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October 29, 2020 29 octobre 2020		
Kimberly Lalonde		
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File No.:

FEDERAL COURT

B E T W E E N:

RONSCO INC.

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant

ACTION UNDER s. 135 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.).

STATEMENT OF CLAIM

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, **WITHIN 30 DAYS** after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

October __, 2020

Issued by: _____
(Registry Officer)

Address of local office: Thomas D'Arcy McGee Building
90 Sparks Street, 5th floor
Ottawa, Ontario
K1A 0H9

TO: ATTORNEY GENERAL OF CANADA
c/o Deputy Attorney General
Department of Justice Canada
50 O'Connor Street, 5th Floor
Ottawa, ON K1A 0H8

CLAIM

1. The plaintiff claims:

- a. An order quashing as unreasonable the July 30, 2020 Detailed Adjustment Statements, titled Transaction No. 00003001046726 (the “July 2020 DAS”), which were issued on the basis that Ronsco Inc. (“Ronsco”) had “reason to believe” that its original tariff declaration with respect to forged railway wheels with unfinished bore holes (“rough bore wheels”) was incorrectly classified;
- b. Direct damages in the amount of \$2,543,628.38 compensating Ronsco for the duties and interest paid retroactively to the Canada Border Services Agency (“CBSA”);
- c. Consequential damages in the amount of \$1,006,641.91 compensating Ronsco for professional services incurred as a result of the CBSA’s actions;
- d. Costs of the proceedings; and
- e. Such further and other relief as counsel may advise and the Court may permit.

I. BACKGROUND

2. The plaintiff, Ronsco Inc. (“Ronsco”) is the only Canadian-owned independent railway wheelset manufacturing shop in Canada. Ronsco is headquartered in Montreal, with five locations across Canada. Ronsco has been active for over 50 years.
3. Ronsco supplies products and services to North American and international rail, mining, and transit industries. A substantial part of Ronsco’s business involves supplying freight and transit railway wheels and wheelsets (wheel and axle combinations) to Canadian consumers.

4. Ronsco imports rough bore wheels to meet its clients' requirements for loose wheels, and to manufacture wheelsets. The rough bore wheels Ronsco imports have unfinished bore holes, such that they must be further manufactured either in one of Ronsco's or its clients' wheelshops before it can be fitted with an axle.
5. Rough bore wheels are a manufacturing input (i.e., a good used to manufacture another good). As imported, they cannot be affixed to axles to make wheelsets. Instead, a very precise, computer-guided, boring operation must take place in a wheelshop to finish the borehole to fit the specific and unique axle to which the wheel will be affixed.
6. Rough bore wheels represent 80% of a wheelset's manufacturing cost.
7. Forged railway wheels have not been manufactured in Canada since 1994.
8. In 2005, Sumitomo Canada Limited ("Sumitomo"), one of Ronsco's competitors, requested and received from the CBSA an Advanced Ruling certifying that the rough bore wheels imported by Sumitomo for use on freight cars (i.e., which were identical in manufacture and use to those imported by Ronsco), could be imported duty-free under Tariff 21.
9. At about the same time, in 2005, Ronsco began importing rough bore wheels. Ronsco sought tariff advice from its customs broker, FedEx. FedEx advised that rough bore wheels could be imported duty-free under tariff item 8607.19.21 (re wheel blanks) ("Tariff 21").
10. Accordingly, Ronsco and Sumitomo (and the Canadian railway and customs brokerage industries as a whole) understood and reasonably believed that these wheels were to be imported duty free under this tariff item. CBSA's own conduct since 2005 confirmed and reinforced this reasonable belief.

11. In 2015, Ronsco was certified by the American Association of Railroads (“AAR”) to produce wheelsets at its wheelshop in Hamilton, Ontario. This certification was the result of a \$10,000,000 capital investment by Ronsco. This investment was driven by the large demand for wheelsets in Eastern Canada and the Northeastern United States.
12. Ronsco competes with United States-based companies in supplying both the Canadian domestic wheelset market and the Northeastern United States market. In addition to “Buy American” policies (which have no equivalent in Canada), United States companies benefit from a duty-free tariff treatment of rough bore wheels for the wheelsets they will ultimately export for sale into Canada.
13. Prior to Ronsco opening its Hamilton wheelshop, there was no option for Canadian customers who did not have their own wheelshop to source wheelsets from a Canadian company. That demand was entirely fulfilled from the United States.
14. Prior to the events giving rise to this proceeding, Ronsco had plans to expand its operations in western Canada by opening a wheel shop. Due to the significant transport of bulk goods by rail, western Canada is the largest wheelset market in Canada. Ronsco’s plan was to invest \$10,000,000 in capital, which would have created 30 jobs. However, as described below, these plans were put on hold due to the CBSA’s imposition of a 9.5% duty on rough bore wheels and its imposition of retroactive duties on Ronsco.
15. As a result, Canadian customers without their own wheelshop continue to be serviced by wheelsets supplied from American companies with facilities in Tacoma, Washington, and Chicago, Illinois. These American companies benefit from a significant cost advantage, due to the tariff treatment described at paragraph 12, above.

