

CANADIAN INTERNATIONAL TRADE TRIBUNAL

B E T W E E N:

RONSCO INC.

Appellant

and

CANADA BORDER SERVICES AGENCY

Respondent

**APPELLANT'S BRIEF
VOLUME I (PUBLIC)**

June 14, 2019

Conway Baxter Wilson LLP/s.r.l.
400-411 Roosevelt Avenue
Ottawa ON K2A 3X9

Colin S. Baxter LSO#: 33574P
cbaxter@conway.pro
David P. Taylor LSO#: 63508Q
dtaylor@conway.pro
Alyssa Edwards LSO#: 74272A
aedwards@conway.pro

Tel: 613-288-0149
Fax: 613-688-0271

Grey, Clark, Shih and Associates, Limited
571 Blair Road
Ottawa, ON K1J 7M3

Peter Clark
jpclark@greyclark.com
William Bradley
wbradley@greyclark.com

Tel: 613-238-7743

Fax: 613-238-0368

Counsel for the Appellant, Ronsco Inc.

Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

Charles Maher

Charles.Maher@justice.gc.ca

Counsel for the Respondent, President of
the Canada Border Services Agency

INDEX

<u>Tab</u>	<u>Document Description</u>
VOLUME I	
A	Appellant's Brief of Ronsco Inc.
1	Oxford Dictionary, "Forge", Verb, Definition #1, online: Lexico < https://www.lexico.com/en/definition/forg >
2	Scot Forge Online Glossary, "Forging", online: Scot Forge < https://www.scotforge.com/Why-Forging/Glossary#f >
3	Ronsco Inc., "Summary of Steps Involved in the Forging Process"
	(a) AAR Technical Services, "Welcome", online: AAR < https://www.aar.com/standards/index.html >
	(b) [REDACTED] (CONFIDENTIAL)
	(c) [REDACTED] (CONFIDENTIAL)
4	[REDACTED] (CONFIDENTIAL)
5	United Metallurgical Company (OMK), "Wheels Catalogue"
6	Discovery Channel, <i>How It's Made</i> , Season 14, Episode 3, "Train Wheels", online: YouTube < https://www.youtube.com/watch?v=ui--zx1RmDU >
7	Sandvik Coromant, "How a Train Wheel is Made – Sandvik Coromant", online: YouTube < https://www.youtube.com/watch?v=KQ98bYFBK_U >
8	American Association of Railroads ("AAR"), "Manual of Standards and Recommended Practices: Wheels and Axles", G [M-107/M-208] 21
9	Oxford Dictionary, "Wheel", Noun, Definition #1, online: Lexico < https://www.lexico.com/en/definition/wheel >
10	AAR, "Manual of Standards and Recommended Practices: Wheels and Axles", G-II [S-659] 9, "Rule 1.3: Wheels–Boring Mill Practices"
11	Photos of Wheelset and Wheel Bodies, and Video of Wheel Boring Process
12	Standard Car Truck Company, "Stabilized Components Parts Diagram", online: Standard

	Car Truck Company < http://www.sctco.com/products.html >
13	Interim Report of the CBSA (20 April 2018)
14	Interim Submissions of Ronsco Inc. to the CBSA (25 May 2018)
15	Final Report of the CBSA (24 July 2018)
16	Request for Further Re-determination Under s. 60 of the <i>Customs Act</i> from Ronsco to the CBSA President (26 September 2018)
17	Letter from S Ogilvie to Ronsco Inc. re Request for Further Re-determination (CBSA President's Decision) (18 January 2019)
18	BNSF Railway, "The Wheels at Havelock Go 'Round and 'Round", online: BNSF < http://www.bnsf.com/news-media/railtalk/community/havelock-wheel-shop.html >
19	Customs Canada Coding Forms and Commercial Invoices issued by Taiyuan to Ronsco Inc. (CONFIDENTIAL)
20	Purchase Contract Between Ronsco Inc. and Taiyuan [REDACTED] (CONFIDENTIAL)
VOLUME II	
21	<i>Customs Act</i> , RSC 1985, c 1 (2nd Supp), ss. 60, 67(1)
22	<i>Customs Tariff</i> , SC 1997, c 36, s 10(1) and Schedule (excerpt)
23	<i>Atomic Ski Canada Inc v Canada (Deputy Minister of National Revenue)</i> (8 June 1998), AP-97-030; AP-97-031 (CITT)
24	<i>General Rules for the Interpretation of the Harmonized System</i> (Schedule to the <i>Customs Tariff</i> , SC 1997, c 36)
25	<i>Canada (AG) v Iqloo Vikski Inc.</i> , 2016 SCC 38
26	<i>Gladu Tools Inc v President of the Canada Border Services Agency</i> , 2009 FCA 215
27	<i>Danson Décor Inc v President of the Canada Border Services Agency</i> (27 May 2011), AP-2009-066 (CITT)
28	CBSA, <i>Memorandum D10-13-1</i> , "Tariff Classification of Goods" (15 January 2015)
29	<i>CDC Foods v Canada (Border Services Agency President)</i> (21 December 2016), AP-2015-035; AP-2016-015 (CITT)

30	CBSA, Memorandum D10-0-2 , "Punctuation in the <i>Customs Tariff</i> " (24 September 2015)
31	World Customs Organization ("WCO"), <i>Explanatory Notes to the Harmonized Commodity Description and Coding System</i> , 6th ed (2017), "86.07 – Parts of railway or tramway locomotives or rolling-stock" (EN) and "86.07 – Parties de véhicules pour voies ferrées ou similaires" (FR)
32	CBSA, Memorandum D10-0-1 , "Classification of Parts and Accessories in the <i>Customs Tariff</i> " (13 May 2014)
33	Bauer Hockey Corporation v President of the Canada Border Services Agency (26 April 2012), AP-2011-011 (CITT)
34	Partylite Gifts Ltd v Commissioner of the Canada Revenue Agency (16 February 2004), AP-2003-008 (CITT), aff'd: 2005 FCA 157
35	VGI Village Green Imports v Canada Border Services Agency (13 January 2012), AP-2010-046 (CITT)
36	Lone Pine Supply Ltd v Canada (Border Services Agency President) (22 August 2018), AP-2017-002 (CITT)

CANADIAN INTERNATIONAL TRADE TRIBUNAL

B E T W E E N:

RONSCO INC.

