

CANADIAN INTERNATIONAL TRADE TRIBUNAL

B E T W E E N:

RONSCO INC.

Appellant

and

CANADA BORDER SERVICES AGENCY

Respondent

SUPPLEMENTARY WRITTEN SUBMISSIONS

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I. OVERVIEW

1. These submissions respond to the Tribunal's letter dated October 29, 2019, inviting additional written submissions from both parties. Parties were asked to set out their positions regarding the application of Rule 2(a) of the *General Rules for Interpretation of the Harmonized System* (the "*General Rules*").¹
2. The goods at issue in this case ("Wheel Bodies", as defined in the Appellant's Brief of Ronsco Inc. ("Ronsco")) are properly classified under tariff item 8607.19.30 as "Parts of axles or wheels", based on Rule 1 of the *General Rules*. The Wheel Bodies are classifiable based on the terms of the headings, subheadings, and tariff items at issue, and must therefore be classified based on Rule 1 of the *General Rules*, without reference to Rule 2(a).
3. In the alternative, Rule 2(a) does not resolve the issue before the Tribunal, because the Wheel Bodies do not have the essential character of finished wheels. The goods should therefore be classified under tariff item 8607.19.30 based on Rule 3(a) of the *General Rules*, because "Parts of axles or wheels" provides a more specific description of the goods than "Wheels, whether or not fitted with axles".
4. In the further alternative, the goods should be classified under tariff item 8607.19.30 based on Rule 3(c) of the *General Rules*, because tariff item 8607.19.30 comes later in numerical order than the three-dash item "Wheels, whether or not fitted with axles".

¹ [*General Rules for the Interpretation of the Harmonized System*](#), (Schedule to the *Customs Tariff*, SC 1997, c 36), Appellant's Brief ("AB"), Vol II, Tab 24, Rule 2(a) [*General Rules*].

II. POINT AT ISSUE

5. Both parties agree that the correct subheading for the goods at issue is 8607.19. The Tribunal must therefore decide 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 CBSA President; or as “[...] Parts of axles or wheels” under the three-dash tariff item 8607.19.30, as Ronsco submits. These submissions address the tariff classification of the goods specifically with respect to Rule 2(a) of the *General Rules*.

III. THE APPELLANT’S SUBMISSIONS

A. The general process for determining tariff classification

6. The *General Rules* must be applied in a “hierarchical” manner beginning with Rule 1,² as set out in paragraphs 26 to 32 of Ronsco’s Appellant’s Brief. Rule 1 states that “classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes”.³ Rule 6 of the *General Rules* and Rule 1 of the *Canadian Rules* apply this principle to subheadings and tariff items, respectively, and further state that only subheadings and tariff items at the same level are comparable.⁴

7. Only if the appropriate heading cannot be determined through Rule 1 alone should Rules 2, 3, 4 and 5 of the *General Rules* be applied.⁵ As a result, Rule 2(a) cannot be considered unless the goods cannot be classified based on Rule 1 of the *General Rules*.⁶

² [Customs Tariff](#), SC 1997, c 36, AB, Vol II, Tab 22, s 10(1); *General Rules*, *supra* note 1, AB, Vol II, Tab 24; [Canada \(AG\) v Igloo Vikski Inc](#), 2016 SCC 38, AB, Vol II, Tab 25 at para 29 [*Igloo Vikski*].

³ *General Rules*, *supra* note 1, AB, Vol II, Tab 24, Rule 1.

⁴ *Ibid*, Rule 6 and Canadian Rule 1.

⁵ *Igloo Vikski*, *supra* note 2, 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.

⁶ Ronsco reiterates the arguments made on this point at paragraphs 51 to 55 of its Appellant’s Brief.

