CANADIAN INTERNATIONAL TRADE TRIBUNAL

TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Transcript of Public Hearing

Transcription de l'audience publique

BETWEEN/ENTRE:

RONSCO INC.

Appellant/ Appelante

- and/et -

THE PRESIDENT OF THE CANADA BORDER SERVICES AGENCY

Respondent/ Intimé

Appeal No. AP-2019-003

Appel Nº AP-2019-003

BEFORE/DEVANT:

Ms. Cheryl Beckett — Presiding Member/ Membre présidente

ALSO IN ATTENDANCE/AUSSI PRÉSENTS:

Ms. Sara Pelletier — Registrar/Greffière

Ms. Heidi Lee — Tribunal Counsel/ Avocate du Tribunal

APPEARANCES/COMPARUTIONS:

Mr. Charles Maher — For the Appellant/ Au nom de l'appelante

Mr. Colin S. Baxter
Ms. Alyssa Edwards
Mr. Peter Clark — For the Respondent/ Au nom de l'intimé

HELD AT:

CITT Hearing Room
18th Floor
333 Laurier Avenue West
Ottawa, Ontario

TENUE À:

Salle d'audience du TCCE
18e étage
333, avenue Laurier ouest
Ottawa (Ontario)

October 24, 2019

le 24 octobre 2019

TABLE OF CONTENTS/TABLE DES MATIÈRES

PAGE

SWORN: KENT MONTGOMERY.....10
EXAMINATION BY MR. BAXTER.....10
EXAMINATION BY MR. MAHER.....49
RE-EXAMINATION BY MR. BAXTER.....76
QUESTIONS BY THE PRESIDING MEMBER.....88

SWORN: PETER LEPORE.....98
WITNESS STATEMENT ADOPTED.....98
EXAMINATION BY MR. BAXTER.....98
EXAMINATION BY MR. MAHER.....127
RE-EXAMINATION BY MR. BAXTER.....166
QUESTIONS BY THE PRESIDING MEMBER.....167

ARGUMENT BY MR. CLARK.....177
ARGUMENT BY MR. BAXTER:.....185
ARGUMENT BY MR. MAHER:.....208
REPLY ARGUMENT BY MR. BAXTER.....232
REPLY ARGUMENT BY MR. CLARK:.....236
QUESTIONS BY THE PRESIDING MEMBER.....237

Ottawa, Ontario / Ottawa (Ontario)

--- Upon commencing on Thursday, October 24, 2019 at 9:30 a.m. /

--- L'audience débute le jeudi 24 octobre 2019 à 9 h 30

PRESIDING MEMBER: Madame Registrar, could you please open this hearing.

THE SECRETARY:

Thank you, Madame Chairperson. This hearing is being held by the Canadian International Trade Tribunal to hear the parties in Appeal No. AP-2019-003.

This is an appeal under Section 67 of the Customs Act of a decision of the President of the Canada Border Services Agency. The appeal was filed with the Tribunal on April 15, 2019. The Notice of Hearing was published in the September 21, 2019, issue of the Canada Gazette.

The Appellant is Ronsco Inc. and the Respondent is the President of the Canada Border Services Agency.

The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8607.19.29 as other wheels, whether or not fitted with axles, as determined by the President of the Canada Border Services Agency, or should be classified under tariff item No. 8607.19.30 as parts of wheels, as claimed by Ronsco Inc.

Several documents have been filed on the record of this appeal. Lists of Exhibits have been prepared, and are tabled as part of this appeal. The lists have been distributed to counsel. These documents include the Notice of Appeal, correspondence with the parties, as well as the briefs of the appellant and the respondent.

With regards to the electronic record for this appeal, upon request by the Presiding Member or by counsel, documents will be called up by the Registrar and displayed on the monitors in front of the Presiding Member, counsel and witnesses. Counsel are asked to refer to specific exhibit numbers when referring to a document in order to minimize delays in calling up the exhibit. Please direct any requests for adjustment to the Presiding Member, and the Registrar will adjust accordingly. Counsel are reminded that exhibits will not be displayed during final arguments, save in exceptional circumstances.

The Member assigned to this appeal is:

Ms. Cheryl Beckett, Presiding. The Tribunal's legal counsel is Heidi Lee.

Counsel and witnesses are reminded to activate their microphones by pressing the silver button before addressing the Tribunal, and to speak loudly and clearly into their microphones.

Those who have cell phones or other

communication devices are asked to kindly turn them off, including from the vibrating mode, while the hearing is in session.

Thank you, Madame Chairperson.

PRESIDING MEMBER:

Before proceeding further, would parties and counsel present introduce yourselves for the record, and indicate the name of the party you represent, starting on my right.

MR. BAXTER: Good morning, it's Colin Baxter on behalf of Ronsco Inc. I'm joined by Peter Clark and Alyssa Edwards.

MR. MAHER: Good morning. I'm Charles Maher for the respondent, the CBSA, and I'm here with my client, the CBSA's representative, Karen Alford.

PRESIDING MEMBER: Do counsel have any additional preliminary matters to discuss before we proceed?

Counsel have already provided us with their respective witness list and time estimate. Are there any last minute changes regarding the time estimates?

I understand we have a couple preliminary matters to discuss. One being the filing yesterday of additional documents related to the expert testimony. But before we get to that one issue, was there anything else

that you want to raise? And we will deal with that one at the end of the preliminary matters. Yes, Mr. Clark?

MR. CLARK: Madam Chairperson, I don't think this is an objection, but I'm not accustomed to hearings before the Tribunal where the client is at the counsel table. And I just wondered is this a new practice? I know I'm usually across the hall in the bigger room, but I have been here before, and this seems new to me. And I would like to clarify whether or not that's appropriate procedure.

PRESIDING MEMBER: Yes, for appeal hearings it is standard practice that the CBSA client sits at the table beside counsel.

MR. CLARK: Could we bring our witness up to the table with us?

PRESIDING MEMBER: Do you feel the need to do that?

MR. CLARK: I don't think so. I just wanted to know if it's for CBSA or for everybody.

PRESIDING MEMBER: I don't see if there would be any objection for one party or the other to have their client sitting at the table.

MR. CLARK: Okay. Thank you.

PRESIDING MEMBER: Are there any other preliminary matters at this point that need to be addressed

other than going -- discussing the initial documents for the expert testimony?

MR. MAHER: Well, I don't know, it's -- maybe it's not the right time, but I have distributed already to everyone just an aid sheet that I will be referring to in my closing arguments, so.

PRESIDING MEMBER: Do we have any objections to that, or has that been provided to counsel?

MR. MAHER: Yeah.

PRESIDING MEMBER: Okay. And I think vice versa, I see there are other aides to arguments from the Appellants that has been provided to counsel for CBSA.

MR. BAXTER: So we have -- thank you, Madam Chairperson. We have provide -- it's not quite clear, depending on how the evidence comes out, which we may -- there are some which we haven't decided whether to use, but those that we will use for sure, my friend has. And he has been provided copies.

PRESIDING MEMBER: Okay. Any issues --

MR. MAHER: No.

PRESIDING MEMBER: -- in respect of Mr. Maher?

MR. MAHER: No.

PRESIDING MEMBER: Okay, thank you. So moving to the documents that were filed yesterday with respect to the --

MR. MAHER: Oh, I just have one final -- sorry. We just want to make a correction. We did a factual error or mistake at paragraph 11 of our brief, and this is Exhibit 11 B. I just want to set it clear for the record.

The second sentence, the Appellant -- this talks about the request for further redetermination, and we stated: The Appellant submitted that the goods should be classified under tariff item 21, that's wheel blanks. We will talk about it as originally declared. That's a mistake on our part. At that time, the Appellant did not argue, that they conceded that it shouldn't be classified under that tariff item.

So I just want to be very clear, it's just on error on our part.

MR. BAXTER: Thank you, Mr. Maher. And to be clear, it was at that point that we argued parts of wheels. My friend makes half a correction. The full correction is, from in that very paragraph it should be mentioned that the issue before you today was first surfaced and briefed.

PRESIDING MEMBER: Yes. Thank you. Yeah, I did see that in the original letters that went back and forth. Thank you.

Okay. So now we will move on to the documents filed with respect to the expert that's coming up. Was there any other submissions to me made on this from either

Appellant's counsel or the CBSA, with respect to these documents?

MR. CLARK: This is not -- these are aides to examination in chief, which reflect material that's in the record, which my friend Mr. Baxter can speak to in more detail. But they are not evidence, not new evidence. They are simply something to assist the witnesses and shorten the examination time.

PRESIDING MEMBER: Okay. Thank you. Mr. Maher?

MR. MAHER: I think -- well, we have been pretty clear in our correspondence of yesterday. Even though I can appreciate that those are described by the Appellant as an aid, there's still new documents with new information that we didn't have before, and those were filed at a very late stage. And for all the other reasons that are set out in the letter, I think this would be improper to be accepted at this stage. Thank you.

PRESIDING MEMBER: Okay. Thank you. Yes, Mr. Baxter.

MR. BAXTER: I must address -- may I just advise the Tribunal. When we saw these documents for the first time yesterday in preparation for today, we immediately took steps to scan them, and to provide them to you and your legal counsel and to my friend. In our view, they would be helpful. They assist the Tribunal and everyone in

the room understanding some technical concepts. You may wish to defer a decision.

And as my friend Mr. Clark says, they are not evidence per se. They are more a visual representation of what is already written down in reports, and what I believe both witnesses will testify to. You may wish to defer a decision on this, but if you wish to rule it right now, we are content. It can be done without them. It's just easier with them.

PRESIDING MEMBER: Okay. Thank you for those submissions. Taking into account everything that you said, I do appreciate that they are a very late filing, but I'm going to allow them. Just as you mentioned, I will give them the weight and the relevance they deserve as part of the expert evidence testimony.

So are we ready to swear in the first witness?

MR. MAHER: Sorry. Again, just me. I just want to know, how does it work when -- if I want to -- if I have questions on confidential documents to the witnesses, is it more proper to just leave those questions for the end and make that ending portion an in-camera portion? Or how would that work?

PRESIDING MEMBER: Do you foresee much of your -- the cross-examination having to be done in-camera, or reference to confidential information?

MR. MAHER: Not a lot. Just a small portion of both. So I just wanted to raise that to you.

PRESIDING MEMBER: Yeah. As always, we try to get as much on the public record as possible. If that cannot be done, just please let me know and we will move into an in-camera portion. And we will have to clear the room of anyone who has not signed an undertaking.

MR. MAHER: Okay. Well, I will make sure to limit that portion. It's just there's several confidential documents that are relevant, and I want to have questions on them for the witnesses.

PRESIDING MEMBER: Yes, for procedures, if you could, if it works to just have it all in one chunk, then we don't have to have our participants having to come and go from the room.

MR. MAHER: Yes, I will leave them all for the end of each cross-examination, so we don't have to go back and forth.

PRESIDING MEMBER: Okay. Thank you. Just before we proceed, is there -- I appreciate counsel has provided me with time estimates, and your witness lists. Are there any changes or unexpected circumstances of account this morning?

MR. BAXTER: Madam Chairperson, we will endeavor to come in under our time limit. One always has to

anticipate all eventualities, but we are hopeful that this can be done quickly and efficiently.

PRESIDING MEMBER: Thank you. Madam Registrar, could you please swear in our first witness?

SWORN: KENT MONTGOMERY

EXAMINATION BY MR. BAXTER

PRESIDING MEMBER: Please proceed, counsel.

MR. BAXTER: Good morning, Mr. Montgomery. I see you have a -- just for the Tribunal's benefit, you have a hardcopy of the Appellant's brief. Is that correct? In front of you?

MR. MONTGOMERY: Yes, that's correct.

MR. BAXTER: Okay. And I appreciate that the proceeding may also involve electronic filing, but for ease of reference occasion, I will just be making reference. I will certainly identify the record page for Madame Pelletier, but to paper documents as well.

And good morning, Mr. Montgomery. What is your current position at Ronsco?

MR. MONTGOMERY: Executive Vice President and Chief Operating Officer.

MR. BAXTER: And speaking of that Appellant's brief, you have had a chance to review it before today. Do you adopt its contents?

MR. MONTGOMERY: Yes, I do adopt its contents.

MR. BAXTER: Thank you. Now, I'm going to ask you a bit about your background and education. I understand you attended McGill University and received a Bachelor of mechanical engineering in aerospace, is that correct?

MR. MONTGOMERY: That's correct.

MR. BAXTER: And what were the years that you were there in those studies?

MR. MONTGOMERY: I graduated in engineering in the spring of 1994.

MR. BAXTER: Okay. And when did you start working at Ronsco?

MR. MONTGOMERY: Later that spring, in 1994.

MR. BAXTER: In what positions did you start at at Ronsco, and can you describe a bit your career progression at that company?

MR. MONTGOMERY: I started in a, you know, a technical role at Ronsco. And it evolved, you know, through various technical sales roles, eventually leading up to vice president of sales and engineering, and then moved into my current role, in and around 2012.

MR. BAXTER: Okay. And when we speak of sales, and we are going to get into more specifics about the goods that were being sold from 1994 to the present, what are the types of products that are being sold by Ronsco, roughly

speaking?

MR. MONTGOMERY: Ronsco is in the business of parts and services for the rail industry. And, you know, we sell axles and bearings and wheels, componentry mostly for locomotives and railcars and transit cars, and the services that are around those components as well.

MR. BAXTER: Okay. And in the technical positions which you occupied at the beginning, did you have experience with the goods that are at issue here today?

MR. MONTGOMERY: Yes. You know, through my whole career at Ronsco we have been involved with the goods at issues, wheels, axles, and bearings. They are, you know, the primary mechanical product that's on our railcar and they are very -- it's very well known to me.

MR. BAXTER: Thank you. The goods in question are unfinished wheels. When did Ronsco start importing them into Canada?

MR. MONTGOMERY: In and around 2006, late 2005.

MR. BAXTER: And let's talk a bit about the corporation. How many employees does Ronsco have?

MR. MONTGOMERY: Currently Ronsco has approximately 100 employees. And we have been in business for just over 50 years right now.

MR. BAXTER: Okay. And we -- perhaps tell us where your main operations are located, sir.

MR. MONTGOMERY: Our two main locations are in Coteau-du-Lac, Quebec, just west of Montreal, which is railcar and locomotive tank car repair and services. And in Hamilton, Ontario which is our wheel shop location where we are doing, you know, wheel set services.

MR. BAXTER: Let's talk about the Hamilton location. How many employees are there?

MR. MONTGOMERY: There's approximately 50 employees at our Hamilton location.

MR. BAXTER: So fully half of the Ronsco employees?

MR. MONTGOMERY: That is correct.

MR. BAXTER: Okay. And when did the Hamilton operations -- when did they open, or when did you start operating?

MR. MONTGOMERY: We started the Hamilton operation in 2015.

MR. BAXTER: And what precisely does it do, if you can describe it for the Tribunal?

MR. MONTGOMERY: The operation machines axles for railcars and transit cars and locomotives. And we assemble the wheel seats and the bogies as well, where we are putting wheels on those axles and those bearings. And our clients are major Canadian corporations like Via Rail, GO Transit, CN, and CP.

MR. BAXTER: Okay. So that's a relatively recent operation. I appreciate that Ronsco, you said, has been in operation for 50 years, whereas that's coming on four years. Are there any plans for expansion? Does Ronsco have any plans for expansion?

MR. MONTGOMERY: Ronsco has a lot of plans for expansion. I mean, we have -- we are proud to be one of the few Canadian service providers in the rail space that are continuing to grow. And, you know, it's part of our knowledge and deep understanding of the Canadian rail space that allows us to continue to build services for our market here.

And, you know, our wheel shop operation in Hamilton has proven to be a success to our clients. And the desire to expand that services, you know, into western Canada is certainly, was one item that, you know, was on our agenda.

MR. BAXTER: Any other plans? So western Canada is on your radar, so to speak?

MR. MONTGOMERY: Yes, in the wheel services business, the more locations -- it's a very location, geographic-centric business. Eastern Canadian locations service eastern Canadian clients. And, you know, we have a national rail service and, you know, we need more, whether it's in western Canada or in the United States itself.

MR. BAXTER: And without entering into any confidential information, can you give the Tribunal, what kind of expenditures are involved in setting up a wheel shop like you did in Hamilton? A rough order of magnitude, again. Nothing confidential.

MR. MONTGOMERY: The Hamilton operation was, you know, north of $6 million in startup. We started that facility from scratch, based on a business model that, you know, we had been working on for a number of years before we decided to make that investment.

MR. BAXTER: And we are going to get into the specific processing more, but that -- in general terms, that allows you to take the unfinished products that are coming in and add value. Is that the business model, generally, of a wheel shop?

MR. MONTGOMERY: Yeah, that is correct. You know, the clients that I mentioned go transit or CN and CP. They have bad order wheel sets, wheel sets don't work properly or they wear out. Those bad order wheel sets come to our facility and we reprocess them, either by putting, you know, unfinished product, putting those unfinished wheels back on new axles, or we are re-profiling existing wheel sets. And that business had been done exclusively out of the United States. Our, you know, business model in 2015 was to bring that service into Canada and allow our

clients in Canada to have a local service provider.

MR. BAXTER: And before you had this licensed wheel shop in Hamilton you were importing goods, like are at issue today. And what were you doing with them before December of 2015?

MR. MONTGOMERY: Yes. We brought in unfinished wheels to provide them to wheel shops, you know, in Canada. Other wheel shops, primarily the railways, have their own wheel shops in Winnipeg. And we brought in unfinished wheels. We sold them as a parts supplier and they process those unfinished wheels into wheel sets at their location in Winnipeg.

MR. BAXTER: So as a parts supplier and not as a wheel shop operator, who were your competitors between 2006 and 2015?

MR. MONTGOMERY: Primarily in the Canadian market space it was Sumitomo and Amsted Rail.

MR. BAXTER: And they were selling to wheel shops as well.

MR. MONTGOMERY: Correct.

MR. BAXTER: Thank you. Let's talk a bit if we could, sir, about terminology. And I would -- you have seen -- Madam Chairperson, recently the Tribunal received, I believe it's Exhibit AP 31, an affidavit from Mr. Brian Lambert at Sumitomo. And it's not necessary to turn it up,

Mr. Montgomery, but Mr. Lambert talks about the terminology for the unfinished wheels. Can you tell me, in your experience, what are these items referred to in the industry?

MR. MONTGOMERY: There's, you know, many different terminologies for the unfinished wheels. The Canadian rail spaces tended to call them wheel blanks. The United States had tended to call them wheel plates, you know, wheel bodies. They are all referencing an unfinished product, it's just different terminology that people use to define that that wheel has to be further processed.

MR. BAXTER: Okay. And we will come to the specific goods in question. What is the common characteristic of all of those names, about the imported good?

MR. MONTGOMERY: That everyone one of those names define an unfinished product. You know, we need to continually machine the bore of that wheel blank or body to make sure that that can fit up against an axle.

MR. BAXTER: Okay. If I could, I would ask you now to turn up tab 19, Mr. Montgomery and Madam Registrar. Tab 19 record, page 218. So it's tab 19, sub 1.

THE SECRETARY: Would that be of Volume 1 or 2 of the Appellant's brief?

MR. BAXTER: Volume one. Most of -- all of the

evidence per se is in Volume one. I believe Volume two is just authorities.

THE SECRETARY: Thank you. So for the benefit of the record, that would be Exhibit 03 A.

MR. BAXTER: Thank you, 03 A. And it's record page 218, to which I would like to direct Mr. Montgomery. Oh, that's not what we have. I'm sorry. Can we just look, Madam Registrar, at page 219? I'm going to guess it's just the next page. Yes, 220. Oh, sorry.

Can we put the confidential version -- there's really nothing confidential. I'm going to ask Mr. Montgomery, if he doesn't feel comfortable with anything that comes up. I don't believe there's anything that's company confidential in any of the information we are about to discuss. I'm terribly sorry. I prepared all of my record page indicia to the confidential version.

PRESIDING MEMBER: Are you at this point -- do you want this information to be put on the public record? It's not considered confidential? Or is that -- are we moving it from a confidential to the public?

MR. BAXTER: I think Mr. Montgomery can speak to a document that's in the -- I don't think the document per se -- could I have a moment, please, Madame Chair? Sorry, this is an unforeseen.

PRESIDING MEMBER: Do you need to take a few

minutes, or?

MR. BAXTER: I don't believe so. Madame Chairperson, perhaps the easiest way is for Ronsco Inc. to agree to declassify this page and another page to which I'm going to direct the witness. They are also found, I believe, in form and substance in the public version. And my apologies again for doing my preparation in the confidential version.

PRESIDING MEMBER: No problem. If you could just advise the Registrar specifically which pages, and we will make that change to the record.

MR. BAXTER: So it's page 218 of the confidential version. And I guess, for the record, that's Exhibit 3 C. Okay, I see it's up there. And could it be enlarged a bit, Madam Registrar? Thank you.

Mr. Montgomery, I have directed you to record page 218 in the confidential version. If you could look with me to line 21, which is in the middle of the page -- sorry. Box 21. Do you see that? It's in the middle of the page and it has a description of the goods?

MR. MONTGOMERY: Yes, I do.

MR. BAXTER: And perhaps I will read it, and then you can tell me precisely about the goods. It says, AAR APPROVED H36 WHEELS/BLNKS/ NOT FITTED W/ AXL/NOT FNSHED. So these are the products that are at issue in

this appeal. Can you describe these products for the Tribunal, please, sir?

MR. MONTGOMERY: Yes. These products are what we had imported, certain wheel size, H36 unfinished wheel, that we would use ourselves internally, or to another wheel shop for finishing and attaching to an axle.

MR. BAXTER: And at the time of these importations, it was prior to your wheel shop being certified, is that right?

MR. MONTGOMERY: Yes, this was prior to our wheel shop being certified, correct.

MR. BAXTER: So in this case it was for resell?

MR. MONTGOMERY: Correct.

MR. BAXTER: Turn with me again now to record page 221. We have declassified this page as well, Madame Chairperson.

Exhibit 3 C. There we are. I'm going to look at the same box, Mr. Montgomery, if I could. On my reading, Box 21 says, BLANK WHEEL ONLY (NOT FINISHED AND NOT FITTED WITH AXLES.) Are those the same goods?

MR. MONTGOMERY: Yes, those would be the same goods.

MR. BAXTER: And, well, it's not indicated. These are 36-inch wheels, to your knowledge?

MR. MONTGOMERY: To my knowledge, yes, they are

36-inch wheels.

MR. BAXTER: Now, just below that box there -- and there's three others, Madame Chairperson, three others. But for the sake of argue -- for the sake of brevity of the evidence, these two will suffice. Below that box in Box 27, we see the tariff item under which it's classified. I want to ask you about that, Mr. Montgomery. Back in 2015, why was that tariff item chosen, to your knowledge?

MR. MONTGOMERY: That item, that tariff item was chosen through our interactions with FedEx, which was our broker. And that had been, you know, the tariff code that we have been bringing them in since 2006. And also based on our -- it's a small industry, only so many people are bringing these in, and with our customers and clients, you know, that was a tariff code that they had been bringing them in under as well.

MR. BAXTER: Okay. So you knew that your competitors were bringing it in under that tariff code, did you?

MR. MONTGOMERY: That is correct.

MR. BAXTER: Okay. And if I could direct you now, in the same volume, Madam Registrar, tab 16, record page 201.

THE SECRETARY: Are we also declassifying this page?

MR. BAXTER: Yes. Yes.

THE SECRETARY: Thank you.

MR. MONTGOMERY: Tab 16, page 201, correct?

MR. BAXTER: Yes, thank you. And you see it on the screen too. You have that, and we have a list on that page of A through J. And perhaps, Madam Registrar, we could just move it down a tiny bit just so that -- no, sorry. Yes, thank you.

In the brief which you have adopted, you indicate that your intelligence during the relevant period, the four-year period, those companies were using the same tariff item. Is that what I understand you to be saying in this brief?

MR. MONTGOMERY: Yeah, that is correct, yes.

MR. BAXTER: And among them, do you see any of your competitors that we just mentioned earlier? I think you mentioned Amsted and -- so there's Sumitomo.

MR. MONTGOMERY: Sumitomo is on this list, yes.

MR. BAXTER: Thank you. How long have -- so FedEx had been your agent, and for how long, sir, do you know? Before --

MR. MONTGOMERY: I'm uncertain how long, but I know they have been a long-term agent for our company.

MR. BAXTER: Thank you.

PRESIDING MEMBER: Excuse me. Mr. Baxter, that

tab 16. Just for the record, what exhibit number was that? I don't think that got read into the record.

MR. BAXTER: That's in Exhibit 3 C, Madame --

PRESIDING MEMBER: Tab 16 is Exhibit 3 C? Okay.

MR. BAXTER: -- Chairperson, and it's a document, just for the record, dated September 26, 2018. It was the submission to -- effectively the president's appeal, if you want to call it that way.

PRESIDING MEMBER: Okay. Thanks.

MR. BAXTER: Dated September 26th, 2018. That date may become significant later in Mr. Montgomery's evidence.

All right, if I could now direct you to tab 11 of this same brief. I think we are going to be unclassifying certain photographs as well. So I'm starting at record page 143, Madame Chairperson, of tab 11. Can you describe that picture? Well, it says -- it has got a heading there, a photo of a finished wheel set. Is that accurate, sir, or is there anything?

MR. MONTGOMERY: That's a wheel set with the wheels had been bored and mounted. It's just missing the roller bearings on those ends of the axles to have a completed wheel set.

MR. BAXTER: And we will come a bit to the mounting process later. Turn over the page with me to

record page 144. And those are the unfinished -- can you describe what those are, please, sir?

MR. MONTGOMERY: Yes. Those are the unfinished wheels which would come in from, you know, our clients, from our providers. And that's how they would be imported in a container, ultimately arriving at our wheel shop in Hamilton.

MR. BAXTER: Thank you. And the next page, please, Madam Registrar, 145. That appears to be one of the items that we just looked at on 144, is that correct, Mr. Montgomery?

MR. MONTGOMERY: Yeah, that is correct. That's one of those wheels that would have been removed from that stack that you saw on the previous photo.

MR. BAXTER: And it's being held up by -- what is holding it up there? Is that a --

MR. MONTGOMERY: There's a special clamp that we use. It's so you don't damage the unfinished bore on that wheel. You know, we want to make sure that, you know, there's -- we have to finish that process.

MR. BAXTER: And I see around the outside rim, and then inside the hole in the center, is that rust I'm seeing, sir?

MR. MONTGOMERY: Yes, that would be rust.

MR. BAXTER: Okay, very good. So those are the

importations in question. I want to ask you, are these wheels able to be mounted on an axle?

MR. MONTGOMERY: No. This product here could not be mounted on an axle at this time, in this state.

MR. BAXTER: And we will come back to the process that is used. You gave us various names that the industry uses in Canada. I think you said wheel blanks, wheel bodies, wheel plates. Is "plates," is that a Canadian term?

MR. MONTGOMERY: No. That's more of a term that I have heard out of the United States.

MR. BAXTER: And at tab 18, this is a public extract. Tab 18, record page 213. Madam Registrar, I just want to direct -- this is a terminological point, but I want to direct the witness to this record page, and the Tribunal.

First of all, this entire tab, sir, do you recognize this tab, and can you tell the Tribunal what it is, if you recognize it?

MR. MONTGOMERY: This tab is an internal correspondence from Burlington Northern Santa Fe, which is a major Class 1 railway out of Dallas, Texas. And this is pertaining to their wheel shop operations in Nebraska.

MR. BAXTER: And that's Havelock? Is that --

MR. MONTGOMERY: That's correct.

MR. BAXTER: Havelock is a place, is it?

MR. MONTGOMERY: Havelock is the town that their wheel shop operation is located in.

MR. BAXTER: And now at tab -- page 213, pardon me, second paragraph. You can read it.

To assemble the wheels, employees called machinists takes the axles, loose wheel plates and bearings and fit them together.

So wheel plates, what is that referring to, Mr. Montgomery?

MR. MONTGOMERY: Again, it's an unfinished wheel that will go through further processing.

MR. BAXTER: And so all of these names are referring to the same good, are they?

MR. MONTGOMERY: Absolutely. That is correct.

MR. BAXTER: And does the term "wheels" often just get used as a short form of that good?

MR. MONTGOMERY: Right. That's another way. "Wheels" have been adopted through the AAR practice to be kind of the default term, you know, that we are using for an unfinished wheel.

MR. BAXTER: You spoke about a wheel set, and we looked at the picture that was -- that you said was missing the roller bearings. Perhaps if I could ask Madam Registrar to turn up tab 12, record page 150. This will be

unclassified too. But that may give the Tribunal some assistance. Could you tell us, sir, are we seeing wheel sets in this exploded view?

MR. MONTGOMERY: That's correct. This exploded view will show you a railcar bogie with all the components. And you have two completed wheel sets in this photo.

MR. BAXTER: Okay. And the difference between this and the photo we looked at from tab 11 -- but to my untutored eye, it looks like it's at the end of the axle, is that right?

MR. MONTGOMERY: Right, at the end of the axles. This would show you the two tapered roller bearings that are, you know, on each wheel set. And there are four wheel sets per railcar.

MR. BAXTER: And what percentage -- so now that you have a wheel shop that's accredited, you sell wheel sets? Is that what I understood your evidence to be?

MR. MONTGOMERY: That is correct.

MR. BAXTER: And what percentage of your costs, the costs to Ronsco of a wheel set, are the unfinished wheels that you import?

MR. MONTGOMERY: The unfinished wheels account for 80 percent of the finished cost of a wheel set that gets in turn sold to the railway network.

MR. BAXTER: And I don't know if it was obvious

from the importation documents, but in rough figures, again, what is the cost of the two unfinished wheels that go into making up this wheel set? What is the approximate cost in Canadian or American dollars?

MR. MONTGOMERY: The H36 wheel, each wheel, unfinished wheel, has a certain price point. But an H36 would be roughly $700 per wheel. So $1,400 per wheel set.

MR. BAXTER: And you say that constitutes 80 percent of the cost of a wheel set?

MR. MONTGOMERY: That is correct. By far, by far the most important component on, and most costly component on that product.

