derek Quinn and Ms. Kristen Selby. Ocean Trailer submitted two-page witness statements for each of these individuals. On the same day, the CBSA opposed the request, submitting that the appellant’s expert witness statements did not provide a detailed outline of its witnesses’ intended testimony and that, regardless, given the witnesses’ relationships with Ocean Trailer, they lacked the necessary independence to serve as impartial experts.

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

12. On March 26, 2018, the Tribunal held a teleconference, where it heard the parties' submissions. The Tribunal issued a decision by letter the same day to the parties, denying the appellant's request that its witnesses be qualified as experts.<sup>2</sup> The Tribunal deferred its reasons in support of its decision, which are elaborated below.

13. Mr. Darby is a licensed mechanic and has been the "head estimator for Ocean Trailer" for the last 18 years.<sup>3</sup> The summary of opinion in his statement comprised one paragraph to the effect that a functional trailer compliant with domestic laws and regulations cannot be constructed from only the goods in issue.

14. Mr. Quinn is a certified trailer mechanic and the Director of Maintenance and Equipment with TransX Group (TransX), where he has worked for the past five years.<sup>4</sup> He is also a certified Red Seal mechanic in British Columbia since 1998. The summary of opinion in his statement comprised two paragraphs to the effect that Ocean Trailer has an exclusive contract with TransX to provide service, warranty, and repair to its trailers, that TransX relies on Ocean Trailer's expertise and knowledge, and that the use of trailer chassis has grown in Canada along with trucking industry costs.

15. Ms. Selby is a licensed customs broker holding the position of Compliance Manager at the firm of Expert Customs Brokers.<sup>5</sup> Her statement confirms that she filed the refund requests with the CBSA for the goods in issue. The summary of opinion in her statement comprised six sentences, concluding that Ocean Trailer "has been a pioneer in changing the industry as it relates to chassis and choosing to ignore the costs, expertise and workmanship that has been created by Ocean Trailer is only causing further harm to an already suffering transportation industry".<sup>6</sup>

16. The CBSA objected that these individuals, being employees, clients, and brokers of Ocean Trailer, were not sufficiently impartial and independent to serve as experts. It further objected that their expert witness statements lacked sufficient detail regarding the content of their expert opinions and testimony to enable the CBSA to know the case it needed to meet. Ocean Trailer responded that it needed these witnesses to be qualified in order for them to provide opinion rather than fact evidence.

17. For a witness to be recognized as an expert, a party must show that the expert opinion evidence is relevant; necessary; not barred by any exclusionary rule; and tendered by a properly qualified expert.<sup>7</sup> If these threshold criteria are met, the Tribunal may still exercise its discretion to refuse to qualify an expert witness where the potential risks of admitting such expert opinion evidence outweigh the potential benefits.<sup>8</sup>

18. The relevance criterion considers whether the evidence "ha[s] a tendency as a matter of human experience and logic to make the existence or non-existence of a fact in issue more or less likely than it would be without that evidence".<sup>9</sup> The necessity criterion considers whether the evidence "provide[s] information which is likely to be outside the ordinary experience and knowledge of the trier of fact". Of note, "it is not necessary that fact witnesses be qualified as experts for the purpose of providing their fact evidence. The purpose of qualifying such a witness as an expert is to permit the witness 'to provide the

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2. Exhibit AP-2017-031-36 at 2, Vol. 1A.

3. Exhibit AP-2017-031-20 at 1, Vol. 1A.

4. Exhibit AP-2017-031-23 at 184, Vol. 1A.

5. Exhibit AP-2017-031-21 at 141, Vol. 1A.

6. *Ibid.*

7. *R. v. Mohan*, [1994] 2 S.C.R. 9, 1994 CanLII 80 (SCC) at 20.

8. *White Burgess Langille Inman v. Abbott and Haliburton Co.*, [2015] 2 SCR 182, 2015 SCC 23 (CanLII) [*White Burgess*] at para. 24.

9. *R. v. Abbey*, 2009 ONCA 624 (CanLII) at para. 82.

judge and jury with a ready-made inference which the judge and jury, due to the technical nature of the facts, are unable to formulate.”<sup>10</sup>

19. In this case, the Tribunal found that the proposed individuals should not be qualified as experts. Ocean Trailer stated that it sought to qualify witnesses as experts in order for them to provide opinion evidence on matters of law (e.g. what domestic regulations require in terms of certifying trailers for highway use) and on matters of fact (e.g. the work performed by Ocean Trailer on the goods in issue and its place in the trucking industry).

20. It must be mentioned at the outset that questions of domestic law are not the proper subject of testimony by experts; rather, they are for the Tribunal and reviewing courts to decide on the basis of the submissions and authorities identified by parties.<sup>11</sup> Therefore, expert opinion evidence on this question fails the necessity criterion for admissibility. Furthermore, questions of fact are the proper subject of testimony by lay witnesses. Therefore, expert opinion evidence on such questions also fails the necessity criterion.

21. All witnesses tendered by Ocean Trailer were permitted to testify as fact witnesses. This was the most appropriate format for their evidence, as Ocean Trailer identified no technical matter outside the experience of a fact finder requiring an expert to provide the Tribunal a ready-made inference through an expert opinion. Further, the type of opinion Ocean Trailer was seeking to solicit was one on the pith of the issue in dispute—whether chassis have the essential characteristics of semi-trailers. Even when qualified, experts may not provide testimony directly answering the very question before the Tribunal, as that usurps the latter’s role as fact-finder.<sup>12</sup> For these reasons, the Tribunal found that it was inappropriate for these individuals to testify as experts.

