Court File No.: T-1295-20

FEDERAL COURT

BETWEEN:

RONSCO INC.

Plaintiff

-and-

HER MAJESTY THE QUEEN

Defendant

FRESH AS AMENDED STATEMENT OF DEFENCE

1. The Attorney General of Canada defends this action on behalf of the Defendant, Her Majesty the Queen.

2. The Defendant does not admit any of the allegations contained in the Fresh as Amended Statement of Claim, except as set out below.

3. The Defendant denies the allegations contained in paragraphs 8, 10, 12, 16-17, 19-23, 33, 35-39, 41-43, 45-60 and, 68-69 of the Fresh as Statement of Claim.

4. The Defendant has no knowledge of, or takes no position on, the allegations contained in paragraphs 2-7, 9, 11, 13-15, 40, and 44 of the Fresh as Statement of Claim.

5. The Defendant admits the allegations contained in paragraphs 18, 25-32, and 34 of the Fresh as Statement of Claim.

6. The Defendant denies that the Plaintiff is entitled to the reliefs sought in paragraphs 1 and 67 of the Fresh as Statement of Claim.

Ronsco Benefitted from Incorrect Declarations for Over a Decade

7. The CBSA relies on the voluntary declarations of importers, subject to the right of random verification to ensure compliance.

8. For over a decade, the Plaintiff, Ronsco Inc., imported into Canada rail wheels at a 0% duty rate under the *Customs Tariff*, specifically: H36 wheels, Class C, for use on freight rolling-stock (the "Goods"). In 2017, pursuant to the CBSA's powers and duties under the *Customs Act*, the Plaintiff was selected for a verification of its importations for the period of 2015.

9. The verification led to a finding that the Plaintiff incorrectly declared the Goods under tariff item 8607.19.21 as "blanks for use in the manufacture of wheel and axle combinations for railway and tramway (including subway cars) passenger coaches" ("wheel blanks" or "wheel blanks for passenger coaches"). Goods classified under this tariff item attract no duties, and the Plaintiff paid no duties on its importations of the Goods for over a decade.

10. Rather, the Goods are properly classified under tariff item 8607.19.29 as "other wheels, with or without axles" ("wheels"). Goods classified under this tariff item attract a duty of 9.5% pursuant to the *Customs Tariff*. Notably, the Canadian International Trade Tribunal (the "CITT") agreed that it was clear that the Goods were "wheels" and were incorrectly classified by the Plaintiff.

11. The verification also led to a finding that the Plaintiff had "reason to believe" that its declarations were incorrect. It is clear, *prima facie*, evident and transparent that the Goods a) are not "wheel blanks", and b) are not used for passenger coaches – two requirements for classification under tariff item 8607.19.21.

12. During the verification, the Plaintiff was unable to provide any evidence in this regard and conceded that the Goods were not "wheel blanks", arguing instead that they were "parts of wheel", another duty-free tariff classification.

13. By failing to correct its declarations related to tariff classification for the Goods and pay ensuing duties within 90 days, when it had reason to believe the declarations were incorrect, the Plaintiff contravened s. 32.2 of the *Customs Act*. The Plaintiff was required to pay duties and failed to do so.

14. In this s. 135 action, Ronsco advances, amongst other things, a claim in "breach of public law duties" and for general and special damages. However, this claim is not a recognized tort in Canadian law - having been expressly rejected by the Supreme Court -, is time-barred, and has no factual or legal basis to support it.

15. The Plaintiff takes issue with the fact that: it has to pay duties for the years 2015-2018; other importers of similar goods were not subject to a verification; and a specific importer (Sumitomo), also subjected to a verification, did not have to correct past declarations going back four years.

16. These concerns are irrelevant. Despite the Plaintiff's allegations, they are rooted in the application of the legislation, and not in the conduct of the CBSA:

    a) the duties from 2015 to 2018 flow from the obligation to self-correct importations and pay the resulting duties four years after having "reason to believe" they were incorrect, pursuant to s. 32.2 of the *Customs Act*; and

    b) Sumitomo secured for itself an advance ruling, and as such benefitted from the provisions of the *Tariff Classification Advance Rulings Regulations*, while the Plaintiff failed to seek one for itself.