MR. BAXTER: Thank you. Now, all throughout the Appellant's brief, which is Exhibit 3 C, we see reference to two types of unfinished wheels, forged and cast. Can you describe briefly what the imported goods were here, and any difference between forged and cast products for the Tribunal?

MR. MONTGOMERY: We -- the products here in this, through this Tribunal, H36 wheels we imported were forged wheels. We import all forged wheels. There is a performance difference between a forged wheel and a cast wheel. There are no forged wheel manufacturers in Canada. The rest of the world primarily is a forged wheel operation.

And there is well known and well documented performance benefits of a forged wheel, particularly in the Canadian marketplace where it comes into cold-weather operations. Wheel sets in Canada tend to get consumed a lot more during the winter months. There's a significant spike in demand, and that's because of the, you know, how wheels perform in cold weather. And the forged wheels are a benefit.

There's a very different manufacturing process to produce a forged product versus a cast product. The forged product is cut from a bloom, a steel bloom, a long steel bloom that gets created. They will cut a blank, which is a certain size, different sizes off that bloom. And then that bloom gets put through a series of machine operations where there's pressure, heat, pressing that basically starts creating the profile of that wheel. It goes through a series of machining steps, a series of ultrasonic testing and nondestructive testings, and ultimately turns into a shape of a wheel.

A cast process is absolutely completely different. Cast wheels are made through molten steel. You basically melt steel, pour it into a mould, and that wheel is shaped almost to its exact profile through that moulding process. And then it just goes through a series of undestructive testing to make sure that it, you know, meets

certain criterias so.

They are two very, very different processes to create, you know, ultimately the wheel. And the forge process just allows you to make a better wheel. It's just inherent in the technology.

MR. BAXTER: Thank you. And you sort of made a sign, like almost like my grandmother used to make cookies. Is that what the blank -- is that what you were doing?

MR. MONTGOMERY: Right. The first step is when you make a big long continuous cast, a piece of steel, you are slicing that into little, you know, cookie blanks if you want to call it, that ultimately turn itself into a wheel. And that's the beginning process that we would see at a forged wheel manufacturer.

MR. BAXTER: And I now want to ask about the goods as imported. And perhaps a good way to do this, since the Tribunal has now heard the evidence of Mr. Lambert and received it in written form in Exhibit 31, if -- Madam Registrar, if we could put up Mr. Lambert's affidavit, Exhibit 31 at paragraphs 7 and 8, please.

So Mr. Montgomery, you have now the paragraphs in front of you. Mr. Lambert says what he says. I won't read them to you. The important part at the end of 7 and in 8, "these goods were not ready for direct use as such since they require further working to be finished."

Paragraph eight.

"In their condition as imported, the wheels cannot be affixed to an axle without additional work."

Let me -- and we are going to get into the specific processing of both. I will ask you for a description, Mr. Montgomery, and also Mr. Lepore will be able to help us with that. Let's just stop at the first part of paragraph 8. He says "they cannot be affixed to an axle without additional work." Hypothetically, what would happen if you attempted to mount a wheel on an -- an unfinished wheel or a wheel body, a wheel bank, whatever we want to call it, on an axle. What would happen?

MR. MONTGOMERY: You couldn't jam that wheel on that axle if you tried. It's just not processed enough to be able to allow that to happen.

MR. BAXTER: And why? What about that wheel is not processed enough? What about that wheel body?

MR. MONTGOMERY: So the unfinished wheel, when the bore -- it has to be custom-matched to every axle. So when we get a wheel, a bad wheel set in, we take the old scrap wheels off. We then are using that axle for a second time. So every diameter on that wheel seat, which is on an axle, is different. So every wheel bore has to be custom-machined to match that particular wheel seat on an axle.

And with two wheels that go on an axle, there's two wheel seats, each wheel on that wheel set will have a specific diameter. So the machinery that we have is constantly measuring every axle, wheel seat, feeding that back to the computers. The computers are then creating custom programs to bore that wheel bore to match up ultimately, and turn it into a wheel set.

MR. BAXTER: And we are going to here more about the mounting process, but when you say couldn't say "couldn't jam it on if you tried," the mounting machines that you use, how much pressure can they generate on the unfinished wheel and on the axle?

MR. MONTGOMERY: All our equipment is set up for 600 tonnes. And you know, the way -- the size of that unfinished wheel bore and not having a chamfering, there's just no way, even with the 600 tonnes could you even in any circumstance get that on.

MR. BAXTER: Thank you. If we could, Madam Registrar, now turn up tab 11, record page 148, please.

THE SECRETARY: Of which exhibit? Sorry.

MR. BAXTER: Sorry. The same, 3 C. I think I will mostly be in Exhibit 3 C.

THE SECRETARY: And you said 148?

MR. BAXTER: Yeah, record page 148, tab 11, Appellant's brief. This is not confidential. This is a...

Do you have that?

Okay. We have that now. There is a title there: "Photo of a wheel body during the boring process." Mr. Montgomery, what are the steps involved in this precision wheel boring process? Can you describe them briefly? I know that they are set forth in the written materials, but for the Tribunal can you describe briefly the various steps?

MR. MONTGOMERY: So this photo will show you a wheel, unfinished wheel going through its process. It's in a machine called a wheel bore. Basically we are creating the proper dimensions and surface finish and characteristics in that wheel that will allow it to be mounted onto one end of an axle.

So the wheel bore has three specific tool holders, three indexes. We will do a rough cut where we are basically creating that opening, roughly, that we need, based on our feedback through the axles.

Then once that rough cut is done, the tooling is indexed. There will be a finishing cut, and the finishing cut basically gives you the very particular surface finish that you need to be able to press fit. And then the tooling is indexed again. And then you have a chamfering cut which will go on the exterior outside of that bore. And that chamfer cut basically is allowing that wheel to be

located on the axle and pressed in in a straight, you know, manner.

So all three processes are very important to, you know, give yourself finally a wheel that can actually be pressed onto an axle. And it should then have those conditions to allow that to happen.

MR. BAXTER: And how precise does this -- I don't see any humans in this picture. How precise does this process have to be?

MR. MONTGOMERY: Right. This is -- this whole area is locked out. It's all, you know, automatic. We have robots that put the unfinished wheels into this machinery. The operator stands outside of this, within a cage, and his role is to essentially validate what the computers are measuring.

Every so often he will go in and, you know, with very specific micrometers measure the bores that we have created, making sure that they are being done to what we think they should be done. And then what we would do is adjust the tooling. We are looking for deviations that could affect the performance of the machineries and everything else.

You know, so those are where the operators stand, and that's their responsibilities.

MR. BAXTER: Okay. Madam Chair, for the sake of

time, I will just direct you to the fact that the Appellant's have filed a video of the wheel boring process. It's at record page 149. It's three minutes and 33 seconds, so it's not a lot of time, but if it's of assistance I'm sure the Tribunal will have access to that at its own -- in its own time. I don't intend to take Mr. Montgomery there for the time being. It describes the three processes that Mr. Montgomery has just set forth.

PRESIDING MEMBER: I have had an opportunity to watch that video.

MR. BAXTER: And it's shorter than most other YouTube videos, so it has got that going for it.

All right, I want now -- so we have talked about the boring process. Do you know -- so let's talk about the mounting process. And we may now come to the new documents, if I can call it that. But tell us what, after the process you have just described, this precision boring, tell us what the next steps are in the assembly of a wheel set.

MR. MONTGOMERY: Are you showing a picture, or just?

MR. BAXTER: Well, I want you to describe it first. You talked about a machine and a certain tonnage. And then I think I'm going to ask you --

MR. MONTGOMERY: Right. So once, you know, once

the axle wheel seats have been measured, and two wheels have been bored to match those wheel seats, the wheel is finally in a position to be used as a wheel. You know, they are -- they roll down a tray, and the operator then will put the axle and those two wheels into a wheel press. And that -- those wheels, then, are pressed onto those wheel seats.

That process is -- the wheel bore process will allow you to do the proper press. And proper press is the most critical component, ultimately, because you are press-fitting a wheel to be used as a wheel on that axle. And you know, what we do is -- that's a very important QA record that we have, to show that that wheel has been pressed on and that wheel set could be used as a wheel.

There's a graph that we have. It's a pressure graph, it's distance versus pressure, and there's a certain curve that the rail industry -- which we call the Association of American Railroads, AAR. We are certified every year to a certain rail standard, and that standard will come and audit us and make sure that we are making that mounting process and those boring processes correct so that we can produce a wheel that goes into what we call interchange service throughout North America.

MR. BAXTER: Okay, thank you. And I was going to get there, so that's a perfect introduction. AAR is an

acronym. What does it stand for again? Sorry.

MR. MONTGOMERY: The AAR is the Association of American Railroads.

MR. BAXTER: And the standards to which you create the -- that you carry out, first of all, the boring process you described earlier, are there -- does anybody dictate how that's supposed to be done?

MR. MONTGOMERY: That process, you know, everything we do from a technical standpoint and a quality standpoint is basically governed by the Association of American Railroads. It allows for, you know, continuity throughout North America. Railcars are interchanged on everybody else's track and people are changing wheel sets all through North America.

And you know, the American Association, the AAR allows, sets the standards for everybody to do it the same way, and making sure that the product has the same integrity and quality. And that's the basis that it's used on.

MR. BAXTER: So do they come and look at your plant?

MR. MONTGOMERY: Every year, yes, we have an audit from them. We get a special certification, it's called AARM 1003. And our wheel shop is registered in documents. And we have that certification done, a

mechanical and a quality audit. We could not produce or sell a wheel set unless we have this certification, and we are passing all these audits every year.

MR. BAXTER: Going back upstream a bit in the process, the manufacturers of the unfinished wheel bodies, does the AAR look at them? Is there any requirement for them to be licensed?

MR. MONTGOMERY: Right. The vertical integration on the certifications is there. There's a, you know, defined process for the unfinished wheel manufacturers as well, or the axle manufacturers, or the bearing manufacturers. The AAR basically sets the standards, and those companies are also all registered within the AAR as approved products.

And when we are working with our clients, ultimately the railways or the transit authorities, you know, their mandate with us is to making sure we are putting on AAR approved products. The liability is immense in wheel sets, as you may get a feel for through this. They are basically keeping those trains on the tracks. And so the certification process and the performance that we do within our shops in Hamilton is tremendously important, and it has to be done with a high degree of quality.

MR. BAXTER: Okay. So the initial manufacturer is AAR compliant. Your processes are AAR compliant. I now

want to get you back to the mounting process. And if we could, Madam Registrar, could we give numbers or letters to the two new documents which Madame Chairperson admitted earlier today? And I would ask Mr. Montgomery to then explain what they are. So do we need to mark them first?

THE SECRETARY: The document entitled "aid for examination in chief of Kent Montgomery" is Exhibit 39.

MR. BAXTER: And is that a two-page document, Madam Registrar?

THE SECRETARY: That is correct.

MR. BAXTER: Thank you. So I have Exhibit 39 up in front of you now, Mr. Montgomery. Perhaps could that be enlarged a tiny bit on the screen? I provided my friend a paper copy. I may just pass the witness a paper copy, if that's --

MR. MONTGOMERY: I see it here.

MR. BAXTER: Your eyes are better than mine. So you were talking about the mounting process and you were talking about AAR compliance. What is Exhibit 39, and what is it showing you? Who drafts it? How does it -- what is this document?

MR. MONTGOMERY: This document is what gets -- one of the things that gets registered with that wheel set. This is the pressing. This validates that the fit between our finished wheel and that axle is correct.

There's a certain graph we call our tonnage chart. This is measuring a certain amount of tonnes that you see on the bottom versus certain amount of distance. And that wheel travels over the wheel seat a certain distance, and it has to show a certain tonnage. This chart will tell our operators whether or not we hit a certain tonnage range, and that will determine whether or not that wheel is properly affixed to that axle. So every wheel set has to have -- and it has to show this.

If we don't mount that properly, if the bore was done incorrectly, for example, the chart, this graph wouldn't look proper. You know, there would be too much tonnage or too little tonnage and we would be forced to take that demount, what we call that finished wheel, off and then it becomes a scrap product. And then we are forced to put that axle back through the process again, reboring additional wheels to try to create a wheel set.

MR. BAXTER: Let me stop you if I could. I was going to come there later. But if the imported, unfinished wheel is defective or something is -- what are the other possible uses for an unfinished wheel, except as part of a wheel set?

MR. MONTGOMERY: When we bring an unfinished wheel, it only has one function. It's to be used to turn into a finished wheel that finally could be then mounted on

that axle for a wheel set. There is no other function for this product.

MR. BAXTER: So what do you if something goes wrong in the boring or the mounting process?

MR. MONTGOMERY: Once that wheel is scrap, you know, for us it ultimately gets sold to a steel recycler, or generally be turned into an anchor or something. But, you know, there's no other application for it.

MR. BAXTER: Okay. And you said earlier about the product, as you imported, you couldn't jam it on if you tried. I took you to mean even with 600 tonnes. I see that in this graph we are seeing between 100 and 180 tonnes. I know you couldn't do it, but what would the graph look like if you tried to mount the wheel?

MR. MONTGOMERY: You would see a tonnage pressure that goes straight up. If it could read to 600, it would go to 600. It wouldn't even get on to that wheel set.

MR. BAXTER: And what is the green on this Exhibit 39? What is that green zone showing?

MR. MONTGOMERY: That's the good zone that we are able to, you know, have our graphs in. It basically shows the tonnage over time over distance. If it's outside of these zones, then you are not getting yourself a proper, you know, a proper looking graph.

And this is not -- you know, you see an operator. Jerry, here, you see his name, but the operator's job is to monitor. This is all computer-controlled, and this is one of those important QA records that we use that will stay for ten years with us, you know, as our -- that wheel set finally moves in service for up to ten years through North America, this is what the AAR has on us to trace that wheel set back and make sure that it was created properly.

MR. BAXTER: If we could go to page 2, Madam Registrar, of Exhibit 39. Okay, good. What is page 2 of Exhibit 39, Mr. Montgomery?

MR. MONTGOMERY: This is a document that we use to register that wheel set. By registering, we are basically identifying the axle, the bearings, the wheels, the serial numbers, the time that that wheel set was produced. We create what we call, you see here a CID number, and that is basically -- that number and that wheel set and the documents around that go to the Association of American Railroads. Every wheel set is registered, and that becomes that traceability for that wheel set through its life.

So if there was ever a problem with a wheel performance issue that we did as a manufacturer, or one of the components that we used on that wheel set, it allows

the industry to quickly trace that wheel set. It identifies, ultimately, that wheel set gets put under a railcar and it gets linked to that railcar, and those two items, then, allow us to trace that over time. So it's another safety and quality record that, you know, follows that wheel set as it's on a railcar.

MR. BAXTER: Okay. Thank you. So back to page 1, Madam Registrar, if we could, of this. Yes, yes. Is this page showing a successful wheel mount or an unsuccessful one? Are you able to tell?

MR. MONTGOMERY: Yes. This is showing a successful mount. It has the right tonnage, it has the right chart graph, and it's in the right range. And you know, this is showing, again, this was a 7 by 12 size. It basically is -- same operation is done through all the various sizes, whether it's an H36 wheel which we are talking about today, whether it's a B38 wheel, whether it's a J33 wheel, you know, J36. It's just a different distance. The process is identical. It's just the dimensions and handling and some other things are a little different.

MR. BAXTER: Thank you for mentioning that. I should have asked earlier when we were talking about the AAR. Do the AAR processes apply equally to different wheel sizes? In other words, is it a generic process, or are

there specific -- is it different for each wheel size?

MR. MONTGOMERY: Well, we will use an unfinished wheel. No matter what the size is, we do through the same processes. It's just, again, how the machinery is set up with. The gauges that we use are different because of the various sizes but, you know, the actual processes, everything is very much the same.

MR. BAXTER: And I'm going to ask your -- I'm going to ask the expert witness, Mr. Lapore, more about the specific tolerances involved. I take it, sir, the equipment that you have in the Hamilton plant, is that also subject to, I guess, verification? Or what would you call it, annual verification or maintenance?

MR. MONTGOMERY: The equipment maintenance is obviously critical. You know, that's something that we are constantly doing to make sure that it's performing and creating a product that, you know, we need to sufficiently create a wheel set. So we spend a lot of time on, you know, making sure our equipment is properly performing, and allows us the productivity which is very important to have.

MR. BAXTER: And what are the -- if I can ask you, again, nothing super confidential here. But what kind of margins are we talking about when you ultimately sell the wheel sets into the market? Is it --

MR. MONTGOMERY: This is a very competitive

business. You know, the inputs that we put, whether the wheels or the axles, you know, they are generally market equivalent for everybody. It's a function of our labor, our productivity, you know, and the margins are -- it's a very mature business. There are very small margins on this business.

MR. BAXTER: I would like now, if I could -- actually, just if I might have a moment, Madam Chairperson, just to consult for one second.

PRESIDING MEMBER: Certainly.

MR. BAXTER: Thank you, Madam Chairperson. Just before we move into another area. Mr. Montgomery, I know that there are perhaps those more technically minded than yourself. Are you able to give the Tribunal an order of magnitude of how precise the boring process, for example, has to be? Are you able to say, in inches or millimeters or meters?

MR. MONTGOMERY: It is very precise. We are talking 5/10th of a thou. You know, it's very, very, very close tolerances to get the proper interferences that you need.

MR. BAXTER: Five ten-thousandths?

MR. MONTGOMERY: Five ten-thousandths, yeah.

MR. BAXTER: Five ten-thousandths, okay.

MR. MONTGOMERY: Point 00005 of an inch.

MR. BAXTER: Of an inch? Okay. Thank you. And if it falls outside of that, it becomes an anchor or scrap, is that right?

MR. MONTGOMERY: Yeah, that bore, that tolerance, you've got to understand, you're pressing two pieces of steel together and it's got to hold and operate without moving for ten years. So that interference and how that's done is very delicate and very important.

MR. BAXTER: Thank you. If I could ask Madam Registrar now for another exhibit to be put up. And I just have to cross-reference this. It was filed earlier. It was provided to Ronsco by Mr. Maher, and it's an advance ruling certificate. I don't know what exhibit number it is. And I am told it is Exhibit 14 A.

THE SECRETARY: This would be a confidential document.

MR. BAXTER: And it's a public -- it's a redact -- it has already been redacted by my friends, I believe. And it was provided to me over the Internet, so I --

THE SECRETARY: In that case, that would be Exhibit 14.

MR. BAXTER: Thank you.

THE SECRETARY: Is this the correct page?

MR. BAXTER: No. Continue on, please. Thank you. Maybe if we could expand that? Mr. Montgomery, I'm

going to ask you questions. We talked about Ronsco's importations beginning in 2006, and for resale, anyway, continuing until December 2015, when your Hamilton plant received certification.

You have now seen this document. Do you know what this document is, sir?

MR. MONTGOMERY: Yes, I have read this document, and it pertains to Sumitomo being given a ruling that they were able to bring in unfinished wheels without any duties.

MR. BAXTER: And how did you learn about this document initially?

MR. MONTGOMERY: I learned it through Brian Lambert, you know, vice president of sales for Sumitomo.

MR. BAXTER: And I have taken you earlier to the place in the brief where you list others using the same tariff item. Sumitomo was a competitor of yours, sir? Of Ronsco's I should say?

MR. MONTGOMERY: That is correct, yes.

MR. BAXTER: And it still is a competitor of Ronsco's, is it?

MR. MONTGOMERY: That is correct.

MR. BAXTER: I would now like to ask, Madam Registrar, if you could turn up the document attached to Mr. Lambert's affidavit, which is Exhibit 31. The document attached to it, I believe, Madam Registrar, is -- thank

you. And perhaps if you could -- Mr. Montgomery you have had a chance to review this. It was attached to Mr. Lambert's affidavit that was filed with the Tribunal.

Do you know what this is, sir?

MR. MONTGOMERY: Yes, I have read this. This is Sumitomo having, you know, their advance ruling revoked.

MR. BAXTER: And the date on this document is?

MR. MONTGOMERY: Is October 22, 2018.

MR. BAXTER: And I took you earlier to the date of Ronsco's submissions, sir, to the president and the president's appeal. Just for the Tribunal record, you don't need to turn it up again, Madam Registrar. It's tab 16 of Exhibit 3 C, September, 26, 2018, approximately four weeks prior to the revocation that Mr. Montgomery just identified.

If we could move this picture down. So get towards the bottom of this page, Madame Registrar. So here we see under analysis and justification, Mr. Montgomery. I will just read it.

> "Originally classified under 8607192100 as wheel blanks, the goods under review are more than what could be considered as blanks. As they are for all and intents and purposes in their finished state. The fact that the goods have not

been mounted on the axles does not mean they are not finished wheels."

Mr. Montgomery, do you agree with that statement?

MR. MONTGOMERY: No, I absolutely do not.

MR. BAXTER: So could you mount the goods in their state as imported on axles?

MR. MONTGOMERY: No, you couldn't if you tried, no.

MR. BAXTER: Just, if I might have a minute, Madam Chairperson.

PRESIDING MEMBER: Certainly.

MR. BAXTER: Thank you. Those are my questions, Madam Chairperson.

PRESIDING MEMBER: Thank you very much. Mr. Maher, are you ready for cross-examination?

EXAMINATION BY MR. MAHER

MR. MAHER: Good morning, Mr. Montgomery. So you have confirmed to us that you are the vice president and Chief Operating Officer at Ronsco. That is correct?

MR. MONTGOMERY: That is correct.

MR. MAHER: Okay, and the goods in issue are at times, at least described as forged wheels with rough-cut bores.

MR. MONTGOMERY: That is correct.

MR. MAHER: Okay. And more precisely, I think you have mentioned it a bit, they are described as H36 forged steel class C wheels for freight rolling stock. That is correct?

MR. MONTGOMERY: That is correct.

MR. MAHER: Okay. I just want to make sure I understand all of those little components. So I take it that the 36 is the diameter of the whole wheel?

MR. MONTGOMERY: Yes, it's the diameter of the wheel.

MR. MAHER: Okay. And what does the H mean?

MR. MONTGOMERY: The H refers to the thickness of the tread on the external diameter. The different alpha numbers will tell you the certain different thicknesses. So an H has a one-and-a-half inch thickness, a J will have a two-inch thickness, and so on.

MR. MAHER: So I take it that different types of wheels for different purposes will have a different letter there?

MR. MONTGOMERY: That is correct.

MR. MAHER: Okay. And Class C steel, I take it that it refers to the hardness of the steel, or the type of steel.

MR. MONTGOMERY: It refers to a hardness and a certain type of steel, correct, yes.

MR. MAHER: I just want to make that clear. So the goods imported today were imported under five different transactions. That is correct?

MR. MONTGOMERY: Yes, that's probably correct on that.

MR. MAHER: I would like to talk a bit about -- so you have confirmed earlier in your examination that you are aware of the content of the Appellant's brief and that you adopt its content?

MR. MONTGOMERY: That is correct.

MR. MAHER: Yes. So I would like you -- I would like to discuss with you a bit about the procedural history in this appeal, and I would like to bring up Exhibit 3 A at tab 13. That is the public Appellant's brief. So you see here, Mr. Montgomery, the date is April 20th, 2018, right?

MR. MONTGOMERY: Yes, it looks to be the date, yes.

MR. MAHER: And that document is the trade compliance interim report. So I take it that Ronsco was subject to what we call a trade compliance verification. That is correct?

MR. MONTGOMERY: That is my understanding, yes.

MR. MAHER: Okay. If we go to page 154 in the same document. So here, just under the list of transactions, I see that classification declared and

classification determined. So I take it that at that time, and I think you said since 2006, the goods or similar goods to the goods in issue were imported under that tariff item, which is the wheel blank one.

MR. MONTGOMERY: Yes, since 2006. .19.21 has been what we have been importing, yes.

MR. MAHER: Yes. Are you aware, Mr. Montgomery, that in order to benefit from that tariff item, the wheel blanks have to be used for passenger cars. They have a specific use.

MR. MONTGOMERY: That's not my -- that was not our understanding at all, no.

MR. MAHER: Okay. If we can go down just a little. Yeah, perfect. You see that second paragraph here? I would like you to read middle of the paragraph for us. It starts on the right, one -- it starts with two signed documents. Sorry.

MR. MONTGOMERY: You want me to read it?

MR. MAHER: Yes, please.

MR. MONTGOMERY: Right to the end?

MR. MAHER: No. Just the first two sentences. I will tell you.

MR. MONTGOMERY:

"Two signed documents were provided by the importer to support the requirements

of the conditional relief tariff item. One document was from National Steel Car Limited, and the other was from Canadian National Railway."

MR. MAHER: Okay. And can you read just the next sentence?

MR. MONTGOMERY:

"Both documents confirmed that the wheel blanks purchased from Ronsco Inc. were used in the manufacture of wheel sets for rail cars."

MR. MAHER: So I take it from that document that in order to support your position at the time that they were wheel blanks under the tariff item ending with 21, you provided those two documents from National Steel Car Limited and Canadian National Railway. Correct?

MR. MONTGOMERY: That is what we did at that time, yes.

MR. MAHER: Okay. And from the second sentence you read, I take it that those -- you stated that those goods were used in the manufacture of wheel sets. That is correct?

MR. MONTGOMERY: That is what this document says, yes.

MR. MAHER: Okay. I would like to now go to tab

14 of the same Exhibit 3 A. So here the document is dated May 25, 2018. And you see the title, this is a response from Ronsco to that interim report we just discussed, correct?

MR. MONTGOMERY: That is correct.

MR. MAHER: Okay. Now if we go to page 160 of the same tab. You see here, section 3, this is where Ronsco provided their position on the goods in issue today. Could you read the first sentence for us here, starting "having reviewed"?

MR. MONTGOMERY:

> "Having reviewed the interim report, Ronsco also does not dispute that the tariff classification that was submitted for the importations of AAR approved H36 wheels, class C, 8 and 3/8 inch bore diameter during the verification period was incorrect."

MR. MAHER: So I take it that Ronsco's position is that the goods are not wheel blanks that fall under that specific tariff item.

MR. MONTGOMERY: After an incredibly extensive review, you know, that was what we have determined.

MR. MAHER: And just for -- if I can go to the next page, the bottom of the page 161. Just here it

starts, I will read it.

"Instead, as will be explained below, the product imported by Ronsco is a part of a wheel falling under that tariff item."

So I take it that it's from that moment where you took the position that the goods should be classified, or are parts of a wheel. That is correct?

MR. MONTGOMERY: After our lengthy review, you know, and the ambiguity in some of the wording, we felt that was by far the best area that described what we do and what the goods we brought in.

MR. MAHER: Now if you go to the next page, 162. I would like you to read that little paragraph for us, please, Mr. Montgomery.

MR. MONTGOMERY: Which one? It starts with --

MR. MAHER: It starts with "specifically."

MR. MONTGOMERY:

"Specifically, Ronsco imports wheel bodies, the wheel bodies, corps de roue. The wheel bodies, corps de roue, imported by Ronsco are forged, rolled and machined by the exporter to meet or exceed precise detailed specifications that are developed, monitored and

enforced by the Association of American Railroads. These standards are attached to this letter as annex E."

MR. MAHER: All right. So I take it from you've -- how Ronsco has described the goods there that before importation, you have to go through an elaborate process. I think it's of forging, rolling, and machining, that is correct?

MR. MONTGOMERY: Yes. There is a, you know, involved process to produce an unfinished wheel, yes.

MR. MAHER: And they have to meet specific and detailed requirements provided by the AAR?

MR. MONTGOMERY: Yeah, that is correct. Yes.

MR. MAHER: Here, Ronsco, in that paragraph that you just read, Ronsco refers to the goods as wheel bodies. If we look up just a little, this is the World Custom Organization Explanatory Notes to the relevant heading. And the French version mentions le roues et leurs parties corps de roue.

And what would be the corresponding term there in the bracket for, corps de roue? The first one in the English version.

MR. MONTGOMERY: Wheel centers.

MR. MAHER: Okay. Now I would like to take you to the second paragraph of this, starting with "despite."

MR. MONTGOMERY: You want me to read that again?
MR. MAHER: Yes, please.
MR. MONTGOMERY: Okay.

> "Despite these strict standards, however, and despite the product being shipped and sold as a wheel, when it is imported the product cannot perform the normal functions expected of a wheel for rolling stock. This is due to the fact that the rough bore diameter of the wheel bodies, corps de roue, received by Ronsco is unable to fit any axle. When Ronsco receives the wheel bodies, corps de roue, they are capable of being modified to fit either AAR Class F or AAR Class K axles."

MR. MAHER: So I want to spend some time on this paragraph. I take it that the goods are being shipped and sold as a wheel, that is correct?
MR. MONTGOMERY: From the standpoint of a wheel manufacturer.
MR. MAHER: Yes.
MR. MONTGOMERY: But it has no functionality to be a wheel until we actually do what we do.
MR. MAHER: But they are being shipped and

market -- or referred to as a wheel from a manufacturing standpoint?

MR. MONTGOMERY: Right. As an unfinished product, yeah. The terminology, like I was explaining earlier, "wheels" tends to be the default, you know, term.

MR. MAHER: Okay. And so, that is because -- you say that because they are not ready to be fitted with an axle.

MR. MONTGOMERY: That is correct, yes. They have no functionality until they are actually machined in the bore and actually able to be put on an axle.

MR. MAHER: But there's already a bore there, a hole that has a --

MR. MONTGOMERY: Yeah, so that -- Yeah, the wheel from the OEM wheel manufacturer, they will put in a rough, you know, hole. It's not centered in perfectly. It doesn't have any, you know, final tolerances to it. We are actually making that wheel center, which is what we can call that. You know, basically the hub of that wheel. The wheel bore is the, you know, technical center of that wheel, and we are making that center perfect and round to be able to be used as a wheel, to be put on that axle.

MR. MAHER: So, and from that paragraph at the end, I take it also that the -- so I know it's a rough bore. It needs further work in order to be mounted on the

axle. But I take it that the bore -- the rough bore size is so specific that the wheels can only be fitted with an axle Class K and F, right?

MR. MONTGOMERY: Well, the goods in question, a certain wheel diameter is designed to go with a certain axle size. So it just happens with an H36, the sizes of axles you can use are those two. It fits a couple different styles.

MR. MAHER: Okay. So the goods, the H36 goods?

