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File No.: T-1295-20

FEDERAL COURT

B E T W E E N:

RONSCO INC.

Plaintiff

- and -

**HER MAJESTY THE QUEEN, THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS, CANADA BORDER SERVICES AGENCY**

Defendants

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

FRESH AS AMENDED 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 29, 2020

Amended: May 7, 2021

Issued by: Kimberly Lalonde
(Registry Officer)

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c/o Deputy Attorney General
Department of Justice Canada
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TO: MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
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TO: CANADA BORDER SERVICES AGENCY
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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. General damages in the amount of \$1,000,000, to be particularized before trial;
- c. Special damages in the amount of \$1,006,641.91 compensating Ronsco for, *inter alia*, professional services incurred as a result of the Canada Border Services Agency’s (“CBSA”) actions;
- d. \$2,544,628.30 compensating Ronsco for the administrative monetary penalties, the duties, and interest paid retroactively to the CBSA as a result of CBSA’s actions;
- e. Costs of the proceedings; and
- f. Such further and other relief as counsel may advise and the Court may permit.

I. Background

2. 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 they 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 item 8607.19.21 (re wheel blanks) ("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 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 or around the same period that Ronsco was importing rough bore wheels, numerous other competitor companies were similarly importing identical or substantially similar goods under Tariff 21 without any duty, penalty, or enforcement action by CBSA.
12. CBSA knew, or ought to have known, that Ronsco and the industry as a whole believed that Tariff 21 was the correct and appropriate classification for these imported goods.
13. 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.
14. 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.
15. 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.
16. 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 upended due to the CBSA's imposition of a 9.5% duty on rough bore wheels and its imposition of retroactive duties on Ronsco.

17. As a result, Ronsco has been unable expand its operations as planned and Canadian customers, many of whom do not have their own wheelshops, 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 14, above.

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

18. 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").
19. On April 20, 2018, Ronsco received an Interim Report from the CBSA which advised that 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, purportedly on the basis that it had "reason to believe" that its initial tariff declaration was incorrect.
20. 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.

21. On June 26, 2018, Ronsco officials 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.
22. These representations by Mr. Band are an admission that Ronsco had not had “reason to believe” that the rough bore wheels were dutiable, given the acknowledged unclear wording of Tariff 21.
23. Mr. Band’s assurances regarding retroactive duties were also consistent with CBSA policy.
24. Ronsco pleads and relies upon CBSA Memorandum D11-6-10 (“**D11-6-10**”), including section 27 thereof, and CBSA Memorandum Memorandum D-11-6-6.
25. 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.

26. 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.
27. 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*.
28. 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.
29. On December 19 2018, as required by the CBSA, Ronsco filed self-corrections for its importations of the goods at issue going back four years (i.e. for the years 2015 to 2018). The CBSA issued Detailed Adjustment Statements ("DAS") for the corrected transactions, pursuant to section 59 of the Customs Act, RSC 1985 c 1.
30. Ronsco requested a further re-determination. The CBSA issued the July 2020 DAS on July 30, 2020, pursuant to section 60 of the Customs Act. The July 2020 DAS upheld the earlier DAS and required Ronsco to pay duties and interest with respect to the corrected importations.

III. Ronsco's Notice of Penalty Assessment Appeal

31. 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.
32. On December 17, 2019, Ronsco filed its appeal of the NPA. It made further submissions on March 10, 2020 and June 1, 2020.
33. 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 27, 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*.
34. On September 17, 2020, Ronsco received the CBSA’s decision, dated September 15, 2020, dismissing its NPA Appeal.
35. 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 27 above) and to Ms. Alimohamed’s advice (see paragraph 33 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 Been Required to Pay Retroactive Duties

36. Ronsco did not have “reason to believe” that its tariff classification of the imported rough bore wheels was incorrect. It should not have been required to pay the retroactive duties set out in the July 2020 DAS.
37. 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.
38. CBSA knowingly took contradictory positions with respect to this Tariff Item with different importers. The CBSA’s Advance Ruling from 2005, which was in place for almost 14 years, evinces CBSA’s uneven, unfair, and contradictory positions.
39. The CBSA posts 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.
40. Ronsco’s American competitors benefit from ruling letters from U.S. Customs and Border Protection that address tariff classification. This allows U.S. importers to understand the laws that affect their imports and the consequences of particular transactions under those laws.
41. 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 further 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.