22. The Tribunal also found that the proposed expert witnesses’ close pre-existing and continuing relationships with Ocean Trailer weighed against admitting their evidence in the form of expert opinion. An expert witness should be “independent from the exigencies of litigation and [able to] provide assistance to the court by objective, unbiased opinion in relation to matters within his or her expertise”.<sup>13</sup> Where the witness has a pre-existing or continuing financial, employment, or fiduciary relationship with one of the parties, that interest may undermine her independence, rendering the impartiality of her opinion questionable.<sup>14</sup> This does not automatically disqualify a proposed witness from testifying as an expert, but it does weigh into the cost-benefit analysis the Tribunal conducts in deciding “whether the potential benefits justify the risks” of admitting the expert testimony.<sup>15</sup> Such risks include the undue consumption of time, prejudice, complication, confusion, inappropriate deferral to an expert, and the distraction of a battle of the experts.<sup>16</sup>

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10. *Oshkosh Defense Canada Inc. v. Department of Public Works and Government Services* (29 December 2017), PR-2015-051 and PR-2015-067 (CITT) at para. 21, citing *R. v. D.D.*, [2000] 2 SCR 275, 2000 SCC 43 (CanLII) at para. 21; and *R. v. Abbey*, [1982] 2 SCR 24, 1982 CanLII 25 (SCC) at 42.

11. See for example *Brandon (City) v. Canada*, 2010 FCA 244 (CanLII) at para. 27.

12. See for example *Rockwell Collins Canada Inc. v. Department of Public Works and Government Services* (13 October 2017), PR-2017-006 (CITT) at para. 50.

13. *Hudson’s Bay Company v. President of the Canada Border Services Agency* (21 March 2014), AP-2012-067 (CITT) [*Hudson’s Bay*] at para. 24.

14. See, for example, *Eastern Division Henry Schein Ash Arcona Inc. v. President of the Canada Border Services Agency* (20 May 2014), AP-2013-029 (CITT) at para. 43.

15. *White Burgess* at para. 24.

16. *Ibid.* at para. 18.

23. Mr. Darby has a continuing 18-year employment relationship Ocean Trailer. Mr. Quinn is a long-standing business customer of Ocean Trailer, whose company, in his own words, “values the partnership between Ocean Trailer and TransX which has been built on trust, communication and understanding . . . [and] rel[ies] heavily on Ocean Trailer[’s] expertise and knowledge”.<sup>17</sup> Finally, Ms. Selby is the broker who filed the original refund applications with the CBSA on Ocean Trailer’s behalf, in which role she acted as its professional advocate. These individuals have pre-existing or continuing financial, employment, or professional relationships with Ocean Trailer that weigh against accepting their evidence in the form of expert opinion, especially given the lack of any countervailing benefit in terms of necessity or relevance as discussed above.<sup>18</sup>

24. Finally, the Tribunal found that the witnesses should not be qualified as experts because their witness statements lacked sufficient detail. Rule 22(1) of the *Canadian International Trade Tribunal Rules* provides that a party who intends to call an expert witness must file and serve “a report, signed by the expert, setting out the expert’s name, address, qualifications and area of expertise and a detailed outline of the expert’s testimony.”<sup>19</sup> The purpose of Rule 22(1) is “to ensure that parties ha[ve] the opportunity to rebut evidence presented by an expert witness called on behalf of an opposing party.”<sup>20</sup> In the absence of an expert report, an opposing party can rely only on the summary of opinion provided in the expert witness statement for knowing the case they need to meet. Here, the summaries provided by Ocean Trailer were only a few sentences in length, were devoid of any substantiating detail, clear position or supporting reasons. A summary of opinion need not be comprehensive, but it must contain sufficient detail for the opposing party to understand the opinion of the expert and the main reasons supporting it. For these reasons, the Tribunal found that the expert witness statements were not compliant with Rule 22(1) and has not considered them in its decision.

### **Late Submission of Photographic Evidence**

25. On March 19, 2018, Ocean Trailer filed 67 photographic exhibits with the Tribunal, to which the CBSA objected by letter dated March 20, 2018, on the grounds that Ocean Trailer had shown no cause for why the photographs could not have been filed earlier with its brief. The CBSA also argued that the photographs lacked the necessary detail regarding their date, subject matter, author and background information to enable the CBSA to properly respond to them.

26. The Tribunal allowed these to be filed into evidence because they were potentially relevant and because, although they likely could have been filed earlier, their late filing did not prejudice the CBSA. Procedural fairness concerns are allayed by providing an opposing party an opportunity to respond to new issues or evidence raised during a proceeding.<sup>21</sup> In its letter dated March 26, 2018, the Tribunal gave the CBSA an opportunity to make supplementary submissions “if requested and needed after the relevance of

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17. Exhibit AP-2017-031-23 at 185, Vol. 1A.

18. Further, at least two of these individuals (Mr. Darby and Ms. Selby) have direct personal experience with the goods in issue as, respectively, the mechanic responsible for assembling them and the broker responsible for seeking a rebate of their duties. Thus, they would have been providing expert opinion testimony on a matter in which they were personally involved.

19. *Canadian International Trade Tribunal Rules*, SOR/91-499.

20. *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (30 June 2004), RR-2003-002 (CITT) at para. 13.

21. See, for example, *R. v. Mian*, [2014] 2 SCR 689, 2014 SCC 54 (CanLII) at para. 59 (“the underlying concern should be ensuring that the court receives full submissions on the new issue. If a party asks to file written submissions before or after the oral hearing, in my view, there should be a presumption in favour of granting the request. The overriding consideration is that natural justice and the rule of *audi alteram partem* will have to be preserved. Both sides will have to have their responses considered.”).



the photographs becomes clear at the hearing”.<sup>22</sup> The fact that the CBSA made no such request is indicative of the lack of any prejudice. The CBSA’s evidentiary concern regarding the photographs goes to weight, not admissibility, under the rules of evidence as applicable to customs appeals at the Tribunal.<sup>23</sup>

### Narrative Evidence

27. On March 15, 2018, the Tribunal requested that the parties be prepared at the hearing on March 27, 2018, to make submissions on the following three questions:

(1) What are the exact contents of the goods in issue as shipped? Particularly, are there . . . shipping item lists or manifests that identify what specifically is included in the package shipped to the appellant by its overseas supplier[?] If there are, please file them in advance of the hearing.