MR. MONTGOMERY: Correct. Yeah, so a B38 would go with a different axle. A J33 would go with a different axle.

MR. MAHER: Yeah, okay. But those H36 goods would go -- could go only with a Class F and a Class K axle, correct?

MR. MONTGOMERY: That is absolutely correct, yeah.

MR. MAHER: And they wouldn't be able to go with a Class D, or Class E, or Class F, or Class J axle?

MR. MONTGOMERY: Yeah, so there's no other classes of -- you know, there's other classes of axles, but I mean -- you know, there's a certain, in the AAR there's J -- anything with a 36-inch designation, an H36 or a J36 or a K36, with those alpha numbers reference to a thickness, they could all go with a certain axle class, and those axle

classes are defined. It's all in the rules and, you know, for interchangeability and AAR rules.

MR. MAHER: If we go to page 163, the next page. So here we can see that Ronsco describes this 18-step process used in the manufacturing of the goods. And you -- Ronsco states just before the list begins.

> "Prior to Ronsco's certification by the AAR in 2015 to carry out process of forming a functional board that is capable of fitting an axle at its plant in Hamilton, all processing was done at its customer's plant."

So I take it from -- I understand from that, and correct me if I'm wrong, that before the certification Ronsco still imported the goods or similar goods to the good in issue, but with rough bores, right?

MR. MONTGOMERY: So previous to our wheel shop, or with our wheel shop, no wheel is ever imported with anything but a rough bore. You know, so whether it was in 2006 when we were selling unfinished product to another wheel shop, or whether it's today for us in Hamilton, you know, the unfinished bore, rough bore, is as is.

MR. MAHER: Okay. You said no wheels is ever imported with a finished bore, I guess.

MR. MONTGOMERY: That is correct.

MR. MAHER: And that is because you need to wait to have the specific axle take the very precise measurement of it and do the work that is -- so, custom the bore to the specific axle.

MR. MONTGOMERY: That is correct. That operation has to happen all in a very short period of time to allow it to actually, you know, function as a wheel, to put on a wheel set.

MR. MAHER: And you are talking also about the mount, both the custom boring process and the mounting?

MR. MONTGOMERY: Correct.

MR. MAHER: That happens in a -- sequentially?

MR. MONTGOMERY: Right. So, you know, we will center that bore, we will finish that bore, we will mount that wheel set all in the same day. You know, it's a function of temperature and humidity, and there's a lot of factors that go into being able to create a proper interference fit.

Once you have the proper bore, you know, everything has to be managed very quickly to allow it to actually be usable.

MR. MAHER: All right. That is helpful. If I can go to page 36 of that same document. The second paragraph, 166. So could you read for us the second paragraph, starting with "the 18 steps"?

MR. MONTGOMERY:

"The 18 steps in the forging process noted above must also be performed to the AAR standards as verified in the annual inspections. The AAR's design standards aim to ensure the wheel is compatible with the standard axles, bearings, side frames, and track. And also to ensure the quality of the product."

MR. MAHER: Okay. Just this. So I take it from that sentence that the AAR standards that the goods need at the time of importation aim to ensure that the wheel is compatible with standard axles and bearings.

So I take from that that the AA -- the wheel is already considered to be compatible with standard axles and bearings.

MR. MONTGOMERY: The compatibility is the diameter, basically. I'm mean, you've created that circle, so to speak. And a certain diameter automatically, you know, goes with a certain type of axle. You know, so certain types of railcars, it's based on tonnage, how much a rail train can hold. 36-inch diameter gives you that kind of expectation. And the wheel, you know, is designed to meet at certain tonnage and that certain type of

service.

MR. MAHER: Okay. Thank you, Mr. Montgomery.

I would like now to talk about Ronsco's own description of itself and of the goods, as a company. So from your testimony, I take it that Ronsco has been in the railway industry for almost 50 years, that is correct?

MR. MONTGOMERY: Yeah. Just over 50, right.

MR. MAHER: I would like to bring up Exhibit 11 B. This is the Respondent's confidential brief, but I won't refer to anything that is not in the public one for this.

PRESIDING MEMBER: That's fine.

MR. MAHER: And tab -- sorry, at tab 10. Could we just focus on that text? Could you read for us the first paragraph under the title "wheels"?

MR. MONTGOMERY:

> "Ronsco is a long-term supplier of freight and transit wheels to the North American international markets through our partnerships with leading international wheel manufacturing companies."

MR. MAHER: So I take it from that that Ronsco describes itself as a wheel supplier, correct?

MR. MONTGOMERY: Yes, that is correct. That's,

like I said, the generic. We keep everybody happy with one generic term.

MR. MAHER: Okay. But you didn't describe Ronsco as a wheel manufacturer or wheel producers, right?

MR. MONTGOMERY: No, we do not produce unfinished wheels, correct.

MR. MAHER: Could you read just the first sentence of this second paragraph?

MR. MONTGOMERY:

> "Ronsco works closely with our customers and manufacturing partners to design and develop standard AAR and custom wheel designs and profiles."

MR. MAHER: So I take it that those manufacturing partners, the manufacture of the goods at issue today would be one of those manufacturing partners.

MR. MONTGOMERY: That is correct, yes.

MR. MAHER: I would like now to discuss a bit about terminology. I'm sure you are aware, this is a topic today. And you have discussed it already a little. I would like to bring you to tab 11 of that same Exhibit 11 B. So for everyone's benefit, this is the website of the manufacturer of the goods in issue. Could you read just the first paragraph for us, or the first sentence under "railway wheels."

MR. MONTGOMERY:

"Main products are locomotive wheels, passenger car wheels, freight car wheels and high-speed rail wheels."

MR. MAHER: All right. So I take it that the manufacturer of the goods in issue describes itself as a -- that they produce railway wheels. That is correct?

MR. MONTGOMERY: That is correct, yes.

MR. MAHER: Okay. And that includes, I think, later in the paragraph you can see in the middle third line, "freight car wheels." Like --

MR. MONTGOMERY: Like HDSA, right.

MR. MAHER: Yes. And I see H36 here.

MR. MONTGOMERY: Correct.

MR. MAHER: And those are the goods in issue, they are H36 wheels?

MR. MONTGOMERY: That is correct.

MR. MAHER: Okay. If we go to page 86 of the same tab. And if we focus on "certificate." Could you read that little sentence for us, please?

MR. MONTGOMERY:

"TYHI has obtained certificates such as CRCCAAR, TSI, DB, MOLT, RS, AS, and manufactures all types of railway wheels, axles, and wheel sets."

MR. MAHER: So, like you confirmed earlier this manufacturer is AAR certified in order to sell forged wheels.

MR. MONTGOMERY: Right. Yes, they are AAR certified, correct.

MR. MAHER: Okay. And I see that they describe their companies as they manufactures all types of railway wheels, axles, and wheel sets. That is correct?

MR. MONTGOMERY: That's what it looks like they are doing, yes.

MR. MAHER: Okay. And so I guess the goods in issue with that list would fall under wheels, not under wheel sets or axles.

MR. MONTGOMERY: Right. What we bring in, you know, based on this limited description here, would be more appropriate under the railway wheels part of it.

MR. MAHER: All right. I would like to discuss a bit the actual manufacturing process of the goods. And I would like to go to tab 3 of Exhibit 3 A. The Appellant's public brief. So here at tab 3 I see this is a summary of the steps involved in the forging process. It says the 18 steps involved in the production of a forged wheel body are.

Would you agree with me, Mr. Montgomery, that this 18-step process is a specialized process that involves

multiple steps like heating, cooling, and machining?

MR. MONTGOMERY: Absolutely, yes.

MR. MAHER: Yes. And those would require specialized tools and machinery, right?

MR. MONTGOMERY: There are specialized tools and machinery, correct.

MR. MAHER: Yeah. And they would also require some kind of specialized workforce that is able to carry out that 18-step process?

MR. MONTGOMERY: I would expect so, yes.

MR. MAHER: So it could -- that 18-step process could be fairly described as a highly sophisticated process? That's correct?

MR. MONTGOMERY: I'm sure the manufacturers think so, yeah.

MR. MAHER: So I take it that during that process, there's no assembling of two goods that are separate, or adding a component. The goods starts from it's one piece of steel that is machined, treated, and that is worked in order to form the goods in issue, right?

MR. MONTGOMERY: Right. It starts with that bloom that ultimately turns into an unfinished wheel. And the center bore is basically roughly punched out of the center like a doughnut.

MR. MAHER: Yeah, okay. I see you use the words

"steel bloom" there. It's in step one. If we go down to step six, I see here that Ronsco says at the second sentence, "at this stage the material has been differentiated for a particular use, and is no longer a blank."

You agree with that statement?

MR. MONTGOMERY: Well, this is not a Ronsco document, I'm assuming. This is the manufacturer's document but, you know, that's probably correct.

MR. MAHER: So from that process, I take it that from start to finish, the work and the steps are all done on one single piece of steel that is initially a bloom. It then becomes a blank. But after step six, it is not a blank anymore and it becomes what you call an unfinished wheel. That is correct?

MR. MONTGOMERY: At the end, probably if you go down to step 18, I would say that's where it is, yes. After step 18 it should be in a position to be sold to somebody like us to use as a wheel shop.

MR. MAHER: Yeah, so after that 18-step process, your goods are imported with rough bores.

MR. MONTGOMERY: Yes.

MR. MAHER: I want to talk a little about the custom boring process. So I understand that each wheel must be specifically customized to fit a specific axle.

That is correct?

MR. MONTGOMERY: That is correct.

MR. MAHER: And that custom boring process is comprised of, I think you had three main steps. The rough cut, correct?

MR. MONTGOMERY: Correct, the first step is the rough cut, yes.

MR. MAHER: And then there's the finished cut.

MR. MONTGOMERY: Right, and then there's the chamfered cut.

MR. MAHER: So for the rough and finished cut, I take it, you have confirmed it, but the amount of steel that is taken off is very precise, right?

MR. MONTGOMERY: Right. The tolerance is very precise, and also the amount of steel is too. I mean, you can take off a quarter of an inch, you know, potentially in that area to round it out.

We, you know, ask for a rough bore size where we can. It helps our productivity because obviously you don't -- each wheel that goes through the boring process has a time, it takes a time standard we have. So we try to meet certain time standards by taking the cuts as quickly as we can.

MR. MAHER: But I take it that this amount is very tiny, what's taken -- what's actually taken off the

whole wheel.

MR. MONTGOMERY: Roughly, it's about a quarter of an inch in the inside of that hub, yes.

MR. MAHER: And then after this there's the mounting with the axle and the pressing. The pressing first, in order to permit the mounting, correct?

MR. MONTGOMERY: That is correct, yes.

MR. MAHER: Okay. And that also involves special, specialized machinery and tool.

MR. MONTGOMERY: That is correct, yes.

MR. MAHER: And you confirmed that the custom boring process and the pressing and the mounting usually happens together, sequentially, one after the other.

MR. MONTGOMERY: Yeah, we like to, you know, for productivity reasons, the way it's all controlled by a lock-in area. It should be done that way.

MR. MAHER: And you have confirmed that the wheels are usually imported with rough bore, because we don't know which axle they are going to go.

MR. MONTGOMERY: It's not usually. It's always. And there's no exception.

MR. MAHER: And that is because we need to have the specific axle they will go with before doing anything to the rough bore.

MR. MONTGOMERY: Yeah, because of a high degree

of variability in a wheel shop. You know, you are basically creating the functionality of that wheel based on what axle you have.

MR. MAHER: Okay. And so earlier we confirmed that the manufacturer of the goods, the Asian company, they say they manufacture railway wheels, axles, and wheel sets. So I take it that a wheel set will always -- when an importer imports a wheel set, the custom boring process will always have happened prior to importation, because you have a whole wheel set.

MR. MONTGOMERY: Correct, yes.

MR. MAHER: Okay. I would like to bring up Exhibit 11 D, the Respondent's brief, at tab 15.

THE SECRETARY: For the benefit of the record, we're using 11 A because we are in a public session. Thank you.

MR. MAHER: Yeah. They are the same page number anyway. At page 99. If we go in the middle of the -- 98, sorry. I just want to start from there. Middle of the page. Thank you. So I see here section G, Mr. Montgomery. The first one is wheels and axles. And the second one section G part two, wheels and axle shop manual. I take it that section G, wheels and axles, this is the standard or the section that the goods have to meet when they are manufactured, when they are imported.

MR. MONTGOMERY: Section G would be that section, yes.

MR. MAHER: And then section G part two would be what regulates or governs what happens in the wheel shop. So the custom boring process and all of that.

MR. MONTGOMERY: That is correct, yes.

MR. MAHER: Okay. If we go to the next page, we see here rule 1.3. Wheels boring practices. So I take it that relates to the custom boring, right?

MR. MONTGOMERY: I would assume so, yes.

MR. MAHER: And then we see rule 1.4, wheels mounting press practice. So I guess that would govern the mounting phase of the --

MR. MONTGOMERY: That is correct, yes.

MR. MAHER: At rule 1.1 and 1.2 I see axles, general practices. Axles, roller bearing practices.

So I take it from that that axles also need further work to be able to receive a wheel?

MR. MONTGOMERY: There's a set of criteria that how you can reuse an axle. We don't do further work to the axles. You know, in terms of, you know, the journal of an axle is as is. I mean, you are basically inspecting it. Axles could be in service for 50 years. And you're --

MR. MAHER: So when you import new axles, let's say.

MR. MONTGOMERY: We only import unfinished axles. And you know, we have processed them and finished them. But the wheel shop uses old axles, right? And that's where the variability --

MR. MAHER: I'm curious to know about that axle finishing process.

MR. MONTGOMERY: Which piece? The --

MR. MAHER: When you import axle, you said they are rough, I think?

MR. MONTGOMERY: Right.

MR. MAHER: So what is that process that you do to the axle?

MR. MONTGOMERY: We are machining the end of the axle, which is the journal where the bearing goes. We are machining the wheel seat, taking small cuts of steel off basically. And you know, tailoring it to a certain dimension. And we do grinding of the journals to get a certain surface finish. So there is a dimensional control and a surface finish control, and then that rough axle is ready for processing.

MR. MAHER: In order to receive two wheels and become a wheel set?

MR. MONTGOMERY: Correct.

MR. MAHER: I would like to bring up Exhibit 17 A. This is the expert report. And I would like to go at -

- it's tab C, it's page 25. You see here Mr. Montgomery, this is an excerpt of the AAR of the manual of standards and recommended practices, wheels and axles. And there's a breakdown of all the parts of what an axle is, or all the component of an axle. And they mention here from top to bottom, they mention a thread, a flange. They mentioned a rim, they mention both the back and the front, a web or a plate, a hub, and at the bottom, a bore.

At the time of importation, could you confirm for the Tribunal that the goods do have a rim?

MR. MONTGOMERY: Yes, the goods have a rim.

MR. MAHER: And the goods do have a flange?

MR. MONTGOMERY: Yes, they would have a flange.

MR. MAHER: And the goods have a web as well.

MR. MONTGOMERY: Yes.

MR. MAHER: And they have a hub.

MR. MONTGOMERY: They do have a hub.

MR. MAHER: And they have a thread?

MR. MONTGOMERY: A sorry. A what?

MR. MAHER: A tread, sorry.

MR. MONTGOMERY: A tread, yes.

MR. MAHER: And they also have a bore?

MR. MONTGOMERY: They have a rough bore, yes.

MR. MAHER: Yeah. And we see, I think the -- I would like to just go in-camera for a very small portion of

my cross-examination, if that's possible.

PRESIDING MEMBER: Will these be your final questions on the cross-examination? Okay. As this is in-camera, only those people that have signed an undertaking can remain in the room. So if we could clear the room for a very short period of time, and then we will let you know as soon as you can return for the questions.

--- Upon commencing the in camera session under separate cover at 11:33 a.m. /

--- L'audience huis clos débute à 11 h 33

--- Upon resuming in public at 11:53 a.m. /

--- Reprise en publique à 11 h 53

PRESIDING MEMBER: Please be seated. Mr. Baxter, are we ready for --

MR. BAXTER: Yes, sorry Madame Member. I was just trying to check something about a translation that my friend had provided to the court. It's at page 13 of your brief, Mr. Maher, at paragraph 50. Perhaps when we come to this -- this can all be done in public, but when we come to this, if we could take another two-minute recess just so that I don't say something wrong about my friend's translations here. Because terminology is clearly important, and I was trying to check with my friend before this resumed, but let's get as much as we can done now.

PRESIDING MEMBER: Please proceed.

RE-EXAMINATION BY MR. BAXTER

MR. BAXTER: Thank you. Mr. Montgomery, I have a couple of questions in reexamine. And I'm going to start at the beginning of my notes from Mr. Maher's examination. He was asking you about the product as imported, and he didn't tarry on this point but I would like to come back to it. I believe he showed you the stack, or you were referring to the stack of wheels, and you mentioned the rough bore is not centered.

Maybe we could -- it's from tab 11, Madam Registrar. I will just get you a record page number. Why don't we look at record page 145 from tab 11?

THE SECRETARY: Would that be Exhibit 03 A?

MR. BAXTER: I think it's 3A and 3C these are both the photographs behind tab 11. So the next page would be page 145, would it, Madam Registrar, the next page? Thank you. Perfect.

So my friend Mr. Maher was asking you, Mr. Montgomery, about the goods as imported, and here we have an example. And I'm looking at the rough bore there. First of all, what am I seeing on the far side, if I could call it the far side of that rough bore? Is that sort of -- is that chipped? Is it something chipped there?

MR. MONTGOMERY: It's not a perfect surface, for sure, because it's rough. I'm hoping it's not chipped, but

it's mostly maybe some rust or some other stuff.

MR. BAXTER: Just another ship anchor if it's chipped?

MR. MONTGOMERY: Yeah.

MR. BAXTER: Okay. Then you said to my friend, they are not centered. Well, my notes have you saying that "by the way, these rough bores aren't centered." I hadn't appreciated the significance of that. Could you tell me -- could you unpack that a bit please, sir?

MR. MONTGOMERY: Well, obviously for a wheel to be utilized as a wheel, it has to rotate around a proper center, and that is the main function. When the rough bore is done, they are not really concerned. They are getting a rough opening. They are not concerned at their part of the process on the manufacturing side to worry about, you know, how round that hole is. You know, is that wheel going to turn around itself.

And that's where our process, you know, is the most critical one, is to center that because as you can imagine if a wheel is not properly centered, it can't rotate. It can't do anything. It can't do anything that it's meant to do.

MR. BAXTER: I will come back to that, but let's just -- while we are dealing with it in the shape that it's imported in, if we could go back, Madame Registrar, to -- I

think it's the previous page. So yes, and move that up a bit on the screen.

So there we have, it looks like a pallet of these. I mean, to my untutored eye, this looks like a stack of them with holes in the center. But do I understand that each of those holes might be in a different place, vis a vis the circumference of each of these unfinished wheels?

MR. MONTGOMERY: Right. There's a range. Every wheel would have a little different -- you know, they could be out of center, perfect center. There's a variation on that rough bore that makes sure they wouldn't be concentric. Just because they're sitting in this pallet in this format, every one of those rough bores would be a little different to each other.

MR. BAXTER: Okay, and now, let's -- you have already told us you couldn't jam it on if you tried, but what would happen if you put an axle on the unfinished product and it has that characteristic of not being in the center? What would happen to the train or the freight car under which the wheel is?

MR. MONTGOMERY: You know, you would be violating every AAR rule possible if you tried to do that. I mean, first of all, it wouldn't work. You wouldn't get it on. But in a theoretical case, if you got an out-of-

center -- you know, if we bored something out of center, for example, and tried to get it on, the wheel would not rotate. It would be out of round, there would be run-out, it would be thumping. And there's tests for that, you know, for us to make sure. That's why that area is so, so, so critical.

I mean, the wheel has to roll properly on the tracks, and if it doesn't you create a whole bunch of serious, serious liabilities to the trains and, you know, to whatever is in the cargo.

MR. BAXTER: So you say you'd violate every standard in the book, is that what you mean?

MR. MONTGOMERY: Right. I mean, to try to, you know --

MR. BAXTER: Is there an analogy we can use for the Tribunal's sake with respect to wheels that we do deal with? On my car, what happens if my wheels are -- I mean, I guess car wheels are in-center by definition, are they, or?

MR. MONTGOMERY: Car wheels, you know, are bolted on. So it's a different analogy, so it's completely different scenario. You know, this is -- we are finishing this thing to turn it into a wheel.

MR. BAXTER: Okay. My friend also asked you, he showed you the pictures of these products, and then he was

asking about the custom boring process. He says it's a specific fit to a specific axle, and I think you agreed with him there. And then my notes say -- have you saying you take a quarter inch off from the rough bore. And he said to you -- so you only take a tiny amount of steel off.

Did you agree with him when he said that, sir?

MR. MONTGOMERY: That tiny amount, that quarter-of-an-inch steel on that surface finish is the most critical part of it being usable as a wheel. I mean, unless you have that area completely circular, round, surface finish, it cannot be used in any scenario.

So from my perspective, certainly where we are in that wheel process, that is the absolute most critical area, you know, independent of how much of it is taken off or not. But that is -- where all the liability rests and everything else.

MR. BAXTER: And I think you gave the Tribunal a sense of what the tolerance is of the machine boring. Did you say it was required to be within five ten-thousandths?

MR. MONTGOMERY: Of an inch, yes.

MR. BAXTER: So a quarter inch is.

MR. MONTGOMERY: Significant larger than --

MR. BAXTER: 2,500 ten-thousandths of an inch. How is my math? Is that right?

MR. MONTGOMERY: That could be right. Maybe.

MR. BAXTER: So a quarter inch compared to the tolerance that is required by AAR is not tiny? Is that a fair statement, sir?

MR. MONTGOMERY: That's a fair statement, yes.

MR. BAXTER: We also talked about -- you talked with my friend -- he said no wheels are ever imported with a finished bore. Are wheel sets ever imported into Canada, Mr. Montgomery, to your knowledge?

MR. MONTGOMERY: Oh, yes. Absolutely. I mean, that's the reason we opened our shop in Hamilton, was to benefit the Canadian businesses. And all those wheel sets were being imported into Canada, from the United States into the Toronto market before we opened our wheel shop.

MR. BAXTER: So just to go back, if we could go back, Madam Registrar, to record page 143. And I appreciate you have already told the Tribunal that the roller bearings are missing, or at least the one on the near side here. But coming into Canada, and documented importations into Canada, are items like this photo that we see here at record page 143?

MR. MONTGOMERY: Yeah. When the bearings are on it, it would be the exact product that would be imported into Canada, yes.

MR. BAXTER: And does that still happen?

MR. MONTGOMERY: Very regularly, yes.

MR. BAXTER: And do those wheels that we see here, do they have a finished bore?

MR. MONTGOMERY: Those wheels would have been -- had their finished bore done in the United States to be mounted in that wheel set operation, yes.

MR. BAXTER: And that still happens?

MR. MONTGOMERY: Yes, it does. Yes, our competitors are still down there.

MR. BAXTER: Thank you. All right. I want to now turn -- it's clear, Madam Chairman, that terminology is important. Might I ask for two minutes just to consult with my friend about a translation that he has kindly provided the Tribunal in his brief? And I just don't want to misstate it, but I do want to get to -- it can all be done in public, but if I had two minutes, it might shorten what's about to come. And I'd do my friend more justice.

PRESIDING MEMBER: That's fine.

MR. BAXTER: Thank you.

PRESIDING MEMBER: Just a quick two-minute recess, then?

--- Upon recessing at 12:17 p.m. /

--- Suspension à 12 h 17

--- Upon resuming at 12:25 p.m. /

--- Reprise à 12 h 25

PRESIDING MEMBER: Mr. Baxter?

MR. BAXTER: Thank you, Madam Chair. And just for the Registrar, we ultimately will be turning up tab 14. My friend took the witness to record page 162 of tab 14 of Exhibit 3 C. We are going to be going there, but I don't need it just yet. Madam Chairperson, the last area, and this is -- there's nothing confidential about this.

It seems to be quite an important feature of this case for my friend in particular, the terminological points of the different names. And I want to clarify some evidence that Mr. Montgomery was asked about. I believe he had already said, he had given some evidence on this. The context for this, Madam Chair, is Mr. Lambert's own affidavit, which we have marked as Exhibit 31, paragraph six of which reads, just for the court's assistance,

> "Wheel blanks may also be called wheel plates, wheel bodies, or corps de roue by the industry."

And I had asked my friend a bit about how -- pardon me. I asked Mr. Montgomery a bit about the industry's use of the terms, and the common prefix to each of these being the word "wheel." And now, both in public and in confidential, my friend Mr. Maher has taken the court to a number of instances where just the term "wheel" is used.

Mr. Montgomery, I don't want to repeat what I

asked you earlier, but in your business, in the freight car business in particular, the imported good is sometimes referred to as a wheel. We have seen that. What are the commonalities of all of these different terms that Mr. Lambert and yourself have described about the good as imported?

MR. MONTGOMERY: Every one of those goods are unfinished. You know, they still need further processing.

MR. BAXTER: And you just told me before we broke that unfinished includes a rough bore that is not centered, is that right?

MR. MONTGOMERY: That's absolutely correct, yes.

MR. BAXTER: And you told us before in direct that unfinished means you couldn't jam it onto an axle if you tried. Is that still correct?

MR. MONTGOMERY: That is correct.

MR. BAXTER: Okay. Now, my friend took you -- and I will ask Madam Registrar to turn up page 162, record page 162 of Exhibit 3C.

THE SECRETARY: I do want to clarify that this was not -- had not been declassified. Are we now declassifying it?

MR. BAXTER: There's nothing on this page that's -- oh, dear. There's nothing on this page that is redacted in any way.

THE SECRETARY: Perhaps it was in 30 A that we have seen it? Perfect.

MR. BAXTER: Thank you, okay. Mr. Montgomery, if you look at the top, maybe we could expand that a bit, Madam Registrar, too. I think my friend took you to this extract from the harmonized commodity description and coding system, and he asked you about the bottom part. In 3, it says "wheel and parts thereof, (wheel centers, metal tires, etc.)". And then he showed you the French version. And I didn't I understand quite the question. He said, "the first entry under the French version, corps de roue, could you please read the first version under the English section," and you dually read "wheel center."

Let's look at the four -- these -- this extract comes from the WCO Explanatory Notes and Madame Chair, those are found at tab 31 of the Appellant's brief. And perhaps we could go there just so the entire document is available for this question to Mr. Montgomery.

It's tab 31 and it's going to be Exhibit -- starting at Exhibit page 352. These are the WCO Explanatory Notes.

THE SECRETARY: For the benefit of the record, that would be Exhibit 03 B.

MR. BAXTER: Very good. So let's go down to the bottom of that page, if we could. And the blacked-line

portion has item number three, "wheels and parts thereof, wheel centres, metal tyres, etc."

And then if we turn over two pages, Madam Registrar, to page 354, down to the bottom again, parmi ces parties de vehicules pour voies ferrees, you see that. And then we go to number 3 there, Mr. Montgomery. Le roues et leurs parties.

And then we have the extract. Corps de roue (bandage, frettes, centres, etc.) And my friend in the brief has made a translation of these. I'm going to attempt one as well. And I have appreciate you have testified in English, but I'm advised that he asked you about corps de roue. Bondage, I'm told, are rims. I believe my friend may have translated them somewhat differently. Frettes, I'm told, are rubber bands or hoops. Not rubber bands in the sense of an elastic band, Madame Chair. And then centre is just sitting there, and I think even those with the most nominal French training will have an idea what that means.

And I believe my friend asked you to compare corps de roue and wheel centers. These are listed as parts of wheels. If you had to describe from the French version, what it is the unfinished product that you are bringing in, do any of these four French terms, examples, do it better than the others?

MR. MONTGOMERY: Based on these examples, corps de roue would be the better example.

MR. BAXTER: Right. And we don't see anything approaching "wheel blank" or "wheel plate" in the English version, do we, Mr. Montgomery?

MR. MONTGOMERY: No, we don't. No.

MR. BAXTER: So I appreciate that you have said that the industry shortens it to the term "wheel." And when the industry says "wheel," it really means the unfinished product with an out-of-center rough bore that can't be fitted to an axle. Is that what you are -- to summarize your earlier evidence?

MR. MONTGOMERY: That is correct. Absolutely.

MR. BAXTER: He asked you a bit about the brokerage forms, and I had taken you to the first two. My friend took you to two other brokerage forms where just the term "wheel" was used. Is that referring to the same unfinished product?

MR. MONTGOMERY: They would all refer to the same unfinished product, yes.

MR. BAXTER: And those are the H36 product?

MR. MONTGOMERY: Correct.

MR. BAXTER: Thank you. Just one minute, please, Mr. Montgomery. Thank you, Madam Chairman. That's re- exam.

PRESIDING MEMBER: Thank you very much.

QUESTIONS BY THE PRESIDING MEMBER

PRESIDING MEMBER: Mr. Montgomery, I actually have a few questions for you, just to clarify some of the information I've heard today. During the direct, you were asked about the cost of a wheel set, and I think your response was about 80 percent of the finished cost is composed of it, the two unfinished wheels.

In a wheel set, what are, then -- I appreciate there's an axle and a bearing. Between the other costs that are involved with the axle, the bearing, and then of course you have the labor and the finishing. How do the rest of those components break out? Is most of it material, or the last 20 percent?

MR. MONTGOMERY: Most of it would still be probably labor. You know, the axle is reevaluated, basically. So there's labor, there's QA portions of it. The only other piece that goes in is to recondition bearings. So if we take off an old bearing, we would recondition those bearings at the OEM manufacturer. There's a cost to that. It's not significant. And then, you know, the wheels are by far, by far the biggest. So I would say the labor, then the reconditioned bearings would be the only other two components after.

PRESIDING MEMBER: Thank you. And with respect

to wheel sets, you also mention that they need to be serviced usually more in the winter. And I have heard for wheel sets you keep the documentation for ten years, I believe. And you'd mentioned for axles, they have a lifespan of perhaps around closer to 50 years.

With respect -- as a couple questions. Does the actual unfinished wheel portion -- or I guess even once the wheel is finished. Does it have a separate lifespan different from the axle? And my second question is, when you service a wheel set, what is the part that goes wrong on it first? Or why does it get pulled out of service to be refinished?