II. Imposition of Retroactive Duties on Ronsco's Imports of Rough Bore Wheels

16. On July 11, 2017, the CBSA informed Ronsco that a Trade Compliance Verification would be conducted for goods imported by Ronsco between January 1, 2015 to December 31, 2015. Among the goods reviewed by the CBSA were "AAR approved H36 Wheels Class C, 8-3/8" bore diameter" ("rough bore wheels").
17. On April 20, 2018, Ronsco received an Interim Report from the CBSA that advised it had determined that Tariff 21 (re wheel blanks) did not apply to the rough bore wheels imported by Ronsco, and that Tariff Item 8607.19.29 (wheels – other) ("Tariff 29), dutiable at 9.5%, applied. Ronsco was informed that it would have to make corrections and pay duties going back four years on the basis that it purportedly had "reason to believe" that its initial tariff declaration was incorrect.
18. In response, Ronsco argued that Tariff Item 8607.19.30 (parts of wheels, duty free) was instead applicable, given that the rough bore wheels cannot perform the essential functions of a wheel (i.e., being fitted to an axle) when they are imported, as further manufacturing is required. Ronsco also argued that it did not have, and had never had, "reason to believe" that the rough bore wheels fell into a category that was dutiable.
19. On June 26, 2018, Ronsco's representatives met with representatives from the office of the Minister of Public Safety and with Doug Band, the CBSA's Director General responsible for the Trade and Anti-Dumping Programs Directorate. This meeting addressed the Interim Report. In this meeting, Mr. Band acknowledged that the wording of Tariff 21 was confusing and outdated and assured Ronsco that it would only be required to pay duties for the items identified in the Interim Report, and going forward.

20. On July 24, 2018, the CBSA issued its final Trade Compliance Verification Report (the “Verification Report”), confirming the conclusions in the Interim Report and stating that Ronsco would be required to pay \$461,446.21 in duties related to the five transactions covered by the Verification Report. The Verification Report concluded that Ronsco had “reason to believe” the goods were incorrectly classified under Tariff 21 that they should have been classified under Tariff 29, and that Ronsco would need to make corrections and pay retroactive duties on all transactions involving the rough bore wheels dating back four years.
21. On September 26, 2018, Ronsco made a request to the President of the CBSA for further re-determination, pursuant to section 60 of the *Customs Act*. Ronsco argued both that the rough bore wheels were properly classified under Tariff Item 8607.19.30 (parts of wheels) and that it did not have reason to believe that its prior selection of Tariff 21 was incorrect.
22. On November 8, 2018, Sue Ogilvie, an Appeals Officer with the CBSA’s Toronto Trade Appeals Unit, Finance and Corporate Management Branch, advised that the CBSA’s conclusion regarding Ronsco’s “reason to believe” could only be challenged by appealing the Administrative Monetary Penalty that Ronsco would receive, under section 129 of the *Customs Act*.
23. Ronsco’s appeals to the CBSA President, and subsequently to the Canadian International Trade Tribunal (“CITT”), were denied. In its ruling, the CITT acknowledged that the imposition of “historical duties” on these transactions placed a financial burden on Ronsco, particularly considering that it operates a small-margin business.

III. Ronsco's Notice of Penalty Assessment Appeal

24. On October 11, 2019, Ronsco received a Notice of Penalty Assessment (“NPA”) from the CBSA. The NPA found that Ronsco had “reason to believe” that it had incorrectly selected Tariff 21 for the goods subject to the retroactive corrections.
25. On December 17, 2019, Ronsco filed its appeal of the NPA. It made further submissions on March 10, 2020 and June 1, 2020.
26. On August 17, 2020, Natasha Alimohamed, Director General of the CBSA’s Recourse Directorate, advised Ronsco that, contrary to Ms. Ogilvie’s representations in November 2018 (see paragraph 22, above), Ronsco ought to have brought an application for judicial review under the *Federal Courts Act* to challenge the CBSA’s conclusions with respect to Ronsco’s “reason to believe”. To preserve its rights, Ronsco filed the Notice of Application for Judicial Review in T-1037-20, taking the position in its Notice of Application that the judicial review should be placed in abeyance pending the outcome of Ronsco’s appeal under section 135 of the *Customs Act*.
27. On September 17, 2020, Ronsco received the CBSA’s decision, dated September 15, 2020, dismissing its NPA Appeal.
28. On October 14, 2020, as Ronsco was preparing to bring this appeal, counsel for Canada on the judicial review in T-1037-20 took the position that, contrary to Ms. Ogilvie’s advice (see paragraph 22 above) and Ms. Alimohamed’s advice (see paragraph 26 above), Ronsco should have challenged the CBSA’s conclusion regarding “reason to believe” in an appeal to the CBSA President under section 60 of the *Customs Act*. To preserve its rights, Ronsco filed a Notice of Appeal to the CITT on October 22, 2020, taking the position in its Notice of Appeal that that appeal should also be placed in abeyance.