17. The CBSA always acted pursuant to its mandate, duties and powers under the *Customs Act*, and as regulator of cross-border movement of goods and collector of taxes and duties. By verifying Ronsco's importations, the CBSA simply ensured compliance with the *Customs Act*. The Plaintiff was not compliant.

18. The CBSA relies on the voluntary compliance of importers who are expected to properly classify their goods, failing which they may be found to be in contravention and be imposed a penalty.

19. The contravention should be upheld, and this action and the claim in "breach of public law duties" should be dismissed.

Self-Reporting: the Cornerstone of the *Customs Act*

20. The *Customs Act* and related legislation seeks to oversee, regulate and control the cross-border movements and importations of goods. To achieve these objectives, the *Customs Act* relies upon an effective voluntary self-reporting scheme.

21. Importers are required to account for imported goods and to pay any required duties, pursuant to section 32 of the *Customs Act*. This accounting includes accounting for tariff classification.

22. Subsection 32.2(2) of the *Customs Act* requires that an importer of goods shall, within ninety days after the importer has reason to believe that the declaration of tariff classification for any of those goods is incorrect, correct the declaration of tariff classification and pay any amount owing as duties and interest as a result of the correction.

23. This obligation to self-correct a particular importation ends four years after the goods were originally accounted for, pursuant to subsection 32.2(4) of the *Customs Act*.

24. An importer's failure to self correct within 90 days of an importation, when it has reason to believe its declaration as to tariff classification is incorrect, constitutes a contravention of the *Customs Act* that attracts a penalty, pursuant to section 109.1 of the *Customs Act* and the *Designated Provisions (Customs) Regulations*.

25. From time to time, the Canada Border Services Agency (the "CBSA") initiates verifications in order to promote and ensure compliance with *Customs Act* obligations, pursuant to section 42.01 of the *Customs Act*.

The Interim Verification Report: Ronsco Agrees that it Failed to Self-Report Correctly

26. On July 11, 2017, the CBSA initiated a trade compliance verification into the Plaintiff's importations of the Goods: Trade Compliance Verification #C-2016-011118. The objective of the verification was to promote and ensure compliance with customs accounting obligations as they relate to tariff classification. The verification period, from which the CBSA took samples, ran from January 1, 2015 to December 31, 2015, and covered a sample of five importation transactions of the Goods.

27. On April 20, 2018, the CBSA issued an Interim Verification Report, in which it preliminarily determined that, with respect to the Goods:

    a) the Goods should have been classified under tariff item 8607.19.29, as "other wheels, with or without axles", and not under tariff item 8607.19.21 as "wheel blanks" as declared by the Plaintiff;

    b) the Plaintiff previously had information giving rise to a reason to believe that the Goods were incorrectly classified because the legislative provisions at issue were "*prima facie*, evident and transparent". Accordingly, a Notice of Penalty Assessment would be issued with a penalty assessed for each declaration made in error that had not been corrected within 90 days with ensuing duties paid, which constitute contraventions of the *Customs Act*.

28. On May 25, 2018, the Plaintiff submitted to the CBSA a response to the Interim Verification Report. In its response, the Plaintiff, *inter alia*:\

    - agreed that the Goods are not correctly classified under tariff item 8607.19.21 as "wheel blanks for passenger coaches";

    - stated that it had relied on classification advice from its customs broker, FedEx, in selecting the tariff item;

    - agreed that the Goods are not "blanks";

- acknowledged that the fact the Goods are not blanks was demonstrated by the Plaintiff's contract with Taiyuan Heavy Industrial Railway Transit Equipment Co. Ltd., the Plaintiff's principal supplier of the Goods, and by commercial invoices from Taiyuan; and

- indicated that it was willing to pay the administrative monetary penalty.

29. The Plaintiff did not dispute the CBSA's preliminary finding that it had earlier reason to believe that the Goods were incorrectly classified under tariff item 8607.19.21. Instead, the Plaintiff argued in its response to the Interim Verification Report that it did not have reason to believe that the Goods would fall within a category on which duty is payable. The Plaintiff argued that the Goods were properly classified as "parts of axles or wheels" under tariff item number 8607.19.30, which, like tariff item 8607.19.21, is duty-free.

30. Neither before nor after the Interim Verification Report did the Plaintiff furnish any evidence indicating the Goods were used for passenger coaches, self-propelled railway vehicles for the transport of passengers, baggage, mail or express traffic, or tramway vehicles (excluding subway cars) with magnetic track brakes, as required for classification under tariff item 8607.19.21.