(2) Is there any documentary evidence verifying the value added (processing labour time, value of the goods in issue as a percentage of the value of the finished product) and additional parts the appellant claims are incorporated by it during processing into its final trailers/semi-trailers[?] If there is, please file it in advance of the hearing;

(3) What specific type of processing work does the appellant claim is not mere assembly, fixing, or riveting[?] Does the appellant alter or finish the goods in issue in any (other) manner?

28. On March 26, 2018, in response to the second and third questions, the appellant filed, respectively, twenty pages of various invoices, quotations and other documentation, and a nine-page narrative summary of the processing work it performs on imported chassis.<sup>24</sup> The respondent filed a two-page letter in response to the Tribunal’s second question, identifying two additional Tribunal decisions and excerpts of certain WCO explanatory notes.<sup>25</sup>

29. On March 27, 2018, at the hearing of this appeal, the Tribunal held that it would not accept into evidence the nine-page narrative, though the appellant would have the opportunity to prove these facts through the testimony of its witnesses at the hearing.<sup>26</sup> Although the Tribunal understands that the narrative was submitted in good faith in response to the third question found in the Tribunal’s letter dated March 15, 2018, it contains facts prepared by Ocean Trailer’s counsel rather than evidence submitted by a witness.<sup>27</sup> Counsel are not permitted to give evidence as a witness before the Tribunal.<sup>28</sup> The proper method for substantiating allegations of fact before the Tribunal is via documents, physical exhibits, and affidavits or witness statements and testimony.<sup>29</sup> Merely stating facts in a submission or a brief is insufficient. Therefore, the Tribunal did not consider this narrative submission in reaching its decision, though it did consider the testimony of Ocean Trailer’s witnesses at the hearing, which often overlapped with the submission.

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22. Exhibit AP-2017-031-36 at 2, Vol. 1A.

23. See, for example, *Hudson’s Bay* at para. 43 (acknowledging that rules of evidence before administrative tribunals are relaxed compared to courts). See also ss. 34-35 of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.).

24. Exhibit AP-2017-031-35 at 2-10, Vol. 1A.

25. Exhibit AP-2017-031-37 at 2, Vol. 1A.

26. *Transcript of Public Hearing*, 27 March 2018, at 6-7.

27. *Ibid.* at 6.

28. See, for example, *Andersson v. Aquino*, 2018 ONSC 852 (CanLII) at para. 17 (recognizing “the long-established prohibition on a lawyer simultaneously acting as counsel and witness”).

29. See, for example, *Cubex Ltd. v. President of the Canada Border Services Agency* (31 January 2018), AP-2017-017 (CITT) at paras. 53-60 (rejecting unsubstantiated allegations).

## DESCRIPTION OF THE GOODS IN ISSUE

30. The goods in issue are invoiced as “highway trailer container chassis” in various models.<sup>30</sup> Each unit at the time of importation includes a chassis frame and miscellaneous equipment,<sup>31</sup> including couplers, kingpins, bolsters, bumpers, tires and rims, brakes, suspensions, axles, bearings, hangers, mud flaps, and electrical equipment (lighting, reflectors, wire harnesses, etc.).<sup>32</sup> Ocean Trailer supplies the landing gear, cross members, twist locks and its support brackets itself, as well as, as needed, extra bolsters, and accessories for additional functionality (e.g. refrigeration units, generator systems [gensets], lifts or tool boxes, etc.).

31. After importation, and in order to become functional and meet Canadian motor vehicle regulations, Ocean Trailer first installs the accompanying tires and wheels onto the chassis frame. Next, it completes the unit according to the customer’s specifications by having a certified trailer mechanic attach, fuse (weld) and calibrate various additional components (e.g. equalizers, suspensions, landing gears and twist locks) onto the unit. The certified trailer mechanic also installs bracing and hangers for mud flaps, inspects brakes and hubs, greases all lights, re-torques all tires and checks all major components. Finally, the trailer chassis is inspected and certified to conform to Canadian motor vehicle safety standards, after which a Statement of Compliance is applied, and the New Vehicle Information Statement is created.<sup>33</sup>

## LEGAL FRAMEWORK

### Tariff Classification Steps

32. 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).<sup>34</sup> 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.

33. 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*<sup>35</sup> and the *Canadian Rules*<sup>36</sup> set out in the schedule.

34. 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.

35. 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*<sup>37</sup> and the *Explanatory Notes to the Harmonized Commodity Description and Coding*

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30. Exhibit AP-2017-031-15A, Appendix 3 at 40, Vol. 1.

31. Exhibit AP-2017-031-38 at 4-5, 10-12, 14, 17-18, 22-23, Vol. 1B.

32. Exhibit AP-2017-031-15A, Appendix 5 at 69, Vol. 1.

33. *Ibid.*

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

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

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

37. WCO, 2d ed., Brussels, 2003.

*System*,<sup>38</sup> 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.<sup>39</sup>

36. The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the *General Rules* as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. It is only where Rule 1 does not conclusively determine the classification of the goods that the other general rules become relevant to the classification process.<sup>40</sup>

37. Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to use a similar approach to determine the proper subheading.<sup>41</sup> The final step is to determine the proper tariff item.<sup>42</sup>

### Relevant Tariff Nomenclature and Notes

38. The parties agree that the goods in issue are properly classified under Section XVII, Chapter 87 and heading No. 87.16, which read as follows:

**Section XVII**  
**VEHICLES, AIRCRAFT, VESSELS**  
**AND ASSOCIATED TRANSPORT EQUIPMENT**  
**Chapter 87**  
**VEHICLES OTHER THAN RAILWAY**  
**OR TRAMWAY ROLLING-STOCK,**  
**AND PARTS AND ACCESSORIES THEREOF**

...