B. The goods are properly classified as “parts of wheels” under tariff item 8607.19.30, based on Rule 1 of the *General Rules*

8. As set out in greater detail in Ronsco’s Appellant’s Brief,⁷ the Wheel Bodies can – and therefore must – be classified based on Rule 1 of the *General Rules*, without reference to Rule 2(a). Rule 2(a) of the *General Rules* does not enter into the tariff classification of the Wheel Bodies, given the Supreme Court of Canada’s decision in *Canada (AG) v Igloo Vikski Inc* (“*Igloo Vikski*”).⁸

9. Although Ronsco will not repeat the arguments in its Appellant’s Brief in detail, the terms of the *Customs Tariff* headings, subheadings, and tariff items at issue, as well as the Explanatory Notes thereto,⁹ are sufficiently clear for the tariff classification of the goods to be determined.¹⁰ First, the Wheel Bodies cannot even be fitted with axles, let alone function as finished wheels. The Tribunal has found the functionality (or lack thereof) of a good to be a significant part of what distinguishes it from a complete or finished good.¹¹

10. Second, given the Supreme Court of Canada’s guidance that a heading styled “Parts of...” already specifically contemplates the unfinished nature of a good,¹² it is clear that the Wheel Bodies should be classified as parts of wheels under three-dash item 8607.19.30 (“Parts of axles or wheels”) rather than as wheels outright (under three-dash item “Wheels, whether or not fitted with axles”). Chairperson Bédard has since applied this guidance from *Igloo Vikski* in the 2017

⁷ AB, Vol I, Tab A at paras 51 to 55.

⁸ *Igloo Vikski*, *supra* note 2, AB, Vol II, Tab 25 at para 22 and footnote 4.

⁹ World Customs Organization, *Explanatory Notes to the Harmonized Commodity Description and Coding System*, 6th ed (2017). See, for example, “86.07 – Parts of railway or tramway locomotives or rolling-stock” (EN) and “86.07 – Parties de véhicules pour voies ferrées ou similaires” (FR).

¹⁰ Rule 1 of the *General Rules* states, “The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions [emphasis added]”: *General Rules*, *supra* note 1, AB, Vol II, Tab 24, Rule 1.

¹¹ *Alliance Mercantile Inc v Canada (Border Services Agency President)*, [2017] CITT No 107, Appellant’s Supplementary Written Submissions (“ASWS”), Tab 1 at paras 41 and 44 [*Alliance Mercantile*].

¹² *Igloo Vikski*, *supra* note 2, AB, Vol II, Tab 25 at footnote 4. See paragraphs 53 to 54 of Ronsco’s Appellant’s Brief.

decision of *Alliance Mercantile Inc v Canada (Border Services Agency President)* (“*Alliance Mercantile*”).¹³

11. While the CBSA has argued that the Wheel Bodies should not be considered parts of wheels because they are not subsequently added to “other parts” of wheels (i.e., they do not ultimately become part of “composite goods”), the Supreme Court makes it clear in *Igloo Vikski* that this is not a requirement in order for a good to be a “part”. Specifically, the Supreme Court referred to headings styled “Parts of...” as contemplating the incomplete or unfinished nature of the goods at issue.¹⁴ The Wheel Bodies must therefore be classified based on the terms of the three-dash items at issue alone, as per Rule 1 of the *General Rules*, and without reference to the other *General Rules*.

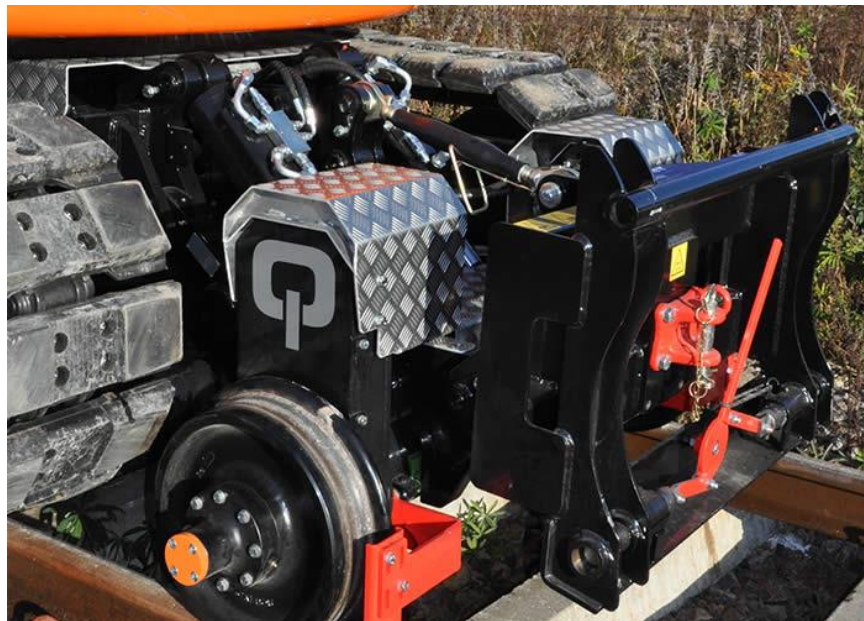
12. The fact that the Wheel Bodies can be considered “parts of wheels” is further supported by the fact that there are other finished wheels that can be classified under the three-dash item “Wheels, whether or not fitted with axles”. This three-dash item would include goods such as wheelsets – that is, Wheel Bodies that have undergone all of the further manufacturing processes described at paragraph 12 of Ronsco’s Appellant’s Brief, and which have been mounted on axles and had bearings attached. Such goods would constitute “Wheels, [...] fitted with axles.”