MR. MONTGOMERY: Okay. So the large majority of reasons wheel sets are pulled out of service are for wheel defects. So those wheels become out of round, in service. Or they crack, there's some cracks that are looked at. Or they could wear. There is a series of gauges that, you know, the manufacturer or the railroads look for.

They look for if the wheels could move, you know, the wheels have to be a certain distance from each other to roll on the tracks. So you know, the tracks are in a fixed location, so the wheels have to have that distance. They call it back to back. So if the wheels tend to not have that back to back, then they can get pulled out as well, there are going to be some issues.

So I would say, you know, 90 to 95 percent of the reasons are associated with some wear, some problem with the wheels on measurements. And the other ten percent could be due to the bearings. You know, bearings tend to go hot, so the railways detect wheels' impact, wheels' back to back, wheels' roundness. And they also detect the heat that a bearing would have on there, and they could pull out a wheel set because there's an excess amount of heat in the bearings, and that can cause a derailment. So those would be the general reasons.

When we get a wheel set back that had been pulled out of service, we have two options. We could -- if the wheels, we determine, are on that -- still on that wheel set are, we can re-profile them. You know, a certain percentage of them, we recut a new shape into the tread, and that wheel set, you know, can then be put back into service again.

80 percent of what we do would have those two wheels are scrap on that wheel set. So the process is, you pop those two wheels off, they go into the scrap bin. That axle could be reused. It's a process that we do, a labor process, a QA process. And then two new wheels are bored, matched up on that axle, and that wheel set goes back into service.

PRESIDING MEMBER: Okay. Thank you. I

appreciate that.

And just some clarification on the axles. I know we are talking about an H36 unfinished wheel that's being imported. And it could be fitted with an F or K Class axle. When I look at the specification, it says the rough bore is 8 3/8-inch?

MR. MONTGOMERY: Right.

PRESIDING MEMBER: Rough bore. So the two -- just wondering from between an F and a K axle, is there a difference in diameter, or is it?

MR. MONTGOMERY: No, the area where the wheel goes on an F or a K axle -- and that designation actually applies, is associated with the bearing that goes on there. But the wheel seat and the wheel is exactly the same. What's different is the end of the axle where the bearing goes. The bearing is actually called a Class K bearing, or a Class F bearing. So we associate the axle with a K or an F as well, and then -- but that wheel could be used on either types of axles with those bearings.

PRESIDING MEMBER: Okay. I appreciate that clarification. And I think I picked this up from the documentation, but this specific wheel type H36, it's known in the industry that its purpose will be used on freight rolling stock. Is that fair to say that it -- if you are --

MR. MONTGOMERY: Right.

PRESIDING MEMBER: -- dealing with an H36, it's not going to go on a Via train or a passenger train.

MR. MONTGOMERY: Not the ones we are dealing with, but you know, there are certain designations. There are 36-inch that go on Via trains or passenger trains as well. But you know, the -- it wouldn't be the same metallurgy. There would be a different, other designation associated with it, right. But what we brought in is specifically H36, is broadly used in the freight side of it.

PRESIDING MEMBER: Okay. Thank you. You mentioned as well that with respect to the advanced ruling that you found out about the advanced ruling directly from Brian Lambert. When was that? Do you remember when that was? Was that sort of this or prior?

MR. MONTGOMERY: Well, it was through this. The -- part of this is because we bought a wheel here called an E28 wheel, and we bought it from Sumitomo. It came from the United States. And when we went through this audit process and then they said, hey, this is what you guys are doing wrong. And you have to kind of pay money on the stuff that you have brought in, one of the wheels that we brought in was a Sumitomo wheel from the United States.

And through this audit process, they want us to

pay a duty on that. So I went to Brian Lambert and said, something doesn't make sense. You guys have been bringing in, we all know. And I said, if you guys -- if we bought it from you in Canada rather than your U.S. counterpart, would there be a duty for it? And he said, absolutely not.

So that exact same good that I'm importing through Sumitomo, because I cleared it, I'm paying a duty on it. But Brian Lambert, if he just brought it in and I bought it from him out of Toronto, there would be no duty on it.

And so that's where that process started, you know. And where we started, where Brian explained to me, well, hey look, we have an advance ruling. We have had it in place since 2005, and we've just been bringing this stuff in, you know, duty free. And it's the exact same material that we bring in regularly that works through this group here, the H36s.

PRESIDING MEMBER: And the E28, I appreciate that's a separate type of wheel, you said?

MR. MONTGOMERY: Right, so that's just another -- that's a wheel that goes -- it's just a smaller diameter so that goes on those auto-rack cars that you would see, that move your automobiles, you know, if you have ever seen them. Those have a smaller wheel, and they go on those types of cars.

So those E28s, H36s, J33s, and B38s, they are all railway designated wheels. They are all the wheels that we bring in currently and use them through our wheel shop to support any freight car, different freight car type that is out there.

PRESIDING MEMBER: Thank you very much for that. And again, terminology very important. The one word that has come up is "wheel center." And I have heard descriptions for wheel bodies, wheel plates, wheels, unfinished wheels. Could you -- what is your understanding in the industry of a wheel center?

MR. MONTGOMERY: You know, the term for me would be, you know, you are applying, you are looking at that wheel bore that we are doing. That's your true center, you know, of the wheel.

So, you know, the terminology could be associated there, but it's not -- we don't use any reference, the term "wheel centers" in the freight business. The term "wheel" is generally associated with all these unfinished products, and different people use it in different ways and different parts. And the term "wheels" just tend to be the broad area that people look at, right?

PRESIDING MEMBER: So if the wheel center is the bore, which I understand is a hole, there must be a product

somehow, though, that could be perhaps imported, since -- I'm making this assumption, since it's listed. Is there some other type of a rolling stock wheel that uses a good that is called a wheel center, as opposed to just being referred to as the bore, which is --

MR. MONTGOMERY: There's nothing that I -- that we work with that has that designation that I'm aware of. But it's quite possible. I'm not sure, no.

PRESIDING MEMBER: Okay. Thanks. Just within your knowledge, of course. Thank you. I'm trying to visualize as well. You were talking about the chamfered cut when you do the wheel press. And I heard you say, and maybe I misheard it. But that cut, I thought I heard you said it was on the exterior of the wheel. And I was visualizing an axle in the middle, two wheels with an interior, and as it's pressed together, the chamfered cut. I was visualizing it on the interior.

MR. MONTGOMERY: So it's --

PRESIDING MEMBER: Did I miss something?

MR. MONTGOMERY: It's on the exterior of the outside of the hub. But it's on the inside of the wheel, so as you are pressing it, you know, you are basically creating kind of the chamfer that allows that wheel to kind of locate itself and position itself correctly on the axle before you press it, or else you couldn't move that wheel

onto the axle. It would kind of go like this, and then you would slide it on. So it's on the inside of the wheel, on the outside of the hub.

PRESIDING MEMBER: Thank you. That clarifies my visualization on that.

Actually, I think that's all my questions. Counsel, did I raise any further issues you wanted to discuss, based on my questions? Okay. Thank you.

MR. MONTGOMERY: Thank you.

PRESIDING MEMBER: It is 12:45. And so these are all the questions for Mr. Montgomery. So we can excuse him, and thank you very much for attending this morning, this hearing. We will take a break for lunch.

Just before you go, though, time estimates for the rest of the day. I know we have one more witness, and then we have arguments. Could you just give me an estimate of what you think that will be right now?

MR. BAXTER: I think we should be able to finish. Unless my friend has a great deal of cross-examination, we should be able to finish comfortably. If we come back, for example, at 1:30 I would anticipate no more than 20 minutes in chief after qualification with Mr. Lepore. And Mr. Clark and I will be dividing the argument somewhat, but I think a maximum of 20 minutes, say, outside 25 for legal argument. So I'm really in my friend's hands

as to the total amount of time.

MR. MAHER: Yes. So I don't want to be limiting my cross-examinations. I think it might be a bit more than 20 minutes. Maximum 40 minutes, but, and I will make an effort to streamline it for efficiency. As to my oral submissions, I would say similarly 40 minutes maximum.

PRESIDING MEMBER: Okay. Thank you very much. So on that information, I guess we will break right now until 1:30, if that gives -- oh, Mr. Baxter?

MR. BAXTER: Maybe one question that might free up some more time. Maybe my friend could advise, or Madame President, you could advise whether qualification of Mr. Lepore as a separate exercise is necessary. I don't know if my friend intends to challenge his qualifications as an expert. I'm certainly prepared to do it. I have my jurisprudence ready and the Mohan test and all those good things. But that might shorten things.

PRESIDING MEMBER: Okay. Do you have any comment on that right now, Mr. Maher?

MR. MAHER: We weren't intend -- didn't intend to challenge or limit the scope of expertise as defined by the Appellant, so.

PRESIDING MEMBER: Okay. So we can qualify him that a shortened version of that, then, if that's going to be the case. Okay. So we will reconvene at 1:30. And

thanks again, Mr. Montgomery, for your presence here this morning.

--- Upon recessing at 12:47 p.m. /

--- Suspension à 12 h 47

--- Upon resuming at 1:30 p.m. /

--- Reprise à 13 h 30

PRESIDING MEMBER: Mr. Baxter, are you ready to start with the qualification of the expert?

MR. BAXTER: Yes, I am. Thank you, Madam Chair. We would like to call Peter Lepore to the stand.

SWORN: PETER LEPORE

WITNESS STATEMENT ADOPTED

EXAMINATION BY MR. BAXTER

PRESIDING MEMBER: Please proceed, Mr. Baxter?

MR. BAXTER: Thank you. Good afternoon, Mr. Lepore.

MR. LEPORE: Good afternoon.

MR. BAXTER: First of all, I would like you to take before you -- I see you have before you Exhibit 17A, which is your export report, and then attached to it are three annexes. Annex A is your CV, Annex B is the instruction letter and Annex C, which my friend referred to earlier in these proceedings, is an extract from the AAR manuals.

If we could start, sir, with your CV? And you

are being tendered here, Mr. Lepore, as an expert in certain things. So I would like for you to give the Tribunal -- thank you, yes, it is being shown, up here, too, on the electronic screen -- I want to take the Tribunal through some of your experience in the railroad industry, as it will be relevant to the evidence you are about to give. Thank you.

So if we can go to the CV, Madam Registrar, which is at record page 15 of this exhibit? Thank you. And it says at the beginning of your summary, Mr. Lepore, you have over 40 years of railway experience, mainly in rolling stock, locomotives, freight and passenger cars. That's the summary paragraph.

Let's start at the very beginning, though, as a famous song says, you did a bachelor of engineering at the École Polytechnique de Montréal in Mechanical Engineering, finishing in 1971?

MR. LEPORE: That is correct.

MR. BAXTER: And then if we go to the back of your resume, which I think is about record page 20, these last two or three pages are all in your first -- with your first employer at Canadian National. Is that correct?

MR. LEPORE: Yes, it is.

MR. BAXTER: So, as a mechanical engineer 1971 to 1981, is that your first job out of school?

MR. LEPORE: Yes, it is.

MR. BAXTER: Can you describe for us what you did in those 10 years?

MR. LEPORE: I worked in the mechanical department. And there, we handled all technical issues related to freight cars, locomotives and passenger cars -- in those years, CN operated passenger trains also -- and dealings with the AAR standards and so on.

MR. BAXTER: I understand you worked some of that time in a neighbourhood in Montreal called Pointe-Saint-Charles?

MR. LEPORE: Yes, that's correct.

MR. BAXTER: And what is at Pointe-Saint-Charles, and what was there from the CN operations?

MR. LEPORE: I was responsible for the maintenance of the facility, all the equipment, including the equipment that was used in a wheel shop.

MR. BAXTER: So CN had its own wheel shop?

MR. LEPORE: Yes, they did.

MR. BAXTER: And you said you had technical duties; at least my notes say you had technical duties. Can you describe some of those technical duties, the duties I suppose that would be consistent with your degree in Mechanical Engineering?

MR. LEPORE: Yes. I worked on the design of

freight cars; that is, you know, sizing all the material. Also, the brake system, the wheels, axles, trucks. We also did analysis on derailments, causes for derailments, which were either caused by failure of a component and so on.

MR. BAXTER: And I see, speaking of derailments, up about three items higher under, "Manager, car equipment, Taschereau Yard," you mention that you had 550 employees and you were dealing with derailments.

Is that a different task than the one you just described?

MR. LEPORE: Yes. That was right in the field. At that time, I was responsible for the inspection of the trains. I was also responsible for the maintenance of the trains. And we had the service for derailments, with wrecking equipment, to put the trains back on the track and, at the same time, analyzing the root cause for the derailment.

MR. BAXTER: Okay. Analyzing the root cause for the derailment: I know it's impossible to generalize over hundreds or thousands of events but, in general, when do derailments occur, sir?

MR. LEPORE: Typically either in train operation itself; if the train is very long, the train can split in two and then it can derail. Other, it is related to worn wheels. Typically, if you are going through a switch, that

was the main reason. And if you have a worn wheel, and then the wheel is not centred on a track and it can take the wrong direction. So it happens, very frequently, on switches.

MR. BAXTER: Okay. Moving closer to us in time, and back to page 19, Madam Registrar, we see between 1989 and 1993, you were a manager of a contract shop and equipment.

Again, could you briefly describe your role in that position, sir?

MR. LEPORE: Yes. We operated -- CN started to convert the shop to a contract shop, doing work other than CN. In that particular time, we were refurbishing VIA Rail equipment, their stainless steel cars, and we were also refurbishing Montreal subway cars.

MR. BAXTER: Okay. And refurbishing, you heard some of the evidence this morning -- not all of it. Is refurbishment done as part of the refurbishing done in wheel shops?

MR. LEPORE: No, but we did use the wheels, obviously.

MR. BAXTER: Okay. The refurbishment that Mr. Montgomery talked about, or the reuse of parts of wheelsets, is different from what you were doing here?

MR. LEPORE: Well, we did have a wheel shop, so

the wheels that were required on the VIA Rail cars were went to the wheel shop, which was right next door; it was part of the Pointe-Saint-Charles shop.

MR. BAXTER: Okay. Thank you. So that's Pointe-Saint-Charles, again.

And then I see, from 1995 to 1997, you -- technically, I guess you changed employers, is that right? What's CANAC International?

MR. LEPORE: It was a division of CN. And they were doing international work to promote material that was developed by CN, either automatic switching of cars and stuff like that.

MR. BAXTER: Okay. So it was a division. Then you went back into the mothership, if I could call it that, between 1997 and 2008. I am just going upwards, Madam Registrar, page 18 of Mr. Lepore's resume. You went back into the mothership for another 11 years, and then back to CANAC, again, from 2008 to 2012?

MR. LEPORE: Yes. I retired in 2008. And when I went to CANAC, now CANAC had been sold. It belonged to a company called Savage. And there, I was responsible for rail services, locomotive maintenance, repair, car design and so on, which is really related to what I used to do when I first started at CN -- technical work.

MR. BAXTER: And then finally, I would ask you

to go, Madam Registrar, to page 16. Your final entry here is for SNC-Lavalin. What did you do in general? And anything related to wheelsets and wheelset manufacturing at this, in this job?

MR. LEPORE: In this particular job, we did the new facility at the East Yard for GO Transit, where we had to develop all the yard layout, the shop and, more particularly, the wheel inspection station, which was automated. And we also had the wheel re-profiling station, for the GO Transit cars.

MR. BAXTER: Okay. And I see in the middle of the page of page 16, U-tube replacement assembly study. What is that? It's not the YouTube that my children use on the Internet, I take it?

MR. LEPORE: No, that's not the case.

MR. BAXTER: What is a U-tube?

MR. LEPORE: We did an analysis for ArcelorMittal, which is in Northern Quebec. They are not AAR certified, because they are a provincial railroad. However, they do follow AAR standards, and they do have a wheel shop. And we looked at their wheel shop as far as the equipment, and if it was adequate for what they were doing. And that analysis was really done on the basis, if we had to replace the equipment for them to continue operating the wheel shop or if they should have just

contracted out the work. They were buying wheel blanks, like they are doing here, and mounting it on axles.

MR. BAXTER: Okay. And is it fair to say over the course of that lengthy career that you had an up close and personal experience with AAR standards?

MR. LEPORE: Yes, I did.

MR. BAXTER: Are you familiar with them? Do you keep current in them?

MR. LEPORE: Yes. It's all in the manuals and it's very, very specific as to what has to be done. The recipes are all in there, whatever you want to do, in order to ensure that all the equipment that the railways use is adequate and interchangeable.

MR. BAXTER: Thank you, Mr. Lepore.

Madam Chair, Ronsco would like to qualify Mr. Lepore as an expert witness in the following areas: railroad operations, technical standards for rolling stock, freight cars and locomotives, components and operation of the supply chain in the rolling stock industry, manufacturing processes for rolling stock, including components such as wheelsets, and North America's integrated railway maintenance system.

PRESIDING MEMBER: Thank you. Mr. Maher, do you have any cross or comments?

MR. MAHER: No. We agree with the

qualification.

PRESIDING MEMBER: Okay. So thank you, very much. The Tribunal qualifies you as our expert witness in this hearing. So we appreciate you being here this morning. I won't read those out again but, on those very specific items that you had listed out there, Mr. Baxter. And you have already signed a form indicating that you are an independent witness and you are here to help advise the Tribunal on the facts of the case. And I appreciate you being here.

MR. LEPORE: Thank you.

PRESIDING MEMBER: So we will get on with the evidence.

MR. BAXTER: Thank you, yes. And I neglected to do this, and I will do it now even though you have made that ruling.

Mr. Lepore, I understand from you that this is not the first time you have had occasion to testify before courts and that, in fact, you have testified twice before the Quebec Superior Court, once in relation to a rolling stock issue dealing with the Mount Royal Tunnel.

Can you tell the court briefly about that? I think it would be relevant to what is about to follow.

MR. LEPORE: Yes. It was about the safety of operating diesel-powered passenger trains along with the

electrically powered passenger train in the Mount Royal Tunnel. And the concern was for the possibility of derailments; in an accident, what the consequences could be and what safeties could be improved.

And the other one --

MR. BAXTER: Yes. And again, another time, that was before the Quebec Superior Court. And your evidence was of a technical nature, was it?

MR. LEPORE: Yes, it was.

MR. BAXTER: And the second time that you have made me aware of, it dealt with a tragic commuter line case. Can you describe for the Tribunal very briefly what your role in that case was?

MR. LEPORE: Yes. There was a student that was onboard a commuter train operated by CN, just at the entrance of the Mount Royal Tunnel. And unfortunately, she was in a vestibule area; she fell off the train and ended up underneath the car, and was seriously injured. And my role was to define as to where that person was at the location, so why the reason that she fell off, and where was she standing that would allow her to fall.

MR. BAXTER: And again, in that case, was your evidence of a technical nature, Mr. Lepore?

MR. LEPORE: Yes, it was.

MR. BAXTER: And in both cases was your evidence

accepted by the Superior Court of Quebec?

MR. LEPORE: Yes.

MR. BAXTER: Thank you.

Could you turn with me to Annex B to your report, sir, which is record page 21? I just want to identify for the Tribunal, if you could -- do you have an Annex B? That is a letter dated September 3, 2019, from my colleague to yourself. Is that the instruction letter that we provided you for the mandate in this case?

MR. LEPORE: Yes, it is.

MR. BAXTER: And you see there that we asked you five specific questions, and then reminded you of your duties. Are those the questions that are answered in your report, sir?

MR. LEPORE: Yes, they are.

MR. BAXTER: Thank you. And I think, in the swearing-in process, you have adopted the contents of your report as your evidence here today?

MR. LEPORE: Yes, I have.

MR. BAXTER: Thank you. So let's turn to that now, if we could. And in light, Madam Chair, of a lot of the evidence that came this morning, I am going to pass quite quickly over some of the materials. I know you have had -- I know the Tribunal has had the benefit of the written product for some time, and some of this has already

been covered with Mr. Montgomery. So I would invite my friend, Mr. Maher, if he has questions for the witness to do so. But I am going to take the report as read, in most cases, and just go to what I sense are the main issues.

So if I could, Mr. Lepore, if I could direct you first to paragraphs 10, 12 and 14 -- essentially record page 5 of your report. So if you just look at those three paragraphs, they deal with terminology. And terminology is perhaps an important issue for the Tribunal here.

So we saw what Mr. Lambert said, and the different names for the unfinished wheels that he has testified to. Can you describe for the Tribunal in general terms what you say, on this page, the unfinished products are referred to in the industry?

MR. LEPORE: The two terms I normally use, it's wheels, which are specified in Annex G of the AAR standards. That's how they refer to it. And an Annex G gives you all the requirements to produce a wheel in order to be certified and accepted by the railways to manufacture them.

The other term that I normally hear is wheel blanks; those are the terms that, typically, I had heard.

MR. BAXTER: Okay. Sir, whether you call them wheel blanks, wheels, wheel bodies, wheel plates, is there anything in common about all of these wheels -- or about

all of these items?

MR. LEPORE: The terms, when you are in the wheel shop, you talk about wheels, wheelsets. Outside of the wheel shop, in the operation, it's wheelsets; a single wheel does not exist, so it's always a wheelset.

If you are pointing to a term, somebody says "That wheel is defective," it's because there is a defect on the wheel, and you are trying to give the position of that wheel in the car, whether it's on the left side, first axle, second axle, which they have verbiage in the AAR that says L-1. So that you know you have to go look at that wheel and check it, to see if it's definitely defective.

MR. BAXTER: Thank you. If I could now turn, ask you to turn with me to paragraph 16 of your report, which is on the next page. And there, you say:

> "Any wheel for rolling stock that has a rough bore is not a finished wheel. Wheels with a rough bore cannot be fitted with axles. If a railway wheel cannot be fitted with an axle, it cannot be placed under a locomotive or railway car. Additional manufacturing is required for use on a railcar."

I think you have heard the evidence this morning. Why do you say that wheels with a rough bore

cannot be fitted with axles, sir?

MR. LEPORE: The AAR manual states all the type of wheels you can use in freight; you have 28-inch, 33-inch in diameter, 36, 38. These wheels have different diameters because they have different capacities. Cars, some of them are 100 tonne -- I will use the verbiage, 100 tonnes, 70 tonnes, 50 tonnes. And they are very specific in design. And they are all listed in the AAR. And when you are buying a wheel that you are putting on -- do you want me to go into interchange?

MR. BAXTER: I am going to come to the interchange.

MR. LEPORE: Okay.

MR. BAXTER: But perhaps you could just stick with why it can't be fitted with an axle in the form imported.

MR. LEPORE: Okay. So anyways, it's very, very specific, and it gives you everything that has to be done, chemical composition and so on, and the dimensions. And when it comes to the bore, the specification calls for a rough bore. There is a tolerance; the customer can order a bore with the tolerances of plus or minus one-sixteenth of an inch. And that bore could be off centre, up to 60 thousandths of an inch, which is a sixteenth, which is totally -- it's really rough, because when you go to the

final product, we are going to see that we have to be within a half a thousandth of an inch, when you try to fit it on. So it is really rough. It is just the holes is already bored there; for convenience, you don't want to be shipping steel from one place to another because, you know, an eight-inch diameter, 12-inch thick, that's a fair amount of steel.

MR. BAXTER: But would the axle fit through the rough bore?

MR. LEPORE: No way. It's just impossible. It won't fit, plus it would not -- the wheel would -- for whatever reason the axle is too, too, too small, that means the axle is scrap. And, if it does fit, it wouldn't stay on it.

MR. BAXTER: Okay. And then you say at paragraph 19:

> "Any wheel that cannot keep a train on the tracks can't be considered a finished wheel."

That's what the AAR standards are about, I understand?

MR. LEPORE: That is exactly right.

MR. BAXTER: Okay. Now let's talk ability interchange service at paragraph 21. You define that term. That's at the next page; that's record page 7, Mr. Lepore.

What is interchange service and why is it important?

MR. LEPORE: Interchange service in essence, let's say CN has a freight car. The AAR was established -- the Association of American Railroads -- is to make sure that a car that is fabricated meets these standards, because a CN car can go on a CP line, it can go on BNSF in the States, or it can go all the way to Mexico.

When a CN car goes on CP, as an example, CP pays CN what they call the car hire, so much per hour, so much per mile. If the car is defective, then CP would have to repair it and charge CN. So CN wants to make sure that, on its car, it has the proper repair with the proper material, which is generic. And CP wants to make sure that this car that shows up from CN uses material that is approved by the AAR, because you have to get that car repaired, because they are paying; as long as they are holding on to the car, and they can't repair, they are paying. So it's all financial.

So in order to have a car that actually belongs to somebody, but it's generic; it can go anywhere, and it uses generic components. And the AAR makes standards for all these components, to make sure that all the parts are interchangeable.

MR. BAXTER: Thank you, sir. You have explained both a bit about what the requirements are and the raison

d'être behind the requirements, to which, as often, is financial.

Turn with me if you could, sir, to paragraph 25 of your report. And there, you talk about -- is that what you were referring to when you were talking about the financial incentives?

MR. LEPORE: Yes, this is another financial incentive. When you receive a car from a foreign road, you accept it. If you have a derailment with that foreign car, the railroad that accepts it is responsible for all the costs. Therefore, when you do take on that responsibility, you want to make sure that the car that is transferred to you meets standards, very strict standards. And that's why those cars are all built to the same standards.

MR. BAXTER: Okay. When we are speaking about those standards, the AAR standards, do they apply equally to imported goods of different sizes? For example, we have heard this morning about 28-inch sizes, 36-inch sizes, 38-inch sizes; is it a different process for each? Or is it a generic process?

MR. LEPORE: It's a generic process for the -- let's say for fabrication of wheels. But, in the AAR, they go beyond that. They also give you the dimensions for a specific wheel to make sure that when you buy a wheel to put underneath an AAR-approved car, that that wheel is

exactly that dimension. So not only do they give you how to fabricate it, the process, they also give you the very specific dimensions that that component has to be built to.

MR. BAXTER: Okay. And these can apply to all different sizes of wheels?

MR. LEPORE: That's a fact.

MR. BAXTER: Thank you. Okay.

If we turn over now to paragraph 29 of your report, Mr. Lepore, record page 9? And we are coming to the activities that occur in the wheel shop. You refer to Section G-2 of the AAR processes. We heard this morning from Mr. Montgomery, who described the precision boring process that occurs in a wheel shop. Can you comment on that?

First of all, was there anything that you heard you disagreed with? Or is there anything that needs -- for the Tribunal's benefit, needs more precision in that description?

MR. LEPORE: No, he was right on. I may just offer some details.

MR. BAXTER: Please.

MR. LEPORE: When you are pressing a wheel onto an axle, it's very critical, because that is what -- the wheel is not welded, it's not bolted; it's the friction between the wheel hub and the axle that holds that wheel in

place. And when you are going at 60 miles an hour with a hundred tonnes, and you hit something, the wheel could get loose. So that would be a disaster.

So you want to make sure that the final product, and when you are getting the pressing and that curve that you get, it has to be exactly that. If you don't reach it, that means it's a misfit, and then you have to scrap it.

But in the process, you are measuring the axle; you have to have the proper temperature, like the difference between the wheel and the axle, which has expansion. You would then have to measure the axle, the wheel seat diameter. You have to bore it, you have to do a final cut in order to get the precision. Because let's say you were mentioning this morning, an eight-inch bore. Well, that means it's about eight thousandths of an inch interference. So the bore is eight thousandths of an inch smaller. But the tolerance on that eight thousandths is about a half a thousand, which is less than a sheet of paper.

You have to make sure that the bore is cylindrical, you have to make sure that's it's not tapered. And then you finally put that chamfer on it, when you are pressing the wheel on, so that you don't scrape the steel, and everything jams in there, and you get a false reading on the tonnage for the pressure.

MR. BAXTER: Sorry. If I can just -- you used an analogy, and I hadn't appreciated that yet. The final tolerance for the finished bore is about as thick as a piece of paper? Did I hear you say that?

MR. LEPORE: Yes. It's about a half a thousandth of an inch.

MR. BAXTER: Okay. So when my friend said that taking a quarter inch off of the wheel bore is a tiny amount of steel, do you agree with that?

MR. LEPORE: Compared to the volume of the wheel, it's small. But as far as physically doing it with the tolerances, that is another job, because you have to take multiple cuts; it depends how much you have to take off, so that you get your final cut, exactly the precision.

So if you look at the amount of steel, it's real -- but it's a very complicated...

The other thing too that you have to keep in mind, the bore is not centred. And once the wheelset is all assembled, you cannot have the wheel -- the outside surface of the wheel that's not centred with the axle, because you get like a --

Like, I wouldn't -- you know, in a car, you would say, "Geez, my wheels are not balanced." But, in a railroad, it's worse than that because if you have the -- it's not centred, every time that wheel runs, it does an

impact on the rail. The forces go up. And if you have a loaded car and you are going at 60 miles per hour, you can generate forces that can break the rail.

So that's why they are very critical. Once you have done all this, you have got the tonnage and everything, then you test the wheel to see it's out of round, the completed wheelset. And you have to make sure it's within 15 thousandths of an inch, centred, which is very small. Considering you also have to clamp the wheel into the machine, this is a heavy piece of equipment; you have to clamp it. So you are playing with the tolerances, on how you hold it. And then you have to look at the tolerances, how you are boring it.

So that is probably the most critical thing on a freight car, because freight cars, you know, machining within a tenth of a thousandth of an inch on freight cars, believe me, it's fairly rough; you weld, you cut.

So this is one of the most precision tasks that you have to do, as in the components of a freight car and the air brake valve. And that's about it; the rest is all fairly rough and tough.

MR. BAXTER: So, on that rough and tough, meaning less precise. Is that right?

MR. LEPORE: Yes.

MR. BAXTER: So, for example, the precision

required by the manufacturer in Asia of this, is that as precise as the precision that's required by Mr. Montgomery in his wheel shop?

MR. LEPORE: In the standards for the wheels, the tolerances are fairly large. Typically, on the outer surface of the wheel, the precision is minus zero, plus a sixteenth. The reason it's minus zero is because you want to ensure certain thicknesses of the steel, for the strength, but you can go a little thicker. And it's a sixteenth of an inch, which is fairly big.