**87.16 Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof.**

39. There are no relevant section or chapter notes.

40. The CBSA submits that the relevant nomenclature is tariff item No. 8716.39.30, which reads as follows:

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38. WCO, 5th ed., Brussels, 2012 [*Explanatory Notes*].

39. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131, 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.

40. *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 (CanLII) [*Igloo Vikski*] at para. 21.

41. Rules 1 through 5 of the *General Rules* apply to classification at the heading level. Rule 6 of the *General Rules* provides that "... the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules [i.e. Rules 1 through 5]..." and that "... the relative Section and Chapter Notes also apply, unless the context otherwise requires."

42. Rule 1 of the *Canadian Rules* provides that "... the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the [*General Rules*]..." and that "... the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires." Classification opinions and explanatory notes do not apply to classification at the tariff item level.

**-Other trailers and semi-trailers for the transport of goods:**

...

**8716.39 - -Other**

8716.39.30 - - -Trailers and semi-trailers for road tractors or for motor vehicles for the transport of goods (excluding non-commercial snowmobile, utility, boat or horse trailers and trailers for use as permanent mountings for machinery or equipment)

41. The explanatory notes to heading No. 87.16 regarding trailers and semi-trailers read as follows:

This heading covers a group of **non-mechanically** propelled vehicles (**other than** those of the preceding headings) equipped with one or more wheels and constructed for the transport of goods or persons. . . .

The vehicles of this heading are designed to be towed by other vehicles (tractors, lorries, trucks, motorcycles, bicycles, etc.), to be pushed or pulled by hand, to be pushed by foot or to be drawn by animals.

The heading includes :

**(A) Trailers and semi-trailers.**

For the purposes of this heading, the terms “trailers” and “semi-trailers” means vehicles (other than side-cars) of a kind designed solely to be coupled to another vehicle by means of a special coupling device (whether or not automatic).

The most important types of trailers and semi-trailers falling in this group are those designed for use with motor vehicles. Trailers usually have two or more sets of wheels, and a coupling system mounted on the swivelling front wheels which steer the vehicles. Semi-trailers are fitted with rear wheels only, the forward end resting on the platform of the towing vehicle to which it is coupled by a special coupling device.

For the purposes of the following Explanatory Note, the term “trailers” includes semi-trailers.

Trailers falling here include :

...

(4) Other trailers for the transport of goods . . .

42. The explanatory notes to Chapter 87 apply Rule 2(a) to the classification of incomplete vehicles, which, per the above explanatory notes to heading No. 87.16, includes trailers and semi-trailers.

43. The explanatory notes to Chapter 87 read as follows:

**An incomplete or unfinished vehicle, whether or not assembled**, is classified as the corresponding complete or finished vehicle **provided** it has the essential character of the latter (see General Interpretative Rule 2(a)), as for example:

- (A) A motor vehicle, not yet fitted with the wheels or tyres and battery.
- (B) A motor vehicle not equipped with its engine or with its interior fittings.
- (C) A bicycle without saddles and tyres.

44. There are no classification opinions for subheading No. 8716.39.

45. Ocean Trailer submits that the relevant nomenclature is tariff item No. 8716.90.30, which reads as follows:

**8716.90 -Parts**

8716.90.30 - - -For use in the manufacture of trailers and semi-trailers

46. The relevant explanatory notes to heading No. 87.16 regarding parts read as follows:

**PARTS**

This heading also includes parts of the vehicles mentioned above, provided the parts comply with both the following conditions :

- (i) They must be identifiable as being suitable for use solely or principally with such vehicles; and
- (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note)

Parts of this heading include :

- (1) Chassis and component parts thereof (frame side members, cross members, etc.).
- (2) Axles.
- (3) Bodies and parts thereof.
- (4) Wooden or steel wheels and parts thereof, including wheels fitted with their tyres.
- (5) Coupling devices.
- (6) Brakes and parts thereof.
- (7) Shafts, swingle-bars and similar parts.

47. There are no relevant classification opinions for subheading No. 8716.90.

**POSITIONS OF THE PARTIES****Ocean Trailer**

48. Ocean Trailer argues that the goods in issue are parts because they require significant work to be completed into a finished, functional trailer that is compliant with domestic laws and regulations. In support, Ocean Trailer makes several arguments.

49. First, it submits that the goods are simply chassis frames, not complete chassis, much less trailers or semi-trailers. The goods in issue do not include cross members, bumpers and twist locks, which are an integral part of a trailer and are designed as a unit with chassis. The goods in issue are custom parts designed exclusively by Ocean Trailer for specific trailers for specific customers. Other customizable features of Ocean Trailer's chassis include their warranty, size (up to 53' as opposed to regular 20' or 40'), suspensions (equalizers), landing gear and aftermarket components (storage, electrical, and temperature control).

50. Second, Ocean Trailer alleges that the goods in issue account for only ten percent of the number of components comprising the final trailers/semi-trailers.<sup>43</sup> Ocean Trailer fabricates all cross members (required for installation of the necessary landing gears) and electrical box components itself, which are essential to the operation of the finished product.<sup>44</sup> The value of the goods in issue represents only about 43 to 56 percent of the finished product, and an average 21 to 23 percent of the final manufacturing occurs in

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43. Exhibit AP-2017-031-11A at para. 20, Vol. 1.

44. *Ibid.*

Canada at the appellant's facility.<sup>45</sup> At least ten hours of labour are required to complete the trailer. The average time after importation to complete a final unit so that it is ready for pickup by the customer is two months.<sup>46</sup>

51. Third, Ocean Trailer argues that the goods in issue are distinguishable from trailers because, it alleges, Transport Canada does not regulate chassis on importation but highly regulates trailers and semi-trailers on importation.