The Final Verification Report: Ronsco Contravened the *Act* and is Required to File Corrections Going Back Four Years

31. On July 24, 2018, the CBSA issued its Final Verification Report. The CBSA confirmed its preliminary decision with respect to the Goods, and determined that:

a) The Goods imported under the five verified sampled transactions were properly classified under tariff item 8607.19.29 as "wheels", which carries a 9.5% duty, and not 8607.19.21 ("wheel blanks"). as declared by the Plaintiff;

b) The Plaintiff was required to correct its importations going back a maximum of 4 years, and to pay any resulting duties, pursuant to s. 32.2 of the *Customs Act*. This includes the period between 2015 and 2018.

c) The Plaintiff had earlier "reason to believe" its tariff classification of the "rough bore wheels" was incorrect because the tariff provisions at issue were "*prima facie*, evident and transparent"; and

d) By failing to earlier correct its tariff classification within 90 days of having such a "reason to believe", the Plaintiff had contravened s. 32.2 of the *Customs Act*. Consequently, an NPA would be issued with a penalty assessed.

32. On August 27, 2018, the CBSA issued re-determinations of the tariff classification for the five sampled transactions of the Goods examined in the verification process, which imposed related duties, under s. 59 of the *Customs Act*.

The CITT Confirms the CBSA's Tariff Classification of the Goods

33. Pursuant to s. 60 of the *Customs Act*, the Plaintiff appealed the CBSA's re-determination of the tariff classification of the five sampled transactions of the Goods to the President and subsequently brought an appeal to the CITT under s. 67.

34. The Plaintiff, in its CITT appeal, did not pursue the incorrect tariff classification it benefitted from for over a decade ("wheel blanks"), but rather chose to argue that the Goods were "parts of axles or wheels", another duty-free classification.

35. On March 17, 2020, the CITT issued a decision in AP-2019-003, confirming the CBSA's determination that the Goods are properly classified under tariff item 8607.19.29 as "wheels" was correct. The decision dismissed the Plaintiff's appeal of the CBSA's tariff classification of the Goods. The Plaintiff did not appeal the CITT's decision.

Ronsco Files Corrections for the Years 2015-2018 as Required by s. 32.2 of the *Act*

36. In January 2019, as required by s. 32.2, the Plaintiff filed corrections covering all its importations of "rough bore wheels" going back four years, from 2015 to 2018 (except for the Goods imported under five sampled transactions, the classification of which had already been re-determined by the CBSA).

37. On May 23, 2019, the CBSA issued Detailed Adjustment Statements ("DAS") for those importations pursuant to the Plaintiff's corrections, with related duties owing. Those corrections were thereby deemed to be redeterminations under 59(1)(a) of the *Customs Act*.

38. The Plaintiff appealed the May 23, 2019 DASs under s. 60 of the *Customs Act*. This appeal was held in abeyance pending the outcome of the appeal of the five sampled transactions (same goods) in AP-2019-003.

39. On July 30, 2020, following the confirmation by the CITT of the CBSA's tariff classification, the CBSA upheld the May 23, 2019 redeterminations, in the form of a DAS.

Notice of Penalty Assessment and Appeal: The Minister Correctly Upholds the Finding that Ronsco Contravened the *Act*

40. On October 3, 2019, as a result of the finding that the Plaintiff had contravened the *Customs Act*, the CBSA lawfully issued a Notice of Penalty Assessment (No. 209442) to the Plaintiff, pursuant to s. 109.3 of the *Customs Act*. The Notice of Penalty Assessment indicated that the Plaintiff was required to pay an Administrative Monetary Penalty of a total of $1,000.

41. Section 127 of the *Customs Act* provides that the debt due to Her Majesty as a result of a notice served under section 109.3 is final and not subject to review, except to the extent and in the manner provided by sections 127.1 and 129 of the *Customs Act*.

42. Section 129 of the *Customs Act* provides that any person on whom a notice is served under section 109.3 may request a decision of the Minister under section 131 by giving notice in writing, or by any other means satisfactory to the Minister.

43. By letter dated December 17, 2019, the Plaintiff contested the Notice of Penalty Assessment issued on October 3, 2019 and requested that the Minister make a decision under section 131 of the *Customs Act*.