And the reason being there is that you don't want to be carrying steel wheels; you want to carry the product. So you don't want all the weight to be on the wheels. So they give you a bigger tolerance. So it's not as critical as far as machining, as long as you've got the profile.

MR. BAXTER: Thank you. Okay. We have heard that the borehole isn't centred, and that you couldn't jam it on to an axle, even if you tried. If I can direct you to paragraphs 40 and 41 of your report at page 11, this is under question no. 5; I am going to come back to one issue that I -- but I just want to understand what you say at paragraph 41:

> "Unfinished wheels are manufactured with a rough bore diameter..."

We have just talked about that...

> "...which must be expanded in order to fit on to an axle wheel seat. Press-fitting is not possible with a rough bore for two reasons. First, it is physically impossible to press an unbored wheel on to an axle, as the borehole is simply too small. Wheels are manufactured with a borehole that is much smaller than required, as they must be capable of being pressed on to either new or used axles."

And I think the evidence this morning was a quarter inch comes off for -- is that for a new or for a used axle, first of all?

MR. LEPORE: For a new axle, it would be close to a quarter of an inch; for a second-hand axel, because the axle has been reused and it has been turned down, the wheel seat, you reduce the diameter. Then you don't take off as much material, because the hole is going to be smaller, because when you are using a second-hand axle, you need to test it for cracks and so on. But you also need to clean the surface where you are going to be pressing on, in order to get a consistent pressure, from a tonnage point of view, so that that wheel stays on. So you have to do some

work to it.

And as axles are used for 50 years, and a wheel, maybe the life of a wheel, let's say, it's 10 years. Well, it will be machined five times. And, every time you take a clean cut, then you can take material off. And you want to make sure that when you order your wheel, that the bore diameter is small enough so it covers all the -- from a new to a second-hand wheel -- axle, sorry.

MR. BAXTER: Okay. But as I understand it, you are taking up -- if we go in thousandths, a quarter of an inch is 250 thousandths; you are taking as much of that off of the inside of the wheel bore. Yet, when you finally get down to it, it has to be one one-thousandths accurate? Is that right?

MR. LEPORE: Yes, half a thousandth, accuracy.

MR. BAXTER: Half of one one-thousandth? Thank you. Okay.

So I want to ask you about, what is holding the wheel on? Probably of interest to all of us, who occasionally ride on trains, what is an interference fit? You use that term in your -- can you describe what an interference fit is, sir.

MR. LEPORE: The interference fit is that, let's say, the axle has a nominal -- the wheel seat has a nominal diameter. The wheel bore is eight thousandths of an inch

smaller. So obviously being smaller, you have to press it on. And when you press it on, there is so much force on it, it is going to grip, and the wheel is going to stay there.

And to make sure that you are getting a proper fit, the tonnage that is used to press the wheel on is a confirmation that you have achieved that. So you have to have the proper surface finish, you have to have the proper interference.

So when you press the wheel on, that is why the AAR made it mandatory that, when you -- you have to check the pressure and you have to record that and keep it for 10 years to confirm that that wheel was pressed on properly.

MR. BAXTER: Okay. Perhaps we can put up, Madam Registrar, the first page of Exhibit 39 again, for this witness to address. It was spoken to by Mr. Montgomery, but I would just like Mr. Lepore, if we could enlarge that a bit on the screen? There.

You have talked about the pressing process. Is this one of the outputs of the pressing process?

MR. LEPORE: Yes, it is.

MR. BAXTER: So can you tell us what we are seeing here?

MR. LEPORE: What we are seeing here is there is a wheel A and a wheel B, and that is the tonnage. It shows

you as the distance, so it goes about, oh, close to seven inches, that it's you are pressing it on. It's moving seven inches on to that axle. And it has -- it's moving. You look at the bottom portion; it gives you the tonnage that you are -- it starts at about -- a little about the 35 tonnes, until the wheel starts moving. And it has to move continuously all the way till its positioned. And in this particular case, we hit 140 tonnes, which is what the AAR requires as a normal press fit.

It has different tonnages, by the way for a 28-inch wheel, a 33-inch wheel and a 36-inch wheel, because they have different bores.

MR. BAXTER: Okay. So you say, and I had hadn't appreciated this, you say that each of these wheels has moved approximately seven inches on to the wheel seat? Is that the correct way to say it?

MR. LEPORE: Yes.

MR. BAXTER: Okay. And in the hypothetical -- I know you have said you couldn't do it if you tried -- but in the hypothetical, where you tried to, without further manufacturing, mount the unfinished wheel plate on to an axle, how far would it get?

MR. LEPORE: Zero.

MR. BAXTER: It would get to zero.

MR. LEPORE: Yes. The pressure would go up to

600 tonnes, which is the maximum pressure of the press.

MR. BAXTER: Okay.

MR. LEPORE: And it's just going to stay there.

MR. BAXTER: Thank you.

MR. LEPORE: And on this particular diagram here, it has all the history on it. It has the wheel number, it has the manufacturer that made the wheel -- which is a certified, AAR-certified manufacturer. It has a date, it has the operator. And this information will be stamped on one end of the wheels, on the wheelset, that what shop put that wheelset together. And all this has to be kept for records for about 10 years.

MR. BAXTER: Thank you. So the wheel shop, Ronsco in this case, puts a stamp on the wheelset, does it?

MR. LEPORE: Yes, it does.

MR. BAXTER: Okay. My friend made had some questions for Mr. Montgomery about the serial numbers and the stamping of the rough, unfinished materials.

Are you saying that after that, whenever -- before they can ever be used as a wheel, there has to be all this work you have described, and then a further stamp put actually into the metal?

MR. LEPORE: Yes. Each wheel that is manufactured has a serial number, and a manufacturer identification. And that manufacturer is on a list that is

produced by AAR that gives you a list of all the approved manufacturers. So if I am CN, and I am buying wheels, I can only buy by those approved manufacturers. I cannot buy from anybody else. It has to be an approved manufacturer.

Each wheel arrives at the wheel shop with a serial number and identification, who made it. Once I put it together, then I take all that information, each wheel, and I press it on to the axle, and that particular operation, again, I am now a certified shop, and I put my stamp with my reference identification, which again the AAR gives -- has a list of all the approved wheel shop manufacturers. So nobody can put a pair of wheels underneath a freight car, if it's not assembled by a certified AAR shop.

MR. BAXTER: So until one of the goods that was imported here gets put under a train in the interchange system in North America, before that happens, all of the precision machining that you have described and the precision mounting that you have described has to occur, and a new identifier has to be put on.

MR. LEPORE: Yes.

MR. BAXTER: And the second page, Madam Registrar, of Exhibit 39? Your computer is doing what my computer does. There we are. Thank you.

What is that? Do you know what that document

is, Mr. Lepore?

MR. LEPORE: Yes. This is a report here; I think it has the wheelset identification number, the record for that, assembled. I guess "CID", there? And --

MR. BAXTER: Okay. Yes. Help me with that: CID, that's the identification of the actual wheelset that --

MR. LEPORE: Yes.

MR. BAXTER: So that's after it has been custom bored and pressure fitted and this green document has been generated; it gets given that number?

MR. LEPORE: Yes. It has the quality assurance; that's the file. It has a quality assurance; that is part of the quality assurance, and it has all the charts, the inspections, all the attachments. And all this is forwarded to the AAR. And when the wheel is applied to a freight car, the person that applies the wheelset to the freight car also registers at that time the car number, the reporting marks -- if it's CN car, CP -- the location on the car and...

So the record, if somebody goes and looks at that car, let's say a wheel for whatever reason after five, six years, they notice that some of the wheels are starting to show a defect, either that they are cracking or something like that, they can track back with that number

who produced it. They can track back who assembled it. They can also now look at suspicious wheels because, if that one has a type of defect that could be caused by something that is reoccurring, they can look at the wheelsets that were assembled before the wheelsets that were assembled after, and they can ask for a recall. And whoever put them together, pays. So there's a liability there.

MR. BAXTER: And can it ever be placed under a freight car in North America, before all that stuff happens?

MR. LEPORE: No.

MR. BAXTER: Thank you. No further questions.

PRESIDING MEMBER: Thank you. Cross-examination?

EXAMINATION BY MR. MAHER

MR. MAHER: All right. We are ready.

PRESIDING MEMBER: Okay. Please proceed.

MR. MAHER: Yes.

Good afternoon, now, Mr. Lepore. I have some questions for you, but if you have difficulty hearing me or you don't understand some terms that I use, feel free to tell me to rephrase or to precise my question.

MR. LEPORE: Yes.

MR. MAHER: I would like to show Exhibit 17A,

the expert report, to start with, at page 5. So, Mr. Lepore, I want to discuss a bit about the terminology and the terms used in the industry, so we are sure what's what and what's not.

At paragraph 12 of your report, you state that in your experience:

> "...wheel shops are the only place in the railway industry where the term "wheels" would refer to anything other than a mounted wheelset. In all other contexts, those in the industry understand wheels to mean two wheels pressed on to an axle, i.e. a wheelset."

You stand by that statement?

MR. LEPORE: Can you rephrase that, exactly? Maybe I can answer partially, one that I am sure --

MR. MAHER: Let me rephrase, yes: So you say that it's the only place where the term "wheels" refers to the independent wheels, an independent wheel, not fitted on an axle, is in a wheel shop; it's the only place in the industry where that term is used in that sense.

MR. LEPORE: Yes. In my opinion, what I have heard with my experience, when you are out in the field and somebody says "wheels", it's an assembled wheelset. If somebody says a wheel in the field, it's because he is

referring to a wheel of a wheelset that has a defect. So you are referring to the wheel that has a defect. And "wheel" is only in the wheel shop, because you have a stock of wheels.

MR. MAHER: Okay.

MR. LEPORE: So they come in as a wheel, and it comes out as a wheelset.

MR. MAHER: Okay. But you do state that it's the only place in the railway industry where wheels is -- in the wheel shop, where "wheels" is used?

MR. LEPORE: To my knowledge, that's what's being used. When you are in the field, you would call them "wheelsets." And in, on the shop, in the wheel shop, you call it "wheel."

MR. MAHER: Okay. If we go to paragraph 10 of your report, you do state that the specific item imported, "unfinished wheels" as you may call them, or independent wheels, has many names in the railway industry at large --

MR. LEPORE: Yes.

MR. MAHER: ...including wheels and wheel blanks. Correct?

MR. LEPORE: That's -- yes.

MR. MAHER: At the beginning of paragraph 14 of your report, you state that:

"The goods, wheel not mounted on an

axle, are marketed as wheels by the AAR-approved manufacturers."

That's correct?

MR. LEPORE: Yes. I say are often marketed as wheels, yes.

MR. MAHER: Can we just show --oh, paragraph 14. Sorry. Often -- yes, often.

MR. LEPORE: Yes, often.

MR. MAHER: Yes. So are often marked as...?

MR. LEPORE: Wheels.

MR. MAHER: Wheels. Okay. And those manufacturers or producers, plants or companies, are different from a wheel shop. Right? Correct?

MR. LEPORE: Yes.

MR. MAHER: Okay. And those manufacturers are still part of the railway industry, at large?

MR. LEPORE: From a supplier point of view, yes.

MR. MAHER: Okay.

MR. LEPORE: And in the AAR manual, Section G, it talks about "wheel."

MR. MAHER: Yes. Okay. But while we are talking about the AAR manual, I would like to bring up Exhibit 3A, the Appellant's public brief, at tab 8. So this is the "AAR Manual of Standards and Recommended Practises" --

MR. LEPORE: Yes.

MR. MAHER: "...Wheels and Axles." So that is Section G?

MR. LEPORE: Yes.

MR. MAHER: That relates to the manufacturing of, as they call it, the wheel.

MR. LEPORE: Mm-hmm.

MR. MAHER: So, throughout all of this document, I take it that the goods are referred -- yes, the goods are referred to as "wheels" --

MR. LEPORE: Yes.

MR. MAHER: ...straight up. Okay. So I take it that the American Association of Railroads generally refers to the goods in issue as wheels?

MR. LEPORE: From a specification point of view, yes.

MR. MAHER: Okay. And so I take it that the AAR is also part of the railway industry?

MR. LEPORE: It is the railway industry.

MR. MAHER: Okay. I think it represents Class 1 railroads?

MR. LEPORE: Yes.

MR. MAHER: And those include CN and CP?

MR. LEPORE: Yes.

MR. MAHER: Okay. I would like to discuss a bit

with you about the manufacturing process of the wheels --

MR. LEPORE: Yes?

MR. MAHER: ...so about the Section G requirements. So I would like to go to tab 3 of Exhibit 3A. You are generally aware, I take it, of that 18-step manufacturing process?

MR. LEPORE: Yes. I have witnessed the manufacture, when Canadian Steel Wheel was doing forged wheels in Montreal, before they closed.

MR. MAHER: Okay. Here, on the step no. 1, Ronsco refers to the state of the goods in issue as "steel blooms."

MR. LEPORE: Yes.

MR. MAHER: So that would be like, what? - a very primitive state?

MR. LEPORE: Well, you have got molten steel, liquid, and you have to solidify and make it out as a billet. So they pour it into a mould, which gives you a bloom or a billet, if you want to.

MR. MAHER: Okay.

MR. LEPORE: And they can do multiple wheels with it. They have to cut it like a cookie cutter to the amount of steel that you need to manufacture the wheel.

MR. MAHER: And that is in step two, right?

MR. LEPORE: Yes.

MR. MAHER: The steel blooms are sawn into cylindrical blanks?

MR. LEPORE: Yes.

MR. MAHER: So I take it that, at this stage, they can be more precisely called blanks?

MR. LEPORE: In a manufacturing process, if you are taking something that's very rough, it's a blank. And then you are going to do your working on it.

MR. MAHER: Okay. But do you agree that there are blooms and then, after that cutting, they became blanks? Or?

MR. LEPORE: They are still blooms, or a part. But they call it blank, because you are going to use a piece of steel to fabricate a wheel, and it’s a blank. You are starting from something that doesn't look like a wheel, yet; it's a blank.

MR. MAHER: All right. And then I see there listed, there are various steps involved. No. 3, I see, "blank heating", and then "water descaling, performing," which brings us to step no. 6, "forging." And there, Ronsco states that:

> "At this stage, the material has been differentiated for a particular use and is no longer a blank."

MR. LEPORE: Yes, because now it has the shape

of a wheel.

MR. MAHER: Okay. So at that stage, they have been differentiated to a specific use?

MR. LEPORE: Yes.

MR. MAHER: And that would be the shape --

MR. LEPORE: Of a wheel.

MR. MAHER: Okay, and of a particular wheel, H36, or...?

MR. LEPORE: Well, it depends what you are manufacturing; it could be...

MR. MAHER: But if I am the importer, I am manufacturing H36, I want --

MR. LEPORE: It will be the shape, more or less the shape, the final shape of the H36.

MR. MAHER: Of that type of wheel?

MR. LEPORE: Of that specific wheel, yes.

MR. MAHER: Yes, okay. And then there are other various steps, rolling, at no. 7. We can go down. Punching, hot measurements, where the wheel body is heated and cooled, preheating, heating, quenching.

And then, if we go on the other page here, at step 13, I see "tempering."

MR. LEPORE: Yes. That's a heat treatment, where the wheel is hot. And then you cool it down, so that you could put some hardness into the wheel, so it doesn't

become like cheese and it wears out.

MR. MAHER: And I think that takes some time to do?

MR. LEPORE: No, it's a process. It is fairly fast in the production line. They stamp them; it's like a cookie cutter. Then the wheel goes on, and then they spray water on it for a certain time. Once you've got the process done, you spray it for 10 minutes; you bring the temperature down. And then you keep on going.

MR. MAHER: Okay. Thank you. And then I see no. 14, "machining."

MR. LEPORE: Machining, yes.

MR. MAHER: Yes, machining. It says it's machined multiple times?

MR. LEPORE: Yes, because there are different faces: the machine, the inside surface, the outside surface and the rim. And, like I said before, the tolerances are very broad on there because you want to make sure that you hit the minimum thicknesses of the material, where you need the strength. But you don't want to leave too much material, because then the wheel is going to be very heavy and it has no use.

So the tolerances are fairly broad and the machining is very rough, also, so you are allowed like minus zero plus one sixteenth, I believe, is in the AAR for

the drawings.

MR. MAHER: In that step, I see the borehole is excluded from this process. So I take it that -- but all the rest of the surface, the plate or the sides of the wheel are --

MR. LEPORE: Yes, it has all been cleaned. Yes, because when you are forging it, it is fairly rough.

MR. MAHER: Yes.

MR. LEPORE: So you can't have that; you have to have a fairly even surface. But, like I say, some of the surfaces, they have to be cleaned because it is rough, and you have to hit a minimum thickness. But, on the other hand, you want to clean it so it is balanced; you don't want a wheel thumping around, because the forging is not a precise manufacturing process, when you forge. That's why you have to machine it.

A cast wheel, you don't have to machine it because the casting is already machined itself. So when you cast the wheel, you already get the final shape and the tolerances.

MR. MAHER: But I take it that, except for the rough bore, the wheel has reached its finished dimension, except for the rough bore?

MR. LEPORE: Yes. Yes, yes.

MR. MAHER: Okay.

MR. LEPORE: No argument.

MR. MAHER: Yes. And then I see "Final inspection." Then "Shot peening." Can you tell us, what is shot peening?

MR. LEPORE: These are small, like, pellets of steel. And what they do, they do stress -- what is called stress relieving. So they throw it at the wheel. And that's why, when you look at the picture, where you see in them -- it is like a dark little -- no, not dark. But how would I call it? Like a flat surface, non-reflecting, and that reduces the stress on the surface, so it improves the quality of the wheel. All the wheel that are manufactured are shot peened, being --

MR. MAHER: Okay. So I take it that these steps, like all the heating, preheating, quenching, tempering and shot peening, they are not done another time on the rough bore when --

MR. LEPORE: No, no.

MR. MAHER: ...at the wheel shop?

MR. LEPORE: No.

MR. MAHER: This is a one-thing process?

MR. LEPORE: Yes.

MR. MAHER: Okay.

MR. LEPORE: It is similar, if you are producing a steel plate on a rolling mill. You had liquid, then you

put a billet, then you roll it. Then you treat it, you clean it. Then you end up with a steel plate. Then you do what you want with the steel plate, that this is a wheel, and it has those physical characteristics as far as a shape, and that it has to meet to AAR. And the chemical composition is already pre-established -- part of the recipe.

MR. MAHER: So I take it that this 18-step process is governed or in line with the requirements of Section G of the AAR manual?

MR. LEPORE: Yes.

MR. MAHER: Okay. And to accomplish those 18 steps in that process, before importation, I take it that it takes specialized machinery and tools to do that.

MR. LEPORE: Oh, definitely.

MR. MAHER: In a plant, yes.

MR. LEPORE: Yes. It's a rough process.

MR. MAHER: What do you mean?

MR. LEPORE: Well, it's rough when you are fabricating it. I mean, it's a rough process in a sense that it is nothing that, you know, it requires a lot of precision.

MR. MAHER: Okay. So we talked about the shape of the wheel --

MR. LEPORE: Yes.

MR. MAHER: ...and the dimension of the wheel. I understand that the shape is very specific, the flange and the rim and all of that.

MR. LEPORE: Yes. It's programmed with a machine that's computerized. It does the shape. You don't have to change the inserts because they wear as often, because it's not critical. Compared to when you are doing a bore within a half a thousandth of an inch, you have to make sure the insert cuts, and then you have to measure every time to make sure that if it's wearing out, you have to adjust, because the consequences, you get a misfit.

In this particular case, it is a rough machining to get the final shape because the manufacturing process is a very rough one because you are forging. And in a forging, you don't get a smooth surface or even surface, so you have to take off the excess material. But it's a rough machining.

MR. MAHER: At what stage of the --

MR. LEPORE: Excuse me?

MR. MAHER: ...you have to take off the excess material?

MR. LEPORE: When you are machining.

MR. MAHER: Okay. So during the 18-step process.

MR. LEPORE: Yes, yes.

MR. MAHER: Okay. But so the shape of the wheel is very specific.

MR. LEPORE: Yes.

MR. MAHER: So it's not just a cylindrical piece of --

MR. LEPORE: Welded --

MR. MAHER: ...steel. If you cut it in half --

MR. LEPORE: Yes.

MR. MAHER: ...in the middle, you will see there's a very specific shape to it.

MR. LEPORE: Yes. It looks complex, but it's not any easier or difficult than making a flat surface because, if you have to machine a flat surface, you are machining it. And you are machining a shape; you could program it so it cuts it.

MR. MAHER: Yes. You said that the mounting process and all of that is critical because -- so the axle and the wheel can be fitted together --

MR. LEPORE: Yes.

MR. MAHER: ...and in order to avoid derailments and accidents and stuff like that?

MR. LEPORE: Yes.

MR. MAHER: But I also understand that from that process this is where you obtain the form that you want for your wheel. I take it that if the wheels were not --

didn't have that shape, they wouldn't be usable for that type of railway car?

MR. LEPORE: Yes. There is a reason why it is that shape.

MR. MAHER: Yes, okay. And that is done during that process?

MR. LEPORE: Yes. It's forged into that shape.

MR. MAHER: Yes.

MR. LEPORE: And then it's cleaned, through the machining process.

MR. MAHER: Okay. And this is all part of this process?

MR. LEPORE: Yes, it is.

MR. MAHER: Okay. So, while I appreciate that it's not as precise because you are not getting rid of, like, very specific amounts of steel in order to fit a very specific axle, but would you agree with me that that process is still a sophisticated forging process?

MR. LEPORE: It's part of a production system and it's machining, yes.

MR. MAHER: Okay.

MR. LEPORE: But it's not a precision machining. That is why the tolerances are minus zero plus one sixteenth. And that's fairly broad.

MR. MAHER: And so, during that process, there

is no assembling of the blanks or the wheels to any other components?

MR. LEPORE: No.

MR. MAHER: They start from one very rough piece of steel, and they end up as the finished product with the desired shape that you want, with the rough bore?

MR. LEPORE: Yes. And it also goes through all the testing, non-destructive testing, and so on --

MR. MAHER: Yes.

MR. LEPORE: ...to make sure it complies with AAR requirements.

MR. MAHER: All right. If you go to tab 8 of Exhibit 3A, this is the AAR; this is Section G of the AAR specification. If we go to page 104, tab 8? So here, I read the Section 16 title, "Finish." Could you read for us just the first sentence of 16.1?

MR. LEPORE: Yes:

> "Wheels shall be rough-bored and shall not have black spots in the rough bore, front of face of wheels, one wheel, two wheel..."

MR. MAHER: Okay, yes, just the first sentence. What I want to discuss with you is how -- is you to tell me that indeed AAR -- this Section G --

MR. LEPORE: Yes?

MR. MAHER: ...specifically requires that the wheels be imported or be manufactured with rough bores, for Section G?

MR. LEPORE: Why they have to be manufactured --

MR. MAHER: No. You confirm that, that the manufacturing of the wheels here, the finish, Rule 16.1 requires manufacturers to manufacture their wheels with a rough bore.

MR. LEPORE: Yes. It does not require a finished rough bore; it's a rough bore, and there are also tolerances in it. The bore is plus or minus one sixteenth of an inch in diameter, and can be off centre up to 90 thousandths of an inch, so it is a rough bore.

MR. MAHER: Yes. So I take it that the contrary -- let's say I manufacture wheels, and I want them to comply with Section G of the AAR. If I do the finished bore, they wouldn't be compliant with that section?

MR. LEPORE: No. No, because I am saving money because if I asked them for a finished bore for a specific dimension, I would have to be paying a premium because I don't need the finished bore because I am going to be boring it, anyways. So why ask for something super-precise that's going to cost them money, to come up with something super-precise at this stage? I am going to be machining it.

MR. MAHER: Okay. And I take it that, in this section and throughout the whole Section G, and even G-...

MR. LEPORE: G-2?

MR. MAHER: ...G-2, yes, the goods are not called "unfinished wheels."

MR. LEPORE: No. They are called -- in the manual, it refers to specs. When you go into the AAR, they call, you know, "This is a wheel, this is an axle and this is a wheelset."

MR. MAHER: Okay. And they are not referred to as parts of wheels, either?

MR. LEPORE: It says "wheel, axle, wheelset." So that you manufacture a wheel, you manufacture an axle and then you assemble them. And then it comes out as a wheelset.

MR. MAHER: Okay.

MR. LEPORE: And there are very strict procedures for that.

MR. MAHER: Okay. It's just you said that you are very knowledgeable with this tender, so I am just asking; I am asking you if you, let's say, like, the terms -- is the term "wheel bodies" used in those tenders?

MR. LEPORE: No.

MR. MAHER: Okay.

MR. LEPORE: But it does call about a rough

bore.

MR. MAHER: Yes.

MR. LEPORE: And when a wheel has a rough bore, obviously, you have got to do something to it.

MR. MAHER: So, yes, let's talk about the custom boring process a bit.

MR. LEPORE: Yes.

MR. MAHER: So let's go back into your report, which is Exhibit 17A at paragraph 41, page 11. So here at 41, you state at the beginning, and I will read it for you -- I have questions. You have stated that:

> "Unfinished wheels are manufactured with a rough-bore diameter which must be expanded in order to fit on to an axle wheel seat."

That is correct?

MR. LEPORE: Yes.

MR. MAHER: Okay. So in order to do that, the specific wheel and the specific axle will have to be measured?

MR. LEPORE: Yes.

MR. MAHER: Okay. And following that measurement, I guess a very precise amount of steel will have to be cut, cut out from the bore.

MR. LEPORE: Yes.

MR. MAHER: And I think you have confirmed that we are talking about zero micromillimetres? How many?

MR. LEPORE: Well, the AAR tells you a used axle, how small you can make that diameter. And obviously you have to have enough steel on the wheel hub so that you can fit it on to that axle, which is -- so if the AAR says you can reduce the diameter by three-eights of an -- a quarter of an inch or an eighth of an inch, so you have to leave enough material in the bore, plus tolerances for all these variations, so that you can -- when you bore it, that you have enough steel there.

MR. MAHER: Okay. Yes, I understand that now, better.

So, when an importer imports wheels, they are usually or invariably imported with rough bores, because you have to wait before they finish the bore --

MR. LEPORE: Always.

MR. MAHER: ...you have to wait to get this -- with which specific axle.

MR. LEPORE: There is no to her way. You cannot order one with a finished bore; you will never find an axle to fit underneath it, unless you are at the lottery.

MR. MAHER: So, from what you just said, I take it that when a manufacturer sells an independent wheel to an importer, a wheel that is not fitted on an axle, it

would -- it will always be with rough bores?

MR. LEPORE: Yes.

MR. MAHER: At tab 15 of Exhibit 11B, which is the Respondent's brief, this is just an excerpt of the manual of standards from the AAR.

MR. LEPORE: Yes.

MR. MAHER: If we go to page 99, there's a table of contents of the rules. Mandatory rules here at 1.0. I see we have discussed a bit about the wheels, boring mill practices. I see also "Wheels, mounting-press practices", and before that, 1.1, 1.2, I see, "Axle, general practices, axles, roller bearing practices."

So I take it that at the wheel shop, it's not just the wheel that has to be further worked, but also the other components, like the axle?

MR. LEPORE: Well, you can purchase an axle already finished, which you have to press the wheel on, or you can do the finishing yourself. Or you can take a second-hand axle, and machine the wheel surface. The bearings typically arrive all ready, all assembled. Wheel shops typically don't do bearings; they come directly from the manufacturers, either new or reworked. You just have to press them on.

MR. MAHER: Okay.

MR. LEPORE: So it tells you, when you are

pressing them on, how you have to torque the bolts and put on locking caps, so they don't come off.

MR. MAHER: But so usually the goods that are imported would be new, would be considered new wheels. Not refer -- what, not -- since they just come out of the manufacturer?

MR. LEPORE: You are talking the wheels?

MR. MAHER: Yes.

MR. LEPORE: Wheels would be new.

MR. MAHER: Okay.

MR. LEPORE: Nobody presses on second-hand wheels.

MR. MAHER: Okay. You can refurbish them or something?

MR. LEPORE: No. Normally, you turn them, if they are already assembled, because you don't have to disassemble them, so there is a price reduction. So you can reprofile them.

MR. MAHER: Okay. Well, maybe reprofile is a better term.

MR. LEPORE: Yes, you profile the tread, yes.

MR. MAHER: Okay.

MR. LEPORE: That's why they have one-wear wheel, two-wear wheel and multi-wear, so the rim is thicker, so it allows you, instead of buying new unfinished

wheels, you just reprofile it for cheaper cost.

MR. MAHER: Okay. I see. And so, about the axle, do you say you can buy new ones?

MR. LEPORE: Sure.

MR. MAHER: When you buy new ones, you import them, let's say, from a manufacturer like the ones in issue in Asia.

MR. LEPORE: Yes.

MR. MAHER: And those would come in a rough state, also?

MR. LEPORE: Yes. You can come in the rough, because the shipping, you don't want to damage them. And this is one of the biggest problems is when you import them with the rust, the protection you have to do on them, a lot of people, they import them rough, and then they do the finishing, onsite.

MR. MAHER: At a wheel shop?

MR. LEPORE: Yes.

MR. MAHER: Okay. And that work to do on an axle would also be costly, like the work on the wheel. Yes? Or?

MR. LEPORE: Well, the wheel seat doesn't require that much precision because you are going to measure it and tailor-cut the wheel. But as far as the bearings, it has to be very, very precise, where you are

pressing the bearings on; there's a very tight tolerance.

MR. MAHER: But I meant I import new, in the rough axles.

MR. LEPORE: Yes.

MR. MAHER: The work that would have to be done on the axle in order for it to be ready to be fitted with wheels, with the --

MR. LEPORE: Yes. You have to machine the surfaces.

MR. MAHER: Okay. And so I take it that there's the custom boring process on the wheels, and then there's the pressing and the mounting phase. And I take it, and please confirm it or infirm(sic) it, but I think that the axle needs to be also at a certain temperature in order to be pressed.

MR. LEPORE: Yes. Because there are different temperature; you are taking the measurement. You have to factor in the expansion. So, if the axle is at minus 20 and the wheel is at plus, so you measure it and then you go to fit it on, when they are both heated up at the same temperature, they won't fit.