Appellant

and

PRESIDENT OF THE CANADA BORDER SERVICES AGENCY

Respondent

APPELLANT'S BRIEF**Contents**

I.	OVERVIEW	1
II.	FACTS	2
	A. THE GOODS AT ISSUE	2
	B. CLASSIFICATION BACKGROUND AND CBSA PRESIDENT'S DECISION.....	8
III.	POINT AT ISSUE	10
IV.	THE APPELLANT'S SUBMISSIONS	11
	A. THE GENERAL PROCESS FOR DETERMINING TARIFF CLASSIFICATION	11
	B. THE GOODS ARE PROPERLY CLASSIFIED AS "PARTS OF WHEELS" UNDER TARIFF ITEM 8607.19.30	14
	(i) THE GOODS SHOULD BE CLASSIFIED AS "PARTS OF WHEELS" BASED ON THE EXPLANATORY NOTES TO HEADING 86.07	14
	(ii) THE DESIGN, PRODUCTION PROCESS, USAGE, CHARACTERIZATION, AND COMMON UNDERSTANDING OF THE GOODS SUGGEST THEY ARE "PARTS OF WHEELS"	15
	(iii) THE GOODS SHOULD BE CONSIDERED "PARTS" BASED ON THE CBSA'S D MEMORANDA	17
	(iv) THE CBSA PRESIDENT'S DECISION, CLASSIFYING THE GOODS UNDER TARIFF ITEM 8607.19.29, IS BASED ON RULE 2(A) OF THE <i>GENERAL RULES</i>, WHICH IS IRRELEVANT TO THE ISSUE BEFORE THE TRIBUNAL	21
V.	ORDER SOUGHT	23

I. OVERVIEW

1. This appeal, based on s. 67 of the *Customs Act*,¹ is from a decision (the “Decision”) made by the President of the Canada Border Services Agency (“CBSA”), pursuant to s. 60(4) of the *Customs Act*.²

2. The CBSA President’s Decision held that certain forged wheel bodies/corps de roues imported by Ronsco Inc. (“Ronsco”) are properly classified under tariff item 8607.19.29.00 of the Schedule to the *Customs Tariff*³ (the “Schedule”) (“[...] Wheels, whether or not fitted with axles: - Other”). Ronsco submits that the goods at issue are instead parts of wheels, properly classified under tariff item 8607.19.30 (“[...] Parts of axles or wheels”).⁴

3. The goods at issue are forged wheel bodies/corps de roues. The goods are used in the manufacture of finished forged wheels, for application to rolling-stock (i.e., rail cars) in the form of wheel and axle combinations (known as “wheelsets”). Given that there is no domestic supply, Ronsco imports forged wheel bodies/corps de roues. After importation, Ronsco either further manufactures the goods into wheels by applying a “wheel boring” process, allowing the wheels to be fitted with an axle, or resells the wheel bodies/corps de roues to other manufacturers who perform this process.⁵ Following the wheel boring process, the wheels are mounted onto axles,

¹ [RSC 1985, c 1 \(2nd Supp\)](#), Appellant’s Brief (“AB”), Vol II, Tab 21, s 67(1).

² *Ibid*, s 60(4).

³ [SC 1997, c 36](#) [*Customs Tariff*]. An excerpt of the Schedule to the *Customs Tariff* showing the tariff items at issue is included at AB, Vol II, Tab 22.

⁴ See paragraph 25, *infra*, for the full text of these tariff items.

⁵ Ronsco was certified by the Association of American Railroads (“AAR”) to perform the wheel boring and finishing process in December 2015. As a result, for the specific transactions at issue, which took place earlier in 2015, Ronsco did not perform the wheel boring and finishing processes itself; rather, Ronsco’s customers who purchased the subject goods of this appeal performed this same process themselves after receiving the goods from Ronsco.

and bearings are attached to produce wheelsets. Wheelsets are incorporated into “truck assemblies” (also known as “bogies”) and installed on rail cars.

4. The wheel bodies/corps de roues are forged, rolled and machined by the exporter, but in the condition imported cannot perform the essential functions of wheels for rolling-stock. Not only are the goods not fitted with axles when they are imported, but in fact they cannot be fitted with axles in the condition in which they are imported. It is only after importation, once further manufacturing processes have been performed, that the wheel bodies/corps de roues are even capable of being fitted with axles and being used as wheels. Similarly, although the goods are committed to use for wheels for rail cars (as is to be expected for parts falling within Chapter 86 of the *Customs Tariff*: “[...] rolling-stock and parts thereof [...]”), they are not dedicated to a specific end use or type of rail car at the time of importation, as, at that point, they can be further manufactured to fit multiple types of axles.

5. On this basis, Ronsco submits that the Canadian International Trade Tribunal (the “Tribunal”) should allow the appeal and find that the goods at issue be classified as “Parts of axles or wheels” under tariff item 8607.19.30, rather than as “Wheels, whether or not fitted with axles: - Other” under tariff item 8607.19.29.

II. FACTS

A. The Goods at Issue

6. The goods at issue are forged⁶ wheel bodies/corps de roues (referred to herein as “Wheel

⁶ The Oxford Dictionary defines “forging” as to “[m]ake or shape (a metal object) by heating it in a fire or furnace and hammering it”: Oxford Dictionary, “Forge”, Verb, Definition #1, online: Lexico <<https://www.lexico.com/en/definition/forged>>, AB, Vol I, Tab 1. An industry definition can be found in Scot Forge’s

Bodies”) for use in the manufacturing of finished forged wheels, for application to rail cars in the form of wheelsets. The Wheel Bodies 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 (“AAR”).⁷

7. A Wheel Body cannot perform the essential functions of a “Wheel, whether or not fitted with axles” (as per the three-dash heading preceding tariff item 8607.19.29) when it is imported. The Oxford Dictionary defines a “wheel” as “[a] circular object that revolves on an axle and is fixed below a vehicle or other object to enable it to move easily over the ground.”⁸ However, when they are imported, Wheel Bodies are not only not fitted with axles, they are in fact incapable of being fitted with an axle. They are also incapable of being “fixed below a vehicle or other object” and enabling it to move easily over the ground. It is only after importation, once the final boring, machining, and finishing processes have been performed – pursuant to an

online glossary, which defines forging as a “[p]rocess of working hot metal to the desired shape by impact or pressure from hammers, presses or forging machines. The metal object so produced is termed a forging”: Scot Forge Online Glossary, “Forging”, online: Scot Forge <<https://www.scotforge.com/Why-Forging/Glossary#f>>, AB, Vol I, Tab 2.