52. Fourth, Ocean Trailer alleges that the goods in issue are not functional at the time of importation. In particular, that they cannot move or transport goods. They require a special forklift to be moved in Ocean Trailer's facility. For processing the goods in issue, Ocean Trailer's facility uses special equipment costing over \$48,000 per bay; it also incurs technician costs.<sup>47</sup> Finally, Ocean Trailer claims that the goods in issue must also be certified and registered with Transport Canada prior to their use.

### CBSA

53. The CBSA takes the position that the goods in issue, even though unassembled, incomplete, and non-functional, have the essential characteristics of a semi-trailer for the transportation of goods and, as such, are semi-trailers, not parts of semi-trailers.

54. The explanatory notes to Chapter 87 specifically invoke, with regard to all vehicles including semi-trailers, Rule 2(a) of the *General Rules*, which reads as follows:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the *essential character* of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

[Emphasis added]

55. The explanatory notes to Rule 2(a) read as follows:

The first part of Rule 2(a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, **provided** that, as presented, it has the essential character of the complete or finished article.

...

The second part of Rule 2(a) provides that complete or finished articles presented unassembled or disassembled are to be classified in the same heading as the assembled article. When goods are so presented, it is usually for reasons such as requirements or convenience of packing, handling or transport.

This Rule also applies to incomplete or unfinished articles presented unassembled or disassembled provided that they are to be treated as complete or finished articles by virtue of the first part of this Rule.

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45. *Ibid.* at para. 102.

46. *Ibid.*

47. *Ibid.* at para. 103.

For the purposes of this Rule, “articles presented unassembled or disassembled” means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, **provided** only assembly operations are involved.

No account is to be taken in that regard of the complexity of the assembly method. However, the components shall not be subjected to any further working operation for completion into the finished state.

[Italics added]

56. The CBSA submits that, based on the above, it is irrelevant whether the goods in issue are functional or compliant with motor vehicle regulations. They only need to have the “essential character” of the completed product, a term which the Federal Court of Appeal has interpreted as follows:<sup>48</sup>

[T]o be essential, a characteristic must pertain to the essence of something. It must be fundamental. Thus, the CITT’s mission, if I can characterize the CITT’s task in that fashion, was to determine the fundamental nature of the goods in issue.

57. The CBSA argues that the goods have the essential character of semi-trailers. The goods in issue comprise multiple semi-trailer parts including a chassis, tires, rims, brakes, hubs, axles, hangers, coupling devices and electrical equipment. They are not merely a single chassis frame by itself, but rather are analogous to the above example from the *Explanatory Notes* of motor vehicles not yet fitted with wheels or tires or batteries or engines or interior fittings. This is consistent with the explanatory notes for “Parts” under heading No. 87.16, which lists chassis and chassis component parts separately from axles, wheels, coupling devices, brakes, swingle-bars, etc. The goods in issue cannot simply be a chassis part (i.e. the bare skeletal structure of a semi-trailer) if they are accompanied with all of the rest of these articles which are used to assemble a complete semi-trailer.

58. The CBSA further argues that the goods in issue also meet the definition of a semi-trailer, as found in the *Explanatory Notes*, as a trailer fitted with rear wheels only, the forward end resting on the platform of the towing vehicle to which it is coupled by a special coupling device. The 11 models of the highway trailer container chassis at issue are characterized in their purchase orders by specific automotive terms such as “tridem”, “combo” “GN” (gooseneck), “tandem”, “SL” (slider), and “fifth wheel”, all designations involving trailers or semi-trailers.<sup>49</sup>

59. Finally, the CBSA alleges that the other conditions of Rule 2(a) are met. The type of processing work undertaken by Ocean Trailer on the goods in issue is limited to assembly through fixing devices, riveting or welding. Also, there is no “further working operation” that must be performed on the goods in issue.

## ANALYSIS

60. As noted above, the parties agree on the applicable section (XVII), chapter (87) and heading No. 87.16 (trailers and semi-trailers). However, Ocean Trailer submits that the goods in issue are properly classified under subheading No. 8716.90 (parts), while the CBSA supports classification under subheading No. 8716.39 (other trailers and semi-trailers for the transport of goods).

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48. *Mon-Tex Mills Ltd. v. Canada (Commissioner of the Customs and Revenue Agency)*, 2004 FCA 346 (CanLII) at para. 13.

49. Exhibit AP-2017-031-15A, Appendix 4 at 60-66, Vol. 1.

61. Application of Rule 1 of the *General Rules* does not result in the goods in issue fitting in only one subheading. The parties agree that the chassis arrive in an unassembled state and that they are missing certain components necessary to be licensed and operate as semi-trailers—at the very least, a permanently attached container box or flat bed for the transportation of goods. Therefore, they could *prima facie* be classified as parts under subheading No. 8716.90. However, as a collection of many of the main components of an unassembled semi-trailer, they could also *prima facie* be classified as semi-trailers under subheading No. 8716.39 by virtue of the explanatory notes to Chapter 87, which provide that incomplete and unassembled vehicles<sup>50</sup> shall be classified as if they were complete and assembled vehicles so long as they have the essential character of the latter.

62. The Tribunal must, therefore, consider whether Rule 2(a) of the *General Rules* applies.<sup>51</sup> In this appeal, where the goods as imported are both incomplete and unassembled, Rule 2(a) will apply if the chassis:

1. though missing certain trailer components, still have the “essential character” of a semi-trailer;  
*and*
2. though unassembled, require “only assembly operations” using, for example, fixing devices (screws, nuts, bolts, etc.), riveting or welding but no “further working operation for completion into the finished state”.

63. For the reasons that follow, the Tribunal finds that the goods in issue have the “essential character” of a semi-trailer because they meet the definition of semi-trailers under the explanatory notes to heading No. 87.16, but for the inclusion of a permanently attached container box or flatbed. The Tribunal further finds that the goods in issue can be processed into their finished state through only assembly operations. Because the two conditions of Rule 2(a) are met, the goods in issue are properly classified as semi-trailers for the transport of goods under subheading No. 8716.39 (and tariff item No. 8716.39.30) and not parts for use in the manufacture of semi-trailers under subheading No. 8716.90 (and tariff item No. 8716.90.30).