MR. MAHER: Okay. So both the wheels and the axles would need that special temperature?

MR. LEPORE: Yes. The AAR states exactly what the temperature differential, maximum, that you can have,

which you have to measure. And when they audit you, they check all those things.

MR. MAHER: Okay.

MR. LEPORE: Because you could artificially reach the pressure on the tonnage, but that it was due to the differential in temperature. When the temperature equalizes, then you find out you've got a loose wheel, and you are begging for punishment.

MR. MAHER: That's the liability part.

MR. LEPORE: Yes.

MR. MAHER: That's very important, I take it?

MR. LEPORE: You bet.

MR. MAHER: Yes. I want to bring up 17A, the expert report, at paragraph 39, page 11. At that paragraph, you state that:

> "Prior to having a finished borehole and be mounted on to an axle so that they can be part of a wheelset, wheels have no use in a railway setting."

Correct?

MR. LEPORE: Yes.

MR. MAHER: And so I take it that the same would be/could accurately said for an axle; until it is mounted with wheels and bearings and made into a wheelset, it would have no use in a railway setting?

MR. LEPORE: In a railway operation? No, because you need the wheelset. The only way you see a single axle on a freight car is when you are transporting it.

MR. MAHER: All right. I want to go back to paragraph 31 of your report, which is under the third question, 3A:

"Are there any producers of the goods in Canada?"

In that portion of your report, you talk about the two different types of wheels. You talk about cast wheels --

MR. LEPORE: Yes.

MR. MAHER: ...and you talk about forged wheels. The goods in issue today would be classified in forged wheels. Correct?

MR. LEPORE: Yes.

MR. MAHER: Okay. And so I take it that you say -- I think you used the word "moulded." Cast wheels are moulded.

MR. LEPORE: That is true. Yes.

MR. MAHER: Okay. And that is a very different process from forging?

MR. LEPORE: Yes, definitely.

MR. MAHER: But both two processes is what gives

the wheel its general shape?

MR. LEPORE: Yes, yes. One of them is you are machining the mould to get the final shape of the wheel. The other one, you are machining the wheel after you forged it.

MR. MAHER: At paragraph 35 at page 10, still discussing about...

Well, you discuss what is the forged wheel in more detail. You state that:

> "Cast wheels are different from forged wheels."

That, we know, and that:

> "Forged wheel are considered superior product to cast wheels. And that is because of their greater resistance to fatigue cracks, and their higher performance in cold weather."

MR. LEPORE: Yes.

MR. MAHER: That is correct?

MR. LEPORE: Anything that is forged typically has better resistance, yes.

MR. MAHER: Okay. And that explains why there is a spike in demand in forged wheels during the winter?

MR. LEPORE: Yes. Well, in Canada, because we are more northern, there would be a big advantage. People,

like in Sept-Îles and those areas, they buy forged wheels. And they pay a premium.

MR. MAHER: And so forged wheels have a greater resistance to fatigue cracks and a higher performance in cold weather. And I take it that is a very important feature of a forged wheel?

MR. LEPORE: Yes.

MR. MAHER: Okay.

MR. LEPORE: They wear the same, but they -- you don't get broken wheels and stuff like that in the winter.

MR. MAHER: Okay. At paragraph 36 now, you state that:

> "The principal feature of a forged wheel is that the impurities..."

...you explain why there are more performing, I guess. You say:

> "The principal feature of the forged wheel is that the impurities or the flaws have been reduced in size by the pounding of the metal to its final shape."

Correct?

MR. LEPORE: Yes. Yes.

MR. MAHER: Okay. And so that's why it results in improved fatigue-crack resistance and improved

resistance to lower temperatures?

MR. LEPORE: Yes.

MR. MAHER: And at the time of importation, the goods, I take it that they have already been subjected to the steps necessary to reduce those impurities and achieve that improved fatigue-crack resistance to lower temperature.

MR. LEPORE: Yes. The forging gives you those advantages --

MR. MAHER: Yes.

MR. LEPORE: ...compared to a cast wheel. They typically use forge wheels on high-speed operations, like passenger cars.

MR. MAHER: So they have already been pressed; the impurities have already been pressed?

MR. LEPORE: Yes.

MR. MAHER: Correct?

MR. LEPORE: But don't make it a big thing. You know, like, impurities, you know, you can do different ways of cleaning the steel. When you are casting them, there's other things you can do to make sure the impurities are not there. But, by forging, you get that benefit.

MR. MAHER: Okay. I am very interested in it, because you state that this feature is the principal feature of a forged wheel.

MR. LEPORE: It is exactly it. When you forge something, that's what you get out of it.

MR. MAHER: Okay.

MR. LEPORE: But the railways accept either wheel.

MR. MAHER: Yes. And so the goods in issue today at the time of importation, before they go into the wheel shop, they already have that principal characteristic?

MR. LEPORE: Oh, yes.

MR. MAHER: Okay. At paragraph 38, you talk about the various parts of a forged wheel. The title says, "The parts of a finished, forged wheel." You mention there, there's a rim, a flange, a web, a hub with a finished borehole, correct?

MR. LEPORE: With a rough borehole.

MR. MAHER: Yes, rough, with a finished bore.

MR. LEPORE: That secures the wheel on the axel?

MR. MAHER: Yes.

MR. LEPORE: Yes, that is once it is assembled, yes.

MR. MAHER: Yes. Okay. And now, if I bring you to tab C of your report, which is Exhibit 17A, page 25? I see there the same parts that you have mentioned at paragraph -- what is it? -- 38 in your report are here. I

see there's a tread, up at page 25.

MR. LEPORE: Yes, I see that.

MR. MAHER: There's a flange, and on -- anyway, we have gone through them. I just wanted you to confirm for the Tribunal that at the time of importation, the goods do have that, the tread part?

MR. LEPORE: Yes. That's the shape of the wheel; it has a tread, the flange, a web, a hub and a rim.

MR. MAHER: And they also have a bore?

MR. LEPORE: Oh definitely, yes.

MR. MAHER: So the goods at the time of importation would have all of these different parts or areas of the wheel?

MR. LEPORE: Yes. That's the geometry of the wheel.

MR. MAHER: Yes. I would like now to take you to Exhibit 11B, the Respondent's brief, at tab 8. I just want to try to clarify for the Tribunal some terms that might be confusing for someone who is not in the industry or not an expert.

This is an educational blog done by a Dr. Rajiv Desai. Okay? And I would like to bring you to the next page, 75. If we could go down to where the text is?

Could you read for our benefit the last part of that paragraph that starts with:

"A railroad wheel typically consists of..."

MR. LEPORE: A rail tire, you are saying?

MR. MAHER: A railroad wheel at, like, two thirds of the paragraph.

MR. LEPORE: Oh. Wait a minute:

"A railroad wheel typically consists of two main parts, the wheel itself and the..."

Is it tire?

MR. MAHER: Yes.

MR. LEPORE: A round.

MR. MAHER: Yes, we can -- okay.

MR. LEPORE: Yes, it says "tire."

MR. MAHER: Yes.

MR. LEPORE: That is not what we are using here; that is a typical --

MR. MAHER: No, I know. I am just asking you to read from "A railroad," to the end of the paragraph. And then I will have questions for you, on this. But take time to read it, and read it aloud for us, out loud, first.

MR. LEPORE: Just a second. Let me trace it again, here. I am lost, here. Does anybody have a pointer, so I can know where to start?

MR. MAHER: "A railroad," yes.

MR. LEPORE: Oh, okay.

"A railroad wheel typically consists of two main parts, the wheel itself and the tire around the outside. The rail tire is usually made from steel, and is typically heated and pressed on to wheel, where it remains firmly as it shrinks and cools. Monoblock wheels do not have encircled tires, while resilient rail wheels have a resilient material, such as rubber, between the wheel and the tire."

So we used to have that on steam locomotives, the one with the rim. And the one with the rubber is -- I hear some people are using it in very low loads, not with a 100-tonne car.

MR. MAHER: And so I take it that it exists out there, some railway wheels that have different components that have to be assembled together, like this, a resilient wheel?

MR. LEPORE: Well, the resilient wheel, it depends where you are using it. I have heard about it, but these are very low loads. It's not what you have in the AAR, with 100 tonne; the rubber would squeeze out.

MR. MAHER: Yes. But I am not talking about the

AAR, just wheels in general.

MR. LEPORE: You can have wheels for cranes, you can have wheels for light rail and you can have wheels for --

MR. MAHER: Well, here, we are talking about railroad wheels. Pardon me.

MR. BAXTER: Madam Chair, I must: I think to be fair to the witness, my friend should introduce this document that he is now showing to him from apparently a doctor; I don't know if it's a medical doctor or some other form of doctor named Rajiv Desai.

I think I just heard my friend, "It exists out there, a wheel," and then describing what is in Mr. Desai's document. I didn't tender and I don't think this Tribunal has accepted Mr. Lepore as a witness on global wheel-making practices. We are talking about the North America industry, and freight, freight trains.

Perhaps my friend could properly introduce this document. I see it appended to his brief, but he is then putting propositions to the witness about a document, the provenance of which is beyond all of us in this room.

PRESIDING MEMBER: Thank you. Mr. Maher, do you have any comments on that?

MR. MAHER: Yes. Well, maybe I will just get away a bit, from the document. I just wanted something to

launch a conversation about what other types of wheels exist out there that are different components which are assembled together; I think that's highly relevant to the issues today.

PRESIDING MEMBER: I do agree that part of this is a wheel, or what becomes part of a wheel is relevant. I do appreciate, Mr. Lepore, that your expertise might be in the North America market or Canadian market. So, as questions are asked about parts of wheels, if you are not familiar, please let us know that that is sort of outside your area of expertise.

But because some of this terminology, it is used -- this specific one is in Canada, of course, but some of these words are used globally as well, I would also appreciate from your benefit if you are aware of some of this terminology. But again, please keep it within your own knowledge.

MR. LEPORE: Yes. As an engineer, I can say I have heard about things like this. But I would suspect these are very light rail, very specific use, and definitely not in the North American railroads, where you have heavy loads.

PRESIDING MEMBER: Okay. Thank you.

Mr. Maher, do you want to continue on?

MR. MAHER: Yes.

So the term monoblock wheels is used there. I take it that monoblock wheel would refer to the fact that the wheel is just one piece of steel. Correct?

MR. LEPORE: Yes. Well, monoblock, that's what it would suggest, yes.

MR. MAHER: Okay. You have never seen that term, monoblock?

MR. LEPORE: No, I have heard -- the AAR is very clear; it calls it a wheel. We work with North America, we work with AAR, and that's what's in there. And those are the rules and those are the guidelines, and it's very specific. If you follow them, you can't make any mistakes. It tells you everything: tolerances, size, shape, you name it. And then they stamp you and they say "Yes, you can do it now, as long as you follow the recipe." But this is a little bit out of my expertise.

MR. MAHER: All right. I would like to bring the witness to tab 14 of the Respondent's brief.

So I will introduce more, a bit of that document; I want to discuss some things that are raised in it. So this is called: "Comparison of vibration and rolling noise emission of resilient and solid monoblock railway wheels in underground lines."

Those are the authors, and we can go down a bit. Here, it says:

"The final definitive version of this paper has been published in proceedings of the Seventh World Congress on Railway Research that was held in Montreal, Canada."

So if we go to page 96, here, Mr. Lepore, if we could go down to Section 2. Yes. Here they are analyzing a wheel. They provide an image of this; they call it a resilient wheel. Have you heard in your experience and expertise about that type of wheel, that is, there's a flange tire that is made of steel, a rubber ring and a steel pressure ring around it?

MR. LEPORE: Yes. I heard about that on YouTube, when they were explaining to me a derailment that happened in Germany, when the rim came off and a lot of people died. So I don't think Amtrak is ready to use that wheel.

MR. MAHER: And I understand that that type of wheel would -- those three components or four components would have to be assembled together in order to make a complete usable wheel that is ready to be fitted on an axle.

MR. LEPORE: Yes, but I don't know where they would use it.

MR. MAHER: Okay. Now, if we go to tab 13, this

is from the Railway Group Standard. They are based in London, from -- we can see at the bottom of the document; it's called railway wheelsets.

If we go to page 92, and you see here, "monoblock wheel" is defined. It says:

> "A wheel comprising a hub, a wheel web and rim with the full wheel tread profile manufactured from a single piece of steel as a single entity."

Would the goods in issue correspond to that definition of a monoblock wheel?

MR. LEPORE: It's a general definition of a wheel, yes. It has a rim, a flange and a hub.

MR. MAHER: Thank you.

MR. LEPORE: Well, the AAR calls it -- identifies a rim, a flange and a hub. I mean, how can I argue?

MR. MAHER: But it is really the monoblock part. It is formed from a single entity of steel.

MR. LEPORE: Well, he calls it monoblock; I call it a wheel that is forged or a wheel that is cast.

MR. MAHER: All right. If we go to page 93? A bit further down, to "Wheel centre." There, there is a definition of wheel centre. It says:

> "A wheel hub, web and rim on which a

tire is fitted."

Tell me if you disagree, or what this definition tells you. But for you, what is a wheel centre?

MR. LEPORE: I have never heard of it, but I have seen that before because that's what we used to use a hundred years ago on steam locomotives.

MR. MAHER: So you have never seen the word, "wheel centre"?

MR. LEPORE: No.

MR. MAHER: Okay. And there, they mention the wheel hub. What is the hub? Where is the hub?

MR. LEPORE: It's in the centre; that's what's pressed on the axle.

MR. MAHER: Okay. So how would you describe a hub, in French?

MR. LEPORE: Offhand, I wouldn’t know -- "un moyeu"?

MR. MAHER: Un moyeu?

MR. LEPORE: Un moyeu, yes -- hub. I don't know.

MR. MAHER: Okay. But the hub is like the area at the centre of the wheel? That is correct?

MR. LEPORE: Yes. That's where it is pressed on the axle. That's what I said.

MR. MAHER: Okay. Comprising the bore? Or?

MR> LEPORE: Well, sure -- that's what's pressed on the wheel. That's the hub.

MR. MAHER: Okay.

MR. LEPORE: It's a cylinder part, the inner cylinder of the wheel that's pressed on the axle.

MR. MAHER: Just give me a quick moment. That would end my questions, Mr. Lepore. Thank you.

PRESIDING MEMBER: Thank you. Re-examination?

RE-EXAMINATION BY MR. BAXTER

MR. BAXTER: Thank you, Madam Chair.

Perhaps, Madam Registrar, we could put up the diagram again. I think it was at page 96 of my friend's brief, which is Exhibit 11B.

MR. MAHER: Which tab? Sorry?

MR. BAXTER: I just need this diagram. Thank you, Madam Registrar. Mr. Lepore, I essentially have one question. You started in 1971. In your over 48 years in the industry, and looking at this page 96, have you ever seen a finished or unfinished train wheel like this diagram under a freight car or a locomotive on any interchange service in North America?

MR. LEPORE: No.

MR. BAXTER: Just one minute, if I could, Madam Chair, just to consult.

Those are all my questions, thank you, Madam

Chair. Thank you, Mr. Lepore.

MR. LEPORE: Thank you.

QUESTIONS BY THE PRESIDING MEMBER

PRESIDING MEMBER: Thank you. Mr. Lepore, I actually have a few questions, just to clarify for myself. I promise I won't hold you that much longer.

MR. LEPORE: That's okay. Take your time.

PRESIDING MEMBER: Again, as you are the expert in the room, I am definitely relying on you to help me understand some of this terminology. And going back to the last question that Mr. Baxter asked you about, I know the one kind of wheel that is not used in North America, it sounds like. And it makes perfect sense to me why you would want a forged wheel for heavy freight and locomotives. But that type of wheel for rolling stock and tramways, in your just basic knowledge, are there some uses for that type of a wheel that make sense?

MR. LEPORE: As an engineer, I could understand somebody would want to do something like that to reduce noise. But as far as the viability of such a wheel and the functionality, I couldn't really tell. But it must be very light loads, certainly not in passenger service and certainly not in high speed and certainly not -- definitely not in freight. So that's about what I know about it.

PRESIDING MEMBER: Thanks, very much. And so

from what I have gathered from all the evidence we have heard today, the industry does appear to like to use the same words in various steps of the manufacturing process, right from -- when it starts with molten steel, and we get to a finished wheelset.

But just to make sure, I want to make sure I understand it that if we go back to the first manufacturer who goes from molten steel to -- and what I will call the unfinished wheel, terminology, it can be used as a blank, but that could mean just a very -- the cut piece of steel that hasn't even been forged yet.

They also then can refer at that stage of manufacturing to wheel blanks, wheel bodies, corps de roues, all within that type of manufacturing, those terminologies would all be referring then at that point to what we are calling or I will call right now the unfinished wheel? Do I understand that correctly.

MR. LEPORE: Yes, except for the French term; I have never heard that because most of the language in the railroad is in English. So corps de roues, at that -- I have heard it here, this first time.

PRESIDING MEMBER: Okay. I appreciate that.

MR. LEPORE: But besides that, yes, you can call it because in any process of manufacturing, a blank is when you are starting from something and then you do it into

something else. And then, once it is finished, it could be a blank for somebody else because he is starting from there and he is doing -- you know, the term "blank", is really you are using a component of a certain shape, and changing it or doing things to it. So that's what I see as a blank. So you can use "blank" in a multitude of places within the manufacturing process.

PRESIDING MEMBER: Right. And that gets us to, then, the second part which, in my mind, the second part of the wheel manufacturing process when you are actually at a wheel shop, the processes that happen there in Part 2 of an Annex G. And at that point, you are right, again within the wheel shop, you can also refer to that then, the product that has been imported as a wheel blank, or as a wheel, I guess, at the same point in time.

And we are calling it or I am going to call it again "unfinished", when it's first imported, and then the finishing part, which we have talked about at great length today, is when the final boring -- and I appreciate how sensitive it is at the end of the day, to fit on an axle.

With that, when you fit the wheel once it has been to an axle, and you are doing the finishing on the axle, whether it's a rough axle that been finished -- one that's already finished or a reused axle that has been finished again -- does a wheel shop take, like, 10 axles

and finish them to the exact same specification? And then you can, you know, once you finished the wheels, you can put them on one of any 10 axles? Or is it so specific, it's actually unique to -- you are actually measuring sort of in real time the actual -- both ends of an axle, to make sure that wheel fits just that one unique axle?

MR. LEPORE: Because of the tolerances you need for the interference fit, you cannot do it. Each wheel is custom fitted to that specific wheel seat.

One could think, "I am going to machine them all to the same size, and I am going to bore them all to the same size," but it's not practical. Because when you need to be precise in machining the axle, then you have to be very precise in boring the wheel. And that's a nightmare from a point of view, because you are going to be scrapping things because whatever doesn't fit is going to be pulled out. And you are in the process of manufacturing, so the axles come one after the other.

You can't go there, "I am going to take this axle out, because it doesn't fit the wheel," or, "I am going to take the wheel out." They are heavy pieces of equipment, and it is just not practical. So the reality, that is why they have computerized measuring, it gives it to the machine and the machine cranks it out, and it should fit. And the ultimate test is you press it on and, if

everything is okay, that means you have done your job.

PRESIDING MEMBER: Okay. That makes perfect sense. So when we talk about having an unfinished wheel, and then there's that extra process when it becomes finished, we heard from testimony earlier today that basically that might happen all in one day or in one process where you do the final finishing of the bore and then you pressure mount it to a very unique axle.

So the time period when you go from an unfinished wheel to let's say the finished wheel, so that it actually now is part of a wheelset, that finished wheel on its own, how long a period of time does a finished wheel even exist separately from a wheelset? Or is it just a matter of minutes or hours? Or?

MR. LEPORE: It depends on how your production line is made. Some people, you can wait two hours, if you have a place to store it. The problem in the production line is you have to -- let's say you want to do 20 wheels, and then you start pressing them on. You could do that. But where are you going to put all those 20 wheels? And you have to identify them to an axle? You can't mix them up, the risk, somebody mixes them up -- and then you get scrap. So they don't do that.

Normally, it tries to flow. As soon as the wheel is bored, the two wheels, it moves over to the press

with the axle, and you put them on -- the sooner the better. But you don't want 20 wheels in line waiting to proceed because then, if somebody mixes it up, and then you are going to scrap a bunch of wheels. It's not practical.

PRESIDING MEMBER: Right.

MR. LEPORE: It could be done. I am not arguing. You know, somebody could do it. You could even press it on a month after, if you want to, but the risk of having a misfit is very big.

PRESIDING MEMBER: Right. Because again, you have to match --

MR. LEPORE: Right.

PRESIDING MEMBER: ...those finished wheels to a very specific axle and...

MR. LEPORE: That's the procedure, the way they do it.

PRESIDING MEMBER: Okay. Thank you. You mentioned reprofiling and retreading a wheel.

MR. LEPORE: Yes.

PRESIDING MEMBER: I know it may not be quite relevant but I am just wondering, just to make sure I understood what that means, how one reprofiles an actual wheel as opposed to scrapping it?

MR. LEPORE: A defective wheel, there is many areas where you could be defective. You could have a skid-

flat, like there is a flat, the wheel skids on the track, you get a flat. So you have to remove that or else it creates very high forces on the rail.

You can have a cracked wheel and those -- and if you have a cracked wheel, that comes off automatically. But it has a sort of flat on it, or the tread is worn -- critical -- because the AAR in Section G-2 also gives you all the gauges for a wheel that is in service, because the AAR also talks about cars that are in service. So you gauge the wheel and, if the flange is too high, you may break a switch or something like that. So you have to take it out of service.

When it goes into the wheel shop, they check if there is enough steel remaining on the rim. That is why there is a one-wear, a two-wear and a multi-wear; the rim is just thicker, so it allows you to take a cut. There's enough steel there, so can you reprofile the wheel and send it out without pressing on a new wheel? So it's just extending the life of the wheelset.

PRESIDING MEMBER: Thank you. And I think my final questions are going back to some of the diagrams, listing different components or parts of a wheel. And you actually mentioned the word, the geometry of the shape of the wheel when we are talking about the hub, the tread, the rim, the flange.

In other industries, those could be separate components, but I appreciate in a forged steel wheel, we are talking about one piece of steel. So is it correct to sort of think of those, that terminology in this case, as those are the geometric parts of a train wheel? I like your word, "geometry", because it kind of clicked for me.

MR. LEPORE: The geometry. They are not separate, they are always together, because every time you have components that you put together, you risk them coming apart. But the tread areas, where it rolls on the rail -- so they call that a tread surface -- it has a taper into it; that's why they call it a tread. Then it has the rim, it has the little bump. Well, that keeps the wheel -- the wheel, prevent it from coming off the track. Then you have the web, which connects the rim to the hub. It has a special shape; they call it low stress. When they used to be straight, they were getting cracks. Now they have like an S-shape, so that it can deform when the wheel heats up. When you are putting on the brakes, you are putting heat into the wheel. It deforms, you can get.

So these are all improvements. That's why you have from a technical point of view all these shapes. And then you have the hub, which it has to be of substantial size to resist the pressure when you are pressing it on, or else it could crack.

And that's why they say a maximum tonnage, also. There's a minimum tonnage, but there's also a maximum. If you exceed it, you have to pull it off because if the force is too high when it's in service, that hub can crack. That's why it's...

PRESIDING MEMBER: Okay. Sorry. That led to one more thought: You had also mentioned that in the industry, which I am taking to mean more, if you are sort of at the end-user level, a wheel is more referenced, usually the wheelset because at that point in time, they are looking at a car at that point. And so when they refer to wheels, it's usually sometimes more the wheelset.

So at that point in time, if they used the word "wheel", the part of a wheel, is it correct in assuming that then they are breaking down a wheelset into the axle and the wheels? Those are the parts of a wheelset?

MR. LEPORE: When you are outside in the operation side --

PRESIDING MEMBER: Yes.

MR. LEPORE: ...that the wheel is underneath a car that's in service, if there's a defect, not both wheels come with a defect. You may condemn the wheelset because there's a flaw on one of them, and you have to identify that wheel. That's why, if the wheelset has to be removed, then they call the wheels in position one, which is the

first axle from one end. So they call it the wheels, or wheelsets.

When they say the wheel at position L-1, it's the left side of the car, position one. That means that that specific wheel has a defect. So the guy that inspects has to go physically there to check it, to see if that defect is there. And that's the only way you say "it's the wheel."

PRESIDING MEMBER: The plural --

MR. LEPORE: Yes.

PRESIDING MEMBER: ...of wheels is referring to the wheelset --

MR. LEPORE: Yes. Well, you know, like...

PRESIDING MEMBER: ...basically because, of course, there are two wheels. Okay. Thank you. I appreciate you answering those questions for me. Did my questions raise any issues with counsel? Okay. I think that's everything.

So thank you very much, Mr. Lepore, for attending our hearing today and providing the Tribunal with your excellent analysis and opinion on train wheels.

MR. LEPORE: Thank you. Bye.

PRESIDING MEMBER: So you are excused. It is now, let's say, quarter after 3:00. Does anyone want to take a break before we start into argument?

MR. BAXTER: Yes, please.

PRESIDING MEMBER: How about a 15-minute pause, right now, and come back right at just after 3:30.

--- Upon recessing at 3:17 p.m. /

--- Suspension à 15 h 17

--- Upon resuming at 3:34 p.m. /

--- Reprise à 15 h 34

PRESIDING MEMBER: It is 3:35 almost. Mr. Baxter and Mr. Clark, which will be going first? Thank you. Please go ahead, Mr. Clark.

ARGUMENT BY MR. CLARK

MR. CLARK: Thank you, Madam Chair. Why are we here? We have heard a lot. There's a fairly detailed record. We are here to determine whether or not the goods at issue are wheels or parts of wheels, just to get it down to the real basics. Of course, our submission is that they are parts of wheels.

As is my habit, I am going to use my friend's brief as a basis for my comments and argument. Mr. Baxter is going to deal with the legal arguments and taking you through the structure of the tariff and the harmonized system. Now we could have started with paragraph 25, saying that, you know, we both agree that we are dealing with 8607. We both agree that we are dealing with the first of the 41-dash subheadings, but I think Mr. Baxter

has that put together and he will deal with that very, very efficiently as usual.

We don't agree that the classification analysis should begin at the subheading level, paragraph 28. And Mr. Baxter will deal with that. I was having a Frito-Lay moment when I heard and saw some of this. The goods have the principal characteristics and features of wheels. It sounds like -- well, Mr. Baxter is better able than me to determine whether or not someone is trying to relitigate Igloo Vikski, here. And I am sure that he will speak to you about that.

At paragraph 32, we hear a repetitive them, almost a mantra: At the time of importation, the goods exhibited all of the characteristics and features, all of these characteristics and features of a wheel. And thus are considered wheels.

Well, we don't agree with that. All of the characteristics except those that make them function as a wheel. What's a wheel? If you look at tab 9 of the Appellant's brief, and that's the same, whether it's confidential or not, it refers to a circular object that revolves on an axle and is fixed below a vehicle or other object to enable it to move more easily over the ground.

So that's what a wheel does. But it has to be revolving on an axle. And to revolve on an axle, it has to

be attached to an axle, and that work isn't done in China. That work is done in Hamilton, in our case, or the case of our client.

And just to make it a little bit clearer, there's an aid to argument from the Shorter Oxford Dictionary which -- did you send the aids to argument around?

MR. MAHER: I don't have a copy; I would like to have one.

MR. CLARK: Yes. Usually the Tribunal distributes them. Sorry, madam. I wouldn't want to go any further without Mr. Maher having everything.

MR. MAHER: Sorry. Where is that from?

MR. CLARK: Shorter Oxford Dictionary. It's on the front page.

MR. MAHER: No, I know. But is it part of the record? Or?

MR. CLARK: It's a dictionary.

PRESIDING MEMBER: Sorry. This is part of --

MR. CLARK: It's an aid to argument. I am just trying to highlight. We have an extract at tab 9, which I have just read. It's supposed to come from the Oxford Dictionary; I am just reading something that clarifies the definition that I read. I have never seen anybody object to using dictionaries in aids to argument.

PRESIDING MEMBER: Yes. I had thought that there was some dictionary information submitted with the Appellant's brief. Was there not?

MR. CLARK: There is.

PRESIDING MEMBER: There is. This is a different format?

MR. CLARK: This is supposedly from the same source. But all it does is it is a little bit clearer, saying the same thing that I said before. You can give it whatever weight you want.

PRESIDING MEMBER: Okay. Yes, I will. If you just want to just read it in as to where you got it from and, as you say...

MR. CLARK: Yes. It's the Shorter Oxford English Dictionary, 6th Edition, which because I can't afford the latest one, but I don't think anything has changed. And that's a dictionary that the Tribunal uses frequently.

MR. MAHER: I would have to object and leave the decision to you. Sorry to cut you, Mr. Clark. I am sorry.

Just so that it's clear on the record, that this is not just a legal aid to argument, however they want to frame it. If the Appellant would have wanted to refer to it, they should have provided this before. I understand that it's just a dictionary definition, but usually at

this, before the CITT, the dictionary definitions and excerpts from doctrine and books are provided way before or during the closing argument. So I just want to make that clear on the record.

That being said, I understand that this is just a dictionary definition, and that the Tribunal is not bound to it by any way.

PRESIDING MEMBER: Thank you, for that objection. I am going to allow Mr. Clark just to continue on with talking about this specific, one definition.

MR. CLARK: It is:

> "A solid disk or a circular ring with spokes radiating from the centre, attached or able to be attached at its centre to an axle around which it revolves, and used to facilitate the motion of a vehicle or for various mechanical purposes..."

...which I think is essentially what I just said.

So it has to be attached to an axle or capable of being attached to an axle. And that's what we have been talking about. And in the condition as imported, the goods at issue cannot be attached to an axle. They are useless for the function for which a railway wheel is designed.

You have heard evidence from experienced people in the industry as to what has to be done to these wheel bodies, whatever you want to call them; there's certainly a lot of difference in the jargon around the world. But the question is can they function as a wheel? Is it a wheel or is it not a wheel? Or is it a piece of steel that, if not treated properly, is scrapped or perhaps might be used as an anchor?

I took from Mr. Maher's questioning to the witnesses and his references in his brief, he was trying to suggest that the work that's done by Ronsco and by other wheel shops to these unfinished wheels is minimal. There's lots of work that goes into making the product in the state that it is exported to Canada, and there is. And, you know, there's a lot of things to go from basically a piece of steel to a round.