The forging process employed to produce Wheel Bodies, from the selection of raw materials to the final good, normally involves 18 steps, which Ronsco has summarized in a document at AB, Vol I, Tab 3. These steps, and the forging process generally, are further illustrated in the following:

(1) Taiyuan Heavy Industrial Railway Transit Equipment Co. Ltd. (“Taiyuan”), [REDACTED] AB, Vol I, Tab 4 at 3, [REDACTED] [Taiyuan [REDACTED] Document]. Taiyuan was Ronsco’s principal wheel body supplier in 2015.

(2) United Metallurgical Company (OMK), “Wheels Catalogue”, AB, Vol I, Tab 5 at 7, “Production Scheme” [OMK Catalogue]. The steps in this document addressing the machining of the bore hole for fitting on a specific type of axle occurs, for the goods imported by Ronsco, after they are imported into Canada.

(3) The forging process generally is illustrated in the following YouTube video: Discovery Channel, *How It’s Made*, Season 14, Episode 3, “Train Wheels”, online: YouTube <<https://www.youtube.com/watch?v=ui-zx1RmDU>>, AB, Vol I, Tab 6 [Discovery Channel Video]. See also Sandvik Coromant, “How a Train Wheel is Made – Sandvik Coromant”, online: YouTube <https://www.youtube.com/watch?v=KQ98bYFBK_U>, AB, Vol I, Tab 7 [Sandvik Coromant Video].

⁷ AAR, “Manual of Standards and Recommended Practices: Wheels and Axles”, G [M-107/M-208] 21, “Wheels, Carbon Steel”, AB, Vol I, Tab 8 [AAR Standards].

⁸ Oxford Dictionary, “Wheel”, Noun, Definition #1, online: Lexico <<https://www.lexico.com/en/definition/wheel>>, AB, Vol I, Tab 9.

additional set of strict AAR rules⁹ – that the Wheel Bodies are even capable of being fitted with axles and being used as wheels. The Wheel Bodies, as imported, therefore cannot perform any of the essential functions of a wheel.

8. As such, and as addressed in more detail below,¹⁰ despite forging process standards referring to the output of that process as a “wheel”, and despite the goods sometimes being marketed and shipped as such (though on other occasions they are marketed and shipped as wheel “plates” or “blanks”), the goods are functionally incapable of being used as wheels for rolling-stock. The inability of the goods to perform the function of a wheel shows that the Wheel Bodies, as imported, are not finished goods.¹¹

9. Upon importation the goods are also not yet dedicated to one specific end use. Although the Wheel Bodies, as imported, are committed to use for rolling-stock generally, it is only after importation that the Wheel Bodies are capable of being further manufactured to fit a specific type of axle. In fact, the Wheel Bodies as imported can be used on freight cars, passenger rail cars, and even locomotives. They can also be further manufactured to fit a wide variety of axles, such as AAR Class E, F, G, or K axles, in the case of freight cars, and a significant number of other

⁹ AAR, “Manual of Standards and Recommended Practices: Wheels and Axles”, G-II [S-659] 9, “Rule 1.3: Wheels—Boring Mill Practices”, AB, Vol I, Tab 10 [AAR Rules for Wheel Boring Process].

¹⁰ *Infra* at para 38.

¹¹ The Tribunal made a similar finding in [Atomic Ski Canada Inc v Canada \(Deputy Minister of National Revenue\)](#) (8 June 1998), AP-97-030; AP-97-031 (CITT), AB, Vol II, Tab 23 at 5 [*Atomic Ski*]; see discussion at para 48, *infra*. The Tribunal found that “plastic shells for in-line skates” did not have the essential character of skating boots because they lacked one of the “principal features of footwear” – that is, “the ability to be worn as a covering for the foot and part of the leg.” Although this finding was related to the “essential character” of the plastic shells, based on the relevant WCO “Explanatory Notes” in that case, this supports Ronsco’s position that the Wheel Bodies cannot be considered wheels, given that they cannot be used as wheels, or even fitted with axles, and therefore lack the principal features of wheels.

axles for passenger cars.¹²

10. More specifically, although the steps involved in the forging process occur before the goods arrive in Canada, the process of forming a functional bore hole, capable of fitting an axle, occurs after the Wheel Bodies are imported and received by Ronsco. This wheel boring process is what transforms the Wheel Bodies into wheels that can be mounted on axles and to which bearings can be applied to form a wheelset, thereby allowing the Wheel Bodies to perform the essential function of a wheel. Several photographs and a video showing the Wheel Bodies, as imported and after the “boring and finishing process”, described below, as well as the boring process itself, are attached to these submissions at **Tab 11**.

11. As noted above, the process of forming a functional bore hole is based on an additional set of strict rules established by the AAR.¹³ Based on those standards, after determining the type of axle with which the wheels will be fitted, the Wheel Bodies must be bored to a precise diameter, specific to the axle in question. The Wheel Bodies must undergo this boring and chamfering process before they can be fitted with axles.

12. To do this, the Wheel Bodies undergo a three-step process with various cutting tools:¹⁴

- (a) a “rough cut”, to open the wheel bore (i.e., the hole in the middle of the Wheel Body);
- (b) a “finish cut”, which makes the final tolerance adjustment on the wheel bore and provides the proper surface finish, required for the correct “interference fit” of a wheel onto an

¹² See AAR Rules for Wheel Boring Process, *supra* note 9, AB, Vol I, Tab 10, Appendix B at 51.

¹³ AAR Rules for Wheel Boring Process, *supra* note 9, AB, Vol I, Tab 10 at G-II [S-659] 9, “Rule 1.3: Wheels—Boring Mill Practices”.