44. On September 15, 2020, after considering the submissions of the Plaintiff and all the circumstances of the case, the CBSA issued a ministerial decision pursuant to section 131 of the *Customs Act*, which upheld the Notice of Penalty Assessment issued on October 3, 2019.

45. The Minister lawfully concluded that Plaintiff had contravened the *Customs Act*, confirming that:

    a) it was evident from the language of tariff item 8607.19.21 that it did not apply to the Goods imported by the Plaintiff;

    b) the Plaintiff had "reason to believe" its declarations that the Goods were classified under tariff item 8607.19.21 were incorrect because the relevant provisions are *prima facie*, evident and transparent; and

    c) the Plaintiff had contravened the *Customs Act* by failing to make corrections to its tariff classification declarations and pay resulting duties within 90 days after having reason to believe that the declaration was incorrect.

46. On October 26, 2020, the Plaintiff commenced this action under section 135 of the *Customs Act*, which constitutes an appeal of the September 15, 2020 ministerial decision made pursuant to section 131 of the *Customs Act*.

Ronsco Contravened the *Customs Act*

47. In response to the allegations in paragraphs 36 to 45 of the Fresh as Amended Statement of Claim, the Defendant states the following.

48. The Plaintiff made importations of the Goods and incorrectly declared them as being under tariff classification item 8607.19.21, including during the verification period and otherwise during the years 2015 to 2018.

49. At the time of those importations, the Plaintiff had reason to believe its declarations of tariff classification for the Goods was incorrect because the relevant tariff items were *prima facie*,

evident and transparent. It was clear from the wording of the provisions that the Goods were not properly classified as declared by the Plaintiff under tariff item 8607.19.21.

50. As the Plaintiff did not correct its tariff classification declarations with respect to the Goods and pay the ensuing duties within 90 days, the Plaintiff was in contravention of the *Customs Act*.

51. While advance ruling can be informative to the importing community, they are binding only between the CBSA and the ruling recipient and cannot be relied upon by other importers. The fact that an advance ruling had been issued to another importer, for different goods, does not mean the Plaintiff did not have reason to believe that its tariff classification declarations for the Goods were incorrect.

52. American policy, statements made by CBSA personnel at later points in time, and a general statement by the Minister of Finance are irrelevant to whether the Plaintiff had reason to believe that its tariff classification declarations for the Goods were incorrect, and do not mean that the Plaintiff did not have "reason to believe".

53. Accordingly, the Plaintiff's appeal of the September 15, 2020 decision issued pursuant to section 131 of the *Customs Act* should be dismissed.

"Breach of Public Law Duties": Not a Recognized Tort in Canadian Law

54. The claim for breach of public law duty is not a recognized tort in Canadian Law. In fact it has been expressly rejected by the Supreme Court. As such, the Plaintiff is precluded from advancing a claim for damages based on this repudiated cause of action.

The Claim in "Breach of Public Law Duties" and for Damages is Time-Barred

55. The claim for breach of public law duties and for damages is time-barred, pursuant to subsection 106(1) of the *Customs Act*. No cause of action can be commenced against a CBSA officer more than three (3) months after the cause of action or the subject-matter of the proceeding arose.

56. The Plaintiff originally filed this action on October 26, 2020. The Plaintiff filed this Fresh as Amended Statement of Claim and asserted this claim in "breach of public law duties" on June 3, 2021. The Plaintiff knew or ought to have known the facts at the basis of its claim in " breach of public law duties" and for damages at or around the time the Final Verification Report was issued, in July 2018.

57. In any event, the Plaintiff filed this action passed the 3-month limitation period.

No "Breach of Public Law Duties": the CBSA Simply Fulfilled its Mandate and Ensured Compliance with the *Act*

58. In response to the allegations in paragraphs 45 to 60 of the Fresh as Amended Statement of Claim, the Defendant denies that the CBSA or its servants "breached" any "public law duties" that caused or contributed to any damages alleged by the Plaintiff.

58. The Defendant further denies that its conduct was "unacceptable", "indefensible in the administrative law sense", "inconsistent with, and offensive to, public law values" or that it "constituted significant maladministration", as claimed by the Plaintiff.

