

APPEAL No.: AP-2019-003

IN THE MATTER OF an appeal, pursuant to section 67 of the *Customs Act*, R.S.C. 1985, c. 7 (2<sup>nd</sup> Supp.);

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated January 18, 2019, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

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**AFFIDAVIT**

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## AFFIDAVIT

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This Affidavit is provided to the Canadian International Trade Tribunal pursuant to a Subpoena issued by Presiding Member Cheryl Beckett in Appeal No. AP-2019-003 on the 17<sup>th</sup> of October 2019.

The request for said Subpoena was made by Mr. Colin Baxter, Conway Baxter Wilson LLP acting on behalf of the Appellant, Ronsco Inc., in AP-2019-003.

This Affidavit constitutes the information that can be provided by the Affiant in that matter. This Affidavit substitutes for any testimony that could be made by the Affiant.

The Affiant, and his employer Sumitomo Canada Limited, take no position in the matter of the substance of the dispute before the Tribunal.

1. My name is Brian Lambert and I am the Affiant. I am domiciled and reside at 343 Roslyn, in the City of Westmount, Province of Quebec H3Z 2L7.
2. I am the Vice President of Sumitomo Canada Limited (“Sumitomo”) and have personal knowledge of the information and facts provided herewith.
3. In November 2005, Sumitomo Canada Limited submitted a Request to the CBSA for a tariff Classification Advance Ruling of **WHEEL BLANKS for railway**.
4. The Advanced Tariff Classification Ruling (“**ATC Ruling**”) number #212532 was issued to Sumitomo by the CBSA on December 19, 2005 and has been placed into evidence in the Canadian International Trade Tribunal’s proceeding AP-2019-003.
5. The goods for which that ATC ruling was issued were solid wheel blanks of forged alloy steel, without an axle described in the industry as E28, J33, H36, J36, B38 and other wheel bodies; where the letter designates the wheel tread thickness and the number designates the diameter of the wheel blank.

6. Wheel blanks may also be called wheel plates, wheel bodies or “corps de roues” by the industry.
7. The goods were further described as having the shape and form and all the visual apparent characteristics of a wheel; however, these goods were not ready for direct use as such since they require further working to be finished.
8. In their condition as imported, the wheels cannot be affixed to an axle without additional work, such as bore pressing and chamfering performed by an Association of American Railroads (“AAR”) certified wheel shop to reduce the rough bore and fit it to a particular axle;
9. Compliance with AAR Standards is required if the resulting wheels are to be placed into wheel sets for use in rail cars in North America. It is to be noted that Sumitomo is a supplier to such AAR Certified wheel shops as it does not perform these activities itself;
10. In order to render the products suitable for final end-use, the following finishing procedures are understood to be required to be performed in Canada:
  - a. wheel bore sizing: this step is necessary to match the bore size with the right size of the axle;
  - b. finishing the bore and flange of the wheel;
  - c. the axle is placed into the bore;
  - d. the wheel is mounted and fastened onto the axle.
11. The finished wheel and axle combination were for use in the manufacture and maintenance of non-self-propelled railway (or subway) cars.
12. The wheel blanks were produced by Sumitomo Metal Industries Ltd. in Osaka, Japan and exported by Sumitomo Corporation, Tokyo, Japan. The goods were a product of Japan.

13. In ATC Ruling #212532, the CBSA instructed that, *based on the information at hand, the "Wheel Blanks" were to be classified for import purposes into Canada under H.S Tariff item 8607.19.21.00*. At that time, the duty rate was free for a MFN Tariff Treatment, as applicable to products of Japan, for goods classified in the item in question.
14. Subsequent to its receipt of the ATC Ruling, all wheel blanks imported by Sumitomo met the description of the products and were imported under that H.S. Tariff item 8607.19.21.00 as instructed by the CBSA.
15. On October 22, 2018, the CBSA issued an Amendment to the ATC Ruling #212532 which informed that the correct tariff classification for the goods described therein is 8607.19.29.00; thereby confirming that ATC Ruling #280954 supersedes ATC Ruling #212532, effective on January 20, 2019.
16. I have attached a copy of ATC Ruling \*Amendment\* #280954.
17. Since the effective date of ATC Ruling #280954, Sumitomo has complied with its provisions and imported these goods under tariff item number 8607.19.29.00.

All the facts stated in this declaration are true. And I have signed at Montréal, in the Province of Québec, on this 21<sup>st</sup> day of October, 2019.