### **Essential Character**

64. The Tribunal described its analysis of “essential character” recently in *Alliance Mercantile Inc.*:<sup>52</sup>

Among the elements considered in determining whether an article has the essential character of a finished article, the Tribunal has considered, for instance, whether the goods look like the complete or finished article. It has also considered whether the goods possessed the essential features of the complete or finished article. In one instance, the manner in which the article was marketed was a factor taken into consideration. In another, the Tribunal also considered the question of whether the value that is added to the goods in issue after importation is of such a considerable proportion as to render absurd the claim that those goods as imported have the essential character of the finished or complete goods.

65. In *Renelle Furniture Inc.*, the Tribunal considered whether unassembled metal futon bed frames were parts for seats or seats convertible into beds. The Tribunal held they were the latter, using the following reasoning: “The frames have all the complexity, design and appearance of the complete goods. One need only glance at the goods in issue to immediately recognize them for what they are: futon sofa beds or futon

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50. Semi-trailers are “vehicles” per the definition of semi-trailers found in the explanatory notes to heading No. 87.16.

51. See *Igloo Vikski* at paras. 22-23 and n. 4.

52. *Alliance Mercantile Inc. v. President of the Canada Border Services Agency* (3 November 2017), AP-2016-038 (CIIT) at para. 65.



bunk beds. . . . The essential character of the goods in issue is therefore that they convert from a seat to a bed or from a seat with a stacked bed to a bunk bed.”<sup>53</sup>

66. As relevant to the automotive context, the Tribunal also explained in *Renelle Furniture Inc.* as follows:

It should be stressed that, in order for an incomplete or unfinished article to be classified in the heading for the complete or finished article, it must be recognizable or identifiable as the complete or finished product. For example, if an automobile were imported without wheels, it could be classified in heading No. 87.03 for automobiles, because it is recognizable as the finished product. However, an automobile frame only (without motor, wheels, etc.) would be classified in heading No. 87.08 (parts and accessories of motor vehicles).

67. In *Alliance Mercantile Inc.*, the Tribunal applied the methodology of *Renelle Furniture Inc.* to the question of whether boot bottoms were essentially footwear, concluding they were not. The boot bottoms were instead merely frames that required significant finishing into multiple different forms. Thus, in addition to the multi-factor analysis that the Tribunal conducts when considering essential character, another productive way of considering the issue is whether the goods in issue are more like building blocks or a model of the finished good.

68. In this appeal, the question is whether the goods in issue are simply chassis frames or whether they have the essential character of semi-trailers despite being unassembled and missing some parts required for functionality. The explanatory notes to heading No. 87.16 define semi-trailers to mean vehicles constructed for the transport of goods or persons with rear wheels only, designed to be towed by other vehicles through a special coupling device by which the forward end of the semi-trailer rests on the towing vehicle.

69. Ocean Trailer called four witnesses who testified about the differences between chassis and semi-trailers: Mr. Darryl Chafe; Ms. Kirsten Selby; Mr. Derek Quinn and Mr. John O’Dwyer.

70. Mr. Chafe, Ocean Trailer’s liaison to its key suppliers and customers, testified about Ocean Trailer’s business in designing, purchasing, and assembling the goods in issue. He testified that he works with the manufacturer CIMC Vehicles Group Co., Ltd. (CIMC) in China to develop a highway container chassis that, when processed into a trailer, will be compliant with the needs of Ocean Trailer’s customers as well as domestic regulations. He explained that the transportation industry has evolved in the past two decades towards more customized chassis with varied uses in terms of length, size of containers, electrical requirements (such as for refrigeration), and other needs (such as chassis for garbage trucks, portable crushing machines, grain bins, etc.). The chassis that Ocean Trailer imports have no carrying capacity even when fully assembled because they include no means of safely securing goods for transport.

71. Ms. Selby reviewed the reasons she advocated for a change in classification after being brought in by Ocean Trailer for an audit. The Tribunal found this testimony to be of limited relevance as it involved either interpretation of the tariff itself (a matter for legal argument by counsel) or the proceedings before the CBSA (which is irrelevant given that appeals are heard *de novo* before the Tribunal).

72. Mr. Quinn testified that chassis cannot haul freight, only the container on top of the chassis can. He testified that TransX purchases containers but not chassis from CIMC. He confirmed it would take about four or five hours to install landing gear on a chassis.

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53. *Renelle Furniture Inc. v. President of the Canada Border Services Agency* (23 March 2007), AP-2005-028 (CIIT) at paras. 20-21.

73. Mr. O'Dwyer is the CEO of Checker Flag Leasing Inc., a distributor of CIMC's chassis based in Ontario. His company operates a provincially licensed inspection facility, with an inventory of parts for use in assembling chassis. He testified that he receives CIMC chassis in containers, disassembled. He explained that he often has to add pieces depending on customer specifications when assembling the unit. The full process takes about 20 labour hours. He also explained that a chassis is basically an extended dolly, meaning that it is akin to a frame or undercarriage that can only carry goods if one adds a piece of equipment such as a storage box.

74. All of the evidence, including Ocean Trailer's submissions and the specifications for the goods in issue, shows that the goods in issue comprise more than simply bare chassis frames for semi-trailers. Rather, they include other articles such as couplers, kingpins, bolsters, bumpers, tires and rims, brakes, suspensions, axles, bearings, hangers, mud flaps, and electrical equipment (lighting, reflectors, wire harnesses, etc.). In this sense, they are more like automobiles imported lacking a few parts (landing gear, twist locks, and a container box or flatbed) rather than simply an automobile frame only.