59. On the contrary, at all material times, the Defendant, the CBSA, and their servants, acted in accordance with the applicable legislation and the CBSA's mandate to regulate the cross-border movement of goods and to ensure compliance with the *Customs Act* and the proper collection of taxes and duties.

60. In response to paragraphs 49 to 52 of the Fresh Amended Statement of Claim, the Defendant denies that the CBSA treated the Plaintiff differently than other importers, or that it treated the Plaintiff unfairly.

61. In any event, the Defendant states that the treatment of other importers is irrelevant, and cannot ground a claim in breach of public law duties.

62. The CBSA has the prerogative of verifying importers within the powers and obligations conferred on it by statute.

63. The CBSA cannot be held responsible towards a specific importer for the declarations of other importers in a given "industry", and the CBSA does not have a "public law duty" to verify every importers of a certain good. The *Customs Act*, based on self-reporting, simply does not require this.

64. The Defendant further states that Sumitomo was also subject to a verification, but benefitted from a prior advance ruling. Following the verification, the advance ruling was revoked, and Sumitomo had to change the tariff classification of the Goods only for the importations of the Goods occurring after the effective date of the revocation, pursuant to the *Tariff Classification Advance Rulings Regulations*.

65. The Plaintiff could have benefitted from the same legislation, and not have to pay duties for the years 2015-2018, but it omitted to secure its own advance ruling.

66. In response to paragraphs 53 and 54 of the Fresh as Amended Statement of Claim, the Defendant denies that the CBSA admitted during the June 2018 meeting with the Plaintiff that Ronsco did not have "reason to believe". The Defendant further denies that it provided any assurances whatsoever that the Plaintiff would not have to pay the duties for the years 2015-2018. In the alternative, if those or part of those representations were made, they were made in error and were corrected at the latest a month later when the Final Verification Report was issued. In any event, it cannot ground a claim in "breach of public law duties".

67. In response to paragraph 54 and 56 of the Fresh as Amended Statement of Claim, the Defendant denies that the imposition of the duties for the years 2015-2018 was done contrary to the CBSA's policies. In any event, it cannot ground a claim in "breach of public law duties".

68. In response to paragraphs 55 and 56 of the Fresh Amended Statement of Claim, the Defendant denies that the CBSA or the Defendant took inconsistent procedural positions. Rather, it is the

Plaintiff that chose to commence multiple proceedings regarding different issues, partly based on a misunderstanding of Ronsco's legislated obligation to correct declarations going back four years, pursuant to s. 32.2 of the *Customs Act*.

69. In any event, this cannot ground a claim in "breach of public law duties". The CBSA and the Defendant are not under the obligation to provide legal advice to the Plaintiff, and the Plaintiff should not have relied on information given by the CBSA to conduct its litigation.

Ronsco Did Not Suffer Any Loss Because of the CBSA's Conduct

70. The Defendant denies that the Plaintiff suffered any compensable damages or loss.

71. In the alternative, if the Plaintiff suffered any loss that may be compensable in law, which is denied, such losses were not caused or contributed to by any breach of public law duties on the part of the CBSA, the Defendant, or their servants.

72. In the further alternative, if the Plaintiff suffered losses that may be compensable in law, which is denied, the damages claimed by the Plaintiff are excessive, exaggerated, and/or too remote to be compensable.

73. In the further alternative, if the Plaintiff suffered losses that may be compensable in law, which is denied, the Plaintiff caused or contributed to those injuries by its own conduct and contributory negligence.

74. If it is found at trial that the Plaintiff is entitled to any damages, those damages should be reduced to the extent of the Plaintiff's conduct and contributory negligence.

75. In the further alternative, if the Plaintiff suffered losses that may be compensable in law, which is denied, the Plaintiff failed to mitigate its losses.

76. If it is found at trial that the Plaintiff is entitled to any damages, those damages should be reduced to the extent that the Plaintiff failed to mitigate its losses.

77. The Defendant asks that the Plaintiff's contravention be upheld and its claim in "breach of public law duties" and for damages be dismissed with costs payable to the Defendant.

78. The Defendant pleads and relies upon the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp); *Customs Tariff*, S.C. 1997, c. 36; *Tariff Classification Advance Rulings Regulations*, SOR/2005-256; *Designated Provisions (Customs) Regulations*, SOR/2002-336; *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50 (as amended); and the *Federal Courts Act*, R.S.C., 1985, c. F-7.

August 11, 2022

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