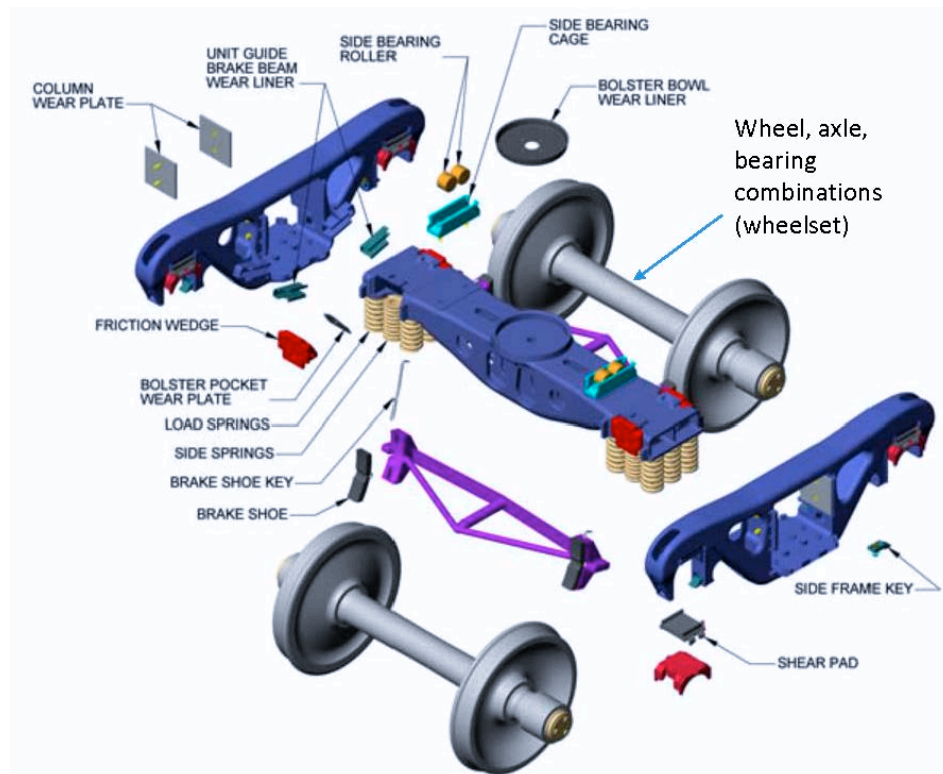
¹⁴ See the video attached to these submissions at AB, Vol I, Tab 11.

axle, as described below; and

(c) a “chamfer cut”, which puts an angled chamfer (i.e., an angled “edge”) around the circumference of the bore hole’s outside rim. This allows the finished wheel to concentrically position itself on the axle during the mounting process.

13. The tolerance level for the fit between the axle selected and the bore hole created after import is one-half of one-one thousandth of an inch (i.e., 0.0005 inches, or 0.0127 millimetres (12.7 micrometres)). An operator verifies the dimensions of the machined bore hole after the computer-controlled cutting process is complete.

14. To summarize, the goods at issue are shown below. The following image shows the components of a truck assembly or “bogie” that would be installed under railway or tramway locomotives or rolling-stock:¹⁵



¹⁵ Standard Car Truck Company, “Stabilized Components Parts Diagram”, online: Standard Car Truck Company <<http://www.sctco.com/products.html>>, AB, Vol I, Tab 12. The wheelset label in this diagram was added by Greg Barlow, Ronsco’s Director of Product Development & Engineering.

15. Each bogie is made of two wheelsets, which are wheel, axle, and bearing combinations.

A finished wheelset is shown in the photograph below:¹⁶



16. Each wheelset is made of two wheels, one axle, and two bearings (one applied to each end of the axle). The wheels are made from Wheel Bodies, shown in the two photographs below:



¹⁶ The photographs shown at paragraphs 15 and 16 are also attached to these submissions AB, Vol I, Tab 11.



B. Classification Background and CBSA President's Decision

17. The goods at issue were imported in 2015, in the following import transactions:

Date of Transaction/ Importation	Transaction Number (Importation)	Transaction Number (CBSA Verification)
May 15, 2015	13003172664734	00001-1004088561
May 25, 2015	13003172665074	00001-1004088572
August 26, 2015	13003704306035	00001-1004088583
October 23, 2015	13003704475201	00001-1004088594
November 23, 2015	13003705530245	00001-1004088607

18. The forged Wheel Bodies in these transactions were originally imported under tariff item 8607.19.21 (“[...] Wheels, whether or not fitted with axles: - Blanks for use in the manufacture of wheel and axle combinations for railway and tramway (including subway cars) passenger coaches; [...]”). This was based on the advice Ronsco received from its customs broker since Ronsco began importing Wheel Bodies around 2006,¹⁷ as well as on industry knowledge that Ronsco obtained from its customers and other manufacturers that imported these same goods

¹⁷ Ronsco’s customs broker in 2015 was FedEx Trade Networks Transport & Brokerage (Canada), Inc (“FedEx”).

prior to 2006.

19. In or around 2017, the CBSA commenced a Trade Compliance Verification (the “Verification”) of these transactions. In April 2018, the CBSA provided Ronsco with an interim report (the “Interim Report”), attached at **Tab 13**. The Interim Report indicated the CBSA’s preliminary conclusion that the forged Wheel Bodies should be classified under tariff item 8607.19.29.

20. In response to the Interim Report, Ronsco made detailed submissions to the CBSA on May 25, 2018. These submissions are attached at **Tab 14**. Based on its own detailed review of the goods and tariff items at issue, Ronsco accepted the CBSA’s determination that 8607.19.21 was not the appropriate tariff classification, because the goods do not correspond to the metallurgical definition of a “blank”. However, Ronsco contended that the goods are instead “Parts of wheels”, falling under tariff item 8607.19.30.

21. However, the CBSA’s final report resulting from the Verification (the “Final Report”), dated July 24, 2018, determined that the goods at issue were properly classified under tariff item 8607.19.29. A copy of the Final Report is attached at **Tab 15**. Ronsco also received Detailed Adjustment Statements (“DASs”) regarding the forged Wheel Bodies imported in the transactions listed above and paid [REDACTED] in duties on those goods.

22. Ronsco appealed this conclusion through a request for further redetermination to the CBSA President under s. 60 of the *Customs Act* (the “Request”). The Request, dated September 26, 2018, is attached at **Tab 16**. The Request was ultimately rejected by the CBSA President on

January 18, 2019. This Decision forms the subject of this appeal and is attached at **Tab 17**.

23. Ronsco is also aware that the CBSA issued an Advance Ruling for Tariff Classification in or about December 2005 to Kuehne + Nagel Canada, a customs broker, regarding the same goods as those at issue. However, Ronsco has been unable to procure a copy of this Advance Ruling.

III. POINT AT ISSUE

24. The point at issue is the tariff classification of the forged Wheel Bodies imported by Ronsco in the transactions listed above. Both parties agree that the correct subheading for the goods at issue is 8607.19. The specific issue is therefore whether the goods should be classified as “[...] Wheels, whether or not fitted with axles: - Other” under the four-dash tariff item 8607.19.29, as determined by the President; or as “[...] Parts of axles or wheels” under the three-dash tariff item 8607.19.30, as Ronsco submits.