Brian LAMBERT

Sworn before me on this 21<sup>st</sup> day of October, 2019  
in the City of Montréal, Québec, Canada



Lucia Tomasetta, #105 292  
Commissioner for Oaths





October 22, 2018

Mr. Pierre Lemire  
Sumitomo Canada Limited  
150 King Street West, Suite 2304  
Toronto, Ontario M5H 1J9

**Subject: Tariff Classification Advance Ruling \*\*Amendment\*\***

Dear Mr. Lemire:

**This letter is to advise you of a modification to advance ruling # 212532, for the Wheel Blanks.**

A review of advance ruling # 212532, issued to you in respect of Wheel Blanks, on December 19, 2005, has determined that this classification is incorrect. In accordance with the provisions of Section 12 of the *Tariff Classification Advance Ruling Regulations*, this letter is a modification of the original ruling, with an effective date of January 20, 2019. The correct tariff classification of *Wheel blanks* is reflected in this advance ruling # 280954.

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|-------------------------------|------------------------------|
| <b>Importer BN and RM(S):</b> | <del>XXXXXXXXXX</del> RM0001 |
| <b>TRS Number:</b>            | 280954                       |
| <b>Classification Number:</b> | 8607.19.29.00                |
| <b>Effective Date:</b>        | <b>**January 20, 2019**</b>  |

### Product Description

The goods under review are listed as E28 wheels, B38 wheels, and J33 wheels for use in the manufacture of wheel axle combinations for use on non-self-propelled railway vehicles. According to the importer, at the time of importation they are finished wheel blanks that have the shape, form and all the visual apparent characteristics of a finished wheel, but they are not ready for direct use. After importation there are finishing procedures that need to be performed by the Canadian clients including wheel bore sizing, finishing the bore and the flange, placing the axle, mounting and fastening onto the axle, and then the wheel is finished with the axle mounted.

### Analysis and Justification

Originally classified under 8607.19.21.00 as wheel blanks the goods under review are more than what could be considered as blanks as they are for all intents and purposes in their finished state. The fact that the goods have not yet been mounted on the axles does not mean they are not finished wheels. Although the wheels must undergo finishing processes after importation they still have the essential character of the finished wheel and the characteristics of a finished wheel.

The goods fall under heading 86.07 as parts of railway or tramway locomotives or rolling-stock. At the subheading level, the goods fall under 8607.19 as other, including parts. As the goods are wheels with the characteristics of a finished wheel, not fitted with axles they fall under tariff item 8607.19.29.

### **Decision**

Therefore, in accordance with General Interpretative Rule 1, the correct tariff classification is 8607.19.29.00, as other parts of rolling stock, finished wheels.

Advance ruling # 280954 supersedes the previous advance ruling # 212532 and is effective as of January 20, 2019. Please note that any importations of the subject goods that were made in accordance with ruling # 212532 from the time it was issued until the effective date of this new ruling will not require any correction or adjustment.

### **Legislative /Administrative References**

This ruling has been issued under paragraph 43.1(1)(c) of the *Customs Act* and will be honoured by the CBSA for future importations of the goods specified, provided the material facts and circumstances remain as originally presented; all conditions in the ruling have been met; the ruling has not been modified or revoked; and the *Customs Tariff* legislation has not changed. Should there be a change in the material facts or circumstances pertaining to the goods, you must notify the CBSA as soon as possible. You may request that the advance ruling be modified or revoked as of the date of the change in the material facts or circumstances.

Importers should quote the advance ruling number at the time of importation in either the description field of the B3 entry document or on the Canada Customs Invoice. Exporters or producers should quote the advance ruling number on the Certificate of Origin or commercial invoice accompanying the goods.

Should you disagree with this advance ruling, you may file a dispute notice under subsection 60(2) of the *Customs Act* within 90 days of the date of issuance. Please see the procedures outlined in Appendix C of the CBSA's Memorandum D11-11-3, *Advance Rulings for Tariff Classification*.

This advance ruling is considered 'reason to believe' for the purposes of section 32.2 of the *Customs Act* and the CBSA's Administrative Monetary Penalty System, described in Memorandum D22-1-1.

All Memoranda referenced in this letter may be accessed on the CBSA website, at: [www.cbsa-asfc.gc.ca/publications/dm-md/menu-eng.html](http://www.cbsa-asfc.gc.ca/publications/dm-md/menu-eng.html).

Sincerely,

A handwritten signature in black ink, appearing to be 'SL' with a long horizontal stroke extending to the right.

Sophie Lemyre  
Senior Officer  
Trade Operations Division  
130, rue Dalhousie  
Québec, Québec G1K 4C4

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