And these products in the condition as imported may look like a wheel, but they aren't a wheel. And they aren't a wheel because they can't function like a wheel.

You have heard the evidence that the functions performed by Ronsco in terms of enlarging the bore to ensure that it fits to the axle the very, very tight tolerances that must be used, these are really serious manufacturing processes. We are not talking about a corner garage here. We are talking about a situation where, in

the expert witness report, when you go through the experience, one of the facilities in Montreal had 800 workers and the other had 550. So it is not a corner garage operation; it's really serious.

There are 50 people and a lot of investment at Hamilton that are involved in bringing these wheel bodies to the point where they can be pressed on an axle without breaking the equipment. We have heard several times saying that in the condition as imported, they can't be put on an axle. If they can't be put on an axle, they can't be deemed to be a wheel.

Now, I tried to use the dictionary definition, and you can look at Komatsu, AP-2010-036, which points to the need to use dictionaries if there are no statutory definitions. This is what we tried to do in our original brief, and we are trying to follow up on it.

We had a discussion about what's in the WCO. I note that when they are talking about parts, they are not exhaustive lists. They refer to "etc.", and to other parts of wheels. Some of the information is not particularly useful to you because it doesn't relate to Canada. In other cases, it doesn't relate to railways, particularly the tire'd wheels that we were talking about towards the end. And so I am just trying to put this in the proper concept.

The most crucial characteristic of the product is that it must function as it is intended to function. Now, the Tribunal doesn't dismiss as negative the participation of one party in the manufacturing process because it is less than other parties in the manufacturing process. This was an issue in NQ-2008-003, Aluminum Extrusions, where there were extensive discussions about exclusions and the fact that the principal extruders in many cases used fabricators to finish the products, to make them usable to the customers.

And there were arguments saying "These people aren't part of the industry, they are only finishers." And the Tribunal said no, they are not. They are part of the manufacturing process. And they bring you to the finished product.

I think that that's really the issue. The issue is how can something be a wheel if it can't function as a wheel? And that's where the evidence is. They had only two witnesses, giving evidence. I believe they were credible; they certainly answered their questions honestly. They were forthright, and I think you should give them considerable weight.

Now, in terms of what you do have to do, and link all of the information to the tariff items, Mr. Baxter is going to deal with that.

ARGUMENT BY MR. BAXTER:

MR. BAXTER: Thank you, Peter, thank you, Madam Chairperson. I am going to be making more of what I would classify as legal submissions around the customs tariff, specifically, and relevant case law. We have briefed it, but now is the chance to take your good self through it, Madam Chairperson, and to apply if we can the legal learning to the facts as before you.

For your general guidance, I will be in the factum portion of our submissions, starting at about paragraph 26 and following. You may have paper copies. I am conscious of the fact that we also have electronic copies. With those submissions, I will also be taking you to the legal documents. And the first one I would ask to be turned up, Madam Chair, is tab 24, which are the General Rules for the Interpretation of the Harmonized System.

These are as you are well aware -- and that's at tab 24 --

PRESIDING MEMBER: I don't believe that we will be putting those up, but I do have access to them.

MR. BAXTER: Okay. You can't put them up. So do you have a hard copy access to our briefs, Madam Chair?

PRESIDING MEMBER: Do I need to have hard copy access?

MR. BAXTER: It may be of some assistance,

particularly when we are dealing with tab 25 and tab 26 which are case law, including recent case law from the Supreme Court of Canada. And we could probably pass you a copy.

PRESIDING MEMBER: Do you have an extra copy there or I can always run and get my computer and follow along. I will just have to take a brief minute to grab my laptop.

MR. BAXTER: Let me just consult, please.

PRESIDING MEMBER: Sorry for that, Mr. Baxter, just conferring with my colleagues. Is there just a couple of items that you need to refer to going through?

MR. BAXTER: Yes, there will be a number of tabs. I had understood, obviously correctly, that there were hard copies available to you. This is like the book of authorities essentially at the end of a trial. Unfortunately, I had an extra copy, I didn't bring it because I was conscious of the fact that you had things both electronically and in paper.

PRESIDING MEMBER: We are very much paperless here. And I apologize, I did not bring my laptop. The Registrar can bring them up.

MR. BAXTER: Perfect.

PRESIDING MEMBER: It's a matter of, if there's a lot of jumping around. Do you perceive that?

MR. BAXTER: No.

PRESIDING MEMBER: Or it may just be better for me to go and grab my laptop?

MR. BAXTER: I don't think there will be a lot of jumping around. So why don't we try that. And if you find it too confusing, we will certainly adjourn. I think it is important for us to look, for example...

So there we have Igloo Vikski. We are coming to that. But if we go back, Madam Registrar, to tab 24, let's start there.

PRESIDING MEMBER: Okay. We will see how this goes.

MR. BAXTER: Yes.

PRESIDING MEMBER: Okay, thank you.

MR. BAXTER: There we are. So these are a familiar document to all, no doubt to yourself, Madam Chair. And I will go slowly and enable you to take notes, and hopefully we can all read it together.

So these again are the General Rules. They have been briefed in our factum section of the submissions. And just for your reference when you are back with your laptop and documents, starting at about paragraph 26. So Ronsco, the Appellant, will call the Tribunal's attention primarily to Rule 1 and Rule 6 of these General Rules. The important part of Rule 1 is 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 following provisions..."

So that is where we start. And if we could scan down then to Rule 6, and I am just going to show these to you and then take you to the consideration by this Tribunal and the Federal Court of Appeal, Rule 6 says:

"For legal purposes, the classifications 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, on the understanding that only subheadings of the same level are comparable. For the purposes of this rule, the relative section and chapter notes also apply unless the context requires otherwise."

So in our submissions and what we have briefed for you in, as I say, the argument portion, is that these create a methodology. They don't dictate a result, they create a methodology for the reading of the customs tariff,

the legislation that you are being asked to apply.

And the key parts are that, first of all, you look only to the headings at the same level, and only when those do not resolve the issue do you go to the next level.

If I could have Madam Registrar, you turn the court to tab 26, and I will go to paragraph 7. This is a Federal Court of Appeal case, so that's record page 296. And you will see paragraph 7 is blacklined, and I am going to start reading there at about the fifth line, that says as follow, towards the right-hand side of the page:

> "The General Rules are structured in cascading form. If and only Rule 1 does not resolve the classification, then regard must be had to Rule 2 and so on, as necessary."

And this is a Federal Court of Appeal case that you are going to see cited in the Supreme Court of Canada decision that we are going to come to instantly. And it is that if-and-only-if language that I think is appropriate for this court to bear in mind as we come to the specific customs tariff language at issue.

The intent of Rule 6 is that that same methodology applies as we go through various customs tariff items, 1-dash, 2-dash, 3-dash, 4-dash, and we will come to that with the specific example in question.

I would next like to go to tab 28, Madam Registrar, and that is the D-memo that is cited in our factum. And if you could go with me to record page 322, and in particular paragraphs 27 and 28. This is the D-memo which is obviously an internal document, but it's used, frequently used by this Tribunal and other judicial instances to inform their reading. And paragraphs 27 and 28 are relevant here. It says:

> "The classification process reflects a hierarchical structure of the tariff. Headings are only to be compared with other headings. No consideration is to be given to the descriptions found in the subheading tariff items or statistical subdivision when determining which heading is applicable."

No. 28:

> "The same process is followed when selecting each level of subheading, tariff item and statistical breakout."

So what that is doing is clarifying with specific reference to the customs tariff the General Rules which we have just looked at. And we don't need to turn it up but for your reference at tab 29, we have given you a decision of this Tribunal -- in 2015, the CDC Foods case --

where it's made quite clear that in particular these paragraphs and that process or that methodology is to be followed in doing the analysis required under the customs tariff.

So I have directed you now and I am sure you have noted tabs 24, tabs 26, tab 28, tab 29. Let's go back, if we can, to tab 25. That is the Supreme Court of Canada guidance in the Igloo Vikski case. Of course, all of what I have just spoken of is somewhat ancient history in the sense that these cases were decided and these memos were written without the benefit of the definitive judicial consideration of this methodology and of its application in the case before you to the customs tariff.

So the Gladuee case that we referred to is from 2009. This case, as you see, is from 2016, in the Supreme Court of Canada. It's a unanimous decision authored by Justice Brown. And it's about the interaction of the General Rules and the customs tariff. I am sure, as a sitting member of this Tribunal, you have had occasion to study it at great length, and I obviously don't need to tell you, a member learned in the law, of its significance as a binding precedent to this Tribunal and indeed to any other Tribunal or court in the land.

In particular, this case deals with the question of unfinished or incomplete goods, and the notion of parts

of goods, which has emerged today and in the briefs as a key issue.

So, the goods in question in Igloo Vikski, as you are aware, are hockey gloves for goalies. The specific facts about those goods as imported are in the appeal; they are set out in the judgment of Justice Brown, and they are not really relevant to this, a very different good imported.

What is relevant is what is found at paragraph 19 and following of the judgment, so perhaps we could turn there, Madam Registrar, and all look at it together. Paragraph 19 and following is where the Supreme Court in its unanimous decision talks about the structure of the General Rules. And there is some introductory -- as I said, this talks about a methodology. It doesn't dictate any particular result. It introduces in paragraph 19, 20 and 21 as a kind of hierarchical or cascading series of classification rules. But really where the rubber hits the road if you want to put it that way in this appeal is at paragraph 22, if we could go over to paragraph 22, because the Supreme Court of Canada teaches us that these rules mean what they say and that they dictate a certain approach to the customs tariff as drafted.

And my friend Mr. Clark used the term relitigating Igloo Vikski. In our submission, and I think

you will find that that is precisely what the CBSA would have you do in your capacity here as decision maker, Madam Chair. Study carefully, if you will, the wording of the revocation document which we found in October of 2018, coming four weeks after this party's submission to the President of the CBSA in this appeal which, of course, was ultimately unsuccessful resulting in this appeal to you.

Study carefully the wording of it, because you will see that that wording comes right out of Rule 2a. But what the Supreme Court of Canada directs us in Igloo Vikski is first of all you apply Rule 1 and, where Rule 1 determines the issue, that is where the analysis ends.

So I will read to you, and then we will apply it to the facts of this case. So paragraph 22:

> "In some cases, applying Rule 1 alone does not settle the classification of a good. Where the goods are unfinished or where they are comprised of a mix of materials or substances..."

...and then these brackets are very important:

> "...and where no heading specifically describes the unfinished or composite good as such, Rule 2 is applied."

Recall the guidance of the Federal Court of Appeal in Gladue: if and only if Rule 1 does not suffice

do you see proceed to Rule 2. And here, the Supreme Court echoes that and says:

> "...and where no heading specifically describes the unfinished or composite good as such."

And then for greater clarity, the Supreme Court of Canada says let's have a footnote, because that parenthetical section is important.

So let's look at footnote 4 together, shall we? And it says:

> "As an example of a heading that specifically describes an unfinished good is 6406, (parts of footwear) and an example of a heading that specifically describes a composite good is 5906, (rubberized textile fabrics). Where a good falls within one of those headings, there would be no need to apply Rule 2, as the heading specifically contemplates the incomplete or..."

...and I pause on the word "or"...

> "...composite nature of the good in question. Rule 1's direction that the classification of goods should be determined according to the terms of the

headings therefore suffices."

And what the Supreme Court of Canada teaches us is when Rule 1 suffices, we don't go to Rule 2. We don't go look at the essential characteristic, we don't go look at -- it looks like a round thing with a hole in the middle, so it must be a wheel and we are going to call it a wheel. Rule 1 and the Supreme Court of Canada says incomplete or unfinished are the terms that is used, and then composite is an "or." It's not an "and", it is an "or.".

My friend in his analysis as you have seen, and it's very skilfully done, puts a great of emphasis on composite, on the term "components" and "composite." And he showed a picture of a wheel which the experts who has worked 48 years in the industry hasn't seen in North America, but presumably it exists in India or somewhere where Dr. Prival(ph) is familiar with it. However, in the North American industry, there are not composite wheels under freight trains in interchange service.

Sorry. So I was trying to discuss the Supreme Court of Canada guidance in this regard, and we come back up in paragraph 22, if I could ask, Madam Registrar, it is precisely the parenthetical:

"...and where no heading specifically describes the unfinished or composite

good as such."

That is a very important portion of a Supreme Court judgment, and then the footnote which explains that portion and expressly talks about unfinished goods as being parts of a finished good is directly relevant to this appeal before you.

I say my friend puts a lot of emphasis on composite goods. Indeed, we have seen that it's unfinished or composite, and my friend is talking only about composite. That's because unfinished is something that the evidence clearly shows the imported goods are. They cannot physically be attached to an axle. They are uncentred, they wouldn't go in. We see you would have to move seven inches on each side of the wheelset. It wouldn't go in any distance, says Mr. Lepore.

So here we clearly have unfinished goods and unfinished wheels. The Supreme Court of Canada tells us parts of wheels contemplates unfinished wheels. The proof, there is proof, also factual proof before you; it's not just legal analysis from the Supreme Court of Canada. For 13 years, between 2005 and October of 2018, CBSA themselves considered these goods, these exact goods imported by a competitor of our client to be unfinished goods. They consider them to be blanks. And they told Sumitomo, clearly, and Sumitomo did, for 13 years, import these

unfinished goods. So CBSA themselves acknowledge that they were unfinished and then, for their own reasons, have revoked that ruling and are defending this appeal here.

Mr. Maher showed Mr. Lepore a picture of a wheel, which he hasn't seen in North America in 48 years. He has been working we heard since 1971 in the industry. Well, customs tariff items which we are about to come to weren't even -- 1971 is well before when the customs tariff was brought into the harmonized system in the 1980s and thereafter. So the customs tariff that we are talking about was clearly a Canadian tariff. It is a Canadian tariff, and my friend is going to make the argument -- I can anticipate a bit the argument he will make. And he is going to speak as if these wheels of which hide nor hare has been seen in North America for 48 years are something else, and they are not the wheels that Ronsco is bringing in.

So let's look, shall we, at the customs tariff, and I have given my friends copies. And since I am a more or less visual person, I have some visual aides to argument. So could I pass up or have available to you, Madam Chair, the colour-coded items?

PRESIDING MEMBER: I do have the aides to argument. Thank you.

MR. BAXTER: Yes. We will start with the more

fulsome one, if I could. This is the entire 86.07, colour coded by hierarchy, if you want to put it that way. We have the heading and then the blue items are the one-dash, and the yellow items are the two-dash and, in both cases, my friend admits in his responding materials that it's agreed.

And where the rubber meets the road so to speak is at the three-dash level. And so you will see in this longer aid to argument, the three dashes are coloured in green.

But there's even more agreement between the parties than it would seem, because the parties all agree that the only relevant green, three-dash items Madam Chair, are these two in the middle of the first page. And that's why I am going to pass you a shorter one. It's just these two green items, under 8607.19, "other, including parts", and it's between "wheels, whether or not fitted with axles," and 8607.19.30.00, "parts of wheels." That's the only two that are in question.

So we can now sort of discard this because hopefully you have been provided with the shorter version, which is really where this case stands to be decided. So what do we have here? We have the relevant sections, and we are fresh from the guidance of the Supreme Court of Canada in Igloo Vikski, which tells us how to use the

General Rules in interpreting this.

And the General Rules say, yes, you start at the heading and then you get down to the one-dash bogies, Bissel-bogies and then you get down to the two-dash, "other, including parts." And so we are all in agreement there.

And then we go to three-dash, but recall we don't go beyond 3-dash. We can go green, but we can't go red. Red means stop, and we don't go to red if three-dash answers our questions. So the 2-3 dashes in issue in this aid to argument, "wheels, whether or not fitted with axles" or "parts of axles or wheels." "Wheels, whether or not fitted with axles."

Wheels must be capable of being fitted with axles to be included there.

Wheel blanks, wheel bodies, wheel plates, they must be capable of being fitted with axles. And we have heard evidence today, I think the evidence has been quite clear: If it's not capable of being fitted with an axle, it's not a wheel.

My friend Mr. Clark has made submissions about what the essential characteristics -- and I shouldn't even use that term, because it actually is a loaded term in this. He said what a wheel is, but we have heard that you can't put these things under trains and, even if you could,

the train would derail and that wouldn't be good.

So "wheels, whether or not fitted with axles", of course that includes wheelsets. And we have heard today that there is evidence of extensive importation into Canada of wheelsets. Those are wheels fitted with axles, and they are coming into Canada. And they presumably go under that three-item heading.

And then there is parts of wheels. That is where the decision falls for this Tribunal to make. So the General Rules direct us to first apply only the green; we have done that. The Supreme Court of Canada and the Federal Court of Appeal say don't go to red unless the green, quote:

"...fails to resolve the matter."

That's from the Federal Court of Appeal case I have called to your attention.

So, the Supreme Court of Canada in Igloo Vikski does resolve the matter. Indeed, it tells us, it directs us, it explicitly tells us that unfinished goods are specifically described in subheadings as parts of goods. And we recall footnote 4; we just looked at it together.

So let's look at other instances of unfinished goods, if we can. And I have caused to be handed up and I believe my -- does my colleague have a copy of the other aids to argument, my friend rather, Mr. Maher, should

receive a copy of -- there are three sort of visual things. I say I am a visual person, and I have given Madam Pelletier three -- pardon me, okay -- and the Tribunal member should have one as well, Ms. Edwards. Yes.

MR. MAHER: Sorry. I will have to cut you, just right away. I am sorry to interpret your argument. I would still have to make a strong objection for the filing of this on the record. I understand what, you are trying to make analogies. But if you wanted to do such, you should have done this way before the closing arguments. So I would ask the Tribunal to ask counsel to not use this, not refer to this and to accept this on the record. But...

PRESIDING MEMBER: Just to confirm, both the definition that was referred to by Mr. Clark as well as these aids to argument, they are not evidence. They are not forming part of the formal record. This is again just an aid to argument as opposed to evidence that I would be looking at with respect to deciding the decision.

MR. MAHER: Okay, yes.

PRESIDING MEMBER: So I appreciate you are saying it's as part of the record, but I don't see these as going as part of the record that when I go back and look at an electronic record, these would not be included in it. I just want to make sure that that is my understanding, that these are not going to have an exhibit number. And when I

go back to refresh, that I will have the transcript I will read through, but it will just be referencing. Is that my understanding of the use of these, that they are not to be put forward as exhibits?

MR. BAXTER: Quite so. In fact, I would suggest you could dispose of them after your deliberation in this matter. They are simply as I say a visual representation of something. Some of us think better visually than others, and I am going to urge upon you a visual representation of what the Supreme Court of Canada directs us to do in words.

PRESIDING MEMBER: As an aid to argument for this process, I will be looking at them just during this argument.

MR. MAHER: Yes.

PRESIDING MEMBER: And I will not be looking at them through any deliberation, just to confirm.

MR. MAHER: Okay. I just want to say another thing: I would have appreciated to have those before the closing arguments. You had those prepared, I guess, at the beginning of the hearing. I gave you my aids, so it's just for like we are on the same playing field, but...

And I am reassured by the Tribunal's approach to these documents, so...

PRESIDING MEMBER: Yes. And I do apologize, Mr.

Maher. I was also under the understanding that you had received copies --

MR. MAHER: I did not.

PRESIDING MEMBER: When we first discussed this at the very beginning about the aids to argument, I had thought that they had already been exchanged. So I should have clarified that, as well.

MR. BAXTER: I was under the understanding that they had been distributed through Madam Pelletier to everybody but, as you say they are not evidence. They are absolutely not evidence. They are a way of thinking about something.

And so if I may and with that understanding, I want to show you an unfinished good. I am going to show you an unfinished statue. It is a picture of a statute of a woman. There are two pictures of it; one on the side and one on the front. That's not a statue. That's an unfinished statute. I have given you other, by a better-known sculptor named Michelangelo, unfinished statues from Michelangelo. And indeed, although this is of course not evidence, the website from which it is obtained is on the bottom. And the art historian who is writing about it notes, he gives us the names of the items and then he says:

> "...referred to as non-finito, or incomplete..."

...another term that we find in the footnote, you will recall, Madam Chair of the Supreme Court of Canada -- incomplete and unfinished are both used there as definitions in the parts of goods analysis.

So those are parts of a statue. The art experts say they are unfinished. You need to take away things, some disassembly required as some toys would say. You need to take away things by precision steps in order for it to be a statue.

The "David", the third example that you have, now that's a statue. The statue here is a finished statue. It's capable of going in a museum and it's capable of -- and it is a finished statue. In our case, we have a complex and detailed set of precise rules, the AAR rules about what constitutes a finished wheel that can be fitted with an axle, so that would be consistent with the first of the green headings, capable of being fitted with an axle, and it can be put under a freight train. Those are complex and precise rules for a reason, for the safety reasons that we have heard about.

To use this analogy and perhaps stretch is too thin, but I leave it for your consideration, Madam Chair, the analogy in the art world would be if there were a complex and detailed and precise set of rules saying precisely what must constitute a statue in order to be

displayed in the museum. For example, you must be able to see all the statue's limbs very clearly. If you can't see all the limbs clearly, it's not a statue; it's an unfinished or incomplete statue.

So in the presence of those rules, "David" is a statue, and the others are unfinished and therefore not statues as defined by the context, by the industry, the art industry in that hypothetical case.

Here, of course, the goods as ported can't even be fitted with an axle. They couldn't jam them on if you tried, was the evidence I heard today. They can't be wheels. The essential characteristic of a wheel is it can be fitted with an axle.

The Supreme Court of Canada tells us an unfinished wheel can be defined as a subheading, as part of a wheel, and that indeed it is.

So Rule 1 answers the classification questions. We don't proceed, as my friends would have us proceed, to the red, the four-dash item, "other" and say, well, you know, it's not a part of a wheel, it an "other." And you are not allowed to go there, says the Supreme Court of Canada, because the Supreme Court of Canada has looked at the general interpretation rules and said this is how you must apply them, thou shalt apply them in the case of Canadian legislation, and your interpretive function.

And I come back to the point that my friend did seem to cite to an India author, and a picture of some form of component or composite wheel, and urged upon the Tribunal that that must be -- I am going to anticipate here -- that must be what the legislator meant in its wisdom.

Well, that is a form of wheel that has not been seen since long before the customs tariff in question here came into being, and since long before the harmonized system and the bringing of Canadian legislation into the harmonized system occurred.

So the evidence before you is that's not what they were talking about. The legislature, Parliament in its wisdom wasn't talking about the diagram that my friend has shown to the witnesses.

Just one second, please. Thank you, for your patience, Madam Chairperson. Those are the arguments.

PRESIDING MEMBER: Thank you, both Mr. Clark and Mr. Baxter.

Mr. Maher, are you ready to proceed? Or would you like a five-minute break?

MR. MAHER: No, we are fine. Yes.

PRESIDING MEMBER: Ready to go?

MR. MAHER: Yes.

PRESIDING MEMBER: Okay.

MR. MAHER: Maybe give me 30 seconds, just to

organize my space.

PRESIDING MEMBER: Definitely, take your time. Thank you.

Actually, while you are organizing that space, Mr. Clark had raised an issue earlier with respect to undertakings and limited undertakings of the CBSA, and went and did a little bit more; I just wanted to put on the record, the practice and procedure in an appeal hearing, it is a little different than a SIMA hearing. One reason that the CBSA signs the limited disclosure in appeal cases is they are always the Respondent on these cases and as such, for most confidential information, if it relates to customs information, it's in their file, they are already aware of that confidential information. Which is a subtle difference, and I do appreciate though in this case, is a new hearing that perhaps all the confidential information filed wasn't prepared as part of the verification and the redetermination.

So it is quite common practice that the CBSA sign limited undertakings in other files, but the Tribunal does have discretion of course, one way or the other, to have them in the hearing. I hope that gives you a bit more background on the limited undertakings with respect to appeal hearings, Mr. Clark.

MR. CLARK: Usually, we have to agree to those

limited disclosures, from our side.

PRESIDING MEMBER: And that is true, that's usually discussed beforehand, that both counsel are aware of what confidential information is going to be raised and whether you would already be aware if that information was in the purview of the CBSA. So it's very appropriate to bring forward that comment earlier, and I think, as we did clear the room, then there should be no issues. Thank you.

Mr. Maher, have I given you enough time to --

MR. MAHER: What time is it, just for the purpose of not going too late?

PRESIDING MEMBER: It is 4:23.

ARGUMENT BY MR. MAHER:

MR. MAHER: Good afternoon, everyone. Good afternoon, Tribunal Member Beckett.

So as you know, the issue before you today is whether the goods are properly classified under tariff item 8607.19.29 as "other wheels, whether or not fitted with axles", or should be classified under tariff item 8607.19.30, as "parts of axles or wheels." I will try to refer to the actual wording of the tariff item and not the numbers, just for efficiency and ease.

So of course in order to do that determination between those two tariff items, the Tribunal will have to look at the meaning of a wheel, or should give regard to

the meaning of a wheel, and should also give regard to the industry's understanding of what is a wheel and the characterization of the goods in issue, and also the industry's different uses of different terms.

Ultimately though, that being said, the wording of the relevant tariff provisions and implicitly Parliament's intention should remain the Tribunal's first guide in its adjudicating task today.

So just to be very clear, it is the Respondent's submissions/position that at the time of importation, the goods, wheels with a rough bore, fall under the scope of three-dash tariff item, "wheels whether or not fitted with axles."

It is also the CBSA's submission that they should be considered to be finished for the purposes of tariff classification. So the wheels as imported should be considered to be finished, and that is -- and so their clarification should be made, relying exclusively on Rule 1 and not on Rule 2a and 1 of the general interpretation rule. So just to make our position very clear, but that's already in our brief.

To date, the CBSA has chosen not to present any witnesses, and there is a reason for that. It is because we think that Rule 1 and the wording of the tariff is dispositive of this issue today, mostly.

In fact, we agree with most of the content of the expert's report. We feel like his testimony was enlightening for all parties and the Tribunal. I would like also to get out of the way -- I would like to state that my friend has referred to the advance ruling. And I won't refer to it again unless you have questions, but it is still our submission that those are irrelevant, they do not pertain to the goods in issue and they were issued to a different importer. And I refer you to the case of Helly Hansen and H. Topaz(ph), that I have mentioned last week.

And I would also like to emphasize that this is a de novo appeal, and so the position of the CBSA today is as I have just presented.

So I will address four main points. First, the fact that the goods at the time of importation already have all the principal characteristics of forged wheels. I will address then the meaning of wheels, or wheel, as interpreted by the industry and all the stakeholders.

Third, I will talk about how the goods cannot be classified as parts of wheels because they don't meet the test.

And four, I will make submissions on the actual structure of the tariff and the wording of it, and hopefully will show that the term "wheels" in the tariff includes wheels with rough bores.

So my first point: The goods have all the principal characteristics of wheels. I think we have heard evidence to that effect today, extensive evidence. It is our position that the goods at the time of importation have all of those principal characteristics. As you know, they are formed from a block of steel that then according to Ronsco's own documentation becomes at some point a wheel blank, and then it's so differentiated that it's not a wheel blank. It cannot be called a wheel blank at the end of that 18-step process.

And so when they are at the end of that process, when they are imported, you have heard evidence that the goods have a rim, they have a plate or a web, a hub, a tread, a flange, a bore, so they have all the geometrical -- I like that word that you used, the geometrical parts of a functional wheel. And that was confirmed by both the witness, Mr. Montgomery, and the expert, Mr. Lepore.

In order to reach that sophisticated geometrical shape, we have to go through that highly sophisticated 18-step process of manufacturing.

So at the time of importation the goods have already been machined, treated and modified to such an extent that they already possess all of those principal geometrical parts or principal features of a forged wheel.

On that note, I would also add that I would

refer the Tribunal to paragraph 36 of the expert report, which is Exhibit 17A. In that paragraph, the expert states that:

> "The principal characteristic of a forged wheel is its reduced impurities, so it can have that improved resistance to fatigue and improved resistance to lower temperature."

And he has confirmed today that at the time of importation, the wheels have that principal -- he called it the principal feature of a forged wheel, if I am not mistaken. And that is found at paragraphs 35 and 36, at page 10 of his report.

The witnesses have confirmed that this is a highly specialized process which requires a specialized work force, specialized machinery and tools. And so the wheels with the rough bore at the time of importation have been manufactured to such an extent that they have still somehow relatively precise bored diameter of eight and three-eighths inches or, depending on the transaction, some have 8.5 inch, and as it was specified in the contract between the parties.

And they are manufactured to such an extent also that they can only be fitted with Class F or Class K axles, and we have heard today that Class F and Class K are

actually the same size. So really, the goods are manufactured to an extent that they can only be fitted with one type of axle.

And so the fact that the wheels are imported with a rough bore, like the goods in issue today, it is our position that this is irrelevant to their fundamental nature.

Now which brings me to my second point, the meaning of "wheels" as interpreted and used by the industry. So this is another strong indicia that the goods should be seen by the Tribunal as complete wheels or finished wheels, or wheels that are outright, because various industry stakeholders, including the Appellant and the manufacturer, actually refer to the goods as "wheels."

Of course we have seen that some terms are used interchangeably, and sometimes those stakeholders use other terms. But the fact remains that they still often use the term "wheels" in order to refer to the goods.

As you know, the Tribunal must interpret a provision in its entire context. And so as such, the railway industry interpretation of the term or use of the term should be given regards by the Tribunal. And we have cited that case in our brief, the EMCO Corporation v. President of the CBSA. It stands for the proposition that industry standards like the ones we have seen today, the

AAR manuals for Section G and Section G-2, can constitute evidence of the industry's interpretation of a term. And we have seen that in those documents, and the American Association of Railroads -- which is comprised of big players such as CN and CP -- they have chosen to refer to their goods as "wheels", during the manufacturing process and then after, for the custom boring process and the mounting process.

So we think that relying on EMCO and the fact that the industry uses that term in the standards, that should be a strong indicia to show that the goods should be seen as wheels, outright.

The standard, again, refers strictly to wheels. It doesn't use the term "wheel blanks", it doesn't use the "wheel plates" and nowhere is the term "wheel bodies" mentioned. And so nowhere in the standard is there a term used to refer to the alleged unfinished nature of the goods.