13. In addition, “Wheels, whether or not fitted with axles” can also encompass wheels for rolling-stock that are finished but that are imported not fitted with axles. Since this issue was raised by the Tribunal at the hearing, Ronsco’s expert witness, Peter Lepore, has provided Ronsco with images showing examples of such wheels, shown below:¹⁵

¹³ *Alliance Mercantile*, *supra* note 11, ASWS, Tab 1 at para 49 and footnote 29.

¹⁴ *Igloo Vikski*, *supra* note 2, AB, Vol II, Tab 25 at para 22 and footnote 4.

¹⁵ Photos of Bolted Wheels for Railway Maintenance Rolling-Stock, ASWS, Tab 2.



14. These wheels ("Bolted Wheels"), which are installed on rolling-stock for railway maintenance,¹⁶ are bolted into place, rather than pressed onto a specific axle requiring a specific bore hole with an extremely precise diameter. Because Bolted Wheels are bolted into place, and

¹⁶ "Rolling stock" is defined broadly as "Locomotives, carriages, wagons, or other vehicles used on a railway": Oxford Dictionary, "Rolling Stock", Noun, online: Lexico <https://www.lexico.com/en/definition/rolling_stock>, ASWS, Tab 3.

are not held in place solely by their “interference fit” with an axle, they do not need to undergo the wheel boring process after importation. That is, they are not subjected to the three-step process described at paragraph 12 of Ronsco’s Appellant’s Brief and are therefore already finished upon importation.

15. The Wheel Bodies imported by Ronsco are easily distinguished from Bolted Wheels, given that the Wheel Bodies are not finished upon importation and cannot be fitted on axles, let alone installed on rolling-stock. As a result, they can be classified as “Parts of axles or wheels” under tariff item 8607.19.30 based on Rule 1 of the *General Rules* alone.

C. In the alternative, the Wheel Bodies should be classified under 8607.19.30 based on Rule 3(a) of the *General Rules*, because Rule 2(a) does not apply

(i) Rule 2(a) of the *General Rules* does not apply to the Wheel Bodies

16. If the Tribunal finds that the Wheel Bodies cannot be classified based on Rule 1 alone, and that it is not clear whether the goods should be considered parts of wheels or wheels outright, then Rule 2(a) of the *General Rules* must be considered. However, this Rule does not apply to the goods in Ronsco’s case.

17. Rule 2(a) states as follows:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

18. In this case, Rule 2(a) cannot be considered to apply to the Wheel Bodies as they do not have the “essential character” of finished wheels (i.e., of “Wheels, whether or not fitted with

axles”). The Tribunal discussed the meaning of “essential character” in *Alliance Mercantile*:¹⁷

63 In *Renelle Furniture*, the Tribunal defined “essential character” as follows: “The word ‘essential’ is defined in the *Canadian Oxford Dictionary* as ‘of or constituting the essence of a person or thing’. The word ‘character’ is defined as ‘the collective qualities or characteristics ... that distinguish a person or thing’”.

19. Although there is no universally applicable test to determine the “essential character” of an article,¹⁸ the Tribunal has considered a number of elements in determining whether an article has the “essential character” of a finished good. These include whether the article shares the appearance of the finished good, whether the article possesses the essential features of the finished good, the manner in which the article was marketed, and whether the value added to the article after importation is of such a considerable proportion as to render absurd the claim that the article as imported has the essential character of the finished good.¹⁹

20. In this case, although the Wheel Bodies are generally the same size and shape as finished wheels, they cannot be considered to possess the essential features of finished wheels. The essential features of a finished wheel must include the ability to be mounted on an axle, so that bearings can be attached in order to form a completed wheelset, which can then be incorporated into a bogie and installed under a train. The Wheel Bodies as imported do not have this essential feature. In other words, the very factor that would allow them to be considered wheels – the essential ability to be mounted onto axles – is conspicuously absent upon importation.