42. 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 (which remained unchanged).
43. Approximately ten companies have imported identical or substantially similar goods into Canada under Tariff 21 from Russia, China, Japan and Ukraine. CBSA knew that this was the case.
44. 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 from Tariff 21 to Tariff 29.
45. 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). These public statements further support Ronsco's lack of "reason to believe" that its selection of Tariff 21 was improper.

V. CBSA Breached its Public Law Duties

46. Ronsco pleads and relies upon *Paradis Honey Ltd. v. Canada*, 2015 FCA 89.
47. CBSA's conduct, as set out above and below, was "unacceptable" and "indefensible in the administrative law sense".

48. CBSA's conduct, as set out above and below, was inconsistent with, and offensive to, "public law values" and constituted "significant maladministration". CBSA's conduct requires an award of damages.
49. By imposing retroactive duties on Ronsco, CBSA treated Ronsco differently than similarly situated competitors, who were importing identical or substantially similar goods under the same Tariff as Ronsco, including Sumitomo and other companies. In doing so, CBSA unfairly favored certain importers over others, to the detriment of Ronsco, and affected the competitive landscape of the industry.
50. CBSA did not impose retroactive duties on any other importer for importing these goods under Tariff 21. CBSA did not conduct a trade compliance verification of any other importer for conduct similar to Ronsco's.
51. Numerous other companies were importing identical or substantially similar goods under the same tariff as Ronsco. None of them suffered the same unfair consequences at the hands of CBSA.
52. In particular, Sumitomo was allowed to import rough bore wheels without duty and without penalty until the 2005 Advanced Ruling was rescinded.
53. When Ronsco's representatives met with Doug Band in June 2018, his statements were an admission that Ronsco did not have "reason to believe" that its tariff declaration was incorrect. Further, he provided assurances indicating that CBSA would exercise its discretion in a manner consistent with CBSA policy so that Ronsco would not be required to pay unreasonable retroactive duties. He represented that Ronsco would only be required to pay duties for the verification period and going forward.

54. Contrary to CBSA's own internal policy, and the specific representations of its representative Mr. Band, CBSA imposed retroactive duties on Ronsco for a four-year period and denied Ronsco's appeals.
55. Throughout this appeals process, CBSA has taken inconsistent procedural positions that have created an unnecessary multiplicity of proceedings, causing Ronsco (and the Canadian public) to incur significant and unnecessary costs. Those inconsistent procedural positions include the following:
- a. In November, 2018, Ms. Ogilvie 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*;
 - b. In August, 2020, Ms. Alimohamed, advised Ronsco that, contrary to Ms. Ogilvie's advice, 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";
 - c. In October 2020, as Ronsco was preparing to bring this action, counsel for the Minister on the judicial review in T-1037-20 took the position that, contrary to Ms. Ogilvie's advice and Ms. Alimohamed's advice, 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*. Despite these inconsistent directions, Ronsco pursued each avenue of appeal to which it was directed.

56. CBSA now takes the position that it does not matter whether or not Ronsco had “reason to believe” at the time of the imports, because the *Customs Act* would require it to pay four years of retroactive duties regardless. That proposed interpretation would render the concept of “reason to believe” meaningless and would run directly contrary to CBSA’s internal policies as well as the representations by Mr. Band to Ronsco’s representatives.
57. Prior to commencing this action, and throughout the multi-year appeals process described above, CBSA never advised Ronsco of its interpretation that “reason to believe” has no application to the retroactive duties owed by Ronsco, despite Ronsco repeatedly challenging CBSA’s findings with respect to “reason to believe.”
58. CBSA’s position appears to be that the retroactive duties paid by Ronsco can only be recovered as damages.
59. Damages are necessary to cure Ronsco’s significant losses caused by CBSA’s conduct.
60. There is no public law justification for CBSA’s conduct.