And at the time of importation the goods meet the Section G; that relates to the manufacturing of wheels, and I am just borrowing words from that standard.

And in fact, and we have gone through it with the witness, the expert witness, Section 16.1 of Section G of the AAR manual expressly states that wheels shall be manufactured with a rough bore.

Also, in Partylite Gifts v. Canada Revenue Agency, which is in our brief, too, the Tribunal has stated that the manner in which the goods are marketed can be also relevant for tariff classification purposes for the Tribunal.

And again, I won't go into details into all the references in the documentation. It's all in our brief but, very quickly, the Applicant refers themselves to the goods in issue as wheels in some of the documents they provided at tab 3. In their custom coding forms, they sometimes use the word "wheels."

And in fact, in their contract with the Appellant, the only word that is used is "wheel." The manufacturers refer also to the goods in issue as "wheels." Again, also in their contract together, but also in their website, they market themselves as a manufacturer or a producer of H-36 freight car wheels. That should also be given regard by the Tribunal.

And we have seen that also various stakeholders refer to the good in issue as wheels, having gone through them in detail. But an example would be -- it's all in our brief; I will just skip that.

What is also interesting in this case is the Applicant's marketing of itself. We have seen that, on their website, they market themselves as a wheel supplier

as opposed to a wheel manufacturer. And that should also be given regard.

And this use of the term was actually confirmed by the expert in the expert report, and he confirmed this today via testimony. He confirmed that wheel blanks and wheels are used interchangeably at paragraph 14 of his report, and he said that wheel blanks and wheels are the most commonly -- chief, he says "chief" -- so most commonly used term in order to refer to the goods in issue.

So it's not just a wheel shop that uses the term "wheels" in order to refer to the goods in issue -- as incorrectly, we submit, stated in the expert report. But it is rather the whole industry: the manufacturer, the Ronsco, the Appellant, the AAR and other stakeholders.

In fact, at paragraph 10 of his report the expert states:

> "The specific item has many names in the railway industry, including wheels and wheel blanks."

I want to just spend a few minutes or go quickly over the term "wheel bodies" that is used by the Appellant throughout their brief and their documentation. We think that this is an incorrect translation used by the Appellant to further their arguments that the goods should be classified under "parts."

From the evidence before the Tribunal, we note that nowhere in the expert report does that term appears. And also nowhere in the documentation provided by the Appellant is that term used in order to refer to a wheel with a rough bore. And, in fact, at tab 12 of the Respondent's brief, which is Exhibit 11B, the ISO, which is the International Standards Organization. So it's an international organization that works for the standardization of goods and terms. They translate "corps de roues", as "wheel centre." And you can find those again at tab 12 of the Respondent's brief.

So it seems like, from the evidence, "corps de roues" is better translated into the words, "wheel centre" in English. From the evidence we have heard from the expert, a wheel centre is a part of a certain -- it seems to be a part of a certain type of wheel that seems to be not really a lot in use in North America or in Canada at least.

But, yes, we still contend that a wheel centre or a corps de roues would be something that is -- the part that is referred to in the documents that I brought the witness to.

The proper translation of corps de roues as wheel centres is further supported by the WCO Explanatory Notes. So I would like to take the Tribunal, in my little

aid sheet; I think you have it before you. So this is all already in the record. The first one is the relevant tariff provisions, the first page. And the second page is the legal note to Chapter 86. And then the WCO Explanatory Notes to what parts are. Okay?

So we created this just so you have, like, a very easily accessible way to compare not only the two languages but also the Explanatory Notes, the legal note and the tariff provision.

So the ISO translation of corps de roues to wheel centre is supported by the Explanatory Notes. Here, you see wheels and parts thereof, wheel centre, metal tires, et cetera.

In French: "Les roués et leurs parties (corps de roués, bandages, frettes, centres, etc.)"

Now I recognize that this list is not perfectly concordant because, in the French version, there's more examples of parts provided. Do you see that?

But we still see that wheel centre and, in French, the first one is corps de roues. And so what's a bit confusing is that in the French version of the Explanatory Notes, they use the word centre. So the wheel centre translates into French to "centres" but, no, the answer is no. Because "centres" in the French version is not the translation for wheel centre. And we can conclude

that by looking at the legal note, where all the terms that are listed are corresponding. So there's the same amount and they correspond to each other.

In English, axle wheels, wheelset, metal tire, hoops and hubs and other parts. In French, les essieux, roués, essieux montés, which is a wheelset; bandages, metal tires; frettes, hoops; and hubs would be "centres", in French, et autres parties de roués.

So I just wanted to make that clear. I know it is a bit fastidious, but I just wanted to bring that to the attention of the Tribunal regarding the term, "wheel bodies." And in any event, even if the Tribunal were satisfied that the term "wheel body" is indeed a term used in the industry to describe the goods, we would still contend that even if we called them "wheel bodies", they would still fall under wheels for the purpose of tariff item that ends with '29.

Which brings me to my third point, how the goods don't meet the test to be considered a part of a wheel. Mainly this is because they are not designed to be assembled to another component of a wheel. In and of themselves, as imported, they constitute wheels.

As you know, the test for parts have been outlined and detailed in a memorandum. In CBSA's memorandum, parts is defined as being:

> "...an identifiable component of an article, machine, apparatus, equipment appliance or specific goods in which it is integral to the design and essential to the function of the product in which it is used."

And the Tribunal has previously accepted that definition in past decisions; we have cited one in our brief.

So here, the evidence shows that the goods are one piece, made from one piece of steel. There are what we could call monoblock wheels. And they will not be assembled to another component. So they cannot be seen as being an identifiable component, nor to be integral to the design of a wheel or essential to the function of a wheel because they already are a wheel.

And we have provided examples of what could more possibly fall under what could be a "parts of wheel." And I refer the Tribunal to tab 14 and 13 of our brief.

Now, the Appellant has relied on Atomic Ski, that case about Atomic Ski. And I this the Atomic Ski is very distinguishable from the case before you today. The evidence in that case showed that the goods at issue were only a component of inline skates and, after importation, they have to be assembled together; so different parts had

to be assembled together in order to form a complete good.

As I have stated before, the wheels are formed into their state of importation through a complex and sophisticated 18-step process, and they exhibit all the principal characteristics and features of a wheel.

And I think the legal note is also useful. It provides an example of what could be seen as parts of wheels: metal tires, hoops, hubs and other parts. And the Explanatory Note is also informative in that regard, because it lists wheel centres, metal tires, et cetera. So those are, according to the legal note and the Explanatory Note, examples of what could be considered "parts of wheels." And we have seen that the goods here are not those things.

Now, about the custom boring process. It is the Appellant's contention that because they undergo this precise custom boring process, which is comprised of a finished cut and a chamfer cut that makes the good parts of wheels. We disagree. We think that the Tribunal must be very careful in how it sees that Section G-2, that "other" phase. This process is usually conducted in a wheel shop, but it doesn't pertain to the actual manufacturing of the goods, or the transformation of the goods into actual wheels, whether or not fitted with axles.

We would submit that that process should be more

properly referred to or described as not -- it's not the manufacturing process; it's the customizing of the already finished wheels to a specific axle so that they can all make together a wheelset. So that process doesn't relate to the manufacturing of wheels but rather to the fitting of a wheel with a very specific axle, and then the transformation of those goods into wheelsets. But the wheels are already wheels when they arrive at the wheel shop.

So the custom boring process is not to transform the goods into wheels, and change their tariff classification from parts to wheels. But more accurately to -- the purpose of it is to fit or combine the wheels with a specific axle, and ultimately, so that they can form a complete wheelset.

And this is supported by the expert report. And I want to cite some parts of it, because I think they are very telling about that distinction I am telling you today.

At paragraph 10 of the expert report, the expert states:

> "Ronsco imports unfinished wheels, which are then mounted on axles and supplied to the railway industry as wheelsets."

So the emphasis is put on the mounting and the making of wheelsets.

At paragraph 18 at the end of the paragraph, the expert states:

> "I assume that such H-36 wheels are supplied with a rough bore, which will require further machining after importation in order to mount them on an axle to be applied on a freight car truck, not in order to finish the wheels. They are already finished."

At paragraph 16, the expert says:

> "The process of boring wheels to make it possible to press them on to axles is critical."

So again, the expert makes a direct link between the boring process and the fitting with the axle, so the boring process serves that fitting process rather than the manufacturing of the wheels.

And at paragraph 29 of the expert report, it states:

> "Section G-2 covers the process of finishing the wheels, i.e., mounting them on an axle."

In fact, reading the expert report, it seems clear that the expert -- it is clear for the expert that the purpose of that custom boring process is more to

transform the wheels into a wheelset, and less to transform them into a finished wheel.

And then I just want to take you to paragraph 36 of the expert report where he states:

> "Wheels only exist for railway use, once their boreholes have been finished and they are mounted on an axle, such as they are part of a registered wheelset. Prior to that, a wheel has no use in a railway setting."

So, really, for the expert, a wheel is not a wheel until it is a wheelset. And we would disagree with that for tariff classification purposes.

At paragraph 48, the expert states:

> "The additional work, the boring the hub, ensuring that the borehole and therefore the axle are centred and adding the chamfer is the key operation for mounting the wheel on an axle."

So again, that process relates to the mounting of those goods that are already finished together, rather than -- and their transformation into a wheelset, rather than they are to complete their individual manufacture.

I think also it is telling that this custom boring process is provided for in a different standard or a

different section than the one for manufacturing wheels.

And actually, Section G-2 does not speak to the actual specifications or the shape or all of the characteristics of a forged wheel. That section doesn't speak to the requirements that wheels have to meet.

And both witnesses confirmed today that wheels, axles and bearings must all be worked on and pressed so that they can be fitted together, so it's not just the wheel. So it is our position again that the custom boring process relates more to the fitting of those goods together rather than their individual manufacturer.

And so this concludes my submissions for my third point, on how they do not meet the test for a part, these cannot be seen for a part.

Which brings me to my fourth and final argument, about the tariff structure and wording, and how it supports the CBSA's position today. So if you can have that handy, I will be referring to that a bit. So now we have talked about how the goods have all the characteristics of a wheel. We have talked about how the industry refers to them very often as "wheels," and the fact that they cannot be characterized as parts.

But again, like I told you in my introduction, the CBSA must ultimately go back to the tariff provisions and the wording of it in order to interpret it and classify

the goods.

Now, if you look here, if we look at the three-dash tariff item, "wheels, whether or not fitted with axles." I just want to spend some time and emphasis how it is all worded. So here, we have wheels. Okay, whether or not fitted with axles. So it indicates to us that Parliament wanted to capture both a wheel that is already fitted with an axle, and we have heard today that that is usually called a wheelset.

Parliament also wanted to capture a wheel that is not fitted with an axle. That is part of the same tariff item, three-dash tariff item. We think that, just by reading this, it is clear that Parliament intended to capture wheels with rough bore. We heard evidence today that the goods in issue are always imported with rough bore, so that is relevant for the interpretation of the tariff item here.

And so we think that the reference to "wheels, where not fitted with axles", actually refers to the goods in issue, "wheels with rough bores." We have also seen that the custom boring process and the mounting happens at the same time so, really, if you import a wheel with an axel, this process has already been done, and it's a wheelset. If you import a wheel not fitted with an axle, it will invariably be a wheel with rough bore.

So the tariff provides for an independent wheel, not fitted with an axle. And we have seen today that those goods are wheels with rough bores. They don't spend some time being imported with their finished cut, and that is because they need to be -- we need to make that process in a certain amount of time, and they need to be fitted with a very specific axle.

I would also like to emphasize by reading this that functionality as a wheelset is not -- it does not seem to be a part of -- it is not relevant for tariff classification purposes. I think that if the legislator says "wheels not fitted with axles", it necessarily includes wheels that are not ready to be transformed into a wheelset yet.

So we think that using Rule 1 only, the goods are already captured in this three-dash tariff item. And even if the Tribunal would agree to describe the goods as being unfinished in nature, I think that what I have just said, the three-dash tariff item already captures their unfinished nature so they would -- under Rule 1, you wouldn't have to go to "parts." You could just stay at that three-dash tariff item.

Now that we have determined this, we go to the four-dash tariff item. I won't read the first one, but we know it's wheel blanks for the use in passenger cars, put

roughly. And the other one is "other." And as you know, other is called a residual tariff revision. And so because there are only these two, if the wheels are not wheel blanks for that specific use, then all the other goods that fall under that three-dash tariff item, "wheels, whether or not fitted with axle," are captured under "other."

Now it is interesting to see if you look up an axles, three-dash tariff item for axles, it's kind of -- the four-dash tariff items are structured the same. The first one, for self-propelled railway vehicles, but there's also a second one. In the rough, for the use in the manufacture of axles for railway rolling stock. And then they have, "other", just like the wheel one.

So in this case, it is very clear, for axles at least, that the legislator intended to capture axles that are in the rough, as well. And so similarly, we think that the term "wheels" should be interpreted in the same manner and capture wheels in the rough or with rough bores, for the three-dash tariff item for wheels.

Now, I just want to make some observations on Igloo Vikski that was raised by my friend: So the Appellant relies on footnote 4; I think it's at paragraph 22 or 23 of Igloo Vikski, in order to argue that the alleged unfinished wheels should be classified as parts of wheels. Okay? That is, they rely on footnote 3. But this

footnote must be put in its context.

First of all, it's only a footnote, so we would argue that this was said by the Supreme Court more as an obiter dictum than an actual conclusion of the case.

And Igloo Vikski was really not about parts; that wasn't the subject of Igloo Vikski, of that case. Igloo Vikski is a case of -- it was about hockey gloves, but it is a case that gave further guidance on the GRI and how they should be applied and their hierarchy and sometimes their conjunctive applications together.

So it is not a case that talks about parts as defined by the memorandum, as defined by the Tribunal. It's not a case that talks about the five criteria that have been developed by the CITT. So really, the Supreme Court said that in a footnote, when they didn't have any issue, real issue or submissions on what it means to be a part of something. So I think that should be made very clear.

And also, the Supreme Court only mentions one specific example; they say parts of footwear in tariff revision 6404, which is very particular. And they didn't have the relevant tariff revisions of today before them.

And so, because of all of these points, I think that it cannot be taken as authority for the contention that unfinished goods as defined in Rule 2a must

automatically be classified as a part of a finished good if such a provision exists.

And in any event, I am repeating myself, but the three-dash tariff item provision, "wheels, whether or not fitted with axles," already captures wheels with a rough bore. They are finished wheels, just not yet being fitted with a specific axle and transformed into a wheelset.

And we believe that from the structure of the three-dash subheading, the three-dash tariff item, it's already -- in the wording of it, it's already intended to capture a number of goods at various stages of a wheel, including a wheel blank and a wheel with a rough bore.

Can I just have one quick moment?

PRESIDING MEMBER: Certainly.

MR. MAHER: To conclude, I would just like to make an analogy myself. I don't have pictures of arts, but I will try to pander to your imagination. Let's say we take a wedding dress. Okay? I am a supplier of wedding dresses to retail stores, and I import them from a manufacturer. Wedding dresses will get here in a different size and -- but when they get sold to a client, they will have to be customized because every client has different size and waist and everything. So it's a customization process that has to happen in order for the goods to be fitted on the bride.

So we think that it's similar to the wheel boring process that happens for the goods at issue. They are already wheels; they have all the parts that we have talked about. They already have that fatigue and lower temperature resistance. They already have a relatively precise bore cut. It's just that we cannot import them with a precise bore because we don't know with which axle they will go with. But it doesn't change their fundamental nature. Just like the wedding dress before, it is customized for a bride.

So, in conclusion, we would ask the Tribunal to reject the narrow and overly technical interpretation proposed by the Appellant of the term "wheels" and of the tariff revision. We think that it ignores the wording and the intention behind the tariff item, "wheels whether or not fitted with axles." We think that that already captures the wheels without -- not fitted on an axle, and that necessarily refers to a wheel with rough bores.

We think that adopting the Appellant's position would render the words of that tariff item provision meaningless.

So today, the burden was on the Appellant to show that the goods are actually parts of wheels. Of course, we think that they did not discharge their burden. And so from the evidence discussed today and the evidence

provided by the witnesses, it is clear that the goods cannot be seen as parts of wheels but rather wheels in their own right.

And it would be our alternative position that even if the Tribunal would see the goods as unfinished in nature, as defined in 2a, they would still have to be classified under "wheels, whether or not fitted with axle" and not in "parts", because they just simply are not a part of a wheel.

So the Respondent asks that this appeal be dismissed. And this would be my final remarks for the Respondent.

PRESIDING MEMBER: Thank you, Mr. Maher.

Mr. Baxter, or Mr. Clark, was there any Reply?

REPLY ARGUMENT BY MR. BAXTER

MR. BAXTER: Very briefly, Madam Chairperson. I think Mr. Clark has advised me he has one point or maybe perhaps two short points to make. I have three, and I will go in the order that my friend, Mr. Maher, made them.

He urges upon this Tribunal that the advance ruling certificate is irrelevant. He says to you it does not pertain to the goods at issue and, even if it did, it's not binding on this Tribunal.

Ronsco says, "au contraire, it is very relevant." It shows that for 13 years at least, from 2005

until October of 2018, CBSA considered these goods, these very goods that were coming in to be unfinished. They themselves call them blanks. And it's relevant for the reasons that I have sketched before with respect to the jurisprudence on unfinished and incomplete articles. It is very relevant to the issue before you.

Of course, practically speaking, also the advance ruling certificate is very relevant because it means -- because of a change of position of the CBSA, Ronsco Inc.'s competitors can import these for free and have been doing so for 13 years in a low-margin industry, and Ronsco must pay 9.5 per cent on its highest input cost.

So my friend says they are irrelevant. I say it has a legal relevance to you in that it is evidence of unfinished nature, and it has a practical relevance to the Appellant in this case.

If one were cynical, one might think more about the timing of the revocation letter, but I am not a cynical guy.

The second point of reply, my friend said to the Tribunal, he focused on paragraphs 35 and 36 of Mr. Lepore's report. And I believe he said "The principal feature of a forged wheel is that it's made of forged metal and it enjoys that characteristic on the time of its importation, and therefore it's already destined to be what

it is."

Obviously, I think my friend is acknowledging that a goods classification is to be determined at the time it is imported, but surely I don't take my friend to be suggesting that a wheel as defined is more defined by the metal it is made from than by the fact that a wheel must be capable of being fitted to an axle. And it's truly not more definitive, the material from which it is made, than what a wheel is supposed to do. And Peter Clark gave you lots of submissions on that.

My friend, his third point was this is not a part of a wheel. He referred you to the D-memo. That D memo is included at tab 32 of the materials, Madam Chair. We have briefed that D-memo at paragraphs 42 to 50 of our written factum, and I will just refer you there. We have fully briefed the five criteria, and shown why we take an opposite position from my friend.

But a much more apposite remark is that that D-memo, May of 2014, and indeed all of the case law we have referred you, to predates the Supreme Court of Canada, which has expressly considered this. All of this, the Supreme Court of Canada was aware of those D-memos; they must have looked at them and the Federal Court must have looked at them on the way up, and they have directed us that parts of goods -- sorry, that unfinished goods can

constitute parts of goods as far as the customs tariff.

And finally, my friend in the fourth part of his argument made an argument by analogy, and he directed you to the three-dash item for axles. And he was kind enough to point you to the four-dash item under axles, which states:

> "In the rough, for use in the manufacturer of axles for railway rolling stock..."

...and says, "Well, I invite you, Tribunal, to consider that when they said wheels, they actually implicitly meant that was a wheel, too, wheels in the rough."

To the contrary, Madam Chair, we would submit that Parliament, if it had had meant to do, so would have said so. It would have expressly said so. I believe the Latin maxim, and I am going back too many decades, is expressio unius est exclusio alterius, to express one is to exclude the other. Well, in the axle section, they have expressly stated it. In the wheels section, they didn't state it. They could have stated it. Parliament has presumed to have known what it intended, and it did not say "wheels in the rough are included as wheels." Therefore, wheels as imported here, or wheel blanks or wheel plates or wheel bodies, whatever we call them, are not included in

the term "wheels." If Parliament had meant that, they would have expressly said it. So my friend's argument by analogy in our submission actually proves the other side.

I turn it over to Mr. Clark for a final word. Thank you, Madam Chair, for your patience.

REPLY ARGUMENT BY MR. CLARK:

MR. CLARK: Thank you. I finally found the reference to EMCO. Now my recollection of EMCO that that is a most troublesome thing because it did determine who was the exporter; it's a SIMA case. If they were looking at tariff items in that case, and I don't recall they were, tariff items don't really mean anything in determining goods, subject goods in an SIMA case. They are there for reference and to guide you, but they are not determinative.

Now, as for wedding dresses, I have some experience with wedding dresses having been married three times -- twice to the same one. Okay? Once at the Chateau Laurier and at Saint Brigid's. And I have four daughters.

Now, I can't give evidence, but I think if there had been a witness brought here to support this, as a former president of the Canadian Apparel Manufacturers Institute, I would have had a few interesting questions to them about custom wedding dresses. You don't really buy these things -- I don't want to give evidence -- but, you know, there's a suggestion that you buy them as a standard

product and standard sizes, and adjust them? I don't know anybody who could stay in business if they did that. Thank you.

PRESIDING MEMBER: Thank you, counsel, for your submissions. I do have a couple of follow-up questions myself. I will try to keep it brief; I appreciate it is already a quarter after 5:00.

QUESTIONS BY THE PRESIDING MEMBER

PRESIDING MEMBER: One issue I still am struggling with, and I will direct this question to Mr. Baxter: On 86.07, when we say "wheels, whether or not fitted with axles," I clearly understand that wheels fitted with axle is a wheelset. Can you give me an example of where under that heading what else would be imported. Just based on the evidence, I am having a hard time seeing how there could be anything else but a wheelset that would actually really fit under this category. Do you understand what I am getting at?

MR. BAXTER: Perhaps you could rephrase?

PRESIDING MEMBER: Because this talks about wheels with or without fitted with axles, I understand completely fitted with axles, we can call that a wheelset. But I don't see how there's any place in that specific wording where there would ever then be a wheel that would fall under this category, not fitted with an axle since --

My understanding of your submission, that that would be a rough unfinished wheel, so therefore we just drop down to parts. Is that a fair representation?

MR. BAXTER: Perhaps it's late in the day, I agree. Perhaps I am misunderstanding. A wheel that can't be fitted with an axle is not a wheel is our submission. Are we ad idem, there? Sorry...

PRESIDING MEMBER: No. It's just that the specific language says "wheels, whether or not fitted." So if it's a wheel not fitted with an axle, if that was the only definition, not with, but "wheel, not fitted with axle," I am just trying to get my head around what item that could possibly be under this definition, because I -- based on your submissions, I would always drop down to parts of wheel, because we would be talking about a rough unfinished wheel. Am I understanding your submissions?

MR. BAXTER: I hate to say it; I have just -- might we make written response to you within 24 hours on this? I just -- there's too many terms going around. We have wheel blanks with a four-dash item. This is clearly a broad and inclusive tariff item, but I am having difficulty seizing the precise question. And I am not a subject matter expert in the industry, and Mr. Lepore is no longer under oath.

PRESIDING MEMBER: I am going to try and just

rephrase once more. I guess what I was getting at that is -- a wheel that is capable of being fitted with an axle, but is not yet fitted, is that the kind of a -- that's a wheel that would fit under this category?

MR. BAXTER: A wheel that is capable of being fitted with an axle, but is not yet fitted? Yes, that would fit under this category. Correct.

PRESIDING MEMBER: Okay. Fair enough.

MR. BAXTER: I am sorry. I must have not seized the question the first time, because, yes.

PRESIDING MEMBER: Okay. Yes. I am just again, the terminology and when a wheel is actually capable of being fitted with an axle, but not yet fitted, some of the evidence came through that that may not be something that actually is ever imported. But that's just my recollection of the evidence.

MR. BAXTER: It's quite clear that there may be drafting issues at the customs tariff level but, with respect, we all take it as we are dealt it.

PRESIDING MEMBER: Okay. Thank you.

And going now, dropping down to parts. And as you are well aware, the Tribunal has many times had to wrestle with the what is or is not a part. And that test, the Tribunal has laid out -- it was in Atomic Ski as well -- talking about...I think there were four separate

different components of what the Tribunal has looked as what's considered a part.

I know you have referred to the memorandum and the wording is a little different from what the test is; do you have any specific comments with respect to what the Tribunal in the past has outlined.

MR. BAXTER: May I, because I am afraid I am failing to follow as well. May I "passez la parol" to my colleague, Ms. Edwards, who I think has followed your questions better than I have.

PRESIDING MEMBER: I would love to hear from Mrs. Edwards. Thanks.

MS. EDWARDS: Thank you, Madam Chair. I think the position that we take is that for whatever reason Parliament in its wisdom has opted to include blanks under the term "wheels." And it's not particularly clear given the meaning that blanks has in the manufacturing world, why that is. But, for whatever reason, blanks has been included under the three-dash tariff item "wheels, whether or not fitted with axles."

So we would take the position that "wheels, whether or not fitted with axles" is drafted so as to include wheels in any form, but not that there are necessarily goods that are currently being imported into Canada as wheels finished to the point that the wheel

bodies or plates are, but that are not yet fitted with axles.

PRESIDING MEMBER: Just following along that, then, when I look at things that -- and clearly, other fact situations, when the Tribunal has looked at what we consider a part, one reason you haven't gone to some of those is that because this, clearly it doesn't fit into the "wheels, whether or not fitted with an axle," that just drops you right down to parts, because there is no other option at that point?

MS. EDWARDS: Sorry. I think now I have missed the point of your question. I am sorry.

PRESIDING MEMBER: Okay. First of all, I guess the actual criteria that the Tribunal has looked at -- and let me know if these sound familiar: whether the product is essential to the operation of other goods, whether the product is a necessary and valid component of other goods, whether the product is installed in the other goods in the course of manufacture and common trade usage and practice.

We have heard a lot about common trade uses and practice today. The other headings that the Tribunals -- usually, when we are talking about a part, I have had some submissions with respect to those other headings. And I just wondered if you had any other specifics relating to -- and really, if they all are sort of referring to a product,

plus then another good, and just trying to see how we differentiate that point from here, where clearly we do not have an "other" good -- we basically have one piece of steel.

MS. EDWARDS: Right. So I think with regards to the criteria you are referring to from, I believe it's the D-memoranda and/or perhaps it was Atomic Ski, I think Mr. Baxter has referred you to the specific paragraphs in our brief where we have discussed that. And I don't have any additional comments on that at the moment.

PRESIDING MEMBER: And that's fine. I will go back and review the brief.

And I appreciate both counsel, you are relying on Rule 1. I heard some very brief submissions from Mr. Maher if 2a is applicable. At this time, if I go to 2a, do you have any submissions at this point on 2a that you would like to make?

MR. BAXTER: My friend, Mr. Maher, has said CBSA is not going to 2a. And it is relying on Rule 1. We say the Supreme Court of Canada says Rule 1 is dispositive as well. We haven't briefed Rule 2a, precisely because we think that, since 2016, we have binding guidance which clarifies this. So we say one doesn't go to 2a. We haven't briefed it however, and I don't know when the Respondent itself has said it's not relying on 2a, that

this Tribunal needs to go there.

But we could certainly provide supplementary written submissions if that were to be of assistance to the court. I hadn't understood that that was my friend's position.

PRESIDING MEMBER: I understood from Mr. Maher's last point that you had mentioned that if the Tribunal does go to 2a, your position is that the unfinished good --

MR. MAHER: Yes, I did mention that.

PRESIDING MEMBER: ...but correct me if I am wrong.

MR. MAHER: No, no. I did mention that. Maybe my friend was already failing, but -- and it's late for all of us. I did mention it, yes, so...

PRESIDING MEMBER: Okay. Just for that clarification, just so that I do have a full record, I would appreciate, since 2a has been raised, that I have written submissions on it. I appreciate this maybe is too late in the day to talk to 2a, but I would like some further submissions on 2a, if you would have anything further to go on to say on 2a.

MR. BAXTER: Certainly.

MR. MAHER: You mean now? Or?

PRESIDING MEMBER: Sorry. I was directing that to Mr. Baxter, but --

MR. MAHER: You mean now? Or you mean written submissions?

PRESIDING MEMBER: Written submissions. Sorry, that's what I meant, written submissions.

MR. MAHER: I am sorry. I missed that.

PRESIDING MEMBER: Sorry, Mr. Baxter?

MR. BAXTER: Certainly, we can accommodate you with written submissions, I guess. Perhaps could we ask that the court, that you Madam Chair give us a precise question and formulation of the question, since I seem to be not following as closely, that you would like written submissions for.

I am personally travelling next week, but we should be able to get you something in a timely fashion with respect to any additional written arguments with respect to the General Rules.

PRESIDING MEMBER: The Tribunal, after we close off the hearing today, we can send out a more formal letter setting out exactly, so that the parties are aware of what additional submissions that I would appreciate hearing from.

MR. MAHER: Okay. And I will be curious to see how you frame that question. But so are you having questions on Igloo Vikski mention of that, 2a? Or just how 2a -- what are you...

PRESIDING MEMBER: Yes, just how 2a...

MR. MAHER: Okay.

PRESIDING MEMBER: It's more of a -- I appreciate the submissions that have been made on Igloo, on what that states. But --

MR. MAHER: Okay. So we shouldn't repeat our -- or you wouldn't want us to repeat our position on Igloo Vikski? That's not what you are asking?

PRESIDING MEMBER: No, it is not.

MR. MAHER: Okay, okay.

PRESIDING MEMBER: Okay. Thank you very much, counsel, for all your submissions and I appreciate -- I am very much more knowledgeable about the manufacture of train wheels at this point in time. So it is 5:25. It has been a longer day, but thanks everyone for your time. And we will be in touch with regards to further submissions and then, of course, decision in a timely fashion. Thank you.

MR. MAHER: Thank you, very much.

--- Whereupon the hearing concluded at 5:25 p.m. /

--- L'audience est ajournée à 17 h 25

I HEREBY CERTIFY THAT I have, to the best of my skill and ability accurately transcribed the foregoing proceeding.

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Marion Liang, Court Reporter