75. The explanatory notes Chapter 87, which apply Rule 2(a) to the classification of incomplete vehicles (such as semi-trailers), reinforce this conclusion. They include the example of a vehicle without wheels, or tires, or batteries; and a vehicle without an engine or its interior fittings. The explanatory notes to Chapter 86 similarly provide that "[i]ncomplete or unfinished vehicles are classified with the corresponding complete or finished vehicles, provided they have the essential character thereof. Such vehicles may include: . . . (3) Truck underframes complete with suspension and wheels". The goods in issue here are in a similar state on importation, missing an enclosure or floor necessary to perform their intended function (the transportation of goods) but still recognizable as essentially a semi-trailer underframe, which is essentially a chassis.

76. Further, the fact that the goods in issue are imported in a bundled package containing most of the components necessary to assemble a semi-trailer weighs against classifying them as merely parts. The *Explanatory Notes'* description of trailer and semi-trailer parts lists "[c]hassis and component parts thereof (frame side members, cross members, etc.)" separately from other parts such as "axles", "wheels", "coupling devices" and "brakes". The goods in issue contain not only the latter parts but many others including electrical and suspension systems. In this sense, they are more like a (unassembled) model of a semi-trailer, rather than one or more individual building blocks. Viewed holistically in this manner, their essential character as a semi-trailer resolves into focus.

77. The nomenclature used by the vendor and buyer also supports a finding that the goods in issue are essentially semi-trailers. The goods in issue are invoiced by CIMC as "highway trailer container chassis".<sup>54</sup> The purchase agreement between CIMC and Ocean Trailer describes the goods in issue using trucking industry terms associated with trailers, e.g. "tridem", "combo" "GN", "tandem", "SL" and "fifth wheel".<sup>55</sup> Also, the name under which the appellant does business includes the word "trailer" (not chassis, underframes, etc.).

78. In terms of the photographs filed by Ocean Trailer, Mr. Chafe testified that the photograph most representative of what the goods in issue would look like in their final, assembled stated was exhibit 1D (a combo chassis produced by Ocean Trailer).<sup>56</sup> This equipment could not carry goods, in comparison to

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54. Exhibit AP-2017-031-15A, Appendix 3 at 40, Vol. 1.

55. *Ibid.*, Appendix 4 at 60-66, Vol. 1.

56. Exhibit AP-2017-031-A-04 at 1.

exhibit 1C<sup>57</sup> which, containing a box container on top of the chassis frame, could be described as a trailer if the box container and chassis were permanently joined. He stated that Ocean Trailer never sells chassis and containers as a combined set. He also identified exhibits 14A,<sup>58</sup> 14B,<sup>59</sup> and 14C<sup>60</sup> as dollies, which he described as similar to a chassis (both are unable to transport goods or people and are used to connect two trailers together) but shorter.

79. Based on the above, Ocean Trailer argues that the goods in issue could not be licensed or function as semi-trailers even when fully assembled. However, as reviewed above, Rule 2(a) still applies even when one or more necessary components are missing.<sup>61</sup> Moreover, the Tribunal has previously held that the domestic regulatory regime is irrelevant for tariff classification purposes, unless it is incorporated into the tariff or is helpful to understand industry usage of a term.<sup>62</sup> Ocean Trailer provided no evidence that Canada's federal and provincial laws and regulations regarding the licensing and operation of semi-trailers are referenced anywhere in the tariff. Further, Ocean Trailer's witnesses' testimony<sup>63</sup> regarding their usage of the terms "chassis" and "trailer" is consistent with the Tribunal's analysis above, i.e. that a chassis is essentially an incomplete trailer or semi-trailer, missing only a (permanently attached) container or bed for the transport of goods. Accordingly, the Tribunal finds the domestic regulatory regime governing the operation and licensing of chassis and trailers or semi-trailers irrelevant to the purpose of classification under Rule 2(a).

80. Ocean Trailer also argues that the Tribunal should find that the goods in issue are only parts because they account for only a fraction of the value of a finished semi-trailer. As reviewed above, Ocean Trailer submitted that the goods in issue account for only ten percent of the components of the finished semi-trailer, that their value is only about half of that of the finished trailer, and that they require ten to forty hours of processing work. These figures were cited in the appellant's brief without reference to any supporting evidence. Although the Tribunal requested documents to verify these figures, the only documents Ocean Trailer provided were twenty pages of assorted invoices, quotes and unidentified printouts filed on March 26, 2018. It is not clear which if any of these apply to the goods in issue. They appear to involve work on other goods. Even assuming they are applicable or at least representative, they do not corroborate the claim that the goods in issue constitute only ten percent of the number of total components in a finished semi-trailer or that the value of the goods in issue is only about half that of the finished semi-trailer. The goods in issue are invoiced by CIMC to Ocean Trailer at around twelve to seventeen thousand dollars per unit.<sup>64</sup> The documentation filed on March 26, 2018, shows work invoiced or quoted at much lower amounts

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57. Exhibit AP-2017-031-A-03 at 1.

58. Exhibit AP-2017-031-A55 at 1.

59. Exhibit AP-2017-031-A56 at 1.

60. Exhibit AP-2017-031-A57 at 1.

61. See, for example, *Viessmann Manufacturing Company Inc. v. Deputy M.N.R.* (14 November 1997), AP-96-196 to AP-96-198 (CITT) at 6 (holding that the fact that the goods in issue do not form a complete boiler when imported and cannot operate safely is not determinative so long as they have the "essential feature of a boiler, namely, the heat exchanger" as well as "the burner, the manifold, the outer panels and sundry other components").

62. See *Nestlé Canada Inc. v. President of the Canada Border Services Agency* (7 February 2017), AP-2015-027 (CITT) at paras. 19 and 58; *LRI Lighting International v. President of the Canada Border Services Agency*, AP-2016-007 (CITT) at paras. 45-46; *J. Cheese Inc. v. President of the Canada Border Services Agency* (13 September 2016), AP-2015-011 (CITT) at para. 73; *Outdoor Gear Canada* (21 November 2011), AP-2010-060 (CITT) at para. 44.

63. *Transcript of Public Hearing*, 27 March 2018, at 10, 20, 43, 46-47, 107, 120.