VI. CBSA Breached its Duty of Care

61. CBSA owed a duty of care to Ronsco, arising from:
 - a. Its role in administering and enforcing the *Customs Act*;
 - b. Its internal policies, including section 27 of CBSA Memorandum D-11-6-10;
 - c. The representations of Doug Band set out above;
 - d. CBSA’s conduct in allowing other importers to import identical or substantially similar goods under Tariff 21;

- e. CBSA's knowledge that Ronsco and the industry as a whole believed that Tariff 21 was the correct and appropriate classification for these imported goods; and
 - f. CBSA's knowledge that treating Ronsco differently from the rest of the industry would cause significant harm to Ronsco.
62. There is no public policy reason that would negate a duty of care. In particular, CBSA's duties to the broader public do not come into conflict with its duties to Ronsco, and a finding of a duty of care will not expose CBSA to indeterminate liability.
63. CBSA's duty of care required that it:
- a. Administer and enforce the *Customs Act* in a consistent manner;
 - b. Treat Ronsco in a manner that is consistent with other importers, importing substantially similar (or the same) goods;
 - c. Exercise its discretion with respect to reassessment in a manner consistent with its internal policies;
 - d. Act in a manner consistent with the representations of its representative Doug Band, including by not imposing retroactive duties;
 - e. Provide consistent and transparent directions to Ronsco in pursuing its various appeal routes; and
 - f. Interpret the *Customs Act* in a manner that attributes meaningful consequences to the concept of "reason to believe."
64. CBSA breached its duty of care, including by:

- a. Treating Ronsco differently than other similarly situated importers by imposing significant retroactive duties on Ronsco that were not imposed on other importers;
 - b. Failing to exercise its discretion in a manner consistent with its internal policies, by imposing retroactive duties on Ronsco despite Ronsco not having “reason to believe” at the time of import;
 - c. Failing to exercise its discretion in a manner consistent with the representations of Doug Band, including his representation that retroactive duties would not be imposed;
 - d. Providing inconsistent directions to Ronsco as to the appropriate appeals route to pursue;
 - e. Asserting that regardless of whether Ronsco has a “reason to believe,” it is still required to pay retroactive duties.
65. CBSA’s breaches of the standard of care have caused significant damages to Ronsco as set out below.
66. Ronsco pleads and relies upon the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.

VII. Damages

67. CBSA’s breaches of its public law duties and the applicable standard of care have caused the following damages to Ronsco:
- a. General damages in the amount of \$1,000,000, to be particularized before trial;

- b. Special damages in the amount of \$1,006,641.91 of professional fees incurred by Ronsco as a result of CBSA's breaches. 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:
 - i. Legal: \$347,378.15
 - ii. Trade Consultants: \$550,065.76
 - iii. Surety Bond: \$104,282.00
 - iv. Experts: \$4,916.00
- c. \$2,544,628.30 erroneously charged by CBSA to Ronsco as follows:
 - i. Duties: \$2,434,002.31;
 - ii. Interest: \$109,626.07; and
 - iii. Administrative Monetary Penalty: \$1,000

IX Ronsco's Right to Amend

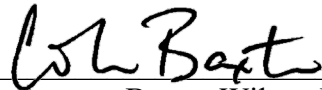
- 68. The causes of action alleged herein arise from substantially the same facts as those pleaded in Ronsco's statement of claim dated October 26, 2020. The defendant suffers no prejudice from these amendments.
- 69. No relevant limitations periods had expired at the time of the commencement of this proceeding on October 26, 2020. In particular, the claim was commenced well within 90 days of September 17, 2020 when Ronsco received the CBSA's decision, dated September 15, 2020, dismissing its NPA Appeal, and within 90 days of July 30, 2020,

when Ronsco received the July 2020 DAS requiring it to pay duties and interest from 2015 to July 2018.

70. Rules 75, 76, 77, 200, and 201 of the *Federal Court Rules*.

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

October 26, 2020
Amended: May 7, 2021



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