IV. **RONSCO SHOULD NOT HAVE TO PAY RETROACTIVE DUTIES**

29. Ronsco did not have “reason to believe” that its tariff classification of the imported rough bore wheels was incorrect. It should not have to pay the retroactive duties set out in the July 2020 DAS.
30. Tariff 21 is not a legislative provision that is *prima facie* evident and transparent, as required by CBSA policy. Rather, it is unclear and ambiguous.
31. CBSA itself has had contradictory readings of this Tariff Item. The CBSA’s Advance Ruling from 2005 was in place for almost 14 years and confirmed Ronsco’s understanding, and that of the industry as a whole, that Tariff 21 was available and appropriate for rough bore wheels.
32. Since September 2014, the CBSA has posted Advance Rulings online, for the express purpose of serving as a reference point for providing meaningful guidance and help to other importers in complying with Canada’s trade legislation.
33. Ronsco’s American competitors benefit from ruling letters from U.S. Customs and Border Protection that can address tariff classification, for the purpose of facilitating trade by enabling companies to make business decisions that are dependent on how their goods will be treated on importation. The American policy in this regard is that it is in the interest of the sound administration of Customs and Border Protection and related laws that persons engaging in any transaction affected by those laws fully understand the consequences of that transaction prior to its consummation.
34. The CBSA only rescinded the 2005 Advance Ruling after deciding against Ronsco in its July 2018 Verification Report to Ronsco. In so doing, the CBSA nevertheless granted

Sumitomo a significant exemption window from paying duties by timing the Advance Ruling amendment to coincide with the enactment of the Comprehensive and Progressive Trans-Pacific Partnership free trade agreement.

35. What is more, Mr. Band, a senior CBSA official agreed with Ronsco that the wording of Tariff 21 was confusing, and that Ronsco would not have to pay retroactive duties. As such, Ronsco had reasonably understood after meeting with representatives from the Minister of Public Safety and Mr. Band that the CBSA agreed that Ronsco did not have “reason to believe”.
36. Industry behavior also shows that Tariff 21 is not *prima facie* evident and transparent, as from 2005 to 2019 it was the CBSA’s own conduct that drove importer behavior, rather than the Tariff Item’s wording.
37. To the CBSA’s and Ronsco’s knowledge, approximately ten companies have imported substantially similar goods into Canada under Tariff 21 from Russia, China, Japan and Ukraine.
38. Only when the CBSA issued its Verification Report against Ronsco in 2018 and rescinded Sumitomo’s Advance Ruling, did many of these importers begin changing their tariff classifications Tariff 21 to Tariff 29.
39. Finance Canada’s public posture is that Canada has a duty-free tariff regime for imports of manufacturing inputs. Specifically, in 2010, the Minister of Finance declared that Canada was a “tariff-free zone” for manufacturing inputs. Under this regime, it was, and still is, express government policy that goods imported to manufacture other goods are not subject to duty (as recognized by the CITT in its judgment, rough bore wheels must undergo further

manufacturing after importation in order to be fitted to axles as part of the manufacture of wheelsets). This policy further supports Ronsco's lack of "reason to believe" that its selection of Tariff 21 was improper.

V. IMPACT ON RONSCO'S BUSINESS

40. The CBSA's ruling that the goods in issue are dutiable at 9.5% and the retroactive imposition of duties have had two major financial impacts on Ronsco's business:

- a. The imposition of a 9.5% duty on rough bore wheels increases Ronsco's costs relative to its United States competitors. The increased cost is significant, as rough bore wheels are 80% of a wheelset's manufacturing cost. From the Verification Report (July 24, 2018) to September 30, 2020, Ronsco's increased cost due to duties was \$1,929,016.86. Ronsco estimates that it has lost business of 5,400 wheelsets per year, representing \$6,000,000 in annual revenue.
- b. At the time the retroactive duties were imposed, Ronsco was in negotiations with its Canadian customers to open a second wheelshop, in order to fulfill their wheelset requirements across the country. However, the imposition of a 9.5% duty on rough bore wheels, the imposition of \$461,446.21 in duties arising from the Verification Report, and the imposition of roughly \$2.4 million in retroactive duties have made these expansion plans costs prohibitive. Ronsco estimates the lost production associated with a second wheelshop at 25,000 wheelsets per year, with an expected revenue of \$32,500,000.

VI. DAMAGES SOUGHT

41. Ronsco claims reimbursement of the amounts erroneously charged by the CBSA as follows:

- a. Duties: \$2,434,002.31;
- b. Interest: \$109,626.07; and
- c. Administrative Monetary Penalty: \$1,000.

42. Ronsco also claims reimbursement of significant professional fees incurred since the CBSA's erroneous conclusion with respect to its "reason to believe". Ronsco expressly asserts, and does not waive, privilege over any of the relevant privileged documents or information in this regard. Ronsco claims the following amounts:

- a. Legal: \$347,378.15
- b. Trade Consultants: \$550,065.76
- c. Surety Bond: \$104,282.00
- d. Experts: \$4,916.00

The plaintiff proposes that this action be tried at Ottawa, Ontario.

October 26, 2020



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