64. Exhibit AP-2017-031-15A, Appendix 2 at 26-57, Vol. 1.

(three or four figures).<sup>65</sup> There is no evidence that the work performed by Ocean Trailer or the components it adds to the goods in issue in order to make them suitable for incorporation into complete, assembled semi-trailers, approaches, much less exceeds, the value of the goods in issue.<sup>66</sup>

81. Based on all of the above facts, the Tribunal finds that the first condition for application of Rule 2(a) is met: the goods in issue have the essential character of semi-trailers.

### **Assembly vs. Further Working**

82. As referenced above, the second condition for Rule 2(a) to apply here requires that the goods in issue can be completed only through assembly operations using, for example, fixing devices (screws, nuts, bolts, etc.), riveting, or welding but no “further working operation”.

83. Ocean Trailer called two witnesses to discuss its processing operations: Mr. Jamie Darby and Mr. Darryl Chafe.

84. Mr. Darby testified that when the goods in issue are imported, they are disassembled and in a state similar to the components shown in Exhibit 3A.<sup>67</sup> Mr. Darby spoke at length about the assembly process for the goods in issue. He testified that sometimes the chassis come with the landing gear but other times not—it varies depending on the customer order. He stated that the work performed by Ocean Trailer can vary in length from ten to forty hours depending on the order. The work begins with the landing gear, for which Ocean Trailer will attach, via welding, structural mounts and then braces to the chassis frame. Then Ocean Trailer welds bolsters (if additional ones are needed) to the chassis frame, with twist locks to secure the container box. Ocean Trailer will also weld cross members, genset mounts and axles. Under cross-examination, when asked if there is any assembly method that does not include welding or bolting, Mr. Darby confirmed that everything is welded or bolted on the frame, aside from lighting/electrical which is installed.<sup>68</sup> Mr. Chafe’s testimony about the work performed by Ocean Trailer overlapped and was consistent with the information supplied by Mr. Darby.

85. In all of its evidence, Ocean Trailer identified no “further working operation” it performs on the goods in issue to transform them into a completed chassis, even when prompted by the Tribunal’s letter dated March 15, 2018. Moreover, on cross-examination, Mr. Darby could not identify any working operation performed on the goods in issue beyond welding, riveting, bolts and installation of electrical systems (i.e. the placement of wire harnesses and lighting in and on the chassis).<sup>69</sup> This was corroborated by Mr. Chafe’s own testimony. His evidence was that once a container box or flatbed is loaded onto a chassis, the only distinction between it and a semi-trailer is that in the latter the chassis and container box or flatbed are “joined . . . They are affixed. They cannot be changed. They are a done deal. . . . These two pieces of equipment are married together.”<sup>70</sup> When the Tribunal asked Mr. Chafe in response whether “the only difference between this piece of equipment on [Exhibit] 1C and an actual trailer is the means of

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65. Exhibit AP-2017-031-35 at 11-30, Vol. 1A.

66. This should not be taken to diminish the skill or the value that Ocean Trailer contributes to the trucking industry. The Tribunal acknowledges that Ocean Trailer performs other important work to customize chassis for clients, such as adding refrigeration and other capabilities. However, the only additional components or work relevant for purposes of tariff classification is the components and work necessary to make the chassis have the essential character of a semi-trailer. Refrigeration and other customized additions, though very valuable for some clients, are not essential characteristics of semi-trailers as defined by the tariff and the *Explanatory Notes*.

67. Exhibit AP-2017-031-A-08 at 1.

68. *Transcript of Public Hearing*, 27 March 2018, at 90.

69. *Ibid.*, at 89-90.

70. *Ibid.*, at 76.

manufacturing, the manner in which they've been assembled", Mr. Chafe's answer was "correct".<sup>71</sup> That marriage of the chassis and container or flatbed is achieved by means of a coupling mechanism involving fixing devices (screws, nuts, bolts, etc.), welding, and/or riveting. There is no evidence in the record that any other type of "further working operation" is required.

86. Therefore, because the only work performed on the goods in issue is assembly, the second condition for the application of Rule 2(a) here is met. As both conditions are met, Rule 2(a) applies and the goods in issue are properly classified as assembled, complete semi-trailers under subheading No. 8716.39.

### **Heading, Subheading and Tariff Item Number**

87. In accordance with Rule 6 of the *General Rules*, the classification of goods in the subheading of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, according to Rules 1 to 5. Only subheadings at the same level are to be compared.

88. There are six subheadings at the one-dash or level 1 subheading. These six subheadings provide for the following:

- A. "-Trailers and semi-trailers of the caravan type, for housing or camping";
- B. "-Self-loading or self-unloading trailers and semi-trailers for agricultural purposes";
- C. "-Other trailers and semi-trailers for the transport of goods";
- D. "-Other trailers and semi-trailers";
- E. "-Other vehicles"; and
- F. "-Parts".

89. Given that no one-dash subheading more particularly describes them, the goods in issue are properly classified under "Other trailers and semi-trailers for the transport of goods".

90. At the two-dash subheading, the relevant categories are "Tanker trailers and tanker semi-trailers" (8716.31) or "Other" (8716.39). Given that the goods in issue are highway container semi-trailers and not tankers, the goods in issue fall under the residual subheading of 8716.39 as "Other".

91. There are three tariff items under subheading No. 8716.39: "aluminium construction drop-centre livestock trailers" (8716.39.10); "farm, logging or freight wagons" (8716.39.20); and "trailers and semi-trailers for road tractors or for motor vehicles for the transport of goods" (8716.39.30). Given that the goods in issue are highway container semi-trailers for the transport of goods, they are most appropriately classified under tariff item No. 8716.39.30, as determined by the CBSA.

### **DECISION**

92. For the reasons provided above, the appeal is dismissed.

Serge Fréchette  
Serge Fréchette  
Presiding Member

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71. *Ibid.*