21. This necessity for a wheel to be capable of being fitted on an axle is clearly an “essential feature” of a wheel, given the ordinary meaning of the term “wheel”. For instance, the Shorter

¹⁷ *Alliance Mercantile*, *supra* note 11, ASWS, Tab 1 at para 63, citing *Renelle Furniture Inc v Canada Border Services Agency* (23 March 2017), AP-2005-028 (CITT) at para 18.

¹⁸ *Alliance Mercantile*, *supra* note 11, ASWS, Tab 1 at para 62.

¹⁹ *Ibid* at paras 64-65.

Oxford Dictionary, referred to as an aid to argument at the hearing, defines a wheel as follows:²⁰

1 A solid disc or a circular ring with spokes radiating from the centre, attached or able to be attached at its centre to an axle around which it revolves and used to facilitate the motion of a vehicle or for various mechanical purposes.

The Wheel Bodies are not only incapable of being attached to axles, but the evidence before the Tribunal is that the bore holes on Wheel Bodies are also not even centred. Installing them under trains would cause the trains to “jump” off the tracks and potentially derail. The Wheel Bodies therefore cannot be considered to have the “essential character” of wheels.

22. Furthermore, although the Wheel Bodies are occasionally marketed as “wheels”, there is clear evidence before the Tribunal that the value added to the Wheel Bodies after importation is extremely significant. The evidence of Messrs. Montgomery and Lepore was that the three-step wheel boring process (described at paragraph 12 of Ronsco’s Appellant’s Brief) is a highly sophisticated process requiring millions of dollars’ worth of equipment and highly trained employees to complete. It must also be extremely precise, such that the tolerance level for the fit between the finished bore hole and the axle to which it is ultimately fitted is only 0.0005 inches.

23. As a result, before the wheel boring process is conducted (or if the process is not conducted with sufficient precision), the Wheel Bodies are useless and do not even exist for the purposes of the railway industry. Indeed, Mr. Montgomery noted that Wheel Bodies which cannot be fitted with axles are sometimes sold just as anchors. Wheel Bodies therefore cannot be considered to have the “essential character” of finished wheels.

24. The analysis in *Alliance Mercantile* is apposite, where the Tribunal considered boot bottoms

²⁰ Shorter Oxford English Dictionary, 6th ed, Vol II (N-Z) at “Wheel” (noun), Definition #2, ASWS, Tab 4.

consisting of an outer sole (with a heel), affixed to an unfinished and incomplete “upper”, and with a steel toe cap and plate. These goods could fit onto a foot and would cover the bottom, sides and top of the foot, but would not cover the ankle.²¹ Despite the fact that the goods had the “form and shape” of finished footwear, the Tribunal found in *Alliance Mercantile* that this was not sufficient for the goods to be considered finished footwear.²²

25. In addition, the Tribunal noted the complex “finishing process” that had to be applied after importation to the goods at issue in *Alliance Mercantile*.²³ The Tribunal stated:²⁴

68 In addition, the level and type of transformation performed on the goods in issue after importation distinguishes the goods in issue from the types of goods the Tribunal has found to have acquired the essential character of the finished products. For instance, the goods in issue are distinguishable from the ones in *Bauer*, where the Tribunal found unfinished skating boots had the essential character of the finished articles where all that remained to be done in order to finish the imported goods was to add insoles. This is substantially different from the situation of the goods in issue.

69 The goods in issue are also distinguishable from those in *Viessmann* wherein the Tribunal's consideration went beyond the monetary value of work and components necessary to transform the parts into a finished product, and instead looked at the nature and extent of the work that was involved. The Tribunal takes the same approach in this case.

As a result, the Tribunal found that the goods did not have the essential character of “footwear” and classified them as “parts of footwear”.²⁵ This analysis involved a consideration of the criteria addressed at paragraphs 43 to 45 of Ronsco’s Appellant’s Brief.

²¹ *Alliance Mercantile*, *supra* note 11, ASWS, Tab 1 at para 8.