25. For ease of reference, the tariff items at issue are reproduced below:

Tariff Item	Description of Goods	
86.07	Parts of railway or tramway locomotives or rolling-stock.	<i>Parties de véhicules pour voies ferrées ou similaires.</i>
	- Bogies, bissel-bogies (truck assemblies), axles and wheels, and parts thereof:	<i>- Bogies, bissels, essieux et roues, et leurs parties :</i>
	[...]	[...]
8607.19	- - Other, including parts	<i>- - Autres, y compris les parties</i>
	[...]	[...]
	- - - Wheels, whether or not fitted with axles:	<i>- - - Roues, avec ou sans essieux :</i>
8607.19.21 00	- - - - Blanks for use in the manufacture of wheel and axle combinations for railway and tramway (including subway cars) passenger coaches;	<i>- - - - Ébauches devant servir à la fabrication d'ensembles de roues et d'essieux pour les voitures à voyageurs de chemins de fer et de tramways (y compris les voitures de métro);</i>

	For self-propelled railway vehicles for the transport of passengers, baggage, mail or express traffic;	Pour les véhicules pour voies ferrées autopropulsés pour le transport des passagers, des bagages, de la poste ou des messageries;
	For use in the repair of tramway vehicles (excluding subway cars) with magnetic track brakes	Devant servir à la réparation des tramways (à l'exclusion des voitures de métro) avec sabot-freins électromagnétiques glissant sur le rail
8607.19.29 00	- - - - Other	- - - - Autres
8607.19.30 00	- - - Parts of axles or wheels	- - - Parties d'essieux ou de roues
[...]	[...]	[...]
8607.19.50	- - - Parts of bogies or bissel-bogies (truck assemblies)	- - - Parties de bogies ou de bissels
30	- - - - For non self-propelled rolling-stock	- - - - Pour véhicules de voies ferrées, non autopropulsés
40	- - - - For locomotives and other self-propelled rolling stock	- - - - Pour locomotives et les autres véhicules de voies ferrées, non autopropulsés

IV. THE APPELLANT'S SUBMISSIONS

A. The general process for determining tariff classification

26. The *General Rules for the Interpretation of the Harmonized System* (the “*General Rules*”) must be applied to determine the proper tariff classification of the forged Wheel Bodies.¹⁸ The *General Rules* are six rules to be applied in a “hierarchical” manner, beginning with Rule 1.¹⁹ Rule 1 states that “classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes”.²⁰ Only if the appropriate heading cannot be determined

¹⁸ *Customs Tariff*, *supra* note 3, AB, Vol II, Tab 22, s 10(1); [General Rules of the Interpretation of the Harmonized System](#) (Schedule to the *Customs Tariff*, SC 1997, c 36), AB, Vol II, Tab 24 [*General Rules*].

¹⁹ [Canada \(AG\) v Igloo Vikski Inc](#), 2016 SCC 38, AB, Vol II, Tab 25 at para 29 [*Igloo Vikski*].

²⁰ *General Rules*, *supra* note 18, AB, Vol II, Tab 24, Rule 1.

through Rule 1 alone should Rules 2, 3, 4 and 5 of the *General Rules* be applied.²¹

27. Rule 6 of the *General Rules* extends this principle to sub-headings, such that the correct subheading must 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 at the same level are comparable” [emphasis added].²²

28. Finally, Rule 1 of the *Canadian Rules* applies the same principle to individual tariff items within a subheading, such that the appropriate tariff item is determined “according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the [*General Rules*], on the understanding that only tariff items at the same level are comparable” [emphasis added].²³ Thus, once the appropriate heading has been determined, Rule 6 is applied at the subheading level, followed by the application of Rule 1 of the “Canadian Rules” of interpretation,²⁴ in order to identify the correct tariff item.²⁵

29. The next step of the analysis is therefore to determine under which tariff item the Wheel Bodies must fall, by comparing tariff items at the same level. This is further explained in CBSA *Memorandum D10-13-1*, “General Rules for Tariff Classification”:²⁶ [emphasis added]

27. The classification process reflects the hierarchical structure of the Tariff. Headings are only to be compared with other headings. No consideration is to be given to the

²¹ *Igloo Vikski*, *supra* note 19, AB, Vol II, Tab 25 at para 22 and footnote 4; *Gladu Tools Inc v President of the Canada Border Services Agency*, 2009 FCA 215, AB, Vol II, Tab 26 at para 7.

²² *General Rules*, *supra* note 18, AB, Vol II, Tab 24, Rule 6.

²³ *Ibid*, Canadian Rule 1; see also *Danson Décor Inc v President of the Canada Border Services Agency* (27 May 2011), AP-2009-066 (CITT), AB, Vol II, Tab 17 at paras 13-18 [*Danson Décor*].

²⁴ *General Rules*, *supra* note 18, AB, Vol II, Tab 24; see also CBSA, *Memorandum D10-13-1*, “Tariff Classification of Goods” (15 January 2015), AB, Vol II, Tab 28 [*Memorandum D10-13-1*].

²⁵ *Danson Décor*, *supra* note 23, AB, Vol II, Tab 27 at paras 13-18.

²⁶ *Memorandum D10-13-1*, *supra* note 24, AB, Vol II, Tab 28 at paras 27-28.

descriptions found in the subheadings, tariff items, or statistical subdivision, when determining which heading is applicable.

28. The same process is followed when selecting each level of subheading, tariff item, and statistical breakout.

30. As a result, and as further set out at Appendix A of CBSA *Memorandum D10-13-1*, subheadings and tariff items must be compared at the same “level”, as determined by the number of “dashes” shown in the Schedule for each subheading and tariff item.²⁷ This is explained in *CDC Foods v. Canada (Border Services Agency President)*, as follows:²⁸

97. Classification at the tariff item level proceeds by *mutatis mutandis* application (pursuant to Rule 1 of the *Canadian Rules*) of the *General Rules*. Rule 1 of the *Canadian Rules* provides that only tariff items at the same level are comparable. Accordingly, the appropriate three-dash subheading must first be chosen using the principles of classification contained in Rules 1 through 5 of the *General Rules*. If the appropriate three-dash subheading is subdivided, then the appropriate four-dash subheading must be chosen using the same technique.

31. Given that the parties agree that the Wheel Bodies fall under “two-dash” subheading 8607.19, the next step of the analysis is to determine under which of the following “three-dash” tariff items the goods must be classified:²⁹

- (a) - - - Wheels, whether or not fitted with axles;³⁰ or
- (b) - - - Parts of wheels or axles.

32. Given that tariff items 8607.19.21 and 8607.19.29 are “four-dash” items, they cannot be compared to tariff item 8607.19.30 (“Parts of axles or wheels”). The Tribunal must therefore determine whether the goods are a part of a wheel (8607.19.30), or a wheel outright.

²⁷ See *ibid*, Appendix A.

²⁸ *CDC Foods v Canada (Border Services Agency President)* (21 December 2016), AP-2015-035; AP-2016-015 (CITT), AB, Vol II, Tab 29 at para 97.

²⁹ CBSA, *Memorandum D10-0-2*, “Punctuation in the *Customs Tariff*” (24 September 2015), AB, Vol II, Tab 30 at para 4.

³⁰ This is a three-dash “suppressed tariff item”, which is further subdivided into two four-dash tariff items (8607.19.21 and 8607.19.29). See *ibid*.

B. The goods are properly classified as “parts of wheels” under tariff item 8607.19.30

33. In this case, the forged Wheel Bodies can – and must – be classified as “Parts of wheels” under tariff item 8607.19.30, and not as “Wheels, whether or not fitted with axles”, for the following reasons:

- (i) The Explanatory Notes to Heading 86.07 refer to Wheel Bodies/corps de roues as an example of a part of a wheel;³¹
- (ii) The design, production process, usage, characterization, and common understanding of the goods lead to the conclusion that they are “parts of wheels”;
- (iii) The forged Wheel Bodies should be considered “parts” based on the CBSA’s own D Memoranda;³² and
- (iv) The CBSA President’s Decision, classifying the goods under tariff item 8607.19.29, is based on Rule 2(a) of the *General Rules*, which the Supreme Court of Canada has held is irrelevant to the issue before the Tribunal.³³

(i) The goods should be classified as “parts of wheels” based on the Explanatory Notes to Heading 86.07

34. The Wheel Bodies should be classified as “parts of wheels” based on the World Customs Organization (“WCO”) Explanatory Notes to Heading 86.07 of the Harmonized Commodity Description and Coding System (the “Explanatory Notes”), which refer to Wheel Bodies/corps de roues as an example of a part of a wheel.³⁴ [emphasis added]

Parts of railway or tramway locomotives
or rolling-stock include:

[...]

*Parmi ces parties de véhicules pour voies
ferrées ou similaires, on peut citer :*

[...]

³¹ World Customs Organization (“WCO”), *Explanatory Notes to the Harmonized Commodity Description and Coding System*, 6th ed (2017), “86.07 – Parts of railway or tramway locomotives or rolling-stock” (EN) and “86.07 – Parties de véhicules pour voies ferrées ou similaires” (FR), AB, Vol II, Tab 31 [*Explanatory Notes*, Heading 86.07].

³² CBSA, [Memorandum D10-0-1](#), “Classification of Parts and Accessories in the *Customs Tariff*” (13 May 2014), AB, Vol II, Tab 32 [*Memorandum D10-0-1*].

³³ See *Igloo Vikski*, *supra* note 19, AB, Vol II, Tab 25 as discussed at paragraph 52, *infra*.

³⁴ *Explanatory Notes*, Heading 86.07, *supra* note 31, AB, Vol II, Tab 31.

(3) Wheels and parts thereof (wheel centres, metal tyres, etc.)	<i>Les roues et leurs parties (corps de roues, bandages, frettes, centres, etc.)</i>
---	--

35. Although it is unclear why the two translations of these Explanatory Notes differ slightly, in that the French version provides four examples of parts of wheels (including Wheel Bodies), while the English version provides only two examples, Wheel Bodies/corps de roues are nonetheless clearly considered a part of a wheel by the WCO.

(ii) The design, production process, usage, characterization, and common understanding of the goods suggest they are “parts of wheels”

36. Goods must also be classified according to the terms of the tariff items (at the same level) under which they might fall,³⁵ with regard to the product’s design, production process, usage, and characterization by the trade, and the common understanding of what the product is.³⁶ These factors, and particularly the design, production process, and usage of the Wheel Bodies described above, further support that the goods are not wheels, but rather are parts of wheels, particularly when one considers that the goods in issue must be either wheels or parts of wheels for railway or tramway locomotives or rolling-stock, as these tariff items fall within Chapter 86.

37. First, upon importation, the goods cannot perform the essential function of a wheel for railway or tramway locomotives or rolling-stock, given that they cannot be mounted with any axle until they have undergone further manufacturing after importation. This supports the goods being parts of wheels, and not wheels outright. Similarly, there are different AAR standards that

³⁵ *General Rules*, *supra* note 18, AB, Vol II, Tab 24, Rules 1, 6 and Canadian Rule 1; *Danson Décor*, *supra* note 23, AB, Vol II, Tab 27 at paras 13-18.

³⁶ *Bauer Hockey Corporation v President of the Canada Border Services Agency* (26 April 2012), AP-2011-011 (CITT), AB, Vol II, Tab 33 at para 43, citing *Partylite Gifts Ltd v Commissioner of the Canada Revenue Agency* (16 February 2004), AP-2003-008 (CITT), AB, Vol II, Tab 34 at 5, *aff’d* 2005 FCA 157.

apply to Wheel Bodies (the good produced prior to importation) and to the wheel boring process, which is a manufacturing process applied after importation. This leads to the conclusion that the Wheel Bodies, as imported, are not the same as outright wheels.

38. This is also supported by the characterization of the goods by the trade (i.e., parties involved in the rolling-stock manufacturing industry) and the common understanding of what the product is. Participants in North America's rolling-stock industry refer to the goods by multiple names – including “wheel plates”³⁷ and even “wheel blanks”³⁸ – indicating that the goods are not considered wheels outright. Indeed, the customs coding forms for the transactions at issue [REDACTED]

[REDACTED]³⁹ [REDACTED]
[REDACTED]

39. Although the exporter used the term “wheels” in its invoicing,⁴⁰ industry participants do not consider the goods to be the same as wheels. In fact, the existence of a 2005 Advance Ruling (of which Ronsco is aware, but has yet to successfully obtain a copy) stating that the goods were “blanks” indicates that, at the time, CBSA also did not consider the goods to be the same as wheels. Ronsco is unable to speak to the rationale underlying the Advance Ruling, and the CBSA President's Decision does not speak to the reasoning underlying the CBSA's change of position.

40. In any event, as Ronsco argued to the CBSA, which argument the CBSA can only be taken

³⁷ BNSF Railway, “The Wheels at Havelock Go ‘Round and ‘Round”, AB, Vol I, Tab 18, online: BNSF <<http://www.bnsf.com/news-media/railtalk/community/havelock-wheel-shop.html>>.