²² *Ibid* at paras 44, 67 and 72-73. In *Alliance Mercantile*, the Tribunal stated the following at para 44: “It would be possible for someone to insert his/her foot in the opening of the subject goods and stand still or even potentially take a few awkward steps. This, however, hardly amounts to using the subject goods as waterproof footwear. Wearing footwear generally has a more active connotation, as footwear is generally used to protect or cover the feet in the action of moving around. The fact that the foot can be introduced into the goods in issue and surrounded by them is not, on its own, determinative, and is not, in this case, sufficient for the goods in issue to be considered footwear.”

²³ *Ibid* at paras 67 and 72-73.

²⁴ *Ibid* at paras 68-69.

²⁵ *Ibid* at paras 44 and 73-74.

26. As in *Alliance Mercantile*, the Wheel Bodies are clearly distinguishable from the goods in *Bauer* (that is, unfinished skating boots, that only needed insoles added to become complete).²⁶ Although the Wheel Bodies may have the form and shape of finished wheels, they have to undergo extraordinarily significant further work in order to be considered finished wheels for railway rolling-stock. This work involves a highly sophisticated process, requiring millions of dollars' worth of technical equipment in order to achieve an extremely precise outcome. As a result, just as in *Alliance Mercantile*, the Wheel Bodies cannot be considered to have the "essential character" of finished wheels. Rule 2(a) of the *General Rules* therefore does not provide any assistance in determining the tariff classification of the Wheel Bodies imported by Ronsco.

(ii) The Wheel Bodies must therefore be classified under 8607.19.30 under Rule 3(a)

27. Given that Rule 2(b) of the *General Rules* is about the tariff classification of goods composed of "mixtures or combinations of [a] material or substance", it cannot apply to the Wheel Bodies. Accordingly, the analysis proceeds to Rule 3(a) of the *General Rules*. Rule 3(a) states that, where a good is classifiable under two or more headings, "[t]he heading which provides the most specific description shall be preferred to headings providing a more general description."²⁷

28. On this basis, the Wheel Bodies should be classified under tariff item 8607.19.30 as "Parts of axles or wheels", rather than wheels outright. That is, when comparing the two three-dash items at issue, it is clear that "Parts of axles or wheels" provides a more specific description of the goods than "Wheels, whether or not fitted with axles". As a result, if Rule 1 of the *General Rules* does not resolve the issue before the Tribunal, then the Wheel Bodies should ultimately be classified under

²⁶ See *ibid* at para 68, citing *Bauer Nike Hockey Inc v Deputy MNR* (2001), AP-99-092 (CITT).

²⁷ *General Rules*, *supra* note 1, AB, Vol II, Tab 24, Rule 3(a).

tariff item 8607.19.30 based on Rule 3(a).

D. In the further alternative, the goods should be classified under tariff item 8607.19.30 based on Rule 3(c) of the *General Rules*

29. In the further alternative, if Rule 3(a) of the *General Rules* does not resolve the issue, then the analysis proceeds to Rule 3(b). However, Rule 3(b) concerns the tariff classification of goods composed of “mixtures, composite goods consisting of different materials or made up of different components.”²⁸ This clearly does not apply to the Wheel Bodies, and the analysis must therefore proceed to Rule 3(c).

30. Rule 3(c) states as follows:²⁹

(c) When goods cannot be classified by reference to Rule 3(a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration

31. As a result, if the classification of the goods under one of the three-dash items at issue cannot be completed based on Rules 1, 2, or 3(a) of the *General Rules*, then the goods must be classified under the tariff item that occurs numerically last, between “Wheels, whether or not fitted with axles” and “Parts of axles or wheels”.

32. Although the three-dash item “Wheels, whether or not fitted with axles” does not have a specific tariff item number, it is subdivided into two four-dash items that are numbered 8607.19.21 and 8607.19.29. “Parts of axles or wheels” is numbered 8607.19.30. As a result, if regard is had to Rule 3(c) of the *General Rules*, then the Wheel Bodies must be classified under tariff item 8607.19.30 as “Parts of axles or wheels”.

²⁸ *Ibid*, Rule 3(b).

²⁹ *Ibid*, Rule 3(c).

IV. ORDER SOUGHT

33. As stated in its Appellant's Brief, 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", and order that the duties paid by Ronsco on the goods at issue be remitted to Ronsco forthwith, with interest.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of November, 2019.



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