³⁸ See the “Canada Customs Coding Forms” submitted by FedEx for the transactions at issue, attached at AB, Vol I, Tab 19. These coding forms also include the commercial invoices issued by Taiyuan to Ronsco Inc.

³⁹ *Ibid.*

⁴⁰ See Purchase Contract Between Ronsco Inc. and Taiyuan [REDACTED], AB, Vol I, Tab 20; see also the commercial invoices issued by Taiyuan to Ronsco Inc., included in the Customs Forms attached at AB, Vol I, Tab 19.

as having accepted given the rulings below, the goods have also been manufactured far beyond the stage of being “blanks”, in that they are no longer undifferentiated to the point of being able to serve as more than one type of wheel for rolling-stock. However, the goods have not reached the point in the manufacturing process at which they could be considered “wheels”, in that they cannot be fitted with any axle or fixed below a vehicle or other object.

41. Furthermore, while the AAR Standards refer to the goods as “wheels”, the fact remains that at the stage of manufacture at which they are imported, the goods cannot yet perform the essential function of wheels for railway or tramway locomotives or rolling-stock. They are instead, as specifically contemplated by tariff item 8607.19.30, “parts of wheels”.

(iii) The goods should be considered “parts” based on the CBSA’s D Memoranda

42. The Wheel Bodies should also be considered “parts of wheels” based on the CBSA’s own internal policies regarding the classification of “parts”. Although the CBSA’s “D Memoranda” are administrative documents and are not legally binding on the Tribunal, they may nonetheless provide guidance for the Tribunal’s analysis.⁴¹

43. As recognized in CBSA *Memorandum D10-0-1*, “Classification of Parts and Accessories in the *Customs Tariff*”, “[t]here is no one universally applicable test” regarding what constitutes a part; rather, the analysis is a contextual one.⁴² *Memorandum D10-0-1* sets out the following criteria for use in determining whether a good is a part:⁴³

27 Five criteria have emerged over the years which set forth basic considerations for the

⁴¹ See [VGI Village Green Imports v Canada Border Services Agency](#) (13 January 2012), AP-2010-046 (CITT), AB, Vol II, Tab 35 at para 97.

⁴² *Memorandum D10-0-1*, *supra* note 31, AB, Vol II, Tab 32 at para 24.

⁴³ *Ibid* at para 27.

classification of parts. To be considered to be a part, goods:

- (a) form a complete unit with the machine;
- (b) have no alternative function;
- (c) are marketed and shipped as a unit;
- (d) are necessary for the safe and prudent use of the unit; and/or
- (e) are committed to the use of the unit.

These criteria may be “[u]sed singly or in combination” – that is, depending on the context, goods need not meet all of the criteria in order to be considered a “part.”⁴⁴

44. The goods imported by Ronsco fulfill the criteria in *Memorandum D10-0-1*. First, they cannot function as wheels as imported (criterion (b)). As noted above, on importation the Wheel Bodies cannot be fitted with axles, which is one of the key functional criteria for a wheel for railway or tramway locomotives or rolling-stock. However, once they are further machined and manufactured after being imported, the goods constitute “complete” wheels and are capable of being mounted on axles (criterion (a)). Second, the goods have no alternative function, and, once finished, are – and must be – marketed as a unit (criterion (c)). That is, after being imported, the wheels are finished such that they will fit one specific axle and must therefore be marketed as a unit with that axle, based on the number of completed wheels that a customer requires to be fitted with axles and incorporated into a bogie or bissel-bogie.

45. Furthermore, the Wheel Bodies must always be further worked or processed in order to be marketed and shipped for use in an AAR-compliant manner (criterion (d)). Finally, the goods

⁴⁴ *Ibid* at para 28.

in question are committed to use in finished wheels of railway rolling-stock;⁴⁵ that is, the Wheel Bodies cannot be used for any other purpose or in the manufacturing of any wheel other than for railway or tramway locomotives or rolling-stock (criterion (e)).

46. Given that the goods imported by Ronsco are forged (i.e., the process of forming and shaping metal through the use of hammering, pressing or rolling) it is unsurprising that the further manufacturing that the part requires involves removing material from the good imported, rather than adding to the good or assembling the good with something else. The uniqueness of the plethora of manufacturing processes applied to goods imported into Canada is the very reason that there is no universal test for what constitutes a “part”.

47. As described above and at Tabs 4⁴⁶, 5⁴⁷, 6⁴⁸ and 7⁴⁹, the forging process involves applying a series of progressive steps to a “blank”, which is cut from “steel blooms”, in order to form it from a blank to a Wheel Body. It is not until all of these steps are complete, as well as the further manufacturing performed by Ronsco after importation, that the good can properly be called a wheel for railway or tramway locomotives or rolling-stock.

48. This interpretation is supported by previous decisions made by this Tribunal. For instance, the Tribunal held in *Atomic Ski Canada Inc v Canada (Deputy Minister of National Revenue)*⁵⁰ that the plastic shells for in-line skates could not be considered “roller skates” or “other sports

⁴⁵ For an imported good to be “committed” for use with a particular good, it must (i) have no other use than with those goods and (ii) be necessary to their function: *ibid* at paras 25-26.

⁴⁶ Taiyuan [REDACTED] Document, *supra* note 6, AB, Vol I, Tab 4.

⁴⁷ OMK Catalogue, *supra* note 6, AB, Vol I, Tab 5.

⁴⁸ Discovery Channel Video, *supra* note 6, AB, Vol I, Tab 6.

⁴⁹ Sandvik Coromant Video, *supra* note 6, AB, Vol I, Tab 7.

⁵⁰ *Atomic Ski*, *supra* note 11, AB, Vol II, Tab 23.

footwear”, but rather were “other parts of footwear.”⁵¹ This was because these plastic shells lacked one of the principal features of footwear: “the ability to be worn as a covering for the foot and part of the leg.”⁵² Similarly, the forged Wheel Bodies imported by Ronsco lack one of the principal features of a wheel for railway or tramway locomotives or rolling-stock – the ability to be mounted on an axle and to enable a locomotive or railcar to move – and cannot be considered a wheel outright. Following the same reasoning, the goods imported by Ronsco are neither a blank (as they are too far along the manufacturing process) nor a wheel (as the manufacturing process is not yet complete), but are rather a part of a wheel.

49. Furthermore, although “blanks” may be addressed by tariff item 8607.19.21, which falls under the sub-sub-heading “Wheels, whether or not fitted with axles”, this tariff item is a “four-dash” item while tariff item 8607.19.30 is a “three-dash” item. Following the Canadian Rules, the analysis must compare items at the “three-dash” level, such that tariff item 8607.19.21 can only be considered if it is determined that the good is a wheel for railway or tramway locomotives or rolling-stock in the first place.⁵³

50. In any event, it is only logical that “blanks” are addressed by a different tariff item than “parts” as a blank is an undifferentiated good, rather than a part. Given that blanks are undifferentiated, they are in fact not yet sufficiently manufactured in order to be considered “committed” to use as a specific wheel. Blanks do not fulfill the criteria for “parts” above, particularly given they are not “committed to the use of the unit” (i.e., the wheel), as identified

⁵¹ *Ibid* at para 22.

⁵² *Ibid*.

⁵³ See *Memorandum D10-13-1*, *supra* note 26, AB, Vol II, Tab 28, Appendix A.

under *Memorandum D10-0-1*, s. 27(e). Indeed, a blank can be further manufactured into various types of finished wheels, or even into different goods entirely.

(iv) The CBSA President's Decision, classifying the goods under tariff item 8607.19.29, is based on Rule 2(a) of the *General Rules*, which is irrelevant to the issue before the Tribunal

51. Furthermore, the CBSA President's Decision, classifying the goods at issue as "Wheels, whether or not fitted with axles: - Other" under tariff item 8607.19.29, is based on Rule 2(a) of the *General Rules*.⁵⁴ Rule 2(a) allows unfinished goods to be classified as the finished version of the goods, if they have the "essential character" of the finished goods.⁵⁵ However, Rule 2(a) is irrelevant to this analysis and should not be considered in classifying the Wheel Bodies, because the goods can – and therefore must – be classified based on Rule 1 of the *General Rules* (as it applies to tariff items, *mutatis mutandis*, pursuant to the Canadian Rules).

52. Specifically, the Supreme Court of Canada recently held in *Canada (Attorney General) v Igloo Vikski Inc* ("*Igloo Vikski*")⁵⁶ that it is "only where Rule 1 [of the *General Rules*] does not conclusively determine the classification of the good that the other General Rules become relevant to the classification process [citations omitted]."⁵⁷ As a result, the classification of the forged Wheel Bodies must be determined according to the terms of the two "three-dash" items noted above and any relevant Explanatory Notes, as stated in Rule 1 of the *General Rules*.⁵⁸ The

⁵⁴ Letter from S Ogilvie to Ronsco Inc. re Request for Further Re-determination (CBSA President's Decision) (18 January 2019), AB, Vol I, Tab 17.

⁵⁵ *General Rules*, *supra* note 18, AB, Vol II, Tab 24, Rule 2(a).

⁵⁶ *Supra* note 19, AB, Vol II, Tab 25; see also *Lone Pine Supply Ltd v Canada (Border Services Agency President)* (22 August 2018), AP-2017-002 (CITT), AB, Vol II, Tab 36 at para 18.

⁵⁷ *Igloo Vikski*, *supra* note 19, AB, Vol II, Tab 25 at para 21.

⁵⁸ *General Rules*, *supra* note 18, AB, Vol II, Tab 24, Rules 1, 6 and Canadian Rule 1. See also *Memorandum D10-13-1*, *supra* note 24, AB, Vol II, Tab 28 at paras 27-28 and Appendix A.

other *General Rules* should not even be considered unless the goods cannot be classified based on Rule 1.

53. The Supreme Court also held in *Igloo Vikski* that the deeming provisions in Rule 2 are not applicable where a heading “specifically describes the unfinished goods or composite goods as such,” because the heading already “specifically contemplates the incomplete or composite nature of the good in question” [emphasis added].⁵⁹ The same reasoning applies to subheadings (given Rule 6 of the *General Rules*) and to tariff items (given rule 1 of the *Canadian Rules*).⁶⁰

54. In this case, the forged Wheel Bodies should be classified as “parts of wheels” under tariff item 8607.19.30 without reference to Rule 2(a), given that tariff item 8607.19.30 already contemplates the unfinished nature of the forged Wheel Bodies. For instance, in *Igloo Vikski*, the Supreme Court specifically cited “Parts of footwear” (heading 64.06 of the Schedule) as an example of a heading that “specifically describes an unfinished good”, precluding the application of Rule 2(a) of the General Rules:⁶¹ [emphasis added]

An example of a heading that specifically describes an unfinished good is 64.06 (“Parts of footwear”), and an example of a heading that specifically describes a composite good is 59.06 (“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 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.

Like heading 64.06 (“Parts of footwear”), tariff item 8607.19.30 (“Parts of axles or wheels”) specifically contemplates the incomplete nature of the goods at issue in this appeal.

⁵⁹ *Igloo Vikski*, *supra* note 19, AB, Vol II, Tab 25 at para 22 and footnote 4.

⁶⁰ *General Rules*, *supra* note 18, AB, Vol II, Tab 24, Rule 6 and Canadian Rule 1.

⁶¹ *Igloo Vikski*, *supra* note 19, AB, Vol II, Tab 25 at footnote 4.

55. As a result, the forged Wheel Bodies should be classified under tariff item 8607.19.30 as “parts of wheels”, without the need to refer to Rule 2(a) of the *General Rules*. Given that the CBSA President’s Decision is based on *General Rule 2(a)*, it clearly runs contrary to the Supreme Court’s statements in *Igloo Vikski* and should therefore be reversed.

V. ORDER SOUGHT

56. Ronsco respectfully requests that the Tribunal allow the appeal; find that the forged Wheel Bodies at issue are properly classified under tariff item 8607.19.30 as “Parts of wheels”; order that the [REDACTED] in duties paid by Ronsco on the goods at issue be remitted to Ronsco forthwith, with interest; and further order that the CBSA pay Ronsco’s costs in this appeal and the proceedings below on a substantial indemnity basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

Dated at Ottawa, this 14th day of June, 2019.

June 14, 2019

Conway Baxter Wilson LLP/s.r.l.
400-411 Roosevelt Avenue
Ottawa ON K2A 3X9

Colin S. Baxter LSO#: 33574P
cbaxter@conway.pro
David P. Taylor LSO#: 63508Q
dtaylor@conway.pro
Alyssa Edwards LSO#: 74272A
aedwards@conway.pro

Tel: 613-288-0149
Fax: 613-688-0271

Grey, Clark, Shih and Associates, Limited
571 Blair Road
Ottawa, ON K1J 7M3

Peter Clark
jpclark@greyclark.com
William Bradley
wbradley@greyclark.com

Tel: 613-238-7743
Fax: 613-238-0368

Counsel for the Appellant, Ronsco Inc.